

FILED

NOV 03 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 96653-2

COA #348636

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SPOKANE

)
)
) NO. 14-1-03384-3
)
) PERSONAL RESTRAINT PETITION
)
MATTHEW SEAN MCCARTHY)
 Petitioner's Full Name

If there is not enough room on this form, use the back of these pages or use other paper. Fill out all of the form and other papers you are attaching before you sign this form in front of a notary.

A. STATUS OF PETITIONER

I, MATTHEW SEAN MCCARTHY, 1100 W. MALLON
(Full name and current address)
AVE, SPOKANE, WA 99260

Apply for relief from confinement. I am am not now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order: _____
(Identify type of court order)

1. The court in which I was sentenced is: SPOKANE COUNTY SUPERIOR COURT
2. I was convicted of the crime of: FIRST DEGREE BURGLARY
3. I was sentenced after (check one) Trial Plea of Guilty on OCT. 17, 2016
 Date of Sentence
4. The Judge who imposed sentence was JUDGE HAROLD CLARKE III

5. My lawyer at trial court was DENNIS DRESSLER; COUNSEL FOR
Name and Address if known
DEFENSE, 1116 W. BROADWAY, SPOKANE, WA 99260

6. I did did not appeal from the decision of the trial court. (If the answer is that I did), I
appealed to: APPEAL NOT FILED YET, DIVISION III
Name of court or courts to which appeal took place

7. My lawyer for my appeal was: UNKNOWN
Name and address if known or write "none"

The decision of the appellate court was was not published. (If the answer is that it
was published, and I have this information) the decision is published in N/A

8. Since my conviction I have have not asked a court for some relief from my
sentence other than I have already written above. (If the answer is that I have asked, the court I
asked was _____ . Relief was denied on
Name of court

_____ .
Date of Decision or, if more than one, all dates)

(If you have answered in question 7 that you did ask for relief), the name of your lawyer in the
proceedings mentioned in my answer was _____
Name and address if known

9. If the answers to the above questions do not really tell about the proceedings and the courts,
judges and attorneys involved in your case, tell about it here: MY TRIAL WAS A
DECEPTION. THERE WAS A DUE PROCESS VIOLATION KNOWN
TO THE STATE AND THE DEFENSE IN WHICH BOTH FAILED TO
ACT. I AM BEING DENIED ACCESS TO THE COURT WITH A
WRIT OF HABEAS CORPUS AND A MOTION TO SET ASIDE THE

B. GROUNDS FOR RELIEF:

CONTINUED PG. 7

(If I claim more than one reason for relief from confinement, I will attach sheets for each reason
separately, in the same way as the first one. The attached sheets should be numbered "First
Ground", "Second Ground", "Third Ground", etc). I claim that I have 4 reason(s) for this
court to grant me relief from the conviction and sentence described in Part A.

FIRST Ground
(First, Second, etc)

1. I should be given a new trial or released from confinement because (State legal reasons why you think there was some error made in your case which gives you the right to a new trial or release from confinement): LAW ENFORCEMENT TARGETED THE DEFENDANT FOR PROSECUTION. THE ARRESTING OFFICER FALSIFIED HIS REPORT.

ANOTHER OFFICER MANUFACTURED A REPORT TO MANIPULATE THE "CRIME SCENE."

2. The following facts are important when considering my case. (After each fact statement put the name of the person or persona who know the fact and will support your statement of the fact. If the fact is already in the record of your case, indicate that also) SEE COURT FILE:

POLICE REPORTS, SEPTEMBER 21, 2014 911 CALL RECORDING; SEE ATTACHED MOTION AND MEMORANDUM OF AUTHORITY TO SET ASIDE...

3. The following reported court decisions (indicate citations if possible) in cases similar to mine show the error I believed happened in my case. (If none are known, state "None Known").

UNITED STATES V. BOGART, 783 F.2d 1428, 1435 (9th Cir 1986);

UNITED STATES V. RUSSELL, 411 U.S. 423, 431-32, 93 S.Ct. 1637,

1643, 36 L.Ed.2d 366 (1973); STATE V. LIVELY, 130 WASH.2d 1, 921 P.2d 1035, 65 USLW 2180 (1996)

4. The following statutes and constitutional provisions should be considered by the court. (If none are now, state, "None Known") STATE CONSTITUTION, ARTICLE I, SECTIONS:

3, 10, AND 22. FEDERAL CONSTITUTION AMENDMENTS 5 AND 14.

5. This petition is the best way I know to get the relief I want, and not other way will work as well because: I AM BEING DENIED ACCESS TO THE LOCAL COURTS.

C. STATEMENT OF FINANCES:

If you cannot afford to pay the \$250 filing fee or cannot afford to pay an attorney to help you, fill out this form. If you have enough money for these, do not fill this part of the form. If currently in confinement you will need to attach a copy of your prison finance statement.

1. I do do not ask the court to file this without making me pay the \$250 filing fee because I am so poor and cannot pay the fee.

2. I have \$ 0.50 in my prison or institution account.

3. I do do not ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a lawyer.

4. I am am not employed. My salary or wages amount to \$ _____ a month. My employer is _____
Name and address of employer

5. During the past 12 months I did did not get any money from a business, profession or other form of self-employment. (If I did, it was _____
Type of self-employment
And the total income I received was \$ _____.

6. During the past 12 months I:

Did Did Not Receive any rent payments. If so, the total I received was \$ _____

Did Did Not Receive any interest. If so, the total I received was \$ _____

Did Did Not Receive any dividends. If so, the total I received was \$ _____

Did Did Not Receive any other money. If so the total I received was \$ Approx. 2000

Do Do Not Have any cash except as said in question 2 of Statement of Finances. If so the total amount of cash I have is \$ _____.

Do Do Not Have any savings or checking accounts. If so, the total amount in all accounts is \$ _____

Do Do Not Own stocks, bonds or notes. If so, their total value is: \$ _____.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what item or property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items	Value
<u>N/A</u>	

8. I am am not married. If I am married, my wife or husband's name and address is:

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age
MOGT McCARTHY, SPOKANE, WA	SON	14
MARTUS McCARTHY, SPOKANE, WA	SON	12
MALAKIA McCARTHY SPOKANE, WA	SON	12
MATEO S. CLERMONT CHICAGO, IL	SON	11

10. All the bills I owe are listed here:

Name & Address of Creditor	Amount
WA STATE CHILD SUPPORT REGISTRY	\$ 70,000. ⁰⁰

D. REQUEST FOR RELIEF:

I want this court to:

Vacate my conviction and give me a new trial

Vacate my conviction and dismiss the criminal charges against me without a new trial

Other: _____
(Please Specify)

THE CONVICTION IN MY CASE AND TO DISMISS THAT IS CURRENTLY BEFORE TWO SPOKANE COUNTY SUPERIOR COURTS UNRULED UPON THOUGH I HAVE CONTACTED THEM REPEATEDLY.

I AM NOT BEING PERMITTED LAW LIBRARY TIME TO ACCESS A NOTARY OR COPIES. I WROTE A COPY OUT MYSELF AND FILED WITHOUT BEING NOTARIZED.

THE GROUNDS FOR THIS PERSONAL RESTRAINT PETITION ARE THE SAME ISSUES ADDRESSED IN MY "MOTION AND MEMORANDUM OF AUTHORITIES TO SET ASIDE THE VERDICT AND TO DISMISS" WHICH I HAVE ENCLOSED.

IT IS APPARENT THAT SPOKANE COUNTY SUPERIOR COURT IS NOT CONCERNED WITH FAIR AND IMPARTIAL ADJUDICATION OF MY CASE.

RESPECTFULLY SUBMITTED THIS 31 DAY OF OCTOBER.

Matt McCarty
DEFENDANT

SECOND GROUND

1. THE STATE USED FALSIFIED REPORTS AND PERJURED TESTIMONY TO GAIN A CONVICTION. THE STATE NEVER MOVED TO CORRECT FALSE STATEMENT.
2. SEE ATTACHED MOTION - STATE'S BRIEF... ; KAYLA BONZALES' TESTIMONY / COURT RECORDS; POLICE REPORTS; 911 CALL RECORDING / ON RECORD.
3. MOONEY V. HOLLOMAN, 294 U.S. 103, 55 S.Ct. 340, 98 A.L.R. 406, 79 L.Ed. 791 (1935); CARTER V. TEXAS, 177 U.S. 442, 447, 20 S.Ct. 687, 689, 44 L.Ed. 839; PEOPLE V. SAVVIDES, 1 N.Y.2d 554, 557, 154 N.Y.S.2d 885, 887, 136 N.E.2d 853, 854-855 (1956); NAPOE V. PEOPLE OF STATE OF ILL., 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).

4. STATE CONSTITUTION, ARTICLE I,
SECTIONS 3 AND 22.
FEDERAL CONSTITUTION AMENDMENTS
5 AND 14.

5. SPOKANE COUNTY SUPERIOR COURT
HAS ON TWO SEPERATE OCCASIONS
DENIED TO RULE ON THE WRIT
OF HABEAS CORPUS THAT HAS BEEN
BEFORE THE COURT SINCE JUNE.

THIRD GROUND

1. THE DEFENDANT WAS NEVER AFFORDED AN EFFECTIVE ASSISTANCE OF COUNSEL: ONE OF REASONABLE COMPETENCE AND UNDIVIDED LOYALTY. COUNSEL DID NO PRE-TRIAL INVESTIGATIONS, SECURE WITNESSES AT THE DEFENDANTS REQUEST, MOVE TO INCLUDE THE LESSER INCLUDED OF FOURTH DEGREE ASSAULT OR IMPEACH STATE WITNESSES THAT PERJURED THEMSELVES.
2. THE DEFENDANT MOTIONED THE COURT ON NUMEROUS OCCASIONS FOR A SUBSTITUTION OF COUNSEL BECAUSE THERE WAS A BREAK DOWN IN COMMUNICATION AND AN OBVIOUS RELUCTANCE TO PERFORM THE MOST BASIC ACT WHICH RESULTED IN REAL CONFLICT. / IN COURT RECORD ; SEE MOTION AND MEMORANDUM OF AUTHORITY TO SET ASIDE THE VERDICT AND TO DISMISS - AND ATTACHMENTS.

3. SANDERS V. RATELLE, 21 F.3d 1446 (1994); STATE V. SANDOVAL, 123 WASH. APP. 1, 94 P.3d 323 (2004); STRICKLAND V. WASHINGTON, 466 U.S. 668, 698, 104 S.Ct. 2052, 2069, 80 L.Ed. 2d 674 (1984); STRICKLAND, 466 U.S. AT 692, 104 S.Ct. AT 2067; ID. AT 689, 104 S.Ct. AT 2055; STATE V. FERNANDEZ - MEDINA, 141 WASH. 2d 448, 454, 6 P.3d 1150 (2000); GLASSER V. UNITED STATES, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942).

4. STATE CONSTITUTION, ARTICLE I, SECTIONS 3 AND 22.
FEDERAL CONSTITUTION AMENDMENTS 6 AND 14.

5. THE DEFENDANT NEVER HAD REAL REPRESENTATION. THE LAW HAS BEEN GROSSLY PERVERTED IN THE HANDLING OF THIS MATTER OR OUTRIGHT IGNORED. THE DEFENDANT DOES NOT KNOW OF A BETTER RECOURSE.

FOURTH GROUND

1. FROM MARCH TO JULY 2016, THE DEFENDANT WAS UNDER EXTREME DISTRESS CAUSED BY CONSTANT ABUSE, BOTH PHYSICAL AND PSYCHOLOGICAL, AND HARASSMENT FROM DETENTION SERVICES OFFICERS. DURING THIS TIME THE DEFENDANT WAS ACTING PRO SE AND WAS UNABLE TO PEACEABLY PREPARE A DEFENSE.
2. THE DEFENDANT'S ALLEGATIONS OF ABUSE WERE OFFERED IN THE FORM OF MEDICAL RECORDS AND DETENTION SERVICES COMPLAINT FORMS AS ATTACHMENTS TO THE WRIT OF HABEAS CORPUS THAT IS STILL BEFORE JUDGE MORENO'S COURT (WRULED) UPON AND 6/24/16, 7/1/16 HEARING BEFORE SAID COURT. IN COURT FILE/RECORD.
3. UNITED STATES V. DEBBS, 801 F.SUPP. 441, 448 (D. KAN. 1992); U.S. V. HARRIS, 997 F.2d 812 (1993); UNITED STATES V. GONZALES, 539 F.2d AT 1240.

4. STATE CONSTITUTION, ARTICLE I,
SECTIONS 3, 14, AND 22.
FEDERAL CONSTITUTION AMENDMENTS
5, 6, 8, AND 14.

5. LOCAL COURTS WERE DISMISSIVE THOUGH
DID NOT RULE UPON WRIT FILED IN
MAY/JUNE 2016 OR ADDRESS THE
ALLEGATIONS OF ABUSE, SO AN OUTSIDE
JUDICIARY IS REQUIRED TO HAVE THE
ISSUES ACTED UPON.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SPOKANE

1. STATE OF WASHINGTON No. 14-1-03384-3

2. PLAINTIFF (S)

3. VS.

MOTION: AND

4. MATTHEW MCCARTHY

MEMORANDUM OF
AUTHORITIES TO SET
ASIDE THE VERDICT AND
TO DISMISS

6. DEFENDANT (S)

8. _____
9. I. MOTION

11. THE DEFENDANT, MATTHEW MCCARTHY, MOVES

13. TO HAVE THE VERDICT IN HIS CASE SET

15. ASIDE AND THE CHARGE DISMISSED.

17. RESPECTFULLY SUBMITTED THIS DAY OF
18. OCTOBER, 2016.

19. _____
20. MATTHEW MCCARTHY,
21. DEFENDANT.

¹ Washington Court Rule GR 14, <2012>

1. THE STATEMENT OF FACTS
 2. _____
 3. ON SEPTEMBER 23, 2014, MATTHEW
 4. _____
 5. MCCARTHY WAS BOOKED INTO THE SPOKANE
 6. _____
 7. COUNTY JAIL ON ONE COUNT OF FIRST
 8. _____
 9. DEGREE BURGLARY. JUDGE SYPOLT FOUND
 10. _____
 11. PROBABLE CAUSE THE SAME DAY. SEE
 12. _____
 13. FINDING OF PROBABLE CAUSE. THE ARRESTING
 14. _____
 15. OFFICER, TODD BELETZ, AUTHORED BOTH THE
 16. _____
 17. AFFIDAVIT OF FACTS, AND SPD REPORT
 18. _____
 19. NUMBER 14-319146 IN THE ABOVE-ENTITLED
 20. _____
 21. CASE. SEE SPD REPORT NUMBER 14-319146
 22. _____
 23. AND AFFIDAVIT OF FACTS. OFFICER BELETZ'S
 24. _____
 25. REPORTS PROVIDED THE SOLE BASIS FOR
 26. _____
 27. THE FINDING OF PROBABLE CAUSE AND
 28. _____
 29. THE STATES INFORMATION. THE FOLLOWING
 30. _____

1. ARE PASSAGES FROM THE AFFIDAVIT OF
2. _____
3. FACTS AND SPD REPORT NUMBER 14-319146,
4. _____
5. RESPECTIVELY:

6. _____
7. "VICTIM, KAYLA BONZALES,
8. WILL TESTIFY TO THE FOLLOWING:"

9. _____
10. "11. EXITED THE BEDROOM, GRABBED
11. HER KEYS, AND ATTEMPTED TO FLEE
12. IN HER VEHICLE."

13. _____
14. "13. RETURNED TO HER RESIDENCE
15. AND LOCKED THE DOOR."

16. _____
17. "15. CALLED 911 AND OBSERVED THE
18. DEFENDANT FLEE THE SCENE
19. IN A GREEN VEHICLE."

20. _____
21. "16. FILED A REPORT WITH
22. OFC. GRANT."

23. _____
24. AND,

25. _____
26. - "OFFICER LESSER MADE CONTACT
27. WITH CORY AND THE SUSPECT AT
28. 3RD AND STONE ST."

1. - "... AND SHOVED HER WITH
2. TWO HANDS AGAINST HER CHEST
3. CAUSING HER TO FALL BACKWARDS
4. AGAINST THE WALL OF THE HOUSE."
- 5.
6. - " SHE LOCKED HERSELF INSIDE OF
7. THE BEDROOM WITH HER ONE-YEAR-OLD
8. DAUGHTER UNTIL SHE HEARD
9. FOOTSTEPS LEAVING THE HOUSE."
- 10.
11. - " (MS. GONZALES) THEN RAN TO THE
12. FRONT DOOR, LOCKED IT, AND
13. CALLED 911."
- 14.
15. - " SHE LOCATED HER CAR KEYS AND
16. HER CELL PHONE AND AFTER A FEW
17. MINUTES SHE OPENED THE FRONT DOOR IN
18. AN EFFORT TO WALK TO THE GARAGE TO
19. GET IN HER CAR TO LEAVE TO SAFETY."
- 20.
21. - SHE TOLD THE MALE TAKE WHAT HE
22. WANTED AND SHE WILL LEAVE THE
23. DOOR OPEN... "
- 24.
25. - " THEREFORE, SHE RAN BACK INSIDE
26. THE HOUSE AND LOCKED THE DOOR."
- 27.
28. - " SHE WAS ON THE PHONE WITH 911
29. THE ENTIRE TIME THIS TOOK PLACE."
- 30.

1. - "KAYLA POINTED OUT TO ME THAT
2. SHE HAD A SMALL SCRAPE ON HER
3. RIGHT WRIST FROM THE ASSAULT
4. IN HER HOUSE DURING THE INCIDENT.
5. I REQUESTED A CORPORAL AND CORPORAL
6. KAKUOA ARRIVED AND TOOK PHOTOS OF
7. THIS INJURY FOR ME."

8.
9. BOTH OFFICER BRANT AND OFFICER LESSER
10.
11. WROTE SUPPLEMENTAL REPORTS IN THIS CASE.
12.
13. OFFICER BRANT WAS A FIRST RESPONDER THE
14.
15. MORNING OF SEPTEMBER 21, 2014.

16.
17. ON JANUARY 21, 2016, THE STATE'S
18.
19. TRIAL BRIEF REGARDING COMPETENCY AND
20.
21. DEFENSE COUNSEL'S REQUEST TO TESTIFY
22.
23. WAS FILED IN THIS CASE FOR A
24.
25. COMPETENCY TRIAL BEFORE JUDGE COONEY
26.
27. THAT COMMENCED JANUARY 25, 2016. SEE
28.
29. STATE'S TRIAL BRIEF REGARDING COMPETENCY

Continuation Page

1. AND DEFENSE COUNSEL'S REQUEST TO TESTIFY.
2.
3. IN THE BRIEFS "STATEMENT OF FACTS",
4.
5. PAGE 3 - LINE 18, THE STATE'S POSITION
6.
7. WAS THAT: "... THE DEFENDANT FORCED HIS
8.
9. WAY INTO HER HOME SHOVING HER INTO A
10.
11. WALL WITH THE DOOR. SHE FELL AND HER
12.
13. CELL PHONE FLEW OUT OF HER HAND." THE
14.
15. STATEMENT WAS MADE BY MS. BONZALES TO
16.
17. THEN DEFENSE COUNSEL KARI REARSON AND
18.
19. PRIVATE INVESTIGATOR DEANNA CORNELL. ALSO
20.
21. ON PAGE 3 OF THE SAME STATE BRIEF, THE
22.
23. STATE CITES SPD REPORT NUMBER 14-319141.
24.
25. SEE SPD REPORT NUMBER 14-319141. THE
26.
27. OUTCOME OF THE COMPETENCY TRIAL WAS A
28.
29. FINDING OF COMPETENCE BY ALL 12 JURORS.
30.

1. IMMEDIATELY FOLLOWING THE VERDICT THE
2. _____
3. DEFENDANT WAS ARRAIGNED IN THE INSTANT
4. _____
5. CASE AND A MOTION FOR A SUBSTITUTION
6. _____
7. OF COUNSEL WAS GRANTED. MR. DRESSLER
8. _____
9. WAS APPOINTED BY THE COURT.
10. _____

11. THE DEFENDANT HAS ALLEGED
12. _____
13. GOVERNMENTAL MISCONDUCT BY SPOKANE POLICE,
14. _____
15. OFFICERS, THE STATE, DETENTION SERVICES,
16. _____
17. AND OTHER JUDICIAL OFFICERS SINCE THE
18. _____
19. ON-SET OF THIS CASE. THE ALLEGATIONS
20. _____
21. DESCRIBE THE CREATION OF A CRIME BY
22. _____
23. LAW ENFORCEMENT, FALSIFYING POLICE
24. _____
25. REPORTS, ENLISTING THE VICTIM IN THEIR
26. _____
27. PLOT TO RAISE A CONVICTION, AND
28. _____
29. PERJURY. THERE WAS ALSO A PERIOD OF
30. _____

1. RELENTLESS ABUSE AND MEDICAL MISCONDUCT
2. _____
3. BY DETENTION SERVICES. THE INEFFECTIVE
4. _____
5. ASSISTANCE OF COUNSEL BECAME APPARENT
6. _____
7. EARLY ON ALSO.
8. _____
9. DUE TO THE BREAKDOWN IN
10. _____
11. COMMUNICATION AND EXTREME CONFLICT -
12. _____
13. THE DEFENDANT MOTIONED TO CONTINUE ON
14. _____
15. PRO SE. JUDGE COONEY GRANTED THE REQUEST
16. _____
17. ON MAY 13th, 2016, WITH THE DIRECTIVE
18. _____
19. THAT THE COURT WOULD HAVE HIM BACK
20. _____
21. IN TWO WEEKS TIME TO "SEE HOW
22. _____
23. MR. MCCARTHY WAS DOING", AND TO HANDLE
24. _____
25. SUBPOENA ISSUES. THE FOLLOWING DAY
26. _____
27. DETENTION SERVICES BEGAN GASSING THE
28. _____
29. DEFENDANT IN HIS CELL. THIS WOULD BE
30. _____

Continuation Page

1. THE SECOND SUCH OCCURENCE AND LASTED
2.
3. FOR THE MOST PART OF 45 DAYS. ON
4.
5. MAY 16, 2016, THE DEFENDANT FILED A
6.
7. CrR 2.3(b) MOTION TO DISMISS. JUDGE
8.
9. COONEY'S COURT ABANDONED ITS DIRECTION
10.
11. TO BRING THE DEFENDANT BACK BEFORE THE
12.
13. COURT AND SET THE MOTION TO BE HEARD
14.
15. ON JUNE 24, 2016. SEE COURT RECORD / FILE.
16.
17. DAYS LATER THE DEFENDANT FILED A
18.
19. WRIT OF HABEAS CORPUS DUE TO RELENTLESS
20.
21. ABUSE AT THE HANDS OF DETENTION SERVICES
22.
23. CORRECTIONAL OFFICERS AND THE FAR OUT
24.
25. DATE OF THE MOTION TO DISMISS HEARING.
26.
27. ON JUNE 14, 2016, THE DEFENDANT
28.
29. MOTIONED THE COURT FOR A CHANGE OF
30.

1. JUDGE DUE TO ACTUAL BIAS AND THE
2.
3. COURT RESPONDED WITH ITS OWN MOTION
4.
5. OF RECUSAL. SEE COURT FILE. JUDGE
6.
7. COWNEY WAS A FRIEND AND ACQUAINTANCE
8.
9. OF THE DEFENDANTS BROTHER WHILE JUDGE
10.
11. COWNEY'S FATHER IS AN ACQUAINTANCE OF
12.
13. THE DEFENDANTS PARENTS. JUDGE MURENO
14.
15. WAS ASSIGNED THE CASE.
16.
17. BETWEEN JUNE 6, 2016, AND
18.
19. JULY 12, 2016, THE DEFENDANT FILED
20.
21. A SUPPLEMENTAL BRIEF AND A MOTION
22.
23. TO MODIFY OF IDENTICAL CONTENT FOR
24.
25. BOTH THE CrR 8.3(b) MOTION AND THE
26.
27. WRIT OF HABEAS CORPUS UNDER THE ABOVE -
28.
29. ENTITLED CASE NUMBER. ON JUNE 24, 2016,
30.

1. BEFORE JUDGE MORENO'S COURT THE
2.
3. DEFENDANT WAS FORCED TO TAKE A
4.
5. CONTINUANCE BECAUSE HE WAS OF THE UNDERSTANDING
6.
7. THAT JUDGE SYBOLT REDIRECTED THE SUPPLEMENTAL
8.
9. BRIEF TO THE COURT OF APPEALS AND WAS
10.
11. OF THE BELIEF THAT JUDGE MORENO'S COURT
12.
13. WAS NOT IN POSSESSION OF THE BRIEF.
14.
15. WITH ITS ACCOMPANYING DOCUMENTS. IT WAS
16.
17. NOT UNTIL AFTER COURT THAT SAME DAY THE
18.
19. DEFENDANT RECEIVED THE ORDER VACATING
20.
21. THE TRANSFER TO THE COURT OF APPEALS BY
22.
23. JUDGE MORENO WHICH HAD BEEN FILED
24.
25. THREE DAYS EARLIER - JUNE 21, 2016. SEE
26.
27. TRANSFER AND VACATING ORDERS. ON JULY
28.
29. 15, 2016, JUDGE MORENO'S COURT RULED
30.

1. AGAINST THE DISMISSAL ONLY HEARING THE
2. _____
3. INITIAL MOTION AND NOT THE
4. _____
5. SUPPLEMENTAL AND MODIFICATIONS BRIEFS.
6. _____
7. AT THE JULY 15, 2016, HEARING THE
8. _____
9. DEFENDANT HAD COUNSEL RE-APPOINTED DUE
10. _____
11. TO THE ABUSIVE TACTICS EMPLOYED BY
12. _____
13. DETENTION SERVICES AND INTERFERENCE
14. _____
15. BY THE STATE THAT HAMPERED ANY REAL
16. _____
17. ABILITY TO PUT ON A DEFENSE. MR. DRESSLER,
18. _____
19. WITH WHOM THERE WAS STILL CONFLICT, AND
20. _____
21. UNSOLVED COMMUNICATION ISSUES TRUCK BACK OVER
22. _____
23. THE DEFENSE. THE DEFENDANT HAD ALREADY
24. _____
25. ATTEMPTED TWICE TO HAVE MR. DRESSLER
26. _____
27. SUBSTITUTED. SEE COURT RECORD. IT WAS
28. _____
29. AT THIS JULY 15, 2016, HEARING BEFORE
30. _____

1. JUDGE MORENO THAT THE STATE ADDRESSES
2.
3. THE INTERVIEW BETWEEN MS. BONZALES AND
4.
5. BOTH MS. REARDON AND MS. CORNELL WHERE
6.
7. THE STATE ACCEPTED STATEMENT CONCERNING
8.
9. THE DOOR BEING WHAT HIT MS. BONZALES AND
10.
11. MADE HER FALL THE DAY OF THE INITIAL
12.
13. INCIDENT.

14.
15. AT TRIAL ON SEPTEMBER 19, 2016,
16.
17. BEFORE JUDGE HAROLD CLARKE, THE STATE
18.
19. CALLED MS. BONZALES TO TESTIFY. ON
20.
21. CROSS-EXAMINATION MR. DRESSLER
22.
23. SPECIFICALLY ASKED MS. BONZALES IF SHE
24.
25. MADE THE STATEMENT TO BOTH MS. REARDON
26.
27. AND MS. CORNELL DURING THE INTERVIEW IN
28.
29. QUESTION. MS. BONZALES ANSWERED "NO". THE
30.

Continuation Page

1. STATE DID NOT MOVE TO CORRECT THE
2.
3. FALSEHOOD. WHEN OFFICER BELITZ
4.
5. TESTIFIED MUCH OF HIS REPORTS WENT
6.
7. UNCONTESTED. DEFENSE COUNSEL ON
8.
9. CROSS-EXAMINATION DID NOT QUESTION
10.
11. OFFICER BELITZ ABOUT THE DISCREPANCY
12.
13. BETWEEN HIS REPORTS AND THE SEPTEMBER
14.
15. 21, 2014 911 CALL RECORDING THAT WAS
16.
17. MADE A PART OF THE RECORD. OFFICER
18.
19. BELITZ WAS NEVER ASKED WHY HE
20.
21. FALSIFIED HIS REPORT. DEFENSE COUNSEL FAILED TO
22.
23. IMPEACH OFFICER BRANTS AND OFFICER LESSERS
24.
25. THOUGH MR. DRESSLER HAD THE INFORMATION
26.
27. AND/OR WITNESSES AVAILABLE TO HIM.
28.
29. FURTHERMORE, MR. DRESSLER DID
30.

Continuation Page

1. NOT QUESTION ANY OF THE STATES
2.
3. WITNESSES ABOUT POLICE CONTACTING A
4.
5. JAMES MARTIN; WHO WAS DRIVING A
6.
7. BREEW OLD SUV, IN MS. GONZALES
8.
9. DRIVEWAY AT 9:34 AM THE MORNING
10.
11. OF THE INCIDENT, EVEN THOUGH
12.
13. MS. GONZALES SAID HE WAS THE SUSPECT,
14.
15. OR HOW 911 RECORDED OFFICERS RELAYING
16.
17. OVER THE NETWORK THAT THE SUSPECT WAS
18.
19. DARK SKINNED WITH UNDONE DREADLOCKS.
20.
21. SPD REPORT NUMBER 14-319141 IS
22.
23. WRITTEN BY ONE OFFICER WILLARD.
24.
25. OFFICER MCCABE WAS ALSO LISTED AS
26.
27. BEING ACTIVELY INVOLVED IN THE CALL.
28.
29. THE SIGNIFICANCE BEING THAT THE CALL
30.

1. TOOK PLACE ON SEPTEMBER 21, 2014 AT
2.
3. 9:25 AM, AND THE CALLER WAS LARCA
4.
5. MCCARTHY - THE DEFENDANT'S X-WIFE.
6.
7. THE TWO OFFICERS INVOLVED REPORTEDLY
8.
9. CONTACTED MS. MCCARTHY AT 2710 E. 40th,
10.
11. EVENTUALLY TOOK HER REPORT, ESCORTED
12.
13. HER TO 3407 E. 29th - THE HOME SHARED
14.
15. WITH THE DEFENDANT, SEARCHED THE
16.
17. RESIDENCE, ALLOWED MS. MCCARTHY TO
18.
19. GATHER SOME CLOTHES, AND CONDUCTED A
20.
21. DOMESTIC VIOLENCE SCREENING. OFFICERS
22.
23. WILLARD AND MCCABE DID ALL THESE
24.
25. TASKS IN ADDITION TO ALSO INTERVIEWING
26.
27. A NEIGHBOR IN 6 AND 8 MINUTES,
28.
29. RESPECTIVELY. THESE SAME OFFICERS ARE
30.

1. LISTED AS RESPONDING TO THE 911 CALL
2.
3. MADE BY MS. BONZALES IN THE ABOVE -
4.
5. ENTITLED CASE AT 9:31 AM AND 9:33 AM,
6.
7. SEE SPD REPORT NUMBER 14-319141.
8.
9.

10. III. ISSUE

11.
12. SHOULD THE VERDICT IN THIS CASE BE
13. SET ASIDE AND THE CHARGE DISMISSED
14. BECAUSE OF NUMEROUS DUE PROCESS
15. VIOLATIONS?
16.

17.
18. IV. ARGUMENT

19.
20. THE VERDICT IN THIS CASE
21.
22. SHOULD BE SET ASIDE AND THE CHARGE
23.
24. DISMISSED ON THE GROUND OF DEPRIVATION
25.
26. OF DUE PROCESS STEMMING FROM GOVERNMENTAL
27.
28. MISCONDUCT AND INEFFECTIVE ASSISTANCE
29.
30. OF COUNSEL.

1. 1. THE STATE MAY NOT KNOWINGLY
2. USE FALSE EVIDENCE, INCLUDING
3. FALSE TESTIMONY, TO OBTAIN A
4. TRANTED CONVICTION.
5.
6. THE STATE BY ITS OWN AUTHORITY
7.
8. IS OBLIGATED TO NOT SEEK A CONVICTION
9.
10. CHARGING AN INFORMATION NOT SUPPORTED BY
11.
12. FACT. IN EVALUATING WHETHER THE
13.
14. STATES CONDUCT VIOLATED DUE PROCESS,
15.
16. WE FOCUS ON THE STATES BEHAVIOR,
17.
18. AND NOT THE DEFENDANTS PREDISPOSITION.
19.
20. STATE V. LIVELY, 130 WASH.2d 1, 921
21.
22. P.2d 1035, 65 USLW 2180 (1996) (CITING
23.
24. UNITED STATES V. LUTRELL, 889 F.2d
25.
26. 806, 811 (9th Cir 1989). THE STATE USED
27.
28. OFFICER TODD BELITZ'S AFFIDAVIT OF FACTS,
29.
30. AND SPD REPORT NUMBER 14-319146 FOR

1. ITS CHARGING INFORMATION. OFFICER
2.
3. BELITZ CLEARLY FABRICATED THE REPORTS
4.
5. OF TOPIC. OFFICER BELITZ REPORT HAS
6.
7. THE VICTIM, KAYLA GONZALES, RUNNING
8.
9. FROM THE BEDROOM AFTER SHE HEARS THE
10.
11. SUSPECT LEAVE TO CLOSE AND LOCK THE
12.
13. DOOR AND CALL 911. OFFICER BELITZ
14.
15. GOES ON TO REPORT THAT MS. GONZALES
16.
17. MADE AN ATTEMPT TO LEAVE IN HER VEHICLE,
18.
19. BUT WAS STOPPED BY THE DEFENDANT.
20.
21. MS. GONZALES AT THAT POINT TOLD THE
22.
23. DEFENDANT TO "TAKE WHAT HE WANTED AND
24.
25. SHE WILL LEAVE THE DOOR OPEN..." THE
26.
27. NEXT EVENT THAT WAS REPORTED WAS
28.
29. THAT MS. GONZALES RAN BACK INTO THE
30.

1. HOME AND ALL THIS TOOK PLACE WHILE SHE
2. _____
3. WAS ON THE PHONE WITH 911. SEE COURT
4. _____
5. RECORD. THE 911 RECORDING FROM
6. _____
7. SEPTEMBER 21, 2014 WHICH WAS MADE
8. _____
9. PART OF THE RECORD AT TRIAL DOES NOT
10. _____
11. REFLECT OFFICER BELITZ'S REPORTS.
12. _____
13. OUTRAGEOUS CONDUCT IS FOUND ON THE
14. _____
15. PRINCIPLE THAT THE CONDUCT OF LAW
16. _____
17. ENFORCEMENT OFFICERS AND INFORMANTS
18. _____
19. MAY BE "SO OUTRAGEOUS THAT OUR PROCESS
20. _____
21. PRINCIPLES WOULD ABSOLUTELY BAR THE
22. _____
23. GOVERNMENT FROM INVOKING JUDICIAL
24. _____
25. PROCESS TO OBTAIN A CONVICTION."
26. _____
27. UNITED STATES V. RUSSELL, 411 U.S.
28. _____
29. 423, 431-32, 93 S.Ct. 1637, 1643, 36
30. _____

1. U.Ed.2d 366 (1973). THE DEFENDANTS POSITION
2. _____
3. IS THAT THE FALSEIFYING OF POLICE
4. _____
5. REPORTS DENIED THE DEFENDANT DUE
6. _____
7. PROCESS AND ANY REAL SENSE OF A FAIR TRIAL.
8. _____
9. IT WAS ALSO FOUND IN "RUSSELL" THAT:
10. _____
11. "FOR THE POLICE CONDUCT TO VIOLATE DUE
12. _____
13. PROCESS, THE CONDUCT MUST SHOCK THE
14. _____
15. UNIVERSAL SENSE OF FAIRNESS!" Id at
16. _____
17. 432, 93 S.Ct. at 1043. FOLLOWING "RUSSELL,"
18. _____
19. NEARLY EVERY FEDERAL CIRCUIT COURT
20. _____
21. AND MANY STATE COURTS, INCLUDING
22. _____
23. WASHINGTON, HAVE RECOGNIZED THAT THE
24. _____
25. STATES CONDUCT MAY BE SO INAPPROPRIATE
26. _____
27. AS TO VIOLATE DUE PROCESS.
28. _____
29. ALSO VIOLATING DUE PROCESS STANDARDS
30. _____

1. ARE THOSE CASES WHERE THE GOVERNMENT
2.
3. CONDUCT IS, SO INTEGRALLY INVOLVED IN
4.
5. THE OFFENSE THAT THE GOVERNMENT AGENTS
6.
7. DIRECT THE CRIME FROM BEGINNING TO
8.
9. END, OR WHERE THE CRIME IS FABRICATED
10.
11. BY THE POLICE TO OBTAIN A DEFENDANT'S
12.
13. CONVICTION, RATHER THAN TO PROTECT THE
14.
15. PUBLIC FROM CRIMINAL BEHAVIOR. UNITED
16.
17. STATES V. BUGART, 753 F.2d 1428, 1435
18.
19. (9th Cir 1986). THE STATES ACTIONS ARE
20.
21. SO FLAGRANT THAT THE DEFENDANT CONTENDS
22.
23. THAT THE STATE HAS NOT JUST STOOD BY
24.
25. WHILE LAW ENFORCEMENT ENGAGED IN A
26.
27. COVER-UP, BUT HAS BEEN A WILLING
28.
29. PARTICIPANT IN CRIME IN CONTRAST TO
30.

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1. WHICH THE STATE HAS BEEN SWORN TO
2.
3. UPHOLD. THE REQUIREMENT OF DUE PROCESS
4.
5. "IS A REQUIREMENT THAT CANNOT BE
6.
7. DEEMED TO BE SATISFIED BY MERE
8.
9. NOTICE AND HEARING IF A STATE HAS
10.
11. CONTRIVED A CONVICTION THROUGH THE
12.
13. PRETENSE OF A TRIAL WHICH IN TRUTH
14.
15. IS BUT USED AS A MEANS OF DEPRIVING
16.
17. A DEFENDANT OF LIBERTY THROUGH A
18.
19. DELIBERATE DECEPTION OF COURT AND JURY
20.
21. BY THE PRESENTATION OF TESTIMONY KNOWN
22.
23. TO BE PERJURED. SUCH A CONTRIVANCE BY
24.
25. A STATE TO PROCURE THE CONVICTION
26.
27. AND IMPRISONMENT OF A DEFENDANT IS
28.
29. AS INCONSISTENT WITH THE FUNDAMENTARY
30.

1. DEMANDS OF JUSTICE AS IS THE
2.
3. OBTAINING OF A LIKE RESULT BY INTIMIDATION.
4.
5. AND THE ACTIONS OF PROSECUTING OFFICERS
6.
7. ON BEHALF OF THE STATE, LIKE THAT
8.
9. OF ADMINISTRATIVE OFFICERS IN THE
10.
11. EXECUTION OF ITS LAWS, MAY
12.
13. CONSTITUTE STATE ACTION WITHIN
14.
15. PURVIEW OF THE FOURTEENTH AMENDMENT.
16.
17. THAT AMENDMENT GOVERNS ANY ACTION
18.
19. OF A STATE, "WHETHER THROUGH ITS
20.
21. LEGISLATURE, THROUGH ITS COURTS, OR
22.
23. THROUGH ITS EXECUTIVE OR ADMINISTRATIVE
24.
25. OFFICERS". MOONEY V. HOLAHAN, 294 U.S. 103,
26.
27. 55 S.Ct. 340, 90 A.L.R. 404, 79 L.Ed.
28.
29. 791 (1935) (CITING CARTER V. TEXAS, 177
30.

1. U.S. 442, 447, 20 S.Ct. 687, 689,
2.
3. 44 L.Ed. 839).

4.
5. IT IS OF NO CONSEQUENCE THAT
6.
7. THE FALSEHOOD BORE UPON THE WITNESS'
8.
9. CREDIBILITY RATHER THAN DIRECTLY UPON
10.
11. DEFENDANTS BUILT. A LIE IS A LIE,
12.
13. NO MATTER WHAT ITS SUBJECT, AND,
14.
15. IF IT IS IN ANY WAY RELEVANT
16.
17. TO THE CASE, THE DISTRICT ATTORNEY
18.
19. HAS THE RESPONSIBILITY AND DUTY TO
20.
21. CORRECT WHAT HE KNOWS TO BE FALSE
22.
23. AND ELICIT THE TRUTH. *** THAT THE
24.
25. DISTRICT ATTORNEY'S SILENCE WAS NOT
26.
27. THE RESULT OF GUILT OR A DESIRE
28.
29. TO PREJUDICE MATTERS LITTLE, FOR
30.

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1. ITS IMPACT WAS THE SAME,
2.
3. PREVENTING, AS IT DID, A TRIAL
4.
5. THAT COULD IN ANY REAL SENSE BE
6.
7. TERMED FAIR. PEOPLE V. SAVVIDES, 1
8.
9. N.Y.2d 554, 557, 154 N.Y.S.2d 885,
10.
11. 887, 136 N.E.2d 853, 854-855 (1956). THE
12.
13. STATE THROUGH MR. CRUZ ALLOWED
14.
15. MS. BONZALES TO FALSELY TESTIFY WITHOUT
16.
17. MOVING TO CORRECT THE STATEMENT.
18.
19. MS. BONZALES WAS ASKED BY THE OFFENSE
20.
21. ON CROSS-EXAMINATION IF DURING AN
22.
23. INTERVIEW WITH THEN DEFENSE COUNSEL
24.
25. KARE REARDON IF SHE HAD SAID: "THE
26.
27. DEFENDANT FORCED HIS WAY INTO HER
28.
29. HOME STOVING HER INTO A WALL WENT
30.

1. THE DOOR. SHE FELL AND HER CELL PHONE
 2. _____
 3. FLEW OUT OF HER HAND." MS. GONZALES
 4. _____
 5. RESPONDED, "NO", THE STATE DID NOT MOVE TO
 6. _____
 7. CORRECT THE STATEMENT. IT IS ESTABLISHED
 8. _____
 9. THAT A CONVICTION OBTAINED THROUGH USE
 10. _____
 11. OF FALSE EVIDENCE, KNOWN TO BE SUCH
 12. _____
 13. BY REPRESENTATIVES OF THE STATE, MUST
 14. _____
 15. FALL UNDER THE FOURTEENTH AMENDMENT.
 16. _____
 17. NAPOE V. PEOPLE OF STATE OF ILL., 360
 18. _____
 19. U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d
 20. _____
 21. 1217 (1959) (CITING MOWEY V. HOLLOWAY,
 22. _____
 23. 294, U.S. 103, 55 S.Ct. 340, 79
 24. _____
 25. L.Ed. 791; PYLE V. STATE OF KANSAS,
 26. _____
 27. 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214)
 28. _____
 29. WHETHER THE STATE HAS ENGAGED IN
 30. _____

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1. OUTRAGEOUS CONDUCT IS A MATTER OF
2.
3. LAW, NOT A QUESTION FOR THE JURY.
4.
5. UNITED STATES V. DUDDEN, 65 F.3d
6.
7. 1461, 1466-67 (9th Cir. 1995) TO
8.
9. ESTABLISH PROSECUTORIAL MISCONDUCT,
10.
11. THE DEFENDANT HAS THE BURDEN OF
12.
13. ESTABLISHING THE IMPROPERITY OF THE
14.
15. CONDUCT AS WELL AS ITS PREJUDICIAL
16.
17. EFFECT. STATE V. GENTRY, 125 WASH. 2d
18.
19. 570, 640, 888 P.2d 1105, CERT DENIED,
20.
21. 516 U.S. 843, 116 S. Ct. 131, 133 L.Ed.2d
22.
23. 79 (1995) (CITING STATE V. HOFFMAN, 116
24.
25. WASH.2d 51, 93, 804 P.2d 577 (1991)).
26.
27. THE IMPROPERITY IS WELL-ESTABLISHED
28.
29. WHILE THE PREJUDICIAL EFFECT IS
30.

1. UNDENIABLE, THE DEFENDANT
2. _____
3. SUFFICIENTLY CHARGES A DEPRIVATION
4. _____
5. OF RIGHTS GUARANTEED BY THE FEDERAL
6. _____
7. AND STATE CONSTITUTION AND PROVEN
8. _____
9. WOULD ENTITLE THE DEFENDANT TO THE
10. _____
11. RELEASE FROM CUSTODY.

12. _____
13. 2. THE DUTY OF APPOINTED COUNSEL
14. IS TO MAKE A FULL AND COMPLETE
15. INVESTIGATION OF BOTH THE FACTS
16. AND THE LAW IN ORDER TO ADVISE
17. HIS CLIENT AND PREPARE ADEQUATELY
18. AND EFFICIENTLY TO PRESENT ANY
19. DEFENSES HE MIGHT HAVE TO THE
20. CHARGES AGAINST HIM.

21. _____
22. THE QUESTION OF WHETHER AN ATTORNEY
23. _____
24. RENDERS INEFFECTIVE ASSISTANCE IS A
25. _____
26. MIXED QUESTION OF LAW AND FACT,
27. _____
28. REVIEWED DE NOVO. BUTCHER V. MARQUEZ, 758

1. F-2d 373, 376 (9th Cir 1985). THE SIXTH
2. _____
3. AMENDMENT GUARANTEE OF EFFECTIVE
4. _____
5. ASSISTANCE OF COUNSEL COMPRISES TWO
6. _____
7. CORRELATIVE RIGHTS; THE RIGHT TO
8. _____
9. COUNSEL OF REASONABLE COMPETENCE, MCMAUN
10. _____
11. V. RICHTERSON, 397 U.S. 759, 770-71 90
12. _____
13. S.C.T. 1441, 1448-49, 25 L.Ed.2d.
14. _____
15. 763 (1970), AND THE RIGHT TO COUNSEL'S
16. _____
17. UNDIVIDED LOYALTY. LYON V. GEORGIA, 450
18. _____
19. U.S. 261, 272, 101 S.Ct. 1097, 1103-04,
20. _____
21. 67 L.Ed.2d 220 (1981). MR. DRESSLER'S
22. _____
23. ACTIONS COULD NOT BE SEEN AS
24. _____
25. COMPETENT BY ANY REASONABLE
26. _____
27. MEASURE OF THE WORD.
28. _____
29. MR. DRESSLER DID NOT CONDUCT ANY
30. _____

1. PRE-TRIAL INVESTIGATIONS WHEN
2.
3. MR. MCCARDY HAS CLAIMED GOVERNMENTAL
4.
5. MISCONDUCT SINCE DECEMBER 2014. THE
6.
7. DEFENDANT OFFERED COUNSEL ALL PERTINENT
8.
9. INFORMATION TO INVESTIGATE THE VERACITY
10.
11. OF THE CLAIMS. "STRICKLAND" STATES: COUNSEL
12.
13. MUST CONDUCT A REASONABLE INVESTIGATION
14.
15. ENABLING HIM TO MAKE INFORMED
16.
17. DECISIONS ABOUT HOW BEST TO REPRESENT
18.
19. HIS CLIENT. STRICKLAND V. WASHINGTON,
20.
21. 406 U.S. 668, 698, 104 S.Ct. 2052,
22.
23. 2069, 80 L.Ed.2d 674 (1984). COUNSEL
24.
25. HAS BEEN FOUND TO BE INEFFECTIVE
26.
27. WHERE HE NEITHER CONDUCTED A REASONABLE
28.
29. INVESTIGATION NOR MADE A SHOWING OF
30.

1. STRATEGIC REASONS FOR FAILING TO DO

2.

3. SO.

4.

5. MR. DRESSLER FAILED TO IMPEACH

6.

7. THE TESTIMONY OF MS. GONZALES AND

8.

9. BOTH OFFICER GRANT AND OFFICER LESSEN.

10.

11. MR. DRESSLER HAD ALL THE RELEVANT

12.

13. FACTS AVAILABLE TO HIM THROUGH

14.

15. THE CASE FILE AND BASED POLICE REPORTS.

16.

17. MR. DRESSLER WAS ALSO PRESENT AT THE

18.

19. JULY 15, 2016 HEARING WHERE THE

20.

21. STATE THROUGH MR. CRUZ ACKNOWLEDGED

22.

23. THE STATEMENT MADE BY MS. GONZALES TO

24.

25. MS. REARDON AND MS. CORNELL DURING THE

26.

27. COURSE OF AN INTERVIEW.

28.

29. MR. DRESSLER FAILED TO CONDUCT A

30.

1. 3.5 HEARING TO CHALLENGE PROBABLE
2.
3. CAUSE AND THE STATES INFORMATION. IT
4.
5. HAS BEEN DETERMINED THAT IN ORDER TO
6.
7. ESTABLISH A DENIAL OF THE CONSTITUTIONAL
8.
9. RIGHT TO COUNSEL, "[D]EFENSE COUNSEL'S
10.
11. ERRORS OR OMISSIONS MUST REFLECT A FAILURE
12.
13. TO EXERCISE THE SKILL, JUDGEMENT,
14.
15. OR DILIGENCE OF A REASONABLY
16.
17. COMPETENT CRIMINAL DEFENSE ATTORNEY."
18.
19. COOPER V. FITZGERALD, 586 F.2d 1325,
20.
21. 1330 (9th Cir 1979) CERT DENIED, 440
22.
23. U.S. 974, 99 S.Ct. 1542, 59 L.Ed. 2d
24.
25. 793 (1979). THE FACT THAT DEFENSE
26.
27. COUNSEL FAILED TO CROSS-EXAMINE
28.
29. OFFICER BELTZ TO THE INCONSISTENCIES
30.

1. OF HER REPORTS, THE SOLE BASIS FOR THE
2. _____
3. FINDINGS OF PROBABLE CAUSE COULD NOT
4. _____
5. BE CHARACTERIZED AS LEGITIMATE TRIAL
6. _____
7. STRATEGY. IN THIS CASE, THE ASSAULT
8. _____
9. WAS AN ALLEGED PUSH. THE VICTIM
10. _____
11. ALLEGEDLY REPORTED A SCRATCH ON HER
12. _____
13. HAND TO OFFICER BEITZ WHICH WAS
14. _____
15. REPORTEDLY PHOTOGRAPHED BY ONE
16. _____
17. CARDINAL KAKUDA AT THE TIME OF THE
18. _____
19. ARREST. MR. DRESSLER NEVER ADDRESSED
20. _____
21. THE FACT AT TRIAL THAT THE PHOTOGRAPH
22. _____
23. EVIDENCE WAS NEVER PRODUCED. DEFENSE
24. _____
25. COUNSEL MUST PERFORM AT LEAST AS
26. _____
27. WELL AS A LAWYER WITH ORDINARY
28. _____
29. TRAINING AND SKILL IN THE CRIMINAL
30. _____

1. LAW AND MUST CONSCIENTIOUSLY PROTECT
2. _____
3. HIS CLIENTS INTERESTS, UNDEFLECTED
4. _____
5. BY CONFLICTING CONSIDERATIONS, GUASSER
6. _____
7. V. UNITED STATES, 315 U.S. 60, 62
8. _____
9. S.Ct. 457, 86 L.Ed 680 (1942). THE
10. _____
11. PRESENT TEST USED IN THIS STATE FOR
12. _____
13. DETERMINING WHETHER A CRIMINAL
14. _____
15. DEFENDANT HAS RECEIVED EFFECTIVE
16. _____
17. ASSISTANCE OF COUNSEL IS SET FORTH
18. _____
19. IN STATE V. THOMAS, 71 WASH.2d 470, 471,
20. _____
21. 429 P.2d 231 (1967): "AFTER CONSIDERING
22. _____
23. THE "ENTIRE RECORD", CAN IT BE SAID
24. _____
25. THAT THE ACCUSED WAS AFFORDED AN
26. _____
27. EFFECTIVE REPRESENTATION AND A FAIR
28. _____
29. AND IMPARTIAL TRIAL?" (EMPHASIS IN
30. _____

1. ORIGINAL) CONSIDERING THE RECORD, ALL
2. _____
3. THE EVIDENCE SUBMITTED AT TRIAL, AND
4. _____
5. COUNSEL'S FAILURE TO REACH EVEN A
6. _____
7. FUNDAMENTAL COMPETENCE IN HIS DUTIES -
8. _____
9. THE DEFENDANT WAS PREJUDICED AND A
10. _____
11. FAIR TRIAL COULD NOT BE SAID TO HAVE
12. _____
13. OCCURED.
14. _____
15. THE DEFENDANT IS FACING
16. _____
17. SENTENCING UNDER THE PERSISTENT
18. _____
19. OFFENDER'S ACT; AFTER A VERDICT OF
20. _____
21. GUILTY. DEFENSE COUNSEL DID NOT
22. _____
23. ATTEMPT TO HAVE A LESSER INCLUDED
24. _____
25. OFFENSE CONSIDERED WHEN FOURTH DEGREE
26. _____
27. ASSAULT IS A LESSER INCLUDED OF
28. _____
29. FIRST DEGREE BURGLARY. HAVING A LESSER
30. _____

1. INCLUDED ATTACHED WOULD OF BEEN
2.
3. REASONABLE TRIAL STRATEGY. THE DEFENDANT
4.
5. CONTENDS THAT COUNSEL SHOULD OF GIVEN
6.
7. THE INSTRUCTIONS FOR FOURTH DEGREE
8.
9. ASSAULT AS A LESSEER INCLUDED.

10.
11. "THE INSTRUCTION ON THE
12. CLOSE RELATIVE OF AN INFERIOR
13. DEGREE OFFENSE, A LESSEER
14. INCLUDED OFFENSE, IS WARRANTED
15. WHEN TWO CONDITIONS ARE MET:
16. "FIRST, EACH OF THE ELEMENTS
17. OF THE LESSEER OFFENSE MUST
18. BE A NECESSARY ELEMENT OF
19. THE OFFENSE CHARGED, AND SECOND,
20. THE EVIDENCE IN THE CASE MUST
21. SUPPORT AN INFERENCE THAT THE
22. LESSEER CRIME WAS COMMITTED."

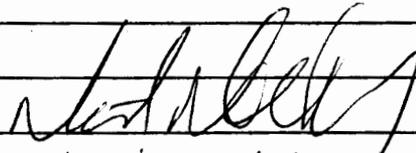
23.
24. STATE V. FERNANDEZ - MEDINA, 141 WASH. 2d
25.
26. 448, 454, 6 P.3d 1150 (2000) (CITING
27.
28. STATE V. WORKMAN, 90 WASH.2d 443, 447-
29.
30. 48, 584 P.2d 382 (1978)). THE SUPREME

1. COURT SAID IN GLASSER V. UNITED STATES,
2.
3. 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed.
4.
5. 680 (1942): "A DEFENDANT IN A
6.
7. CRIMINAL CASE MAY NOT LEGALLY BE
8.
9. FOUND GUILTY EXCEPT IN A TRIAL IN WHICH
10.
11. HIS CONSTITUTIONAL RIGHTS ARE SCrupuLousLY
12.
13. OBSERVED. NO CONVICTION CAN STAND, NO
14.
15. MATTER HOW OVERWHELMING THE EVIDENCE
16.
17. OF GUILT, IF THE ACCUSED IS DENIED
18.
19. THE EFFECTIVE ASSISTANCE OF COUNSEL, OR
20.
21. ANY OTHER ELEMENT OF DUE PROCESS OF
22.
23. LAW WITHOUT WHICH HE CANNOT BE
24.
25. DEPRIVED OF LIFE OR LIBERTY."

28. V. CONCLUSION

30. THE DEFENDANT WITH ALL OF THE SUPPORT

1. OF HIS POSITION HEREIN RESPECTFULLY
2.
3. REQUESTS THE COURT TO SET ASIDE
4.
5. THE VERDICT IN THIS CASE AND
6.
7. DISMISS WITH PREJUDICE IN
8.
9. ACCORDANCE WITH THE LAW.
10.
11.
12. RESPECTFULLY SUBMITTED THIS 1st DAY
13. OF OCTOBER, 2016.


MATTHEW MCCARTY
DEFENDANT

1. INDEX:
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3. STATE V. LIVELY, 130 WASH. 2d 1, 921
4. P.2d 1035, 65 USLW 2180 (1996)
5. (CITING: UNITED STATES V. LUTTRELL, 889
6. F.2d 806, 811 (9th Cir 1999))
- 7.
8. UNITED STATES V. RUSSELL, 411 U.S. 423,
9. 431-32, 93 S.Ct. 1637, 1643, 36, L.Ed.2d
10. 366 (1973)
- 11.
12. MOONEY V. HOLAHAN, 294 U.S. 103, 55
13. S.Ct. 340, 98 A.L.R. 406, 79 L.Ed. 791
14. (1935) (CITING: CARTER V. TEXAS, 177 U.S.
15. 442, 447, 20 S.Ct. 687, 689, 44 L.Ed.
16. 839)
- 17.
18. PEOPLE V. SAVVIDES, 1 N.Y.2d 554,
19. 557, 154 N.Y.S. 2d 885, 887, 136
20. N.E. 2d 853, 854-855 (1956)
- 21.
22. NAPUE V. PEOPLE OF STATE OF ILL., 360
23. U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d
24. 1217 (1959) (CITING: MOONEY V. HOLAHAN,
25. 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791;
26. PYLE V. STATE OF KANSAS, 317 U.S. 213,
27. 63 S.Ct. 177, 87 L.Ed. 214)
- 28.
- 29.
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UNITED STATES V. DUDDEN, 65 F.3d
1461, 1466-67 (9th Cir 1995)

STATE V. BENTLEY, 125 WASH.2d 570,
640, 888 P.2d 1105, CERT. DENIED, 516
U.S. 843, 116 S.Ct. 131, 133 L.Ed.2d
79 (1995) (QUOTING: STATE V. HOFFMAN, 116
WASH.2d 51, 93, 804 P.2d 577 (1991))

BUTCHER V. MARQUEZ, 758 F.2d 373,
376 (9th Cir 1985)

MC MANN V. RICHARDSON, 397 U.S. 759,
770-71, 90 S.Ct. 1441, 1448-49, 25
L.Ed.2d 763 (1970)

WOOD V. GEORGIA, 450 U.S. 261, 272,
101 S.Ct. 1097, 1103-04, 67 L.Ed.2d
220 (1981)

STRICKLAND V. WASHINGTON, 466 U.S. 668,
698, 104 S.Ct. 2052, 2069, 80 L.Ed.2d
674 (1984)

COOPER V. FITZHARRIS, 586 F.2d 1325,
1330 (9th Cir 1979) CERT. DENIED, 440 U.S.
974, 99 S.Ct. 1542, 59 L.Ed.2d 793
(1979)

Continuation Page

1. _____
2. GLASSER V. UNITED STATES, 315 U.S.
3. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942)
4. _____
5. STATE V. THOMAS, 71 WASH.2d 470, 471,
6. 429 P.2d 231 (1967)
7. _____
8. STATE V. FERNANDEZ-MEDINA, 141
9. WASH.2d 448, 454, 6 P.3d 1150
10. (2000) (QUOTING: STATE V. WARKMAN, 90
11. WASH.2d 443, 447-48, 584 P.2d
12. 382 (1978)
13. _____
14. UNITED STATES V. BOGART, 783 F.2d
15. 1428, 1435 (9th Cir 1986)
16. _____
17. _____
18. _____
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29. _____
30. _____

**DECLARATION OF SERVICE AND FILING BY AN INMATE
CONFINED IN THE SPOKANE COUNTY JAIL
W 1100 MALLON
SPOKANE, WASHINGTON, 99260**

I, MATTHEW MCCARTHY, declare that on OCTOBER 2016
I deposited the foregoing document(s), or a copy thereof, in the internal mail
system of the SPOKANE COUNTY JAIL and made arrangements for postage,
addressed to:

Name & Address of Court or Other Place of Filing:	Documents:
<u>1. SUPERIOR COURT CLERK (AND</u>	<u>MOTION TO SET</u>
<u>2. CRIMINAL PROSECUTOR DEPT</u>	<u>ASIDE VISITECT</u>
<u>1116 W. BROADWAY AVE</u>	<u>AND TO DISMISS</u>
<u>SPOKANE, WA 99200</u>	
_____	_____
_____	_____

Name & Address of Parties or Attorneys to be served:

3. COUNTY PROSECUTORS _____

E. CAWZ _____

1100 W. MALLON AVE _____

SPOKANE, WA 99260 _____

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

Dated At Spokane, Washington on this 3 day of OCTOBER, 2016

[Signature]

Signature

¹ Washington Court Rule GR 3.1 2012.

CASE NUMBER 14-1-03384-3

FINDING OF PROBABLE CAUSE

FILED

SEP 23 2014

SPOKANE COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE**

STATE OF WASHINGTON	)	CASE NO: 2014-01-03384-3
	)	PA #:
Plaintiff,	)	RPT #: 140319146
	)	CHARGES:
V.	)	Count 1: 9A.52.020(1)(B) - - BURGLARY-
	)	1D(ASSAULT)
MCCARTHY, MATTHEW SEAN)	<input type="checkbox"/> AMENDED
B M 01/09/1979	)	RELEASE CONDITIONS PENDING TRIAL
	)	(CrR 3.2) (ADULT) (ORECRP)
Defendant.)	<input type="checkbox"/> DEFENDANT TO BE BOOKED ON FTC
	)	WARRANT

PROBABLE CAUSE:

- Probable cause has previously been determined.
- The court finds probable cause exists to believe the accused committed the offense(s) charged. CrR 3.2.1(e)(2).
- The court does not find probable cause exists for the offense(s) charged, but does find probable cause exists to believe the accused committed the offense of _____. CrR 3.2.1(e)(2).
- The court does not find probable cause to believe the accused committed any offense and the accused is ordered released without conditions. CrR 3.2.
- Probable cause statement not received from law enforcement and the accused is ordered released without conditions. CrR 3.2.
- Other: _____.

CUSTODY:

- 1. Defendant shall be in the custody of Spokane County Jail.
 - Housing at Geiger is authorized if eligible and approved.
 - Work Crew/Work Release authorized if eligible and approved.
- 2. Defendant shall be released on his/her own recognizance.
- 3. Defendant shall post a surety or cash bond in the sum of \$25,000.00. Reserved Argued
- 4. No Bond shall be accepted. Reserved Argued

If released: Defendant shall remain: _____ Phone number: _____

Further, defendant shall:

- Appear at all court dates; Regularly contact her/his attorney;
- Remain in Spokane County and/or _____;
- No use or possession of non-prescribed controlled substances, legend drugs, or drug paraphernalia;

**RELEASE CONDITIONS PENDING TRIAL
(CrR 3.2)**

Page 1

ORIGINAL

SPOKANE COUNTY PROSECUTING ATTORNEY
COUNTY CITY PUBLIC SAFETY BUILDING
SPOKANE, WA 99260 (509) 477-3662

- The current offense and a prior qualified offense involve alcohol
 - Defendant MUST install Ignition Interlock Device on ALL vehicles operated by him/her AND PROOF of installation must be filed within 5 days of the date of release
 - with the Superior Court
 - Defendant must comply with a 24/7 Sobriety Program Monitoring – if/when available
- Commit no criminal law violations; No contact with minors under the age of 18;
- No operating a motor vehicle without a valid driver's license and proof of insurance;
- Obey any and all court orders in effect and, if under supervision, obey all conditions of supervision;
- Other: Take all medications as prescribed.

THE COURT FINDS THAT THERE EXISTS a substantial danger that the defendant will commit a serious crime or that the defendant's physical condition is such to jeopardize his/her safety or that of others or that he/she will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice and, therefore:

- 1. Defendant shall not approach or communicate with (named victim) Kayla Gonzales
 - or any others residing at the same residence
 - or any immediate member of his/her family
 - or any witness of the State, as listed in the police reports or witness lists
- 2. Defendant shall not go to the following (area) (premises) _____
 - the 3526 block of Mt. Vernon St. in Spokane County
 - or any known location of any individual listed in number 1 of this order (e.g. school, work, residence, etc.)
- 3. Defendant shall not
 - a. possess any dangerous weapons. b. engage in the activity of _____
 - c. engage in the activity of sexual contact with minors under the age of 18
 - d. use, possess or consume (intoxicating liquor) and/or (use or in possession of marijuana and/or products containing Tetrahydrocannabinol (THC)) and/or (the following drugs _____)
 - e. possess any pornographic material
- 4. Defendant shall report regularly and remain under the supervision of NEWTA or other Court approved facility. Defendant shall report within 24 hours of the entry of this order or release from custody.
 - Reserved
 - Other: _____
- 5. Defendant shall be detained until his/her physical condition permits his/her release.
- 6. Defendant is referred for assessment by Geiger/NEWTA.
- 7. Other: _____

DONE IN OPEN COURT this 23rd day of September, 2014, in the presence of the defendant.



JUDGE GREGORY DAVID SYPOLT

J U D G E

NOTICE TO DEFENDANT: Your attorney is required to advise the Court if you do not maintain regular contact with your lawyer. If you do not maintain regular contact with your lawyer, the Court

RELEASE CONDITIONS PENDING TRIAL
(CrR 3.2)

Page 2

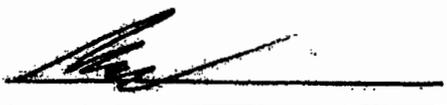
SPOKANE COUNTY PROSECUTING ATTORNEY
COUNTY CITY PUBLIC SAFETY BUILDING
SPOKANE, WA 99260 (509) 477-3662

may issue a bench warrant for your apprehension and incarceration in the Spokane County Jail. Failure to abide by any court ordered release condition is considered a violation and will be reported to the Court. A violation could result in a modification of release conditions, revocation of release, or the issuance of a bench warrant.

IF NO CHARGES ARE FILED BY 09/26/2014 AT 12:21 AM, THE DEFENDANT SHALL BE RELEASED ON THIS CAUSE AND BOND SHALL BE EXONERATED.

Presented by:

Approved:

		
GEORGE W GAGNON, III	MICHAEL VANDER GIESSEN	MCCARTHY, MATTHEW SEAN
Deputy Prosecuting Attorney	Attorney for Defendant	
WSBA # 28768	WSBA# 45288	

STATES INFORMATION

FILED

SEP 24 2014

SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON)	
	)	INFORMATION
Plaintiff,	)	(INFO)
	)	No. 14-1-03384-3
v.)	
	)	STEPHEN W. GARVIN
MATTHEW SEAN MCCARTHY	)	Deputy Prosecuting Attorney
BM 01/09/79)	
Defendant(s).	)	PA# 14-9-54025-0
	)	RPT# 002-14-0319146
	)	RCW 9A.52.020(1)(B)-F (#17705)

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crime(s):

FIRST DEGREE BURGLARY, committed as follows: That the defendant, MATTHEW SEAN MCCARTHY, in the State of Washington, on or about September 21, 2014, with intent to commit a crime against a person or property therein, did enter and remain unlawfully in the building of KAYLA MARINA GONZALES, located at 3526 S. Mt. Vernon, Spokane, Washington, and in entering and while in such building and in immediate flight therefrom, the defendant or another participant in the crime, did assault KAYLA MARINA GONZALES, a person therein; and the crime was aggravated by the following circumstance: the crime was committed against a family or household member and occurred within sight or sound of the victim's or the defendant's minor children under the age of 18 years, as provided by RCW 9.94A.535(2)(h); and further, that the defendant committed the current offense shortly after being released from incarceration; contrary to RCW 9.94A.505(3)(t);



Deputy Prosecuting Attorney
WSBA #31394

DEFENDANT INFORMATION: MATTHEW SEAN MCCARTHY

Address: 924 S LINCOLN ST SPOKANE WA 99204-3832

Height: 6'00"

Eyes: Bro

SID #: 017766838

Weight: 155

DOL #: MCCARMS216BZ

DOC #: 779521

Hair: Blk

State: WA

FBI NO. 174056FB7

SPD REPORT NUMBER 14-319146

AFFIDAVIT OF FACTS

FILED

SEP 24 2014

SPOKANE COUNTY CLERK

141033843

**STATEMENT OF INVESTIGATING OFFICER
AFFIDAVIT OF FACTS**STATE OF WASHINGTON
COUNTY OF SPOKANE

REPORT NUMBER: 14-319146

DEFENDANT: Matthew McCarthy 1/9/1979 B/M

The undersigned, a law enforcement officer, competent to testify, states as follows: That he/she believes a crime was committed by the above named defendant/defendants in the City and County of Spokane, State of Washington, because: There is probable cause to believe that the defendant committed the crime of 1st degree burglary. The crime occurred on 9/21/14 at 0927 hours at 3526 S Mt Vernon St, Spokane WA.

Victim, Kayla Gonzales, will testify to the following:

- 1) Kayla Gonzales resides at 3526 S Mt Vernon St, Spokane WA, and was at that location on 9/21/14 at approximately 0921 hours.
- 2) Heard a knock on the door and opened it.
- 3) Was confronted by the defendant who was yelling "give me Ellie".
- 4) Stepped back and attempted to close the door.
- 5) The defendant stuck his arm in the door to prevent it from shutting.
- 6) The defendant overpowered her and slammed his shoulder into the door causing it to fly open.
- 7) The defendant entered the house and 2 hand shoved her in the chest causing her to fall backwards and hit the wall.

- 8) The defendant slapped the cell phone out of her hand as she called 911.
- 9) Locked herself in the bedroom with her 1 year old daughter.
- 10) Heard the defendant walking around the residence before exiting.
- 11) Exited the bedroom, grabbed her keys, and attempted to flee in her vehicle.
- 12) Was stopped by the defendant who was sitting on his car laughing at her.
- 13) Returned to her residence and locked the door.
- 14) Observed the defendant walking around the house peering through windows.
- 15) Called 911 and observed the defendant flee the scene in a green vehicle.
- 16) Filled a police report with Ofc Grant.
- 17) Was at her residence on 9/22/14 at approximately 2150 hours when she heard someone knock on the door.
- 18) Asked Cory for the description of the male who had been at the door.
- 19) Recognized the description given by Cory and told him it was the same male from the day earlier.
- 20) Called 911 as Cory pursued the defendant.
- 21) Arrived on scene at 312 S Stone Street, Spokane WA and was interviewed by Ofc Belitz.
- 22) Participated in a show up and identified the defendant as a 100% match.
- 23) Also noted that the defendant was wearing the same exact clothes as the day before when the defendant entered her house.

Witness, Cory Hierholzer, will testify to the following:

- 1) Resides at 3526 S Mt Vernon St, Spokane WA, and was at that location on 9/22/14 at approximately 2150 hours.
- 2) Heard someone knocking on the front door
- 3) Opened the door and observed the defendant standing on the porch asking for a female by the name of Laura.
- 4) Told the defendant Laura did not live there and closed the door.
- 5) Was asked by Kayla to describe the male who was just standing at the door
- 6) Was told by Kayla that the description of the defendant matched the man from the previous night.
- 7) Followed the defendant to 312 S Stone St, Spokane WA.

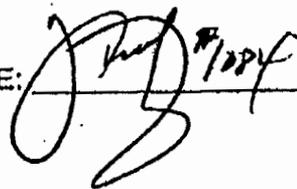
Ofc. T Belitz will testify to the following:

- 1) Is a fully commissioned police officer for the Spokane police department, and was working in that capacity on 9/22/14.
- 2) Arrived on scene and took statements from Kayla Gonzales.
- 3) Walked Kayla to the back of his vehicle to conduct a show up of the defendant.
- 4) Was told by Kyla it was a 100% match, and that the defendant was wearing the same clothes from the day prior.
- 5) Along with Ofc Lesser, established probable cause to arrest the defendant for 1st degree burglary.

Ofc. C Lesser will testify to the following:

- 1) Is a fully commissioned police officer for the Spokane police department, and was working in that capacity on 9/22/14.
- 2) Arrived on scene and took statements from Cory Hierholzer
- 3) Observed the defendant standing on the porch screaming with a brick in his hand.
- 4) Detained the defendant in handcuffs (d.I)
- 5) Removed the defendant from the back of his patrol vehicle and assisted Ofc Belitz with a show up.
- 6) Along with Ofc Belitz, established probable cause to arrest the defendant for 1st degree burglary.
- 7) Transported the defendant to the Spokane County Jail and booked him on the above named charge.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. (9A.72.085)

DATE: 09/22/14 PLACE: SPOKANE, WASHINGTON SIGNATURE: 

SPD REPORT
NUMBER 14-319146

INCIDENT REPORT

Spokane Police/Spokane County Sheriff

Page 1

AGENCY NAME/SUBSTATION SPD		EVIDENCE NUMBER 14-319146	INCIDENT NUMBER 14-319146	
INCIDENT TYPE Arrest	INCIDENT CLASSIFICATION #1 BURGLARY-RESIDNTL		ATTEMPTED <input type="checkbox"/>	INCIDENT CLASSIFICATION #2 Assault - Simple
	INCIDENT CLASSIFICATION #3		ATTEMPTED <input type="checkbox"/>	INCIDENT CLASSIFICATION #4
	RESPONDING TO (Officer Assault)		ASSIGNMENT (Officer Assault)	
REPORTED ON Sun 09/21/2014 09:27	DATE/TIME	OCCURRED ON Sun 09/21/2014 09:27	DATE/TIME	OCCURRED TO Mon 09/22/2014 23:02
DISPATCH TIME 09:30	ARRIVED TIME 09:34	CLEARED TIME 10:18	REPORT DATE 09/23/2014	REPORT TIME 04:06
PRIMARY CHARGE 9A.52.020(1)(B) BURGLARY-1D(ASSAULT)				UCR/NIBRS CODE 1220
LOCATION OF INCIDENT [REDACTED] Mt Vernon Street, Spokane, WA 99223			LOCATION NAME (IF APPLICABLE)	
ENTRY POINT Door	METHOD Body Force/Kicked	WEAPON/TOOL/FORCE USED	SECURITY Deadbolt	EVIDENCE
TYPE OF PREMISE (FOR VEHICLES STATE WHERE PARKED) Residence/Home				
SOLVABILITY FACTORS PC Affidavit Completed, Suspect Arrested, Useful Physical Evidence, Witness to Crime				
RELATED INCIDENT NUMBERS				INCIDENT XREF 14-321221
ADDITIONAL REPORTING OFFICERS C. Lassar, G. Grant				
CODE CV-1	NAME: LAST, FIRST, MIDDLE Gonzales, Kayla Marina		SEX F	RACE/ETHNICITY W-White/Non-Hispanic
HEIGHT 502"	WEIGHT 116	BUILD Light	HAIR Red or Auburn	EYES BLU - Blue
CONFIDENTIALITY <input type="checkbox"/>	ADDRESS: STREET, CITY STATE ZIP [REDACTED] Mt Vernon Street, Spokane, WA 99223		RESIDENTIAL STATUS	PHONE
PLACE OF EMPLOYMENT/SCHOOL/ADDRESS			OCCUPATION Employed	EMPLOYER PHONE
ADDITIONAL PHONES (Cell) (509) [REDACTED]				
DRIVER'S LICENSE <input type="checkbox"/> FALSE	STATE WA	SOCIAL SECURITY NO. <input type="checkbox"/> FALSE	OTHER ID	
RELATIONSHIP TO SUBJECT Victim Relationship Unknown		VICTIM OF Chrg. # 9A.52.020(1)(B) BURGLARY-1D(ASSAULT)	OFFICER # A-1	
TYPE OF INJURY OR ILLNESS/DESCRIBE INJURIES Apparent Minor Injury			TYPE OF VICTIM Individual	MEDICAL RELEASE OBTAINED? <input type="checkbox"/> YES <input type="checkbox"/> NO
HOSPITAL TAKEN TO	TAKEN BY	<input type="checkbox"/> EMPLOYEE <input type="checkbox"/> ON DUTY	ATTENDING PHYSICIAN	SUBJECT NOTE FOUND? <input type="checkbox"/>

ID NO./NAME OF REPORTING OFFICER #1084 - Baltz, Todd	DISTRIBUTION	
APPROVAL #262 - Wutrich, Ernest	DATE/TIME 09/23/2014 09:38	

Incident Report #1

09/23/2014 09:38:01.585

INCIDENT REPORT CONTINUED
Spokane Police/Spokane County Sheriff

INCIDENT CLASSIFICATION BURGLARY-RESIDENTIAL		ATTEMPTED <input type="checkbox"/>	INCIDENT NUMBER 14-319146	
CODE A-1	NAME: LAST, FIRST, MIDDLE McCarthy, Matthew S		SEX M	RACE/ETHNICITY B-Black/Non-Hispanic
DATE OF BIRTH/AGE 01/02/1979 35	HEIGHT 6'00"	WEIGHT 180	BUILD Medium	HAIR Black
CONFIDENTIALITY <input type="checkbox"/>	ADDRESS: STREET, CITY STATE ZIP E 29th, Spokane, WA 99223		RESIDENTIAL STATUS	PHONE
PLACE OF EMPLOYMENT/SCHOOL ADDRESS	OCCUPATION Not employed		EMPLOYER PHONE	
ADDITIONAL PHONES (509) 808-2262				
CHARGE LEVEL Felony Class A	DESCRIPTION 9A.52.020(1)(B) BURGLARY-1D(ASSAULT)		LICENSING CODE /220	
WARRANT #	BAIL	TYPE OF ARREST Taken into Custody		MULTIPLE ARRESTEE SEGMENTS INDICATOR <input type="checkbox"/>
CITATION #	DATE	TIME	BOOKED WHERE Spokane County Jail	DATE 09/22/2014
				TIME 23:02
ARREST LOCATION S Stone Street & E 3rd Avenue, Spokane, WA 99202			STATEMENT <input type="checkbox"/> ORAL <input type="checkbox"/> WRITTEN	CHARGES <input type="checkbox"/> ADMITTED <input type="checkbox"/> DENIED
SUSPECT ARMED WITH				
JUV. PAROLE NOTIFIED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	NAME/RELATIONSHIP OF PERSON NOTIFIED	DATE & TIME NOTIFIED	NOTIFIED BY	DISPOSITION OF JUVENILE
DRIVER'S LICENSE	<input type="checkbox"/> NONE STATE WA	SOCIAL SECURITY NO.	<input type="checkbox"/> NONE OTHER ID	

On 092214 at approximately 2212 hours, I responded to a reported argument to assist Ofc. Lesser, who was on scene in the area of 3rd Ave and Stone St. It was reported that a male who had broken into the complainant, Cory Hierholzer's house was being chased into that area by him. Just before this call from Cory came out, a female had called in at approximately 2128 hours, and reported that the suspect who had broken into her home the day before was now back at the house. She was identified as Kayla Gonzales.

Kayla stated that the male had knocked on the door asking for someone named Laura. This was the same male that knocked on the door and forced his way in the day before at approximately 0930 hours in the morning. Kayla stated that officers showed up and took a report the day before. This occurred on 092114 at 0927 hours.

At this time, Kayla stated that her fiancé was now outside confronting the suspect. This is when her fiancé Cory called and stated that he was now following the suspect. Officer Lester made contact with Cory and the suspect at 3rd Ave and Stone St. See his report for information.

On 092114, when Kayla called to report the original incident Officer G. Grant responded and took her statements. CAD indicated that Officer Grant generated a police report, but at this time I was unable to find it anywhere in the system. Therefore, I contacted Kayla and asked her to respond to the area that we were now at.

Kayla arrived on scene and I asked her to tell me what happened at her house on 092114 at

INCIDENT REPORT CONTINUED

Spokane Police/Spokane County Sheriff

Page 3

INCIDENT CLASSIFICATION BURGLARY-RESIDENTIAL	ATTEMPTED <input type="checkbox"/>	INCIDENT NUMBER 14-319146
--	---------------------------------------	-------------------------------------

approximately 0927 hours when she initially made the report of the burglary. Kayla told me the following:

On Sunday, 092114 at approximately 0927 hours, she was home along with her one-year-old daughter. She heard a knock at the door and went to see who it was. The door has no peep hole and therefore she was not able to look and see who it was before opening the door. When she opened the door, she noticed a black male standing there and he began to yell "give me Ellie." She described the black male as tall and skinny with an Afro wearing blue jeans and a black T-shirt.

She was slightly frightened so she stepped behind the door and told the male that he must have the wrong house because she does not know who Ellie is. She tried to shut the door but the male stuck his arm in the doorway and prevented her from closing the door. The male started to push his way into the house so she continued to push on the door in an effort to get it closed.

The male was too strong for her and finally shoved his shoulder into the door forcing it open. The force of the door coming open caused her to stumble backwards. The male then came inside of the house and walked up to her and shoved her with two hands against her chest causing her to fall backwards against the wall of the house. She had her cell phone in her left hand and the male then smacked it out of her hand and it flew across the room.

She was uncertain where her phone was now and not able to call 911 until she got to the land line, which she was nowhere near. The male laughed at her and stood front of her and stared into her eyes. The male then began to walk into the living room so she ran to her bedroom where her child was sleeping to protect her. She locked herself inside of the bedroom with her one-year-old daughter until she heard footsteps leaving the house.

She then ran to the front door, locked it and called 911. Just then she saw the male looking into the windows of the house. She then ran to the kitchen and grabbed a knife to protect herself and her child. She located her car keys and her cell phone and after a few minutes she opened the front door in an effort to walk to the garage to get in her car to leave to safety. When she opened the front door, she did not see the suspect standing outside.

She took two steps towards the garage and saw the male sitting on the hood of a green SUV. She had not seen the vehicle in the area before. Her and the mail locked eyes and she was holding her 1 year-old daughter in her arms. [She told the mail take what he wanted and she will leave the door open, she just need to get her daughter away safely.]

The male only laughed at her and she was certain that he was not going to allow them to leave safely. Therefore, she ran back inside the house and locked the door. She was on the phone with 911 the entire time this took place. By the time SPD arrived on scene, the suspect and the green SUV were gone from the area. Kayla stated that she had never seen the male before and has not seen the male since that incident.

Officer Lesser had the male suspect detained in the backseat of his patrol car. I walked Kayla around the

092202014 09:30:37

INCIDENT REPORT CONTINUED

Spokane Police/Spokane County Sheriff

Page 4

INCIDENT CLASSIFICATION BURGLARY-RESIDENTIAL	ATTEMPTED <input type="checkbox"/>	INCIDENT NUMBER 14-319146
--	---------------------------------------	-------------------------------------

backside of my patrol car, which was on Stone St. facing south, approximately 150 feet south of 3rd Ave. I placed my spotlight in the area in front of Officer Lessers patrol car in an effort to conceal Kayla from the suspect in order to do a show up.

I notified Kayla that we may not have the right person and to take her time for her identification. I reminded Kayla that the suspect may have changed clothes, changed facial hair and his hair may be different. Officer Lesser removed the suspect from the patrol vehicle and walked him into the middle of the street. I placed the light directly on the suspect. The suspect was now standing in the middle of Stone St. approximately 150 feet south of 3rd Ave. There are no street lights in this area, however, I had placed my headlights and my spotlight on the suspect as well as Officer Lesser's headlights and spotlight from his patrol vehicle.

Kayla looked at the mail for approximately 5 to 8 seconds then stated "that's him, I'm certain." I asked Kayla how certain she was and she said, "100% certain, he's still wearing the same clothes." I notified Officer Lesser over the radio that she had identified him with 100% certainty as the suspect. The suspect was identified as Matthew McCarthy.

Officer Lesser and I spoke and established PC to arrest and charge Matthew with 1st Degree Burglary. Kayla pointed out to me that she had a small scrape on her right wrist from the assault in her house during the incident. I requested a corporal and Corporal. Kakuda arrived and took photos of this injury for me. I provided Kayla with a crime victim card with the incident number on it.

Officer Lesser drove Matthew to jail and booked him for 1st Degree Burglary. Sergeant. Boothe was notified of the arrest and booking, and a PC affidavit was completed per department policy. Matthews clothing was taken at jail and placed onto police property as evidence by Corporal Kakuda.

T. Belitz #1084
SPD C457

09/23/2014 08:38:01.003

STATES TRIAL BRIEF
REGARDING COMPETENCY AND
DEFENSE COUNSELS REQUEST
TO TESTIFY

Reardon

RECEIVED
JAN 21 2016
PUBLIC DEFENDERS
SPOKANE COUNTY

4:23

COPY
ORIGINAL FILED
JAN 21 2016
SUPERIOR COURT
SPOKANE COUNTY, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON)	
	)	No. 14-1-03384-3
Plaintiff,	)	PA# 14-9-54025-0
)	
v.)	
	)	STATE'S TRIAL BRIEF REGARDING
MATTHEW SEAN MCCARTHY	)	COMPETENCY AND DEFENSE COUNSEL'S
BM 01/09/79	)	REQUEST TO TESTIFY
Defendant.)	

COMES NOW, State of Washington, represented by LAWRENCE H. HASKELL, Spokane County Prosecuting Attorney, by and through his Deputy Prosecuting Attorneys EUGENE M. CRUZ and SHARON L. HEDLUND, who now present the following briefing regarding competency and defense counsel's request to testify:

I. STATEMENT OF THE FACTS

The defendant has an almost 20 year long criminal history including convictions for assaults, domestic violence, escaping from community custody, robbery, multiple attempts to elude, felony drug and property offenses and firearm charges. The following is from the Prosecutor's Understanding of Defendant's Criminal History¹:

Crime	Date of Crime	Crime Type	Adult or Juv	Place of Conviction	Sent. Date
ATT TO ELUDE	100412	FELONY TRAFFIC	A	SPOKANE CO, WA	123113
ASSAULT 3	091908	NV	A	SPOKANE CO, WA	032310
THEFT 1	091908	NV	A	SPOKANE CO, WA	032310

¹ The Prosecutor's Understanding of Criminal History, SPD Affidavits and Reports, and Evaluator reports were attached to the State's Response to the Defendant's Motion to Dismiss filed in October 2015.

MAL MISCHIEF 2	101206	NV	A	SPOKANE CO, WA	062007
THEFT OF PROPERTY	012105		A	BURLEIGH CO, ND	031405
ESCAPE COMM CUST	121503	NV	A	SPOKANE CO, WA	052404
DV ASSAULT 2 ATT	073001	VIOL	A	SPOKANE CO, WA	110601
ATT TO ELUDE	041101	FELONY TRAFFIC	A	SPOKANE CO, WA	110601
CRIM MISTREAT 2	041101	NV	A	SPOKANE CO, WA	110601
ROBBERY 2	100599	VIOL	A	SPOKANE CO, WA	110999
UNLW POSS FRARM 2	063099	NV	A	SPOKANE CO, WA	091599
PCS	072997	DRUG	A	SPOKANE CO, WA	040398
PCS	102096	DRUG	J	SPOKANE CO, WA	111496
DCS	021896	DRUG	J	SPOKANE CO, WA	022396
THEFT 1 ATMP	100495	NV	J	SPOKANE CO, WA	022396
OBSTRCT PUB SERV	052103	MISD.	A	BENTON CO, WA	091313
DWLS 3	092608	MISD.	A	SPOKANE CO, WA	111208
DWLS 3	072408	MISD.	A	SPOKANE CO, WA	100608
VEH OPER RFS CMPLY	101206	MISD.	A	SPOKANE CO, WA	121206
DWLS 3	101206	MISD.	A	SPOKANE CO, WA	121206
FLEE POLICE	012105	MISD.	A	BURLEIGH CO, ND	063005
DV VIOL PROT ORD	040504	MISD.	A	SPOKANE CO, WA	061404
DV ASSAULT	091003	MISD.	A	SPOKANE CO, WA	101503
DWLS 3	060103	MISD.	A	SPOKANE CO, WA	101403
CRIM MISTREAT 2	041101	MISD.	A	SPOKANE CO, WA	110601
MAL MISCHIEF 3	051099	MISD.	A	CLARK CO, WA	051399
DWLS 2	072997	MISD.	A	SPOKANE CO, WA	102797
DWLS 2	072197	MISD.	A	SPOKANE CO, WA	110397
DWLS 3	053197	MISD.	A	SPOKANE CO, WA	073097
TRESP PREM 2	013097	MISD.	A	SPOKANE CO, WA	033197
ASSAULT 4	111496	MISD.	J	SPOKANE CO, WA	112696
OBSTRCT OFFICER	111496	MISD.	J	SPOKANE CO, WA	112696
CRIM TRESP 2	020596	MISD.	J	SPOKANE CO, WA	022396
CRIM TRESP 2	020596	MISD.	J	SPOKANE CO, WA	022396

His most recent felony conviction was an Attempt to Elude, where he was represented by current defense counsel Kari Reardon and was sentenced to 22 months in prison after pleading guilty. See *Spokane County Superior Court case number 12-1-03600-5*. Ms. Reardon did not challenge his competency during those proceedings although he was previously evaluated pursuant to RCW 10.77 when represented by Tracy Collins in a First Degree Robbery case that Ms. Reardon negotiated to a Third Degree Assault charge after substituting in on the case. See *Spokane County Superior Court case number 08-1-03239-7*. In that case, he was found competent after evaluations by Eastern State Hospital (hereinafter ESH) and Dr. Mark Mays. *Id.* Ms. Reardon substituted into that case after this determination due to a breakdown in

communication between the defendant and Mr. Collins. *Id.* The defendant ultimately pled guilty and was sentenced to 60 months in prison. *Id.*

The defendant was released from his most recent prison sentence on August 27, 2014, according to information provided by his estranged wife – Laura McCarthy - on September 2, 2014 regarding an assault on September 1, 2014. *See SPD Report number 14-293985.* According to Ms. McCarthy, the defendant had been acting paranoid since his release from prison, had not been taking his prescribed medications for Bi-Polar disorder, but had apparently been taking non-prescribed controlled substances. *See Affidavit of Facts from SCSO report number 14-298504.* The deputy who responded to that incident on September 5, 2014, also noted that the defendant appeared to be under the influence of drugs and acted paranoid. *Id.* On September 20, 2014, Ms. McCarthy again contacted law enforcement regarding a dispute with the defendant that ended with him returning to the family residence and tearing it apart while apparently looking for some unknown item. *See SPD Report number 14-319141.*

On September 21, 2014, the defendant went to the residence of Kayla Gonzales. *See SPD Report number 14-319146.* Ms. Gonzales was home alone with her 1 year old daughter when the defendant knocked on her door. *Id.* When she answered he began to yell “give me Ellie”. *Id.* Ms. Gonzales was frightened, said she didn’t know who that was, and tried to shut the door but the defendant forced his way into her home shoving her into a wall with the door. She fell and her cell phone flew out of her hand. *Id.* As he walked into her living room she fled to her daughter’s room and locked herself in until she could hear him leaving. *Id.* She was able to locate her phone and contact 911 but the defendant was gone when law enforcement arrived. *Id.* On September 22, 2014, the defendant showed up again asking for “Laura.” *Id.* Ms. Gonzales’ fiancé confronted the defendant and followed him as he left the residence. *Id.* Law enforcement officers were able to detain the defendant and arrested him for First Degree Burglary. *Id.*

Due to his two prior convictions for violent offenses – Second Degree Robbery and Attempted Second Degree Assault DV – and the classification of this current offense, the defendant will be sentenced as a persistent offender if convicted as charged. Ms. Reardon, the attorney who represented him in his two most recent prison sentenced cases, filed her Notice of Appearance in this matter on September 30, 2014 and an agreed order for a 10.77 competency evaluation was filed on October 2, 2014. The defendant was evaluated on October 29, 2014 and ESH evaluator Dr. Lord-Flynn noted no significant concerns. *See his report dated December 9, 2014.* The defendant apparently sent a scathing letter to defense counsel subsequent to the interview which defense counsel forwarded, along with a number of other documents, to Dr. Lord-Flynn. *Id.* This resulted in him scheduling another interview for December 1, 2014, where the defendant opted not to answer any questions after privately consulting with Ms. Reardon. *Id.* Of note, Dr. Lord-Flynn’s subsequently characterized his resulting opinion as influenced by Ms. Reardon – “those considerations (regarding his ability to assist counsel) were primarily based upon information provided by his attorney ...”. *Id.*

In his report dated December 9, 2014, Dr. Lord-Flynn opined that the defendant was not competent essentially due to an unwillingness to work with counsel, and an agreed order for 90-day restoration proceedings was entered on December 11, 2014. The defendant was admitted to ESH on December 22, 2014, and discharged on March 9, 2015, accompanied by an opinion of Dr. Lord-Flynn that the defendant was restored to competency. *See Report dated March 6, 2015.*

A contested competency hearing was held before Judge Harold Clarke on April 24, 2015. The parties relied upon the reports of the experts, briefing by counsel and oral argument. Ms. Reardon apparently prevented the defendant from testifying at this hearing over his objection. *See Dr. Brown’s report dated October 30, 2015.* The Court ruled that the defendant remained incompetent but again ordered restoration proceedings. The assigned DPA was opposed to the participation of one particular evaluator, so when Ms. Reardon drafted this order

she indicated that “the prosecuting attorney’s office has exercised its right under RCW 10.77.060(1)(a) to approve a specific expert and that Dr. Daniel Lord-Flynn shall remain the appointed expert on this case.” Dr. Lord-Flynn’s assigned duties, at the time, did not include re-evaluating for competency after restoration but he abided by the court order and evaluated the defendant on October 5, 2015. Dr. Lord-Flynn again opined that the defendant is competent. *See Report dated October 13, 2015.*

On September 25, 2015, before the ESH evaluation and report were even done, Ms. Reardon again requested funds to retain Dr. Debra Brown as an independent expert for the defendant. There is no indication that the defendant requested this intervention and his subsequent refusal to meet with her suggests otherwise although Dr. Brown did observe Dr. Lord-Flynn’s evaluation at Ms. Reardon’s request. *See Report by Dr. Brown date October 30, 2015.* Dr. Brown subsequently opined that the defendant is not competent. *Id.* The defendant has since requested that a jury determine whether he is competent. Ms. Reardon has since submitted briefing requesting that she be allowed to render her opinion as a witness (while still maintaining representation of the defendant) to the jury.

II. LAW AND ARGUMENT

The 14th Amendment and Washington law prevent a court from convicting an incompetent person. *Drope v Missouri*, 420 US 162, 171 (1975); RCW 10.77.050. The Court will conduct a hearing to determine if a defendant is competent. *See RCW 10.77.065, amended by Laws of 2013, ch. 214.* The defendant, the defendant’s attorney, or the prosecutor may demand that the competency hearing be conducted before a jury. *RCW 10.77.086(3).* The defendant has made a demand for a jury trial in this matter.

Although RCW 10.77 does not explicitly assign the burden of proof to either party, the statutes are interpreted to “place the burden on the party challenging competency.” *State v Coley*, 180 Wash. 2d 543, 554, 326 P.3d 702 (2014). RCW 10.77.084 operates in conjunction with RCW 10.77.086 in felony cases. *Id. at p. 555 citing State v. Hurst*, 173 Wash.2d at 603–04,

269 P.3d 1023 (citing RCW 10.77.086 and .084 together as governing the initial 90-day treatment and restoration period). In felony criminal charges, RCW 10.77.086 applies to his competency hearings. RCW 10.77.086 asks the trier of fact - typically the court - to determine, by a preponderance of the evidence, whether the defendant is incompetent. *Id.* The party challenging competency has the incentive to present this preponderance of evidence. *Id.* The party arguing that the defendant is competent to stand trial merely defends against any assertions of incompetency presented by the opposing party. *Id.* It is the defendant's burden to prove that he is incompetent. *Id.*

"No incompetent person shall be tried, convicted, or sentence for the commission of an offense so long as such incapacity continues." RCW 10.77.050. "Incompetency" means that a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect." RCW 10.77.010. The fact that the defendant understands that there is a judge in the courtroom, that the prosecutor is trying to convict him of criminal charges, that he has a lawyer to help him, and that he can recall past facts and relate them shows competency. *State v. Ortiz*, 104 Wn.2d 479, 482-83, 706 P.2d 1069 (1985), cert. denied, 476 U.S. 1144 (1986), affirmed, 119 Wn.2d 294, 831 P.2d 1060 (1992). The court will also consider the person's apparent understand of the charge, consequence of the conviction, apparent understanding of the facts giving rise to the charge, and the ability to relate the facts to his attorney in order to help prepare the defense. *City of Seattle v. Gordon*, 39 Wash. App. 437, 442, 693 P.2d 741, review denied, 103 Wn.2d 1031 (1985).

The Court is authorized to consider defense counsel's input as a non-dispositive factor entitled to considerable weight according to a number of cases noted by defense counsel. In all of these cases, and in nine out of ten cases citing *State v Israel*, 19 Wash. App. 773, 577 P.2d 631 (1978), it was the Court which determined whether the defendant was incompetent. In one, *State v Toliver*, 96 Wash. App 1020 (1999), the unpublished opinion references testimony from his "former attorney on the case." The circumstances under which said testimony was proffered are unclear

from the opinion. The State is unaware of any case in the State of Washington that has allowed a current defense attorney to testify on behalf of a criminal defendant under similar circumstances.

1. Understanding the Nature of the Charges

There is no hard standard by which the court can judge whether the defendant understands the nature of the charges against him; rather, the court is allowed to make a determination from a variety of factors, such as “appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel.” *State v. Dodd*, 70 Wn.2d 513, 514 (1967).

Even defendants suffering significant mental disabilities can understand the charges against them. See *State v. Ortiz*, 104 Wn.2d 479 (1985). The defendant in *Ortiz* was classified as mildly mentally retarded, spoke with a speech impediment, and claimed to suffer from memory problems. *Id.* at 482. He did not know “what the shape of a ball [was] or where rubber [came] from. He [could not] name four presidents, he [thought] Longfellow was Jesus, and [thought] that there [was] 1 day in a week.” *Id.* But he understood the roles of the judge, prosecutor, and his own lawyer. *Id.* at 482-83. This minimal understanding was sufficient for the court to find that the defendant understood the charges against him and was competent to stand trial. *Id.* In this case, all involved agree that the defendant understands the nature of the charges against him.

2. Assisting in His Defense

Defendants will be deemed to adequately assist in their own defense so long as they can recall an incident or relate facts *sufficiently* well to their attorney. See *State v. Harris, III*, 114 Wn.2d 419, 428-29 (1990) (emphasizing that a defendant’s ability to assist “is a minimal requirement”). A defendant is not expected to propose a trial strategy, nor even be able to choose from alternative trial strategies suggested by counsel. *Ortiz*, 104 Wn.2d at 483. See also, *State v. Benn*, 120 Wn.2d 631, 662, 845 P.2d 289 (1993). A disagreement between the accused and his lawyer, without more, also does not raise the issue of competency. *State v. Lord*,

117 Wn.2d 829, 901, 822 P.2d 177 (1991). Even a situation where a defendant might act against their own best interests over against the advice of their counsel does not make that person incompetent. The fact that a person has been previously committed to a mental institution is not determinative of present competency. *State v. Scott*, 93 Wn.2d 7, 15, 604 P.2d 943 (1980). Furthermore, “[s]tate and federal courts have also upheld findings of competency despite the defendant’s diagnosed schizophrenia (a term which includes paranoia, manic-depressive disorder, and what used to be called dementia praecox).” *Harris*, 114 Wn.2d at 429.

In this case, the defendant is more than capable of participating in his own defense, as he can recall past incidents and communicate facts to his counsel. Furthermore, he can properly identify which attorney is his and that any refusal of a plea deal will result in incarceration. *Id.* This demonstrates an ability to assist council that goes well beyond the “minimal requirement” of threshold competency. *See Harris*, 114 Wn.2d at 429.

It appears that the totality of evidence indicates that there is a breakdown in the relationship between Ms. Reardon and the defendant. The defendant understands the various proceedings and has repeatedly expressed his desire to work with a different attorney. The fact that he and Ms. Reardon disagree about trial strategy does not make him incompetent.

Bi-polar disorder, by itself, would not ordinarily affect competency. Extreme delusional or paranoid features might lead to incompetency but these appear to be appropriately medicated and in remission at this time. It seems that the Court might want to consider avenues to ameliorate the breakdown in the relationship between the defendant and this particular counsel.

3. Proposed Defense Testimony

Washington state law explicitly states that a lawyer “shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.” RCW 5.60.060(2)(a). It is a well-known fact that an attorney cannot unilaterally waive the attorney client privilege; the

defendant is the only one allowed to waive. *State v. Marshall*, 83 Wash. App. 741, 923 P.2d 709 (1996).

The Division One Court of Appeals is apparently the only Washington State Court that has reviewed an issue similar to this present case, where a defendant has requested that a jury determine his competency. *State v. Webbe*, 122 Wash. App. 683, 94 P.3d 994 (2004), Webbe had two attorneys and one of them planned to testify at the hearing regarding his opinions about Webbe's competency. The trial judge, concerned that confidential attorney client information would be discussed during the hearing, proposed appointing a guardian-ad-litem to determine if Webbe could and should waive this privilege. Webbe's attorneys proceeded without the appointment, and provided confidential information to the State. Webbe's attorneys subsequently noted that Webbe had not waived his right to attorney-client privilege and the State returned the written information. A guardian-ad-litem was then appointed and Webbe refused to waive the attorney-client privilege. Trial commenced without his attorney's testimony and Webbe was deemed competent by the jury.

Upon review, the Court of Appeals confirmed that "[a] party's offer of his attorney's testimony as to a part of any communication to the attorney constitutes a waiver of the privilege as to the whole of that communication." *Id* at 691. The Appeals court noted that the trial court gave the attorneys ample opportunity to alter their course and affirmed the trial court's determination that, if the attorney testified, it would be a waiver of privilege. *Id* at 692. The language of the appellate court is explicit: "The [trial] court presented Webbe's attorneys with a clear choice, and with time to confer and reflect. They repeatedly chose the route that *required waiver*." *Id* at 693. The Court further noted that defense counsel's disclosure of privileged information without the client's consent was both "unsettling" and a "grievous error" yet upheld the determination of competency and the defendant's subsequent conviction. *Webbe*, 122 Wash. App. at 694–99.

In this case, Ms. Reardon also seeks to testify on her client's behalf. She is not seeking replacement counsel, only the assistance of a colleague to conduct the direct examination of herself. RCW 5.60.060 (2)(a) controls this scenario - it prohibits an attorney from acting as a witness in the same matter. It is obvious that such a restriction is in place to protect the attorney-client privilege. The 3rd Circuit noted that "few lawyers possess even a rudimentary understanding of psychiatry [they] therefore are wholly unqualified to judge the competency of their clients. *Hull v. Freeman*, 932 F.2d 159 (3d Cir. 1991). While Ms. Reardon certainly surpasses the average defense – or prosecution – attorney in her breadth of knowledge in this area, she is not a licensed Psychologist or Psychiatrist. Furthermore, absent offering privileged information, there is no evidence that her testimony would surpass that of a qualified expert.

The Washington State Bar Association has issued two opinions of assistance in this matter - No. 2190 (2009) and No. 2099 (2005) - addressing RPC 1.6 which prohibits disclosure of attorney-client communications without consent. Opinion No. 2190 § 3.2.2 states, "Because a lawyer could simply inform the court of the existence of a competency issue, the lawyer should not disclose any communications that would be protected by the attorney-client privilege, and should not disclose any other secrets, including non-verbal gestures and observations." See also *United States v. Battle*, 264 F.Supp.2d 1088 (N.D.Ga.2003) ("If counsel were allowed to testify, they would be subject to cross-examination. This would raise the issue of waiver of attorney-client privilege. Counsel... should advise the Court when there are difficulties in communicating with a client... [but] this cannot be done through sworn testimony of counsel.") Opinion No. 2099 extensively references the decision in *Webbe* and notes: "Whether a client has the capacity to give informed consent depends on the particular facts, but the Committee believes that asking for consent is problematic if competence of the person giving it is an issue. In most situations, counsel will be able to disclose a concern to the court without revealing the confidential communication that led to the concern. In other situations, it may be appropriate for the lawyer to seek appointment of a limited guardian ad litem or independent consent counsel in

order to protect and assert the client's interests on the consent issue." See *Webbe*, 122 Wn. App. at 689 n.12, 693 n.20.

Should Ms. Reardon maintain her desire to testify as a witness in this matter, she must be granted a waiver by her client. To proceed without that waiver would be outside her authority. *Webbe*, 122 Wash. App. at 693. In that event, the Court should appoint a guardian-ad-litem to assess the defendant's ability to waive.

The defense relies on RPC 3.7, *State v Crenshaw*, 27 Wash. App. 326 and its progeny to argue that prohibiting her from testifying and defending her client would be prejudicial to his interests and ignore the "great weight" that should be given to her opinion. The State finds it hard to see how revealing privileged information, under oath, and subject to cross examination, before a jury, would not be prejudicial to the defendant. Allowing a defendant's attorney to testify in this scenario opens a flood gate of ethical concerns and creates great risk that the client will be harmed. Further, while arguing that the risk of confusing or misleading jury members is "exceptionally minimal" the defense fails to proffer any compelling reasons for this conclusion. The majority of case law which relates to competency hearings deals with hearings before the Court, not a jury. *State v. Webbe* is the exception. Comment 4 to RPC 3.7 speaks of misleading the tribunal (which is recognized as the presiding judge, not a jury) again speaking to the difference between hearings before a judge versus a jury. While defense counsel argues that RPC 3.7 comment 4, RPC 1.7, 1.9, and 1.10 have no application to whether an attorney should be disqualified *by the court*, comment 6 makes it explicit that those RPC's should be taken into consideration *by the attorney* when deciding to make the choice to testify; to forestall any conflict to interest which may occur. This comment adds that a waiver should still be sought if counsel chooses to go through with testifying.

As far as the defense's contention that great weight needs to be given to their testimony, the case which they cite holds that "a lawyer's opinion alone cannot be determinative. *State v. Swain*, 93 Wash. App. 1, 968 P.2d 412 (1998); see also *State v Crenshaw*, 27 Wash. App. at

326, 617 P.2d 1041 (1980) (The court expressly declined to be bound by defense counsel's reservations about the defendant's competency). In *Swain*, the Court rejected the defendant's argument that greater weight should have been given to his attorney's testimony. *Id.* Consideration of a defense attorney's opinion as to her client's competency is constructed in case law, it is not a statutorily granted right, thus addressing whether it is appropriate to allow an attorney to proffer this opinion should be reviewed in of the context in which it is primarily provided. This "great weight" that *needs* to be given by the trial court is less applicable in this situation when the testimony will be given to a jury, as their instructions are to weigh the evidence as they see fit. *WPIC 1.02*.

The relevant case law actually indicates that defense counsel's representations as to a client's competency is entitled to "considerable weight" but that it is "not dispositive", *State v Israel*, 19 Wash. App. 773, 779, 577 P.2d 631 (1978), nor must the Court be bound by defense counsel's reservations about the defendant's competency. *State v Crenshaw*, 27 Wash. App. 326, 331, 617 P.2d 1041 (1980).

4. Stay of Proceedings

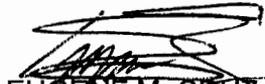
If the defendant is deemed incompetent, the proper remedy is to stay these proceedings. RCW 10.77.084(1)(a) states that if a defendant is found incompetent at any stage of the proceedings, the matter shall be stayed. Since the defendant has already submitted to two rounds of competency restoration period the charges would ordinarily "be dismissed without prejudice." *RCW 10.77.086(4)*. However, the court may order an extended period of commitment for an additional six months if the court or the jury finds the defendant is a substantial danger, the defendant is likely to commit criminal acts endangering the public, and there is a substantial likelihood that the defendant will regain competency within a reasonable time. *Id.*

III. CONCLUSION

The defendant should be found competent because (1) he is able to understand the charges against him, and (2) he is able to assist in his defense. However, if the defendant is found incompetent, then the proper remedy would be to stay the proceedings and institute an extended restoration period followed by consideration of civil commitment proceedings.

RESPECTFULLY SUBMITTED this 21st day of January 2016.

LAWRENCE H. HASKELL
Prosecuting Attorney



EUGENE M. CRUZ
Deputy Prosecuting Attorney
WSBA# 27114



For: SHARON L. HEDLUND
Deputy Prosecuting Attorney
WSBA# 27263



For: MICHAEL A. JOLSTEAD JR.
Rule 9 Legal Intern
ID# 9484053

ORDER TO TRANSFER TO COURT
OF APPEALS

**SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE**

STATE OF WASHINGTON

CASE NO. 2014-01-03384-3

vs.

MATTHEW McCARTHY
01/09/79

**ORDER TO TRANSFER TO COURT
OF APPEALS**

I. BASIS

The court on its own motion moved the court for: an order to transfer this matter of motion for relief from judgment to the Court of Appeals, Division III as a personal restraint petition.

II. FINDING

After reviewing the case record to date, and supplemental response, the court finds that: good cause exists to transfer this matter as a personal restraint petition, as provided in CrR 7.8(c)(2); and further that the ends of justice are served by said transfer, and therefore:

III. ORDER

IT IS ORDERED that: the above referenced motion for relief from judgment is transferred to the Court of Appeals, Division III. Petitioner's pleadings are also to be transferred to effectuate this determination.

Dated: June 13, 2016


GREG SYPOLT

JUDGE

ORDER VACATING ORDER TO
TRANSFER TO COURT OF APPEALS

Superior Court of the State of Washington
for the County of Spokane

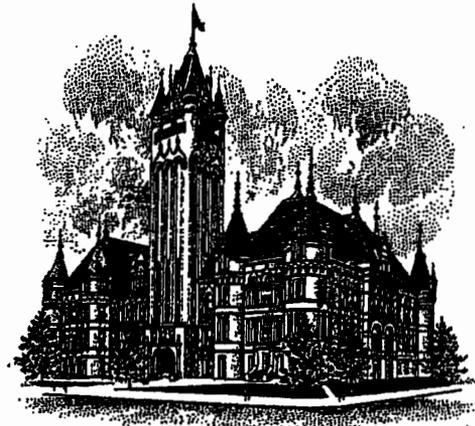
Department No. 7

Maryann C. Moreno
Judge

Tulja Wilkening
Judicial Assistant

Terri Cochran
Court Reporter

TEL: (509) 477-4712
FAX: (509) 477-5714 • TDY: (509) 477-5790
email: dept7@spokanecounty.org



1116 W. Broadway, Room 307
Spokane, Washington 99260-0350

June 22, 2016

Ms. Renee Townsley
Court of Appeals, Division III
500 N. Cedar Street
Spokane, Washington 99201

RE: Petition for Writ of Habeas Corpus – Transfer to Court of Appeals
Cause No. 2014-1-03384-3, *State v. Matthew S. McCarthy*

Dear Ms. Townsley,

Please see the attached Order Vacating Order to Transfer to Court of Appeals filed today.

Sincerely,

Maryann Moreno
Judge

cc: Eugene M. Cruz
Matthew McCarthy
Dennis J. Dressler
Court file

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

STATE OF WASHINGTON,

Plaintiff,

vs.

MATTHEW McCARTHY,

Defendant.

Case No. 14-1-03384-3

**ORDER VACATING ORDER TO
TRANSFER TO COURT OF APPEALS**

This matter is before the court on it's own motion brought to vacate the previous Order filed June 16, 2016, that transferred the defendant's Petition for Habeas Corpus to the Court of Appeals for consideration pursuant to Cr R 7.8 as a Personal Restraint Petition.

Good cause exists in that the matter is properly heard before Dept. 7 which is the preassigned court and is scheduled to be heard on Friday June 24, 2016. Further, transfer is not in accordance with the relevant court rule. Therefore,

IT IS HEREBY ORDERED THAT

The Order Transferring the defendant's Writ of Habeas Corpus filed June 16, 2016 is hereby vacated.

Dated this 21ST day of June, 2016.



**MARYANN C. MORENO
JUDGE**

SPD REPORT NUMBER 14-319141

INCIDENT REPORT

Document:A

Spokane Police/Spokane County Sheriff

Page 1

AGENCY NAME/SUBSTATION SPD		EVIDENCE NUMBER		INCIDENT NUMBER 14-319141	
INCIDENT TYPE Domestic Violence, Information		INCIDENT CLASSIFICATION #1 DOMESTIC DSPT-FMLY		ATTEMPTED <input type="checkbox"/>	
		INCIDENT CLASSIFICATION #2		ATTEMPTED <input type="checkbox"/>	
		INCIDENT CLASSIFICATION #3		ATTEMPTED <input type="checkbox"/>	
		INCIDENT CLASSIFICATION #4		ATTEMPTED <input type="checkbox"/>	
RESPONDING TO (Officer Assault)				ASSIGNMENT (Officer Assault)	
REPORTED ON Sun 09/21/2014 09:25	DATE/TIME	OCCURRED ON Sat 09/20/2014 19:00	DATE/TIME	OCCURRED TO Sun 09/21/2014 04:04	DISTRICT
DISPATCH TIME	ARRIVED TIME	CLEARED TIME	REPORT DATE 09/21/2014	REPORT TIME 11:20	EST. TOTAL PROPERTY LOSS
PRIMARY CHARGE					UCR/NIBRS CODE
LOCATION OF INCIDENT 2907 E 29th, Spokane, WA 99223				LOCATION NAME (IF APPLICABLE)	
SOLVABILITY FACTORS None					
RELATED INCIDENT NUMBERS					INCIDENT XREF
ADDITIONAL REPORTING OFFICERS None					
WSP-503					
CODE S-1	NAME: LAST, FIRST, MIDDLE McCarthy, Matthew S			SEX M	RACE/ETHNICITY B-Black
DATE OF BIRTH/AGE 01/09/1979 35		HEIGHT 6'00"	WEIGHT 160	BUILD Medium	HAIR Black
EYES Brown		DESCRIPTORS			
CONFIDENTIALITY <input type="checkbox"/>	ADDRESS: STREET, CITY, STATE ZIP 3407 E 29th Avenue, Spokane, WA 99223			RESIDENTIAL STATUS	PHONE
PLACE OF EMPLOYMENT/SCHOOL/ ADDRESS A.1.1			OCCUPATION	EMPLOYER PHONE	
DRIVER'S LICENSE MCCARMS216BZ	<input type="checkbox"/> FAKE	STATE WA	SOCIAL SECURITY NO. [REDACTED]	<input type="checkbox"/> FAKE	OTHER ID
WSP-503					
CODE CV-1	NAME: LAST, FIRST, MIDDLE McCarthy, Laura J			SEX F	RACE/ETHNICITY W-White
DATE OF BIRTH/AGE 03/11/1981 33		HEIGHT 5'01"	WEIGHT 150	BUILD Medium	HAIR Brown
EYES BRO - Brown		DESCRIPTORS			
CONFIDENTIALITY <input type="checkbox"/>	ADDRESS: STREET, CITY STATE ZIP 3407 E 29th Avenue, Spokane, WA 99223			RESIDENTIAL STATUS	PHONE
PLACE OF EMPLOYMENT/SCHOOL/ADDRESS A.1.2			OCCUPATION	EMPLOYER PHONE	
ADDITIONAL PHONES (Cell) 868-1532, (Cell) (509) 475-6788					
DRIVER'S LICENSE MCCARLJ195DJ	<input type="checkbox"/> FAKE	STATE WA	SOCIAL SECURITY NO. [REDACTED]	<input type="checkbox"/> FAKE	OTHER ID
WSP-503					

Laura called to report an assault that had occurred on 09/20/2014. Laura was at her mother's house

ID NO./NAME OF REPORTING OFFICER #106 - Willard, John	DISTRIBUTION
APPROVAL #244 - Lee, Thomas	DATE/TIME 09/21/2014 16:57

Incident Report #1

09/21/2014 17:08:17.432

INCIDENT REPORT CONTINUED

Spokane Police/Spokane County Sheriff

Page 2

INCIDENT CLASSIFICATION DOMESTIC DSPT-FMLY	ATTEMPTED <input type="checkbox"/>	INCIDENT NUMBER 14-319141
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at 2710 E. 40th today and Matthew was driving around in the area. I arrived on 40th and Matthew had left. Laura said that they had been married and have children in common. Laura said that they were in the car on 09/20/2014 and were arguing. Laura said that she opened the door to get out while the car as still moving and Matt grabbed her arm. Laura said that the grab was not an assault and that he told her to wait until the car stopped to get out. Matt did stop the car and she got out uninjured.

Laura said that Matthew was at her house on 29th tearing it apart. Lt. McCabe and I responded to the house on 29th. Matthew was not there. The house was ransacked in a manner that looked like Matt was looking for something. Items were thrown around, but not damaged. The fence was damaged by the driveway. A neighbor told Lt. McCabe that Matt had accidentally backed into it. Laura got some clothing and was returning to her mother's home. Laura screened into the LAP and said that she had been in contact with the DV professionals and did not need to talk to them today. Laura was given a crime victim card.

J. Willard #106
SPD Patrol
09/21/2014



09/21/2014 17:08:17.447

DOMESTIC VIOLENCE LETHALITY SCREEN FOR FIRST RESPONDERS

Officer: J. Willard 106		Date: 9-21-14	Case#: 14-519141
Victim: McCarthy, Laura J		Offender: McCarthy, Matthew J.	
Age: 32	Race: W	Phone: 509-869-6496	Gender: F
<input type="checkbox"/> Check here if victim did not answer any of the questions.			
▶ A "Yes" response to any of Questions #1-3 automatically triggers the protocol referral.			
1. Has he/she ever used a weapon against you or threatened you with a weapon?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Ans.
2. Has he/she threatened to kill you or your children?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Ans.
3. Do you think he/she might try to kill you?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Ans.
<i>Negative responses to questions #1-3, but positive responses to at least four of Questions #4-11, trigger the protocol referral.</i>			
4. Does he/she have a gun or can he/she get one easily?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Ans.
5. Has he/she ever tried to choke you?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Ans.
6. Is he/she violently or constantly jealous or does he/she control most of your daily activities?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Ans.
7. Have you left him/her or separated after living together or being married?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Ans.
8. Is he/she unemployed?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Ans.
9. Has he/she ever tried to kill himself/herself?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Ans.
10. Do you have a child the he/she knows is not his/hers?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Ans.
11. Does he/she follow or spy on you or leave threatening messages?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Ans.
An officer may trigger the protocol referral, if not already triggered above, as a result of the victim's response to the below questions, or whenever the officer believes the victim is in a potentially lethal situation.			
Is there anything else that worries you about your safety? (If "yes") What worries you?			
Check one: <input checked="" type="checkbox"/> Victim screened in according to protocol <input type="checkbox"/> Victim screened in based on the belief of the officer <input type="checkbox"/> Victim did not screen in			

Note: The questions above and the criteria for determining the level of risk a person faces is based on the best available research on factors associated with lethal violence by a current or former intimate partner. However, each situation may present unique factors that influence risk for lethal violence that are not captured by this screen. Although most victims who screen "positive" or "high danger" would not be expected to be killed, these victims face much higher risk than that of victims of intimate partner violence.

**Conducting a Lethality Screen
for First Responders**
Following the Protocol

When to Initiate a Lethality Assessment

- When an intimate relationship is involved;
AND
- You believe an assault has occurred,
- You sense the potential for danger is high,
- Names of parties or location are repeat names or locations, or
- You simply believe one should be conducted.

How to Conduct a Lethality Assessment

- Use *Lethality Screen for First Responders*,
- After asking questions, handle information as follows:
 - Yes to Q.1, 2, or 3 = Protocol Referral
 - No to Q.1-3, but Yes to four of Q.4-11 = Protocol Referral
- "No" responses may still trigger Protocol Referral if first responder believes it appropriate.
- Ask unnumbered question to help determine whether protocol referral should be triggered.

Not Screened In or Did/Could Not Participate in Assessment

1. Advise of dangerous situation.
2. Advise to watch for signs of danger.
3. Refer to provider.
4. Provide first responder contact information.
5. Prepare report.

Screened In -

Implementation of the Protocol Referral Process

1. Advise of assessment.
2. Advise victim he/she is in danger and that people in his/her situation have been killed.
3. Advise that you need to call hotline and you would like for victim to speak with counselor.
(Remember: You are seeking the victim's permission.)
4. If victim does not want to speak with counselor, tell victim you need to speak with counselor to seek guidance and gently ask victim to reconsider.
5. If victim still does not want to speak with counselor, use same procedures as in first response.
6. If victim wants to leave, arrange for or provide transportation.
7. Assist counselor with safety planning if asked.
8. Notify domestic violence unit or supervisor.
9. Prepare report.



**SPOKANE POLICE DEPARTMENT
SPOKANE COUNTY SHERIFF'S OFFICE
YWCA**

**DOMESTIC VIOLENCE
LETHALITY ASSESSMENT
PROGRAM**

**24 HOUR DV ADVOCATE HOTLINE
509-326-CALL (2255)**

DOMESTIC VIOLENCE UNIT INVESTIGATORS
SPD DETECTIVE 509-477-3670
SCSO DETECTIVE 509-370-0260

**This project funded by the 2011 OVW grant to encourage
arrest policies and enforcement of protection orders**

NOVEMBER 1, 2016

FILED

NOV 03 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

MATTHEW MCCARTHY #236775
SPOKANE COUNTY JAIL

RE: TRANSFER HOLD, NOTARY/CLERICAL ISSUE.

DEAR MS. TOWNSLEY,

I APOLOGIZE PROFUSELY THAT I EVEN HAVE TO ASK, BUT COULD YOU MAKE ME A COMPLETE COPY OF THE FILINGS AND SEND IT BACK TO ME? I BEGAN A HAND WRITTEN COPY BUT REALIZED THE DOCUMENTS ATTACHED ARE MY ONLY COPY. I AM BEING DENIED LEGAL SERVICES HERE IN THE COUNTY; MY CASE INVOLVES AN OLD COLLEAGUE OF STAFF HERE SO BECAME PERSONAL, AND ANYTHING THAT CAN BE DONE TO HINDER MY PROGRESS, HENCE THE LACK OF NOTARY.

I AM ASKING A HOLD TO BE PLACED ON ME UNTIL MY PRP IS HEARD OR I WILL BE TRANSFERRED TO DOC IN A MATTER OF WEEKS.

RESPECTFULLY,



MATTHEW S. MCCARTHY