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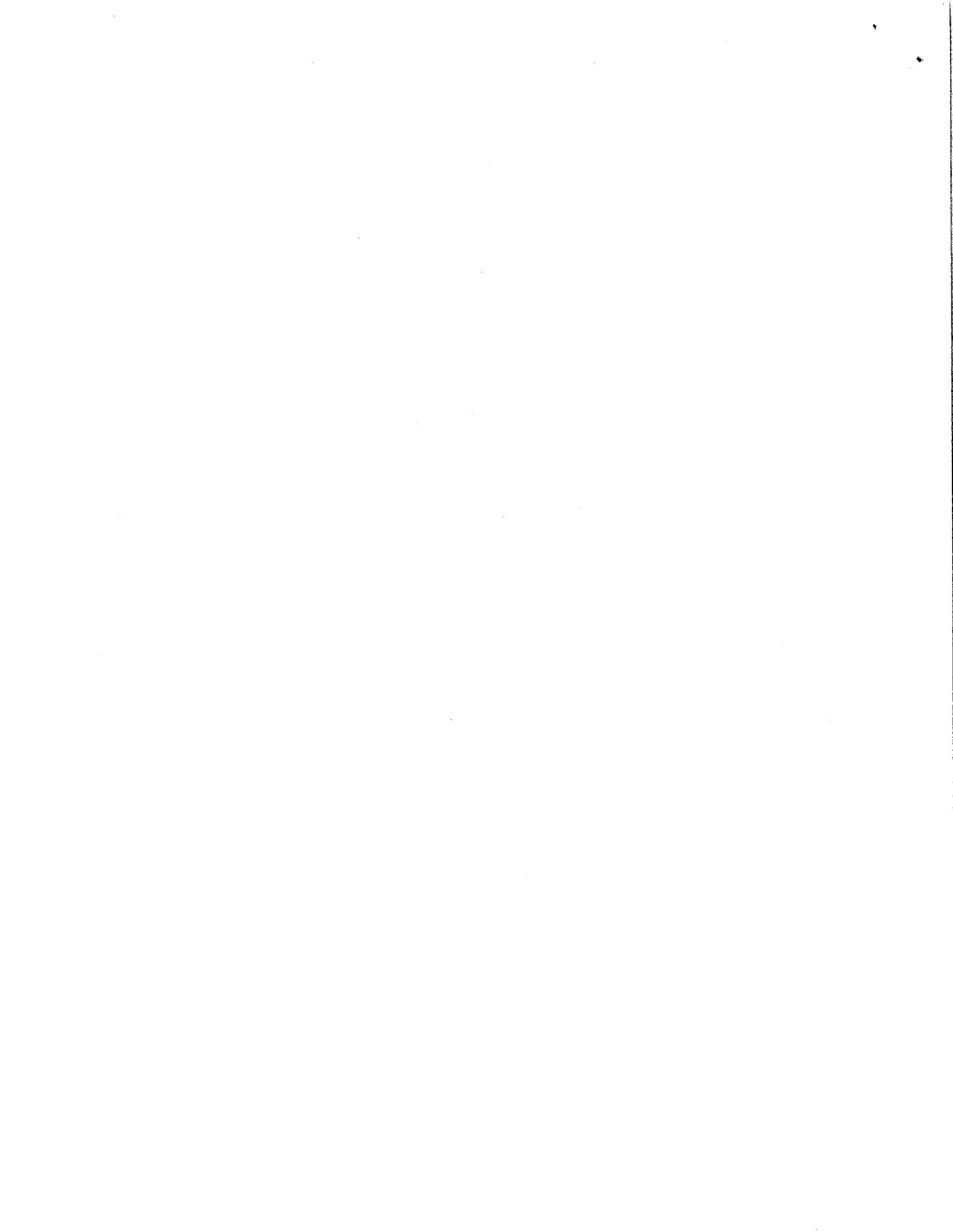
Case # 310183

**Statement of Additional Grounds
for Review**

State of Washington

v.

Joey Anthony Andy



FILED

MAY 19 2014

** No. 31018-3-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By SO

STAE OF WASHINGTON,

Plaintiff / Respondent,

vs.

JOEY A. ANDY,

Defendant / Appellant,

Pro se.

STATEMENT OF APPELLANT'S ADDITIONAL GROUNDS FOR REVIEW, / Pro-se

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Pro se

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)

Respondent,)

No. 31018-3-III

-v-)

STATEMENT OF ADDITIONAL GROUNDS
FOR REVIEW

JOEY A. ANDY,)

Appellant,)

Pro / se.)

/

I Joey A. Andy, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

PROSECUTORIAL MISCONDUCT: Violation of 5th, sixth, eighth and fourteenth Amendment's.

While it is noted prosecutor Knittle may prosecute with earnestness and vigor he may not use improper methods calculated to produce a wrongful conviction. Re: trial transcripts Pages 46, lines 1-25, pages 47, 1-25 the Direct by prosecutor Knittled, of Lydia Howard said victim as to validity of her statments of facts.

RE: ALL TRANSCRIPT PAGES AND RE: LINES ARE ATTACHED TO THE APPENDIX OF THIS PETITION.

Lydia Howard is led by Mr. Knittle (Prosecutor) giving his own personal opinion, that she Ms Lydia Howard is an experienced drinker of beer, even in a drunken stupor would be qualified to testify as to what had taken place the day of the insinuated implication's against Mr. Andy.

Yet Prosecutor Knittle knowing as transcripts clearly point out Howard her self says she was pretty much on her was to being drunk, and that at some point as a matter of the courts record she Howard was passed out at a McDonald's restaurant, when friends were alerted to come and pick her up before the cops were called. After she arrived back at her motel room she started drinking right up to the time Mr. Andy Arrived the first time and right up to his second arrival. Mr. Knittle feels however that because she is used to drinking beer she is more than capable of a statement of facts of validity because she certainly is an experienced drinker. Re: Cross by Defense Attorney Krom page 75 Lines 1 - 25.

Usually to preserve a claim of improper conduct by the prosecutor on appeal, the defendant (Andy) herein must make a timely objection. However if a timely objection is not made, an APPELLATE COURT WILL REVERSE THE CONVICTIO ONLY IF THE LOWER COURTS DECISION TO ALLOW THE PROSECUTORS CONDUCT CONSTITUTED PLAIN ERROR. See U.S.v. Wilkerson, 411 F.3d 1,7 (1st Cir. 2005) If defendant did not object to prosecutorial misconduct at trial, appellate court reviews for plain error .

U.S. v. Weatherspoon, 410 F.3d 1142, 1150-51 (9th Cir. 2005) (if defendant did not object at trial to all prosecutor's statements he now challenges as improper, appellate court applies more deferential plain error standard) .

Appellant Andy makes a timely objection by the conduct of Mr. Knittle the Prosecutor, Prosecutorial misconduct, including a Doyle violation, is subject to harmless error review, during which courts do consider a variety of actors to evaluate whether the prosecutorial misconduct caused sufficient prejudice to constitute a due process violation. See U.S. v. Vazquez-Rivera, 407 F. 3d 476,486 (1st Cir. 2005) (appellate court will reverse a conviction only if improper comments likely affected trials outcome. U. S. v. Marcucci, 299 F.3d 1156,1165 (9th Cir. 2002)(if defendant objects to prosecutors misconduct, appellate court reviews to determine whether there was error, and if any such error was harmless).

Additional Ground 2

STATE FAILED TO PROVE ELEMENTS BEYOND A REASONABLE DOUBT, as to Count Two FIRST DEGREE BURGLARY RCW 9A.52.020(1)(a) ,when the prosecutor failed along with state to meet the required **PROOF OF ISSUES STANDARD**. Re: Trial Transcript pages 76,lines 2-25, 77, lines 1-25, 78,lines 1-25, 79,lines 1-25, 80,lines1-25 and page 81,lines1-25. Attached to the Appendix of this Petition. Under the Due Process Clause of the Fifth Amendment, the Prosecutor is required to prove beyond a reasonable doubt ever

element of the crime with which a defendant is charged. See *In re Winship*, 397 U.S. 358, 364 (1970) see also *Fiore v. White*, 531 U.S. 225, 228-29 (2001) (due process violated when defendant convicted for operating without permit because prosecution failed to show defendant did not possess hazardous waste permit). The reasonable standard applies in both STATE AND FEDERAL PROCEEDINGS. See *Sullivan v. La.*, 508 U.S. 275, 278 (1993). The *Winship* reasonable doubt standard protects three interests. (first), it protects the defendant's liberty interest. See 397 U.S. at 363. (Second), it protects the defendant from the stigma of conviction. See *id.* (Third) it engenders community confidence in the criminal law by giving "concrete substance" to the presumption of innocence. *Id.* at 363-64. In this regard the Court stated, "It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned." *Id.* at 364. It was Justice Harlan in the *Winship* case that noted the standard is being condemned". *Id.* at 364. In his concurring opinion Justice Harlan noted that the standard is "bottomed on a fundamental value determination of our society that it is FAR WORSE TO CONVICT AN INNOCENT MANT THAN TO LET A GUILTY MAN GO FREE." *Id.* at 372 (Harlan J., concurring).

The *Winship* requirement applies as it should in this instant case of Mr. Andy, to the elements that distinguish a more serious crime from a less serious one, as well as to those elements that distinguish criminal from noncriminal conduct.

As in this instant case of Andy, the elements of a less serious offense gained penalties of a more serious one, but the state failed to submit issue of materiality to the jury in the prosecution's case for the jury to prove the elements of Count 2 Crime of First Degree Burglary RCW 9A.52.020(1)(a) on January 22, 2012. INSOMUCHAS THE PROOF WAS SO INSUFFICIENT TO MEET THE STANDARD OF PROOF BEYOND A REASONABLE DOUBT, THE COURT ITS SELF FAILED TO FULLY AND PROPPERLY EXPLAIN WHAT THE EXACT STANDARD OF PROOF MUST UNDER TAKE.

Thus a state may not distinguish between similar offenses that have different maximum penalties without requiring the prosecution to prove beyond a reasonable doubt the facts upon which the distinction turns because of the interest in due process is implicated See Apprendi v. N.J. 530 U.S. 466, 488-92 (2000)(state must prove every element that distinguishes lesser from greater crime.).

Therefore the defendant (Andy) in this instant case must be acquitted re; Winship 397 U.S. at 363; see US.S. v. Corral-Gastelum, 240 F.3d 1181, 1184-85., if the State fails to sustain its burden of proof.

The defendant must also be acquitted if the court defines reasonable doubt in a way that impermissibly eases the prosecution's burden of proof. See Cage v. La., 489 U.S. 39,41 (1990). Due Process does not require the court to use any particular words to advise the jury of the states burden of proof as long as, "taken as a whole, the instructions...correctly convey the concept of reasonable doubt to the jury. Victor v. Neb,. 511 U.S.1,5 (1994).

Finally, in this case Omission from the jury instructions of any element that the prosecution must prove beyond reasonable doubt may require reversal of the defendants conviction as it should be and supported by transcript (Appellant Andy).....

Additional Ground 3

VIOLATION OF THE CONFRONTATION CLAUSE PROTECTED BY THE (SIXTH, AMENDMENT and the DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT, TO INCLUDE FOURTEENTH AMENDMENT GUARANTEES.

Appellant Joey A. Andy his due process right, in meaning his right to be present at "ANY" stage of the proceeding that is critical to its outcome if cumulative effect of these guarantees entitles the defendant (Andy) to be present at all "important" Stages of the proceedings, See Diaz v. U.S. 223 U.S. 442, 454-55 (1912) (defendant in a felony case has right to attend all stages of trial from jury impanelment to delivery of verdict);U.S. v. Novaton, 271 F.3d 968, 998 (11thCir. 2001)(Confrontation Clause violated because critical stages of trial conducted while defendant involuntarily absent) See TRIAL TRANSCRIPTION'S PAGES 403 lines 20-25, Defense attorney Krom and States attorney Knittle stating and apologizing to Andy they had a conversation with Officer Sperle outside in the hallway outside the presence of the jury, this was an important witness to the trial Andy had a right to be present, a mis-trial should have been declared by

the Judge at that moment in time.

Additional Ground 4

**COURT ABUSED ITS AUTHORITY BY ALLOWING MULTIPLE PROSECUTIONS FOR
A SINGLE OR RELATED ACT:**

The act of Appellant / Defendant "Joey A. Andy defending him self, from the attack of Lydia Howard, Chandler Price, Preston Windsor, when transcription page 76 and 77 gives a reaccount of howards statement allowing Mr. Andy into her motel room with the above mention people, that by the way are all self amitted drunk, some in a very drunken stupor, when the victim Howard her self states as to record she was shortly before so drunk that her people had to be alerted to come and get her, after which she returns to the store for more beer and drinks on into the afternoon, right up through the alleged act by Andy. There is no doubt that Andy Cut Howard with the knife, but many others were with Howard on the assault of Andy, Andy only wanting his girl friend who states she was in the bathroom using the facility not advoiding Mr. Andy, but because she had to use the rest-room.at "MOST STATE HAS AN ASSAULT CASE ON THEIR HANDS, NOT A BURGLARY CHARGE." See Transcription Pages 158 lines 1-25, Page 159, 1-25, Page 160 1-25, Page 161, 1-25, Page 162, 1-25. of Chandler Price, than view transcription page 168, lines 1-25 of recross of Chandler Price by Mr. Krom for the defense, review lines 18-25 of that page of 168, there are now credited witness's here because as in the totality of the court transcription's

all involved victims, and witness were in fact proven to be so drunk that if their statements were not lying to protect one another, it was out of no memory at all, and simply guess work on their part as to what took place, certainly there was no proven burglary here maybe a video where after the conflict began of Mr. Andy being pushed out the door and he making a further attempt to go back in to protect himself or his girl friend not knowing what the status was with her since she by her own admission was using the bathroom.

State and Court have it wrong by PROVEN FACT AND TRANSCRIPTION OF RECORD, COUNT 1 AND COUNT 2 do not have to encompass the same criminal conduct because COUNT 2 BY THE RECORD SIMPLY DID NOT TRANSPIRE. THE RECORD DOES NOT SUPPORT THE FINDING OF COUNT 2, and as a furtherance the Court is somewhat confused over legislature's intent, when the Judge questions the States Attorney and Defense attorney to the meaning of statute, on page (30) of transcript in line lines 3-4 the judge states will talk of it later, later was a time when Andy did have a constitutional right to be present, ge was not. Please review pages 29, lines 1-25, and page 30, lines 1-25. on lines 22-24, the Judge states on page 29 "I don't know it that's just the legislature not thinking things through ," which certainly does happen sometimes. So than he proceeds himself by asking if either defense or state has any thing to share on that fact , they do not. Court abused its power and should have sought advise of Legislature intent themselves or at least the Attorney Generals take, if not the Supreme Court.

FOR THIS ALONE THIS CASE SHOULD BE DISMISSED IF NOT OVERTURNED

The fact is the court was asking the question of difference to state and defense, and there was no indication of clarification prior to jury instruction, than should it not be favored to the defendant. 9A. 36.36.021 (1)(a) verse's (1)C;

1(a) intentionally assaults another

1(c) assaults another with a deadly weapon.

Here the Court abused the Judicial Discretion, that has constituted the Erroneous Legal Standard, also sets question to consideration of "Manifest" Error in violation of constitutional Rights violated, setting necessity for purposes of RAP 2.5 (a) (3), under which an issue of manifest error affecting a constitutional error and appellant seeking to raise an issue for the first time on appeal under RAP 2.5 (a) (3) (1) identify a constitutional error and (2) show how the alleged error actually affected the appellants right at trial. Here Appellant Andy has met that obligation.., and "Analysis"..

Additional Ground 5

Appellant Andy alleges his SIXTH AMENDMENT RIGHTS TO CONFRONTATION AND COMPULSORY PROCESS WAS VIOLATED. Re: Transcription pages 5, lines 1-25, 6, lines 1-25, 7, lines 1-25, and 8, lines 1-25, of the appendix to this petition. Andy (Appellant lost his right to challenge the creditability of the witness's back ground to support the testimony of each, so that the jury could make a decision as to which testimony was the truth, the one given at the time of the alleged crime to on site officers, or the one's alleged in the Court at the time of trial. Also the opportunity to judge for themselves of the back ground and validity of the character.

In reviewing with a defendant's Sixth Amendment Rights, when a states witness testifies against the defendant, but invokes the Fifth Amendment right against self-incrimination or the state seeks to exclude the back ground of the witness for state to merly boater the states case, also invokes defendant's Sixth Amendment Right to confrontation and compulsory process. The Confrontation Clause, viewed under the Sixth Amendments Confrontation clause provides a criminal defendant the right to directly encounter adverse witnessess, and the right to be present at any state of the trial that would enable the defendant to effectively cross-examine adverse witnesses. Re: The Sixth Amendment provides in pertinent part that "[i]n all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him. "U.S. Const. amend. VI. This right extends to state prosecutions through the Due Process Clause of the Fourteenth Amendment. See Pointer v. Tx., 380 U.S. 400, 403 (1965). See Also MD. v. Craig, 497 U.S. 836, 846 (1990) ("[F]ace-to-face confrontation enhances the accuracy of fact finding by reducing the risk that a witness will wrongfully implicate an innocent person"): Coy v. Iowa, 487 U.S. 1012, 1019 (1988) ("It is always more difficult to tell a lie about a person to his face than behind his back.").

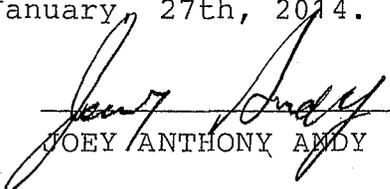
When cross-examining a witness, the defendant must be permitted to test both the witness's credibility, See Olden v. Ky., 488 U.S. 227, 231 (1988)(per curiam)(Confrontatoin clause violated because defendant accused of kidnapping and rape not permitted to cross-examine complaint regarding cohabitation with boyfriend: Here Andy should be able to inquire into the the back ground

ground of the witnesses that are stating under oath statements that are untrue, or true when compared to those first taken by police officers and officials both for defense and prosecution prior to trial, because none of them math up, so is it constitutionally ok to lie, and further should not the best lie that is fashioned to meet the states need to sentence an man to prison the best action to gain a mere conviction, or is it that we should attempt to live by our laws and constitution, that is designed to protect us., If a man is guilty to some degree, should not we plow the feild to what the soil is like before we merely throw the seeds on the dirt and brag THAT THERE MIGHT BE A GARDEN. Otherwisw the State should have disclosed the Back Ground of Witnesses to the jury and let them decide if they were telling the truth, a back ground of warrants and statements in court by transcription stating how they would lie to protect their friends, yet this whole case was based on their testimony..

CONCLUSION

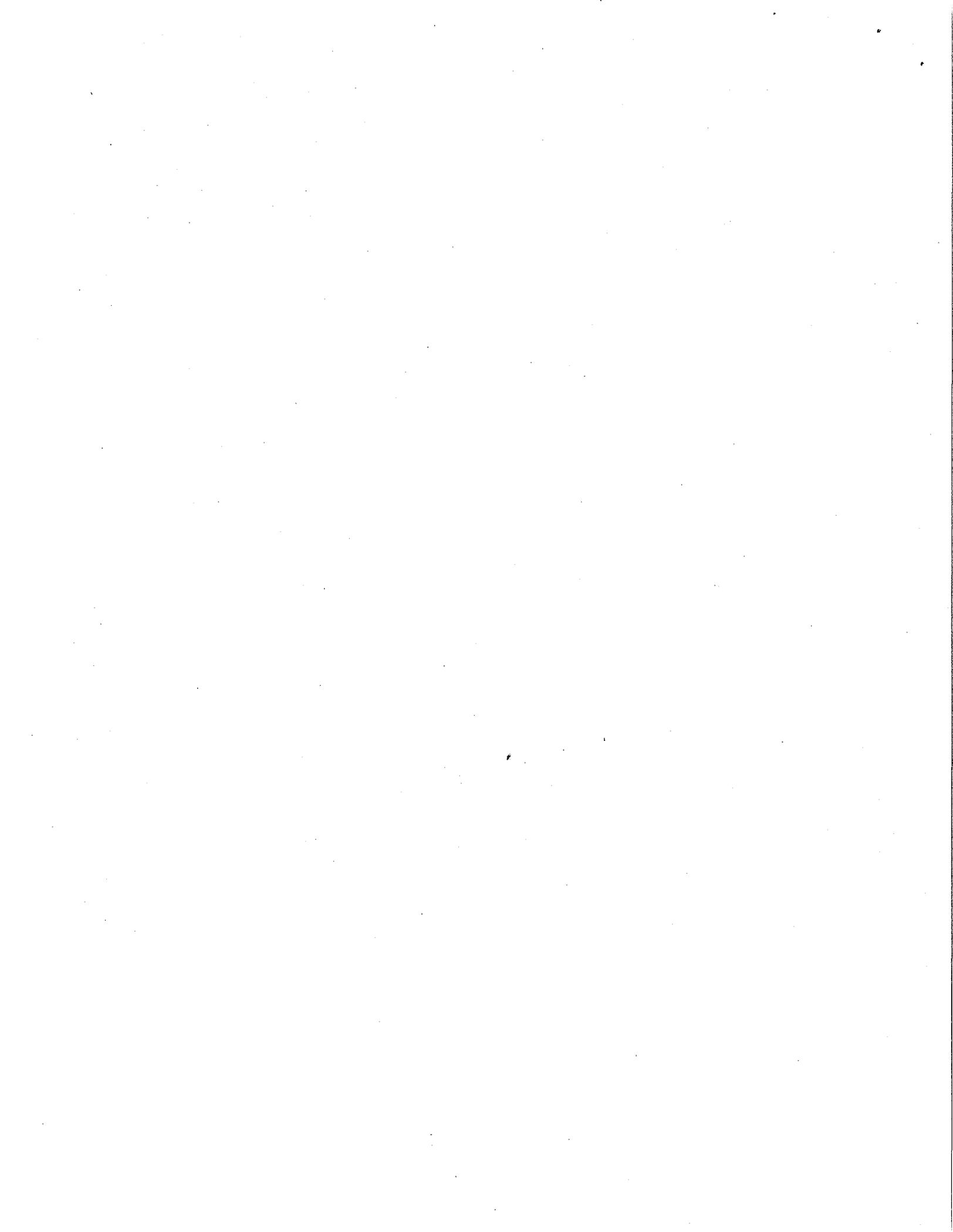
For the reasons stated, the convictions should be reversed, and the case remanded for a new trial, or resentencing without the FIRST DEGREE BURGLARY CHARGE. In this Case the second degree assault charge is even in question as to what degree under self protection and duress causing default.

Respectfully Submitted January, 27th, 2014.


JOEY ANTHONY ANDY PRO 7 SE

APPENDIX

FELONY JUDGMENT AND STNENCE
SUPERIOR COUR TRANSCRIPTION"S



SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

STATE OF WASHINGTON

vs.

JOEY ANTHONY ANDY

SID NO.: WA18003175
 Motor Vehicle Involved: No
 D.L.#: ANDY*JA194JA; DOC: 815956;
 DOB: 4/1/1981; SEX: Male; RACE: Indian

Plaintiff,

Defendant.

NO. 12-1-00151-6

FELONY JUDGMENT AND SENTENCE
(FJS)

Prison
 Community Custody Ordered
 Clerk's Action Required: 4.D.8 (Payroll
 Deduction); 5.2 (NLVR); 5.5 (NTIPF)

I. HEARING

1.1 Hearing: A sentencing hearing was held June 25, 2012. Present were the defendant, MICKEY L. KROM, attorney for the defendant, and DUANE R. KNITTLE, Deputy Prosecuting Attorney.

1.2 Allocution: The defendant was given the right of allocution and asked if any legal cause existed why judgment should not be entered. There being no reason why judgment should not be pronounced, the Court makes the following findings and judgment.

II. FINDINGS

Based on testimony heard, statements by the defendant and/or victims, argument of counsel, any pre-sentence report, and case record to date, the court finds:

2.1 Current Offense(s): On June 18, 2012, the defendant was found guilty by a jury trial:

Count 1 **Crime: SECOND DEGREE ASSAULT**
RCW 9A.36.021(1)(c)
 Date of Crime: January 22, 2012
 Law Enforcement Incident No.: Toppenish PD #12P0264

Count 2 **Crime: FIRST DEGREE BURGLARY**
RCW 9A.52.020(1)(a)
 Date of Crime: January 22, 2012
 Law Enforcement Incident No.: Toppenish PD #12P0264

2.2 Special Findings: The Court makes the following special findings, based either upon a special verdict or upon the Court's own review of the evidence pursuant to a plea of guilty:

Counts 1 and 2 do not encompass the same criminal conduct and **do not count as one crime** in determining offender score, pursuant to RCW 9.94A.589.

The defendant committed the crimes in Counts 1 and 2 while armed with a **deadly weapon** other than a firearm, as defined by RCW 9.94A.825 and RCW 9.94A.533.

2.3 Criminal History: Prior criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	Adult or Juvenile	Type of Crime*
Burglary 2 05-1-00620-5	6-28-2005	Yakima, WA	6-14-2005	A	NV
TMVWOP 2 05-1-06109-6	8-8-2005	King County, WA	8-26-2004	A	NV
Assault 3 00-1-00538-4	1-11-2001	Skagit County, WA	11-14-2000	A	NV
TMVWOP 00-1-00250-4	8-24-2000	Skagit County, WA	6-1-2000*	A	NV
TMVWOP 00-1-00250-4	8-24-2000	Skagit County, WA	6-1-2000*	A	NV
TMVWOP 00-1-00250-4	8-24-2000	Skagit County, WA	6-1-2000*	A	NV
Assault 3 98-8-07009-1	10-19-1998	King County, WA	10-6-2008	J	NV
Burglary 2 97-8-00709-1	1-13-1998	Skagit County, WA	12-15-1997	J	NV

The Court finds the above-listed concurrent prior convictions (indicated by *) are not the same criminal conduct under RCW9.94A.525(5)(a)(i), and shall count separately.

2.4 Other Current Convictions under other cause number(s) used to determine offender score:

Crime	Cause Number	Court (County and State)
None		

2.5 Sentencing Data: The following is the defendant's standard range for each crime pursuant to RCW 9.94A.510:

Count	Offender Score	Seriousness Level	Standard Range	Enhancements*	Enhanced Range	Maximum Term
1	9+	IV	63-84 mos	12 mos	75-96 mos.	10 years
2	9+	VII	87-116 mos.	24 mos.	111-140 mos.	Life

*(D) Other deadly weapons (RCW 9.94A.533(4))

The defendant committed a current offense while on community placement, community custody, or community supervision, which added one point to the defendant's offender score. RCW 9.94A.525(19).

2.6 Exceptional Sentence: Substantial and compelling reasons do not exist which justify an exceptional sentence.

2.7 Financial Ability: The Court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant is an adult and is not disabled and therefore has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

III. JUDGMENT

3.1 Guilty: IT IS ADJUDGED that the defendant is guilty of the counts and charges listed in paragraph 2.1.

IV. SENTENCE AND ORDER

IT IS ORDERED that the defendant serve the sentence and abide by the conditions set forth below.

A. CONFINEMENT

4.A.1 Confinement: The defendant is sentenced to the following term of confinement:

**96 Months, which includes
12 Months Deadly Weapon Enhancement on Count 1
126 Months, which includes
24 Months Deadly Weapon Enhancement on Count 2**

Credit for Time Served in the Yakima County Jail: The defendant shall be given credit for _____ days served **on this charge only**. The defendant shall be given credit for good behavior as administered and computed by the Yakima County Department of Corrections.

Credit for Good Behavior: The defendant shall receive no credit for good behavior on the deadly weapon or firearm enhancement.

Credit for Time in Other Jail: The defendant shall receive _____ days credit for time served on this case in jail or prison _____; in transport from _____; in other _____

4.A.2 Concurrent or Consecutive:

Concurrent: The base sentence in Counts 1 and 2 are concurrent for a base sentence of 102 months

Consecutive: The deadly weapon enhancement in Counts 1 and 2 are consecutive for a deadly weapon enhancement of 36 months.

Consecutive: The Deadly Weapon Enhancements of 36 months are consecutive to the Base Sentence of 102 months for a **Total Term of 138 months**.

Consecutive With Other Sentences: Unless otherwise specified here, this sentence shall be consecutive with prior sentences.

4.A.3 Means of Confinement: The defendant shall serve this sentence as follows:

Total Confinement: The defendant shall serve the balance of confinement in a prison operated by the Washington State Department of Corrections because the term of confinement is over one year.

4.A.4 Time of Confinement: If not already in custody, the defendant shall report to the above facility immediately on or before _____ by _____ a.m./p.m. to begin serving this sentence.

B. SUPERVISION BY THE DEPARTMENT OF CORRECTIONS

4.B.1 Community Custody: The defendant shall serve community custody for a period of 18 months on Counts 1 and 2, pursuant to RCW 9.94A.701 to commence upon the date of this order and shall comply with the conditions and crime related prohibitions as set forth below. During the time the defendant is in total or partial confinement pursuant to this sentence or a violation of the sentence, the period of community custody shall toll. The defendant shall report, in person, within 24 hours of this order or release from incarceration, whichever is later, to the Washington State Department of Corrections, 210 North Second Street, Yakima, Washington.

- 4.B.2 No Community Custody or Probation:** If checked and initialed by the Court, the defendant shall not be subject to community custody or probation.

C. SENTENCE CONDITIONS

4.C.1 DNA Testing: The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. If you are out of custody at the time of sentencing, you will immediately report to the front desk of the Yakima County Jail for the taking of a DNA sample. RCW 43.43.754.

4.C.2 Conditions of Community Custody or Probation: While the defendant is on community custody, community placement, or probation, the defendant shall comply with each of the conditions below.

- Report to and be available for contact with the assigned community corrections officer as directed.
- Cooperate fully with the supervising Community Corrections Officer.
- Perform such affirmative acts necessary for the Department of Corrections to monitor compliance with the court's orders.
- Work at Department of Corrections-approved education, employment and/or community service.
- Do not unlawfully possess or consume any controlled substances except pursuant to a lawfully issued prescription.
- Pay supervision fees as determined by the Department of Corrections.
- Residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community custody.
- Allow home visits by the Department of Corrections to monitor compliance with supervision. Home visits must include access for the purposes of visual inspection of all areas of the residence in which the defendant lives or has exclusive or joint control or access.
- Maintain law-abiding behavior and commit no new crimes.
- If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections, and the defendant's treatment information must be shared with the Department of Corrections for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.
- Have no direct or indirect contact with Lydia Howard.
- Obey all no contact, protection, and/or anti-harassment orders now or hereafter in effect.
- Report no later than the next business day after sentencing or release from jail to a Washington State approved alcohol/drug assessment facility for evaluation. Cooperate fully with the facility and immediately enter into and complete any recommended treatment program by the end of supervision.
- If a treatment program is not recommended, promptly complete Alcohol/Drug Information School.
- Obtain a chemical dependency evaluation by a state-approved agency as ordered by the Department of Corrections, and complete any recommended treatment by the end of supervision.
- Report for urinalysis as ordered by the Department of Corrections.
- Submit to regular polygraph examinations about drug and alcohol usage upon the request of the supervising Community Corrections Officer.
- Do not possess or consume any alcohol or intoxicating beverages, and submit to a breath alcohol analysis upon the request of the supervising Community Corrections Officer.
- Other: _____

D. FINANCIAL OBLIGATIONS

4.D.1 Financial: The defendant shall pay financial obligations and abide by the conditions as set forth below. The defendant shall be under the jurisdiction and supervision of this Court for purposes of payment of financial obligations ordered until they are paid. The defendant shall report to the Yakima County Clerk, Yakima County Courthouse, Room 323, 128 North Second Street, Yakima, WA, within 24 hours of this order or release from incarceration, whichever is later. The defendant must notify the Yakima County Clerk's Office of changes in address or employment. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule. RCW 9.94A.760(7)(b).

4.D.2 Jurisdiction: All legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The clerk of the court is authorized to collect unpaid financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her financial obligations. RCW 9.94A.753(4) and RCW 9.94A.760(4).

4.D.3 Restitution, Costs, Assessments, and Fine: Defendant shall pay the following to the Yakima County Superior Court Clerk, Room 323, Yakima County Courthouse, Yakima, WA 98901:

RTN	\$	0.00	Restitution distributed to: _____, subject to modification
PCV	\$	500.00	Crime Penalty Assessment – felony or gross misd. (RCW 7.68.035)
FRC	\$	200.00	Criminal filing fee
PUB	\$	600.00	Court appointed attorney recoupment (RCW 9.94A.760)
DNA	\$	100.00	DNA collection fee (any felony committed after 7/1/02) (RCW 43.43.7541)
	\$	1,400.00	TOTAL

4.D.4 Costs of Incarceration: In addition to the ~~above costs~~ ^{Costed at \$50}, the court finds that the defendant has the means to pay for the costs of incarceration, in prison at a rate of \$50.00 per day of incarceration or in the Yakima County Jail at the actual rate of incarceration but not to exceed \$100.00 per day of incarceration (the rate in 2012 is \$65.00 per day), and orders the defendant to pay such costs at the statutory rate as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 9.94A.760(2).

4.D.5 Costs of Medical Care: In addition to the above costs, the court finds that the defendant has the means to pay for any costs of medical care incurred by Yakima County on behalf of the defendant, and orders the defendant to pay such medical costs as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 70.48.130.

4.D.6 Forfeiture of Funds: The financial obligations ordered above, in part or in full, shall be paid from defendant's funds held by _____ who is ordered to pay such funds to the Clerk of the above Court. Any balance shall be paid by the defendant.

4.D.7 Payments: Unless provided above, the Yakima County Clerk shall, after investigation, set a minimum monthly payment for the defendant to pay towards the financial obligations. The Clerk may modify the monthly payment amount. Payments shall first apply to any restitution. Costs and assessments shall be paid in 180 days after restitution is paid in full/release. All other fees shall be paid in 270 days after restitution is paid in full/release. The defendant shall pay financial obligations to the Clerk of the Court, Room 323, Yakima County Courthouse, Yakima, Washington.

4.D.8 Payroll Deduction: Without further notice, the Yakima County Clerk may issue a Notice of Payroll Deduction at any time until all financial obligations are paid. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

4.D.9 Interest, Judgment, and Collection: The financial obligations listed herein shall bear interest from the date hereof until paid in full at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total financial obligations. RCW 10.73.160. The financial obligations listed above may be enforced in the same manner as a civil judgment. The defendant shall pay the costs of services to collect unpaid legal financial obligations.

4.D.10 Petition For Remission: The defendant, if not in willful default on financial obligations due hereunder, may at any time petition the court for remission of all or part of the financial obligations due, except restitution or interest on restitution, or to modify the method of payment under RCW 10.01.160 through RCW 10.01.180 and RCW 10.73. Non-restitution interest may be waived only after the defendant has either (a) paid the principal amount in full or (b) made at least fifteen monthly payments within an eighteen-month period, as set by the Clerk, and further payment of interest will cause a significant hardship. RCW 10.82.090.

V. NOTICES

The defendant, by signing below, acknowledges each of the statements in this section.

5.1 Collateral Attack: The defendant may not file a petition or motion for collateral attack on a judgment and sentence in a criminal case more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. For purposes of this section, "collateral attack" means any form of post-conviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw a guilty plea, a motion for a new trial, and a motion to arrest judgment under RCW 10.73.090 and RCW 10.73.100.

5.2 Loss of Voting Rights: The defendant understands and acknowledges that:

1. The defendant's right to vote is lost because of this felony conviction.
2. If the defendant is registered to vote, his or her registration will be canceled.
3. The defendant's right to vote is provisionally restored as long as the defendant is not under the authority of the department of corrections.
4. The defendant must reregister before voting.
5. The provisional right to vote may be revoked if the defendant fails to comply with all the terms of his or her legal financial obligations or an agreement for the payment of legal financial obligations.
6. The defendant's right to vote may be permanently restored by one of the following for each felony conviction:
 - a. A certificate of discharge issued by the Yakima County Superior Court, as provided in RCW 9.94A.637; or
 - b. A court order issued by the Yakima County Superior Court restoring the defendant's right to vote, as provided in RCW 9.92.066; or
 - c. A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or
 - d. A certificate of restoration issued by the governor, as provided in RCW 9.96.020.
7. Voting before the right to vote is restored is a class C felony under RCW 29A.84.660.

5.3 Sentence Condition Violation: Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement for any violation related to a felony charge. RCW 9.94A.633. Any violation of this Judgment and Sentence is punishable by up to the total number of confinement days suspended for any violation related to a non-felony charge.

5.4 Successful Completion: Upon successful completion of the requirements of the sentence, the defendant shall be eligible for a certificate of discharge. RCW 9.94A.637.

5.5 Firearms: The defendant understands that he or she must immediately surrender any concealed pistol license and may not own, use, or possess any firearm unless the right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 Restitution Hearing: If this box is checked and initialed here _____ then the defendant gives up or waives the right to be present at any restitution hearing.

VI. SIGNATURES

DATED: June 25, 2012

LSI Name Gibson
JUDGE

Presented by:

Approved as to form:

DUANE R. KNITTLE
Deputy Prosecuting Attorney
Washington State Bar No. 16538

MICKEY L. KROM
Attorney for Defendant
Washington State Bar No. 7064

Acknowledging the notices in Section V and receiving a copy:

DEFENDANT

INTERPRETER'S DECLARATION: I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated the notices in section V for the defendant from English into that language. The defendant acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Interpreter

Print Name

Date and Place

VII. WARRANT OF CONFINEMENT

THE STATE OF WASHINGTON

TO: The Yakima County Sheriff
TO: The Yakima County Department of Corrections
TO: The Washington State Department of Corrections

The defendant has been convicted in the Superior Court of the State of Washington of the crime of:

**COUNT 1 - SECOND DEGREE ASSAULT
COUNT 2 - FIRST DEGREE BURGLARY**

and the court has ordered that the defendant be punished as set out in the attached Judgment and Sentence.

YOU ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

DATED: June 25, 2012

By the Direction of the Honorable

J U D G E

KIM M. EATON, Clerk

By: _____
Deputy Clerk

1 THE COURT: Well, if admissible evidence that she --
2 that there had been domestic violence on that same date --
3 for purposes of the motion in limine, I was saying, would
4 not be excluded. It would still obviously -- needs to
5 still be admissible --

6 MR. KNITTLE: Okay.

7 THE COURT: -- but it wouldn't be excluded merely
8 because it occurred earlier in the day.

9 MR. KNITTLE: All right.

10 THE COURT: That was my ruling.

11 MR. KNITTLE: The other thing was -- and I should have
12 thought of this on Wednesday. When the police came, they
13 arrested a number of the State's witnesses on warrants.
14 Didn't have anything to do with what happened that day
15 except that that was the day the police contacted them
16 and, oh, you have a warrant, you're under arrest. I think
17 that evidence of those warrants -- those arrests on those
18 warrants of the State's witnesses should be excluded from
19 evidence. It doesn't really have any bearing on what
20 happened that day.

21 I don't know that Mr. Krom really disagrees with me,
22 but he thought perhaps we needed to bring it to the
23 Court's attention just to make sure that, you know --

24 THE COURT: Uh-huh.

25 MR. KNITTLE: -- we're square on this issue.

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THE COURT: Mr. Krom?

MR. KROM: First on that issue and then I would like to put some comments on the record about the domestic violence issue we just talked about, as well.

On the arrests, I think that one of these individuals in particular -- and I believe it was Chandler Price -- was arrested for obstructing because he didn't provide information quickly enough -- at least, that was his perception -- to the police.

And we believe that we should be allowed to get into that issue because I think it's Mr. Andy's position that he feels that the police applied pressure to these people to try to get them to say something incriminating against him, even though they had initially not said anything incriminating against him or had not said anything at all, from his perspective pressure was applied to try to get these people to talk and to say something that they could use against Mr. Andy, and that that included arresting Mr. Price and taking him into custody.

And so I think I should be allowed to get into that. I think that the prosecutor is probably correct that there is no basis probably for me to get into the fact that others were arrested on warrants since those warrants were for, to my knowledge, at least, not crimes of dishonesty, and so I don't think they're otherwise admissible under

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So just the fact that they had warrants for various misdemeanor type things, I think is probably not admissible, but at least for the one individual where he was not talking to them and they arrested him and then subsequent to that, he made some statements, I think we should be allowed to go into.

THE COURT: Okay. Well, that's a separate issue from what Mr. Knittle -- Mr. Knittle was only talking about the arrests on warrants.

MR. KNITTLE: I was, I was, although now that I -- it is a different issue. You know, it is a different issue and it's a closer issue with the situation of Chandler Price.

The way I understand it, he did not provide a false name, just wouldn't give his name. So I don't know that that's really relevant or not. I think it should still be excluded unless -- because there's no evidence that he gave a false name, simply that he wouldn't give his name. And I think that's a little different, and so I think that should be excluded from evidence.

THE COURT: Well, this is always so difficult when I don't know what the witness is actually going to say. As I understand it, Mr. Krom, your theory is that he initially did not incriminate your client and it wasn't

1 until after he was arrested, that then he did incriminate
2 your client and that your theory is that they used the
3 arrest of Mr. Price to pressure him into incriminating
4 your client?

5 MR. KROM: Yeah, I believe that's Mr. Andy's position,
6 that he feels that in regards to all of these witnesses,
7 that they were pressured through their arrests. Others
8 were arrested because they had warrants, and so, arguably,
9 the police had a stronger basis to take them into custody.
10 But Mr. Price -- the only reason they took him into
11 custody was, as I understand it, was because he didn't
12 provide information quickly enough and they arrested him
13 for obstructing. And thereafter, they got him to make
14 some statements that were relevant to this case.

15 But it appears, from my client's perspective, that
16 these people were pressured into talking, in saying
17 something that the police thought was useful to them.

18 THE COURT: Well, how do you get into evidence the
19 fact that he made other statements? I don't know -- is he
20 going to testify?

21 MR. KROM: Yeah.

22 THE COURT: Okay. So if he testifies, he's making the
23 statements now. What difference does it ma -- if he had
24 made prior inconsistent statements, that might certainly
25 be admissible because it's inconsistent. But if what he

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THE COURT: Anything else, Counsel?

MR. KNITTLE: No.

THE COURT: All right. One thing that I wanted to alert you to, and I mentioned it yesterday is, I'm kind of trying to figure out on the Second Degree Assault issue exactly how the instruction should be worded because the statute, 9A.36.021, basically as applies to this case, there's two ways second degree assault can be committed. One is it's the intentional assault of another, thereby recklessly inflicting substantial bodily harm, or it's an assault with a deadly weapon.

And I'm working on the wording of that, but let me just throw this out there so you can be thinking about it. I'm curious -- and I haven't researched this, so I don't know if this has ever been addressed by a court, but an assault is generally defined as an intentional act, so what does the word intentionally assaults another in (1)(a) of the statute add that isn't already there with the word assault?

Because it's in (1)(a), intentionally assaults another, but it's not in (1)(c) that says assaults another with a deadly weapon. I don't know if that's just the legislature not thinking things through, which certainly does happen sometimes, or if there's any -- I mean, if either of you are aware of any court cases that indicate

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1 that the word intentionally needs to be there, does it add
2 something that would not otherwise be there?

3 I don't know. Give it some thought. We'll talk about
4 it later. I'm just raising that issue with you.

5 Okay. If there's nothing else, we'll bring in the
6 jury and we'll start the process. Any fresh water here?

7 THE CLERK: Yes.

8 THE COURT: Thank you.

9 Oh, for the record, I just think the record ought to
10 be clear that we finished the voir dire right at five
11 o'clock yesterday. Then after that, after our side bar,
12 started the peremptory process. First thing, I'll have
13 you swear them in.

14 (JURY PRESENT, 9:34)

15 THE COURT: Go ahead and sit down once you get to your
16 chair.

17 Good morning. We're going to start off by swearing in
18 the jury. We do this because you become officers of the
19 court when you are members of the jury, and you need to
20 take an oath to that effect. So if you would stand up,
21 please, and raise your right hands?

22 THE CLERK: Do each of you solemnly swear or affirm
23 that you will well and truly try the issues in this case
24 according to the evidence and the Court's instructions?

25 JURORS: Yes.

1 also drinking beer?

2 A We were sharing a 40, going all the way around between all
3 of us.

4 Q Okay. Did you drink -- did anybody drink anything other
5 than beer?

6 A No.

7 Q Okay. So nobody had any whiskey, for instance?

8 A No, there was nothing else but, uhm, beer.

9 Q Okay. And what was the brand of beer?

10 A 211.

11 Q And were they in bottles?

12 A Yes, they were 40-ounce bottles.

13 Q Do you remember how many 40-ounce bottles were there?

14 A About six.

15 Q And you were sharing all six of the bottles?

16 A Yes, I was.

17 Q And as the day went on, at some point did you become --
18 well, how sober or not so sober were you as the day went
19 on?

20 A Uhm, I was slowly getting there, pretty much there, by
21 just before four o'clock.

22 Q Okay. Now, you gotta tell me where there is.

23 A Uhm, getting pretty -- pretty much drunk.

24 Q Okay. So is it fair to say that by four o'clock you were
25 pretty much drunk?

- 1 A Yes.
- 2 Q How drunk were you?
- 3 A Uhm, I kind of remember what was going on, the people were
4 still there.
- 5 Q You still remember what was going on?
- 6 A Yeah, they were just still telling, you know, stories, you
7 know, and asking if they had to leave, they had nowhere to
8 go. And I just said, well, it's just supposed to be me
9 and Chandler here, but if you guys don't mind sleeping on
10 the floor, you know, if I get kicked out, you know, just I
11 don't want you guys out in the cold.
- 12 Q Okay. The amount of beer that you drank that day -- is
13 that more than you normally drink?
- 14 A No, it's about what I usually drink with other people.
- 15 Q Is it fair to say that you're an experienced beer drinker?
- 16 A Yes.
- 17 Q At some point during the day, did anyone else come to the
18 room?
- 19 A Lateesha.
- 20 Q Lateesha Miller?
- 21 A Yes.
- 22 Q You remember about when she came?
- 23 A That would be a little after four.
- 24 Q Four in the afternoon?
- 25 A Yes.

1 A I don't recall it.

2 Q All right. You'd been drinking fairly heavily, hadn't
3 you?

4 A Yes.

5 Q Weren't you passed out at the McDonald's at one point in
6 time?

7 A Yes.

8 Q All right. And people had to come and get you to make
9 sure you didn't get arrested?

10 A Yes.

11 Q All right. And now you indicated that at about the time
12 in question, Lateesha came over at some point in time, is
13 that right?

14 A Yes.

15 Q All right. And she was there in the room with you?

16 A Yes.

17 Q All right. And you indicated she was upset?

18 A Yes.

19 Q All right. And you indicated that you sort of viewed her
20 as, like, an adopted daughter?

21 A Yes.

22 Q All right. And you were protective of her?

23 A Yes..

24 Q All right.

25 A I'm protective like that of a lot of my kids.

1 Q All right. And so when Mr. Andy came to the room, he
2 knocked on the door, did he not?

3 A Yes.

4 Q All right. And you opened the door, did you not?

5 A Yes, I did.

6 Q All right. And you had some discussion at the door?

7 A Yes.

8 Q All right. And then you indicated when I interviewed
9 you -- first of all, do you recall being interviewed by me
10 back on May 15th, 2012, at about 2:50 in the afternoon in
11 the prosecutor's office?

12 A Yes.

13 Q Mr. Knittle being there?

14 A Yes.

15 Q Detective Brownell being there?

16 A Yes.

17 Q Kaitlin Mee being there?

18 A Yes.

19 Q All right. And you'd consented to have that recorded; is
20 that correct?

21 A Yes.

22 Q And we did record that. Do you recall being interviewed
23 and indicating to me that he knocked on the door, you had
24 some discussion at the door, you saw that he had a knife
25 in his hand, you said that you stepped back and allowed

1 him to come into the room; is that correct?

2 A Yes.

3 Q All right. And you indicated --

4 A I moved away because I seen the knife.

5 Q Right. And you stepped back and you voluntarily allowed
6 him to come in the room?

7 A What am I supposed to do -- see what happened?

8 Q All right. You didn't tell him not to come into the room.

9 A I told him to go sleep it off.

10 Q All right. Didn't you indicate to me when I interviewed
11 you, that you had voluntarily allowed him to come into the
12 room?

13 A I said I stepped back.

14 Q All right. And you also indicated that you voluntarily
15 allowed him to come into the room.

16 MR. KNITTLE: Objection. Asked and answered.

17 A I said I stepped back.

18 THE COURT: Wait, wait, wait.

19 MR. KROM: All right.

20 THE COURT: Overruled. Go ahead.

21 MR. KROM: All right.

22 THE COURT: Why don't you re-ask the question?

23 MR. KROM: All right.

24 Q So I'm asking you, did you not indicate in answers to
25 questions I asked you, that you voluntarily allowed him to

1 come into the room?

2 A I stepped back. I didn't say he could come into the room.
3 I told him to sleep it off.

4 Q But I asked you the question, did you voluntarily allow
5 him to come in the room?

6 A What are you supposed to do when somebody's got a knife?

7 MR. KNITTLE: Objection.

8 THE COURT: Wait, wait.

9 Q Do you recall me asking you the question --

10 THE COURT: Wait.

11 MR. KROM: Yes.

12 THE COURT: Why don't you ask her just what she
13 said --

14 MR. KROM: All right.

15 THE COURT: -- to you in response to the question?

16 MR. KROM: All right.

17 Q Do you recall the question that I asked of you when we had
18 the interview about whether you voluntarily allowed him to
19 come into the room?

20 A I said I stepped back.

21 Q All right. Did you not indicate that you voluntarily
22 allowed him to come in?

23 A If you step back from the door, what are you supposed to
24 do?

25 Q All right. Okay. Let me just try to rephrase this one.

1 more time.

2 MR. KNITTLE: Objection. I think that he's got his
3 answer, Your Honor.

4 THE COURT: I think the question is, did she say
5 anything else?

6 MR. KROM: All right.

7 THE COURT: Why don't you ask her that?

8 MR. KROM: All right.

9 Q Did you indicate when you made this comment about the
10 knife and Mr. Knittle asked you about whether you were
11 fearful about that, you indicated no, you were not, that
12 you'd known him, you'd raised up with him, didn't expect
13 any problem. You remember saying that?

14 A Yes, I did.

15 Q All right. So you indicated to Mr. Knittle you were not
16 fearful, that you'd known this person, you didn't expect a
17 problem and that you stepped back and allowed him in the
18 room, correct?

19 A I stepped back, but I didn't say he could enter.

20 Q All right. You didn't specifically tell him not to enter,
21 did you?

22 A I told him to go sleep it off.

23 Q That was earlier when he first came to the door.

24 A I told him I didn't want no problems there either --

25 Q All right.

1 A -- because I had no place to go.

2 Q All right. So earlier you may have made this comment, the
3 discussion continued, you stepped back, allowed him into
4 the room; is that correct?

5 A I said what I said.

6 Q All right. And when he stepped in, you didn't tell him he
7 can't come in the room?

8 A I told him I didn't want no problems.

9 Q That was earlier, correct?

10 A That was while he --

11 Q Not when he was step --

12 A -- was in the room also.

13 Q But not when he stepped into the room?

14 A That was when he was in the room also.

15 Q All right. But not when he stepped into the room?

16 A When he was in the room.

17 MR. KNITTLE: Objection, objection.

18 THE COURT: Okay.

19 MR. KROM: All right.

20 THE COURT: Sustained.

21 MR. KROM: All right.

22 Q All right. You indicated that you were not frightened or
23 upset, that you'd known him, that you did not anticipate a
24 problem, you stepped back and he came into the room,
25 right?

1 MR. KNITTLE: Objection. I mean, asked and answered.

2 THE COURT: Sustained.

3 MR. KROM: All right.

4 Q So isn't it true that in fact others confronted Mr. Andy
5 and attempted to shove him or attack him?

6 A No, they did not.

7 Q All right. Do you know why Preston Chandler would tell
8 Officer Perez that he and Kendall and Chandler had
9 attempted to subdue Joey?

10 MR. KNITTLE: Objection. That's not anything that's
11 come in. It would be speculation on her part.

12 THE COURT: Sustained.

13 MR. KROM: All right.

14 Q So you're saying that Preston and Kendall and Chandler
15 didn't do anything; is that correct?

16 A Yes.

17 Q All right. Did anybody throw a beer bottle?

18 A No.

19 Q No one threw a beer bottle. Do you know why Preston would
20 say that it was thrown?

21 MR. KNITTLE: Objection.

22 THE COURT: Sustained.

23 Q Chandler's your boyfriend; is that correct?

24 A Not no more.

25 Q All right. At the time, he was?

1 A But I knew.

2 Q Right. So it's like showing somebody a picture of
3 somebody they already know. They're going to be pretty
4 much able to identify the person they know, right?

5 A Yes.

6 Q All right. Now, it's my understanding in following your
7 testimony that you're indicating nobody answered the door;
8 is that correct?

9 A (Witness shakes head negatively.)

10 Q You're shaking your head.

11 A Nobody.

12 Q All right. So it wasn't that you went to the door and
13 opened it; is that correct?

14 A I didn't open it.

15 Q All right. It wasn't that Lydia went to the door and
16 opened it.

17 A No.

18 Q Wasn't any of the other people in the room opened it.

19 A No.

20 Q Is that your testimony in court?

21 A Yes.

22 Q All right. You're indicating that there was just a knock
23 on the door and then the door opened up.

24 A Yes.

25 Q By itself; is that correct?

- 1 A Yes.
- 2 Q All right. And then you indicate that Mr. Andy came into
3 the room.
- 4 A He stood in front of the door.
- 5 Q All right. So he was standing in the doorway?
- 6 A Yes.
- 7 Q All right. And he was asking for Lateesha Miller --
- 8 A Yes.
- 9 Q -- is that correct?
- 10 A Correct.
- 11 Q And you know that he's been involved as a
12 boyfriend/girlfriend relationship with her for some time?
- 13 A Yes.
- 14 Q All right. And did you or Kendall Cozad or Preston
15 attempt to subdue Mr. Andy in any way?
- 16 A No.
- 17 Q All right. Did you ever attempt to keep Mr. Andy out,
18 yourself personally?
- 19 A No.
- 20 Q All right. Stop him from coming through the door?
- 21 A I didn't open the door.
- 22 Q All right. So you did ultimately make a statement to the
23 police; is that correct?
- 24 A Yes.
- 25 Q That would have been back on the 23rd of January, 2012?

1 A Yes.

2 Q And you met with Sergeant Logan and Detective Brownell?

3 A Correct.

4 Q And they prepared a transcript of that interview?

5 A Yes.

6 Q And you've seen that previously?

7 MR. KROM: If I may approach the witness?

8 THE COURT: You may.

9 Q Showing you what's been marked for identification as
10 Defendant's Exhibit Number 27, here on Page 4, doesn't it
11 indicate here that a question was asked of you because you
12 were trying to stop him from coming through the door; is
13 that correct? And you said, yeah.

14 MR. KNITTLE: Could we have, like, a line on the page
15 or something?

16 MR. KROM: This is about halfway down the page on
17 Page 4.

18 Q The question is, because you were trying to stop him
19 coming through the door, is that right? And you answered,
20 yeah. ; is that correct?

21 A Yes.

22 Q Is that what the transcript indicates?

23 A Yes.

24 Q Now, were you being truthful with the police when you
25 talked to them?

- 1 A Yes.
- 2 Q All right. And you indicate that in fact Preston threw a
3 beer bottle at Mr. Andy; is that correct?
- 4 A Yes.
- 5 Q And that it struck him. You said it hit him and he was
6 blocking it with his arm; is that correct? All right.
7 This was a 40-ounce beer bottle?
- 8 A Yes.
- 9 Q All right. You guys had been drinking for quite a while
10 that day, hadn't you?
- 11 A Yes.
- 12 Q About what time did you start?
- 13 A Uhm, probably about eight o'clock.
- 14 Q All right. Eight o'clock in the morning?
- 15 A Yes.
- 16 Q You'd been drinking all day long, is that right --
17 multiple trips to the store to get beer?
- 18 A Yes.
- 19 Q All right. And everybody was pretty intoxicated, isn't
20 that true?
- 21 A Yes.
- 22 Q All right. And isn't it true that there was three men in
23 the room when Mr. Andy came there? There was Mr. Cozad,
24 there was Preston and there was yourself?
- 25 A Yes.

1 Q And there was also three females, Lydia, Ramona Smartlowit
2 and Lateesha was in the bathroom, you say?

3 A Yes.

4 Q So there was a total of six adults in the room?

5 A Yes.

6 Q Mr. Andy was himself outside; is that correct?

7 A Yes.

8 Q And isn't it true that the people on the inside were
9 verbally arguing with Mr. Andy, making comments to
10 Mr. Andy?

11 A Trying to calm him down.

12 Q All right. Weren't they in fact using profanity and
13 making aggressive comments towards him?

14 A No, there wasn't. They were just trying to calm him down
15 because --

16 Q No aggressive comments at all, no profanity at all?

17 A Trying to tell him to put the knife down.

18 Q All right. Now, in fact isn't it true that Mr. Andy was
19 attacked by the people in that room and had to defend
20 himself?

21 A No.

22 Q All right. You indicated just a few minutes ago in
23 answers to questions from the prosecutor that when you
24 talked to the police that night, in fact you lied to the
25 police and gave them a false name; is that correct?

1 THE COURT: Mr. Krom?

2 RECROSS-EXAMINATION

3 BY MR. KROM:

4 Q Mr. Price, did you feel like the police were attempting to
5 put pressure on you to talk to them?

6 A No.

7 Q You said they left you standing outside in the cold in the
8 snow with no shirt on?

9 A Yes.

10 Q And they dragged you off to jail?

11 A Yep.

12 Q Because you didn't talk to them, they dragged you off to
13 jail?

14 A Yeah, because I didn't say my name.

15 Q And after you'd been dragged off to jail, sometime later
16 then you talked to them; is that right?

17 A Yeah, the next morning.

18 Q Now, in terms of protecting your friends, you wouldn't
19 want to say anything that would get your friends to go to
20 jail, would you?

21 A No.

22 Q All right. So if your friends were guilty of an assault,
23 you'd try to protect them, wouldn't you?

24 A Yes.

25 Q All right. And you'd lie to protect yourself, as well,

1 going to send you back for a few minutes. So enjoy your
2 walk from here to the jury room. Just make sure you leave
3 your notepads on your chairs.

4 (JURY ABSENT, 10:28)

5 THE COURT: Okay. The jury's left the courtroom. For
6 the record, at side bar Mr. Krom advised me that he needed
7 to make a motion in limine. So, of course, we need to do
8 that on the record, so I've sent the jury out.

9 Mr. Krom -- oh, first of all, anything else that needs
10 to be on the record with regard to side bar?

11 MR. KNITTLE: No. Other than that Mr. Krom advised
12 the Court that he had a motion in limine to make and we
13 collectively moved that we had to do this on the record
14 with Mr. Andy present and the jury not present. So we've
15 done that.

16 THE COURT: Right. You agree, Mr. Krom?

17 MR. KROM: I agree.

18 THE COURT: All right. You can sit down, Mr. Andy.
19 I'm sorry.

20 MR. KROM: And I apologize. We did have some
21 conversation with Officer Sperle outside in the hallway
22 outside the presence of the jury. And he did indicate, as
23 I understood, that there was a Teletype that he had
24 received and aware of that listed the charges that
25 Mr. Andy was being sought for. And as I recall, it was

**GASCH LAW OFFICE
ATTORNEYS AT LAW**

David N. Gasch

Susan Marie Gasch

May 16, 2014

Renee S. Townsley, Clerk
Court of Appeals, Division III
500 N Cedar St
Spokane, WA 99201

FILED

MAY 19 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

RE: State v. Joey A. Andy, 31018-3-III

Dear Ms. Townsley:

I noticed today looking at ACORDS that it does not show a statement of additional grounds (SAG) was ever filed by Mr. Andy. I have what I thought was a copy of his SAG plus an Appendix, dated January 24, 2014. Apparently Mr. Andy incorrectly assumed the original went to me. I am therefore enclosing the SAG with attachments and asking the Court to accept it. The SAG was timely. Mr. Andy just sent it to the wrong place.

Thank you for your attention in this matter.

Sincerely,



David N. Gasch

Enclosures as stated

Cc: Jennifer P. Joseph

