

STATEMENT OF ADDITIONAL GROUNDS

Dino J. Constance

v.

State of Washington

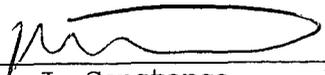
436974-3-II
(40504-1-II Consolidated)

on Appeal of
Collateral attack per CrR 7.8

FILED
COURT OF APPEALS
DIVISION II
2014 JAN 27 PM 2:53
STATE OF WASHINGTON
BY _____
DEPUTY

To avoid repetition, this appellant defers citation of authority, in most cases, to citations already noted by counsel in prior briefing and within the current appellate brief by counsel.

Respectfully signed and submitted this 12th day of September 2013
in Walla Walla, Washington:



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STATEMENT OF ADDITIONAL GROUNDS

A. ASSIGNMENT OF ERROR

- I. THE TRIAL COURT ERRED BY FAILING TO GRANT RELIEF AT THE INITIAL SHOW CAUSE HEARING, AND BY PROCEDURALLY ALLOWING THE STATE EXCESSIVE OPPORTUNITIES TO SUBSTANTIVELY RESPOND TO THE APPELLANT'S CrR 7.8 MOTION.

- II. THE TRIAL COURT ERRED BY NOT FINDING TRIAL COUNSEL INEFFECTIVE FOR FAILING TO INVESTIGATE AND CONDUCT TIMELY WITNESS INTERVIEWS. THIS PRECLUDED COUNSEL'S ABILITY TO REVEAL TO THE JURY THAT WITNESSES HAD THE OPPORTUNITY TO EMBELLISH AND DUPLICATE EACH OTHER'S ALLEGATIONS, AND THAT STATE'S WITNESSES AND THE ALLEGED VICTIM COLLUDED TO FABRICATE WITNESS CREDIBILITY.

- III. THE TRIAL COURT ERRED BY NOT GRANTING RELIEF DUE TO EXTENSIVE STATE MISCONDUCT, RESULTING IN PREJUDICIAL CUMULATIVE ERROR.

- IV. THE TRIAL COURT HAS DEMONSTRATED PREJUDICIAL JUDICIAL BIAS TOWARD THE APPELLANT AND IN FAVOR OF THE STATE.¹

B. Issues Pertaining to Assignment of Error

- I. Did the trial court err by failing to grant relief at the initial show cause hearing when the state failed to show cause why relief should not be granted, as required under the latest revision to CrR 7.8? Did the trial court err by allowing the state excessive time to answer the appellant's CrR 7.8 motion?

¹Embedded errors include: Denial of motions for severance, suppression, recusal of prosecutor, mistrial, excessive bail setting, allowing spoliation of evidence and PRA violations, and inaccurate factual findings.

II. Did the trial court err in not finding Mr. Walker ineffective because the record shows that Mr. Costelanos and Mr. Brown did in fact know of each other's allegations against the appellant (and those of the Sprys), especially since the state maintained no connection between these witnesses? Did the trial court err in not finding Mr. Walker ineffective because the record shows collusion between state's witnesses and the alleged victim, which was not revealed to the jury?

III. Did the trial court err in not granting relief due to prejudice caused by extensive state misconduct, including pervasive Brady violations, numerous Franks Rule violations, widespread discovery and Privacy Act violations, destruction and/or spoliation of evidence, allowing known false testimony, ex parte contact with judges, and misuse of subordinates within the prosecutor's office to conceal the assigned prosecutor's misconduct?

IV. Did the trial court demonstrate judicial bias in the consideration of the appellant's CrR 7.8 motions, to include biased findings of Mr. Walker's credibility (first CrR 7.8) and inaccurate factual findings (second CrR 7.8)? Was this bias sufficient to warrant an order for venue or judge change by this court, after vacating the remaining counts?

C. SUBSTANTIVE FACTS

1. On January 15, 2007, while in the midst of a contentious divorce with Jean Koncos, Mr. Constance rented a room from Michael Spry. This was a temporary 'jumping off point', as Mr. Constance had just relocated back to Clark County from Oceanside, San Diego County.
2. Shortly after moving in, Mr. Constance enlisted the assistance of Jordan Spry to spy on Ms. Koncos (by posing as a massage client), as part of his divorce/custody dispute investigation. He had done this in the past with at least one other person; a female hospital charge nurse named Lisa Parcel. (App. 1)
3. During the ten week Constance-Spry cohabitation period, both Sprys helped Mr. Constance with his family law case. At one or more points they gave sworn declarations in his favor. (RP 2/26/08 385)
4. On March 16, 2007, Jordan Spry proactively assisted Mr. Constance when police came to arrest him for a violation of a mutual TRO, which had been alleged by Ms. Koncos. Jordan gave police a sworn statement establishing Mr. Constance's alibi at the time of the alleged violation. (App. 2) Police then released Mr. Constance and referred Ms. Koncos for charges of making a false police report. Jordan Spry made no mention of any improper or illegal behavior by Mr. Constance at the time. (Ex. 5, 100, 127) App. 2 was illegally suppressed by the state.
5. On the morning of March 27, 2007, Mr. Constance moved out of the shared residence after a heated financial dispute with Michael Spry. Mr. Constance had to summon police to keep the peace, who stayed until he had secured all his property and completed the move out. (Ex. 105)

6. During the heated financial dispute, the Sprys began to threaten and blackmail Mr. Constance over desperately needed money. (Ex. 104, 105) No threats or solicitations against Ms. Koncos were reported to the officers.

7. Also on March 27th, Ms. Koncos heard from CPS with Mr. Constance's concerns that a violent Ms. Koncos was mistreating their son. Still later on March 27th, per suggestion by CPS, Ms. Konos (from Disneyland) called VPD and spoke with Offr. David Brown about a call she had received that morning from Jordan Spry. (App. 3) She expressed doubts about Jordan's claims against Mr. Constance but asked Offr. Brown to call Constance anyway.

8. On March 28, 2007, the very next morning, Mr. Constance filed with the family court, and served by mail, his MOTION FOR CUSTODY CHANGE AND ANGER CONTROL THERAPY against Ms. Koncos. (trial Ex. 1)

9. On April 2, 2007, Constance recorded two lengthy blackmail attempts by Jordan Spry, which he subsequently reported to Sheriffs. (Ex. 9, 104, trial Ex. 2) The recordings contained no mention of threats or solicitations. On April 2nd, Ms. Koncos returned home and received Mr. Constance's motion.

10. On April 3, 2007, the Sprys met with Ms. Koncos and signed declarations typed on her computerized pleading paper, alleging parental misconduct and solicitations by Mr. Constance. On April 10, 2007, the Sprys appeared in the family court for Ms. Koncos, alleging a wide range of uncharacteristic behavior by Mr. Constance. As a result, his custody motion, which was cited for the same day, was summarily dismissed. (App. 4)

11. The Spry declarations contained the first documented allegations of solicitation by Mr. Constance. But in these declarations, and together with

----- Ms. Koncos, the parties claimed to the family court that the Sprys had been alleging solicitations (and extreme parental misconduct) by Mr. Constance, and that they had been warning and cooperating with Ms. Koncos throughout the Constance-Spry cohabitation period; well before March 27, 2007.

12. Mr. Constance was arrested on May 7, 2007.

13. Less than a week before trial, On February 20, 2008, defense counsel Walker finally interviewed Ms. Koncos. Upon learning of Mr. Walker's knowledge of the March 27th David Brown police report, Ms. Koncos abruptly changed her story about hearing warnings and allegations from the Sprys prior to the March 27th financial dispute. Instead, she confirmed hearing no such allegations or warnings from them until "the end of March".

(RP 2/20/08 28-29)

14. At trial, the Sprys and Ms. Koncos offered conflicting testimony about when the Sprys made their first allegation against Mr. Constance. Consistent with their declarations to the family court, the Sprys insisted that they began warning Ms. Koncos "in the beginning" (RP 2/26/08 383, 384, 387) and "immediately" (RP 2/26/08 371). Ms. Koncos, however, reaffirmed her second story, and testified that she heard no such allegations or warnings from the Sprys until "March 27th" - the day of the financial dispute when Mr. Constance moved out. (RP 2/27/08 670)

15. Well prior to trial, during the February 13, 2008 motions hearing, Mr. Walker told the court that the Sprys were "working with Ms. Koncos". (RP 2/13/08 217) He reaffirmed this statement in post-conviction testimony. (RP 2/23/12 850) Yet Mr. Walker did not demonstrate or expose any cooperation between the Sprys and Ms. Koncos at trial, even knowing they "were lying".

16. At trial, Mr. Walker did not question Ms. Koncos about the above-noted discrepancy with the Sprys' testimony, or the discrepancy with her own sworn statement to the family court about when the Sprys first alleged misconduct by Mr. Constance¹.

17. At trial, Mr. Walker did not ask Ms. Koncos why she allowed her 2½ year old child to reside part time with Mr. Constance, if as claimed by the Sprys, they had also been telling her that Mr. Constance had been a horrible parent and been mistreating the child for months.

18. At trial, Mr. Walker made no mention what so ever about the above-noted, apparently inexplicable events of March 16, 2007.

19. At trial, Mr. Walker also did not question the Sprys about the discrepancy with Ms. Koncos's testimony. Despite the huge volume of (undiscovered) impeachment material, the Sprys were unimpeached and their testimony unchallenged, except for Jordan Spry's blackmail recordings. (Ex. 58,60,63-68,70,71,102)

20. Mr. Walker had previously attempted to withdraw from this case due to a full case load and lack of time to prepare. The motion was denied because Clark County had no other qualified attorney available. (RP 10/7/07 16)

21. After filing his custody motion on March 28th, Mr. Constance checked into the jail to serve five days for contempt, as ordered by the family court. While there, he told his cellmate, Ricci Costelanos, all about his difficulties with the family court and the Sprys' recent allegations. (EX. 93)

¹This discrepancy is extreme because the Sprys insisted (as did Ms. Koncos to the family court) there had been warnings to her very soon after Mr. Constance moved in with the Sprys. Ms. Koncos, however, later confirmed no such allegations or warnings until the exact day Mr. Constance moved out; ten weeks later, under extremely unfriendly circumstances.

STATEMENT OF ADDITIONAL GROUNDS

-- OUTLINE OF ISSUES --

I.	VIOLATION OF CrR 7.8(c)(3).....	9
II.	INEFFECTIVE ASSISTANCE OF COUNSEL	
	1. The Cycle of Misinformation.....	12
	2. The Koncos-Spry Collusion.....	14
	*3. Prejudice of Undisclosed Impeachment Evidence.....	20
	4. Summary - Ineffective Assistance of Counsel.....	24
III.	EXTENSIVE STATE MISCONDUCT	
	1. Pervasive Brady Violations Itemized.....	25
	2. Franks Rule Violations Itemized.....	26
	a) Reckless False Statements/Police Perjury.....	27
	b) Relevant Omissions.....	29
	3. Discovery/PRA Violations, Spoliation, Negative Inferences..	33
	4. Allowing Known False Testimony.....	35
	5. Other Misconduct.....	36
IV.	JUDICIAL BIAS.....	38
V.	FACTUAL RE-EXAMINATION AND REQUESTED CORRECTIONS.....	42
VI.	THERE WAS INTER-RELATED PREJUDICE.....	45
VII.	CONCLUSION.....	47

* -contains argument associated with incorporated appeal 405042-ii.

D. ARGUMENT

I. VIOLATION OF CrR 7.8(c)(3)

CrR 7.8 reads in part: "...it shall enter an order afixing a time and place for hearing and **directing the adverse party to appear and show cause why the relief asked for should not be granted**".

(Emphasis is ~~added~~). In the instant case, a show cause hearing was so ordered. The defense had properly raised and documented dozens of meritorious issues which produced prejudice and justified relief. Extremely extensive undisclosed and undiscovered impeachment material on all of the accusing witnesses, and the lead detective on the case, in a case where credibility was key, was clearly at issue. At least a dozen Frank's Rule violations (and a resulting Privacy Act violation) requiring supression of all the evidence in the case, were clearly presented. A large number of egregious Brady violations was documented and clearly shown. Trial counsel's almost complete lack of investigation was revealed and the associated prejudice made obvious. A number of other free-standing claims including the illegal recording of the appellant speaking with counsel, standard of review issue, a mistrial motion issue, jury instruction/First Amendment issue, and cumulative error were all brought before the court as the subjects of the properly ordered show cause hearing. And the State's response to all this was little more than "We deny everything". (STATE'S (FIRST) RESPONSE)

The legislature revised and strengthened CrR 7.8, effective September 1, 2007, such that the trial courts could no longer just dispense with these collateral attacks; The courts would either have to properly hear the motions, granting relief where appropriate, or promptly transfer the matters to the Court of Appeals for consideration as Personal Restraint Petitions. This revision was apparently put in place to prevent overburdening the Court of Appeals with PRPs when relief is clearly appropriate and could be granted by the trial court, and to serve the ends of justice in a timely and efficient manner.

Here, there was clear and strong evidence that the defendant had made a substantial showing that he was entitled to relief, and the State clearly failed to show cause why relief should not be granted; None of the serious issues raised by the defense were substantively addressed by the State.¹ At that point, a new trial on all counts (if not a dismissal) should have been immediately ordered. Only this would have been consistent with the law or judiciously expedient or economical. Instead, the court embarked on a costly and lengthy two year series of evidentiary hearings, with many of the appellant's issues not being even answered for years. The ends of justice were wrongfully delayed and the Court of Appeals has since been burdened with a long and complex appeal when relief was clearly appropriate long ago (without appellate court involvement). The 2007 revision of CrR 7.8 was violated.

¹ There is simply no point in ordering the state to show cause when not doing so carries no ramifications. The legislature presumably did not intend this requirement as a mere formality.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

This section offers facts, conclusions, and resulting prejudices which are now supported by the record, and which support the findings of general ineffectiveness and failure to investigate.

1) The Cycle of Misinformation

In the instant case, unknown to the jury, each of the accusing witnesses were of poor credibility and had strong reasons to lie, exaggerate, or testify favorably for the state. As noted, the appellant was prejudiced by this fact because the jury was forced to make its credibility determinations without the relevant facts. This was largely do to counsel's lack of investigation.

But this prejudice was exacerbated because the jury was misinformed as to the witnesses having no means by which to know of (and therefore embellish or duplicate) each others' allegations. In fact, beginning with the Sprys, a cycle of misinformation ensued, by which the witnesses were able to, and in fact did, derive credibility by duplicating each others' claims. This enabled poor quality witnesses to derive credibility from each other, cumulating prejudice against the appellant¹. The key events supporting this conclusion are as follows:

¹Severance of the counts would have neutralized this prejudice. To avoid a repeat of this dynamic at any retrial, this court should order counts 1 and 2 severed from 3 and 4, and count 3 from count 4.

1. On March 27, 2007, during the bitter Constance-Spry financial disagreement, before police arrived and in the presence of Mr. Constance, the enraged Jordan Spry called Ms. Koncos and offered to switch allegiances from Mr. Constance to her. A first allegation of "want[ing] someone to kill her" was then made¹. (Ex. 104, also recorded by offr. Brown/Ms. Koncos - App. 3)

2. The very next day, on March 28, 2007, after filing and serving (by mail as per the court's order) his MOTION FOR CUSTODY CHANGE AND ANGER CONTROL THERAPY (defense trial Ex. 1), Mr. Constance checked into the Clark County Jail to serve five (5) days for contempt, as ordered by the family court. He then meets Ricci Costelanos and tells the man all about his difficulties with Ms. Koncos, his concerns for his son, and his recent problems with the Sprys (including the one day old allegation mentioned above). (Ex. 93) **Mr. Costelanos then learns of Jordan Spry's falsified allegations.** Having found a possible means to do away with the work release sentence he had been avoiding, he notifies jail staff and is contacted by Det. O'Mara.

3. On April 3, 2007, Ms. Koncos meets with the Sprys at which time they refine their vengeful claims and fabricate a claim of having been personally solicited by Mr. Constance (since the day he moved in). (App. 4) Ms. Koncos takes full advantage of the Sprys' desires to harm Mr. Constance. She collaborates with them to destroy his custody position, at which time the solicitation claim (never before heard) **was first put into writing for the family court**².

¹Note that initially, no mention of Mr. Constance soliciting the Sprys was made; only a general allegation of "wanting someone". Only later, after meeting and colluding with Koncos, did the Sprys modify their claims to having been personally solicited.

²Note that the vast majority of the Spry claims are targeted at slandering Mr. Constance's parenting, per the known custody dispute. The (first made) soliciting claims were of so little concern to Mr. Constance, they were ostensibly unanswered in his written response.

4. Det. O'Mara, apparently not terribly concerned by Mr. Costelanos's rants, finally contacted Ms. Koncos on April 18, 2007. Ms. Koncos, who on March 27th told Offr. Brown she did not believe Jordan Spry's claims, was still wanting to end the long-running custody dispute and eliminate Mr. Constance from her life. So she told Det. O'Mara about the Sprys and their recent allegations to the family court. Faking "huge concern" for herself, she placed herself in the protection of Det. O'Mara. Impressed by the number of apparently unrelated people saying the same thing about Mr. Constance, he put Ms. Koncos in a safehouse. Knowing she was in no danger, Ms. Koncos grew tired of the inconvenience and went home only two days later, on April 21, 2007 (while Mr. Constance is supposedly actively soliciting numerous people to kill her).

The **cycle of misinformation was completed** when the misled and deceived Det. O'Mara interviewed the Sprys (who welcomed the opportunity to cause Mr. Constance's arrest). Ignoring proper and legal police procedure, the heavily falsified intercept application followed shortly thereafter.

By failing to investigate¹ sufficiently to have been able to track this series of events, let alone identify the motives and reputations of these extremely unreliable people in any convincing way, Mr. Walker was unable to show the jury that the state's assertion that the witness's claims were independent, was false.

2) The Koncos-Spry Collusion

Careful examination of the record reveals that there was great purpose to the Spry allegations and testimony, which was initially and deliberately bolstered by Ms. Koncos, so as to deceive the family court. Mr. Constance has always maintained his innocence, and that the ignorant or self-serving malicious witnesses were

¹ See MOTION TO VACATE UNDER CrR 7.8 AND FOR DISCOVERY pp 18-22

either plainly lying or were mistaken about his actual intentions. With the Sprys, in particular, where the solicitation allegations originated, from arrest through to his pro se CrR 7.8 motion, and now, Mr. Constance steadfastly asserts that all Spry allegations were simply an attempt to harm him due to the March 27, 2007 financial disagreement.

Apart from the fact that Mr. Fox's post-conviction investigation results strongly support this type of behavior from the Sprys, careful analysis of their statements and testimony shows a particularly devious intention to defraud the courts. Certainly, Michael Spry's past attempt to use perjury to defraud another court (Ex. 60) confirms that this man is not above using dishonesty in court as a weapon. And according to his former best friend and mentor, Rev. Gordon Jones, Mr. Spry possesses considerable skills to this end. (Ex. 70) And numerous reports on Jordan Spry indicate it is much the same with this young man as well. (Ex. 67)

Here, Michael Spry first made statements and gave testimony designed to bolster his own credibility. He elaborated (falsely) on his "minister's" status and supposed "conservative" high standards for his own moral compass, even claiming to "disapprove of profanity". Mr. Spry, in interview and at trial, skillfully misrepresented himself as a fine, upstanding, thoroughly religious and forthright man of the cloth; an altogether conscientious and completely credible paragon of virtue (instead of a completely dishonest, drug addicted, sadistic sexual predator; long ago removed from his "ministry"). Obviously,

it is now a matter of record that this was misleading and deceptive to the extreme¹. Then, only after fraudulently establishing himself as a witness beyond reproach, did he proceed to testify against Mr. Constance, together with Jordan Spry. (EX. 63-68, 104) Only then did he depict the successful Mr. Constance as a horrific slob, a terrible parent, an extreme alcoholic, a swindler, and to Ms. Esele, even a man who wanted his ~~own~~ beloved son dead. "Secretly very vicious and abusive" indeed. (Ex. 60) After establishing his own misrepresented virtue and credibility, Mr. Spry and his son made any and all possible claims before the jury that would provoke a strongly negative emotional response.

As such, the prejudice associated with Mr. Walker's inability to impeach these witnesses may have been insurmountable. Mr. Walker completely failed to challenge their testimony. But this should not have happened because Mr. Walker knew before trial that the Sprys were lying and were "working with Ms. Koncos".

More importantly, Mr. Walker's lack of preparedness enabled the continuation of a fraudulent dynamic, which had begun earlier, in the family court; Recall the discrepancy at trial between the testimony of the Sprys and that of Ms. Koncos about when the Sprys first began making allegations against Mr. Constance. This conflicting testimony was not just an odd happenstance. Rather, upon careful examination, it reveals (broken down) collusion between the alleged victim and key state's witnesses - Collusion designed to promote and bolster the Spry's credibility. Without the credibility fabricated by this trio, the Sprys' testimony was questionable at best.

¹ ~~Witness~~ Note the consistency in Michael Spry's character for untruthfulness as described in Exhibits 58, 60, 70, 71, and 104.

The Sprys and Ms. Koncos were smart enough to realize that no one, including the family court judge, would believe the Sprys' claims of horrible parenting and criminal solicitations if it was known that they had lived with Mr. Constance for ten weeks, but said **nothing to anyone, including Ms. Koncos** about Mr. Constance's alleged conduct until during the heated financial dispute, especially given that it was at this point that they began to threaten and blackmail Mr. Constance; To be believable they would have to be warning Ms. Koncos (at least) well before March 27th. So, they all collectively lied and told the family court just that. This ruse then carried forward into the criminal case. (RP 2/26/08 371)(App. 4) Obviously, this is contradictory to Ms. Koncos's (forced) testimony at trial and is a topic (her supposedly threatened life and mistreated child) she would not be likely to forget or lose track of.

But, note that in the transcript of her February 20, 2007 interview with Brian Walker, she elaborates about her "huge concern" and the "oh absolutely" efforts of the Sprys to "help her out" "before they separated" (before Mr. Constance moved out), while also evading all questions about specifically when this cooperation supposedly began. Time and again she stated that she "can't remember" the unforgettable first time she heard a first "warning" from the Sprys, claiming that her memory was "fuzzy". But, the moment Brian Walker mentioned his knowledge of the March 27th David Brown police report, which is clearly not the report of a woman who had been hearing dire warnings of life threatening solicitations for months,¹ she experienced her "amazing" memory recovery. She was then forced to confirm that she had heard nothing from the Sprys until the "end of March" (a few days later at trial, "March 27th, Exactly - the exact morning of the financial dispute); not so "fuzzy" after all. (RP 2/27/08 670) Her part in this deception is undeniable.

¹This report was taken a week before she received Constance's custody motion.

Without question, all of Ms. Koncos's vividly recalled and elaborately claimed concerns and conversations with the Sprys during the Constance-Spry cohabitation period simply could not have happened since Ms. Koncos (was later forced to confirm that she) heard not a single allegation from the Sprys until the day Mr. Constance left the Spry residence on March 27th.

Also note that Ms. Koncos claimed great concern for the Sprys (Constance's "excessive volatility") as her reason for not having contacted any authority (while her life was supposedly in dire jeopardy and her child was supposedly being terribly mistreated)¹. (RP 2/20/08 27-29) **Answering this predictable challenge to the "warnings ruse", in advance, reveals criminal premeditations to defraud the courts.** This was all just a fabrication to help the Sprys appear credible instead of just reacting to the heated financial dispute². And it worked like a charm in the family court where it was intended to destroy Mr. Constance's custody position.

This ruse was conceived on April 3, 2007, when the parties met at Ms. Koncos's residence and signed the declarations she had typed up for them. This protected Ms. Koncos's custody position (her motivation) and ~~punished~~ Mr. Constance for withholding the money Keitt Spry so desperately needed (the Sprys' Motivation). But as is apparent from Ms. Koncos's efforts to perpetuate this credibility-bolstering ruse into the criminal case (her interviews with Mr. Walker) she intended that the Sprys be able to mislead the jury, just as they had the family court eleven months earlier.

But of course, being unaware of the breakdown of this ruse during the Walker-Koncos interview, the Sprys maintained the original story of having "warned" Ms. Koncos since "in the beginning" and "immediately". Hence the contradictory Koncos/Spry testimony. (See App. 5)

^{2X1} Per Jordan Spry, the disputed funds were "a matter of life and death" for his father. !

¹² Similarly, she could not have been waiting for Mr. Constance to leave the Spry residence because no Spry allegations existed until move out day.

Unfortunately, Mr. Walker was so poorly prepared he failed to reveal any of this to the jury. He asked Ms. Koncos no questions about the abrupt change in her story, the March 27th David Brown police report, or the mutually exclusive Spry testimony. Nor did he challenge her secondary ruse about wanting to protect the Sprys (instead of herself or her child) if she had, in fact, been hearing such serious allegations from the Sprys for months. The jury never heard anything about the Koncos-Spry collusion that had already defrauded one Clark County court (the family court) in the past.

Mr. Walker's untimely interview of Ms. Koncos is likely responsible for this shortcoming. Had Mr. Walker interviewed Ms. Koncos "a few weeks"¹ before trial as he should have, he would have had time to have been prepared to demonstrate that the alleged victim and key state's witnesses had colluded to make these witnesses appear credible, and why. Perjury and collusion to bolster the Sprys' credibility would have been powerful evidence, as would have the conspiratorial conduct of the alleged victim.

Although defense counsel need not perform flawlessly, they 'will be considered ineffective if [their] lack of preparation is so substantial that no reasonably competent attorney would have performed in such a manner.' State v Jury, 19, Wn. Ap 256, 264, 567, P. 2d 2302 (citing State v. White, 5, Wn. Ap. 283, 286-87, 487, P.2d 243 (1971)). No reasonably competent attorney would have waited until five (5) days before trial to interview the alleged victim, especially when this "victim" and the defendant were in the midst of a highly contested divorce, and especially given that the attorney had advanced knowledge that this victim was "working with" the original accusing witnesses.

¹In post-conviction testimony Mr. Walker confirmed that he knew that the Sprys were lying when he interviewed Ms. Koncos "a few weeks" before trial. But this statement is false; It was not until five days before trial that Mr. Walker finally interviewed Ms. Koncos - the day of the readiness hearing. RP 2/28/12 169

3. Prejudice of Undiscovered Impeachment Evidence

Michael Spry

Even with only a fraction of the impeachment evidence now on the record having been discovered before trial, the jury would have learned that Michael Spry was anything but a highly virtuous "minister" and that he misrepresented himself to the extreme. They should have learned that he lied about why she stopped ministering. They should have learned that he is a highly vindictive sadistic drug addicted life-long sexual predator with a history of trying to use perjury to punish another person who had fallen out of favor. They should have learned that he often resorted to crimes of dishonesty, if not thefts as well, to make ends meet. They certainly should have learned that his order in limine violation about the woman Mr. Constance supposedly "trapped in his bedroom" was a lie. And they should have learned about the inconsistent statements he made to Ms. Esele about wanting his own son dead. (Ex. 60) (Ex. 8)

Michael Spry's flaming eight page email to Mr. Constance threatening him with everything evil under the sun, when Mr. Constance refused full payment for the uncompleted moving job, would have shown the depth of the man's hostility toward Mr. Constance. And the jury never learned that, in fact, Mr. Spry made absolutely no allegations against Mr. Constance until Mr. Constance cut off the money he was living on, and that both Sprys lied about that too. With all this verifiable information, no reasonable juror would have believed a single word this man said about Mr. Constance¹.

¹Local witnesses such as Linda Esele, Det. Sgt. Chicks, and Rev. Gordon Jones, even just on rebuttal, would have decimated Mr. Spry's credibility; arguably the primary source of perceived credibility for the State's entire case. (Ex. 60, 70, 71)

Jordan Spry

Similarly, the jury never learned about Jordan's reputation for dishonesty and deceit. They heard nothing about the inexplicable events of March 16, 2007, and how Jordan went out of his way to help Mr. Constance avoid arrest and prosecution only eleven (11) days before making his first allegation (and two full months after Mr. Constance had moved in). The jury never learned about Jordan's gender confused mental illness, that he had impersonated an officer, violated restraining orders, was wanted in multiple jurisdictions, and had skipped out on a felony probation out of Texas. With all this information and the impeachment material on his father, together with the true circumstances of the March 27, 2007 financial disagreement, any reasonable juror would have concluded that the Sprys were maliciously lying to harm Mr. Constance for spite. (Ex. 63-5, 67-8, 102)

Ricci Costelanos

The Jury never learned about Mr. Costelanos's propensity for "snitching", however unreliably, in order to obtain favorable treatment from the state. They never learned about the work release/EHD sentence, and all he went through for years to avoid it, not to mention how this and other benefits were afforded him only after he testified against Mr. Constance. (RP 11/9/11 533-34) They never learned about his past dishonesties or his severe mental illness; mental illness that caused him to embellish anything to do with "murder". His lawsuits against the jail would have demonstrated his hatred of incarceration, and provided another motive to testify falsely against the appellant. And the jury learned nothing about his love of acholades. And they never

learned how and why he hoodwinked the staff at Western State Hospital.

More importantly, the jury never learned that Mr. Costelanos had been given advanced and detailed knowledge of the Spry's activities and allegations, and so had every opportunity to embellish and/or duplicate their claims for personal gain. With all this information, a reasonable and informed juror would have determined that Mr. Costelanos will swear to anything, if he thinks it will get him paid, supplied with free housing, food, or narcotics, out of a past sentence, or featured in the newspaper.

The Costelanos recordings are consistent with nothing more than spying in conjunction with a well established civil dispute, just as Mr. Constance had done before with other harmless people¹. With this knowledge and an explanation, the Costelanos recording ceases to appear sinister. But Mr. Walker was so ill prepared for trial he even failed to repeat the explanation Mr. Constance had given him.

Mr. Constance wanted to explain it himself, but Mr. Walker insisted he not testify. He insisted he would explain it for himself, and refused to prepare Mr. Constance to testify. - The subject of Mr. Constance's pro se CrR 7.8 motion, which became a swearing contest. As the appeal of that motion was incorporated into this appeal, Mr. Constance will point out that Mr. Walker was caught perjuring himself in 2012. (RP 2/24/12 922-25) This willingness to perjure himself to avoid a finding of ineffectiveness and his clearly deficient performance at trial, shows that Mr. Walker was not credible at the 2009 evidentiary hearing. Hence this court should grant a new trial based on Mr. Walker's violation of the appellant's right to testify. (See BRIEF OF APPELLANT - #405041-II)

- 22 -

¹The jury also never learned about Lisa Parcel, and that she also spied on Ms Koncos because of Mr. Constance's concern for his son. Mr. Walker had seen her declaration but failed to locate and subpoena her.

Zachary Brown

Because of Mr. Walker's failure to investigate, the jury learned nothing about Mr. Brown's no contact orders the state had dropped in exchange for his testimony. Nor did they learn about his resulting assault and kidnaping/rape victims either. They heard nothing about his reputation for extreme dishonesty. They also learned that he had nothing to say about Mr. Constance until the opportunity for preferential treatment was presented to him. And they never learned that he too had advanced knowledge of the allegations against Mr. Constance from the TV News. (RP 4/28/11 108)

The jury should have learned that the \$25 Mr. Constance put on Mr. Brown's jail account was, in fact, repayment for food, just as Mr. Constance had told the police; not a down payment on an assault, as was being asserted by the State.¹ Because Mr. Brown and only Mr. Brown possessed the physical prowess to have harmed Ms. Koncos, the lack of any secondary contact with him together with the fact that Mr. Constance never even gave the man his wife's name, would have shown an informed jury the true lack of a crime here. Instead, the jury naturally cumulated evidence.

John O'Mara

Former Det. O'Mara too, with the long record of misconduct, incompetence, and dishonesty, should have been impeached. Apart from his blatant perjury in obtaining the intercept order, revealing this officer's IAD history would have cast doubts on the entire investigation, and all assertions against Mr. Constance. (Ex. 155-6)

¹ Fabien Rosales Gomez should have been located and subpoenaed to eliminate this ridiculous and prejudicial assertion.

4. Summary - Ineffective Assistance of Counsel

Clearly, recognizing the depth of the Sprys' biases toward the appellant, together with the Sprys' propensities for dishonest, sadistic, vengeful behavior is key. But because the solicitation allegations originated with these men, and because other unreliable witnesses (who became tainted by undisclosed favors from the state) had the opportunity to mimic the Sprys' claims¹, counsel's failures with respect to counts 1 and 2 were prejudicial with respect to all counts.

The underlying causes of this case were intense, malicious hatred and resulting fraud (counts 1 and 2), and self-serving motivations of known criminals, taken advantage of by the state (counts 3 and 4). These two dynamics occurring in the same case was highly prejudicial and is another reason to sever before any retrial; two defenses are required. Moreover, once the true motives and characters of the Sprys become known, and with required disclosure of the preferential treatment afforded both Mr. Brown and Mr. Costelanos, and with suppression of the only evidence per *Franks v Delaware*, this shameful case against Mr. Constance evaporates; exactly what did not happen because of Mr. Walker's deficient performance.

"Furthermore, a defendant can overcome the presumption of effectiveness by showing that counsel failed to conduct appropriate investigations to determine what defenses were available, adequately prepare for trial, or subpoena necessary witnesses." Davis, 152 Wn. 2d at 742. See also Hawkman v Parratt, 661 F.2d 1168-69 (8th Cir. 1981).

¹ Severely prejudicial, Mr. Walker failed to establish any connection between the witnesses. He completely missed that the appellant had discussed the Sprys with Mr. Costelanos and that Mr. Brown had learned about all about the case from the TV News. (RP 2/23/12 805, 801)

III. EXTENSIVE STATE MISCONDUCT

Mr. Fox exhaustively briefed the widespread misconduct that took place in this case. But it was so extensive and varied, the court may have difficulty tracking it and the resulting prejudices. This section provides itemized summaries and summary argument with reference to the misconduct and prejudice in this case. Given the following level of non-disclosure, there was clear prejudice in each count, individually.

1. Pervasive Brady Violations Itemized

Count One -

- 1) Michael Spry Jr. being imprisoned for sex crimes was not disclosed.
- 2) Michael Spry Sr. being investigated by Det. Chicks for witness tampering/intimidation was not disclosed.
- 3) Michael Spry's emails threatening Mr. Constance were not provided.

Count Two -

- 4) None of Jordan Spry's thirteen (13) Texas warrants were disclosed.
- 5) Jordan Spry's lie about his warrants being quashed was not disclosed.
- 6) Jordan Spry's impersonation of an officer was not disclosed.
- 7) Jordan Spry's sworn statement concerning the events of March 16, 2007 was withheld.
- 8) The last two pages of the March 16, 2007 police report were withheld.

Count Three -

- 9) Mr. Costelanos's court ordered mental health report was not disclosed.
- 10) Mr. Costelanos's work release/EHD sentence deal(s) were not disclosed. (His request was disclosed; all the state did for him was not).
- 11) The stringed instrument burglary case was not disclosed.
- 12) Mr. Golik's prevention of an arrest warrant being issued for Mr. Costelanos was not disclosed.
- 13) The assistance given to Mr. Costelanos over the Chrystal Williams assault case was not disclosed.
- 14) Mr. Costelanos's hit and run case was not disclosed.
- 15) Mr. Costelanos's lawsuits against the Clark County Jail to avoid incarceration were not disclosed.
- 16) Mr. Costelanos's emails to and from Det. O'Mara were not disclosed.
- 17) Mr. Costelanos's many offers to inform on others for favorable treatment were not disclosed.

¹Because there are many documents and phases to the preferential treatment afforded Mr. Costelanos regarding the sentence he wanted to have "taken care of", and because there were independent efforts by Det. O'Mara and Mr. Golik to this end, there may be several distinct Brady violations here.

Count Four -

- 18) Post-arrest contact and the interview of Fabien Rosales Gomez was not documented or disclosed.
- 19) The deal quashing Zack Brown's NCOs was not disclosed¹.
- 20) Zack Brown's lies to police and at interview were not disclosed.
- 21) Zack Brown's new cases involving violence were not disclosed.
- 22) Zack Brown's locally pending cocaine charge was not disclosed.

All Counts -

- 23) Det. O'Mara's record for dishonesty and incompetence was not disclosed.
- 24) Det. O'Mara improperly discarded written investigation notes.
- 25) Det O'Mara's promises to "go to bat" for Zack Brown were not disclosed.

2. Franks Rule Violations Itemized

As noted by Mr. Connick in his opening brief, police made a number of assertions concerning Mr. Constance's violent character, then went on to summarize his record from Washington and Oregon. But all of the assertions of violence were false, and Mr. Constance's record was limited to non-violent minor misdemeanors (except the non-violent class C felony of criminal mischief). In fact, Mr. Constance has never harmed anyone, and had never been to prison or even to jail for more than a few days. (MOTION FOR RECONSIDERATION pp 4-5 - Sep. 7 2012)

The one local violation of a local DV protection order was a technical violation (for an email). The order was a mutual order put in place by the couple's divorce judge after Ms. Koncos repeatedly assaulted Mr. Constance. (App. 6) These police reports, submitted in support of Det. Acee's claims of violence by Mr. Constance, actually named Ms. Koncos as the suspect and Mr. Constance as the victim, more often than not, and therefore could not have been read by the reviewing magistrate. The "number of assaults" coined by Det. Acee were either

¹Again, because the initial offer of assistance was made by Det. O'Mara, but Mr. Golik was later involved in the misinforming of Judge Bennett, there are actually multiple distinct Brady violations here.

committed by Ms. Koncos or involved nothing more than someone calling the sheriffs over a verbal disagreement any one of 44 times during the first half of 2004 (when Ms. Koncos was pregnant, involved in a custody dispute over her first two children, and was prone to irrational behavior), not one of which resulted in an arrest of Mr. Constance. In any case, Ms. Koncos was never injured in the slightest, and never required medical attention (whereas Mr. Constance did). The sum total of Det. Acee's description of Mr. Constance's violent nature is unsupported and is a gross misrepresentation. (Ex. 101)

But the sheer number of the Franks Rule violations brazenly committed by two different Clark County detectives illustrate the wider problem of rampant dishonesty in this case; Dishonesty on the part of all the key witnesses, the police, the prosecutor, and the alleged victim¹, and reveals nothing less than a culture of corruption in Clark County.

a) Wreckless False Statements:

1) In their affidavit in support of the intercept application, police labeled Mr. Constance as a "dangerous ex-con". This was blatantly false given that Mr. Constance had a total absence of violent history, serious crime, or prison time in the past². As a successful white

¹ Although Ms. Koncos was forced to testify truthfully at trial, her dishonesty in bolstering the Spry credibility to the family court (and subsequent attempts to do so again with the attorneys in the criminal case) was precursor to the criminal case.

² Because police used the false assertion of Mr. Constance's dangerousness as the reason for needing an intercept authorization, the Privacy Act was also violated; Gross misrepresentations are not one of the three tiers under RCW 10.73.090.

collar professional in his late forties, with no record of serious crime, the magistrate would likely have determined that Mr. Constance was not likely a threat, and was entitled to the protections of Washington's restrictive Privacy Act. (Ex. 101)

2) Police also claimed that Mr. Constance had attempted to "violently abduct his son"¹. Apart from the fact that this incident involved virtually no violence, police also knew that Mr. Constance had obtained a recent California Custody order. They knew that, in fact, the child had been abducted from Mr. Constance's custody in California. By reversing the facts here, police severely misled the magistrate. (Ex. 16)

3) Police also stated that Mr. Constance had violated a protection order "eleven (11) times". Whereas this statement was simply false, a claim such as this would tend to create a false sense of urgency in the mind of the magistrate; another way police misled and manipulated the magistrate to grant the illegal intercept order.

4) By falsely claiming that Mr. Constance was the "suspect" in five (5) separate domestic violence assaults, police again mislabeled Mr. Constance as a dangerous man. But the reports they submitted to support this assertion name Koncos as the suspect three out of four times, and a fourth time police investigated and did not arrest Mr. Constance.² Further, he was always present when police arrived, and was not arrested, whereas Koncos repeatedly fled to avoid arrest. **The fact that police attached**

¹It was this false statement, contained in the intercept application, which caused Division I to erroneously affirm the count 3 conviction, and the intercept order, in the initial appeal.

²Police must have assumed that the magistrate would accept their inaccurate summation of events instead of reading the attached documents and reports; apparently exactly what happened.

their own reports which in and of themselves prove the falseness of their own sworn statements, also shows that these statements were made wrecklessly, deliberately, or both. (App. 6)

b) Relevant Omissions:

5) At the time the Sprys swore out their initial statements for Ms. Koncos to use in the family court (App. 4), they were clearly on a vengeful rampage. By not informing the magistrate of the events of March 27, 2007 (Ex. 105), at which time Mr. Constance became the victim of threats and blackmail and was forced to summon police, they deprived the magistrate of clearly relevant information needed to accurately assess the Sprys' credibility.

6) Jordan Spry's long-winded and elaborate blackmail threats speak volumes to why the Sprys should not be believed. Had he heard them it is unlikely the magistrate would have granted the (second) intercept order. (Note that the blackmail report and recordings were forwarded directly to Det. O'Mara prior to submission of the renewed intercept application, under which the Costelanos recordings were made.) (Ex. 97)

7) The final two pages of the March 16, 2007 police report, which reveal that Mr. Constance was likely not guilty of the reported TRO violation, and rather that Ms. Koncos had given false information to the police, were deliberately withheld from the magistrate (and from discovery). This amounts to concealment of (or tampering with) clearly relevant evidence to mislead both the magistrate and the jury. (App. 2) Similarly, Jordan Spry's accompanying sworn statement would have caused the magistrate (and jury) to question why a supposedly very concerned accusing witness was helping Mr. Constance. It would have become very

noteworthy that Jordan had nothing to tell police about Mr. Constance's alleged solicitations, even later, when clearly enraged and seeking to have Mr. Constance jailed on March 27th.¹ In light of the great concerns both Sprys soon after claimed for Ms. Koncos, the events of March 16th are inexplicable. The magistrate would have noticed.

8) As noted, the Sprys made no statements to anyone about any concerning or threatening behavior by Mr. Constance, including police themselves. The fact that these two destitute and in eviction men had nothing to say about the "would be killer" for more than two months, and until after he enraged them over desperately needed money, is clearly relevant and should have been disclosed.

9) Police did also not include the California custody and protection orders themselves, in the supposedly complete packet of relevant documents they swore they had read. This would have precluded the false assertion of Mr. Constance having violently trying to abduct his son, and would have put the whole matter under an entirely different light for the reviewing magistrate. (Ex. 69)

10) Police were also in possession of the flaming eight page email from Michael Spry to Mr. Constance. (Ex. 18) This too should have been provided to the magistrate as its omission concealed the Sprys' intense hostility toward Mr. Constance.

¹Note that in Jordan Spry's long-winded and elaborate recorded extortion there is no mention of any solicitations or any threat to report them. Clearly, the enraged Jordan Spry would not have hesitated to make this threat if solicitations had existed. Mr. Constance asserts that this is because the Sprys had not met with Ms. Koncos until one day later; They had no opportunity to "cook up" the solicitation claims until the very next day (April 3, 2007). This timing indicates that the initial solicitation allegations were actually Ms. Koncos's idea.

11) Mr. Constance's RESPONSE TO THE SPRY DECLARATIONS (Ex. 104) was particularly relevant and should have been provided. Not only would it have informed the severely misinformed magistrate to the true events of March 27, 2007, and the true relationship between the parties, withholding this document limited the magistrate to a very one sided version of events, and is a relevant omission in and of itself.

12) The intercept application contains a puffed up summary of Det. O'Mara's fine qualifications. As such, a summary of his less than complimentary IAD record (which soon after led to his dismissal) should also have been disclosed. Had the reviewing magistrate known that Det. O'Mara was less than a typical, reliable, honest officer, and had a very checkered service record, this too would have caused him to question the validity of the application. (Ex. 155-6)

Police cannot truthfully call a man with no record of violence, serious crime, or prison, a "dangerous ex-con". They cannot truthfully claim a man is the "suspect" in cases where their own written reports name him as the "victim". Police cannot fail to mention a heated, major financial dispute where police are summoned¹ and remain for an extended time, or an incident where these "witnesses" inexplicably assisted the suspect only days before claiming they had been receiving solicitations for months, and claim no relevant omissions. It can certainly be said that without so many false statements and so many clearly relevant omissions, the magistrate clearly would not have granted the intercept.

¹ It was Mr. Constance who summoned police on March 27, 2007, in Jordan Spry's presence. But in order to appear ~~the~~ credible threatened victim, Jordan Spry called 911 immediately thereafter and insisted at interview that it was he who "called the police". (RP 8/21/07 p.25 & App. 10) Deceptions of this nature are typical and a source of pride for Jordan Spry, as is shown from his prior conduct.

The true facts here are that the sworn statements of Detectives Acee and O'Mara are riddled with deliberate and reckless false statements, and obviously relevant omissions to support their own deceptive purposes. The trial court's factual findings to the contrary (# 5,6,14,15,16,17,18) are just as erroneous as the police statements are false. Hence all legal conclusions regarding the intercepts, the Privacy Act, Franks Rule, and the Costelanos recordings are just nonsense. Suppression is required due to excessive and intermingled violations of both federal and state law.

Further, when all the false statements are corrected, and all the omissions accounted for, the violent dangerous criminal the falseified intercept applications created, becomes a non-violent productive citizen, concerned and litigating for (and investigating for) custody of his only child. Striped of all the violations, absolutely no valid legal basis for an intercept order remains¹. "An affidavit does not provide probable cause to support a search warrant if the affiant intentionally or recklessly asserted material falsehoods." US v Lewis 594 F.3d 1270. "Evidence that is the fruit of an unreasonable search or seizure must be suppressed and cannot be used in the prosecution's case in chief." US v McCargo 464 F.3d 192. Suppression is required prior to any retrial.²

¹Although Div. I denied suppression at the trial appeal, that decision was based on grossly incomplete briefing and false information. Mr. Walker briefed only a single Privacy Act violation, with no mention of the many Franks Rule violations. "The violent attempt to abduct his son and threats to kill her," the court's only reason for denying suppression, was simply one of the false statements by the police.

²This court should rule on the suppression/Franks issue now, rather than remanding it because this issue has already been improperly litigated twice and erroneously ruled on once (the ineffectively litigated pretrial suppression motion, then the trial appeal of the incomplete record, also denied due to false information, then the trial court's erroneous CrR 7.8 findings and conclusions.) The appellant has already been incarcerated since 2007 based on this heavily flawed case, centered around this ambiguous and highly illegal evidence. He should not have to wait years more for a proper and honorable ruling. (The trial court had its chance.)

3. Discovery and PRA Violations, Spoliation & Negative Inferences

As an integral part of the adversarial litigation process, a fair trial cannot be had without the discovery process. Because of widespread discovery violations both before and after conviction, Mr. Fox was forced to repeatedly brief this issue. Finally he was forced to obtain a an order to compel long-missing discovery evidence. (MOTION TO COMPEL - heard June 23, 2011) But widespread noncompliance¹ with the discovery process is a basis for dismissal, in and of itself. In this case, the court should consider this remedy, over and in addition to any remedy for the many related Brady violations.

Although trial counsel made not a single request for documents pursuant to the PRA, Mr. Fox has repeatedly briefed the "exasperating" "wall of silence" associated with the state's many long term violations of the PRA, post-conviction. Where the PRA carries its own penalties for violations, this court should note the likely political motivations here. Mr. Golik clearly has engaged in widespread misconduct in this case. Some of this misconduct became known to his political rival, and the local GOP, prior to his election to the Clark County City Prosecutor's position. (App. 7)

Given this timing and the total absence of compliance with the PRA for at least four (4) months prior to the 2010 election, there is every reason to presume that the hundreds of violations involved were deliberate, to protect Mr. Golik's candidacy. This court should consider sanctions to discourage future interference with the litigation process for personal or political gain, lest the integrity of the courts suffer. (RENEWAL OF RECUSAL MOTION - April 27-28, 2011)

¹See PRELIMINARY MEMORANDUM REGARDING EVIDENTIARY HEARING pp 5-9 (April 27-28, 2011), SUPPLEMENTAL MEMORANDUM IN SUPPORT OF CrR 7.8 MOTION pp 9-14.

Metadata and internal emails are subject to disclosure under the PRA. Here, one-sided email threads (between Det. Omara and Blake Dore, for example - Ex. 75) compelled the trial judge to order Mr. Golik to turn over his internal emails regarding this case. (Ex. 132) But, by instead claiming that these emails had somehow been deleted, and that it would cost \$300,000 to restore them from backup tapes, the state was able to circumvent this order (and continue violating the PRA). This prejudiced the appellant. (RP 6/23/11 427-28)

As such, Mr. Constance is entitled to this court making negative inferences against the state, especially in light of the state's many Brady violations. (SUPPLEMENTAL MEMORANDUM IN SUPPORT OF CrR 7.8 MOTION heard August 3-4, 2011, pp 11-14) Mr. Constance asserts that the missing emails would have revealed many more Brady violations, and a concerted effort by the state to skirt the discovery process, both from within the prosecutor's office and all other county offices.

For obvious reasons, this court should infer the same and assume deliberate spoliation (if not destruction) of evidence. Moreover, admissions made by the state in this case show that many other cases (which may have been just as flawed) will lack for post-conviction evidence that has been "inadvertently" deleted. Admission of widespread and ongoing PRA violations as opposed to producing the ordered emails may indicate that the state had something very incriminating to hide.

4) Allowing Known False Testimony

This court has already seen briefing which proves that Mr. Golik allowed testimony he knew to be false from Zack Brown. Mr. Costelanos, also, denied certain benefits¹ which Mr. Golik knew of (if not arranged for himself.) But Mr. Golik was also present at the untimely interview of Ms. Koncos. He too watched as she reversed her position and confirmed that the Sprys had not been making allegations against Mr. Constance prior to the March 27, 2007 financial disagreement. And then he questioned them so as to make it possible for them to mislead the jury and maintain their own credibility. He had to know they were lying, possibly about everything, but did nothing to correct this known false testimony. Mr. Golik needed this conviction to promote his candidacy for the City Prosecutor's office, and clearly, the truth (let alone public safety) was the least of his concerns. (RP 12/7/2007 47-48)

In Napue v. Illinois, 360, U.S. 264 (1959), the court explained that the principle that a state may not knowingly use false testimony to obtain a conviction, even if false testimony that goes only to the credibility of the witness (which was exactly the case here, with the Sprys), "is implicit in any concept of ordered liberty". The court made no exception for the infamous Clark County, Washington, or its

¹To illustrate both Mr. Costelanos's willingness to blatantly lie, and his habit of obtaining favors from the state, note that at the very end of the factual hearings in this case, Dep. Prosecutor Abbey Bartlett was forced to disclose "in an abundance of caution" that Mr. Costelanos had just called her office to inquire how much he would be paid for his latest service to the state, the very day after he repeatedly insisted he was expecting no special treatment or favors in his latest testimony. (RP 2/28/11 1033,1062-3,1065)(RP 2/29/11 31)

aspiring Deputy Prosecutor Golik. Chief Justice Warren reinforced the constitutional imperative of truthful testimony when he quoted a New York appeals case by saying: "A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the District Attorney has the responsibility and duty to correct what he knows to be false and seek the truth".

In US vs. Wallack, 935 F. 2d. 445 (2nd Cir 1991), the court stated: "Indeed if it is established that the government knowingly permitted the introduction of false testimony, reversal is 'virtually automatic'". Here, known false testimony was permitted from all four of the accusing witnesses. Reversal is required.

5) Other Misconduct

As was briefed by Mr. Fox, and as became clear via post-conviction testimony, the main undisclosed benefit for Mr. Costelanos (forgiveness of his work release/EHD sentence) was arranged by Mr. Golik, personally, in a visit to Judge Verne Schrieber, in chambers. This issue has already been briefed by Mr. Connick. But it is also worth pointing out that Mr. Golik initially denied this unlawful conduct. Only on the production of the hand-drawn floor plan to the courthouse, where Mr. Costelanos (Ex.173) saw this occurring, did Mr. Golik stop denying this misconduct. Instead, he said he "couldn't remember" if he had violated the law in this way or not; as if this conduct is nothing out of the ordinary for him.

Similarly, Mr. Golik denied preventing a warrant from issueing for Mr. Costelanos, until this was proven false. Further, he actually denied each and every Brady violation, collectively at times, and often individually, even over the irrefutable documentary evidence literally

"in his face". The extreme dishonesty consistently displayed by Mr. Golik throughout the entire three year post-conviction process, in writing and in court, sworn and unsworn, warrants disbarment. In some jurisdictions, so profound a lack of integrity would have landed the man in jail. Prosecuting requires at least some ethics.

The involvement of his subordinate, Ann Klein, in consummating the deal with Zack Brown by defrauding Judge Bennett, illustrates the prosecutor's willingness not only to violate the law he is sworn to uphold, but also to subvert other attorneys in the pursuit of his goals. When he recruited Ms. Klein for this errand of stealth, he was the leading candidate in the upcoming election; Ms. Klein would likely be gaining favor with her future boss by honoring his request and cooperating. Peddling influence or favor in this manner is indicative of the dishonorable way this entire case was prosecuted, and must be very illegal. (MOTION TO VACATE UNDER CrR 7.8 AND FOR DISCOVERY pp 21-6)

As noted by counsel, the magnitude of cumulative error in this case was extreme. Given this level of state misconduct, starkly evident with so many Brady violations spanning all four counts, and so many Franks Rule/Privacy Act violations prohibiting the only evidence against the appellant, the prejudice is clear. The other forms of state misconduct far exceed the standard for prejudice, but illustrate the pervasiveness of such misconduct in Clark County. Dismissal as a sanction is appropriate.

IV. JUDICIAL BIAS

At the show cause hearing, even with the state having provided no substantive answer at all (RP 11/17/10 p. 10), and having not denied any of the defense's factual allegations (except a ridiculous blanket denial of Brady violations), Judge Lewis stated: "I don't think there's sufficient factual basis on which I could grant your client's motion."

(RP 11/17/10 p. 11) He said this regardless of the facts that:

1) Many of the errors alleged (such as ineffective assistance) are prejudicial by default, 2) the very fruitful investigation was still ongoing, 3) no evidentiary hearings had yet been convened, 4) the motion named more than three times as many potential witness as had appeared for the defense at trial, and 5) even the state was requesting an evidentiary hearing. Yet Judge Lewis had clearly already decided he was going to deny the motion.

Under the circumstances, this cannot be the action of a fair and impartial judge. Coming from a trial where the defense case lasted barely one day, and so much new evidence clearly needing to be put on the record, no unbiased judge could possibly have already decided to deny the motion. Stating that he was prepared to deny it, at that point in time, indicates an intention to find a way to deny it - exactly what the judge ultimately did. Furthermore, the court's findings and conclusions were heavily skewed in a manner that clearly protected Prosecutor Golik from the political ramifications of conduct so egregious that it led directly to a woman being raped and kidnaped.

A judge's "bias" or "prejudice" against a person's cause consists of preconceived adverse opinion with reference to a person's cause without just grounds or before sufficient knowledge. Borchert, 359 P. 2d 789, 57 Wash. 2d 719. (Emphasis is added.)

As noted, Judge Lewis allowed the state years of extra opportunities to do what the law requires at the initial show cause hearing. But first, he noted (despite the strength of Mr. Fox's opening brief) that "an evidentiary hearing may be required". Then, only after Mr. Golik decided he needed a hearing to try and escape responsibility for the Portland rape victim, did Judge Lewis order the factual hearing. Hence, this appellant asserts that the factual hearing in this case was never intended to be anything more than a means for Mr. Golik to effect damage control after being caught red handed in politically charged misconduct. Judge Lewis never actually considered the petition in the spirit intended under CrR 7.8.

But the favorable treatment shown the state at the initial show cause was not the first state-friendly ruling. Long before, Judge Lewis set Mr. Constance's bail at an outrageous \$1,000,000. This was excessive for a solicitation case and highly prejudicial because it precluded Mr. Constance's ability to retain proper counsel or investigators; and Clark County court-appointeds are not known for quality representation in major cases¹. Mr. Constance's originally appointed attorney behaved in a sadistic and unprofessional maner, but Judge Lewis repeatedly refused to replace him. Finally, after several months, Presiding Judge Harris dismissed this well known 'designated county blow-it'. But suspiciously, Mr. Walker also neglected the case badly.

When Mr. Golik was ordered to turn over his emails, and instead came up with the \$300,000 excuse (which is an absurd sum for tape backup restoration of data files), Judge Lewis failed to enforce his order. Instead, he allowed Mr. Golik an escape, with no further probing

¹The funds Mr. Constance has had access to since the retention of Mr. Fox came from Mr. Constance's family, and did not become available for 2½ years after the arrest.

despite the serious misconduct already discovered, and the long term ramifications under the PRA.

Mr. Fox brought a meritorious motion to recuse the prosecutor, which Judge Lewis denied in short order, just as he did all defense motions for severance and suppression of the Costelanos tapes. Repeatedly, Mr. Golik was caught by Mr. Fox lying to the court, and not once did the judge impose a sanction or issue a warning. Similarly, when Mr. Walker perjured himself and was accused by an irate Mr. Fox, Judge Lewis just proceeded with business as usual.

Judge Lewis's handling of scheduling issues forced Mr. Constance to return to court on seven (7) separate occasions, with long periods in between. Conducting these hearings piecemeal instead of continuously reflects a very low priority given to a very strong petition and has delayed Mr. Constance's just relief for years. Moreover, the judge's systematically discounted, cut and pasted ruling is poorly supported and shows strong bias in favor of the state. Not even mentioning the Portland rape victim, kidnaped at gunpoint due to Mr. Golik's concealed misconduct, further illustrates this point. And, of course, the partial/single court relief scenario he came up with to deny meaningful relief is nothing less than bizarre.

Because of the clearly false finding of "inadvertence" to Mr. Golik's confirmed count 4 Brady violation, Mr. Golik and Ms. Klein have escaped with no fines, no scrutiny, and no sanctions of any kind for conduct that covertly violated the law, not to mention their professional and moral obligations to protect the public. For Mr. Golik's claim of ignorance and innocence to be true, his office would have to, in normal operations, assign attorneys to assist dangerous serial domestic violence perpetrators (real ones) have their no contact

orders quashed; Quashed even after numerous violations, non-payment of fines and fees, delinquency in ordered treatment, and overall non-compliance serious enough for DOC to have filed a new violation the very next day. The finding of inadvertence is clearly erroneous, but was necessary to protect the prosecutor and is strong evidence of bias.

This court will also please recall the blatant procedural violation by Judge Lewis, which also shows bias. In Mr. Constance's pro seCrR 7.8 motion in 2009, the judge heard new evidence, found Mr. Walker credible but Mr. Constance not credible, denied relief, then tried to transfer the motion as a Personal Restraint Petition. Even Mr. Constance knew this was a procedural violation and objected. Nevertheless, Judge Lewis (who was a top flight private practice criminal attorney who had to know better), brazenly transferred the motion anyway, depriving Mr. Constance of the benefit of appeal and counsel at public expense, and requiring intervention by this court. (App. 9) The bias or prejudice which can be urged against a judge must be based on something other than rulings in the case. Walker v U.S. 116 D.2d 485.

As noted in Mr. Fox's MOTION FOR RECONSIDERATION, the appellant excepts to thirteen (13) different factual findings as well as almost every conclusion of law. Whereas legal conclusions are debatable, factual findings which are clearly at odds with documented facts may be the strongest possible evidence of judicial bias. This court should examine the record with respect to the above-noted thirteen (13) erroneous factual findings, correct them independent of all other rulings, find bias in favor of the state, and order a venue change for all future proceedings in this case.

5. Factual Re-Examination & Requested Corrections

Because of the anticipatory nature of the alleged crimes in this case, where the jury had to make determinations as to the appellant's true intentions, and with no overt acts (such as an unambiguous recording or significant moneys paid), the accuracy of the information the jury had to consider was particularly critical. Similarly, because the witnesses derived credibility from each other, and because their testimony and a single piece of unclear evidence comprised the state's entire case, the accuracy of the testimony and the legality of the evidence, was key.

Here, as such, a single testimony-altering Brady violation or a single evidence-invalidating Franks Rule violation could easily have changed the outcome of the entire case. But with literally dozens and dozens of such violations clearly at issue, the cumulative effects could easily had a runaway domino effect on the outcome of this case because of its effects on the witnesses' questionable credibility¹.

Here, there was such extensive police and prosecutorial misconduct, not to mention such severely ineffective representation, the number of ways that first domino could (and should) have been tipped is huge; A proper and honorable review of so many meritorious issues yields an extemely high probability of a different outcome - Confidence in the verdict is decimated. The standard for prejudice is vastly exceeded. Moreover, taking a step back and objectively looking

¹Despite the failures to disclose and discover the vast impeachment evidence on the four key witnesses, their credibility was still somewhat tenuous because of the Jordan Spry blackmail recordings and the criminal backgrounds of Mr. Costelanos and Mr. Brown.

into this case reveals a comedy of errors. The witnesses were all of very low quality and all lied extensively. As noted, none of the officers of the court did their jobs. The overall lack of integrity was profound.

Because this appeal is of the findings and conclusions of a CrR 7.8 motion, this court can review the facts of the case in addition to the legal conclusions of the trial judge. A summary of the facts of this case reveals the true ridiculousness of this case.

Figuratively speaking:

...The well educated, successful, six figure earning mortgage broker who supposedly tries to hire an old, slight of build, semi-crippled serial/sodomy/beastiality rapist minister and his anorexic gender-confused son; both terribly dishonest and unreliable, who he doesn't even get along with, and who just happen to accuse, threaten, and blackmail him only after their survival money is cut off in the final stages of eviction.

...The sickly, harmless, deal seeking, murder idolating "super hero" mental case/con artist, desperate to avoid a years-old work release sentence, who was told all about the mini-minister and his son, who is very available to also spy on Ms. Koncos but who also just happens to be solicited and wants to save the helpless threatened woman.

...Who per the least competent and most dishonest bomb out detective in Clark County's Sheriff's office, promising to make that work release go away, calls and calls the mortgage broker until he finally agrees to let the silly little man spy on his amazon civil litigation opponent via a half hour massage, which he's done with multiple other harmelss people in the past.

...The helpless victim/estranged wife with the big temper, about to loose child custody yet again, and who just happens to be almost six feet tall and 200 lbs., who would have pounded all three of her would be physically inferior attackers into the ground, was clearly colluding with the Sprys, and the would be killer dad couldn't find anyone better suited at the nearest biker bar or rough neighborhood.

...And the consitutionally handicapped deputy prosecutor looking for that six figure salary the only way he might ever see one, together with the (now fired) bomb out detective, breaks so may laws, pulls so many strings, violates so many rules, and makes so many under the table deals with low-life criminals that they'll say exactly what it takes to make both men shine; wonderfully timed for the election, no less.

Succinctly put, this case was the cumulative product of panicked maternal instinct of a woman who had already lost custody of two other children, sadistic withdrawal symptom and poverty motivated rage (Sprys), politically motivated self-serving dishonesty (Golik), severe incompetence (O'Mara), total disregard for constitutional law together with a pronounced absence of integrity (Clark County criminal justice system in general), and a loving father trying to protect his only (mistreated) son within a badly broken and severely gender biased Clark County system. Huge failures in the family court were also prerequisite.

The obvious remedy in a case where the counts were tried as one common there, cross-admissible, and the witnesses clearly derived credibility from one another, and one count has already been reversed for good cause, is reversal of the remaining counts and a severed retrial. Proper corrections given the many Franks Rule and Privacy Act violations and strong evidence of judicial bias are suppression of the erroneous evidence and an order for venue change. Given what little remains of this case, and as a sanction for the extraordinary misconduct involved, dismissal should also be considered.

Finally, should this court decline to order a venue change, the appellant requests that this court set a reasonable bail if ordering a new trial. As noted, the excessive bail setting by the trial court caused a prejudicial dynamic. Clearly, the strength of this case has been dramatically reduced. Mr. Constance's only child, and his livelihood, are both tied to Portland/Vancouver, so he is not a flight risk¹, and with no record of violence, a bail of no more than \$50,000 seems reasonable.

¹Mr. Constance has drafted an extensive motion to the family court designed to prove the Koncos-Spry collusion, strike everything "Spry" from the file, and promote the relationship with his son. This meritorious motion is already being litigated.

VI. THERE WAS INTER-RELATED PREJUDICE

Mr. Walker's failure to investigate and litigate a Franks Motion made it impossible to later demonstrate the intensity of the Sprys' animosities toward Mr. Constance, and the likely effects this would have on their allegations against him. This prejudice was exacerbated by counsel's other failures to investigate; In litigating pretrial motions, the trial court never learned that the Sprys had been threatening the defendant,¹ that they had histories of sadistic and dishonest behavior toward others when angered, that Mr. Constance was not the violent dangerous man the falsified intercept applications depicted, and that the Spry-Koncos collusion about the timing of their first allegations had manipulated (the soon to be fired) Det. O'Mara into his reckless pursuit of the mischaracterized defendant.

Apart from the fact that the police themselves stated Mr. Costelanos was not credible, the many undiscovered benefits afforded him, his many past attempts to avoid the work release/EHD sentence, his reputation for unreliable "snitching", and his serious mental problems, all should have been included in Mr. Walker's motion to suppress. All this, together with the undiscovered evidence on the Sprys, would surely have compelled the trial court to grant the suppression motion. Instead, it was denied in a vacuum. The failure to investigate prior to litigating his suppression motion further prejudiced Mr. Constance because had Mr. Walker made a proper record concerning Mr. Constance's supposed "violent attempt to abduct his son", the Court of Appeals would have been unable to justify the illegal intrusion into Mr. Constance's private conversations.

¹It should be noted that the solicitation allegations originated with the same people whos' uncorroborated statements primarily authorized the ex parte intercept order, then at trial also so seriously incriminated Mr. Constance. Only later, post-conviction, was the hateful relationship between the parties, and the Spry's extreme characters for untruthfulness ascertained.

The grossly incomplete motion to suppress was not litigated until shortly before trial; Mr. Walker (and Mr. Barrar before him) had the better part of a year to have discovered all (or any) of the above and litigate a proper suppression motion. Particularly strong prejudice ensued because the unsuppressed, unexplained¹ Costelanos recording bolstered the testimony of unreliable witnesses, all of whom had undiscovered strong reasons to lie² and to see Mr. Constance convicted. Because the ambiguous recording, the only evidence in the state's entire case, was not suppressed, the failure to discover³ all the reasons the witnesses had to lie or exaggerate became a catastrophic deficiency; Unchallenged testimony appeared to be validated by a recording the jury should never have heard. Prejudice was accumulated and compounded.

Had the recordings been suppressed as they clearly should have, (and the witnesses investigated as they also should have), the entire case would have been reduced to the testimony of hostile witnesses who are clearly very far from credible. Any informed reasonable trier of fact would have determined that only the malicious accusations of a disgraced sex crime-promoting former "minister" and his interstate fugitive son (who were so angry and desperate they were blackmailing the defendant), together with the opportunistic rants of the murder-obsessed Mr. Costelanos (who did have every opportunity to embellish the Sprys' allegations), does not support a finding of guilt beyond a reasonable doubt. It took all of these inter-related prejudices and deficiencies to falsely convict Mr. Constance.

¹Recall the unsubpoenaed Lisa Parcel. Had counsel brought her to trial and offered her pre-existing declaration as an exhibit, this could have shown the jury Mr. Constance's true reason for even talking to Mr. Costelanos; to spy on Ms. Koncos because of his concerns for his small son. Ms. Parcel could have settled the ambiguity of the tape. But instead, as this witness was also neglected by counsel, Jordan Spry's similar spying (and his hidden motives) had just the opposite effect on the jury.

²This obviously includes count four's witness, Zackary Brown.

³Again, much of this undiscovered favorable evidence is clearly mirrored by the pervasive Brady violations.

VII. CONCLUSION

This case abounds with prejudicial errors and deficiencies. An essentially double life sentence was delved out for a well respected white collar professional with a minimal criminal record, after a 2½ day trial involving only 2 pre-existing exhibits, 6 useless witnesses, virtually no pretrial investigations, and no stated defense. In retrospect, all of the accusing witnesses are garbage, the "victim" was anything but a victim and was never endangered, the only evidence was ambiguous, illegal, and neglected by trial counsel, the defendant was prevented from testifying, and the lead detective was soon after fired and became a bankrupt security guard.

The convictions were obtained by way of dozens and dozens of grievous constitutional violations, and negligible discovery. Evidence tampering, spoliation, and destruction all occurred, and dishonesty was rampant at every turn. Very disreputable witnesses were covertly enticed by the state, and the only state evidence was unlawfully acquired via widespread police perjury and omissions, through ex parte contact with judges, then not suppressed due to blatantly inaccurate factual findings.

The prosecutor has enjoyed unsupported favorable (& protective) rulings from the trial court. The defense was virtually non-existent. The trial was an over-abbreviated sham in a notorious small county that couldn't even provide an attorney with time for the case. The system went so awry that prosecutorial misconduct resulted in the at-gunpoint kidnaping and rape of an Oregon woman. And a falsely convicted man has spent years in prison while the little boy he was trying to protect has been growing up fatherless.

With almost no case remaining, this court should dismiss the case with prejudice or grant a new trial in a different county with corrections for suppression of the erroneous recordings and severance of the counts.

STATEMENT OF ADDITIONAL GROUNDS

APPENDICES

RECEIVED
JAN 27 2014
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

DECLARATION OF AUTHENTICITY

I hereby swear and affirm under penalty of perjury under the laws of the state of Washington, that the following copies are true and correct copies of the originals. Sworn this 2nd day of October, 2013, in Walla Walla Washington.


Dino Constance

APPENDIX 1

THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In Re:

JEAN A. KONCOS

Petitioner,

and

DINO J. CONSTANCE

Respondent.

No. 05-3-00440-9

DECLARATION OF LISA PARCEL

In Re:

DINO J. CONSTANCE

Petitioner,

and

JEAN A. KONCOS

Respondent.

(Consolidated)

No. 06-3-00323-1

FILED
JUL 12 2006

JoAnne McBride, Clerk, Clark Co.

My name is Lisa Parcel. I am a Mother to two boys and a 39-year-old RN, working as a charge nurse at a major Portland hospital. I prefer to give no further details as I am aware of Ms. Koncos's propensities toward violence when angered. I have significant experience working with patients of all types, including mental patients.

I have known Dino Constance since early last year and have been kept abreast of his difficulties with Jean Koncos with regards to his son Nickolous. Approximately two months ago, when in conversation with Dino, he told me that Jean had just abruptly quit her job, and claimed to be without income. Dino was very concerned about his son as a result, especially given Jean's apparent mental state. Given that he was a thousand miles away and that Ms. Koncos was then advertising on the Internet to do massage work at her apartment, I offered to drop in on her and see if the child appeared to be in any jeopardy. So I contacted Jean to arrange a brief meeting there.

Ms. Koncos greeted me with warm charm and in a gracious manner. In the scope of about twenty minutes, she volunteered half her life's story to me. She told me her version of her relationship and history with Dino in great detail. She also told me that she had just completed a return to Vancouver involving the abduction of Nickolous from San Diego. She said that she had planned an elaborate reconciliation involving the dismissal of a previous divorce, and cross-country relocation with the intent of taking the child and disappearing. This made no sense to me as I was aware that during this previous divorce she had legal representation whereas Dino did not, and so was not doing well in court. I was also aware that when they reconciled, they were very passionate with each other, and that she had given Dino permission to move with the child.

~~EXHIBIT 28~~

After the meeting, I reported to Dino that his son appeared to be in good shape, that he was clean and dressed and apparently in good spirits. I also reported to Dino that his wife was "not right in the head", further telling him "She is delusional and you should be concerned about it". Dino simply replied, "Yes, I know, Lisa. Thank you for checking on my boy for me".

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Portland, Oregon, July 12, 2006


LISA PARCEL

V

APPENDIX 2

V07-5568

SWORN STATEMENT OF FACTS

VCA ^{id}
DUPD 3-18-07

Date: 3-16-07 Time: 11:30

Page 1 of 1

Continued Statement under Oath

I, JOSEPH P. SARY, born Nov. 12th, 1982, after getting off work at 7:30 came straight home and arrived at my premises around 7:45 pm. Dino Constantine was inside our house which he rents a room out of. When I went to bed around 12:00 am and Dino had up to this point remained inside the residence. Around 2-3 am, I awoke to use the restroom. Upon noticing the toilet was plugged I yelled at Dino to get himself out of bed and clean it up and fix the toilet. At that point I went back to bed until the police knocked on the door around 10:15 am. As well as I can recall Dino remained in the premises

I have read/written the above Statement of Facts and I swear it is true and correct to the best of my knowledge.

Signed: [Signature]

Date: 3-16-07 Time: 11:34

Witnessed: [Signature]

Witnessed: _____

Vancouver Police Department		07-5560
605 E. Evergreen Vancouver, WA 98661		(360) 487-7400 (360) 694-9646 (FAX)
		Report ID ORIGINAL

Incident Report

Records Center		DOR 03/16/2007
707 W 13TH Street Vancouver, WA 98660		(360) 397-2211 (360) 397-6074 (FAX)
Distribution VCA		Officer Assaulted <input type="checkbox"/> Non Disclosure <input type="checkbox"/>

init	pDis	sDis	dEnt	M.C.	Cond	Case	F/U	Ret	Left
Status <input type="checkbox"/> <input type="checkbox"/> IR <input type="checkbox"/> A <input type="checkbox"/> AR <input type="checkbox"/>									

Administrative Information

Location 14620 NE COAST PINE CT #1		City VANCOUVER		State WA	Zip Code 98682
Local Geo	State Geo	Precinct V EAST	Geo		
Rep Date 03/16/2007	Rep Time 05:28	From Date 03/16/2007	From Time 05:28	To Date 03/16/2007	To Time 05:28
Category	Class	Premise RE			
Dom Viol <input checked="" type="checkbox"/>	DV Card <input type="checkbox"/>	Child Abuse <input type="checkbox"/>	Arson <input type="checkbox"/>	Homicide <input type="checkbox"/>	Gang <input type="checkbox"/>
Weapons <input type="checkbox"/>	Alcohol <input type="checkbox"/>	Drugs <input type="checkbox"/>	Computer <input type="checkbox"/>		

Offense Information

Off # 1	Offense 26.50.110	Offense Category PROTECT	Offense Translation Violation of protection order - Misdemeanor	Attempted or Completed C
Location Type APT/CONDO				

Individual

Role S	Seq 1	Type I	Last Name CONSTANCE	First Name DINO	Middle Name J	Sex M	Race W
Birthdate 09/12/1959		Eth N					
Age Low	Age High	Hgt 509	Wgt 170	Hair BRO	Eyes BLU	Residence F	Employment/Occupation
Driver's License Number		Driver's License Issuer WA		Social Security No.		State ID No.	FBI No.
Custody Status		Gang Affiliation		Tribe Affiliation		Identifiers	
Comments							

Type H	Location 4115 NE 45TH ST			City VANCOUVER	State WA	Zip Code 98661	
Type H	Phone No. (360) 798-1082						
Type C	Phone No. (360) 243-7701						

Individual

Role V	Seq 1	Type I	Last Name KONCOS	First Name JEAN	Middle Name ANN	Sex F	Race W
Birthdate 09/11/1965		Eth N					
Age Low	Age High	Hgt 510	Wgt 175	Hair BRO	Eyes BRO	Residence F	Employment/Occupation
Driver's License Number		Driver's License Issuer WA		Social Security No.		State ID No.	FBI No.
Custody Status		Gang Affiliation		Tribe Affiliation		Identifiers	
Comments							

Type H	Location 14620 NE COAST PINE CT #1			City VANCOUVER	State WA	Zip Code 98682
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Reporting Officer Burnette, Michael	PSN 1316	Ref Case Number	Agency/Case Number VPPD 07005560
Approving Officer im, Timothy	PSN 1116		

Individual

Type Phone No.
C (360) 624-0392

Type Phone No.
H (360) 567-1960

Narrative

ORPHAN DOCUMENTS:

- Copy of Restraining Order #05-3-00440-S
- Arresting Officer's Declaration of Probable Cause sheet for Dino Constance

SUMMARY:

On 16 Mar 07, V1-Jean Koncos stated she was awoken by someone knocking on her door. She observed S1-Dino Constance walking away from her front door. Case is forwarded to the Domestic Violence Prosecution Center for issuance of a warrant.

MENTIONED:

- V1-Jean Koncos
- S1-Dino Constance

ACTION TAKEN:

On 16 Mar 07 at approximately 0528 hrs, I was dispatched to 14620 NE Coast Pine Ct #1 for reported Restraining Order Violation in progress. Upon arrival, I contacted V1- Jean Koncos. Jean stated she was awoken by someone knocking on her door. She went to her front window and the subject hit the side of her apartment. When the subject walked away, she saw S1-Dino Constance walk away.

An area check was conducted and Dino was not located.

STATEMENTS:

See above Action Taken.

EVIDENCE:

None.

RECOMMENDATIONS:

Case is forwarded to the Domestic Violence Prosecution Center for issuance of a warrant.

I certify or declare under penalty of perjury under the law of the state of Washington, that to the best of my knowledge the attached report(s), documents, and information contained therein are true, correct, and accurate. (RCW 9A.72.085)

Reporting Officer
Burnette, Michael

PSN
1316

Approving Officer
Tim, Timothy

PSN
1116

Ref Case Number

ORIGINAL

Report ID
07005560

Agency/Case Number
VPD

Vancouver Police Department				Case No. 07-5560	
605 E. Evergreen Vancouver, WA 98661		(360) 487-7400 (360) 694-9646 (FAX)		Report ID 03/16/2007 15:54 1423	
Supplemental Incident Report				RCN	
Records Center				DOR 03/16/2007	
707 W 13TH Street Vancouver, WA 98660		(360) 397-2211 (360) 397-6074 (FAX)		Officer Assaulted <input type="checkbox"/>	Non Disclosure <input type="checkbox"/>
Distribution DVPC				Distribution Other	
init	pDis	sDis	dEnt	M.C.	Concl
					Case
					F/U
					Ret
					Left
				Status <input type="checkbox"/> IR <input type="checkbox"/> A <input type="checkbox"/> AR <input type="checkbox"/>	

Administrative Information					
Location 4115 NE 54TH ST			City VANCOUVER		State WA
			Zip Code 98661		
Local Geo	State Geo	Precinct V EAST	Geo		
Rep Date 03/16/2007	Rep Time	From Date 03/16/2007	From Time 10:00	To Date 03/16/2007	To Time 11:30
Category	Class RE	Premise			
Dom Viol <input type="checkbox"/>	DV Card <input type="checkbox"/>	Child Abuse <input type="checkbox"/>	Arson <input type="checkbox"/>	Homicide <input type="checkbox"/>	Gang <input type="checkbox"/>
Weapons <input type="checkbox"/>	Alcohol <input type="checkbox"/>	Drugs <input type="checkbox"/>	Computer <input type="checkbox"/>		
Individual					
Role I	Seq 1	Type I	Last Name SPRY		First Name JORDAN
			Middle Name P		Sex M
					Race W
Birthdate 11/12/1982		Eth N			
Age Low	Age High	Hgt 601	Wgt 165	Hair BRO	Eyes BRO
Residence F		Employment/Occupation			
Driver's License Number		Driver's License Issuer	Social Security No.	State ID No.	FBI No.
Custody Status		Gang Affiliation	Tribe Affiliation	Identifiers	
Comments					
Type H	Location 4115 NE 54TH AVE		City VANCOUVER		State WA
					Zip Code 98661

Narrative

ATTACHED DOCUMENTS:
 Sworn Statement of Facts (x2)
 Packet of Assorted Legal Documents

SYNOPSIS:
 Contact with suspect Dino Constance. I met with Dino Constance at his home on 4115 NE 54th St. I verified PC with on duty Sergeant and then placed Dino into custody for violation of restraining order. I met with another officer who had PC statement and re-contacted on duty Sergeant. After speaking with on duty Sergeant, I decided to refer charges on the matter of the violation of protection order. I returned Dino to his home, released Dino from my custody, and had Dino and roommate complete witness statements verifying that Dino was at home all times on the morning of 03-16-07. Refer to DVPC for review and charges.

MENTIONED:
 Dino Constance - Involved
 Jordan P. Spry - Mentioned

Reporting Officer Ruder, Brian	PSN 1423	Agency/Case Number VPD 07005560
Approving Officer Dobbs, Steve	PSN 1282	
Report ID 03/16/2007		Report Case Number 15:54 1423
Report printed by: 3804		
Page 1 of 3		

Vancouver Police Department

Case No.
07-5560

Narrative

ACTIONS TAKEN:

I was dispatched to a wanted person call on 03-16-07 at 1000 hours. I arrived at 4115 NE 54th Street at 1020 to attempt to locate Dino Constance regarding a violation of restraining order violation. Before attempting contact I confirmed that there was a Probable Cause Statement for the arrest of Dino Constance. I knocked at the door of 4115 NE 54th Street and was greeted by Jordan P. Spry who invited me inside the house and said that Dino was asleep in his bedroom.

I went to the bedroom of Dino Constance and located Dino asleep on his bed. I woke Dino up and informed him that I needed to speak with him regarding a violation of restraining order that had taken place. I placed handcuffs onto Dino and read the Miranda warning from a department issued Miranda card. Dino agreed to speak with me about the incident.

Interview with Dino:

Dino stated that he was working (at home business) until 0200 on 03-16-07. Dino said that he then went to bed after he was finished with some paperwork that he needed to complete. Dino said that he was woken up by his room mate Jordan at about 0300 to 0330 hours because of a blockage in the toilet. Dino said that he returned to bed after the blockage was cleared and did not wake up again until I woke him at 1020 hours. Dino said that at no time during the night did he go anywhere outside of his house or harass his ex-wife in any way. Dino said that he believed that his ex was trying to get back at him because he was winning the custody of his son who he shared in common with his ex-wife.

I interviewed Jordan Spry:

Jordan said that he woke up at 0300 hours on 03-16-07 and tried to use the bathroom but it was clogged. Jordan said that he woke Dino from his sleep and forced him to help clear the blockage. Jordan said that Dino was in bed again no later than 0330 hours and he did not hear Dino leave the house at any time during the night. Jordan said that he went back to bed at around 0330.

I confirmed with on duty SGT Kim that there was PC to arrest Dino for the violation of restraining order. SGT Kim said that Officer Fisk would deliver the PC statement to SR 500 / Andresen. I agreed to meet Officer Fisk to obtain the PC statement.

I informed Dino that he was under arrest for violation of protection order and escorted Dino to my patrol vehicle. I placed Dino inside the back of the vehicle and transported Dino to SR 500 / Andresen to obtain the PC statement from Officer Fisk.

I met with Officer Fisk and reviewed the PC statement. Due to brevity of the PC statement I re-contacted SGT Kim regarding the original report. SGT Kim said that the original report did not include any witnesses to the violation of restraining order and no clues were discovered at the scene that indicated Dino had been in violation of the no contact order.

I decided to forward charges to the DVPC due to the lack of evidence / supporting facts that Dino had violated the no contact order. I returned Dino to his home where I released him from my custody. Dino agreed to provide me with a written statement. Jordan also agreed to provide me with a written statement. I obtained both statements and Dino also provided me with a copy of court documents indicating Mrs. Koncos had a history of perjury.

Dino's lawyer later faxed several more documents to Central Precinct regarding the litigation between Dino and Mrs. Koncos. I am including all documents received regarding this issue to this report.

Reporting Officer Ruder, Brian	PSN 1423	Agency/Case Number V7PD 07005560
Approving Officer Dobbs, Steve	PSN 1282	
Report printed by: 3804		Report ID 03/16/2007
		Ref Case Number 15:54 1423
		Page 2 of 3

V

APPENDIX 3

Vancouver Police Department		Case No. 07-7587
Evergreen Vancouver, WA 98661	(360) 487-7400 (360) 694-9646 (FAX)	Report ID ORIGINAL
Incident Report		RCN

Records Center		DOR 04/13/2007
707 W 13TH Street Vancouver, WA 98660	(360) 397-2211 (360) 397-6074 (FAX)	Officer Assaulted <input type="checkbox"/> Non Disclosure <input type="checkbox"/>
Distribution DVPC		Distribution Other DET. DAY - VPD DV
init	pDis	sDis
dEnt	M.C.	Concl
Case	F/U	Ret
Status	ID IR A AR	

Administrative Information									
Location 14620 NE COAST PINE CT #1				City VANCOUVER			State WA	Zip Code	
Local Geo		State Geo		Precinct V EAST		Geo			
Rep Date 03/27/2007		Rep Time 15:33	From Date 03/27/2007		From Time 15:33	To Date		To Time	Category
Dom Viol <input checked="" type="checkbox"/>		DV Card <input type="checkbox"/>	Child Abuse <input type="checkbox"/>	Arson <input type="checkbox"/>	Homicide <input type="checkbox"/>	Gang <input type="checkbox"/>	Weapons <input type="checkbox"/>	Alcohol <input type="checkbox"/>	Drugs <input type="checkbox"/>
									Computer <input type="checkbox"/>

Offense Information									
Off # 1	Offense 9A.46.020-FC		Offense Category HARASS		Offense Translation Harassment - class C felony			Attempted or Completed C	
Location Type 1STORY									

Individual										
Role V	Seq 1	Type I	Last Name KONCOS		First Name JEAN			Middle Name A	Sex F	Race W
Birthdate 09/11/1965		Eth N								
Age Low	Age High	Hgt 510	Wgt 175	Hair BRO	Eyes BRO	Residence F	Employment/Occupation			
Driver's License Number		Driver's License Issuer		Social Security No.		State ID No.		FBI No.	PCN	
Custody Status		Gang Affiliation		Tribe Affiliation		Identifiers				
Comments										

Type H	Location 14620 NE COAST PINE CT #1				City VANCOUVER			State WA	Zip Code	
Type C	Phone No. (360) 624-0392									
Type H	Phone No. (360) 567-1960									

Individual										
Role S	Seq 1	Type I	Last Name CONSTANCE		First Name DINO			Middle Name J	Sex M	Race W
Birthdate 09/12/1959		Eth								
Age Low	Age High	Hgt 509	Wgt 170	Hair BRO	Eyes BLU	Residence F	Employment/Occupation			
Driver's License Number		Driver's License Issuer		Social Security No. 545-29-7712		State ID No.		FBI No.	PCN	
Custody Status		Gang Affiliation		Tribe Affiliation		Identifiers				
Comments										

Type H	Location 4115 NE 45TH ST				City VANCOUVER			State WA	Zip Code	
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Reporting Officer Brown, David						PSN 1417		Ref Case Number	Agency/Case Number VPD 07007587
Reporting Officer Timothy						PSN 1116			

Vancouver Police Department

Case No.
07-7587

Individual

Type: C Phone No.: (360) 798-1082

Narrative

ACTIONS TAKEN:

On 03/27/2007 I was dispatched to call Jean Koncos on the report of threats.

I contacted Jean by telephone since she was out of state at the time. She stated that she received a call earlier in the day from her ex-husband's ex-roommate, Jordan. He told her that Dino, her ex-husband, mentioned that he wanted to hire somebody to kill Jean. Jordan didn't mention to Jean a date, time, or method in which Dino was planning on.

Jean told me that she wasn't sure if Dino would have that done. She said that they have been fighting back and forth for awhile and dealing with a custody issue between their children. She also explained that Dino and Jordan have been fighting and Jordan is aware of the situation between Dino and Jean. She said that Jordan may be telling her Dino wants to kill her in order to help her gain custody instead of Dino.

Jean told me that she wanted me to contact Dino to inform him that the police were aware of the situation.

I contacted Dino by telephone. He explained the same situation between he and Jean about the custody issue. I confronted him about the information that I received. He denied making such statements to Jordan. He also told me that he and his roommate were also having issues with each other and that he had just recently moved out.

I informed Dino of the seriousness of the situation and he understood.

ACTIONS RECOMMENDED:

Forward to DVPC
Please forward to Detective Day

I certify or declare under penalty of perjury under the law of the state of Washington, that to the best of my knowledge the attached report(s), documents, and information contained therein are true, correct, and accurate. (RCW 9A.72.085)

Reporting Officer Brown, David	PSN 1417	Ref/Case Number	Report ID 07007587	Agency/Case Number VPD ORIGINAL
Approving Officer Tim, Timothy	PSN 1116			

Report printed by: 1383

Page 2 of 2

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APPENDIX 4

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3 II. DECLARATION

4 Temporary relief is required because:

- 5 1. The remaining property, presently located at Mr. Constance's
6 previous rental property, will be placed in storage until the
7 end of September. At this time the landlord, Christa Garcia,
8 will have fulfilled her legal obligation to have stored it for
9 60 days after the default on rent.
- 10 2. Christa Garcia has informed me that she has provided a letter to
11 the court informing them that July was the last month that Mr.
12 Constance had paid rent.
- 13 3. The remaining property is still in question as to who it will be
14 awarded to during the final dissolution hearing on Monday
15 November 26th, 2007 and hence needs to be temporarily placed in
16 the petitioner's custody until this matter is resolved.
- 17 4. Mr. Constance is aware of where the keys to all three vehicles
18 are located. It is requested that Mr. Constance is ordered to
19 divulge the whereabouts of these keys so that they may be
20 returned to the court. It will be costly and challenging to
21 move the Van and boat from the rental property without the keys.
- 22 5. Mr. Constance wrote a letter to the petitioner on August 21st,
23 2007, which is a direct violation of the no contact order
24 presently in place. Never the less, in this letter he agrees to
25 return the Camry Toyota to the petitioner. (Exhibit 1)

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FILED

APR 04 2007

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

In re the Marriage of:

JEAN ANN KONCOS,

Petitioner,

And

DINO J. CONSTANCE,

Respondent,

)
)
) Case No.: 05-3-00440-9
)
) DECLARATION OF MICHAEL SPRY
)
)
)
)
)
)

DECLARATION

I, Michael Spry, declare as follows: I have personal knowledge of the matters set forth in this declaration and am competent to testify:

1. I am the former roommate of Mr. Dino Constance.
2. Mr. Constance moved in with my son, Jordan Spry and myself on January 15th, 2007.
3. I have never known Jean Koncos before having Mr. Constance come into my life. I communicated with her for the first time on Friday March 23rd and met her in person for the first time on Tuesday April 3rd:

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- 1 4. I was initially persuaded by Mr. Constance's statements/documents
2 regarding Ms. Koncos. Particularly the documents that she wrote that
3 appeared to retract her statements from the dependency hearing 2 ½
4 years ago. However, after the last 2+ months of intimate contact with
5 Mr. Constance, I have subsequently become convinced that his statements
6 have been carefully contrived and edited to cause me as well as
7 numerous other individuals to blindly accept what have become very
8 questionable and or contradictory information. As a professional
9 counselor and ordained Baptist minister, I believe that the issue's
10 lie, unfortunately, with Mr. Constance. I believe that the retraction
11 document was a result of his abusive and excessive ability to bully and
12 manipulate Ms. Koncos. I have also been a victim of Mr. Constance's
13 ability to manipulate and distort the facts of almost every situation.
- 14 5. Mr. Constance has been and continues to be obsessed at all costs with
15 the complete destruction of Ms. Koncos. But more tragically even at
16 the cost of his own sons well being. I have personally observed Mr.
17 Constance's entire existence to have revolved around expending
18 unavailable financial resources as long as it would cost Ms. Koncos
19 anything from inconvenience to utter destruction.
- 20 6. I observed Mr. Constance's erratic, irrational and inconsistent
21 behavior that is detrimental to the well being and stability of any
22 child, let alone one going through this one's current set of
23 circumstances.
- 24 7. I am presently between projects as an IBEW electrician and had the
25 opportunity to be at home a great deal observing Mr. Constance's
behavior.

1 8. Alcohol proved to be his constant mainstay for functioning every single
2 day under every single circumstance. He smoked marijuana frequently,
3 until the time I found out about it. At that point I informed him that
4 it could not be smoked anywhere near our property or I would turn him
5 into the police. However, he affirmed and continued to smoke the
6 marijuana, only not in my presence. He stated that it was the only way
7 he could manage his neck pain. However, that is also the excuse he
8 gave for having to consume 1-2 liters of whiskey every day starting in
9 the morning and ending when he passed out in a stupor at anywhere from
10 1-3 in the morning....this was every single day of the week.

11 9. With regard to his relationship with Ms. Koncos, initially I believed
12 him to simply be angry and to be simply venting. However, after
13 constant repetition, drunk and sober, I came to believe that he was
14 serious in his desire to see her injured physically, damaged
15 financially or even killed. However, the underlying message in every
16 conversation was his desire to see her totally destroyed regardless of
17 the cost to himself, but most importantly his son.

18 10. His disregard for his sons well being is what finally persuaded
19 me that something needs to be done to protect this child at all costs.

20 11. I've been present not only when he made statements to me, my son
21 but also complete strangers in open bars. Mr. Constance was willing to
22 pay starting at \$5000 (as a constant starting point) to have someone
23 make an appointment for a massage and while there, "beat the shit out
24 of her" or injure her in any way they could. This was a constant phrase
25 in every discussion/conversation regardless of the environment. The
amount was negotiable if they were willing to actually kill her.
However, I heard the figure of \$10,000 in at least two instances. He

1 can say it was simply the alcohol talking and he wasn't serious, how
2 ever I heard it enough times and knowing that if voiced in the wrong
3 environment enough times, my fear was that someone would eventually be
4 "that person" to be interested enough in the money to do the job. He
5 definitely stated to me that if I would help him that he would either
6 personally assist me or find someone to assist me in doing the same
7 thing to my ex-wife.

8 12. I personally observed his constant on-line endeavors to solicit
9 prostitution and/or female companionship of any sort for anything from
10 escort services, dancers to prostitution. The only ones that were ever
11 invited to the house and observed by me were ones he believed were
12 willing to provide prostitution services. His primary concern was to
13 have a women come over, be available and release his needs.

14 13. On one of these instances he claimed to have been robbed of \$700
15 plus the entire content of his wallet. He reported all his cards and
16 ID stolen, however, his wallet along with it's contents were later
17 found in the house by Nickolous, where he realized it had been left
18 during one of his drunken stupors by his own admission.

19 14. I was present when Mr. Constance had one young lady, of several,
20 come over who refused his advances to have sex with him. Her fee was
21 \$200 of which she offered to return \$100 if he would just let her out
22 of his room and leave the house. She stated to Jordan and myself that
23 she had never intended to have sex, she was a dancer and Mr. Constance
24 must have misunderstood her ad. Mr. Constance was blocking the doorway
25 which Jordan and I observed when we responded to her calls for help. We
were able to escort her out of the house to the car that had brought
her there.

1 15. My concern is that Mr. Constance sleeps naked with his son, who
2 is also naked, in the same bed that he has had numerous "women for
3 hire" sharing. I know for certain that the bed sheets have NEVER been
4 washed or changed since he moved in. This exposes Nicko to a numerous
5 amount of potential STD's let alone skin diseases and basic sanitation.
6 He is consistently naked with the child. He baths, sleeps and plays
7 with Nicko naked. He plays with Nicko in the open living room naked at
8 all hours disrupting the entire household as late as 1:00am.

9 16. I have observed Mr. Constance's financial irresponsibility. I
10 have personally heard him boast about his having avoided paying his
11 past landlord, Steve Meier, over \$10,000 in back rent along with his
12 ability to yet sue him for not properly protecting his abandoned
13 property. I have personally heard him boast about his ability to avoid
14 paying the currently owed child support of over \$1,500. I have
15 personally heard him boast about his having made over \$28,000 just this
16 last month "which he said was his world record".

17 17. Mr. Constance's actions were excessively irresponsible in his
18 violation with the signed rental agreement documents with the landlord.
19 He signed and agreed to not smoke on the property, not have any pets
20 and he would keep it clean and presentable at all times. Mr. Constance
21 violated ALL of these signed agreements and left the property under
22 sheriff's escort in complete disarray. Because of cigarette butts, pet
23 feces and dander, trash and abandoned property, everyone was affected
24 because of his singular behavior. Mr. Constance did not have any
25 regard for how his actions were going to impact anyone else.

18. Beyond anything that appears to be anger or contempt towards Mr.
Constance. These things I'm reporting are for the simple reason to

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help protect and keep Nickolous safe from Mr. Constance. If everything
Mr. Constance stated about Ms. Koncos was true, it would still not
overshadow the fact he absolutely at all costs must be kept away from
this child unless under supervised visitation.

I declare under penalty of perjury pursuant to the laws of the
State of Washington that the foregoing is true and correct.

Date this 3rd Day of April, 2007, at Vancouver, Washington


Michael (Kit) Spry

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FILED

APR 04 2007

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

In re the Marriage of:

JEAN ANN KONCOS,

Petitioner,

And

DINO J. CONSTANCE,

Respondent,

)
)
) Case No.: 05-3-00440-9
)
) DECLARATION OF JORDAN SPRY
)
)
)
)
)

DECLARATION

I, Jordan Spry, declare as follows: I have personal knowledge of the matters set forth in this declaration and am competent to testify:

1. I am the former roommate of Mr. Dino Constance.
2. Mr. Constance moved in with my father, Michael Spry and myself on January 15th, 2007.
3. Prior to meeting Mr. Constance, I had no knowledge of Jean Koncos.
4. Shortly after Mr. Constance moved in he spent the majority of his time talking about his "crazy ex-wife". He was immediately defaming and making derogatory comments about Ms. Koncos and going on about stories that were extremely far fetched.

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- 1 5. It became very clear within a very short period of time that Mr.
2 Constance was mentally deranged, unhealthy, unstable,
3 obsessive/compulsive, controlling, demanding, relentless, abrasive,
4 unsanitary, and in a constant state of intoxication.
- 5 6. I heard Mr. Constance make constant comments and threats about finding
6 someone that would be willing to kill Jean. He mentioned to my dad
7 that he would kill his ex-wife if he would kill Jean. A favor for a
8 favor. My dad did not find this at all humorous. Mr. Constance said to
9 me that he would pay not only me but somebody else very well if they
10 would go in and brutally beat her, teeth broken, nose broken, severe
11 physical damage. The more scars the better. The more long term damage
12 and uglier you can make her the better. I of course declined the offer
13 and informed Jean of his threats and attempts to find somebody to do
14 this and protect herself.
- 15 7. Mr. Constance repeated this threat often enough and in enough
16 environments that I seriously became concerned for Jean's safety and
17 felt that she needed to know so that she could protect herself.
- 18 8. Mr. Constance would start drinking at around noon and would continue
19 drinking until he would pass out. He would go through 1-2 liters of
20 Black Velvet whiskey per day. He would also do this when he had Nicko
21 as well as smoking marijuana. I heard Mr. Constance claim that he
22 smoked 2 bowls of marijuana a day. He would also do this in front of
23 Nicko. He got to the point where he would be so intoxicated that he
24 would be urinating and defecating on the floor and walls in the
25 bathroom. The bathroom was absolutely disgusting to the point where I
would not even go into it. He however would allow Nicko to use this
bathroom and play in it.

1 9. I observed Mr. Constance trying to acquire prostitutes and successfully
2 bringing them to the house on 3 different occasions. One of the women
3 happen to only be an entertainer and when she informed him that she
4 wouldn't perform sexually, he continued to insist and attempted to rape
5 her taking the phone away from her. She was screaming for help, Mr.
6 Constance opened the door and said to my father, "Hey Kit we have a
7 problem with this one, we need to teach her a lesson". Mr. Constance
8 was blocking the door and refusing to let her pass. It was at that
9 point that I helped escort the women out of the house my getting the
10 phone from Mr. Constance and letting her leave through the front door.
11 I told him that he can either explain it to me now, or he can explain
12 it to the police. Either way she needed to leave.

13 10. I overheard Mr. Constance discussing over the phone the cost of
14 different several sexual services. He never had a prostitute over when
15 Nicko was there, but he would still be on the phone soliciting for such
16 sexual behavior during his visitation time with Nicko.

17 11. I observed that Mr. Constance would give Nicko about 10-15
18 minutes attention at the beginning of the visitation and then after
19 that he would leave him alone to fend for himself. I would say that he
20 would spend about 35% of the time with Nicko during the visitation and
21 the rest of the time simply abandon him and leave him to watch tv.

22 12. Mr. Constance spends all of his time in front of the computer and
23 doing his own thing. Nicko's only a priority in front of people. He
24 is a spot light performer.

25 13. I have heard Mr. Constance claim that he made \$28,000 this month.
He was bragging about the fact that his best month ever as a mortgage

1 broker was \$26,000 and he just surpassed that. One time Mr. Constance
2 had me cash one of his paychecks for \$2200 and he had me bring him back
3 \$1800 in cash. I asked him why I was doing this for him and he said
4 that he couldn't keep any money in his bank account due to the child
5 support garnishment and he said he wasn't going to pay anyone a dime.

6 14. Mr. Constance insisted that I contact Ms. Koncos as a potential
7 massage client. He wanted me to gain specific information from her and
8 give it to him. He had asked me to hack into her computer and gain
9 access to information that would further his agenda. He also told me
10 to try and get her to perform a hand job during the massage and to see
11 how much she would charge for it.

12 15. I have witnessed Mr. Constance bragging about sending Dirk
13 Restvedt false and misleading emails, which have been included as
14 exhibit 1. They serve no purpose other than to cause emotional duress
15 and conflict for Ms. Koncos.

16 16. I have heard Mr. Constance say that his only agenda is to destroy
17 Ms. Koncos at no matter what the cost.

18 17. I observed Mr. Constance filing pleading after pleading and I
19 asked him if he was accomplishing anything and his response was "If
20 nothing else it's giving her hell".

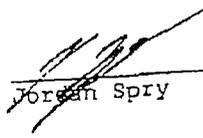
21 18. It has been my observation that Nicko is simply a tool for Mr.
22 Constance to further his agenda to destroy Ms. Koncos.

23 19. I am willing to step forward and present this information to the
24 court even though Mr. Constance has made threats to me personally. I

1 am willing to pursue coming forward with this information and assisting
2 Ms. Koncos and the protection of her child and I am still willing to go
3 forward with this even though Mr. Constance will certainly make my life
4 a living hell. This also goes to prove that Mr. Constance will go to
5 any length he feels is necessary by threatening, bullying and
6 intimidating everyone that has become involved that does not agree with
7 his agenda. Emails regarding these threats have been included (exhibit
8 2)

9
10 I declare under penalty of perjury pursuant to the laws of the State of
11 Washington that the foregoing is true and correct.

12 Dated this 3rd Day of April, 2007, at Vancouver Wa

13
14 
15 Jordan Spry

APPENDIX 5

TIMELINE OF EVENTS

2007 & 2008

* - on or about

- 03/016/07 Jordan Spry assists Constance by providing sworn alibi to prevent his arrest for alleged TRO violation.
- 03/24/07 Constance witnessed a "spanking nightmare", violent exchange refusal, urgent "not going with Mommy" pleas, and other telltale signs of abuse, contacts CPS.
- 03/27/07 1) Michael Spry refuses to help Constance unload truck to complete job, Constance refuses partial payment, Spry threatens Constance, Constance summons police. Constance is threatened with sabotage of custody matter and other problems.
- 2) Prior to police arrival, Jordan Spry calls Koncos and makes first allegations of parental misconduct and "wanting Jean dead". Offers assistance in custody case.
- 3) Koncos is unconcerned but is later contacted by CPS with Constance's allegations. To distract CPS, Koncos tells CPS of Jordan Spry's statements from earlier that day. CPS suggests Koncos relay to police.
- 4) From Disneyland, Koncos calls VPD and is called back by Offr. David Brown, and relays Jordan's dubious statements. She expresses doubt at the validity of Jordan's statements, noting that he is perhaps attempting to harm Constance by assisting her with custody case, since Constance and Jordan are fighting and Jordan has knowledge of the custody case. She mentions no prior warnings, threats, or allegations, and no mention of parental misconduct, soon after heugely claimed in court. Offr. Brown contacts Constance and is told the exact same assessment of the events.
- 03/28/07 Having left the Spry residence, but no where near unloaded or set up, Constance urgently files custody change motion to protect NSC.
- 04/01/07 Koncos returns from Disneyland and finds Constance's Custody Change Motion, with proof of neglect in her mailbox. Terrified at this and the recent call from CPS she contacts Jordan and accepts offer to defame Constance at family court, and embellishes any and all wild anger-based allegations the Sprys are willing to make.
- 04-02/07 Aware that defaming Constance will eliminate any possibility of collecting from Constance, Jordan makes last ditch attempt to collect immediately from Constance via blackmail threat to sabotage his custody case. No mention of solicitations are recorded because this allegation had not been invented yet.
- 04/03/07 Sprys visit Koncos, at which time they maliciously and collaboratively invent horific allegations against Constance. Jordan's statement of "wanting Jean dead" is modified to 'direct solicitation of Sprys' allegations. Sprys invent and Koncos types in pursuit of punishment for Constance (by Sprys) and the ability to distract family court and avert Constance's motion. Koncos plans timing so Sprys are heard from the same day Constance's motion is cited. The "warnings ruse" is invented and agreed to by all parties.
- 04/04/07 Koncos files Spry declarations with Motion for Temporary orders even though she knows Constance is the "best father she ever saw" and the child prefers to be with Constance. Evident. hearing is granted based on the extreme Spry claims.
- 04/10/07 Hearing occurs. Overwhelmed at the extent of the Spry perjury,, Constance is unable to impeach the Sprys or refute their testimony except by written declarations. Judge finds Sprys highly credible, findings and orders entered.

~~EXHIBIT 11A~~

- 04/15/07 Det. O'Mara, having been contacted by Costelianos with deceived mentally ill rantings, contacts Koncos just to be safe. Koncos siezes opportunity to do away with Constance and maintain relationship with Dirk Restvedt, and acquire Constance's property, by telling O'Mara that she knows of two men who will say the same thing. With no investigation into Spry background, O'Mara takes Koncos to safehouse and seeks wiretap order to use with Costelianos.
- 04/16/07 With plenty of time to consider how to make the most of the situation, Koncos decides to dispense with Constance once and for all. She misleads Det. O'Mara into believing that Constance was somehow responsible for the hit and run death of Adrian Blair in 1994. Believing Constance previously has gotten away with murder, O'Mara decides to aggressively pursue Constance. The (teasing) seduction of O'Mara, who is obviously attracted to Koncos, begins in earnest.
- 04/24/07 Having been recruited by O'Mara to do his dirty (illegal) work, Det. Acee submits fraudulently prepared intercept application to the court which is signed by Judge Harris. Costelanos steps up his "super hero" attempts to get Constance to say something incriminating. He attempts to arrange meeting with Constance and undercover detective. Constance assumes this is just another drugie looking for any amount of money and continues to blow off Costelanos.
- 04/25/07 Constance finally gets an opportunity to copy the Jordan Spry blackmail recordings to CD and reports the blackmail to Sheriffs at the very office where Det. O'Mara works. Report and CD are forwarded, by chance, directly to O'Mara, who ignores this evidence; He is now thinking with his penis and smelling a big case.
- 04/31/07 Having failed to incriminate Constance, Det. O'Mara renews the intercept application, but omits the blackmail recordings so as to not lose his warrant.
- 05/07/07 Constance is again contacted by Costelanos, but having found a far better "massage client under cover" should this become necessary, decides to dispense with Costelanos's many calls. So he again pretends to believe Costelanos but assigns him an impossible task; secure a half hour massage appointment after which Constance can get rid of Costelanos. Constance is arrested, does not learn of Spry involvement, and volunteers his brief contact with Zack Brown to demonstrate his true lack of intent.
- *05/10/07 Constance learns from charging document he receives in court that the Sprys are involved and are making copy-cat claims.
- ?? Golek makes deal with Zack Brown to give testimony which is extremely egggerated as only Brown has the physical prowess or violent nature to harm Koncos. This secretly (and illegally) procured grand finale witness assures convictions.
- 02/20/08 Koncos is interviewed by Brian Walker, and is forced to change her story about warnings from the Sprys. The warningsruse is uncovered, but too late for already grossly behind defense counsel to make use of it at trial. Walker bombs out.
- 02/28/08 Walker, grossly underprepared and with migraine headache concludes deficient defense and Constance is convicted due to misinterpreted (and illegal) recording, and the cross-corroboration derived from the witnesses with similar claims.
- 03/28/08 Constance, with no serious criminal record, is sentenced to more time in prison than if he had raped, tortured, and murdered someone. Koncos walks away with the child she three times tried to abort, secured relationship with new boyfriend, and all of Constance's property as well.

~~CONFIDENTIAL~~

APPENDIX 6

707 W 13TH Street Vancouver, WA 98660	(360) 397-2211 (360) 397-6074 (FAX)	04-133 Report ID ORIGINAL
--	--	--

Incident Report

Records Center		DOR 01/04/2004
-----------------------	--	-------------------

707 W 13TH Street Vancouver, WA 98660	(360) 397-2211 (360) 397-6074 (FAX)	Officer Assaulted <input type="checkbox"/>	Non Disclosure <input type="checkbox"/>
--	--	--	---

Distribution DCPA		Distribution Other								
init	pDis	sDis	dEnt	M.C.	Cond	Case	FAU	Ret	Left	
							Status <input type="checkbox"/> IR <input type="checkbox"/> A <input type="checkbox"/> AR <input type="checkbox"/>			

Administrative Information

Location 1908 NE 187TH AV		City VANCOUVER		State WA	Zip Code 98682				
Local Geo	State Geo	Precinct SO CENT	Geo						
Rep Date 01/04/2004	Rep Time 11:50	From Date 01/04/2004	From Time 10:00	To Date	To Time	Category	Class	Premise	
Dom Viol <input checked="" type="checkbox"/>	DV Card <input type="checkbox"/>	Child Abuse <input type="checkbox"/>	Arson <input type="checkbox"/>	Homicide <input type="checkbox"/>	Gang <input type="checkbox"/>	Weapons <input type="checkbox"/>	Alcohol <input type="checkbox"/>	Drugs <input type="checkbox"/>	Computer <input type="checkbox"/>

Offense Information

Off # 1	Offense 9A.36.041-DV	Offense Category ASSAULT	Offense Translation Assault IV DV - No Medical Attention	Attempted or Completed C
Location Type 1STORY				

Individual

Role V	Seq 1	Type I	Last Name CONSTANCE	First Name DINO	Middle Name J	Sex M	Race W	
Birthdate 09/12/1959		Eth						
Age Low	Age High	Hgt 509	Wgt 170	Hair BRO	Eyes BLU	Residence F	Employment/Occupation	
Driver's License Number [REDACTED]		Driver's License Issuer OR		Social Security No. [REDACTED]		State ID No.	FBI No.	PCN
Custody Status		Gang Affiliation		Tribe Affiliation		Identifiers		
Comments								

Type H	Location 1908 NE 187TH AV	City VANCOUVER	State WA	Zip Code 98682
Type H	Phone No. (360) 253-5487			

Individual

Role S	Seq 2	Type I	Last Name KONCOS	First Name JEAN	Middle Name A	Sex F	Race W	
Birthdate 09/11/1965		Eth						
Age Low	Age High	Hgt 510	Wgt 170	Hair	Eyes F	Residence	Employment/Occupation	
Driver's License Number [REDACTED]		Driver's License Issuer OR		Social Security No.		State ID No.	FBI No.	PCN
Custody Status		Gang Affiliation		Tribe Affiliation		Identifiers		
Comments								

Type C	Phone No. (503) 320-7310
------------------	------------------------------------

Narrative

Reporting Officer Chaney, Gregory L	PSN 3181	Agency/Case Number CC50 Report ID 04000133 ORIGINAL
Approving Officer Penoyer, Melanie J	PSN 3116	

Narrative

On 01-04-04 at approx. 1150 hrs I was dispatched to a cold assault at 1908 NE 187th Ave. Dino Constance called 911 to report that his girlfriend Jean Koncos had assaulted him and was no longer at the location.

I contacted Constance at the residence. I observed that his lower left lip was swollen and cut. Constance stated that he received this from Koncos.

Constance related that the incident started earlier this morning when his soon to be step daughter had left the door open again and let the dog out. Constance state that she had been scolded numerous times for leaving the doors open and allowing the dog to escape out of the house. He was so upset over it that he intentionally knocked a plate that has his breakfast off of the counter and screamed at the girl for doing it again. The plate broke as it hit the floor. Constance then went to his office after his tantrum.

I observed that the office was approx. 10 feet from the kitchen with no wall separating them.

Moments later Koncos came into the office with several plates including the one he had broke and began throwing them in his direction as he was sitting at the desk. Constance stated that he had to duck to prevent being struck by the plates. As the plates were thrown they were breaking against the wall. Constance got up and a yelling match started between the two of them. Constance stated that Koncos then began assaulting him by rapidly throwing punches at him with her fists. Constance stated that he attempted to move away from her as she continued the barrage. He was pushed back into a corner and he finally pushed her away. Constance stated that he had picked up a small printer in an attempt to block the blows and she knocked it away from him.

After the two separated she left the room.

I asked where Koncos had gone and he stated that she took her two children and left. She was probably going back over to Portland to drop the kids off at their fathers house. Constance provided me with Koncos's cell phone number.

I asked Constance what time this occurred and he stated that it was well over an hour ago. I asked why he took so long to call and he stated that he did not want to see her arrested in front of her kids.

I did observe, behind the desk, several dents in the wall above a small printer that Constance stated were caused by the plates being thrown. I observed broken plates behind the desk and below the area where the dents in the wall were at.

I contacted Koncos by phone. She stated that she was now in West Linn at a friends house. I asked what had occurred this morning. Koncos related the same thing about the plate being broken by Constance. She then stated that they just argued about the incident. I asked how Constance got a fat lip and she stated that she probably caused it. I asked how and she stated that they got a little physical. I asked her to explain. Koncos admitted that after the incident in the kitchen Constance had left and went into the office. After several minutes she then went into the office and started throwing the plates at him while he was sitting at the desk. She stated that she did not hit him with any of the plates though. Constance then got up and she approached him and then began pushing him. I asked if she was swinging at him and she stated, "Probably a little bit." I asked if he was hitting at her and she stated that he was pushing her. I asked if she had any injuries and she stated that her wrist and forearm were sore.. She admitted that there were no marks on her.

Koncos stated that she felt that this was all in self defense. I asked her how she considered it self defense when Constance was sitting at the desk and she started throwing plates at him and then admitted that she started pushing and shoving him first. She stated that he had verbally abused her and her kids this morning and also placed them in danger when he knocked the plate on the floor in their direction.

Reporting Officer Chaney, Gregory L	PSN 3181	Ref Case Number	ORIGINAL	Report ID 0400133	Agency/Case Number CCSO
Approving Officer Tenoyer, Melanie J	PSN 3116				
Report printed by: 1383		Page 2 of 3			

Narrative

I asked why she did not call 911 and she stated that she didn't know. I asked what time this occurred and she stated around 1000 hrs. She stated that after the argument she cleaned up the kitchen and then left.

I explained to Koncos that from what she had explained to me and the injury to Constance's lip that I was considering her the primary aggressor in this disturbance. She wanted to know why and I told her that she started it after Constance left the kitchen and went into the office. She threw the plates at him and then began pushing and hitting him resulting in his cut lip. I asked Koncos if she was going to return to Vancouver and she related not if she was going to be arrested. I advised that I would forward the information to the prosecutor for a possible warrant. Koncos stated that she was going to move back to Portland to get away from Constance.

Forward to DCPA for review and possible issuance of Warrant on Koncos for Assault 4 DV.

I certify or declare under penalty of perjury under the law of the state of Washington, that to the best of my knowledge the attached report(s), documents, and information contained therein are true, correct, and accurate. (RCW 9A.72.085)

Reporting Officer Chaney, Gregory L	PSN 3181	Rel Case Number	ORIGINAL	Agency/Case Number CCSO 04000133
Approving Officer Kenoyer, Melanie J	PSN 3116			

Report printed by: 1383

Page 3 of 3

707 W 13TH Street (360) 397-2211 Report ID 04-11942
 Vancouver, WA 98660 (360) 397-6074 (FAX) 08/25/2004 13:27 3181

Supplemental Incident Report
Records Center

707 W 13TH Street (360) 397-2211
 Vancouver, WA 98660 (360) 397-6074 (FAX)

Distribution: DCPA+ORPHANS
 Distribution Other: DEP TENDLER DET ROBERTS

ini pDis sDis dEnt M.C. Cond Case FU Ret Lett
 Status: IR A AR

Administrative Information

Location: 1908 NE 187TH AV City: VANCOUVER State: WA Zip Code: 98682
 Local Geo: State Geo: Precinct: SO CENT Geo:

Rep Date: 08/25/2004 Rep Time: 12:00 From Date: 08/21/2004 From Time: To Date: To Time: Category: Class: Promise:

Dom Viol DV Card Child Abuse Arson Homicide Gang Weapons Alcohol Drugs Computer

Offense Information

Off # 1 Offense 9A.36.041-DV Offense Category ASSAULT Offense Translation Assault IV DV - No Medical Attention Attempted or Completed C

Location Type: 1STORY

Individual

Role S Seq 1 Type I Last Name KONCOS First Name JEAN Middle Name ANN Sex F Race W

Birthdate: 09/11/1965 Eth:

Age Low Age High Hgt Wgt Hair Eyes Residence Employment/Occupation
 510 170 BRO BRO F

Driver's License Number: Driver's License Issuer: Social Security No. State ID No. FBI No. PCN

Custody Status: Gang Affiliation: Tribe Affiliation: Identifiers:

Comments:

Type H Location 1908 NE 187TH AV City VANCOUVER State WA Zip Code 98682

Type H Phone No. (360) 253-5487

Individual

Role V Seq 2 Type I Last Name CONSTANCE First Name DINO Middle Name J Sex M Race W

Birthdate: 09/12/1959 Eth:

Age Low Age High Hgt Wgt Hair Eyes Residence Employment/Occupation
 509 170 BRO BLU F

Driver's License Number: Driver's License Issuer OR Social Security No. State ID No. FBI No. PCN

Custody Status: Gang Affiliation: Tribe Affiliation: Identifiers:

Comments:

Type H Location 1908 NE 187TH AV City VANCOUVER State WA Zip Code 98682

Type H Phone No. (360) 253-5487

Reporting Officer Chaney, Gregory L PSN 3181

Approving Officer Colen Jr, Donald F PSN 3312

Agency/Case Number: CCGO 04011942
 Report ID: 08/25/2004
 Rel Case Number: 13:27 3181
 S04-133

Article

Item #	Loss/Action	IBR Type	NCIC Category	Type	Quantity	Caliber	Drug Type
1	EVIDENCE	OTHER			2		
Drug Quantity	Drug Measure	Loss Value	Color	Color			
Description							
Brand							
Model							
Serial No.				Owner Applied No. (OAN)			
Miscellaneous							
OF CONSTANCE AND HIS BACK							
Rec. Date	By PSN	Rec. Agcy	Rec. Value				
Location					City	State	Zip Code

Narrative

DOCUMENTS
CCSO EVIDENCE FORM
MEDICAL RELEASE FORM SIGNED BY CONSTANCE

On 08-25-04 at approx. 1200 hrs I arrived at 1908 NE 187th Ave to contact Dino Constance in regards to a cold assault and custodial complaint. I was advised that Deputy D. Tendler had contacted Constance on 08-23-04 in regards to an alleged assault committed by his girlfriend Jean Ann Koncos. Refer to Deputy Tendler's report regarding that contact and arrest of Constance on an outstanding warrant.

I was familiar with Constance and Koncos as I had respond on 01-04-04 to a cold assault where Koncos was the suspect and had left the residence. Refer to case #S04-133. I checked premise history and found that there had been another report(S04-4782) taken on 04-05-04 and that Constance was the suspect. Both cases were referred to the prosecutor.

What Constance wanted to report today was an injury that he claimed he sustained 4 days ago. I asked what the injury was and he claimed that it was to his back and spine. I had read Deputy Tendler's report and all that Constance had complained of was that he had been slapped across the face. Constance lifted his shirt and I observed a red mark on his lower back. The mark was approx. 4-5 inches long and approx. 1 inch wide. It was directly in the middle of his back on the spine. Constance was complaining that it was now painful and he planned to go to the hospital to have an MRI done. I photographed his back and he signed a medical release form. At this time he had no idea when or where he would seek treatment. The two photo's were placed into CCSO evidence.

I asked Constance how he received the back injury and he stated that Koncos had pushed him against the wall. I again asked why he did not mention this to Deputy Tendler and he stated that he didn't think about it at the time.

The second issue Constance had was that Koncos had left with their month old child. Constance believed that Koncos had flown out of Oregon to an unknown location and he had no idea where she might be at. Constance admitted that Koncos is the legal guardian of the child. Constance was wanting a warrant issued for Koncos for taking the child out of the state. He claimed that she is on probation and one of the conditions is that she not leave the state.

Constance then shifted to what is causing Koncos to react the way she does. He claimed that it all has to do with her ex-husband and civil and legal problems they are having with each other. Constance stated that there are allegations of stalking, harassment and other ongoing problems. He stated that her anger condition has to do with

Reporting Officer	PSN	Ref Case Number	Report ID	Agency/Case Number
Chaney, Gregory L	3181			
Approving Officer	PSN	Ref Case Number	Report ID	Agency/Case Number
Tolen Jr, Donald F	3312			
Report printed by: 1383				

Narrative

her pregnancy and having the child.

Checked premise history and found numerous complaints of assaults between the two with no action being taken.

Refer report to DCPA for action on the alleged assault. Also forward to Detective B. Roberts for his information.

I certify or declare under penalty of perjury under the law of the state of Washington, that to the best of my knowledge the attached report(s), documents, and information contained therein are true, correct, and accurate. (RCW 9A.72.085)			
Reporting Officer	PSN	Report ID 08/25/2004 13:27 3181 Ref Case Number 504-133	Agency/Case Number CCSO 04011942
Chaney, Gregory L	3181		
Approving Officer	PSN		
Colen Jr, Donald F	3312		
Report printed by: 1383		Page 3 of 3	

Clark County Sheriffs Office					Case No. 04-12031														
707 W 13TH Street Vancouver, WA 98660			(360) 397-2211 (360) 397-6074 (FAX)		Report ID 08/26/2004 16:02 3282														
Supplemental Incident Report					RCN														
Records Center					DOR 08/26/2004														
707 W 13TH Street Vancouver, WA 98660			(360) 397-2211 (360) 397-6074 (FAX)		Officer Assaulted <input type="checkbox"/>		Non Disclosure												
Distribution CPS+DCPA			Distribution Other			Confidential													
init	pDis	sDis	dEnt	M.C.	Concl	Case	F/U	Ret	Let										
Administrative Information																			
Location				City		State		Zip Code											
Local Geo		State Geo		Precinct		Geo													
Rep Date		Rep Time		From Date		From Time		To Date		To Time		Category		Class		Premise			
Dom Viol		DV Card		Child Abuse		Arson		Homicide		Gang		Weapons		Alcohol		Drugs		Computer	
<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
Individual																			
Role I	Seq 1	Type I	Last Name KONCOS			First Name JEAN			Middle Name A		Sex F	Race U							
Birth Date 09/11/1965		Ethnicity N			Role Description Involved or Mentioned														
Age Low	Age High	Hgt	Wgt	Hair	Eyes	Residence U	Employment/Occupation												
Driver's License Number			Driver's License Issuer		Social Security No.		State ID No.		FBI No.	PCN									
Custody Status		Gang Affiliation			Tribe Affiliation		Identifiers Affiliation												
Comments																			
Type H	Location 7815 N REVERE DR				City KANSAS CITY		State MO		Zip Code 64151										
Narrative																			

Dino CONSTANCE telephoned Central Precinct to provide the address of I-Jean KONCOS in this case.

Address added.

I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. I intend my printed name and PSN on this document to be my signature. This document was signed in Clark County, Washington on 08/26/2004.										
Report Written By: Baker, Todd A			PSN 3282		Ref Case Number		Report ID 08/26/2004 16:02 3282		Agency/Case No. CCSO 04012031	
Approved By: Polen Jr, Donald F			PSN 3312							
Report Printed By: Erb, Shannon on 8/13/2013 6:09:53PM			PSN 4690							

Clark County Sheriffs Office					Case No. 04-4782				
707 W 13TH Street Vancouver, WA 98660			(360) 397-2211 (360) 397-6074 (FAX)		Report ID ORIGINAL				
Incident Report					RCN				
Records Center					DOR 04/05/2004				
707 W 13TH Street Vancouver, WA 98660			(360) 397-2211 (360) 397-6074 (FAX)		Officer Assaulted <input type="checkbox"/>		Non Disclosure		
Distribution NONE			Distribution Other			Confidential			
init	pDis	sDis	dEnt	M.C.	Concl	Case	F/U	Ret	Let
Administrative Information									
Location 1908 NE 187TH AV				City		State		Zip Code	
Local Geo		State Geo		Precinct SO CENT		Geo			
Rep Date 04/05/2004		Rep Time 21:00	From Date 04/05/2004		From Time 21:00	To Date		To Time	Premise
Dom Viol <input checked="" type="checkbox"/>	DV Card <input checked="" type="checkbox"/>	Child Abuse <input type="checkbox"/>	Arson <input type="checkbox"/>	Homicide <input type="checkbox"/>	Gang <input type="checkbox"/>	Weapons <input type="checkbox"/>	Alcohol <input type="checkbox"/>	Drugs <input type="checkbox"/>	Computer <input type="checkbox"/>
Offense Information									
Off # 1	Offense 9A.36.041		Offense Category ASSAULT		Offense Translation Assault IV - No Medical Attention			Att./Completed C	
Location Type 1STORY									
Individual									
Role V	Seq 1	Type I	Last Name KONCOS		First Name JEAN		Middle Name J	Sex F	Race W
Birth Date 09/11/1965		Ethnicity			Role Description Victim				
Age Low	Age High	Hgt	Wgt	Hair	Eyes	Residence F	Employment/Occupation		
Driver's License Number			Driver's License Issuer		Social Security No.		State ID No.	FBI No.	PCN
Custody Status		Gang Affiliation			Tribe Affiliation		Identifiers Affiliation		
Comments									
Type H	Location 1908 NE 187TH AV				City VANCOUVER		State	Zip Code	
Type C	Phone No. (503) 320-7310								
Type H	Phone No. (360) 254-5487								

Report Written By: McLoughlin, Joseph W	PSN 3223	Ref Case Number	Report ID ORIGINAL	Agency/Case No. CCSO 04004782
Approved By: Polen Jr, Donald F	PSN 3312			
Report Printed By: Erb, Shannon on 8/13/2013 6:10:41PM	PSN 4690			

Individual

Role S	Seq 1	Type I	Last Name CONSTANCE	First Name DINO	Middle Name J	Sex M	Race W
Birth Date 08/01/1959		Ethnicity		Role Description Suspect			
Age Low	Age High	Hgt 509	Wgt 175	Hair BRO	Eyes BLU	Residence F	Employment/Occupation
Driver's License Number		Driver's License Issuer	Social Security No.		State ID No.	FBI No.	PCN
Custody Status		Gang Affiliation	Tribe Affiliation		Identifiers Affiliation		
Comments							
Type H	Location 1908 NE 187TH AV			City VANCOUVER		State	Zip Code
Type H	Phone No. (360) 254-5487						

Vehicle

Item # 1	Loss/Action INFO	Type PC	Year	Make FORD	Model 000	Style	Color GRY	Color	Money	Vehicle ID Number (VIN)
Plate Number ZTU974	Issuer OR	Year	Type	Special Features (Miscellaneous) GREY FORD VAN					Loss Value	
Damage					Equipment					
Missing					Towing - Company			Stored		
Hold For	By (PSN)		Conditions							
Letter - Date	By (PSN)		Notified - Date	By (PSN)		Released - Date		By (PSN)		
Rec. Date	By (PSN)		Rec. Agency	Rec. Value						
Location				City		State		Zip Code		

Narrative

On 3-5-04, I was dispatched to the listed location on a domestic disturbance. Dispatched advised that Jean Koncos was calling 911 reporting that her live-in boyfriend, Dino Constance, had become enraged at her and pushed her across their kitchen. Dispatch advised that Dino was still at the location. I responded code 3, and shortly before my arrival, dispatch advised that Dino had left the house north bound on NE 187th Ave., in the listed grey Ford van.

I did an area check for the van, which was fruitless. I then responded to the house and contacted Jean. She was visibly upset, and shaking. She said she and Dino had been living together since last August, and that she is pregnant with his child. She said they had gotten into a heated argument. While they were standing in the kitchen of the house, Dino had become enraged, reached out grabbing both of her shoulders with his hands while facing her, then shoved her backwards with considerable force against the refrigerator.

I asked Jean if she had any injuries? Jean said she was not injured, but was very frightened by the incident, as Dino was out of control. There was no other physical evidence of an assault.

Jean said Dino then started packing his bags to leave. Jean then went out to the driveway, locked herself in her car and called 911.

Shortly before my arrival, Jean reported that Dino drove away, north on 187th Ave.. Jean had no good idea where Dino might go.

Report Written By: McLoughlin, Joseph W	PSN 3223	Ref Case Number	Report ID ORIGINAL	Agency/Case No. CCSO 04004782
Approved By: Polen Jr, Donald F	PSN 3312			
Report Printed By: Erb, Shannon on 8/13/2013 6:10:41PM	PSN 4690			

Narrative

Jean did indicate that in the past, the Police were call because she had been violent with Dino. She said that she was careful not to fight back as she was afraid of being arrested.

I suggested to Jean that she leave the house for the evening, and advised her I could assist her with finding a place to stay. She declined, and chose to stay home.

I had Jean complete a D.V. victims statement, which is attached to this report. I provided Jean with a D.V. victims information sheet and advised her of her right to seek a protective court order.

After Jean gave me the completed statement form, I was asking her some clarifying questions when she told me that Dino had not grabbed her shoulders, but had grabbed her by the front of her jacket when he pushed her.

Jean indicated that Dino was also intoxicated this even, and that he shouldn't be driving. I had dispatch put out an ATL on Dino and the vehicle. In addition, Dino driver's license is suspended.

At about midnight, I was advised by dispatch that Jean had called back stating Dino had returned to the house. I responded back to the house and was joined by Deputy Todd Young. We then made contact with Dino who was calmly working on his computer when we arrived.

Dino told me that he and Jean had been having numerous arguments lately over some pending civil actions against them. He said they had gotten into a heated argument this evening. Dino said Jean has a bad temper and has assaulted him in the past. He said at some point, he decided to leave the house to get away from her for the evening. Dino said he then packed a bag and left. Dino said he did drive away, even though his license was is suspended, but that he needed to get out of the house and away from Jean.

I asked Dino if he had struck or pushed Jean. I told him Jean had said he had pushed her against the refrigerator in the kitchen. Dino flatly denied doing that. He said when he tried to leave, she was blocking the door and he brushed past her, but that was with his shoulder. Dino denied any other physical contact with Jean.

In speaking to Dino, I could smell the slight odor of alcohol on his breath, but he did not appear intoxicated as Jean had said he was.

Next I stepped around the corner from the office area of the house where I had contacted Dino, to the kitchen, where Jean had been waiting and listening. I asked her again if she had any injuries or physical evidence of the assault, and she then pointed to a button on the floor of the kitchen, and to the left collar of her red jacket, where there was a button missing. Other than that, the jacket did not appear damaged or out of order.

While I was speaking to Jean in the kitchen, Deputy Young stood by with Dino while he made arrangements for someone to come and get him, so he could leave for the evening. In the mean time, I had advised Jean that I was not arresting Dino, but would forward this report to the DCPA for review and possible charges. I also suggested that Jean leave for the evening and she agreed, then, when Jean heard that Dino had agreed to leave, she refused to go.

Dino left the house with a friend. I advised Jean again that she could go to the court house in the morning and petition the court for a protective order.

Refer to DCPA for review and charges, if any.

I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. I intend my printed name and PSN on this document to be my signature.
This document was signed in Clark County, Washington on 04/05/2004.

Report Written By: McLoughlin, Joseph W	PSN 3223	Ref Case Number	Report ID ORIGINAL	04004782	CCSO Agency/Case No.
Approved By: Polen Jr, Donald F	PSN 3312				
Report Printed By: Erb, Shannon on 8/13/2013 6:10:41PM	PSN 4690				

Clark County Sheriffs Office					Case No. 04-12031				
707 W 13TH Street Vancouver, WA 98660			(360) 397-2211 (360) 397-6074 (FAX)		Report ID ORIGINAL				
Incident Report					RCN S0400133				
Records Center					DOR 08/25/2004				
707 W 13TH Street Vancouver, WA 98660			(360) 397-2211 (360) 397-6074 (FAX)		Officer Assaulted <input type="checkbox"/>		Non Disclosure		
Distribution DCPA				Distribution Other			Confidential		
init	pDis	sDis	dEnt	M.C.	Concl	Case	F/U	Ret	Let
Administrative Information									
Location 1908 NE 187TH AVE				City VANCOUVER		State WA	Zip Code 98684		
Local Geo		State Geo		Precinct SO CENT		Geo			
Rep Date 08/25/2004	Rep Time 13:30	From Date 08/20/2004	From Time 19:00	To Date 08/20/2004	To Time 20:00	Category	Class	Premise	
Dom Viol <input checked="" type="checkbox"/>	DV Card <input checked="" type="checkbox"/>	Child Abuse <input type="checkbox"/>	Arson <input type="checkbox"/>	Homicide <input type="checkbox"/>	Gang <input type="checkbox"/>	Weapons <input type="checkbox"/>	Alcohol <input type="checkbox"/>	Drugs <input type="checkbox"/>	Computer <input type="checkbox"/>
Offense Information									
Off # 1	Offense 9A.36.041		Offense Category ASSAULT		Offense Translation Assault IV - No Medical Attention			Att./Completed C	
Location Type 1STORY									
Individual									
Role S	Seq 1	Type I	Last Name KONCOS		First Name JEAN		Middle Name A	Sex F	Race U
Birth Date 09/11/1965		Ethnicity			Role Description Suspect				
Age Low	Age High	Hgt 510	Wgt 170	Hair	Eyes	Residence F	Employment/Occupation		
Driver's License Number			Driver's License Issuer		Social Security No.		State ID No.	FBI No.	PCN
Custody Status		Gang Affiliation		Tribe Affiliation		Identifiers Affiliation			
Comments Koncos temporarily in Kansas City									
Type H	Location 1908 NE 187TH AV				City VANCOUVER		State WA	Zip Code 98684	
Type O	Location UNKNOWN				City KANSAS CITY		State KS	Zip Code	
Type F	Phone No. (816) 505-9005								
Type O	Phone No. (360) 624-6865								
Type O	Phone No. (816) 505-9004								

Report Written By: Drew, James M	PSN 3217	Ref Case Number S0400133	Report ID ORIGINAL	Agency/Case No. CCSO 04012031
Approved By: Polen Jr, Donald F	PSN 3312			
Report Printed By: Erb, Shannon on 8/13/2013 6:09:28PM	PSN 4690			

Individual

Role V	Seq 2	Type I	Last Name CONSTANCE	First Name DINO	Middle Name J	Sex M	Race U	
Birth Date 09/12/1959		Ethnicity		Role Description Victim				
Age Low	Age High	Hgt 508	Wgt 160	Hair	Eyes	Residence F	Employment/Occupation SELF EMPLOYED MORTGAGE BROKER	
Driver's License Number		Driver's License Issuer		Social Security No.		State ID No.	FBI No.	PCN
Custody Status		Gang Affiliation		Tribe Affiliation		Identifiers Affiliation		
Comments INVOLVED IN MUTUAL FIGHT ON 08/20/04 WITH KONCOS								
Type H	Location 1908 NE 187TH AV			City VANCOUVER		State WA	Zip Code 98684	
Type F	Phone No. (360) 253-5847							
Type H	Phone No. (360) 253-5487							

Individual

Role I	Seq 3	Type I	Last Name CONSTANCE	First Name NICKOLOUS	Middle Name	Sex M	Race U	
Birth Date 07/26/2004		Ethnicity		Role Description Involved or Mentioned				
Age Low	Age High	Hgt	Wgt	Hair	Eyes	Residence F	Employment/Occupation	
Driver's License Number		Driver's License Issuer		Social Security No.		State ID No.	FBI No.	PCN
Custody Status		Gang Affiliation		Tribe Affiliation		Identifiers Affiliation		
Comments								

Narrative

ATTACHMENTS:

Smith Affidavit from Constance (5 pages)
 Confirmations of Faxed Smith-Affidavits

NEEDED:

Smith Affidavit from KONCOS

NARRATIVE:

On 08/25/04 I was called from Kansas City, KS by complainant JEAN A. KONCOS. Koncos called to report that her baby's father, and live-in boyfriend had beat her up on 08/20/04. She told me that she escaped him on Monday 08/23/04 by flying out to Kansas City. Koncos told me that she and the boyfriend, a DINO J. CONSTANCE had been together on and off for about a year. She said that their mutual child was born 07/26/04. She also said that in May she had moved out for 2 months due to relational issues. I was able to locate a couple of reports listing Koncos in EPR. One from 1/04/04 listed her as a suspect in a domestic violence DV. Koncos told me that she will be moving back to Portland soon, and has a 09/07/04 court date in Portland.

Report Written By: Drew, James M	PSN 3217	Ref Case Number S0400133	Report ID ORIGINAL	Agency/Case No. CCSO 04012031
Approved By: Polen Jr, Donald F	PSN 3312			
Report Printed By: Erb, Shannon on 8/13/2013 6:09:28PM	PSN 4690			

Clark County Sheriffs Office

Case No.
04-12031

Narrative

Koncos' statement was focused on the time frame of 19:00-20:00 hours on 08/20/04. She told me that Dino was drunk and said some very vile things to her causing her to become angry and slapped him. Koncos then said "Dino beat the shit out of me!" Telling me that she plotted to get her children back to their father on 08/23/04 and escape to Kansas City. I asked Koncos if she was telling me that she first struck Constance, and she said "yes." I advised her that I would be sending her a victim's statement to complete. She asked me to FAX the form which I did with a positive result at "4:10" hours according to the Central fax machine. As of the writing of this report no return had been received. The faxed copy had the report number on it, and will be added to the report when it is received.

I was able to contact CONSTANCE by phone. He agreed to talk with me and told me that he had already been in touch with Detective Bill Roberts on 08/25/04 prior to my call. He said he was attempting to contact a family lawyer to obtain custody of their child, Nickolous CONSTANCE, DOB 07/26/04. Constance told me that his wife has been over-stressed due to some criminal charges she faces in Oregon regarding her ex-husband. He also said that their relationship has been "tumultuous" with her having previously assaulted him.

I asked Constance to tell me what occurred during the mutual assault on 08/20/04. He said that they had a yard sale and Koncos was very tired due to that, and having a month old child. He said that during an argument over finances, and her children she "blind-sided me" knocking him to the ground with a punch to the head. He told me that he injured his back and plans to see a doctor from the fall. He said that he then hit her shoulder one time that knocked her down. He said she appeared to be coming after him again, and he hit her 3 more times in the shoulder. He then told her she needed to become involved in some anger management and she agreed. He said he also obtained agreement that she would leave their new-born with him when she went out. However, on Monday she left with Nickolous telling him by phone she would return. He only later found out that she had fled with the child. He told me that he currently trying to get custody for the welfare of his child.

On 08/25/04 I faxed a Smith affidavit to Constance. I received back the signed form and a 3 page typed response (attached) referencing each of the questions. Please refer this report to the PA's office for review and consideration of filing of any charges on Koncos, and/or Constance for the assault IV-DV.

In my conversation with both involved parties it would appear that when Koncos returns to the area CPS may need to get involved for the safety of the child. I faxed copies of the DV card to both parties.

Please refer this to the PA's office for consideration of charges on Koncos as the primary agressor, and alternatively on Constance for his role in the physical altercation. As of 08/29/04 still no Smith Affidavit received from Koncos.

Please refer copies to the DCPA and CPS.

I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. I intend my printed name and PSN on this document to be my signature.
This document was signed in Clark County, Washington on 08/25/2004.

Report Written By: Drew, James M	PSN 3217	S0400133	Ref Case Number	ORIGINAL	Report ID	04012031	CCSO	Agency/Case No.
Approved By: Polen Jr, Donald F	PSN 3312							
Report Printed By: Erb, Shannon on 8/13/2013 6:09:28PM	PSN 4690							

APPENDIX 7

Clark County Conservative

“Nothing is useful which is not honest.” Ben Franklin



« Marine Corporal David W. Hedrick Arrested, Pleads Not Guilty to Assault Charge
Michelle Obama Caught Violating Illinois Election Law »

Tony Golik, the Columbian and Their Partisan Cheap Shots

By lewwaters

That our friends on the editorial staff at the Columbian prefer Democrats predominantly is no huge secret. While they do endorse a few Republicans from time to time, as they are doing with Dino Rossi against incumbent Patty Murray for U.S. Senator and Ann Rivers in the 18th Legislative District seat being vacated by Jaime Herrera, by and large they usually favor a Democrat candidate.

It is no different in their selection of County Deputy Prosecutor Tony Golik over City Attorney Brent Boger to replace retiring County Prosecutor, Art Curtis. Golik has gained the endorsement of Art Curtis, public unions and several criminal defense attorneys while Boger has gained endorsements from Washington State Attorney General Rob McKenna, Washington Secretary of State Sam Reed, Numerous state legislators and two former Vancouver Mayors.

Both have the backing of numerous citizens and I assume both have good legal records and experience. Golik came out slightly ahead in the primary vote count.

That's why I see no reason he had to resort to taking cheap shots at Brent Boger with the willing help of the Columbian when they ran the Political Beat blog piece **Prosecutor plays detective, tries to find opponent**, *Deputy prosecutor says opponent hasn't shown up for debates*.

Golik lays claim that Boger is not showing up for scheduled debates and forums. That's not exactly true, though. Golik fails to mention that Boger fell ill for one and did not agree to another as they had already held Bench and Bar forums 4 times.

Golik is caught **playing with the truth** and twisting it into an uncalled for cheap shot instead of just running on issues. In all, Boger and Golik have held 7 joint appearances and still have two to go, one before the NAACP and another before the League of Women Voters.

That's as many appearances as we will receive from the Third Congressional District and the U.S. Senate race combined!

Is this how Golik draws attention away from allegations of his own **Prosecutorial Misconduct**?

In a **Press Release** issued today, October 13, 2010 by the Clark County GOP, we read of Seattle attorney Neil Fox filing a motion in Clark County Superior Court to vacate the conviction of a Dino Constance, citing Prosecutorial Misconduct on the part of County Deputy Prosecutor Tony Golik in a case he prominently posts on his personal blog site, "State v Constance Cause No. 07-1-00843-8" that was reported on **HERE** and **HERE**.

The Prosecutorial Misconduct cited by attorney Neil Fox includes,

1. Tony Golik did not reveal, as required by law, the full criminal histories, outstanding warrants, and pending criminal charges of four key witnesses at trial.
2. For example, Golik did not disclose that prosecution witness, Zachary Brown, had reached a deal with prosecutors that no contact orders protecting a woman would be dropped. Brown's testimony was only relevant to the less serious charge of solicitation for assault. Brown's deal was reached over the objections of Brown's community corrections officer. Golik was present during a witness interview when Brown mentioned the no contact orders and Golik did not disclose the prosecution's assistance in getting them lifted. Brown also had pending drug charges that were not pursued, a fact which was not disclosed to the defense as required by law.
3. According to the motion, subsequent to lifting of the no contact orders, Brown assaulted the woman the orders were intended to protect.
4. As a result of the Prosecutor's office's failure to pursue the other criminal charges against Brown after giving testimony, Brown was free to commit a rape and kidnapping in Portland, charges to which he pled no contest to last May.
5. In addition to the community corrections officer, other persons questioned the lifting of the no contact orders against Mr. Brown. Those questioning were told the lifting was "going to get pushed through" because Mr. Brown was testifying in the Constance case. As a result of this pressure, another deputy prosecuting attorney withheld information from the Superior Court as to the reasons for dropping the no contact orders.
6. Tony Golik allowed prosecution witness Ricci Castellanos to testify that he obtained nothing from the prosecution for his cooperation in the case. In fact, Castellanos had received monetary compensation from the police "for his efforts." Golik did not volunteer that information when the issue came up in court.
7. The Prosecutor's Office withheld discovery and Public Records Act requests for documents for four months while Golik was an announced candidate for Prosecuting Attorney. It took the intervention of the Chief Criminal Deputy Prosecutor to get the documents released. The failure to disclose these documents may have been motivated by an intention to protect Tony Golik's candidacy for Prosecuting Attorney.
8. The motion also cites the ineffectiveness of counsel of Constance's defense trial attorney, Brian Walker. According to state Public Disclosure Commission records, Walker made a significant campaign contribution to Golik's campaign for Prosecuting Attorney.

While I am not in any position to offer an opinion on Dino Constance's ~~guilt or innocence~~, two very troubling possibilities jump out at me right away. First, the prospect of an innocent man being convicted and sent to prison. Second, and possibly worse, the prospect of a guilty person going free due to the alleged Prosecutorial Misconduct on the part of Tony Golik should the conviction end up overturned.

We cannot afford to have a Prosecuting Attorney running the County Prosecutor Office that has such questionable ethics or poor court behavior. We cannot afford to elect someone who throws cheap shots at his opponent while hiding such misbehavior in cases as is alleged by attorney Neil Fox.

As was spoken at the Sermon on the Mount, "Why do you look at the speck that is in your brother's eye, but do not notice the log that is in your own eye?"

We need a prosecutor who will actually prosecute criminals, not seek plea bargains for violent crime. With 2 young girls murdered in our community in the last few years, we want these animals off of our streets, not gaining early release or softer sentences through a plea bargain.

With the recent revelation of violent crime increasing in Clark County, I am even more convinced now that our best bet to replace retiring Art Curtis is to elect Brent Boger as our next Clark County Prosecutor.

UPDATE: Golik & the Columbian's cheap shots continue. In an article, Golik, Boger not pulling punches in prosecutor race, the Boger camp is accused of "Nasty campaigning" for bringing up the Prosecutorial Misconduct allegations. Golik is given the opportunity to "refute" the allegations with a mere "Almost every defendant convicted

of a crime of this nature appeals and argues some inappropriate action by the state,” and then accusing Boger of becoming an advocate for a convicted felon.

The Columbian does not give Boger a chance to discuss the seriousness of such allegations nor do they quote the Seattle attorney filing the motion. Golik accuses Boger of “an act of desperation,” but it is apparent Golik is who is desperate to marginalize his own alleged misconduct.

Neither Golik or the Columbian discuss Golik’s cheap shots and misinformation of Boger missing face to face events.

Did I mention the Columbian favors Golik?

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APPENDIX 8

(NULL)

APPENDIX 9

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED
COURT OF APPEALS
DIVISION II
10 FEB 22 PM 3:05
STATE OF WASHINGTON
BY DEPUTY

In re the
Personal Restraint Petition of

DINO J. CONSTANCE,

Petitioner.

No. 39878-8-II

ORDER REJECTING CrR
7.8(c)(2) TRANSFER

On September 14, 2009, the Clark County Superior Court issued an order purporting to transfer Dino J. Constance's CrR 7.8 motion in *State v. Constance*, Clark County Cause No. 07-1-00843-8, to this court for consideration as a personal restraint petition pursuant to CrR 7.8(c)(2). In that same order, the superior court also stated that it was (1) denying one of the CrR 7.8 issues on the merits after holding an evidentiary hearing on the matter and (2) dismissing, at Constance's request, the other issues in the CrR 7.8 motion without considering those issues.

Because the superior court decided or dismissed the issues in the CrR 7.8 motion, the superior court cannot transfer the CrR 7.8 motion to this court under CrR 7.8(c)(2). Although Constance now argues that he did not ask the trial court to dismiss the CrR 7.8 issues that it did not consider, whether the trial court's dismissal of those issues was proper is not an issue that can be resolved in a personal restraint petition.¹ The proper

¹ We note that once the superior court dismissed the remaining CrR 7.8 issues without reaching the merits of his arguments, Constance could have filed a personal restraint raising those issues directly with this court. *In re Becker*, 143 Wn.2d 491, 498 (2001) (citing *In re Bailey*, 141 Wn.2d 20 (2000)).

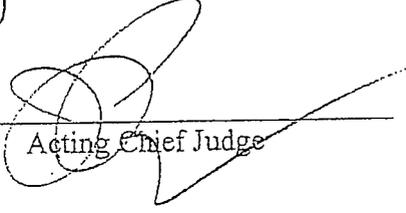
mechanism for reviewing the trial court's September 14, 2009 decision is by direct appeal.

Because we reject this transfer, Constance's pending motions in this matter are now moot.

Accordingly, it is hereby

ORDERED that the September 14, 2009 Clark County Superior Court transfer order is rejected and returned to the superior court for further appropriate action. *See* CrR 7.8(c)(2).

DATED this 22nd day of February, 2010.


Acting Chief Judge

cc: Dino J. Constance
Clark County Clerk
County Cause No(s). 07-1-00843-8
Anthony Frank Golik
Neil Martin Fox

APPENDIX 10

Call 2007095408 File 0704677 Date 03/27/07 Opr DF7051

Location 4115 NE 54TH ST Juris CLK

Call type DIM Svc P Agcy CCSO Area 2113 Dist

IP? Y Pty 3

Remarks DISTURBANCE MINOR

How rcvd: 911 Enhanced

Time Call Rcvd 11:21:55

REMARKS

ROOM MATE OUT FRONT IN YELLOW PENSKE TRUCK.. 11:23:02 9903
 THEY ARE VERBAL OVER WHO OWNS WHAT PROPERTY 11:23:10 9903
 AND MONEY THAT NEEDS TO BE EXCHANGED BETWEEN 11:23:17 9903
 THEM..RP INSIDE..ROOMMIE OUTSIDE..ROOMIE: 11:23:25 9903
 SPRY, MICHAEL 50YO WM..CON 11:23:32 9903
 NAM/CONSTANCE, DINO J.091259...NW 11:25:15 9903
 NAM/SPRY, MICHAEL C.020268...NW 11:29:29 9914
 **** RP CALLING BACK, THE ROOM MATE IS INSIDE NOW 11:30:52 9910
 THREATNING RP TO HACK INTO HIS COMPUTER SYSTEM, 11:31:03 9910
 WHICH CONTAINS FEDERAL CONFIDENTIAL INFO.. ETC 11:31:16 9910
 Call 2007095408 linked to call 2007095416. 11:31:44 9914
 NAM/SPRY, JORDAN P.111282 11:33:21 9914
 C4 11:37:53 9914
 NAM/CONSTANCE, DINO J.091259 12:47:16 9914
 Unit 1D33 tx 505 NW 179TH ST #B; CCSO WEST 13:35:18 1D33
 PRECINCT 13:35:18 1D33
 Call 2007095408 linked to call 2007095622 15:18:57 9904

Reporting Party Name CONSTANCE DINO, J.091259 CELL Phone 360-798-1082

UNIT ACTIVITY				
DATE	TIME	UNIT	STATUS	OPERATOR
03/27/07	11:23:58	7051		DF7051
03/27/07	11:24:23	7155		RD7155
03/27/07	11:24:25	1D33	DSPH	RD7155
03/27/07	11:25:51	1D33	DspAck	RD7155
03/27/07	11:26:47	1D33	ENROUT	MDT
03/27/07	11:26:58	1D35	ENROUT	MDT
03/27/07	11:28:49	7155		RD7155
03/27/07	11:33:29	7155		RD7155
03/27/07	11:34:29	1D35	ARRIVE	AOS
03/27/07	11:35:01	1D33	ARRIVE	AOS
03/27/07	12:47:21	7155		RD7155
03/27/07	13:28:55	1D33	SUSPND	EH7210
03/27/07	13:35:07	1D33	ARRIVE	MDT
03/27/07	13:35:18	1D33	TRANS	MDT
03/27/07	13:40:42	1D33	SUSPND	EH7210
03/27/07	13:57:59	1D35	CLEAR	MDT
03/27/07	15:08:20	1D33	ARRIVE	MDT
03/27/07	15:08:41	1D33	CLEAR	MDT

Clark County Sheriffs Office

07-4677

Individual					
Type	Location	City	State	Zip Code	
H	4115 NE 54TH ST	VANCOUVER	WA	98661	
Type	Phone No.				
C	(971) 409-5851				

Individual												
Role	Seq	Type	Last Name			First Name			Middle Name		Sex	Race
I	3	I	SPRY			JORDAN			P		M	W
Birthdate		Eth										
11/12/1982												
Age Low	Age High	Hgt	Wgt	Hair	Eyes	Residence	Employment/Occupation					
						F						
Driver's License Number			Driver's License Issuer		Social Security No.		State ID No.		FBI No.		PCN	
Custody Status		Gang Affiliation			Tribe Affiliation			Identifiers				
Comments												
MICHAEL'S SON												
Type	Location	City	State	Zip Code								
H	4115 NE 54TH ST	VANCOUVER	WA	98661								
Type	Phone No.											
C	(971) 409-5851											

Narrative

INVOLVED:

- C/ Constance, Dino J (Michael's and Jordan's roommate)
- I/ Spry, Michael K (Jordan's father)
- I/ Spry, Jordan P

DETAILS:

On 03/27/2007, at approximately 1153 hours, Deputy Barsness and I were dispatched to minor disturbance at 4115 NE 54th Street. When we arrived, Deputy Barsness and I spoke with C/ Dino Constance and I/ Jordan Spry. I/ Michael Spry had left the residence before we arrived.

Jordan Spry

Jordan explained that he and his father, Michael, have been living with Dino for the past two months in this rental house. Jordan said none of them own the house; they are all renting it together. Jordan said Michael met Dino from the online website, "Craiglist." Jordan said Dino moved in about two months ago because they needed another roommate. Jordan said all of them are in the process of moving out because the owner of the home is selling it. Jordan said Dino was moving out today, and Michael and he had to be out by the 1st of April.

Today, Jordan stated Michael and Dino got into a verbal argument over money that Dino was supposed to pay his father. Jordan said Dino offered Michael \$1500 to go down to California, pick up his (Dino's) belongings, and bring them back to Vancouver. Jordan said his father arrived today, and wanted his payment for picking up Dino's belongings. Jordan said Dino told Michael he needed to drop off his property at his (Dino's) new house; otherwise he wasn't going to pay him. Jordan said Michael told Dino dropping off the property at the other house wasn't part of the deal and he wasn't going to do it.

Jordan said Michael and Dino started yelling at each other over the payment of the money and the terms of their verbal agreement. Jordan said Dino wanted the rental truck and his belongings, but Michael wouldn't give Dino the truck because it was in his (Michael's) name. Jordan said Michael wasn't going to give Dino his property until he got payment for transporting the items. Jordan said Michael left the house before we (the police) arrived

Reporting Officer	PSN	Ref Case Number	Agency/Case Number
Yoder, Tom	4266		
Approving Officer	PSN	Report ID	ORIGINAL
Hogman, Craig E	3041		
Report printed by: 3804		Page 2 of 4	

Narrative

because he was so upset at Dino. Next, Jordan said Dino became confrontational with him and started to intimidate him. Jordan said he was scared of Dino, so he went into his bedroom and closed the door. Jordan said there was no physical altercation between anyone.

Dino Constance

Next, Dino explained that he needs to be moved out of the house today and just wants Michael to unload his property. Dino stated he and Michael had an agreement that Michael was going to California to pick up his (Dino's) belongings and bring them back to Vancouver. Dino said he was going to pay Michael \$1500 to complete the deal. Dino said Michael refused to finish the job by unloading his property at his new home. Dino said he refused to pay Michael because Michael didn't finish the job.

Dino said he and Michael started to argue when Michael told him he wasn't going to give him his property until he paid for the job. Dino said Michael was holding up his end of the deal and was now stealing his property. Dino said Michael left the house in anger.

Michael Spry

Next, I had Jordan call is father to have him return to the residence. Within a few minutes, Michael arrived and we spoke. Michael explained the same sequence of events as Jordan and Dino, with the exception that Dino was the one violating their agreement.

Michael said Dino said he would pay him (Michael) to just pick up his property from California and bring it back to Vancouver. Michael said there was no agreement that he had to unload Dino's property from the rental truck at Dino's new home. Michael said he told Dino he wasn't going to hand over the property until he got payment for the deal. Michael said Dino is an evil person and is trying to take advantage of him (Michael) like he does everyone else. Michael said the rental truck is in his name and he was going to give it to Dino.

Deputy Barsness and I discussed what reasonable outcomes we could come to between Michael and Dino. The one thing we knew was we could not leave Michael and Dino alone in the home together because during our discussions we learned there were loaded weapons in the home, which we secured.

Both Michael and Dino were very uncooperative. Deputy Barsness and I verbally struggled with them to come to some sort of agreement. It was explained to both of them that their verbal agreement to complete a job had now turned into a civil matter, which needed be handled in civil court. I explained to Michael that he could not hold on to Dino's property until he got payment, but he could remove Dino's property from the truck and it would be Dino's responsibility to pick up his own belongings.

Michael and Dino both went back and forth about how they didn't trust each other. Both didn't want to take the chance the other would damage or steal the other's property. Michael would not give the truck to Dino, and Dino said Michael couldn't just dump his property anywhere Michael wanted. Barsness and I explained the only options in the matter were to either have the truck transferred into Dino's name, or to have Michael drop the truck off at Dino's house for Dino to unload the truck himself.

After much discussion, Michael agreed to be the bigger man and drop the rental truck off at Dino's for Dino to unload himself with the understanding that Michael would keep the keys to the truck, and Dino had to have it emptied by tomorrow. Dino agreed with the decision.

Deputy Barsness waited while Dino moved out the rest of his belongings. Dino provided his copy of the rental

Reporting Officer Yoder, Tom	PSN 4266	Rental Case Number	Report ID 07004677	Agency/Case Number CCSO
Approving Officer Hogman, Craig E	PSN 3041			
Report printed by: 3804		Page 3 of 4		

~~4181~~

Clark County Sheriffs Office

Case No.
07-4677

Narrative

house key to Michael and agreed not to come back to the residence because he now had removed all of his belongings. Deputy Barsness said Michael left in the rental truck, and Dino left in his personal vehicle.

CONCLUSION:

This was a civil matter, which turned into a verbal domestic disturbance between two roommates. Michael and Dino are both stubborn individuals, which they both recognized. Both did not want to budge, but Michael finally took a step forward to help temporarily resolve the issue. Michael and Dino realized they needed to take care of their problem through civil court.

REPORT IS FOR INFORMATION

I certify or declare under penalty of perjury under the law of the state of Washington, that to the best of my knowledge the attached report(s), documents, and information contained therein are true, correct, and accurate. (RCW 9A.72.085)

Reporting Officer

Yoder, Tom

Approving Officer

Hogman, Craig E

PSN
4266
PSN
3041

Ref/Case Number

Report ID
ORIGINAL

Agency/Case Number
07004677

CCSO

Page 4 of 4

Form 3804

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386