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FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 JUL 18 AM 10:54

WASHINGTON STATE COURT OF APPEALS
DIVISION ONE

STATE OF WASHINGTON,)
Plaintiff,) No. 65557-4-I
)
) STATEMENT OF ADDITIONAL
) GROUNDS FOR REVIEW
MARCUS ZAMUDIO-OROZCO,)
Defendant,) Pursuant to RAP 10.10

G R O U N D O N E

Late Amended Information

Zamudio-Orozco's trial commenced on 5-4-10, and the State amended the information and added charges. This resulted in his defense counsel being inadequately prepared for the presentation and defense of the newly added charges. Zamudio-Orozco was put into a classic Hobson situation in his case.

Zamudio was forced to choose between his right to effective representation, and his right to a speedy trial that was delayed before the amending of charges, which occurred on May 5th, the second day of trial. The Washington State Supreme Court interpreted Cr.R 8.3(b) in State v. Michielli, by ruling that "governmental mismanagement satisfies the 'misconduct' element [of 8.3(b)]." see 132 Wn.2d 229, 243, 937 P.2d 587.

1 In Michielli, the state's late action forced the defense
2 to waive the defendant's right to speedy trial or proceed un-
3 prepared. The court found that this late action by the state
4 prejudiced the defendant, and satisfied the misconduct element
5 of 8.3(b). Id. at 245. Specifically, the court held that the
6 defendant was prejudiced in that he was forced to waive his
7 speedy trial rights and ask for a continuance to prepare for
8 the surprise charges brought three business days before, to
9 waive his speedy trial is not a trivial event...The state's
10 delay in amending the charges, coupled with the fact...can
11 reasonably be considered mismanagement. Id. at 245-46.

12 Zamudio's counsel responded with the following:

13 Defense Counsel: Well, what I would like the court
14 to do is certainly. What I would
15 like the court to do is not allow
16 the amendments. If the court al-
17 lows the amendment, then I would
18 when I am provided the information,
19 that I may have a separate motion,
20 I just don't--I knew these counts
21 were coming, but I still don't have
22 the discovery to support them. So I
23 would again just object to the am-
24 endment.

25 (see VRP 5-5-10, pg. 178, Ln. 2.)

26 Zamudio points to the case of Williams, 135 Wn.App. 1029,
where the court held that amendment of information on day of
trial was prejudicial and impermissibly forced the defendant
to choose between his right to effective representation and
his right to a speedy. Reversed and Remanded. Zamudio wants
this court to review the prejudicial effect of the late amend-
ments, and reverse his conviction. (see Exhibits A.)

1 G R O U N D T W O

2 Violation of Speedy Trial

3 Zamudio's trial was originally set to expire on 2-5-10,
4 but the court granted a series of continuances (without expl-
5 anation), in which he did not sign. Zamudio's trial actually
6 commenced on 5-4-10, which was 70 days after the expiration
7 date. Zamudio never signed any continuances, and if the State
8 wishes to contest this fact, then Zamudio requests that this
9 court grant an evidentiary hearing. Zamudio supplies these
10 facts relating to his speedy trial rights; (1) that he made
11 objections to the continuances in open court; (2) the trial
12 expiration date was extended numerous times; (3) the defense
13 was prepared to proceed each time the delays would occur.

14 Zamudio strongly points out that he was arrested on 11-22-09
15 and was not brought to trial until 5-4-10. The provisions in
16 Cr.R 3.3 clearly state; (see Exhibit B 2 PG 2 LINE 10)

17 3.3(c)(1); "A defendant not released from jail pending
18 trial shall be brought to trial no later
than 60 days after the date of arraignment."

19 3.3 (c) (2); "It shall be the responsibility of the court
20 to ensure a trial in accordance with this
rule to each person charged with a crime."

21 3.3 (h); "A criminal charge not brought to trial within
22 the time period provided by this rule shall be
dismissed with prejudice."

23 "Washington Criminal Court Rules, like statutes should be
should be construed to foster the purpose for which they were
24 annotated."

see In re Glothlen, 99 Wn.2d 515, 522, 633 P.2d 1330.

25 The purpose of Cr.R 3.3 is to provide "a prompt trial for
26 the defendant once prosecution is initiated. Edwards, 99 Wn.2d 208.

1 Over his numerous objections, Zamudio suffered numerous
2 prejudicial continuances, and was placed in a Hobson's choice
3 and was forced to choose between two constitutional rights
4 which were, (1) proceed with unprepared counsel; (2) abandon
5 his speedy trial rights, in which both are Sixth Amendment
6 rights to a fair trial. After the 60 day trial date expired,
7 State's complaining witnesses disappeared, and was
8 found in California 3 months later. The State responded with
9 the following: (see Exhibit B.)

10 The State: I just wanted to--and Mr. Bradley knows
11 this--but as the court knows, we have
12 multiple witnesses, so I was waiting.
13 We basically have everyone at bay, wait-
14 ing to see what happens this morning to
15 see whether or not were tickets or they
16 are going to start coming up. And so
17 just to let the court know, I'm thinking
18 right now maybe the earliest we get one
19 of the out-of-state witnesses on the stand
20 is Monday. I'm hoping that works for ever-
21 one. (see VRP 5-5-10, pg. 129, Ln. 18)

22 Having factually established a jeopardizing of Zamudio's
23 speedy trial rights, he notes that the expiration date seems
24 to have suffered surreptitious attempts to secret it from the
25 record. "In bringing the defendant to trial, the prosecution
26 must uphold its duty in good faith and with due diligence.

27 The failure to comply with the speedy trial rule requires
28 dismissal, whether or not the defendant can show prejudice."
29 State v. Ross, 98 Wn.App. at 5. "The right to a speedy trial
30 under rule Cr.R 3.3 is a fundamental right," see State v.
31 White, 23 Wn.App. 438, 440, 597 P.2d 420 (1979).

1 The State had an obligation to provide the lab report as
2 well as disclose its expert witness in a timely manner, also
3 to provide Zamudio with the results so he could prepare a def-
4 ense. This obligation stems from Cr.R 4.7(a), and Zamudio's
5 request for discovery. Namely, all of Zamudio's requests for
6 discovery are intended to obtain information within the know-
7 ledge, possession, or control of each and every member of the
8 prosecutor's staff. Cr.R 4.7(a)(4). The State responded with
9 the following;

10 The State: Essentially what I received, when I
11 received the detective, I forwarded
12 I received it via E-mail. I believe
13 it was April 26th, or might have been
14 over the--sent me over the weekend.
15 At any rate, when it was sent to me,
16 I sent it directly via E-mail to Mr.
17 Bradley, I believe that same day.
18 And so I think the issue will be whether
19 or not--and I don't know exactly when the
20 detective delayed in getting that to me,
21 then that would constitute some sort of
22 prosecutorial misconduct and mismanagement.
23 (see VRP 5-4-10, Pg. 50)

24 The "prosecution team" also includes every single prosec-
25 ator, whether associated with the case or not. see Giglio v.
26 United States, 405 U.S. 150, 154 (1972); Benn v. Lambert, 283
F.3d 1040 (9th Cir. 2002). "The duty to disclosure including
anyone working on the state's behalf, including police." see
Kyles v. Whitley, 514 U.S. 419, 438, 115 S.Ct. 1555, 131 L.Ed.
2d at 294. The prosecutor should have managed his case better
seeing that he had discretion on when to file these charges.

If his attorney had not sought a continuance over Zamudio's

1 objection, the State would not have even disclosed this evid-
2 ence prior to the trial date. The defense reponded with the
3 following;

4 Defense Counsel: So I would say this...well it appears that
5 this court would believe that the complete
6 findings of the DNA exam would be admissible
7 in the form of opinion testimony by Megan
8 Inslee, based on the report. the court still
9 is not persuaded that it should admit the
10 actual report into evidence. I have a couple
11 of questions, and then I don't think we have
12 to delay the trial, now on it. But if counsel
13 believes there needs to be refinement on this,
14 then we'll have a chance to see if there is
15 some authority that would assist the court.
16 Out of curiosity, did Ms. Inslee actually
17 perform the test that is at issue? (see VRP
18 5-12-10, Pg. 7, Ln. 11)

12 The State: I just have one thing. I do want to move to
13 withdraw the DNA exhibit that we use for dem-
14 onstrative purposes while we were on the rec-
15 ord your Honor. It was not admitted into ev-
16 idence, it was just the one the lab used. I'm
17 always supposed to get that back and I forgot
18 to get that back.

16 The Court: Any objection?

17 Defense Counsel: No.

18 The Court: All right. Thank you. It may be withdrawn.

19 The State: Thank you your Honor.

20 (Jury not Present)

(see VRP 5-24-10, pg.12, Ln. 12)

21
22 Counsel was ineffective when he failed to move for a mis-
23 trial after the State withdrew the DNA evidence outside the
24 jury's presence. The defense was also ineffective when he
25 failed to request a curative instruction notifying the jury
26 that the DNA evidence had been withdrawn and that all expert

1 testimony regarding the DNA should be ignored. This ineffect-
2 iveness is overt in the jury's question to the court during
3 its deliberation. the trial judge abused his discretion by
4 not providing a limited instruction telling the jury to ignore
5 the DNA testimony, since the evidence had been withdrawn by
6 the State. The prejudice against Zamudio is obvious, and the
7 outcome of the trial would have been different, had the jury
8 been aware that the State moved to withdraw DNA evidence.

9 This alone, is grounds for reversal and a new trial, based
10 on the fact that four days before the trial, the prosecutor
11 turned over a DNA report which established that DNA from some
12 other man was on the "jeans" and underwear of ZAMUDIO

13 The state used DNA provided by expert Megan Inslee for
14 demonstrative purposes only, never offering it as evidence,
15 and withdrew the testimony at the close of trial. The defense
16 never moved to have the evidence admitted that was exculpatory
17 in favor of Zamudio. During deliberations, the jury submitted
18 a written quest to the court asking the following;

19 **Jury Inquiry:** We would like to see the DNA report concerning
20 Jessica's jeans and Marcus' shorts.

21 **The Court:** You are to consider all of the testimony you heard
22 and the exhibits admitted into evidence as a whole
in light of the court's instructions as a whole.

23 **Jury Inquiry:** We would like to have a copy of the transcript of
the "coded" phone call after arrest (Form F Charge)

24 **The Court:** You are to consider all of the testimony you heard
25 and the exhibits admitted into evidence as a whole
in light of the court's instructions as a whole.

26 The Jury also had questions concerning the verdict forms,

(See Exhibit E.)

1 and submitted the following questions to the court:

2 Jury Inquiry: Do all jurors need to agree on each count to
3 form a verdict on each count? Can a verdict
4 be made on an individual count with just a
5 unanimous vote?

6 The Court: You are to return a unanimous verdict as to
7 each count to which you unanimously agrre.

8 Jury Inquiry: Did the witness know definition of "RAPE."

9 The Court: You are to consider all of the testimony you
10 heard and exhibits admitted into as a whole
11 in light of the court's instructions as a
12 whole.

13 Jury Inquiry: How long do we deliberate on any or all counts?
14 Do we need to decide on each count? Is there any
15 reasonable time limit or do we keep going?

16 The Court: You are instructed to continue your deliberations
17 in accordance with the court's instructions as a
18 whole.

19 Since this case hinges upon that DNA sample which estab-
20 lished that another man committed the crime as charged, the
21 Zamudio's lawyer rendered deficient performance, by not offer-
22 ing the DNA report as an exhibit for the jury to consider in
23 its deliberations. Since the jury requested to view that re-
24 port, there is a substantial likelihood that the DNA report
25 could have changed the outcome of the verdict.

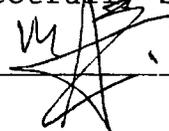
26 C O N C L U S I O N

For reasons above, this court should reverse Zamudio's
conviction, and remand for a new trial.

DATED this 14 day of JULY 2011.

Respectfully submitted,

X



EXHIBIT

A

I. ORIGINAL INFORMATION.
II. AMENDED INFORMATION MAY 6-2010
III. AMENDED INFORMATION MAY 18-2010
IV. MOTION 8.3(b)
18 PGS.

EXHIBIT

A

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COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2011 JUL 18 AM 10:55

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KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

WARRANT ISSUED
CHARGE COUNTY \$200.00

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)
)
 Plaintiff,)
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 v.)
)
 MARCUS A. ZAMUDIO-OROZCO,)
)
)
)
)
)
 Defendant.)

No. 09-1-07750-5 KNT

INFORMATION

COUNT I

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse MARCUS A. ZAMUDIO-OROZCO of the crime of **Rape of a Child in the Second Degree - Domestic Violence**, committed as follows:

That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington, during a period of time intervening between January 1, 2009 through April 3, 2009, being at least 36 months older than J.E.Z. (DOB 04/04/95), had sexual intercourse with J.E.Z. (DOB 04/04/95), who was 13 years old and was not married to the defendant;

Contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT II

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS A. ZAMUDIO-OROZCO of the crime of **Rape of a Child in the Third Degree - Domestic Violence**, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

1 That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington,
2 during a period of time intervening between October 1, 2009 through November 21, 2009, being
3 at least 48 months older than J.E.Z. (DOB 04/04/95), had sexual intercourse with J.E.Z. (DOB
4 04/04/95), who was 14 years old and was not married to the defendant;

5
6 Contrary to RCW 9A.44.079, and against the peace and dignity of the State of
7 Washington.

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COUNT III

24 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS
25 A. ZAMUDIO-OROZCO of the crime of **Rape of a Child in the Third Degree - Domestic
26 Violence**, a crime of the same or similar character as another crime charged herein, which crimes
27 were part of a common scheme or plan and which crimes were so closely connected in respect to
28 time, place and occasion that it would be difficult to separate proof of one charge from proof of
29 the other, committed as follows:

30 That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington,
31 during a period of time intervening between October 1, 2009 through November 21, 2009, being
32 at least 48 months older than J.E.Z. (DOB 04/04/95), had sexual intercourse with J.E.Z. (DOB
33 04/04/95), who was 14 years old and was not married to the defendant;

34 Contrary to RCW 9A.44.079, and against the peace and dignity of the State of
35 Washington.

36 DANIEL T. SATTERBERG
37 Prosecuting Attorney

38 By: 
39 Charles K. Sergis, WSBA #29364
40 Senior Deputy Prosecuting Attorney

FILED
KING COUNTY, WASHINGTON

MAY 08 2010

RECEIVED BY WENDY VICKERY
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7	THE STATE OF WASHINGTON,)	
)	
8		)	No. 09-1-07750-5 KNT
	v.)	
9	MARCUS A. ZAMUDIO-OROZCO,	)	MOTION AND ORDER PERMITTING
		)	FILING OF AN AMENDED
10		)	INFORMATION
)	
11	Defendant.)	

COMES NOW the State of Washington by Daniel T. Satterberg, Prosecuting Attorney, by and through his deputy, and moves the court for an order permitting the filing of an amended information in the above entitled cause.

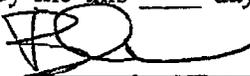
That Benjamin A. Santos is a Deputy Prosecuting Attorney in and for King County, Washington, and is familiar with the records and files herein, and certifies that:

() Newly available information is set forth in the prosecutor's case summary and request for bail.

() The Amended Information more accurately reflects the Defendant's Conduct.

() _____

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct. Signed and dated by me this _____ day of May, 2010, at Seattle, Washington.



Benjamin A. Santos, WSBA #33167
Deputy Prosecuting Attorney

1 That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington,
2 during a period of time intervening between October 1, 2009 through November 21, 2009, being
3 at least 48 months older than J.E.Z. (DOB 04/04/95), had sexual intercourse with J.E.Z. (DOB
4 04/04/95), who was 14 years old and was not married to the defendant;

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Contrary to RCW 9A.44.079, and against the peace and dignity of the State of
Washington.

COUNT III

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS
A. ZAMUDIO-OROZCO of the crime of **Rape of a Child in the Third Degree - Domestic
Violence**, a crime of the same or similar character as another crime charged herein, which crimes
were part of a common scheme or plan and which crimes were so closely connected in respect to
time, place and occasion that it would be difficult to separate proof of one charge from proof of
the other, committed as follows:

That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington,
during a period of time intervening between October 1, 2009 through November 21, 2009, being
at least 48 months older than J.E.Z. (DOB 04/04/95), had sexual intercourse with J.E.Z. (DOB
04/04/95), who was 14 years old and was not married to the defendant;

Contrary to RCW 9A.44.079, and against the peace and dignity of the State of
Washington.

COUNT IV

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS
A. ZAMUDIO-OROZCO of the crime of **Rape of a Child in the Third Degree - Domestic
Violence**, a crime of the same or similar character as another crime charged herein, which crimes
were part of a common scheme or plan and which crimes were so closely connected in respect to
time, place and occasion that it would be difficult to separate proof of one charge from proof of
the other, committed as follows:

That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington,
during a period of time intervening between October 1, 2009 through November 21, 2009, being
at least 48 months older than J.E.Z. (DOB 04/04/95), had sexual intercourse with J.E.Z. (DOB
04/04/95), who was 14 years old and was not married to the defendant;

Contrary to RCW 9A.44.079, and against the peace and dignity of the State of
Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do accuse the defendant MARCUS A.
ZAMUDIO-OROZCO at said time of committing the above crime against a family or household
member; a crime of domestic violence as defined under RCW 10.99.020.

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COUNT V

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS A. ZAMUDIO-OROZCO of the crime of **Rape of a Child in the Third Degree - Domestic Violence**, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington, during a period of time intervening between October 1, 2009 through November 21, 2009, being at least 48 months older than J.E.Z. (DOB 04/04/95), had sexual intercourse with J.E.Z. (DOB 04/04/95), who was 14 years old and was not married to the defendant;

Contrary to RCW 9A.44.079, and against the peace and dignity of the State of Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendant MARCUS A. ZAMUDIO-OROZCO at said time of committing the above crime against a family or household member; a crime of domestic violence as defined under RCW 10.99.020.

COUNT VI

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS A. ZAMUDIO-OROZCO of the crime of **Tampering With a Witness**, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington, during a period of time intervening between November 22, 2009 through February 15, 2010, did attempt to induce a witness or person he has reason to believe may have information relevant to a criminal investigation, or withhold from a law enforcement agency information which he or she has relevant to a criminal investigation, ;

Contrary to RCW 9A.72.120, and against the peace and dignity of the State of Washington.

COUNT VII

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS A. ZAMUDIO-OROZCO of the crime of **Misdemeanor Violation of a Sexual Assault Protection Order**, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely

1 connected in respect to time, place and occasion that it would be difficult to separate proof of one
2 charge from proof of the other, committed as follows:

3 That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington,
4 during a period of time intervening between December 7, 2009 through February 15, 2010, did
5 know of and willfully violate the terms of a King County Superior Court Order issued on
6 December 7, 2009, pursuant to RCW 7.90, for the protection of J.E.Z. (DOB 04/04/95), by
7 having contact with J.E.Z. (DOB 04/04/95);

8 Contrary to RCW 26.50.110(1), and against the peace and dignity of the State of
9 Washington.

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COUNT VIII

8 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS
9 A. ZAMUDIO-OROZCO of the crime of **Misdemeanor Violation of a Sexual Assault**
10 **Protection Order**, a crime of the same or similar character and based on the same conduct as
11 another crime charged herein, which crimes were part of a common scheme or plan and which
12 crimes were so closely connected in respect to time, place and occasion that it would be difficult
13 to separate proof of one charge from proof of the other, committed as follows:

14 That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington,
15 during a period of time intervening between December 7, 2009 through February 15, 2010, did
16 know of and willfully violate the terms of a King County Superior Court Order issued on
17 December 7, 2009, pursuant to RCW 7.90, for the protection of J.E.Z. (DOB 04/04/95), by
18 having contact with J.E.Z. (DOB 04/04/95);

19 Contrary to RCW 26.50.110(1), and against the peace and dignity of the State of
20 Washington.

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DANIEL T. SATTERBERG
Prosecuting Attorney

By: 
Benjamin A. Santos, WSBA #33167
Deputy Prosecuting Attorney

FILED
KING COUNTY, WASHINGTON

MAY 18 2009

SUPERIOR COURT OF WASHINGTON
BY WENDY NELSON
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)	
)	
	)	No. 09-1-07750-5 KNT
v.	)	<i>2nd</i>
MARCUS A. ZAMUDIO-OROZCO,	)	AMENDED INFORMATION
)	
)	
)	
)	
Defendant.)	

COUNT I

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse MARCUS A. ZAMUDIO-OROZCO of the crime of **Rape of a Child in the Second Degree - Domestic Violence**, committed as follows:

That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington, during a period of time intervening between *December 1, 2008* through *Jan 31, 2009*, being at least 36 months older than J.E.Z. (DOB 04/04/95), had sexual intercourse with J.E.Z. (DOB 04/04/95), who was 13 years old and was not married to the defendant;

Contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT II

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS A. ZAMUDIO-OROZCO of the crime of **Rape of a Child in the Third Degree - Domestic Violence**, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

1 That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington,
2 during a period of time intervening between October 1, 2009 through ~~October 31~~, 2009, being
3 at least 48 months older than J.E.Z. (DOB 04/04/95), had sexual intercourse with J.E.Z. (DOB
4 04/04/95), who was 14 years old and was not married to the defendant;

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6 Contrary to RCW 9A.44.079, and against the peace and dignity of the State of
7 Washington.

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COUNT III

25 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS
26 A. ZAMUDIO-OROZCO of the crime of **Rape of a Child in the Third Degree - Domestic
27 Violence**, a crime of the same or similar character as another crime charged herein, which crimes
28 were part of a common scheme or plan and which crimes were so closely connected in respect to
29 time, place and occasion that it would be difficult to separate proof of one charge from proof of
30 the other, committed as follows:

31 That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington,
32 during a period of time intervening between October 1, 2009 through ~~October 31~~, 2009, being
33 at least 48 months older than J.E.Z. (DOB 04/04/95), had sexual intercourse with J.E.Z. (DOB
34 04/04/95), who was 14 years old and was not married to the defendant;

35 Contrary to RCW 9A.44.079, and against the peace and dignity of the State of
36 Washington.

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COUNT IV

56 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS
57 A. ZAMUDIO-OROZCO of the crime of **Rape of a Child in the Third Degree - Domestic
58 Violence**, a crime of the same or similar character as another crime charged herein, which crimes
59 were part of a common scheme or plan and which crimes were so closely connected in respect to
60 time, place and occasion that it would be difficult to separate proof of one charge from proof of
61 the other, committed as follows:

62 That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington,
63 during a period of time intervening between October 1, 2009 through ~~October 31~~; 2009, being
64 at least 48 months older than J.E.Z. (DOB 04/04/95), had sexual intercourse with J.E.Z. (DOB
65 04/04/95), who was 14 years old and was not married to the defendant;

66 Contrary to RCW 9A.44.079, and against the peace and dignity of the State of
67 Washington.

68 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
69 the authority of the State of Washington further do accuse the defendant MARCUS A.
70 ZAMUDIO-OROZCO at said time of committing the above crime against a family or household
71 member; a crime of domestic violence as defined under RCW 10.99.020.

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COUNT V

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS A. ZAMUDIO-OROZCO of the crime of **Rape of a Child in the Third Degree - Domestic Violence**, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington, during a period of time intervening between ~~November 1~~, 2009 through November 21, 2009, being at least 48 months older than J.E.Z. (DOB 04/04/95), had sexual intercourse with J.E.Z. (DOB 04/04/95), who was 14 years old and was not married to the defendant;

Contrary to RCW 9A.44.079, and against the peace and dignity of the State of Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendant MARCUS A. ZAMUDIO-OROZCO at said time of committing the above crime against a family or household member; a crime of domestic violence as defined under RCW 10.99.020.

COUNT VI

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS A. ZAMUDIO-OROZCO of the crime of **Tampering With a Witness**, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington, during a period of time intervening between November 22, 2009 through ~~January~~ 15, 2010, did attempt to induce a witness or person he has reason to believe may have information relevant to a criminal investigation, or withhold from a law enforcement agency information which he or she has relevant to a criminal investigation, ;

Contrary to RCW 9A.72.120, and against the peace and dignity of the State of Washington.

COUNT VII

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS A. ZAMUDIO-OROZCO of the crime of **Misdemeanor Violation of a Sexual Assault Protection Order**, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely

1 connected in respect to time, place and occasion that it would be difficult to separate proof of one
2 charge from proof of the other, committed as follows:

3 That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington,
4 ^{ON DECEMBER 25, 2009} did know of and willfully violate the terms of a King County Superior Court Order issued on
5 December 7, 2009, pursuant to RCW 7.90, for the protection of J.E.Z. (DOB 04/04/95), by
6 having contact with J.E.Z. (DOB 04/04/95);

7 Contrary to RCW 26.50.110(1), and against the peace and dignity of the State of
8 Washington.

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COUNT VIII

8 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse MARCUS
9 A. ZAMUDIO-OROZCO of the crime of **Misdemeanor Violation of a Sexual Assault**
10 **Protection Order**, a crime of the same or similar character and based on the same conduct as
11 another crime charged herein, which crimes were part of a common scheme or plan and which
12 crimes were so closely connected in respect to time, place and occasion that it would be difficult
13 to separate proof of one charge from proof of the other, committed as follows:

14 That the defendant MARCUS A. ZAMUDIO-OROZCO in King County, Washington,
15 during a period of time intervening between ~~December 26~~, 2009 through February 15, 2010, did
16 know of and willfully violate the terms of a King County Superior Court Order issued on
17 December 7, 2009, pursuant to RCW 7.90, for the protection of J.E.Z. (DOB 04/04/95), by
18 having contact with J.E.Z. (DOB 04/04/95);

19 Contrary to RCW 26.50.110(1), and against the peace and dignity of the State of
20 Washington.

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DANIEL T. SATTERBERG
Prosecuting Attorney

By: 
Benjamin A. Santos, WSBA #33167
Deputy Prosecuting Attorney

FILED
KING COUNTY, WASHINGTON

MAY 04 2010

SUPERIOR COURT CLERK
BY WENDY VICKERY
DEPUTY

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

STATE OF WASHINGTON,

Plaintiff,

V

Marcus Zamudio-Orozco,

Defendant

09-1-07750-5 KNT
No. ~~09-1-03187-4 KNT~~ JB

MOTION TO DISMISS PURSUANT TO
CRIMINAL RULE 8.3

MOTION

The Defendant, by and through undersigned counsel, hereby moves this Court for an order dismissing this prosecution under CrR 8.3 (b). The motion is based on the attached declaration and memorandum of law, as well as the record in the Court file in this matter.

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DECLARATION OF COUNSEL

1. My name is Mark Bradley. I am the attorney of record for Marcus Zamudio-Orozco in the above captioned matter. This declaration is based on my personal knowledge
2. Mr. Zamudio-Orozco was arrested for these charges on November 22, 2009. He was arraigned on December 7, 2009 and has been in custody ever since.
3. Mr. Zamudio-Orozco set his case for a trial on January 25, 2010.
4. At the April 16 omnibus hearing, I asked for a continuance of the trial date of April 20 to May 3 over my client's objection.
5. On April 26, I received a three page crime laboratory report regarding DNA. This report is dated March 9, 2010.
6. I attest under penalty of perjury that the foregoing is correct to the best of my knowledge

Date and Place

Mark Bradley

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MEMORANDUM OF LAW

Criminal Rule of Courts 8.3(b) permits the dismissal of a case for prosecutorial misconduct. Specifically, the rule reads:

START
* The court, in the furtherance of justice after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

The Washington State Supreme Court interpreted CrR: 8.3(b) in *State v. Michielli*, ruling that "governmental mismanagement satisfies the 'misconduct' element [of 8.3(b)]." 132 Wn.2d 229, 243, 937 P.2d 587 (1997).

In *Michielli*, the state's late action forced the defense to waive the defendant's right to speedy trial or proceed unprepared. The court found that this late action by the state prejudiced the defendant and satisfied the misconduct element of 8.3(b). *Id.* at 245. Specifically the court held that "Defendant was prejudiced in that he was forced to waive his speedy trial right and ask for a continuance to prepare for the surprise charges brought three business days before the scheduled trial." *Id.* at 244. Finally the Court opined that "Defendant's being forced to waive his speedy trial right is not a trivial event. . . . The State's delay in amending the charges, coupled with the fact that the delay forced Defendant to waive his speedy trial right in order to prepare a defense, can reasonably be considered mismanagement and prejudice sufficient to satisfy CrR

1 8.3(b)." *Id.* at 245. The court affirmed the trial court's dismissal of the case with prejudice
2 pursuant to 8.3(b). *Id.* at 246.

3 CrR 4.7(a) provides the following:

4
5 Prosecuting Authority's Obligations. (1) Except as otherwise provided by
6 protective orders or as to matters not subject to disclosure, the prosecuting
7 authority shall, upon written demand, disclose to the defendant the following
8 material and information within his or her possession or control concerning: (i)
9 the names and addresses of persons whom the prosecuting authority intends to call
10 as witnesses at the hearing or trial, together with any written or recorded
11 statements and the substance of any oral statements of such witnesses; (ii) any
12 written or recorded statements and the substance of any oral statements made by
13 the defendant, or made by a codefendant if the trial is to be a joint one;... (iv) any
14 reports or statements of experts made in connection with the particular case,
15 including results of physical or mental examinations and scientific tests,
16 experiments, or comparisons; (v) any books, papers, documents, photographs, or
17 tangible objects which the prosecuting authority intends to use in the hearing or
18 trial or which were obtained from or belonged to the defendant; (v) any record of
19 prior criminal convictions known to the prosecuting authority of the defendant and
20 of persons whom the prosecuting authority intends to call as witnesses at the
21 hearing or trial.... (2) The prosecuting attorney shall disclose to the
22 defendant:... (ii) any expert witnesses whom the prosecuting authority will call at
23 the hearing or trial, the subject of their testimony, and any reports relating to the
24 subject of their testimony that they have submitted to the prosecuting authority.

25 In the present case, the State had an obligation to provide the lab report as well as
26 disclose their expert witness in a timely manner and provide the results to the defendant in order
27

1 for trial preparation. This obligation stems from CrR 4.7(a) and the defendant's request for
2 discovery, in addition to simple due process and notice concerns.

3 The prosecutor has a duty to disclose discovery under RPC 3.8, CrR 4.7, and controlling
4 case law. Namely, all of defendant's discovery requests are intended to obtain all information
5 within the knowledge, possession, or control of each and every member of the prosecutor's staff,
6 CrR 4.7(a)(4), as well as all information known to the "prosecution team", including law
7 enforcement agencies. See, *United States v. Antone*, 603 F.2d 566, 569 (5th Cir. 1979) and
8 *United States ex re. Smith v. Fairman*, 769 F.2d 386, 391-92 (7th Cir. 1985). The "prosecution
9 team" also includes every single prosecutor, whether associated with this case or not, and
10 exculpatory information must be disclosed if it is in the hands of any prosecutor whatsoever.
11 *Giglio v. United States*, 405 U.S. 150, 154 (1972); *Benn v. Lambert*, 283 F.3d 1040 (9th Cir.
12 2002). Furthermore, the prosecutor's failure to turn over to the defense any evidence favorable to
13 an accused on either the issue of guilt or the issue of punishment, violates due process
14 "irrespective of the good faith or bad faith of the prosecution", *Brady v. Maryland*, 373 U.S. 83,
15 87 (1963); that such a violation of due process is not subject to any "harmless error" analysis, but
16 requires automatic reversal of the conviction, and that the obligation to disclose potentially
17 exculpatory evidence exists whether that evidence is known to the prosecutor or merely to the
18 police.
19

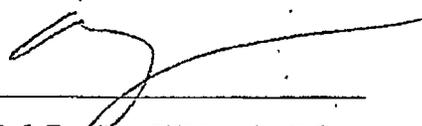
20 Defense counsel has not had an opportunity to properly analyze evidence against the
21 accused for the amount of potential prejudice because the discovery disclosure was so untimely
22 and trial is imminent. Pursuant to the court rules and case law cited above, there doesn't appear
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1 to be a reason why Mr. Zamudio-Orozco is subject to late discovery only days before his trial of
2 material that was prepared by the prosecution team two months ago. The prosecutor should have
3 managed this case better, having had discretion on when to file the case. Indeed, had the defense
4 not *sought* a continuance over Mr. Zamudio-Orozco's objection, the state would not have even
5 disclosed this evidence prior to the trial date.
6

7 This court should not require Mr. Mares to choose between two rights in order to
8 accommodate the State's lack of diligence. *Sherman*, 59 Wash.App. at 770, 801 P.2d 274.
9 Considering the State's delay in providing all discovery owed the defense coupled with the fact
10 that the delay will force Mr. Zamudio-Orozco to waive his right to effective counsel, the trial
11 court should consider the mismanagement and prejudice sufficient to satisfy dismissal under CrR
12 8.3(b). *See Michielli*, 132 Wash.2d at 245, 937 P.2d 587.
13

14 The State's misconduct has placed the Mr. Zamudio-Orozco in a position where
15 he has to either proceed to trial with unprepared counsel or waive a fundamental right – the right
16 to a speedy trial. This is precisely the kind of mismanagement at issue in *Michielli*. Because
17 such prosecutorial mismanagement satisfies the misconduct element of 8.3(b) and the
18 consequential infringement on the right to speedy trial satisfies the material prejudice element, a
19 dismissal with prejudice is both appropriate and necessary.
20
21

22
23 Respectfully submitted,

24
25 
26 _____
27 Mark Bradley, WSBA # 22864
28

EXHIBIT

B

I. ARREST WARRANT, II. CASE SCHEDULING,
III. VRP JAN 7th-2010 TRIAL HERRING,
IV. PERJUDICIAL CONTINUES, V. ORIGINAL COURT
AND CLERK MINUTES, VI. OMNIBUS HERINGS,
VII. REQUEST FOR DISCOVERY? DISCLOSURE.
39 PGS.

EXHIBIT

B

1/2 KENT CITY JAIL

1873436

FILED

09 NOV 25 PM 3:58

KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

BOOKED

NOV 25 2009

KING COUNTY JAIL
KENT DIVISION

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

MARCUS A. ZAMUDIO-OROZCO,

Defendant.

No. 09-1-07750-5 KNT

ARREST WARRANT

To Any Peace Officer In The State Of Washington:

An information has been filed in the above entitled Court, charging **MARCUS A. ZAMUDIO-OROZCO** with the crimes of **Rape of a Child in the Second Degree - Domestic Violence, RCW 9A.44.076, Count I, Rape of a Child in the Third Degree - Domestic Violence, RCW 9A.44.079, Count II, and Rape of a Child in the Third Degree - Domestic Violence, RCW 9A.44.079, Count III**, and the Court having determined that there is probable cause for the issuance of a warrant,

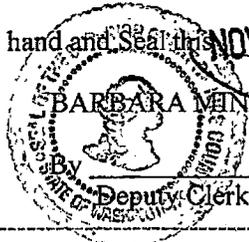
You are therefore commanded to forthwith arrest the said **MARCUS A. ZAMUDIO-OROZCO** and keep him/her in custody until he/she is discharged according to law, and make due return of this writ with your manner of service endorsed thereon. Service of this warrant by telegraph or teletype is authorized.

Bail fixed in the sum of **\$200,000 Cash or Surety Bond**. Cash or Surety Bond to be approved by the Court.

Arrest Warrant - CrR 2.2(c), RCW 10.31.060

The court has ordered the issuance of this warrant.

Witness my hand and Seal this NOV 24 day of November, 2009.



BARBARA MINER, Clerk of Superior Court

Deputy Clerk

T. LAMBETH

The above warrant was served on _____ by _____ Agency

Fees: Service, _____
Mileage, _____
Keeping, _____
Total _____

Return the Arrest Warrant (Cr.R 2.2(e))

EX - B.0

FILED
KING COUNTY, WASHINGTON

DEC 7 2009

**SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY**

**SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING**

STATE OF WASHINGTON

Plaintiff,

No. 09-1-07750-5KNT

vs.

**NOTICE OF CASE SCHEDULING
HEARING DATE - KNT**

MARCUS A. ZAMUDIO-OROZCO

Defendant.

CLERK'S ACTION REQUIRED

In Custody Out of Custody
CCN 1873436

You have been arraigned on this matter. Your Case Scheduling Hearing at which the trial date shall be set has been set for 12/7/09 at 1:00 p.m.

The Case Scheduling Hearing will be held in Courtroom GA, Regional Justice Center, 401 4th Avenue North, Kent, Washington. **YOU MUST BE PRESENT OR A WARRANT WILL BE ISSUED FOR YOUR ARREST AND YOUR FAILURE TO APPEAR MAY RESULT IN ADDITIONAL CRIMINAL CHARGES BEING FILED.**

IMPORTANT NOTICE

You should have an attorney when you appear in court for your Case Scheduling Hearing. IF YOU DO NOT HAVE AN ATTORNEY OR CANNOT AFFORD ONE, YOU MUST IMMEDIATELY CONTACT THE KING COUNTY PUBLIC DEFENSE PROGRAM, 123 THIRD AVENUE SOUTH, SEATTLE, WASHINGTON. CALL (206) 296-7662 (OR IF YOU ARE IN JAIL, SPEED DIAL "20").

I acknowledge receiving a copy of this notice.

Date: 12/7/09

Marco Zamudio
Defendant

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date: _____
Interpreter

EX-B.1 (b)

PA
ISSUED

FILED
09 DEC -8 AM 9:48
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
Plaintiff,) No. 09-1-07750-5 KWT
vs.)
)
Marcus Zamudio-Orosco) **Sexual Assault Protection Order**
Defendant,) (Criminal) (JIS order code: SXP)
) Pretrial [] Post conviction
) *Clerk's Action Required

1. The court finds that the defendant has been charged with, arrested for, or convicted of a sex offense as defined in RCW 9.94A.030, a violation of RCW 9A.44.096, a violation of RCW 9.68A.090, or a gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030.

2. This Sexual Assault Protection Order is entered pursuant to Laws of 2006, ch. 138 §16. This order protects: Jessica Esmerelda Zamudio 4-4-95
(Write protected person's name and DOB. RCW 7.69A.030, 10.52.100, 10.97.130.)

It Is Ordered:

This Sexual Assault Protection Order Expires on November 24, 2011.
(A final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.)

Defendant is Prohibited from:

- A. Having any contact with the protected person(s) directly, indirectly or through third parties regardless of whether those third parties know of the order (to include harassing, stalking or threatening).
- B. Knowingly coming within or knowingly remaining within 500 feet (distance) of the protected person's residence school place of employment [] other: _____
- C. Pretrial: crimes defined as "serious" offenses / see p. 2 for crimes not defined as "serious offenses")
Obtaining, owning, possessing or controlling a firearm.
[] (Conviction) Obtaining, owning, possessing or controlling a firearm.

Warnings to the Defendant: Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order.

EX-B.1(c)
PS 1062

Cause No.: 09-1-07750-5 KJ

It Is Further Ordered: (For pretrial orders involving crimes not defined as serious offenses in RCW 9.41.010 only)

- Defendant is Prohibited from obtaining or possessing a firearm, other dangerous weapon or concealed pistol license.
- The defendant shall immediately surrender all firearms and other dangerous weapons within the defendant's possession or control and any concealed pistol license to: _____ [referring law enforcement agency].

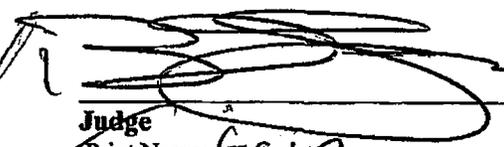
(The pretrial orders for crimes not defined as serious offenses in RCW 9.41.010 are based upon the court's finding that possession of a firearm or other dangerous weapon by the defendant presents a serious and imminent threat to public health or safety, or to the health or safety of any individual. RCW 9.41.800(4).)

(Check this box only if any of the following relationships apply.)

- This order is issued in accordance with Full Faith and Credit provisions of VAWA: 18 U.S.C. § 2265. The court determines that the defendant's relationship to a person protected by this order is: current or former spouse parent of a common child current or former cohabitant as intimate partner current or former dating partner. Therefore, 18 U.S.C. §§ 2261 (federal violation penalties) may apply to this order.

It is further ordered that the clerk of the court shall forward a copy of this order on or before the next judicial day to the originating police agency King County Sheriff's Office Seattle Police Department Other Kent Police Dept. which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

Done in Open Court in the presence of the defendant this 7 day of December, 2009.

 Deputy Prosecuting Attorney WSBA No. <u>29364</u> Print Name: <u>LSOGIS</u>	 Attorney for Defendant WSBA No. _____ Print Name: _____	 Judge Print Name: <u>GAIN</u> <u>Marco Zamudio</u> Defendant Print Name: _____
--	--	--

(A Law Enforcement Information Sheet (LEIS) or copy of Superform must be attached for law enforcement entry)

Copy distribution:

- Original/White: Clerk
- Yellow: Victim
- Pink: Prosecutor
- Goldenrod: Defendant

EX-B.1(c)
PS 2 of 2

RECEIVED

SEP 22 2010

Nielsen, Broman & Koch, P.L.L.C.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

MARCUS ZAMUDIO-OROZCO,

Defendant.

CASE NO. 09-1-07750-5 KNT
Court of Appeals No. 65557-4-1
Transcript of:
01/07/10 Trial Hearing

VERBATIM REPORT OF PROCEEDINGS

VOLUME I

BE IT REMEMBERED that the above-entitled and numbered cause on for hearing before HONORABLE JUDGE MARY ROBERTS, King County Superior Court, Seattle, Washington.

APPEARANCES:

For Plaintiff: DPA Terry Carlstrom;

For Defendant: Marcus Zamudio-Orozco: Attorney Lois Trickey & Josh Poisel.

Brian A. Carney, King County Superior Court Certified Transcriptionist
Virtual Independent Paralegals, LLC
Db a Transcription by Trish, LLC
Monroe, WA 98272
(206)842-4613

1 here and see me she's kind of mean. [inaudible] she say
2 she have too many cases, she can't come and see me and
3 explain me what's going on. So, she don't work with me,
4 you know? I need some lawyer who --

5 **Judge Roberts** How--, how many times have you, um, had a conversation or
6 met with one of your attorneys?

7 **Def. Zamudio** Just on the day when after we left this Court a month, a
8 month ago, and that, and that I, and that they, uh, when
9 she, just last Monday she go to see me because I, I call
10 her supervisor, I call the other lawyer. I don't have, I
11 didn't leave a message, I want to go back tomorrow
12 somehow. So, I don't have any [inaudible]. I don't--

13 **Judge Roberts** Um, other than that you don't think that, that you've been
14 seen enough, how about when you were meeting with counsel?

15 **Def. Zamudio** Wha--, what?

16 **Judge Roberts** When you spoke with Ms. Trickey or when you met with her,
17 were you able to communicate with her?

18 **Def. Zamudio** Yes.

19 **Judge Roberts** So, the issue is you wish she would come see you more
20 often or call you more often?

21 **Def. Zamudio** Yeah. That, to me, I feel like she's not on my side.
22 You know?

23 **Attorney Trickey** I'll have to you let you know, your Honor, that, um, I was
24 very clear with Mr. Zamudio that I won't be coming to see
25 him every time he calls. We did have a conversation on

1 redacted we were not able to do a full conflicts check on
2 it, so, we don't know whether once we get an unredacted
3 copy of discovery --

4 **Judge Roberts** Oh.

5 **Attorney Trickey** --whether there may be.

6 **Judge Roberts** Any reason to think you're going to have any trouble doing
7 any unredacted copy?

8 **Attorney Trickey** Um, hopefully not. I emailed Mr. Anderson yesterday so I
9 would expect --

10 **Judge Roberts** Shouldn't be a problem.

11 **Attorney Trickey** --he's going to respond.

12 **Judge Roberts** And, um, if you, if it turns out there's a conflict, um,
13 I hope it's obvious that you should let me know
14 immediately.

15 **Attorney Trickey** Right back. [laughs] Thank you, your Honor.

16 9:07:27

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D.2
ORIGINAL COURT MINUTES

PAGE #: 95

KENT COURTHOUSE
KING COUNTY SUPERIOR COURT

CASE SCHEDULING CALENDAR

CALENDAR DATE: 01/07/2010

JUDGE: MARY ROBERTS

COURT CLERK:

LESLIE KEITH

GARJC-10-

CASE NO: 09-1-07750-5 KNT

DEFENDANT: ZAMUDIO OROZCO, MARCUS A

TRUE NAME:

CCN: 1873436

DPA:

EXP: 02-05-10/03-07-10

ATD:

CO-DEFENDANTS:

CHARGE: RAPE CHLD 2-DV, RAPE CHLD 3-DV 2CTS

ARR DATE: 12/07/2009

LOC: RJ--102L

INT: SPANISH

COMMENCE DATE:

TRIAL SET EXP:

MOTION JUDGE #: HON. 000

AFFIDAVIT:

____ Scheduling Conference held.

Omnibus Date: _____

Trial Date: _____

____ / Agreed continuance to 1.21.

____ State's motion for issuance of bench warrant - Granted/Denied. Bail is set at

\$ _____.

____ State's motion to dismiss this cause - Granted/Denied.

____ Deff's motion to quash outstanding bench warrant - Granted/Denied.

____ Referred to Plea Judge.

____ Order is signed.

EX B.2 1

CLERK'S MINUTES

SCOMIS CODE: MTHRG

Judge: MARY ROBERTS
 Bailiff: SHERRI TYE
 Court Clerk: LESLIE KEITH
 Digital Record: GARJC-10 -004
 Start: 9:02:58
 Stop:

Dept. 4
 Date: 1/7/2010

KING COUNTY CAUSE NO.: 09-1-07750-5 KNT

State of Washington vs. MARCUS ZAMUDIO-OROZCO

Appearances:

DPA TERRY CARLSTROM present
 Defendant present and represented by counsel LOIS TRICKEY & JOSH POISEL
 also present

MINUTE ENTRY

- Defendants motion to reduce bond. Denied. Granted, bond set at
 On: CCAP Basic CCAP Enhanced EHD WER
- motion to continue trial date. Denied Granted.
 Omnibus date: Trial date: Expiration date:
- motion for competency evaluation. Denied. Granted, Return date:
- Def mtion to discharge counsel is denied.
-
-
-

Order(s) signed

EX-B.3

FILED
KING COUNTY, WASHINGTON

JAN 7 2010

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON

Plaintiff,

NO. 09-1-07750-5KNT

vs.

ORDER ON CRIMINAL
MOTION

Marcus Zumudio-Orozco
Defendant.

(ORCM)

The above-entitled Court, having heard a motion

by Defendant to remove counsel for conflict of interest - inability to communicate and to appoint new counsel for Defendant

IT IS HEREBY ORDERED that Defendant's motion is denied.

DATED: 01/07/10

Mary E. Roberts
JUDGE MARY E. ROBERTS, JUDGE

Terence R. Carlton
Deputy Prosecuting Attorney #32249

Jain T. Tucker 10956
Attorney for the Defendant
Order on Criminal Motion (ORCM) 35877

05/02

FILED
KING COUNTY, WASHINGTON

JAN 7 2010

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,
Plaintiff
vs.
Marcus Zamudio - Orozco
Defendant.

No: 09-1-07750-5KNT
ORDER ON STATUS CONFERENCE AND
WAIVER OF SPEEDY TRIAL (KENT - GA)
SCOMIS CODES (ORCNT; ORSTD; WVSPDT)
(CLERK'S ACTION REQUIRED)

RESOLUTION DATE: Any requests for further hearings beyond the resolution date of 3/25/10 require the presence of all parties and the approval of the court.

The following dates are based upon a Commencement date of 1-21-10 Expiration Date: 3-29-10

- a) Status Conference Hearing: 1-21-10 at 1:00 p.m. in Courtroom GA.
- b) Plea/Sentencing Date: _____ at _____ a.m./p.m.

YOU MUST BE PRESENT FOR ALL HEARINGS NOTED ABOVE OR A WARRANT MAY BE ISSUED FOR YOUR ARREST AND YOUR FAILURE TO APPEAR MAY RESULT IN ADDITIONAL CRIMINAL CHARGES BEING FILED.

Waiver: I understand that I have a right to a trial within 60 days of the commencement date if I am in jail on this case, or 90 days of the commencement date if I am not in jail on this case. I am voluntarily and knowingly giving up this right for a specific period of time to allow my attorney to negotiate with the prosecuting attorney and/or investigate and/or prepare my case. I agree that the new commencement date is 1-21-10 and that the new expiration date is 3-29-10.

The speedy trial waiver, above, must be filled in if a new Status Conference hearing date is set, or a plea date is set more than one week from today's date. Strike the speedy trial waiver if it is not applicable.

I have read to the defendant and discussed this completed form, including the next hearing date and speedy trial waiver, if applicable, and believe the defendant understands it.

I acknowledge being provided with and understanding the dates set forth herein for all future court hearings. I acknowledge my speedy trial rights as set forth above.

[Signature] Attorney for Defendant WSBA# 38857 Marcus Zamudio Defendant 1/7/10 Dated

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty perjury under the laws of the State of Washington that the foregoing is true and correct.

Interpreter: _____, King County, Washington
[Signature] Deputy Prosecuting Attorney WSBA# _____ [Signature] Judge King County Superior Court Dated 01/07/2010

ORIGINAL COURT MINUTES

PAGE #: 60

KENT COURTHOUSE
KING COUNTY SUPERIOR COURT

CASE SCHEDULING CALENDAR

CALENDAR DATE: 01/25/2010

JUDGE: MARY ROBERTS

COURT CLERK:

LESLIE KEITH

GARJC-10-

CASE NO: 09-1-07750-5 KNT

DEFENDANT: ZAMUDIO OROZCO, MARCUS A

TRUE NAME:

CCN: 1873436

DPA:

EXP: 03-21-10

ATD:

CO-DEFENDANTS:

CHARGE: RAPE CHLD 2-DV, RAPE CHLD 3-DV 2CTS

ARR DATE: 12/07/2009

LOC: RJ--102L

INT: SPANISH

COMMENCE DATE: 01-21-10.

TRIAL SET EXP:

MOTION JUDGE #: HON. 000

AFFIDAVIT:

Scheduling Conference held.

Omnibus Date: 2-26

Trial Date: 3-16

Agreed continuance to _____

State's motion for issuance of bench warrant - Granted/Denied. Bail is set at

\$ _____

State's motion to dismiss this cause - Granted/Denied.

Deft's motion to quash outstanding bench warrant - Granted/Denied.

Referred to Plea Judge,

Order is signed.

EX - B.7

State v. _____

Case number: 09-1-07750-5

Do the State and Defense agree this case should be preassigned? Explain if preassignment requested.

If the parties do not reach an agreed resolution of the case, what is the estimated amount of time needed to prepare for trial? 2 mos -

The State confirms it has:

____ Given preliminary notice of possible amendments to the information

Provided defendant's criminal history

Disclosed ^{or} ~~and~~ provided to defense ^{currently} ~~discovery~~ in its possession ~~or control~~, including but not limited to: all police reports, witness statements, CDs/DVDs, audio/video tapes, field test reports, lab reports, 911 tapes, ~~inmate calls~~, medical records, and other relevant materials

____ If victim medical records have not been received, State has contacted the assigned detective to obtain or attempt to obtain appropriate consents for records

____ Other _____

____ If any of the above has not been completed, explain and give a date for completion: _____

The parties have conferred and discussed:

____ An offer to resolve the case, including the limits and duration of the offer, or the information needed in order for an offer to be made to the defense

____ Additional discovery/information that the parties agree is needed to evaluate a potential resolution. Specifically: _____

____ Other investigations or referrals concerning the defendant, and whether the defendant would like to try to resolve these charges jointly

____ The defendant's offender score

____ The likely progress of the case

____ Other: _____

If any of the above has not been completed, explain and give a date for completion:

no negotiations have been requested or discussed

State v. _____

Case number: _____

The Defense confirms it has:

- Completed a conflicts check based on initial discovery *work product*
- Requested a competency evaluation, if appropriate
- Initiated application for transfer to drug court/mental health court, if applicable
- Initiated collection of relevant defendant records for drug court/mental health court/mitigation
- Applied for expert funding for mitigation, if appropriate
- Conferred with defendant regarding discovery, defendant's criminal history, and plea offer

If any of the above has not been completed, explain and give a date for completion:

ORDER

Before the next court hearing the State shall:

Before the next court hearing the Defense shall:

The case is preassigned to Judge _____. All additional hearings, including those listed on page 1 of this order, will be heard by that judge.

If a party is unable to comply with the requirements of this order, that party may set a motion to modify the order or for other relief.

IT IS SO ORDERED.

DATED this 25th day of Jan., 2010.

Andrew Davis

Judge

[Signature]

Deputy Prosecutor WSBA No. 25115

[Signature]

Attorney for Defendant WSBA No. #2588

Defendant

ORIGINAL COURT MINUTES

KENT COURTHOUSE

KING COUNTY SUPERIOR COURT

OMNIBUS CALENDAR

CALENDAR DATE: 02/26/2010
12:05 A.M.

JUDGE:

MARY ROBERTS

BAILIFF:

SHERRI TYE

COURT CLERK:

LESLIE KEITH

COURT REPORTER

~~DR4D~~

CASE NO: 09-1-07750-5 KNT

DEFENDANT: ZAMUDIO OROZCO, MARCUS A

TRUE NAME:

CCN: 1873436

EXP: 03-21-10

DPA: KING COUNTY, PROSECUTING ATTY

ATD: TRICKEY, LOIS DIGHTMAN

2063228400

CO-DEFENDANTS:

CHARGE: RAPE CHLD 2-DV, RAPE CHLD 3-DV 2CTS

ARR DATE: 12/07/2009

LOC: RJ--102L

INT: SPANISH

ORIGINAL TRIAL DATE: 03/16/2010

COMMENCE DATE: 01-21-10

TRIAL SET EXP: 03-21-10

_____ OMNIBUS HEARING IS HELD. COURT ENTERS OMNIBUS ORDER.

_____ MOTION TO CONTINUE OMNIBUS HEARING TO 3.5
GRANTED / ~~DENIED~~ ORDER SIGNED

_____ MOTION FOR ISSUANCE OF BENCH WARRANT. GRANTED / DENIED
BAIL SET AT _____ ORDER SIGNED.

_____ STATE'S MOTION TO AMEND INFORMATION. GRANTED / DENIED

_____ PLEA - SENT TO JUDGE _____

_____ DEFENDANT WITHDRAWS PLEA OF NOT GUILTY AND ENTERS PLEA / ALFORD PLEA OF
GUILTY. STATEMENT OF DEFENDANT ON PLEA OF GUILTY IS EXECUTED.
SENTENCING DATE TO BE SET.

_____ DEFENDANT IS ARRAIGNED ON AMENDED INFORMATION AND ENTERS A PLEA OF NOT GUILTY

_____ MOTION TO CONTINUE TRIAL DATE GRANTED/DENIED

TRIAL DATE CONTINUED TO: _____

EXPIRATION DATE TO: _____

_____ STATE'S MOTION TO DISMISS WITH/WITHOUT PREJUDICE IS GRANTED
ORDER SIGNED

_____ ORDER STRIKING TRIAL DATE IS SIGNED

_____ ORDERS SIGNED

EX-B.9

FILED
KING COUNTY, WASHINGTON

FEB 26 2010

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

ENT'D.

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON Plaintiff,

NO. 09-1-07750-5KMT

vs.

STIPULATED ORDER TO CONTINUE
OMNIBUS HEARING
(ORCOMH)
(Clerk's Action Required)

marcus Zamudio-Ordozco
Defendant.

The parties having stipulated that the omnibus hearing be continued to 3/5/10 at 8:30
in 415

IT IS HEREBY ORDERED that the omnibus hearing is continued to to 3/5/10 at 9:30
in 415

DATED: 2/26/10

[Signature]
3211 AR Ben Santos
Deputy Prosecuting Attorney, WSBA #

[Signature]
JUDGE
JUDGE MARY E. ROBERTS

[Signature]
38000 / [Signature] for Trickey
Attorney for the Defendant, WSBA # 14537
COISTRICKY

Stipulated Order to Continue Omnibus Hearing
10/2/06

FILED
KING COUNTY, WASHINGTON

MAR 3 2010

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON

Plaintiff,

NO. 091077SOS tnr

vs.

ORDER ON CRIMINAL
MOTION

Marcus Zumbado

(ORCM)

Defendant.

The above-entitled Court, having heard a
motion to discharge SERAP as attorney of record

IT IS HEREBY ORDERED that SERAP is discharged as counsel. CPD
shall appoint new counsel. Scrap will return the case to CPD.

Omnibus is continued to 3/12/10, 8:30 AM, RJC-410. Omnibus set
for 3/5/10 is stricken.
Confirmation of counsel hearing is set for 3/10/10, 8:30 AM,
RJC-6A

DATED: 03/03/2010

[Signature]

Deputy Prosecuting Attorney

[Signature]

JUDGE MARY E. ROBERTS JUDGE

[Signature]
Attorney for the Defendant
Order on Criminal Motion (ORCM)

14538

05/02

ORIGINAL COURT MINUTES

KENT COURTHOUSE
OMNIBUS CALENDAR

KING COUNTY SUPERIOR COURT

CALENDAR DATE: 03/05/2010
12:34 A.M.

JUDGE: MARY ROBERTS

BAILIFF: SHERRI TYE

COURT CLERK: LESLIE KEITH

COURT REPORTER DR4D

CASE NO: 09-1-07750-5 KNT

DEFENDANT: ZAMUDIO OROZCO, MARCUS A

TRUE NAME:

CCN: 1873436

EXP: 03-21-10

DPA: KING COUNTY, PROSECUTING ATTY

ATD: TRICKEY, LOIS DIGHTMAN

2063228400

CO-DEFENDANTS:

CHARGE: RAPE CHLD 2-DV, RAPE CHLD 3-DV 2CTS

ARR DATE: 12/07/2009

LOC: RJ--102L

INT: SPANISH

ORIGINAL TRIAL DATE: 03/16/2010

COMMENCE DATE: 01-21-10

TRIAL SET EXP: 03-21-10

OMNIBUS HEARING IS HELD. COURT ENTERS OMNIBUS ORDER.

MOTION TO CONTINUE OMNIBUS HEARING TO 3:12
GRANTED / ~~DENIED~~ ORDER SIGNED

MOTION FOR ISSUANCE OF BENCH WARRANT. ^{previously} GRANTED / DENIED
BAIL SET AT _____ ORDER SIGNED.

STATE'S MOTION TO AMEND INFORMATION. GRANTED / DENIED

PLEA - SENT TO JUDGE _____

DEFENDANT WITHDRAWS PLEA OF NOT GUILTY AND ENTERS PLEA / ALFORD PLEA OF GUILTY. STATEMENT OF DEFENDANT ON PLEA OF GUILTY IS EXECUTED. SENTENCING DATE TO BE SET.

DEFENDANT IS ARRAIGNED ON AMENDED INFORMATION AND ENTERS A PLEA OF NOT GUILTY

MOTION TO CONTINUE TRIAL DATE GRANTED/DENIED

TRIAL DATE CONTINUED TO: _____

EXPIRATION DATE TO: _____

STATE'S MOTION TO DISMISS WITH/WITHOUT PREJUDICE IS GRANTED
ORDER SIGNED

ORDER STRIKING TRIAL DATE IS SIGNED

ORDERS SIGNED

EX- B.12

FILED
KING COUNTY WASHINGTON

MAR 10 2010
SUPERIOR COURT CLERK
BAMONA HARKINS
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON

Plaintiff,

NO.

09-1-07750-5 KJT

vs.

ORDER ON CRIMINAL
MOTION

Marcus Zemudio Ofazco

Defendant.

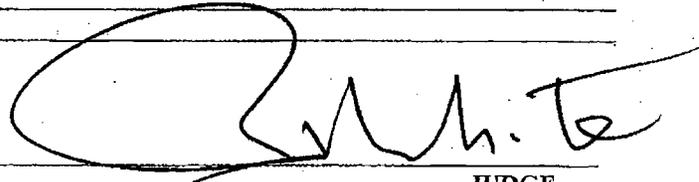
(ORCM)

The above-entitled Court, having heard a
motion to confirm counsel

IT IS HEREBY ORDERED that Mark Bradley is confirmed as new counsel,
effective on Friday, March 12, 2010.

DATED:

3/10/10



JUDGE

Thomas R. Carlston
Deputy Prosecuting Attorney #32249

[Signature] 32249
~~Attorney for the Defendant~~
Order on Criminal Motion (ORCM)

05/02

ORIGINAL COURT MINUTES

KENT COURTHOUSE

KING COUNTY SUPERIOR COURT

OMNIBUS CALENDAR

CALENDAR DATE: 03/12/2010
12:33 A.M.

JUDGE: MARY ROBERTS

BAILIFF: LAURIE WATSON

COURT CLERK: LESLIE KEITH

COURT REPORTER

DR4D 10:12:29

CASE NO: 09-1-07750-5 KNT

DEFENDANT: ZAMUDIO OROZCO, MARCUS A ^{>P}
TRUE NAME:
CCN: 1873436
EXP: 03-21-10

Santos
DPA: KING COUNTY, PROSECUTING ATTY
ATD: BRADLEY, MARK CHARLES ^{>P}
2064473900 *Carter-Edred*

CO-DEFENDANTS:

CHARGE: RAPE CHLD 2-DV, RAPE CHLD 3-DV 2CTS
ARR DATE: 12/07/2009
LOC: RJ--102L
INT: SPANISH
ORIGINAL TRIAL DATE: 03/16/2010
COMMENCE DATE: 01-21-10
TRIAL SET EXP: 03-21-10

OMNIBUS HEARING IS HELD. COURT ENTERS OMNIBUS ORDER.

MOTION TO CONTINUE OMNIBUS HEARING TO 3:26
GRANTED / ~~DENIED~~ ORDER SIGNED

MOTION FOR ISSUANCE OF BENCH WARRANT. GRANTED / DENIED
BAIL SET AT _____ ORDER SIGNED.

STATE'S MOTION TO AMEND INFORMATION. GRANTED / DENIED

PLEA - SENT TO JUDGE _____

DEFENDANT WITHDRAWS PLEA OF NOT GUILTY AND ENTERS PLEA / ALFORD PLEA OF
GUILTY. STATEMENT OF DEFENDANT ON PLEA OF GUILTY IS EXECUTED.
SENTENCING DATE TO BE SET.

DEFENDANT IS ARRAIGNED ON AMENDED INFORMATION AND ENTERS A PLEA OF NOT GUILTY

MOTION TO CONTINUE TRIAL DATE ~~GRANTED/DENIED~~
TRIAL DATE CONTINUED TO: 4:20
EXPIRATION DATE TO: 5:20

STATE'S MOTION TO DISMISS WITH/WITHOUT PREJUDICE IS GRANTED
ORDER SIGNED

ORDER STRIKING TRIAL DATE IS SIGNED

ORDERS SIGNED

EX - B.14

FILED
KING COUNTY, WASHINGTON

MAR 12 2010

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

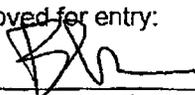
STATE OF WASHINGTON,)	
	)	NO. <u>04-1-07750-5</u> KNT
Plaintiff,	)	ORDER CONTINUING TRIAL
v.	)	(ORCTD)
<u>Marcus Zamudio-Orosco</u>	)	(Clerk's Action Required)
Defendant,)	
CCN)	

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for 3/16/10 is continued to 4/20/10
 *upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:
 plaintiff's counsel in trial; defense counsel in trial; other: defense counsel
received case this week

It is further ORDERED:
 Omnibus hearing date is 3/26/10
 Expiration date is 05/20/2010

DONE IN OPEN COURT this 12th day of March 20 10

 JUDGE ROBERTS

Approved for entry:

33167
 Deputy Prosecuting Attorney WSBA No.


 Attorney for Defendant WSBA No. for Mark Bell

I agree to the continuance:
 * Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 Interpreter King County, Washington
 Trial Continuance
 (Effective 1 September 2003)

FILED

10 MAR 18 AM 11:13

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 09-1-07750-5 KNT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY
REGIONAL JUSTICE CENTER

STATE OF WASHINGTON,

Plaintiff;

vs.

MARCUS ZUMUDIO-OROZCO

Defendant.

NO. 09-1-07750-5 knt

NOTICE OF WITHDRAWAL

The Society of Counsel Representing Accused Persons and undersigned counsel hereby give notice of their withdrawal as appointed counsel herein for Defendant. Withdrawal is necessary because a conflict of interest or other reason mandating withdrawal under the RPC has been identified; our client has retained other counsel; trial court proceedings have concluded as to our client; our client has failed to appear and a bench warrant has been outstanding for more than ninety days; or (other) _____

If further proceedings are scheduled herein involving Defendant, please direct any discovery, requests for discovery, service of process or other notices or inquiries to subsequently-appearing appointed or retained counsel or directly to our former client.

DATED this March 17, 2010



JOSHUA A. POISEL WSBA 35858
Former Counsel of Defendant

14537

NOTICE OF WITHDRAWAL

Page 1 of 1

**SOCIETY OF COUNSEL
REPRESENTING ACCUSED PERSONS**
420 West Harrison Street
Suite 101
Kent, Washington 98032
(253) 852-9460

EX - B.16

FILED
KING COUNTY, WASHINGTON

MAR 26 2010

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON Plaintiff,

NO. 09-1-07750-5

vs.

STIPULATED ORDER TO CONTINUE
OMNIBUS HEARING
(ORCOMH)
(Clerk's Action Required)

Marcus Zamudio-Orozco
Defendant.

The parties having stipulated that the omnibus hearing be continued to 4/16/10 @ 8:30 AM

IT IS HEREBY ORDERED that the omnibus hearing is continued to 4/16/10 @ 8:30 AM

DATED: 03/26/2010

JUDGE ROBERTS

[Signature] 33/67
Deputy Prosecuting Attorney, WSBA # _____

[Signature]
Attorney for the Defendant, WSBA # 22864

Stipulated Order to Continue Omnibus Hearing
10/2/06

ORIGINAL COURT MINUTES

ORIGINAL COURT MINUTES

KENT COURTHOUSE

KING COUNTY SUPERIOR COURT

OMNIBUS CALENDAR

CALENDAR DATE: 04/16/2010
12:56 A.M.

JUDGE:

JAMES D. CAYGE

BAILIFF:

SHERRI TYE

COURT CLERK:

LESLIE KEITH

COURT REPORTER

DR4D 10:50:04

CASE NO: 09-1-07750-5 KNT

DEFENDANT: ZAMUDIO OROZCO, MARCUS A

TRUE NAME:

Santos

CCN: 1873436

DPA: KING COUNTY, PROSECUTING ATTY

EXP: 05-20-10

ATD: BRADLEY, MARK CHARLES

2064473900

> p

CO-DEFENDANTS:

CHARGE: RAPE CHLD 2-DV, RAPE CHLD 3-DV 2CTS

ARR DATE: 12/07/2009

LOC: RJ--102L

INT: SPANISH *R. Gahan*
ORIGINAL TRIAL DATE: 03/16/2010

COMMENCE DATE: 01-21-10

TRIAL SET EXP: 03-21-10

OMNIBUS HEARING IS HELD. COURT ENTERS OMNIBUS ORDER.

MOTION TO CONTINUE OMNIBUS HEARING TO 4.23
GRANTED / ~~DENIED~~ ORDER SIGNED

MOTION FOR ISSUANCE OF BENCH WARRANT. GRANTED / DENIED
BAIL SET AT _____ ORDER SIGNED.

STATE'S MOTION TO AMEND INFORMATION. GRANTED / DENIED

PLEA - SENT TO JUDGE _____

DEFENDANT WITHDRAWS PLEA OF NOT GUILTY AND ENTERS PLEA / ALFORD PLEA OF
GUILTY. STATEMENT OF DEFENDANT ON PLEA OF GUILTY IS EXECUTED.
SENTENCING DATE TO BE SET.

DEFENDANT IS ARRAIGNED ON AMENDED INFORMATION AND ENTERS A PLEA OF NOT
GUILTY.

MOTION TO CONTINUE TRIAL DATE GRANTED / ~~DENIED~~
TRIAL DATE CONTINUED TO: 5.3
EXPIRATION DATE TO: 10.2

STATE'S MOTION TO DISMISS WITH / WITHOUT PREJUDICE IS GRANTED
ORDER SIGNED

ORDER STRIKING TRIAL DATE IS SIGNED.

ORDERS SIGNED

EX- B.18

FILED
KING COUNTY, WASHINGTON

APR 16 2010

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

ENT'D.

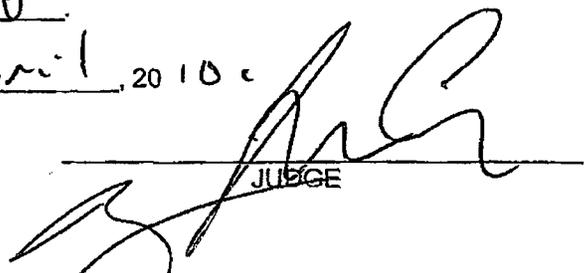
SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
	)	NO. 09-1-07750-5
	)	KNT
	)	ORDER CONTINUING TRIAL
v.	)	(ORCTD)
MARCUS ZAMUDIO-ORZCO	)	(Clerk's Action Required)
)	
CCN)	

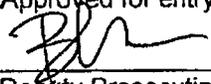
This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for 4/20/10 is continued to 5/3/10
 *upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:
 plaintiff's counsel in trial; defense counsel in trial; other: defense
counsel on vacation

It is further ORDERED:
 Omnibus hearing date is 4/23/10
 Expiration date is 6/2/10

DONE IN OPEN COURT this 16 day of April, 2010.



 JUDGE

Approved for entry:


 Deputy Prosecuting Attorney WSBA No. 33167

Attorney for Defendant WSBA No. 22864

I agree to the continuance:

* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 Interpreter King County, Washington

Trial Continuance
 (Effective 1 September 2003)

EX-1819

ORIGINAL COURT MINUTES

ORIGINAL COURT MINUTES

KENT COURTHOUSE

KING COUNTY SUPERIOR COURT

OMNIBUS CALENDAR

CALENDAR DATE: 04/23/2010
12:29 A.M.

JUDGE: MARY ROBERTS

BAILIFF: SHERRI TYE

COURT CLERK: LESLIE KEITH

COURT REPORTER

~~DR4D~~

CASE NO: 09-1-07750-5 KNT

DEFENDANT: ZAMUDIO OROZCO, MARCUS A

TRUE NAME:

CCN: 1873436

EXP: 06-02-10

DPA: KING COUNTY, PROSECUTING ATTY

ATD: BRADLEY, MARK CHARLES

2064473900

CO-DEFENDANTS:

CHARGE: RAPE CHLD 2-DV, RAPE CHLD 3-DV 2CTS

ARR DATE: 12/07/2009

LOC: RJ--102L

INT: SPANISH

ORIGINAL TRIAL DATE: 03/16/2010

COMMENCE DATE: 01-21-10

TRIAL SET EXP: 03-21-10

OMNIBUS HEARING IS HELD. COURT ENTERS OMNIBUS ORDER.

MOTION TO CONTINUE OMNIBUS HEARING TO
GRANTED / DENIED ORDER SIGNED

4:30

MOTION FOR ISSUANCE OF BENCH WARRANT. GRANTED / DENIED
BAIL SET AT _____ ORDER SIGNED.

STATE'S MOTION TO AMEND INFORMATION. GRANTED / DENIED

PLEA - SENT TO JUDGE _____

DEFENDANT WITHDRAWS PLEA OF NOT GUILTY AND ENTERS PLEA / ALFORD PLEA OF
GUILTY. STATEMENT OF DEFENDANT ON PLEA OF GUILTY IS EXECUTED.
SENTENCING DATE TO BE SET.

DEFENDANT IS ARRAIGNED ON AMENDED INFORMATION AND ENTERS A PLEA OF NOT GUILTY.

MOTION TO CONTINUE TRIAL DATE GRANTED / DENIED

TRIAL DATE CONTINUED TO: _____

EXPIRATION DATE TO: _____

STATE'S MOTION TO DISMISS WITH / WITHOUT PREJUDICE IS GRANTED
ORDER SIGNED

ORDER STRIKING TRIAL DATE IS SIGNED.

ORDERS SIGNED

EX-B.20

FILED

KING COUNTY, WASHINGTON

APR 23 2010

ENT'D.

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON Plaintiff,

vs.

MARCUS ZAMUDIO-ORRICO

Defendant.

NO. 09-1-67750-5 ENT

STIPULATED ORDER TO CONTINUE
OMNIBUS HEARING
(ORCOMH)

(Clerk's Action Required)

The parties having stipulated that the omnibus hearing be continued to 4/30/10

IT IS HEREBY ORDERED that the omnibus hearing is continued to 4/30/10 at 8:30 AM

DATED: 4/23/10

BL 33167

Deputy Prosecuting Attorney, WSBA # _____

[Signature]

JUDGE
JUDGE MARY E. ROBERTS

[Signature] WSBA # 34557

for M. Bradley

Stipulated Order to Continue Omnibus Hearing

10/2/06

ORIGINAL COURT MINUTES

KENT COURTHOUSE

KING COUNTY SUPERIOR COURT

OMNIBUS CALENDAR

CALENDAR DATE: 04/30/2010
12:53 A.M.

JUDGE: MARY ROBERTS

BAILLIFF: SHERRI TYE

COURT CLERK: LESLIE KEITH

COURT REPORTER

DR4D 10.44:27

CASE NO: 09-1-07750-5 KNT

DEFENDANT: ZAMUDIO OROZCO, MARCUS A

TRUE NAME:

CCN: 1873436

EXP: 06-02-10

Santos

DPA: KING COUNTY, PROSECUTING ATTY
ATD: BRADLEY, MARK CHARLES
2064473900

> p

CO-DEFENDANTS:

CHARGE: RAPE CHLD 2-DV, RAPE CHLD 3-DV 2CTS

ARR DATE: 12/07/2009

LOC: RJ--102I

INT: SPANISH *Gahan*
ORIGINAL TRIAL DATE: 03/16/2010

COMMENCE DATE: 01-21-10

TRIAL SET EXP: 03-21-10

OMNIBUS HEARING IS HELD. COURT ENTERS OMNIBUS ORDER.

MOTION TO CONTINUE OMNIBUS HEARING TO _____
GRANTED / DENIED ORDER SIGNED

MOTION FOR ISSUANCE OF BENCH WARRANT. GRANTED / DENIED
BAIL SET AT _____ ORDER SIGNED.

STATE'S MOTION TO AMEND INFORMATION. GRANTED / DENIED

PLEA - SENT TO JUDGE _____

DEFENDANT WITHDRAWS PLEA OF NOT GUILTY AND ENTERS PLEA / ALFORD PLEA OF
GUILTY. STATEMENT OF DEFENDANT ON PLEA OF GUILTY IS EXECUTED.
SENTENCING DATE TO BE SET.

DEFENDANT IS ARRAIGNED ON AMENDED INFORMATION AND ENTERS A PLEA OF NOT GUILTY.

MOTION TO CONTINUE TRIAL DATE GRANTED / DENIED

TRIAL DATE CONTINUED TO: _____

EXPIRATION DATE TO: _____

STATE'S MOTION TO DISMISS WITH / WITHOUT PREJUDICE IS GRANTED
ORDER SIGNED

ORDER STRIKING TRIAL DATE IS SIGNED.

ORDERS SIGNED

EX - B. 22

FILED
KING COUNTY, WASHINGTON

APR 30 2010

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff,

vs.

Marcus Zamudio - Orozco

Defendant

NO. 09-1-07750-5 KNT

ORDER ON OMNIBUS HEARING

Charge: ROB^(OOR) + 3

Trial Date: 5/3/10

Expiration: 6/2/10

In Custody Out of Custody

An omnibus hearing was held on this date.

1. CrR 3.5:

- No custodial statements will be offered in the state's case-in-chief, or in rebuttal.
- The statements of defendant will be offered in state's rebuttal case only.
- The statements referred to in the state's omnibus application will be offered and:
 - May be admitted into evidence without a pretrial hearing, by stipulation of the parties.
 - A pretrial hearing shall be held.

2. CrR 3.6:

- No motion to suppress evidence pursuant to CrR 3.6(a) shall be made.
- Defendant will move to suppress evidence. Moving party shall comply with CrR 3.6, 8.1 and CR 6. The motion shall be heard, immediately before trial, by the trial judge.

3. CrR 4.7:

- Plaintiff has provided the defense with all discovery required by CrR 4.7(a).
- Defendant has provided the plaintiff with all discovery required by CrR 4.7(b).

Plaintiff shall provide the defense with _____ by _____, 200__.

Defendant shall provide plaintiff with _____ by _____, 200__.

Witness interviews shall be completed by _____, 200__. No party may impede opposing counsel's investigation of the case, CrR 4.7(h)(1).

The general nature of the defense is denial.

Discovery orders: _____

4. Plaintiff will move to amend the information to add additional charges of ROG 1, 2, 3
Defense shall be served a copy of the proposed amended information _____ days before the trial date.
And potentially prosecution of child Agg. under RCW 9.94A.535 and Tampering + NCO's

5. Motions *in limine* are reserved for the trial court.

6. Proposed jury instructions shall be served and filed when the case is called for trial, CrR 6.15(a).

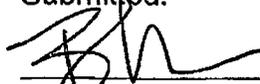
7. Other motions not specifically referenced in this order shall be noted before the chief criminal judge or criminal motions judge, and shall comply with CrR 8.1, CrR 8.2, CR 6 and CR 7(b) unless expressly agreed by the parties in writing.

8. _____

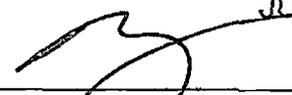
DONE IN OPEN COURT this 30th day of April, 2010.



JUDGE
JUDGE MARY E. ROBERTS

Submitted:

33167

DEPUTY PROSECUTING ATTORNEY
WSBA# _____



ATTORNEY FOR DEFENDANT
WSBA# 22864

I am fluent in the _____ language. I have translated this document for the defendant into that language. I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

Date and Place Interpreter

OMNIBUS HEARING CHECKLIST

Case Name: Marcus Zamudio - Grozco
Case No: 09-1-07750-6

Trial Date: 5/3/10
Expiration Date: 1/2/10

PLEA NEGOTIATIONS COMPLETED

Yes No Plea Possible
Yes No Sent to Plea Calendar this date NA

DISCOVERY ISSUES ADDRESSED

Provided by:

Yes No All documentary discovery (photos/tapes) provided
Yes No Prior convictions of defendant/witness provided
Yes No All medical records, expert reports, lab and test results provided
Yes No All state witnesses have been interviewed and are ready for trial
Yes No All defense witnesses have been interviewed and are ready for trial
Yes No All remaining witnesses interviews have been scheduled for specific dates and times or will be completed by 5/30/10
Yes No All discoverable defenses have been disclosed
Yes No All discovery has been completed

If no: Discovery matters which need court's resolution:

TRIAL / READINESS ISSUES

Yes No The information will be amended
Yes No Co-defendant(s) is/are ready for trial NA
5-6 days Trial length estimate, including pre-trial motions
Yes No Jury
Yes No CrR 3.5 hearing:
of hours _____ # of witnesses _____
Yes No CrR 3.6 hearing:
of hours 1 # of witnesses 3 -- interview date(s) _____
Briefing schedule _____

Jail phone calls are being interrupted; no reason at this time as to believe trial will be affected

OTHER

Yes No Sent to motion calendar
If yes: Motion to be heard no later than: _____
Briefing schedule: _____

If no: Omnibus rescheduled to: _____

DATED: 04/30/2010
[Signature]
Deputy Prosecuting Attorney

[Signature]
JUDGE MARY E. ROBERTS
JUDGE MARY E. ROBERTS

ORIGINAL COURT MINUTES

ENT'D

PAGE #: 16

KENT COURTHOUSE
KING COUNTY SUPERIOR COURT

CRIMINAL TRIAL CALENDAR

CALENDAR DATE: 05/03/2010

JUDGE: Cheryl Carey

COURT CLERK: Teresa Jackson

COURT REPORTER

CASE NO: 09-1-07750-5 KNT

DEFENDANT: ZAMUDIO OROZCO, MARCUS A

TRUE NAME:

CCN: 1873436

EXP: 06-02-10

DPA: KING COUNTY, PROSECUTING ATT

ATD: BRADLEY, MARK CHARLES

2064473900

CO-DEFENDANTS:

CHARGE: RAPE CHLD 2-DV, RAPE CHLD 3-DV 2CTS

ARR DATE: 12/07/2009

LOC: RJ--102L

INT: SPANISH

ORIGINAL TRIAL DATE: 03/16/2010

COMMENCE DATE: 01-21-10

TRIAL SET EXP: 03-21-10

MOTION JUDGE #: HON. 000

AFFIDAVIT:

ACTION:

HOLD TO 5:30 (1:30 Standby)

5-DAY EXTENSION TO _____

CONT - CONTINUED TO _____

60/90 WAIVER TO _____

ASSIGNED TO JUDGE _____

PLEA - SENT TO _____

STRIKE

BEN - BENCH WARRANT TO BE ISSUED

DSMHRG - ORDER OF DISMISSAL

ORDER SIGNED/ORDER TO BE PRESENTED

EX-B.24

FILED
KING COUNTY, WASHINGTON

MAY 3 2010

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,
Plaintiff,
v.
Zamudio-Orozco, Marcus
Defendant
CCN 1873436

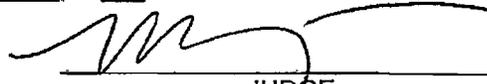
NO 09-1-07750-5 KNT
ORDER CONTINUING TRIAL
(ORCTD)
(Clerk's Action Required)

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
ORDERED that the trial, currently set for 05/03/2010, is continued
05/04/2010. *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the
administration of justice [CrR 3.3(f)(2)] for the following reason: plaintiff's counsel in trial;
 defense counsel in trial; no judicial availability; other:

It is further ORDERED:

Omnibus hearing date is _____
 Expiration date is remains 6/2/2010

DONE IN OPEN COURT this 3rd day of May, 2010.



JUDGE
JUDGE MARY E. ROBERTS

Approved for entry:

Deputy Prosecuting Attorney WSBA No.

Attorney for Defendant WSBA No.

I agree to the continuance:

Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

King County, Washington

Interpreter

Trial Continuance
(Effective 1 September 2003)

ORIGINAL COURT MINUTES

PAGE #: 17

KENT COURTHOUSE
KING COUNTY SUPERIOR COURT

CRIMINAL TRIAL CALENDAR

CALENDAR DATE: 05/04/2010

JUDGE:

Mary Roberts

COURT CLERK:

Leslie Keith

COURT REPORTER

CASE NO: 09-1-07750-5 KNT

DEFENDANT: ZAMUDIO OROZCO, MARCUS A

TRUE NAME:

CCN: 1873436

EXP: 06-02-10

DPA: KING COUNTY, PROSECUTING ATT

ATD: BRADLEY, MARK CHARLES

2064473900

CO-DEFENDANTS:

CHARGE: RAPE CHLD 2-DV, RAPE CHLD 3-DV 2CTS

ARR DATE: 12/07/2009

LOC: RJ--102L

INT: SPANISH

ORIGINAL TRIAL DATE: 03/16/2010

COMMENCE DATE: 01-21-10

TRIAL SET EXP: 03-21-10

MOTION JUDGE #: HON. 000

AFFIDAVIT:

ACTION:

HOLD TO _____

5-DAY EXTENSION TO _____

CONT - CONTINUED TO _____

60/90 WAIVER TO _____

ASSIGNED TO JUDGE White

PLEA - SENT TO _____

STRIKE

BEN - BENCH WARRANT TO BE ISSUED

DSMHRG - ORDER OF DISMISSAL

ORDER SIGNED/ORDER TO BE PRESENTED

EX - B.26

EXHIBIT

C

I.WSP-CRIME LAB REPORT PRESENTED
DATE MARCH 9th-2010
BY MEGAN M. INSLEE
LAB#109-003128.
3 PGS.

EXHIBIT

C

ORIGINAL - RECORDS, COPIES - EVIDENCE, L. MELTON

CHRISTINE O. GREGOIRE
Governor



09-12405
JOHN R. BATISTE
Chief

STATE OF WASHINGTON
WASHINGTON STATE PATROL

2203 Airport Way South, Suite 250 • Seattle, Washington 98134-2045 • (206) 262-6020 • www.wsp.wa.gov

CRIME LABORATORY REPORT

Agency:	Kent Police Department	Laboratory Number:	109-003128
Agency Rep:	Detective L. Melton	Agency Case Number:	09-12405
Subject:	Victim - Zamudio, Jessica E.	Request Number:	0001, 0002
Subject:	Suspect - Zamudio Orozco, Marcus A.		

Evidence Examined:

Item 7: One sealed sexual assault kit reportedly collected from Jessica Zamudio. The oral, perineal, vaginal, anal, and skin swabs, as well as the reference blood card were examined for this report.

Item 4: One pair of jeans, reportedly collected from Jessica Zamudio, in a sealed paper bag.

Item 3: One pair of boxer-style underpants, reportedly collected from Marcus Zamudio Orozco, in a sealed paper bag.

Item 10: Swabs, reportedly oral references from Frank Jaimes, in a sealed envelope.

Procedures and Results:

Portions of the oral, perineal, vaginal, and anal swabs (Item 7) were removed and extracted for a microscopic evaluation. A spermatozoon was observed in the vaginal sample; none were observed in the other samples. Each of the extracts was tested for the presence of p30, a protein used in the detection of semen. The perineal and vaginal samples tested positive for p30 and the oral and anal samples tested negative. The vaginal swabs were sampled in their entirety and extracted for DNA using a differential technique, which attempts to separate sperm cell DNA from non-sperm cell DNA. No further testing was conducted on the oral, perineal or anal samples.

The skin swabs (Item 7) were tested for the presence of acid phosphatase (AP), an enzyme present at elevated levels in semen and lower levels in some other body fluids. All of the skin swabs tested negative for AP and no further testing was conducted on them.

The jeans (Item 4) were examined using a Forensic Light Source (FLS), which delivers a high-intensity light of adjustable wavelength which may cause certain biological fluids to fluoresce. The interior crotch area and an area on the exterior left thigh fluoresced. Both areas were tested for AP. The interior crotch area tested positive; the exterior left thigh tested negative. A sample was removed from the crotch area and extracted for a microscopic evaluation. Spermatozoa were observed. The sample was also tested for the presence of p30, with a positive result. The sample was extracted for DNA using a differential technique.

The boxers (Item 3) were visually examined. The inside front panel was tested for AP, with positive results. A swabbing was taken down the centerline of the inside front panel. The swabbing was extracted for a microscopic evaluation. Spermatozoa were observed. The swab was extracted for DNA using a differential technique.

Megan M. Inslee, Forensic Scientist

39.6
Date

C 1

09-12405

Agency: Kent Police Department
Agency Rep: Detective L. Melton
Subject: Victim - Zamudio, Jessica E.
Subject: Suspect - Zamudio Orozco, Marcus A.

Laboratory Number: 109-003128
Agency Case Number: 09-12405
Request Number: 0001, 0002

Portions from the references for Jessica Zamudio (Item 7) and Frank Jaimes (Item 10) were removed and extracted for DNA.

The DNA extracts were quantified for total human DNA and some for human male DNA. Due to low quantification results, no further testing was conducted on the vaginal samples (Item 7). The other extracts were then amplified using an established Polymerase Chain Reaction (PCR) procedure and the Applied Biosystems AmpFISTR® Profiler Plus® and COfiler® amplification kits. The sperm fractions of the boxers (Item 3) and the jeans (Item 4) were not amplified with the COfiler kit. The Profiler Plus® kit amplifies the following Short Tandem Repeat (STR) markers: D3S1358, vWA, FGA, D8S1179, D21S11, D18S51, D5S818, D13S317, D7S820, and amelogenin (a sex determination site). The COfiler® amplification kit amplifies the following STR markers: D3S1358, D16S539, TH01, TPOX, CSF1PO, D7S820, and amelogenin. The resulting products were then analyzed on an AB 3130 Genetic Analyzer. A threshold of 150 Relative Fluorescence Units (RFU) and above is used for allele designation.

Conclusions:

1. No semen was detected on the oral, anal, or skin swabs (Item 7).
2. Semen was detected on the vaginal swabs (Item 7), the jeans (Item 4), and the boxers (Item 3).
3. The p30 result obtained indicates the presence of semen on the perineal swabs (Item 7).
4. The DNA typing profile obtained from the jeans (Item 4) is mixed in origin, consistent with originating from three individuals.
 - a. The non-sperm fraction is a mixture consistent with originating from two female individuals.

Jessica Zamudio (Item 7) is included as a possible contributor to this mixture. Based on the U.S. population, it is estimated that 1 in 30 thousand individuals is a potential contributor to this mixture.

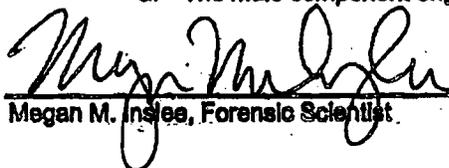
No indication of male DNA was detected in the non-sperm fraction.

- b. The sperm fraction is a mixture consistent with originating from three individuals, at least one of which is female.

The donors of the non-sperm fraction (Jessica Zamudio (Item 7) and a second female individual), Frank Jaimes (Item 10), and Individual A (see conclusion 5) are all included as possible contributors to the overall sperm-fraction mixture. Based on the U.S. population, it is estimated that 1 in 77 individuals is a potential contributor to this mixture.

See Remark 2.

5. The DNA typing profile obtained from the boxers (Item 3) is mixed in origin, consistent with originating from two individuals.
 - a. The male component originates from an unknown male source, designated Individual A.


Megan M. Inslee, Forensic Scientist

3-9-10

Date

Agency: Kent Police Department
Agency Rep: Detective L. Melton
Subject: Victim - Zamudio, Jessica E.
Subject: Suspect - Zamudio Orozco, Marcus A.

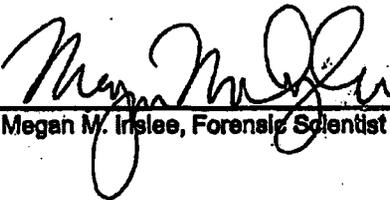
Laboratory Number: 109-003128
Agency Case Number: 09-12405
Request Number: 0001, 0002

- b. The female component originates from a single source and matches the DNA typing profile of Jessica Zamudio (Item 7).

The estimated probability of selecting an unrelated individual at random from the U.S. population with a matching profile is 1 in 33 trillion.

Remarks:

1. Statistical calculations were computed by CODIS Popstats using data compiled by the FBI and published in the Journal of Forensic Sciences, 2001:48(3). The statistical strength increases with the number of markers used in the calculation.
2. An individual who is closely related to one of the donors of a mixture may technically be included as a possible contributor to that mixture simply because he/she shares genetic information with the true donor.
3. The evidence items were resealed and returned to the Washington State Patrol Seattle Crime Laboratory evidence vault pending return to the submitting agency.


Megan M. Inglee, Forensic Scientist

3-9-10
Date

EXHIBIT

D

I. NOTICE OF APPEARANCE AND
REQUEST FOR DISCOVERY
SUP 03-10-2010
3 PGS.

EXHIBIT

D

FILED

10 MAR 04 AM 8:30

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 09-1-077505 KNT

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

NO. (s) 091077505KNT

Plaintiff

v.

MARCUS A ZAMUDIO-OROZCO

Defendant,

NOTICE OF APPEARANCE AND
REQUEST FOR DISCOVERY

Ct. SUP 03/10/2010

Atty: Mark Bradley 22864

Purpose: CS

Charge: RAPECH2

TO: CLERK OF THE SUPERIOR COURT
DANIEL SATTERBERG, PROSECUTING ATTORNEY
FILING DEPUTY in the above matter

YOU WILL TAKE NOTICE that the undersigned is appearing as counsel for the defendant above-named.

YOU ARE REQUESTED to preserve all physical evidence relating to the alleged offense including, but not limited to, police communications (911) tapes, and the scene of the alleged crime until final disposition of this cause or until further order of this Court. Request is made pursuant to State v. Boyd, 29 Wn.App. 584 (1981) and U.S. v. Agurs, 427 U.S. 97, 49 L.Ed.2d 342 (1976).

LAW OFFICES OF
The Defender Association
810 Third Avenue, Suite 800
Seattle, WA 98104

1 YOU ARE HEREBY REQUESTED to provide discovery of the following
2 materials as provided for by CrR 4.7 and LCrR 4.5(j) so that timely decision may be made
regarding selection of a trial date or changing the plea.

3 1. The names and addresses of persons whom the prosecuting attorney intends
4 to call as witnesses at the hearing together with any written or recorded statements and the
substance of any oral statements of such witnesses;

5 2. Any written or recorded statements and the substance of any oral
6 statements made by the defendant, or made by a co-defendant if the trial is to be a joint
one;

7 3. When authorized by the court, those portions of grand jury minutes
8 containing testimony of the defendant, relevant testimony or persons whom the
prosecuting attorney intends to call as witnesses at the hearing or trial, and any relevant
9 testimony that has not been transcribed;

10 4. Any reports or statements of experts made in connection with the particular
11 case, including results of physical or mental examination and scientific tests, experiments,
or comparisons;

12 5. Any record or prior criminal convictions of the defendant known to the
13 prosecuting attorney, including copies of any and all documents, including but not limited
to guilty plea forms and/or transcripts upon which the prosecutor intends to rely for the
purpose of establishing the prior record;

14 6. Any record known to the prosecuting attorney of prior criminal convictions
15 of any persons whom the State intends to call as witnesses at a hearing or trial in this
case;

16 YOU ARE FURTHER REQUESTED to provide notice of the defendant's
17 criminal history (RCW 9.94A.030(8)) and the aggravating factors (RCW 9.94A.390)
upon which the State will rely if the defendant's case ultimately proceeds to sentencing, so
18 that timely decision may be made regarding selection of a trial date or changing the plea.

19 This request is made pursuant to Const. Art. I, §22 and U.S. Const. Amends.
20 V and XIV.

21 YOU ARE FURTHER REQUESTED to provide prompt discovery of the
following:

22 1. With respect to criminal history, the crime or crimes (with specific statutes
23 violated for out-of-state convictions), the date of conviction, the date of release from
custody, the state and county of conviction, and the cause number.

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2. If the State intends to argue or present evidence of aggravating circumstances to justify a departure from the guidelines pursuant to RCW 9.9A.390, the specific evidence the State intends to present to the Court on that issue.

3. Real facts upon which the State intends to rely. RCW 9.94A.370.

YOU ARE FURTHER REQUESTED to produce all expert witnesses at trial pursuant to CrR 6.13(b)(3)(iii).

Respectfully submitted this 3rd day of March, 2010.

s/Mark Bradley
State Bar Number 22864
The Defender Association
810 Third Avenue, Suite 800
Seattle, WA 98104
Telephone: (206) 447-3900
Fax: (206) 447-2349

Next Court Date (per PBP): _____

Purpose: _____

EXHIBIT

E

I. INQUIRY FROM THE JURY
AND COURT RESPONSE
DELIBERATIONS DAY
MAY 20-2010
10 PGS.

EXHIBIT

E

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

STATE OF WASHINGTON,

Plaintiff,

vs.

MARCUS ZAMUDIO-OROZCO,

No. 09-1-07750-5 KNT

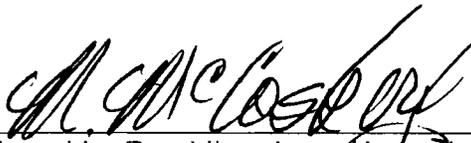
Defendant.

INQUIRY FROM THE JURY
AND COURT'S RESPONSE
(JYN)

In your question to the court, do not indicate how your deliberations are proceeding. Do not state how the jurors have voted on any particular question, issue, or claim, or in any other way express your opinions about the case.

JURY INQUIRY:

WE WOULD LIKE TO SEE THE D.N.A.
~~REDA~~ REPORT CONCERNING JESSICA'S
JEANS & ~~AAA~~ MARCUS'S SHORTS.


Signed by Presiding Juror/Juror # 1

5-20-10 9:50 AM
DATE AND TIME

DATE AND TIME RECEIVED: _____

****DO NOT DESTROY- LEAVE IN JURY ROOM****

Inquiry From the Jury and Court's Response, Page 1 of 2 SC Form JO-117 (7/00)

COURT'S RESPONSE: (AFTER AFFORDING ALL COUNSEL/PARTIES OPPORTUNITY TO BE HEARD):

You are to consider all
of the testimony you
heard and exhibits admitted
into evidence as a whole in
light of the Court's instructions
as a whole.



Judge JAY V. WHITE

DATE AND TIME RETURNED TO JURY: _____

****DO NOT DESTROY- LEAVE IN JURY ROOM****

Inquiry From the Jury and Court's Response, Page 2 of 2 SC Form JO-117 (7/00)

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

STATE OF WASHINGTON,

Plaintiff,

vs.

MARCUS ZAMUDIO-OROZCO,

No. 09-1-07750-5 KNT

Defendant.

INQUIRY FROM THE JURY
AND COURT'S RESPONSE
(JYN)

In your question to the court, do not indicate how your deliberations are proceeding. Do not state how the jurors have voted on any particular question, issue, or claim, or in any other way express your opinions about the case.

JURY INQUIRY:

WE WOULD LIKE TO HAVE A COPY OR TRANSCRIPT
OF THE "CODED" PHONE CALL AFTER
ARREST (FORM F CHARGE.)


Signed by Presiding Juror/Juror # 1

5-20-11 10:15 AM
DATE AND TIME

DATE AND TIME RECEIVED: _____

****DO NOT DESTROY- LEAVE IN JURY ROOM****

Inquiry From the Jury and Court's Response, Page 1 of 2 SC Form JO-117 (7/00)

COURT'S RESPONSE: (AFTER AFFORDING ALL COUNSEL/PARTIES OPPORTUNITY TO BE HEARD):

You are to consider all
of the testimony you heard
and exhibits admitted into
evidence as a whole in
light of the Court's instructions
as a whole.



Judge JAY V. WHITE

DATE AND TIME RETURNED TO JURY: _____

****DO NOT DESTROY- LEAVE IN JURY ROOM****

Inquiry From the Jury and Court's Response, Page 2 of 2 SC Form JO-117 (7/00)

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

STATE OF WASHINGTON,

Plaintiff,

vs.

MARCUS ZAMUDIO-OROZCO,

Defendant.

No. 09-1-07750-5 KNT

INQUIRY FROM THE JURY
AND COURT'S RESPONSE
(JYN)

In your question to the court, do not indicate how your deliberations are proceeding. Do not state how the jurors have voted on any particular question, issue, or claim, or in any other way express your opinions about the case.

JURY INQUIRY:

Do ALL JURORS ~~NEED~~ NEED TO AGREE
ON EACH COUNT TO FORM A VERDICT
~~ON EACH COUNT.~~
CAN A VERDICT BE MADE ON
AN INDIVIDUAL COUNT WITH JUST
A UNANIMOUS VOTE.


Signed by Presiding Juror / Juror # 1

5-20-10 10:52AM
DATE AND TIME

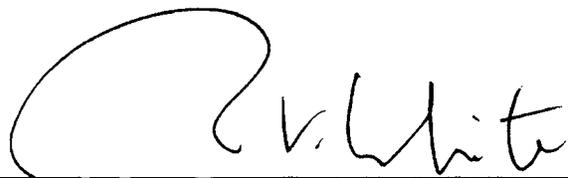
DATE AND TIME RECEIVED: _____

****DO NOT DESTROY- LEAVE IN JURY ROOM****

Inquiry From the Jury and Court's Response, Page 1 of 2 SC Form JO-117 (7/00)

COURT'S RESPONSE: (AFTER AFFORDING ALL COUNSEL/PARTIES OPPORTUNITY TO BE HEARD):

You are to return a
unanimous verdict as
to each count to
which you unanimously
agree.



Judge JAY V. WHITE

DATE AND TIME RETURNED TO JURY: 5/20/10 11:36

****DO NOT DESTROY- LEAVE IN JURY ROOM****

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

STATE OF WASHINGTON,

Plaintiff,

vs.

MARCUS ZAMUDIO-OROZCO,

Defendant.

No. 09-1-07750-5 KNT

INQUIRY FROM THE JURY
AND COURT'S RESPONSE
(JYN)

In your question to the court, do not indicate how your deliberations are proceeding. Do not state how the jurors have voted on any particular question, issue, or claim, or in any other way express your opinions about the case.

JURY INQUIRY:

DID THE WITNESSES KNOW THE COURT
DEFINITION OF "RAPE"


Signed by Presiding Juror/Juror # 1

5-21-10 10:00
DATE AND TIME

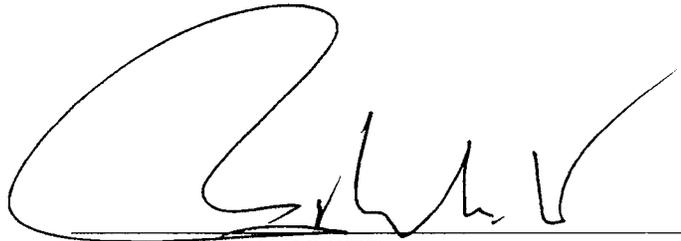
DATE AND TIME RECEIVED: _____

****DO NOT DESTROY- LEAVE IN JURY ROOM****

Inquiry From the Jury and Court's Response, Page 1 of 2 SC Form JO-117 (7/00)

COURT'S RESPONSE: (AFTER AFFORDING ALL COUNSEL/PARTIES OPPORTUNITY TO BE HEARD):

You are to consider all
of the testimony you heard
and exhibits admitted
into evidence as a whole
in light of the Court's instructions
as a whole.



Judge JAY V. WHITE

DATE AND TIME RETURNED TO JURY: ~~10/23~~ 10:30am 5/21/10

****DO NOT DESTROY- LEAVE IN JURY ROOM****

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

STATE OF WASHINGTON,

Plaintiff,

vs.

MARCUS ZAMUDIO-OROZCO,

No. 09-1-07750-5 KNT

INQUIRY FROM THE JURY
AND COURT'S RESPONSE
(JYN)

Defendant.

In your question to the court, do not indicate how your deliberations are proceeding. Do not state how the jurors have voted on any particular question, issue, or claim, or in any other way express your opinions about the case.

JURY INQUIRY:

How long do we deliberate on
any or all counts? Do ^{we} need to
decide on each count? Is
there a reasonable time limit
or do we keep going?

[Signature]
Signed by Presiding Juror / Juror # 1

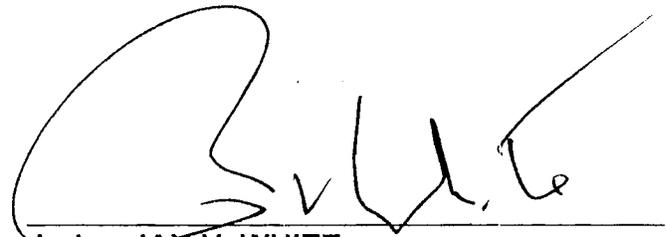
5-21-10 1:50 PM
DATE AND TIME

DATE AND TIME RECEIVED:

****DO NOT DESTROY- LEAVE IN JURY ROOM****

COURT'S RESPONSE: (AFTER AFFORDING ALL COUNSEL/PARTIES OPPORTUNITY TO BE HEARD):

You are instructed to
continue your deliberations
in accordance with the court's
instructions as a whole.



Judge JAY V. WHITE

DATE AND TIME RETURNED TO JURY: _____

****DO NOT DESTROY- LEAVE IN JURY ROOM****

STATE OF WASHINGTON
COURT OF APPEALS, DIVISION I

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 MARCUS ZAMUDIO.)
)
 Petitioner.)

No: 65557-4-1

CERTIFICATE OF SERVICE

I, MARCUS ZAMUDIO, Petitioner in the above entitled case, under the penalty of perjury, do hereby certify that on the date noted below, I sent copies of:

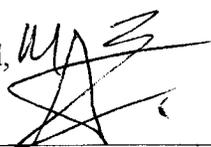
STATEMENT OF ADDITIONAL GROUNDS.

To:

- 1 COURT OF APPEALS
DIVISION I
- 2 PROSECUTOR OFFICE
- 3 CHRISTOPHER GIBSON (NBK)

By processing as *Legal Mail*, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 2049, Airway Heights, WA 99001-2049.

Dated this 14 day of JULY, 2010.

Respectfully Submitted, 

Petitioner

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 JUL 18 AM 10:54