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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

No. 31165-1-III

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

STATE OF WASHINGTON,
RESPONDENT,
v.
JAMES GREGORY CASTILLO
APPELLANT.

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR YAKIMA COUNTY
HONORABLE DAVID A. ELOFSON

STATEMENT OF ADDITIONAL GROUNDS

JAMES G. CASTILLO
SUBMITTED PRO SE

THOMAS M. KUMMEROW
ATTORNEY FOR APPELLANT

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

STATE OF WASHINGTON,	}	NO. 31165-1-III
RESPONDENT,		
V.		STATEMENT OF ADDITIONAL
JAMES CASTILLO,		GROUND FOR REVIEW
APPELLANT.	}	

I, JAMES CASTILLO, HAVE RECEIVED AND REVIEWED THE OPENING BRIEF PREPARED BY MY ATTORNEY. BELOW ARE THE ADDITIONAL GROUNDS FOR REVIEW THAT ARE NOT ADDRESSED IN THAT BRIEF. I UNDERSTAND THE COURT WILL REVIEW THIS STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW WHEN MY APPEAL IS CONSIDERED ON THE MERITS.

PLEASE NOTE: TRANSCRIPT REFERENCES AS FOLLOWS: FOUR-VOLUME SET OF HEARINGS AND SECOND TRIAL "1RP (THE VOLUME) THE PAGE AND THE LINE @ LOCATION"; SIX-VOLUME SET OF FIRST TRIAL "2RP (THE VOLUME) THE PAGE, THE LINE @ LOCATION"; AND THE SENTENCING TRANSCRIPT IDENTIFIED AS "10/15/2012 RP"

STATEMENT OF THE CASE

On July 2, 1998, the State filed information charging James Castillo with one count of second degree rape and an arrest warrant was issued. CP 1 From the onset of the case the State was aware that Castillo was not residing within the State of Washington. Aside from an initial search of a family members home in California, executed in July 1998, CP 79 no efforts are recorded by the State to notify or seek an out-of-state arrest warrant for his arrest. Moreover, when the State was notified by United States Border Customs Officials, CP 37-43, of his detainment in 2007 the State refused to extradite CP 43. Again, notified by the United States Marshall's Office in 2009 of Castillo's exact residence the State continually refused to seek an expediate arrest or notify Castillo of the warrant.

Upon his arrest, May 23, 2010, CP 79, and waiver of extradition the State's dilatory actions to prosecute continued and are demonstrated in the 45-day time lapse between arrest and arraignment of July 9, 2010, the excursion took Castillo through four states, numerous county jails, all before arriving back in Washington State.

THROUGHOUT THE ENSUING 18 MONTHS CASTILLO REPETATIVELY ATTEMPT TO GET HIS "DAY IN COURT." THE TRIAL COURT, DEFENSE COUNSEL AND THE STATE CONTINUOUSLY DELAYED PROCEEDING TO TRIAL, (ESPECIFIC EXAMPLE: IRP (VOL. 1) 110-136) AND CONTINUALLY ATTEMPTED TO HAVE CASTILLO WAIVE HIS SPEEDY TRIAL RIGHTS, WHICH NEVER OCCURRED.

TO PURSUE HIS RIGHT TO A SPEEDY TRIAL CASTILLO FILED A FEDERAL CIVIL ACTION AGAINST THOSE DENYING HIM HIS RIGHT TO TRIAL, WHICH INCLUDED THE COUNTY OF YAKIMA, DEFENSE COUNSEL, STATE PROSECUTORS AND JUDGES. WITHIN 14 DAYS AFTER LOCAL FILING OF CIVIL COMPLAINT CASTILLO WAS IN TRIAL, PRO SE, NOT GIVEN A FULL DAY TO PREPARE. FIRST TRIAL CONCLUDED WITH A HUNG JURY. THE SECOND TRIAL CONCLUDED WITH A CONVICTION.

HAVING A PROSECUTOR THAT YOU ARE SWING IN CIVIL COURT PROSECUTE YOU IS ODD, BUT BEING DEFENDED BY AND HAVING A STANDBY COUNSEL REPRESENT YOU THAT YOU ARE SWING IS FRIGHTENING.

I. THE MISMANAGEMENT OF THE EVIDENCE AND/OR THE PROCEEDINGS VIOLATED CASTILLO'S CONSTITUTIONALLY PROTECTED RIGHT TO DUE PROCESS OF LAW.

On October 5, 2010, the State informed the Court that they were seeking a continuance because the State, "... REGARDING ANTICIPATION OF COMPLETION OF SOME DNA EVIDENCE IN THIS CASE," IRP (Vol. 1) 8@11-15

On October 7, 2010, RESET STATE REQUESTED CONTINUANCE HEARING, THE STATE CONTENTS THAT A CONTINUANCE IS NEEDED TO DO TESTING ON EVIDENCE (DNA) THAT WAS SENT TO THE CRIME LAB. IRP (Vol. 1) @22 — — THE COURT ASKS THE STATE WHY THE REQUESTED CONTINUANCE WAS NOT ASKED FOR IN AUGUST OR SEPTEMBER. — — THE STATE ATTESTED TO THE TRIAL COURT AND EMPHATICALLY STATED, "THE EVIDENCE IS AT THE LAB." IRP (VOL. 1) 21@23-24

DURING THIS SAME HEARING (10/7/10), THE COURT PRESERVES THE ISSUE OF THE STATE'S MISMANAGEMENT OF EVIDENCE OR DISCOVERY MATERIAL AND ITS AFFECTS AND POSSIBLE INFRINGEMENTS UPON CASTILLO'S RIGHTS. IRP (Vol. 1) 23@23 — 24@4

On FEBRUARY 6, 2012, FOURTH DAY OF TRIAL, LEAD INVESTIGATOR RANDY SPERLE, TESTIFIES TO HAVE TAKEN BUCCAL SWABS FOR DNA TESTING FROM NINFA BLANCO (ALLEGED VICTIM) ON OCTOBER 12, 2010 AT 3:22 IN THE EVENING. 2RP (VOL. 4) 248 @ 4-9 — — On JULY 23, 2012, THIRD DAY OF RETRIAL, MR. SPERLE REITERATES THIS SAME TESTIMONY. 1RP (VOL. 3) 506 @ 23-25

On JULY 20, 2012, SECOND DAY OF RETRIAL, THE STATE'S EXPERT WITNESS, FORENSIC SCIENTIST CARON PRUETT, TESTIFIES THAT ONE OF THE DNA SAMPLES TO BE TESTED, "DID NOT ARRIVE INTO THE WASHINGTON STATE PATROL CRIME LAB UNTIL THE 14TH OF OCTOBER, 2010. . . ." 1RP (VOL. 3) 448 @ 9-12

1. CASTILLO HAD A CONSTITUTIONALLY PROTECTED RIGHT TO A TIMELY AND FUNDAMENTAL DUE PROCESS OF LAW.

a. DNA EVIDENCE IN NATURE IS CONSIDERED TO BE EXCULPATORY EVIDENCE.

b. THE STATE'S DECISION TO MISLEAD THE COURT CONCERNING THE PROCESSING OF EXCULPATORY EVIDENCE (10/5/10 AND 10/7/10, TRANSCRIBED DECLARATIONS TO THE COURT), WHICH WAS CONTRADICTED BY THE STATE'S OWN WITNESSES TESTIMONY, SOLIDIFIES A WILLFUL MISMANAGEMENT AND/OR A SUPPRESSION OF EXCULPATORY DISCOVERY EVIDENCE.

c. THIS WILLFUL DECISION BY THE STATE PREJUDICED CASTILLO'S DEFENSE IN A DUAL MANNER.

THE LACK OF FUNDAMENTAL FAIRNESS VIOLATES THE DUE PROCESS OF THE 5TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 3 OF THE WASHINGTON CONSTITUTION, SUCH VIOLATIONS HAVE SEEPED THEMSELVES INTO VIOLATIONS OF THE SPEEDY TRIAL RIGHTS GUARANTEED BY THE 6TH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 22 OF THE STATES'. THE ABOVE NAMED (a, b, c) COMPONENTS FALL DIRECTLY WITHIN THE CRITERIA OF A BRADY VIOLATION.
BRADY V MARYLAND, 373 U.S. 83, 83 S.Ct. 1194 (1963)

2. CASTILLO HAD A CONSTITUTIONALLY PROTECTED VESTED RIGHT TO FUNDAMENTAL FAIRNESS OF TRIAL PROCEEDINGS.

DURING THE MONTH OF FEBRUARY 2011 THE (DAC) DIRECTOR OF ASSIGNED COUNSEL FOR YAKIMA COUNTY, WASHINGTON, REPRESENTED A COLLEAGUE FROM HIS DEPARTMENT IN A CONFLICT HE HAD WITH CASTILLO.

ON JUNE 3, ~~2011~~ 2011, THE DEFENSE CALLS TO THE ATTENTION OF THE TRIAL COURT THE CONFLICT BETWEEN CASTILLO AND THE DIRECTOR, LOUIS DANIEL FESSLER, STATING "...MR. FESSLER ACTUALLY IS IN A POSITION WHERE HE HAS A CONFLICT IN HERE AND SHOULD NOT BE MAKING ANY DECISIONS ON THIS CASE..." IRP (VOL. 1) 106 @ 24 - 107 @ 1

THE ROLE OF THE DAC AND HIS FUNCTION IN YAKIMA COUNTY IS NOT ONLY THE ASSIGNMENT OF COUNSEL, BUT HOLDS A MORE INTIMATE AND EXTENSIVELY ENHANCED ROLE IN EACH CAUSE HE ENCOUNTERS, AS SO DECLARED BY THE TRIAL COURT: JUNE 3, 2011, "THE PROTOCOL THAT WAS -- BEEN AGREED UPON BY THE COURT AND THE DEPARTMENT OF ASSIGNED COUNSEL IS THAT THE -- THOSE REQUESTS FOR EXPENDITURES OF PUBLIC FUNDS WILL START WITH THE DEPARTMENT OF ASSIGNED COUNSEL. AND IF THE DEPARTMENT IS CONFLICTED OUT, THEN THEY PASS IT ON TO THE COURT." IRP (VOL. 1) 107 @ 10-15.

On JULY 20, 2011, MR. FESSLER ESTABLISHES HIS OWN RECORD TO THE TRIAL COURT CONCERNING HIS CONFLICT OF INTEREST WITH CASTILLO AND THE INAPPROPRIATENESS OF THE ASSIGNMENT OF COUNSEL BEING HIS DECISION. IRP (VOL. 1) 142 @ 10-12 MR. FESSLER STATES, "SO I THINK WE HAVE ON THE RECORDS A DECISION TO APPOINT COUNSEL, AND WE'RE HERE TODAY TO DO THAT." 144 @ 6-8

On JULY 27, 2011, MR. FESSLER REITERATES TO THE TRIAL COURT IT NOT BEING APPROPRIATE TO MAKE FINAL DECISIONS ON CASTILLO CAUSE. IRP (VOL. 1) 151 @ 1-3

On DECEMBER 15, 2011, DEFENSE COUNSEL STATES, "WELL, ON THIS CASE I HAVE THIS CAUSE, WHICH I'D LIKE TO STAY ON, BECAUSE MR. FESSLER PERSONALLY ASKED ME TO BE ON IT." IRP (VOL. 2) 194 @ 20-22

On July 23, 2012, DEFENSE COUNSEL VERIFIES TO THE TRIAL COURT THAT HE IS TAKING ADVISEMENT FROM THE DIRECTOR OF ASSIGNED COUNSEL WITH THE STATEMENT, "I CANNOT ISSUE A SUBPOENA UNDER THE RULES. SO WHAT I WAS ADVISED TO BY -- IT WAS OPINION BY DAC (SIC) WAS, I WOULD HAVE TO GO THROUGH THE CLERK OF THE COURT." IRP (VOL. 3) 462 @ 9-11

THE TRIAL COURT'S ORDER SIGNED ON APRIL 5, 2012, SPECIFICALLY NAME THREE SERVICES ALLOTTED TO THE DEFENDANT PRO SE, BY STANDBY COUNSEL, TWO OF WHICH ARE THE PREPARING AND FACILITATING THE ISSUANCE OF SUBPOENAS. PLEASE SEE ATTACHED (APPELLANT'S EXHIBIT A)

1. CASTILLO HAD A CONSTITUTIONALLY PROTECTED RIGHT TO CONFLICT FREE COUNSEL.

a. EFFECTIVE ASSISTENCE OF COUNSEL INCLUDES A DUTY OF LOYALTY AND A DUTY TO AVOID CONFLICTS OF INTERESTS. BOTH AMENDMENT UNITED STATES CONSTITUTION STRICKLAND V WASHINGTON, 466 U.S. 668, 104 S.Ct 2052 (1984) A DEFENDANT'S RIGHT TO CONFLICT FREE STANDBY COUNSEL BECAUSE STANDBY COUNSEL MUST BE (1) CANDID AND FORTHCOMING IN PROVIDING TECHNICAL INFORMATION/ADVICE, (2) ABLE TO FULLY REPRESENT THE ACCUSED ON A MOMENTS NOTICE, IF NECESSARY, AND (3) ABLE TO MAINTAIN CLIENT ATTORNEY PRIVILEGE. STATE V McDONALD, 143 Wn.2d 506, 512-13 (2000)

THE TRIAL COURT WAS ON NOTICE BY BOTH CONFLICTING PARTIES AND DEFENSE COUNSEL THAT AN ACTUAL CONFLICT EXISTED WHICH COULD AND WAS ADVERSELY AFFECTING CASTILLO'S REPRESENTATION, BUT DID NOT MAKE AN INDEPTH INQUIRY AS TO THE NATURE OR EXTENT OF THE CONFLICT, NOR DID THE COURT FORMULATE A RECORD TO RESOLVE/ADDRESS THE ISSUE.

THE LACK OF INQUIRY BY THE TRIAL COURT PROVIDES US WITH NO RECORD TO REFUTE THE ACTUAL CONFLICT OF INTEREST. STATE V. McDONALD, 143 Wn.2d @ 514, SUPRA; In STATE V. JAMES, 48 Wn. App. 353, 366, 739 P.2d 1161 (1987) ("WE WILL NOT FIND AN ACTUAL CONFLICT UNLESS APPELLANT CAN POINT TO A SPECIFIC INSTANCE IN THE RECORD TO SUGGEST AN ACTUAL CONFLICT OR IMPAIRMENT OF THEIR INTERESTS.") QUOTING; U.S. V. FOX, 613 F.2d 99, 102 (5TH Cir. 1980)

On April 11, 2012, CASTILLO REQUESTED PUBLIC FUNDING FOR INVESTIGATIVE SERVICES. MR. FESSLER WROTE A LETTER TO THE TRIAL COURT AS TO WHY THEY SHOULD BE DENIED. IRP (VOL. 2) 309 — — In MAY 2012, SUBPOENAS (DUCES TECUM) WERE ISSUED BY DEFENSE COUNSEL (STANDBY) BUT WERE NOT SERVED. THEY WERE GIVEN TO CASTILLO, WHO WAS INCARCERATED, TO SERVE HIMSELF. A REQUEST TO THE DAC WAS MADE FOR PUBLIC FUNDING FOR PROPER SERVICE. MR. FESSLER DENIED CASTILLO'S REQUEST. On RECORDS June 8, 2012, IRP (VOL. 3) 391 @ 6-8

A conviction will stand unless the defendant can show his lawyer had an actual conflict that adversely affected the lawyer's performance. HOLLOWAY V. ARKANSAS, 435 U.S. 475, 98 S.Ct. 1173 (1978); In order to show adverse affect defendant claiming conflict of interest need not demonstrate prejudice, that the outcome would have been different but for the conflict, but only that some plausible alternative defensive strategy or tactic might have been pursued, but was not, and that the alternative defense strategy was inherently in conflict with or not undertaken due to the attorney's other loyalties or interests. STATE V. REGAN, 177 P.3d 783 (Div. 3, 2008); U.S. V. STANTINI, 85 F.3d 9, 16 (2d Cir. 1996); quoting, WINKLER V. KEANE, 7 F.3d 304, 309 (2d Cir. 1993)

b. THE TRIAL COURT'S ERROR IN NOT INQUIRING ABOUT CONFLICT ITS NATURE AND EXTENT REQUIRES REVERSAL OF CASTILLO'S CONVICTION.

In RICHARDSON THE STATE SUPREME COURT ADOPTED TWO RULES: (1) A TRIAL COURT COMMITS REVERSIBLE ERROR IF IT KNOWS OR REASONABLE SHOULD KNOW OF A PARTICULAR CONFLICT AND FAILS TO INQUIRE, AND (2) REVERSAL IS ALWAYS NECESSARY WERE A DEFENDANT SHOWS AN ACTUAL CONFLICT OF INTEREST ADVERSELY AFFECTING COUNSEL'S PERFORMANCE. IN RE PERS. REST. OF RICHARDSON, 100 Wn.2d 669, 675 P.2d 209 (1983)

On June 14, 2011, RECONSIDERATION HEARING, CASTILLO PUTS THE TRIAL COURT ON NOTICE OF A CIVIL ACTION FILED AGAINST COUNTY OFFICIALS; WHICH INCLUDED THE COUNTY OF YAKIMA, JUDGES, DEFENSE COUNSEL AND THE DAC, LOUIS DANIEL FESSLER. IRP (VOL. 1) 120 @ 13-16 THE TRIAL COURT DID NOT INQUIRE AS TO WHO WERE NAMED AS DEFENDANTS.

On January 31, 2012, PRETRIAL COLLOQUY WITH TRIAL COURT, CASTILLO AGAIN MENTIONS THE FILING OF CIVIL ACTION. COURT DOES NOT INQUIRE, NOR DOES CASTILLO VOLUNTEER DETAILS. 2RP (VOL. 1) 18 @ 12 - 19 @ 12

On MARCH 20, 2012, CASTILLO REITERATES CONCERNS WITH COUNSEL (BAR COMPLAINT AND CIVIL COMPLAINT) AGAINST STANDBY AND OTHERS, THE COURT MAKES NO INQUIRIES FOR CASTILLO TO ELABORATE. IRP (VOL. 2) 276 @ 13-17

ON POINT WITH CASTILLO, HERE IN McDONALD, HE SUED HIS COUNSEL, PROSECUTOR'S OFFICE REPRESENTED DEFENDANT. ALL PARTIES NOTIFIED THE TRIAL COURT OF THIS CONFLICT BETWEEN McDONALD AND HIS STANDBY. HOWEVER, THE TRIAL COURT DID NOT CONDUCT AN INQUIRY OR CREATE A RECORD TO SHOW WHETHER THE FEDERAL CASE HAD BEEN STAYED, WHETHER STANDBY ALREADY DISCLOSED SECRETS AND CONFIDENCES TO THE PROSECUTOR, WHETHER THE PROSECUTOR HAD CREATED ANY PROCEDURES TO AVOID LEARNING ABOUT ANY DISCLOSURE OF McDONALD'S COMMUNICATIONS, OR WHETHER THE PROSECUTOR HAD LEARNED ABOUT McDONALD'S DEFENSE STRATEGIES. STATE V McDONALD, 143 Wn.2d @ 513-14

THE WASHINGTON SUPREME COURT HAS HELD: "THE APPLICATION OF THESE [CONFLICT OF INTEREST] RULES IS NOT LIMITED TO JOINT REPRESENTATION OF CO-DEFENDANTS... THE RULE APPLY TO ANY SITUATION WHERE DEFENSE COUNSEL REPRESENTS CONFLICTING INTERESTS,"
IN RE RICHARDSON, 100 Wn.2d @ 677, SUPRA

III, THE REPETATIVE DELAYS IN DISCLOSING DISCOVERY EVIDENCE TO THE PRO SE DEFENSE VIOLATED CASTILLO'S CONSTITUTIONALLY PROTECTED RIGHT TO PRESENT A DEFENSE.

On JANUARY 31, 2012, FIRST DAY OF TRIAL, CASTILLO REQUESTS THAT DISCOVERY BE HANDED TO HIM FOR REVIEW. 2RP (VOL. 1) 31 @ 22-25 THE COURT ADDRESSES CASTILLO, "YOU'RE SAYING YOU DON'T HAVE DISCOVERY, BUT YOU STILL WANT TO REPRESENT YOURSELF EVEN THOUGH YOU DON'T HAVE DISCOVERY;"
2RP (VOL. 1) 43 @ 15-17 On THIS DAY THE STATE PREPARED A PACKET OF DISCOVERY TO PRESENT TO THE PRO SE DEFENSE. 2RP (VOL. 1) 71 @ 10-12

On MARCH 20, 2012, DISCOVERY HEARING RESET FOR MARCH 22, 2012, CASTILLO ASKS FOR FULL DISCLOSURE OF DISCOVERY (audio tapes), 1RP (VOL. 2) 284 @ 17-19

On MARCH 22, 2012, DISCOVERY MOTION HEARING, CASTILLO REQUEST DISCLOSURE OF EXCULPATORY EVIDENCE. WHEN ASKED BY THE COURT IF SAID EVIDENCE WAS IN THE STATE'S POSSESSION THE STATE RESPONDED AFFIRMATIVELY. IRP (VOL. 2) 296 @ 11-15

On APRIL 11, 2012, INVESTIGATIVE FUNDING HEARING, AFTER BEING DENIED FUNDING CASTILLO MOTIONS THE COURT TO COMPEL PRIOR INVESTIGATIVE REPORTS FROM PRIOR ATTORNEYS (DEFENSE) AND/OR THEIR INVESTIGATORS. THE TRIAL COURTS RESPONSE IS FOR CASTILLO TO WRITE A LETTER TO THE DAC. IRP (VOL. 2) 321 @ 8-13

On APRIL 18, 2012, MOTION TO DISMISS HEARING, CASTILLO CLAIMS POSSIBLE SABOTAGE OF AUDIO COMPACT DISC RECEIVED FROM THE STATE AS DISCOVERY EVIDENCE. CASTILLO MAKES HIS FIRST FORMAL REQUEST TO THE TRIAL COURT REQUESTING TRIAL TRANSCRIPTS OF HIS FIRST TRIAL. IRP (VOL. 2) 341 @ 8 thru 342 @ 5 THE COURT REFERS HIM TO STANDBY COUNSEL TO ACQUIRE TRANSCRIPT, IRP (VOL. 2) 350 @ 23-351

On THIS SAME DATE STANDBY COUNSEL ASKS THE COURT IF HE COULD GIVE CASTILLO ACCESS TO THE DISCOVERY HE ~~IS~~^{HAS} ACCESS TO . . . BETWEEN THE COURT AND THE STATE THE RECORDS SHOWS THEY ELUDED A DIRECT RESPONSE. IRP (VOL. 2) 356 @ 6 - 358 @ 21

On MAY 3, 2012, MOTION TO COMPEL HEARING, CASTILLO AGAIN ATTEMPTS TO GAIN ACCESS TO RECORDS VIA SUBPOENA DUCES TECUM AND TO COMPEL TRANSCRIPTS OF FIRST TRIAL.

THE COURT ACKNOWLEDGES THAT PROPER PROCEDURE IS BEING FOLLOWED BY THE PRO SE DEFENDANT AND ACKNOWLEDGES HIS ENTITLEMENT TO SAID INFORMATION, NO COOPERATION FROM THE COURT IS AFFORDED TO PROCURE MATERIALS, IRP (VOL. 2) 365 @ 23 - 367 @ 3

MAY 25, 2012, MOTION TO CLARIFY DUTIES OF STANDBY COUNSEL HEARING, CASTILLO AGAIN ADDRESSES ACQUIRING DISCOVERABLE MATERIAL THROUGH SUBPOENA, IRP (VOL. 3) 379 CASTILLO ALSO ADDRESSES THE ATTEMPTS TO ACQUIRE TRANSCRIPTS OF FIRST TRIAL TO NO AVAIL, IRP (VOL. 3) 393 @ 23 - 394 @ 24

JULY 23, 2012, THIRD DAY OF RETRIAL, THE TRIAL COURT INFORMS CASTILLO THAT THE COURT REPORTER "WILL TRY TO GET THE TRANSCRIPTS OUT FOR YOU THIS MORNING," IRP (VOL. 3) 459 @ 8-10 The Court: "AND IT LOOKS LIKE -- I JUST GOT AN E-MAIL FROM MS. ANDERSON (COURT REPORTER), SHE SAYS SHE WILL HAVE YOUR TRANSCRIPT THIS AFTERNOON," IRP (VOL. 3) 471 @ 16-18

a. A PRO SE DEFENDANT HAS A CONSTITUTIONALLY PROTECTED RIGHT TO PRESENT A DEFENSE, BE GIVEN UNENCUMBERED ACCESS TO EXCULPATORY EVIDENCE AND/OR DISCOVERY MATERIALS, AND A REASONABLE AMOUNT OF TIME TO PREPARE HIS DEFENSE,

FUNDAMENTAL FAIRNESS DOCTRINE IS THE RULE THAT APPLIES THE PRINCIPLES OF DUE PROCESS TO A JUDICIAL PROCEEDING. DUE PROCESS OF LAW IS GUARANTEED TO ALL CITIZENS BY THE 5TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 3 OF THE STATES.

WASHINGTON STATE COURT GENERAL RULE (GR) 31 PROVIDES US ACCESS TO COURT RECORDS. GR 31 (a) STATES: IT IS THE POLICY OF THE COURTS TO FACILITATE ACCESS TO COURT RECORDS AS PROVIDED BY ARTICLE 1, SECTION 10 WASHINGTON STATE CONSTITUTION (JUSTICE IN ALL CASES SHALL BE ADMINISTERED OPENLY, AND WITHOUT UNNECESSARY DELAY.) — GR 31 (c) (A) DEFINES: "COURT RECORD" INCLUDE, BUT IS NOT LIMITED TO: (i) ANY DOCUMENTS, INFORMATION, ETC., THAT IS MAINTAINED BY THE COURT IN CONNECTION WITH A JUDICIAL PROCEEDING (ii) ANY . . . RECORD OF PROCEEDING, INFORMATION, MINUTES, ETC., CREATED OR PREPARED BY THE COURTS RELATING TO JUDICIAL PROCEEDINGS.

THE PUBLIC RECORDS PORTION OF THE PUBLIC DISCLOSURE ACT REQUIRES ALL STATE AND LOCAL AGENCIES TO DISCLOSE ANY PUBLIC RECORD UPON REQUEST, BEUHLER V. SMALL, 115 Wn. App. 914, 64 P.3d 78 (2003); BRADY DISCLOSURE REQUIREMENTS EXTEND TO MATERIALS THAT, WHATEVER THERE OTHER CHARACTERISTICS, MAY BE USED TO IMPEACH A WITNESS, BRADY V. MARYLAND, 373 U.S. 83, 83 S.Ct. 1194 (1963)

UNDER DUE PROCESS, IT MUST BE DEMONSTRATED THAT THE STATE COMPORTED WITH PREVAILING NOTIONS OF FUNDAMENTAL FAIRNESS SUCH THAT DEFENDANT WAS AFFORDED A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE. STATE V. LORD, 117 Wn.2d 829, 822 P.2d 177 (1991)

DEFENDANT PRESUMED TO BE INNOCENT, CANNOT BE CONFINED TO THE 4 WALLS OF HIS PRISON CELL UNTIL TRIAL AND THEN BE EXPECTED TO APPEAR ON THE DAY OF TRIAL, READY TO REPRESENT HIMSELF; WITHOUT SOME MEANS BY WHICH TO DEFEND AGAINST THE CHARGES AGAINST HIM, AN ACCUSED RIGHT TO REPRESENT HIMSELF WOULD BE MEANINGLESS.

STATE V. SILVA, 107 Wn.App. 605, 27 P.3d 663 (DIV. I, 2001)

ARTICLE I, SECTION 22, WASHINGTON CONSTITUTION, "AFFORDS A PRETRIAL DETAINEE WHO HAS EXERCISED HIS CONSTITUTIONAL RIGHT TO REPRESENT HIMSELF A RIGHT OF REASONABLE ACCESS TO STATE PROVIDED RESOURCES THAT WILL ENABLE HIM TO PREPARE A MEANINGFUL PRO SE DEFENSE." STATE V. SILVA, 107 Wn.App. @622-23, SUPRA.

NON-DISCLOSURE OF WITNESS STATEMENTS VIOLATED BRADY BECAUSE THEY CONTRADICTED TESTIMONY GIVEN AT TRIAL. UNDER BRADY, EVIDENCE IS MATERIAL IF THERE IS A "REASONABLE PROBABILITY" THAT, HAD THE EVIDENCE BEEN DISCLOSED, THE RESULTS OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT. SMITH V CAIN, 132 S.Ct. 627 (2012)

WASHINGTON STATE SUPERIOR COURT RULES (CrR) 4.7 ENTITLED DISCOVERY, STATES THAT THE PROSECUTOR SHALL DISCLOSE TO DEFENDANT DISCOVERY IN HIS POSSESSION NO LATER THAN THE Omnibus HEARING.

On MARCH 22, 2012, CASTILLO IS OBLIGATED TO MOTION THE COURT FOR A CONTINUANCE IN AN ATTEMPT TO OBTAIN EXCULPATORY MATERIALS (I.E. AUDIO EVIDENCE). 1RP (VOL.2) 299@7

CrR 4.7 (d) MATERIAL HELD BY OTHERS. UPON DEFENDANT'S REQUEST AND DESIGNATION OF MATERIAL OR INFORMATION IN THE KNOWLEDGE, POSSESSION OR CONTROL OF OTHER PERSONS, WHICH WOULD BE DEEMED DISCOVERABLE UNDER THE PROSECUTOR'S AUTHORITY, THE PROSECUTING ATTORNEY SHALL ATTEMPT TO CAUSE SUCH MATERIAL TO BE MADE AVAILABLE TO DEFENDANT. IF THE PROSECUTING ATTORNEY'S EFFORTS ARE UNSUCCESSFUL AND IF SUCH MATERIALS OR PERSONS ARE SUBJECT TO THE JURISDICTION OF THE COURT, THE COURT SHALL ISSUE SUITABLE SUBPOENAS TO MATERIALIZED THE INFORMATION TO THE DEFENDANT.

CASTILLO'S ATTEMPTS TO SUBPOENA (DUCE TECUM) FILES FROM PRIOR ATTORNEY'S AND INVESTIGATORS WERE IGNORED BY THE COURT, THE STATE AND STANDBY COUNSEL. SINCE INVESTIGATIVE SERVICES WERE DENIED TO CASTILLO'S PRO SE DEFENSE HIS ONLY MEANS TO ACQUIRE SAID INFORMATION WAS THROUGH PRIOR COUNSEL AND INVESTIGATIVE FILES.

ALAS, THE SUBPOENAS WERE APPROVED AND ISSUED, BUT FUNDING FOR SERVICE WAS DENIED, RENDERING THEM MOOT.

AT ALL PROCEEDINGS BETWEEN MARCH 22, 2012, AND MAY 25, 2012, CASTILLO APPRISES THE COURT WITH EMPHATIC CERTAINTY OF HIS EFFORTS TO ACQUIRE DISCOVERY MATERIALS AND REQUESTS THE COURTS ASSISTANCE.

THE COURT IS NOT AN ADVERSERY BUT A NEUTRAL... BEFORE A COURT CAN TAKE RESPONSIVE ACTION, IT SHOULD BE APPRISED WITH REASONABLE CERTAINTY WHAT IS ASKED TO DO. STATE V. CHRISTENSEN, 75 Wn.2d 678, 683 (1969)

ON THE THIRD DAY OF RETRIAL, JULY 23, 2012, THE RECORDS REFLECTS CASTILLO RECEIVED THE TRANSCRIPTS OF THE FIRST TRIAL AFTER 3 AND ONE-HALF MONTHS OF WAITING, WHICH WAS ~~MADE~~ ^{ATTAINED} IN THE PRESENCE OF THE JURY.
IRP (VOL. 4) 550 @ 16-20

CASTILLO WAS GIVEN LESS THAN 24 HOURS TO PREPARE IMPEACHMENT CROSS-EXAMINATION OF THE STATE'S KEY WITNESS, WHICH IN ITSELF IS PREJUDICIAL. THE PREJUDICE WAS ENHANCED WHEN DEFENSE WITNESSES WERE STRICKEN BY THE COURT ON THE FIRST DAY OF RETRIAL, JULY 19, 2012. NO HEARING, OR WRITTEN FINDINGS WERE ~~MADE~~ FILED BY THE COURT TO JUSTIFY ITS DECISION.

IV. THE TRIAL COURT ERRED IN ITS DECISION TO TIME BAR CASTILLO'S MOTION FOR A NEW TRIAL.

On August 7, 2012, CASTILLO FILED A MOTION FOR A NEW TRIAL IN ACCORDANCE WITH WASHINGTON SUPERIOR COURT RULE (CrR) 7.5. A NOTED DOCKET DATE OF AUGUST 22, 2012, WAS SET TO HEAR CASTILLO'S MOTION AND SENTENCING.

JUST PRIOR TO HEARING OF AUGUST 22, 2012, THE STATE FILED A RESPONSE, ON THE MERITS, TO CASTILLO'S 7.5 MOTION. IN LIEU OF THE TIME STRUCTURE GIVEN TO REPLY TO THE STATE'S RESPONSE, CASTILLO CHOSE TO RELINQUISH HIS PRO SE STATUS AND DEFER THE ARGUMENT TO THE PROFESSIONAL COUNSEL, STANDBY THEODORE HEILMAN-SCHOTT, IRP (VOL. 4) 652 @ 16-22 STANDBY COUNSEL STATED HE WAS UNPREPARED TO ARGUE THE MOTION. 656 @ 20-21

THE COURT GRANTS CASTILLO'S MOTION TO RELINQUISH PRO SE STATUS AND SIGN AN ORDER APPOINTING COUNSEL. 660 @ 2-4 THE COURT RESETS THE 7.5 MOTION HEARING FOR AUGUST 29, 2012, AT 9:00 A.M. 662 @ 11-12

AN EXTENSIVE COLLOQUY BETWEEN DEFENSE COUNSEL AND THE COURT ENSUED CONCERNING THE DETAILS AND/OR RAMIFICATIONS OF COUNSEL "TAKING OVER" AT THIS POINT OF THE PROCEEDINGS. 662-663

THE COURT VACATES ITS ORDER APPOINTING COUNSEL, 664@20-21
THE COURT MAKES DECLARATORY STATEMENT THAT THE ORDER
RESETTING MOTION (CrR) 7.5 HEARING TO AUGUST 29, 2012,
WILL REMAIN IN EFFECT. 665@10-11

ON AUGUST 23, 2012, CASTILLO IS SUMMONED TO AN
UNSCHEDULED HEARING. AT WHICH, THE COURT DETERMINES
THAT A CrR 7.5 NEW TRIAL MOTION HEARING IS A CRITICAL
STAGE OF PROCEEDINGS AND APPOINTMENT OF COUNSEL IS
REQUIRED. IRP (VOL. 4) 668@3-6 THE TRIAL COURT
FINDS THE 7.5 MOTION TO BE UNTIMELY BROUGHT AND TIME
BARS IT. 669@14-15 THEREAFTER, THE DECISION TO
TIME BAR, THE COURT APPOINTS COUNSEL.

a. THE TRIAL COURT ERRED IN TIMEBARRING CASTILLO'S
NEW TRIAL MOTION AND DENYING HIM HIS CONSTITUTIONALLY
PROTECTED PROCEDURAL RIGHT TO ARGUE THE MOTION ON ITS
MÉRIT.

THE STATE FAILED TO OBJECT TO THE TIMELINESS IN
CASTILLO'S FILING OF HIS CrR 7.5 MOTION FOR A NEW
TRIAL. INSTEAD, THE STATE FILED A RESPONSE ON THE
MERITS AND PREPARED FOR ARGUMENT. IN FURTHERANCE,
THE COURT RESET THE HEARING AND STILL YET, THE STATE
FAILED TO RECORD AN OBJECTION CONCERNING TIMELINESS.

In EBERHART, RATHER THAN ARGUING THAT THE UNTIMELINESS OF THE MEMORANDUM BARRED THE COURT FROM CONSIDERING THE ISSUES RAISED, THE GOVERNMENT OPPOSED ON THE MERITS, EBERHART V. UNITED STATES, 546 U.S. 12, 126 S.Ct. 403 (2005)

In KONTRICK, THE DEBTOR RESPONDED ON THE MERITS TO A CREDITOR'S UNTIMELY OBJECTION TO HIS DISCHARGE. HE DID NOT RAISE UNTIMELINESS ISSUES. THE SUPREME COURT REJECTED THIS ASSERTION AND FOUND THE DEBTOR HAD FORFEITED THE TIMELINESS ARGUMENT. KONTRICK V. RYAN, 540 U.S. 443, 455, 124 S.Ct. 906 (2004) THE COURT HELD THAT THERE ARE RULES THAT ARE "UNALTERABLE ON A PARTY'S APPLICATION" BUT "CAN BE NONETHELESS FORFEITED IF THE PARTY ASSERTING THE RULE WAITS TOO LONG TO RAISE THE POINT" Id. KONTRICK V. RYAN 540 U.S. AT 456

Here in, CASTILLO THE STATE FAILED TO RECORD AN OBJECTION, BUT THE TRIAL COURT AS "THE STATE'S ADVOCATE" RAISED THE OBJECTION FOR THE STATE.

THE COURT IN KONTRICK, DETERMINED THAT DEFENSES MADE AVAILABLE BY TIME LIMITATIONS MAY BE FORFEITED. Id. KONTRICK V RYAN, 540 U.S. AT 458-60

WASHINGTON SUPERIOR COURT RULE (CrR) 8.1 TIME, STATES, THAT THE RULES SHALL BE COMPUTED AND ENLARGED IN ACCORDANCE WITH CIVIL RULE OF PROCEDURE (CR) 6. CR 6(b)(2) STATES,

AFTER EXPIRATION OF THE SPECIFIC PERIOD, THE ACT IS PERMITTED TO BE DONE WHERE THE FAILURE TO ACT WAS A RESULT OF EXCUSABLE NEGLIGENCE. — — HERE IN CASTILLO, AUGUST 23, 2012, HE GIVES EXPLANATION OF HIS NEGLIGENCE TO FILE HIS CrR 7.5 MOTION WITHIN THE 10-DAY TIME STRUCTURE ALLOWED. HE EXPLAINS THAT HE THOUGHT 10-DAYS WAS 10-BUSINESS DAYS NOT CALENDAR DAYS. (THE 10-BUSINESS DAY SCENARIO PUT HIM AT FILING ON THE 9TH DAY; THE 10-CALENDAR DAY SCENARIO PLACED HIS FILING ONE-DAY LATE.) IRP (VOL. 4) 670 @ 1-13

A MOTION FOR RECONSIDERATION WAS HEARD ON OCTOBER 15, 2012, MOTION WAS DENIED. 10/15/2012RP.

IV. IN ADDITION TO THE FACTS PRESENTED IN APPELLANT'S OPENING BRIEF HE SUPPLEMENTS THESE FACTS CONCERNING HIS CONSTITUTIONALLY PROTECTED RIGHT TO A SPEEDY TRIAL.

On FEBRUARY 6, 2012, LEAD INVESTIGATOR RANDY SPERLE, TESTIFIED THAT AFTER 12 YEARS OF A NON-EXISTENT INVESTIGATION: "WE WERE GETTING READY TO PUT MR. CASTILLO -- A REQUEST ON WASHINGTON'S MOST WANTED AND AMERICA'S MOST WANTED AS I HAD DONE WITH ANOTHER SUBJECT. BY THAT TIME I HAD LEARNED THAT MR. CASTILLO WAS ALREADY IN CUSTODY." 2RP (VOL. 4) 258@22-25

On FEBRUARY 7, 2012, MR. SPERLE TESTIFIED: "IF WE WOULD HAVE HAD AN EXACT LOCATION WHERE YOU WERE AT, HAD INTEL THAT YOU WERE IN A CERTAIN AREA, WE WOULD HAVE GOTTEN AHOLD OF THAT JURISDICTION AND REQUESTED AN ATTEMPT TO LOCATE." 2RP (VOL. 5) 276@16-19

On OR ABOUT APRIL 16, 2009, STATE OFFICIALS AND COUNTY AUTHORITIES WERE NOTIFIED BY THE UNITED STATES MARSHALL'S OFFICE OF CASTILLO'S EXACT RESIDENCE IN LAS VEGAS, NEVADA. FOR THE ENSUING 402 DAYS UP TO HIS ARREST, MAY 23, 2010, CASTILLO OPENLY LIVED AT THIS SAME ADDRESS.

THE SAME EXACT ADDRESS OF RESIDENCY IS VERIFIED ON HIS DRIVER'S LICENSE, EMPLOYMENT RECORDS, BANK STATEMENTS AND FEDERAL INCOME TAX RECORDS.
CP 27-28, 44-46

THE LEAD INVESTIGATOR, STATE PROSECUTOR'S OFFICE, AND THE SHERIFF'S OFFICE OF YAKIMA COUNTY, INDIVIDUALLY AND/OR COLLECTIVELY AS THE COUNTY'S AUTHORITY NEGLECTED AND FAILED TO EXECUTE THE SERVICE OR NOTIFICATION OF AN ARREST WARRANT UPON CASTILLO; NOR DID THEY REQUEST SUCH SERVICE FROM THE AUTHORITIES OF LAS VEGAS METROPOLITAN POLICE OR CLARK COUNTY (NEVEDA) SHERIFF'S OFFICE.

UPON BEING DETAINED DURING A TRAFFIC STOP IN LAS VEGAS, CASTILLO WAS INFORMED OF THE WARRANT, WHICH STILL NEEDED APPROVAL BY PROPER AUTHORITY TO EXECUTE EXTRADITION FROM NEVADA, TO EXPDITE PROCEEDINGS CASTILLO VOLUNTARILY WAIVED EXTRADITION,

a. CONSTITUTIONALLY PROTECTED RIGHTS TO A SPEEDY TRIAL MUST MEET THE CRITERIA STANDARDS IN BARKER. UNDER THE BARKER INQUIRY WE CONSIDER THE EXTENT TO WHICH THE LENGTH OF DELAY STRETCHES BEYOND THE BARE MINIMUM REQUIRED TO TRIGGER THE INQUIRY.

STATED ANOTHER WAY, THE LONGER THE DELAY, THE MORE SCRUTINY SHOULD BE APPLIED TO THE CIRCUMSTANCES SURROUNDING THE DELAY. STATE V. OLLIVIER, 254 P.3d 883, 887, 161 Wn.App. 307 (Div. I 2011); CITING UNITED STATES V. DOGGETT, 505 U.S. 647, 652, 112 S.Ct. 2686 (1992)

THE GOVERNMENT'S LETHARGY REFLECTS THE RELATIVE IMPORTANCE THEY PUT ON SEEKING AND ARRESTING CASTILLO. THE SUPREME COURT OF THE UNITED STATES HAVE HELD THAT SUCH EFFORTS FIT THE CRITERIA SET FORTH IN BARKER V. WINGO, 407 U.S. 514, 92 S.Ct. 2182 (1972); THE COURT HAS ALSO FOUND THAT FAILING TO SEEK A TIMELY PROSECUTION RESULTS IN NEGLIGENCE BY THE GOVERNMENT, U.S. V. DOGGETT, 505 U.S. at 653, supra.

IF THE DEFENDANT IS NOT ATTEMPTING TO AVOID DETECTION AND THE GOVERNMENT MAKES NO SERIOUS EFFORT TO FIND HIM, THE GOVERNMENT IS CONSIDERED NEGLIGENT IN ITS PURSUIT. UNITED STATES V. MENDOZA, 530 F.3d 758 (9TH CIR. 2008); NO SHOWING OF PREJUDICE IS REQUIRED WHEN THE DELAY IS GREAT AND ATTRIBUTABLE TO THE GOVERNMENT. UNITED STATES V. SHELL, 974 F.2d 1035, 1036 (9TH CIR. 1992)

IN DOGGETT, TO CATCH HIM THE DETECTIVE SENT WORD OF HIS OUTSTANDING ARREST WARRANT TO ALL U.S. CUSTOMS AND A NUMBER OF LAW ENFORCEMENT ORGANIZATIONS. COMPARATIVELY, IN CASTILLO, AN ADB WAS PLACED IN THE LOCAL PAPER THE FIRST TWO YEARS.

FINALLY, HEREIN CASTILLO, THE COUNTY GOVERNMENT'S LACK OF EFFORT TO NOTIFY OR PROSECUTE CAUSED DELAY 12 TIMES AS LONG AS THAT GENERALLY DEEMED TO PRESUME PREJUDICE AND WARRANT JUDICIAL REVIEW.

- THE NEGLIGENT DELAY BETWEEN DOGGETT'S INDICTMENT AND ARREST PRESUMPTIVELY PREJUDICED HIS ABILITY TO PREPARE AN ADEQUATE DEFENSE. THE GOVERNMENT'S EGREGIOUS PERSISTANCE IN FAILING TO PROSECUTE DOGGETT IS SUFFICIENT TO WARRANT GRANTING RELIEF. THE NEGLIGENTS CAUSE DELAY 6 TIMES AS LONG AS THAT DEEMED SUFFICIENT TO TRIGGER JUDICIAL REVIEW, AND THE PRESUMPTION OF PREJUDICE IS NEITHER EXTENUATED, AS BY DOGGETT'S ACQUIESCENCE, NOR PERSUASIVELY REBUTTED. U.S. v. DOGGETT, 112 S.Ct 2686, 2088 (1992)

THE U.S. SUPREME COURT'S SOLUTION WAS TO REQUIRE THE COURT OF APPEALS TO "RECOGNIZE THAT EXCESS DELAY PRESUMPTIVELY COMPROMISES THE RELIABILITY OF A TRIAL IN WAYS THAT NEITHER PARTY CAN PROVE, OR FOR THAT MATTER, IDENTIFY." THE NATURE OF PRESUMPTIVE PREJUDICE MUST BE MADE STRONGER BY THE INCREASING LENGTH OF DELAY. U.S. v. DOGGETT, 505 U.S. at 657, supra.

VI. In addition to the facts presented in Appellant's opening brief he supplements these facts concerning his constitutionally protected right to represent himself.

On October 28, 2011, prior to a contested continuance hearing, Castillo made his initial timely unequivocal motion to the court to self-represent. The unequivocality of his request is solidified by the trial courts noted response: "We're actually now talking about a much larger issue that I think we need to hit head on and that is Mr. Castillo's request to represent himself." IRP (Vol. 1) 165 @ 9-11

During these same proceedings Castillo asks the court directly, "so you're not allowing me to defend myself -- -- is that what you're saying?" at which time the court responded, "no not -- -- right now I'm not." IRP (Vol. 1) 176 @ 14-19

a. Castillo had a constitutionally protected right to represent himself. The Sixth and Fourteenth Amendments to the United States Constitution as well as Article 1, section 22 of the Washington Constitution allow criminal defendants to waive their right to counsel. Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975)

b. CASTILLO'S FOUR REQUESTS WERE UNEQUIVICAL AND TIMELY. THESE FOUR REQUESTS WERE MADE TO TWO DIFFERENT JUDGES DURING THREE DISTINGUISHED HEARINGS. (10/28/2011) IRP (VOL. 1) 163 @ 2-4, (1/13/2012, MORNING SESSION) IRP (VOL. 2) 212 @ 2-6, AND TWICE REPEATED (1/13/2012, AFTERNOON SESSION) IRP (VOL. 2) 227 @ 4-1B AND IRP (VOL. 2) 233 @ 1-4 "IF THE DEMAND FOR SELF-REPRESENTATION IS MADE... WELL BEFORE THE TRIAL OR HEARING AND UNACCOMPANIED BY A MOTION FOR A CONTINUANCE, THE RIGHT OF SELF-REPRESENTATION EXISTS AS A MATTER OF LAW." STATE V. BARKER, 75 Wn.App. 236, 241, 881 P.2d 1051 (1994); QUOTING FARETTA V CALIFORNIA, SUPRA

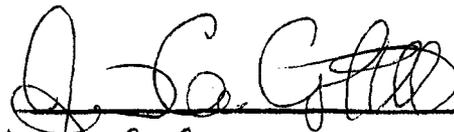
c. THE MULTIPLE DENIALS OF CASTILLO'S MOTION TO SELF-REPRESENT REQUIRES REVERSAL OF HIS CONVICTION. THE PREJUDICE IN DELAYING CASTILLO'S REQUESTS PREJUDICED HIS DEFENSE TO AN UNMEASURABLE DEGREE. THE PRESUMED PREJUDICE DOES NOT NECESSARILY INDICATE A STATISTICAL PROBABILITY OF PREJUDICE, BUT FACTORED IN WITH THE LESS THAN 24-HOURS TO PREPARE FOR TRIAL ONCE HIS REQUEST WAS GRANTED, JANUARY 31, 2012, THE AVERAGE PERSON COULD ASSUME A MORE FAVORABLE OUTCOME FOR THE DEFENSE COULD HAVE BEEN ACQUIRED BY THAT SAME JURY.

CONCLUSION

FOR THE REASONS STATED, CASTILLO REQUESTS THIS COURT REVERSE HIS CONVICTION AND DISMISS THE MATTER FOR VIOLATIONS OF HIS 6TH AND 14TH AMENDMENT UNITED STATES CONSTITUTIONAL RIGHTS AND ARTICLE I, SECTIONS 3 & 22 OF THE WASHINGTON CONSTITUTION. IF THIS COURT WOULD PLEASE CONSIDER THESE ISSUES EITHER INDIVIDUALLY OR AS ISSUES THAT MEET THE CRITERIA OF THE CUMULATIVE ERROR DOCTRINE. ALTERNATIVELY, CASTILLO REQUEST THIS COURT REVERSE HIS CONVICTION AND REMAND FOR A NEW TRIAL.

THANK YOU ALL AND MAY GOD BLESS EACH OF YOU WITH HIS PEACE DAILY.

RESPECTIVELY SUBMITTED THIS 28TH DAY OF JULY IN THE YEAR OF OUR LORD 2013.



JAMES G. CASTILLO, PRO SE SUBMISSION
#956817 Fox E126
WASH. STATE PENITENTIARY
1313 N. 13TH AVE.
WALLA WALLA, WA 99362

PROOF OF SERVICE

I DECLARE THAT I CAUSED TO SERVE A COPY OF THE APPELLATE'S STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW TO THE CLERK OF THE COURT OF APPEALS, DIVISION III. A COPY WAS ALSO SENT TO APPELLATE'S ATTORNEY, MR. THOMAS M. KUMMEROW TO COMPLETE SERVE UPON THE RESPONDANT (S), DAVID BRIAN TREFRY, ATTORNEY FOR RESPONDENT (S), P.O. BOX 4846, SPOKANE WA 99220-0846.

THE DOCUMENTS WERE SENT VIA LEGAL MAIL SERVICES FROM THE WASHINGTON STATE PENITENTIARY.

I, JAMES G. CASTILLO, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

DATED THIS 28TH DAY OF JULY IN THE YEAR OF OUR LORDS 2013.

SIGNED: 
JAMES G. CASTILLO
in WALLA WALLA, WA 99362

APPELLANT'S EXHIBIT A

FILED
APR - 5 2012

KIM M. EATON, YAKIMA COUNTY CLERK

IN THE COURT OF YAKIMA COUNTY, STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff

vs.

JAMES G. CASTILLO,

Defendant.

No. 98-1-01162-4

AMENDED
ORDER APPOINTING 'ADVISORY'
ATTORNEY AT PUBLIC EXPENSE

NATURE OF CHARGE(S): Second Degree Rape

THIS MATTER having come on before the court upon the request of the defendant and upon the court's own motion, and the court finding that: (1) the defendant is indigent and cannot afford to pay the cost of counsel and/or defense but has intelligently and knowingly requested and has been granted the right to proceed as his/her own attorney (2) that appointment of an attorney has been requested by the defendant to assist the defendant, and (3) appointment of an attorney to provide the general assistance outlined by this order will relieve the court of the need to explain basic rules of courtroom and trial protocol and promote the orderly, dignified, and effective presentation of a defense by the defendant, now therefore:

ORDER

IT IS HEREBY ORDERED:

- 1) THEODORE J. HEILMAN-SCHOTT WSBA #26109 Is appointed at public expense to serve as 'advisory' counsel as provided in this order.
- 2) All work done by the Attorney must be reasonable and necessary to the direct defense of the offense charged herein and as follows:

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- a) The role of the Attorney is to provide, **at the request of the defendant only**, general professional advice and counsel on the legal, procedural, and ethical issues involved the defense and trial of the charge, both before and during any trial held in this matter. Except as otherwise specifically provided in this order, the role of the Attorney **does not** include providing assistance other than advice and counsel.
- b) The role of the Attorney **does not** include being co-counsel. The role of the Attorney **does not** include independently preparing for and being ready to take over the defense of the case. In the event that the defendant requests a relinquishment of the right to proceed *pro se*, the court will then consider such motion and the appointment of counsel to fully represent the defendant.
- c) Except as otherwise allowed or required by the Rules of Professional Conduct of the State of Washington or other applicable law, the attorney client privilege shall apply to all communications between the defendant and the Attorney.
- d) The defendant must abide by the ethical requirements for attorneys licensed to practice before the court. The Attorney will not knowingly advise or facilitate the violation of any of the Rules of Professional Conduct of the State of Washington.
- e) The Attorney will initially meet with the defendant to discuss the case, the issues, and courtroom and trial procedures. Thereafter, communication may be by telephone, in writing, or in person. The Attorney may limit unreasonable or excessive telephone calls or requests for conferences.
- f) Services include:
- Facilitating the scheduling and docketing of motions, omnibus hearing, and other pre-trial hearings requested by the defendant except as otherwise limited by the court.
 - Facilitating the issuance of subpoenas by the clerk of the court as requested by the defendant for trial or pre-trial hearings.
 - Preparing, on request, subpoenas in the proper form.
- g) Services **do not** include:
- Performing legal research for the defendant or providing access to legal research materials, which shall be by other order of the court as determined necessary upon request of the defendant;
 - Preparing any court documents or pleadings except as noted above.
 - Obtaining copies of any court documents or evidence;
 - Interviewing and evaluating testimony of witnesses;
 - Any investigative services, which have been provided for by other order of the court;
 - Obtaining other services necessary to the defense, which may be brought before the court on defendant's motion under CrR 3.1;
 - Providing paper, writing materials, or other supplies;
 - Clerical, typing, or secretarial services;

- Copying services;
- Message, messenger services, or mailing services.

3) The court retains authority and jurisdiction to administer this order. In the event of any need for clarification, disagreement, or dispute in regards to the services to be provided, either the defendant or the appointed Attorney may note the matter before the court for clarification or ruling which will be held *in camera*.

DATED this ____ day of April, 2012.

DAVID ELOFSON

JUDGE

Presented by:



THEODORE J. HEILMAN-SCHOTT, WSBA #26109
Appointed Advisory Attorney