

No. 90718-8

SUPREME COURT
OF THE STATE OF WASHINGTON

Received
Washington State Supreme Court

DEC 24 2014

Ronald R. Carpenter
Clerk

STATE OF WASHINGTON,

Respondent,

VS.

RONALD HODGE HOLTZ,
Appellant.

PETITION FOR DISCRETIONARY
REVIEW

RONALD HODGE HOLTZ #945319
PRO SE

MONROE Correctional Complex
P.O. Box 7002 4th Fl - 247
MONROE, WA 98272

IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

RONALD HODGE HOLTZ,
Appellant/Petitioner.

No. 90718-8

MOTION FOR DISCRETIONARY REVIEW

A. IDENTITY OF PETITIONER

RONALD HODGE HOLTZ, PETITIONER (PRO SE) REQUESTS THIS COURT TO ACCEPT REVIEW OF THE COURT OF APPEALS DECISION TERMINATING REVIEW DESIGNATED IN PART B OF THIS PETITION. RAP 13.4

B. COURT OF APPEALS DECISION

PETITIONER APPEALS THE DIVISION II COURT OF APPEALS AUGUST 19, 2014 DECISION DENYING DIRECT APPEAL AND CONSOLIDATED PRP No. (S) 43995-6-II & No. 45427-1-II. OCTOBER 14, 2014 A CONSIDERED MOTION FOR RECONSIDERATION, VIEWED AS MOTION TO MODIFY DENIED OCTOBER 29, 2014. ISSUES ON REVIEW ARE SET FORTH IN PART C & APPENDIX #1.

C. ISSUES PRESENTED FOR REVIEW

1. VIOLATION OF ART. 1 § 7 OF WASHINGTON STATE CONSTITUTION, AND U.S. CONST. AMEND § 4 UNLAWFUL SEARCH AND SEIZURE
2. VIOLATION OF CrR 3.3, WA. ST. CONST. ART. 1 § 3, §§ 22, U.S. CONST. AMEND § 6.
3. IMPERMISSABLE IN-COURT IDENTIFICATION
4. VIOLATION OF THE ESSENTIAL ELEMENTS RULE, DEFICIENT/INSUFFICIENT CHARGING DOCUMENT AND LOSS OF JURISDICTION - RECHARACTERIZATION OF CrR 7.8 MOTION
5. THE COURT'S INSTRUCTIONS IN THIS CASE AFFIRMATIVELY MISLED THE JURY ABOUT ITS POWER TO ACQUIT EVEN IF THE PROSECUTION PROVED ITS CASE BEYOND A REASONABLE DOUBT.
6. VIOLATION OF RAP 9.5 (c), STATE V. TILTON INSUFFICIENT RECORD
7. PROSECUTORIAL MISCONDUCT/BRADY VIOLATIONS
8. ERRONEOUS SENTENCING ERRORS/RIOTING

9. VIOLATION OF PUBLIC TRIAL "BONE CLUB"
ANALYSIS

11. INEFFECTIVE ASSISTANCE OF COUNSEL

12. VIOLATION OF RCW 10.77/MENTAL HEALTH EVAL-
UATION/DIMINISHED CAPACITY DEFENSE

13. JUDICIAL MISCONDUCT, BIAS, OR PREJUDICE

D. STATEMENT OF THE CASE

SEE PART B OF THIS MOTION - ON 9/19/11 OFFICERS WERE CALLED TO THE SUNSHINE MOTEL, LOCATED IN FIVE WASHINGTON. ON AN ALLEGED DOMESTIC VIOLENCE CALL BY CLERK "CONNIE ELLIOTT". OFFICERS PETERSON AND MORALES PARKED AT THE OFFICE, THEN ENTERED REQUESTING THE MOTEL REGISTRY WHERE MORALES RAN "CLARE JANE STRAIN'S" NAME WHICH CAME UP WITH A SODA ORDER AND A NO CONTACT ORDER WITH RONALD KEAL. OFFICERS WENT TO ROOM #116 LISTED TO MS. STRAIN, REQUESTING HER BY NAME AND PLACING HER UNDER ARREST. IMMEDIATELY BEGAN LOOKING FOR MR. KEAL. AFTER REQUESTING IDENTIFICATION FROM MR. HOLTZ WHILE PREVENTING HIM FROM SHUTTING THE DOOR OF ROOM #117 OR LEAVE. OFFICER MORALEZ WENT TO THE OFFICE TO SHORTLY RETURN YELLING TO MS. STRAIN, "THIS IS YOUR BOYFRIEND, ISN'T IT?" WHEN SHONDA M. BAILEY, IRA L. FOREMAN, STEFANIE FOREMAN, CLARE STRAIN, AND RONALD HOLTZ, VEHEMENTLY INFORMED OFFICER

MORALES that there had been no ASSAULT. He told all to shut up and placed MR. Holtz under ASSAULT charges.

Ms. Elliott was not brought out to identify MR. Holtz. OFFICER Peterson called FIFE jail (as MR. Holtz) listened requesting for them to be able to identify MR. Ronald Keal, if brought in. Upon arrival OFFICER LARKINS of FIFE jail identified MR. Holtz as MR. Keal and it was found only to be confirmed at booking when at PIERCE County jail. Until such time the charge would be 4th ASSAULT, then after fingerprinting an additional charge of a Felony violation of a No Contact Order. At 11:28 pm He was taken to PIERCE County jail At 11:56 pm was booked / Finger printed and charged. Arraigned on 9/20/11 at 9:12 am.

Appointed Attorney Harry Steinmetz 9/29/11 AFTER DAC recognizing a conflict with Robert DePan 9/22/11 from an already conflicted case in Pierce County Superior Court No. #10-1-022-02-2. on 10/25/11 MR. Steinmetz motioned the Court for an extension of time in order to grant motions to Suppress. From trial date of 11/9/11 to 11/29/11 which he walked out of the courtroom on. The Court's set over trial date for new counsel to 12/6/11 and appointed Attorney Robert DePan with a 90 day trial date extension to 3/6/12. MR. Holtz obtained / retained private Counsel SEAN P. Wickens 4/19/12, on 6/4/12 at a CrR 3.5 Probable Cause hearing MR. Holtz was pointed out by witness Connie Elliott as an in-court identifier. Also, on this day by way of Counsel MR. Wickens, MR. Holtz CrR 3.6 motion to Suppress was filed. In July 10, 2012, the

Court again appointed Counsel Robert DePan in spite of the past conflict and current, just to be removed on 8/1/12 with Counsel Kent Underwood appointed. After a trial September 4th - 6th 2012, Mr. Holtz is found not guilty of Fourth degree assault and guilty of Felony violation of a No Contact Order. On 9/2/12 Mr. Holtz was sentenced to 60 months in the Department of Corrections. Petitioner appeals after the events set forth in section B of this motion.

D. ARGUMENT

- SPEEDY TRIAL -

1. In observation of Respondents claims that Counsel can obtain continuances without the approval of the defendant under CrR 3.3(F)(2) "required in the Administration of Justice", for numerous 30 day periods of time as they cite STATE v. SAUNDERS, 153 Wn. App. 209, 220 P.3d 1238 (2009). However, on the contrary is the case at bar on appeal. A) 10/25/11 Counsel H. Steinmetz motioned the Court for an extension of time to graph motions to suppress up Fed 11/9/11 - 11/29/11. This was 70 - 72 days, over the 60 day speedy trial, checking on Form CrR 3.3(F)(1) which requires defendant's signature and the Court must observe this was not done. B) on 11/29/11 Mr. Steinmetz simply walked out of the Court room against defendant's objections, Mr. Holtz motion to dismiss due violation of 6th amended U.S. Const. Right to representation was denied. C) Judge Bryan Tolerson set the date over citing on Form yet, again CrR 3.3(F)(1) as Mr. Holtz objected. D) on 12/6/12 day 77 - 79 again Counsel Robert DePan is appointed even though there is a recorded conflict No. 1011-

-02212-2 with him at this time. He is not provided 30 nor 60 days but 90 days, again under CrR 3.3 (F)(1) NOT (F)(2) AND REQUIRES THE DEFENDANT'S SIGNATURE. Extending the date to 3/20/12 setting trial 182 days FROM ARREST. At the time of describing the defendant on 11/29/11 if any continuance was obtained beyond speedy trial rights and under CrR 3.3 (F)(1) REQUIRES MR. Holtz signature which was NEVER obtained. CrR 3.3 (g) cure period. only allowed 14 days or 30 days under (F)(2). However, EVEN AFTER 11/29/11 the court FAR exceeded its discretion in abusing the rights of MR. Holtz and their authority by clear prejudice to all proceedings. on 12/6/12 going FAR beyond, EVEN IF using a CrR 3.3 (b)(1)(i), which requires trial within 60 days but the court went outside this by setting it 90 days 3/6/12. Any other dates were based upon untenable grounds. The Appellant did not have the verbatim record so he presented the unsigned documents where Counsel checked CrR 3.3 (F)(1). see, STATE V. SAUNDERS, 153 Wn. App. 209, 220 P.3d 1238 (2009). In STATE V. CHAVEZ-ROMERO, 285 P.3d 195 (Wash. App. Div. 3, 2012), when a trial court denies a motion to dismiss for speedy trial purposes, the appellate court reviews that decision for an abuse of discretion. Here MR. ROMERO was released to Immigration for 90 days offsetting the court date which required dismissal. In the current case the 90 day period constituted the same basis of abuse of discretion and prejudice. CrR 3.3 (c)(2)(ii). GEORGE, 160 Wash. 2d at 738, 158 P.3d 1169 (2007) and in STATE V. KENYON, 167 Wash. 2d 130, 216 P.3d 1024 (2009) This Wash. Supreme Court recently REVERSED our decision and dismissed numerous unlawful FIREARM possession charges based on the trial court's FAILURE to articulate an adequate basis of continuances beyond the speedy trial limits. Kenyon, 167 Wash. 2d

At 131-32, 138-39, 216 P.3d 1024, MR. Steinmetz, walked out of the Court room on 11/29/11 because defendant Mr. Holtz refused to agree to yet another extension of time so he could go on vacation and numerous later continuances were granted due to Prosecution or judge going on vacation. Violating CrR 3.3(e)(8) Kenyon, 167 Wash.2d at 134. The Court need review the Wash. St. Const. Art. 1 § 22, and U.S. Const. Amend. 6 CrR 3.3(h), For the Supreme Court's Prejudice Analysis may well clearly show prejudice, requiring reversal.

2. VIOLATION OF WASH. ST. CONST. ART.
1 § 7, UNLAWFUL SEARCH AND SEIZURE
U.S. 4th AMEND. AND SUPPRESSION

A. SEARCH OF MOTEL'S REGISTRY

The Respondents have alleged that Officer Morales parked at the office of the Motel but went directly to the room without speaking to the 911 caller, Motel employee Connie Elliott. However, Ms. Elliott tells (under oath) a more logical explanation/version of the incident. This is said in order to try to negate the fact that the information was obtained by Morales going directly to the office's Registry and obtained it by other direct means invoking the "independent source exception."

The Division II Court of Appeals failed to properly review the record/issues as Officer Morales was impeached by his own testimony and Prosecution witness Connie Elliott. See Connie Elliott: 6/4/12 testimony Pg. #38 Ln. 1-25; Pg. #46 Ln. 15-25; Pg. 47 Ln. 1-25

[VOIR DIRE September 5, 2012: Pg. #250 Ln. 11-25; Pg. #251 & 252 Ln. 5-12] She admits to providing the Registry to him, Both officers arriving at sometime viewing the Registry, Morales admits to taking Fife dispatcher call (CAD), He admits to running her name and the no contact order with "RONALD KEAL" came up. Then he admits to never asking Ms. Strain for identification. So, either he already knew prior to approaching the OR had to pick out of 3 women without any description or identification and believe her without I.D. However, the CAD report shows A) ARRIVAL 21:34:40, Then her name & DOB B) 21:34:43 (3) seconds, no male registered to room.

[Pg. #253 Ln. 12-25; Pg. #254 Ln. 1-15] [Pg. #266 Ln. 23-25; Pg. #267 Ln. 1-25; Pg. #268 Ln. 1-25; Pg. #269 Ln. 1-25; Pg. #270 Ln. 1-10] [6/11/12: Pg. #20 Ln. 20-25]

[Sept. 5, 2012: Pg. #163 - Pg. #167, Pg. #165 Ln. 1-25 & Pg. #166 Ln. 1-25] see; Pg. 145 Ln. 22-25; Pg. #146 Ln. 1-20] [Pg. #152 and #153] [Pg. #154 - Pg. #178]

Connie Elliott, clearly testifies to providing the Registry to officer Morales as he pulled up and came directly to the office which she provided the Registry as she was accustomed to doing. Instead of going to the room, he viewed the Registry as a Fishing Expedition in order to obtain more information on warrants, NCO's, SODA, SOAP, etc. instead of doing the foot work in violation to Wash.

Sup. Ct. ruling STATE V. JORDEN, 160 Wn.2d 121, 130, 156 P.3d 893 (2007). Mr. Holtz, was held without proof of probable cause after multiple witnesses informed officers Petersen and Gonzalez, that there had been no assault including alleged victim Chare Strain. [SEE exhibit #2] STATE V. MILES, 244 P.3d 1030, 159 Wn. App. 282 (Wash. App. Div. 1, 2011), All evidence from the Motel Registry is but Fruit from the poisonous tree. The independent Source Doctrine does not apply because the name Ronald Holtz did not show

any criminal history nor any A.K.A. which is the reasoning for falsely charging Mr. Hottz with assault in order to arrest him to have him fingerprinted so he could be identified. He'd never been arrested under the name "Hottz." Ms. Elliott, admits that officers did not know who "Hottz" was. September 5, 2012 - Pg. #216 Ln. 23-25 & Pg. #217 Ln. 1-13; Pg. #202 Ln. 1-25 & Pg. #203 Ln. 1-3 | JUNE 4, 2012 - Pg. #40 Ln. 1-17 & Ln. #13; Pg. #47 Ln. 1-25 & Pg. #48 Ln. 1; Pg. #20 Ln. 7-8 | Sept 4, 2012 - Pg. #23 Ln. 1-25; Sept. 5, 2012 - Pg. #29 Ln. #6-13; Pg. #30 Ln. 7-19 | Ms. Elliott, goes on to admit that she was not taken out to identify Mr. Hottz. So, proof by the only alleged eyewitness to identify the culprit was never obtained which blows away the 4 degree assault (Probable Cause) yet, Hottz was still placed under arrest. Independent source nor inevitable discovery doctrine applies because no history came up under Hottz nor was Hottz "linked to Keal" at that time and would not be until 11:56 pm booking at Pierce County jail. Thus, there is nothing to prevent all information after viewing of the motel registry to be suppressed as fruit from the poisonous tree. Knowing if not for performing a false arrest in order to bring Mr. Hottz in to be fingerprinted, there had been no legitimate reason to arrest him arbitrarily to be fingerprinted.

His rights derived from Ms. Strain's as well being a product of the violated registry. State v. Ibarra-Cisneros, 172 Wash. 2d 880, 884-85, 263 P.3d 591 (2011) There our Supreme Court said, "Courts should not consider grounds to limit application of the exclusionary rule when the state at a CrR 3.6 hearing offers no supporting facts or argument." Ibarra-Cisneros, 172 Wash. 2d at

885, 263 P.3d 591. Our Supreme Court rejected the "cursory application of the attenuation doctrine" nothing, "our resolution of this case is dictated by the limited record and briefing before us." Ibarra-Cisneros, 172 Wash. 2d at 884, 263 P.3d 591. Through, Ibarra-Cisneros' cell phone officers made contact with his brother at his home where they made an unlawful search discovered items to arrest Ibarra-Raya. The trial court refused to suppress the evidence. On appeal, Division Three of this court reversed Ibarra-Raya's conviction, holding that it need not exclude that evidence because it was "too attenuated" from the unlawful search of his brother's home. Ibarra-Cisneros, 172 Wash. 2d at 883-84, 263 P.3d 591. This same basic principal applies to Strain and Holtz, as the fruit from the poisonous tree deriving from the unlawful viewing of the Motel Registry.

The detection, broadening the scope of the search after being notified of no assault by numerous witnesses, fact of no on show I.D., Affidavit of Connie Elliott providing absolutely no description of Mr. Holtz or anyone else except "THE MAN", arrest without composite identification and that officers did in fact arrest Mr. Holtz with the sole intent to have him identified by fingerprints, they were not sure of his identity until 11:56 pm that night, at the 6/4/12 CR 3.5/3.6 hearing all information should have been suppressed and dismissed instead of allowing an impermissibly suggestive in-court identification. on 9/4/12 & 9/5/12 Judge K. Nelson should have not only heard Mr. Holtz CR 3.6 motion to suppress on record in

open court, allowing argument but conducted A Finding of Facts conclusions of law CrR 6.1. Also, the Court of Appeal had an obligation to grant review based upon these Facts in deprivation of defendants Constitutional rights.

3. IMPERMISSABLY SUGGESTIVE IN-COURT IDENTIFICATION

Petitioner proves that there was no 4th assault but it was used in order to arrest him for identification. see exhibit #3 (c) Affidavit of Connie Elliott providing absolutely no physical description of Mr. Holtz. Elliott admits that officers came to ask her because they all didn't know who he was [Sept 5, 2012 - Pg. #216 Ln. 23-25 & Pg. #217 Ln. 1-13; Pg. #202 Ln. 1-25 & Pg. #203 Ln. 1-3] [JUNE 4, 2012 - Pg. #40 Ln. 1-7 & Ln. #13; Pg. #47 Ln. 1-25; Pg. #48 Ln. 1; Pg. #20 Ln. 7-8]. Elliott, wasn't taken to Holtz at the scene to identify him as the alleged culprit and see him allegedly until 9 months later on 6/4/12 without any photo montage or line up. Obviously, she couldn't identify "Mr. Holtz" on 9/9/11 (as shown in her Affidavit) but prosecution made it possible in court on 6/4/12 at a Motion to Challenge Probable Cause identification which arbitrarily prejudiced the Petitioner by enabling her to claim identifying him in court. As the only person in jail greys, pink shirt, waist chains and leg shackles. A court may not shackle a defendant except in extra ordinary circumstances because shackling undermines the presumption of innocence and the right to appear and defend in person. IN RE DAVIS, 152 Wn.2d 647, 693, 101 P.3d 1 (2004); STATE V. FINCH, 137 Wn.

2d 792, 844, 975, P. 2d 967 (1999), Art. 1 § 22, OF THE WASH. CONST.
STATE V. HARTZOG, 96 Wn. 2d 383, 398, 635 P. 2d 694 (1981). When it's
established that the witness had an independent basis for identifica-
tion, an in-court identification will not be reversible error without
substantial evidence that the identification was influenced by seeing
the defendant at defense counsel's table. BRADLEY V. STATE, 359 O.W. 3d
912 (Tex. App. Houston 14th Dist. 2012); STATE V. McDONALD, 40 WASH. APP. 743, 746,
700 P. 2d 327 (1985). Here in a similar case where DEAN requested convict-
ion be reversed and the case remanded when identified by PETERSEN
in-court after failing to identify DEAN 22 hours before and picks another
person. The Court deemed a hearing would be pointless, under all of the
circumstances, any identification by PETERSEN would be so unreliable
that its admission would violate due process. SEE RPP 12.2; FOSTER V.
CALIFORNIA, 394 U.S. 440, 89 S. Ct. 1127, 22 L. Ed. 2d 402 (1969) (case remand-
ed for determination of whether due process violation was harmless
error; if new trial ordered, in-court identification apparently
to be suppressed). STATE V. SANCHEZ, 171 WASH. APP. 518, 288 P. 3d 351
(2012). This case need be remanded for suppression hearing.

4. INSUFFICIENT CHARGING DOCUMENT AND JURISDICTION

The Court of Appeals should grant review of the
insufficient charging documents used to establish Mr. Hottz
prior history that violated the essential elements rule which
was used at the current case sentencing after failing to inform
the jury. Mr. Hottz, did not stipulate to prior misdemeanors

nor Felony, see Supreme Court's ruling: *City of Bothell v. Kaiser*, 152 Wash. App. 466, 217 P.3d 339 (2009); *City of Seattle v. Termain*, 124 Wn. App. 798, 103 P.3d 209 (Wash. App. Div. 1, 2004); *State v. Leach*, 113 Wash. 2d 679, 695, 782 P.2d 552 (1989). This requires every element to be in the four corners of the charging document and the court has the authority to order an evidentiary hearing which need be done here in this case. U.S.C.A. Const. Amend. 14; West's RCWA Const. Art. 183, RCWA 26.50.110; CrRLJ 2.1(a)(2).

This takes these documents as well outside of the jurisdiction of the Court which is raised at any time, hereby challenging the jurisdiction of the federal government to charge Petitioner with this crime inside the state of Washington (specifically Tacoma Washington). Petitioner hereby cites the statutory requirements within 40 U.S.C. § 255 - with specific reference to interpretive note #14 - and hereby request that the Court order the Department of Justice (DOJ) to produce the documentation specified per the statute to establish their criminal jurisdiction. This has not been done, requiring reversal and dismissal.
[see Exhibit #4].

5. RECHARACTERIZATION OF CR 7.8

On September 21, 2013 a Cr 7.8 Motion for Relief From Judgment was filed in Pierce County Superior Court and sent to Division II Court of Appeals as a Personal Restraint Petition No. #45427-1-II. In violation to state and federal law with no

opportunity to retract and when objecting there was no evidentiary hearing. State v. Smith, 144 Wn. App. 860, 184 P.3d 666 (2008) State v. Flaherty, 296 P.3d 904 (2013). Being recharacterized as a (PRP) a defendant is denied the due process rights to adequate review standard even on a U.S. Supreme Court level. see Castro v. United States, 546 U.S. 375, 124 S. Ct 786, 157 L. ed. 2d 778 (2003). Violating the stare decisis doctrine where all courts must be in continuity with one another. State v. Ray, 130 Wash. 2d 673, 679, 926 P.2d 904 (1996).

This case needed to be remanded at the Court of Appeals level.

6. FAILURE TO PRODUCE RECORD OF PROCEEDINGS RAP 9.2 & 9.5

On appeal the trial court failed to record proceedings, which is a due process violation WA St Const. Art. 1 § 3; Art. 1 § 21 and 22. State v. Tilton, 72 P.3d 735, 149 Wn. 2d 775 (2003) State v. Harvey, 175 Wn. 2d 922, 288 P.3d 1113 (2012). RAP 9.2(6). [SEE exhibit #5]. Letters, motions, and Counsel's requests for the records. Petitioner has been prejudiced by the denial of those records on appeal.

7. RIOTING PRIOR GROSS MISDEMEANOR

In case No. 10-1-02212-2 Pierce County Superior Court 10/18/11 before Judge Beverly Grant on a guilty plea, state-

ment of guilt (signed by Ronald Keal at that time) states that he is pleading to "Rioting without a weapon". Petitioner does not have this document but the court has this in the prior history as it was not provided to petitioner. State v. Hayes, 164 Wn. App. 262 P.3d 538 (Wash. App. Div. I, 2011). An example is found in Montejano, a person is guilty of the misdemeanor crime of riot, "if acting with three or [164 Wn. App. 470] more other persons", that person threatens the use of force against another person. RCW 9A.84.010(1). But riot is a felony if "the actor is armed with a deadly weapon". RCW 9A.84.010(2)(b). In Montejano the defendant -- who was unarmed -- was convicted of felony riot. The conviction was reversed on appeal because, while guilt for riot is plainly predicated on group conduct, the term "actor" refers to the accused. Thus, to convict for felony riot, the accused must be the one with the deadly weapon; Montejano, 147 Wash. App. at 699-700, 196 P.3d 1083, and accomplice liability as defined in RCW 9A.08.020(3) does not apply. The riot statute itself "defines the contours of the accomplice liability by setting forth the participation required by the accused". Montejano, 147 Wash. App. at 703, 196 P.3d 1083.

Because the defendant's participation did not include being personally armed, his conviction for felony riot had to be reduced to a misdemeanor. State v. Montejano, 147 Wash. App. 696, 699, 196 P.3d 1083 (2008). [164 Wn. App. 469] The primary objective of an inquiry into the construction of a statute is to ascertain and carry out the intent of the legislature, review is de novo.

Petitioner turns to the court for review of this erroneous sentencing error to be corrected by resentencing.

8. COURT'S INSTRUCTION MISLEAD
JURY ABOUT IT'S POWER TO ACQUIT
EVEN IF PROVED CASE BEYOND A REASON-
ABLE DOUBT

This is the first time this issue is challenged in the state of Washington. In a criminal trial, a "to-convict" instruction, which informs the jury that it has a "duty to return a verdict of guilty" if it finds the elements have been proven beyond a reasonable doubt, violate a defendant's right to a jury trial, when there is no such duty under the state and federal constitutions. For example, in *Leonard v. Territory*, 2 Wash. Terr. 381, 7 Pac. 872 (1885).

This case must be reversed and dismissed.
[See exhibit #5 BRIEFS]

9. PROSECUTORIAL MISCONDUCT
AND BRADY VIOLATIONS

From 6/4/12 if not before on 9/19/11 OFFICERS MORANES
Falsely Alleged that he was informed that Mr. Holtz had an A.K.A.
but when thoroughly questioned on the dispatch, no contact order,
and identification, he can not substantiate any. However, he/prosecu-
tion perpetuate this falsehood up to being impeached at trial
when Finger print Specialist Kimberly Howard "adamantly" stated
that the names "Holtz" and "Keal" were not linked to being ever
shown as the same person or ever coming up until being book-

ed / Finger printed on 9/19/11 AT EXACTLY 11:56 pm [September 4, 2012 - Pg. #85 Ln. 7-18, & 22-25; Pg. #86 Ln. 14 & Ln. 19; Pg. #104 Ln. 20-25 & Ln. 9; Pg. #105 Ln. 10-25; Pg. #106 Ln. 1-25 (specifically Ln. 19-25)].

[SEE EXHIBIT #3 Booking Form] you'll see the exact computer time, booking ID: 2011162083. see issuance date of "Ronald Hodge Holtz" Identification mailed 2/21/11 yet, it had not been run by law enforcement to be linked to any other name nor was he finger printed under this name. Prosecutor E. Eggertsen continued to allow her witnesses to perjure themselves by claiming "Ronald Hodge Holtz" came up as an A.K.A. for "KEAT" when she knew this to be FALSE. She admits to this [September 6, 2012 Pg. #356 Ln. 20-22].

[SEE EXHIBIT #3].

10. VIOLATION OF MENTAL HEALTH
RCW 10.77

Submitted: December 22, 2014.


Ronald Holtz #945319
Monroe Correctional Complex
P.O. Box 7002 INU 2-6147
Monroe, WA 98272

- EXHIBIT -

- 1 -



Washington State Court of Appeals

Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

October 7, 2014

Ronald Holtz
DOC #945319
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PO Box 900
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Thomas Charles Roberts
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Stephanie C Cunningham
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4616 25th Ave NE # 552
Seattle, WA, 98105-4183

CASE #: 43995-6-II
State of Washington, Respondent v. Ronald Holtz, Appellant

Counsel and Mr. Holtz:

On October 6, 2014, a motion for reconsideration of a Clerk's letter of September 23, 2014, was filed in the above-referenced matter. The motion is being treated as a motion to modify. A panel of judges will consider the motion without oral argument on the next available motion calendar. Any response to the motion should be filed no later than **October 17, 2014**. A reply, if any, must be filed within seven days after the response has been filed. Please note that ordinarily there would be no provision to file this motion under **State v. Romero**, 95 Wn. App. 323, 1999; however, it appears that the Appellant is acting pro se. If you have any questions, please contact this office.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:c

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 43995-6-II

Respondent,

v.

RONALD HODGE HOLTZ, aka RONALD HOLTZ KEAL,

ORDER GRANTING MOTION TO MODIFY AND DENYING MOTION FOR PUBLICATION

Appellant.

In re Personal Restraint Petition of

No. 45427-1-II

RONALD HODGE HOLTZ,

Petitioner.

FILED
COURT OF APPEALS
DIVISION II
2014 OCT 29 PM 1:09
STATE OF WASHINGTON
BY DEPUTY

Appellant Ronald Holtz has moved to modify the clerk's September 23, 2014 letter rejecting his motion to publish as untimely. Because Holtz is currently in prison and has established exceptional circumstances, we (1) grant his motion to modify; (2) accept for filing his motion to publish; and (3) having considered his motion to publish, deny it.

IT IS SO ORDERED.

DATED this 29th day of October, 2014.

Worawich J
Presiding Judge

- EXHIBIT -

- 2 -

ee

STATE OF WASHINGTON

No. 11-1-03845-1

COUNTY OF PIERCE

ss.

DECLARATION
OF
RONALD HOLTZ

I, RONALD H. HOLTZ, duly hereby deposes the
Following:

1. on or about 9/23/11, I WAS INFORMED THAT
ATTORNEY HARRY STEINMETZ WAS REPRESENTING ME BY
ATTY: ROBERT DEPAN.

2. on or about 9/26/11, I SEEN HIM BETWEEN JAIL
GATES IN ORDER TO BE SEEN, AT WHICH TIME HE EXPLAINED THAT
HE'D COME TO SEE SOMEONE ELSE YET, I GAVE HIM A LOT OF
MEDICAL / MENTAL HEALTH INFO. ALONG W/ MY WITNESSES AS
FOLLOWS: (A) SHORDA COUTIER, (B) CLARE J. STRAIN, (C) IRA AND STEPH-
ANIE FOREMAN, (D) BOOKING % CALL, AND (E) FIRE OFFICER HARKIN.
#A-C, I GAVE PHONE NUMBERS AND ADDRESSES TO.

3. on or about 10/11/11, I SEEN HIM IN PRE-TRIAL, WHERE
HE TOLD ME THAT ALL MY WITNESSES HED SPOKEN TO AND THEY
WERE TELLING THE SAME STORY THAT I WAS. ALSO, ALLEGED VICT-
IM "CLARE J. STRAIN" HAD BEEN CALLING HIS OFFICE AND WAS
COMING IN TO GIVE A STATEMENT IN MY BEHALF. I INFORMED
(1 OF 4)

him that a friend told me that she'd be in court looking for him because he didn't return any calls, as would my other witnesses. He stated that he'd bring the discovery in to go over w/ me after being redacted. Their calls haven't been returned.

4. Between this time as well as prior, I'd called my witnesses while they called his office (on speaker phone) so, I could hear but he'd never be in or call back. Also, he was informed by parties that on 10/11/11 "CLARE STRAIN" had left a statement at the prosecutor's office, that there was no victim. "MR. STEINMETZ" office had been called to be informed that she'd be in "WAPATO" jail starting 10/13/11.

5. Since 9/28/11, MR. STEINMETZ, HASN'T COME TO JAIL TO SEE ME, CALLED ME, NOR HAVE I TALKED TO ANY INVESTIGATOR, AND HIS PHONE CANNOT BE CALLED COLLECT.

6. on 10/25/11 (omnibus) I WAS NOT PROVIDED DISCOVERY - HE OBTAINED A (20) DAY EXTENSION OF TIME TO DRAFT MOTIONS WHICH I OBJECTED TO.

7. on 11/7/11, I SENT MR. STEINMETZ, A LETTER QUESTIONING HIS REPRESENTATION; A) FAILURE TO PRESENT DISCOVERY B) FAILURE TO COMMUNICATE OR TAKE CRITICAL

(2 OF 4)

time necessary in order to perfect DEFENSES TRIAL strategy, 8. Refusal to inform the Court that I'm listed w/ Social Security as being severely mentally and physically disabled as well as not being on any medication. I was told that I'd have to get myself into a program and that Atty: R. DePan had gotten those records which I needed to contact him.

8. on or about 11/8/11, I informed his office that witness "IRA FOREMAN", I'd seen in custody @ the jail.

9. on or about 11/23/11, while waiting for MR. STEINMETZ to visit w/ discovery and pre-trial motions, I received an attorney call from him. He told me that he was in trial, wouldn't be out until 12/5/11, so, my trial would be put off and that he couldn't contact any witnesses w/ his investigator "LEE SANDERS". When objecting to this, due to my being on another phone (able to hear the calls), he hung up. I still haven't received any forementioned documents from him. The current trial date 12/29/11.

10. By 11/15/11, pretrial motions were to be filed, w/ Prosecution's motions the following week by 11/22/11. yet, I haven't been provided w/ any AS A MATTER OF
(3 OF 4)

right which "shocks the conscious mind" as to the level of zealous representation. STRICKLAND v. WASHINGTON, 466 U.S. 668 (1984)...

11. AT this time, I must be adamant in my concerns for the level of performance, as I strongly believe that my 6th Amend. Const. Rights as well as my 5th "procedural due process of law" have been violated. As we must further view; Wash. St. Const. Art 2 § 21 & § 22 - looking to Washington and Supreme Court ruling in STRICKLAND v. WASHINGTON which set precedence on its "Strickland Test", citing RPCs 1.7 - 1.10...

When a pre-trial detainee (Defendant) must be subjected to seriously question, the sincere role of Prosecution, differing from defense due to their colluding over lives at lunch. There need be a revision that may definitely safeguard a helpless defendant. Upholding these Constitutional claims (not to be abridged) by issues of Attorneys lacking man power, time, nor an element of indigency. As paying customers tend to gain more loyalty/time from such lawyering. Thus, I also believe due to all my health problems, one might use delay/continuances, to push me into a "Hobson's Choice" in order to receive necessary medical treatment to preserve my life.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

THIS 26th, DAY OF November, 2011.

(4 of 4)


RONALD H. HOLTZ

The Law Office of Kent W. Underwood LLC

1111 Fawcett Ave., Suite 101, Tacoma, WA 98402-2024 Ph. (253) 627-2600 Fax (253) 591-7086

August 20, 2012

Ronald Holtz
Pierce County Jail
910 Tacoma Ave. S
Tacoma, WA 98402

RE: State v. Ronald Holtz, Cause No. 11-1-03845-1

Dear Mr. Holtz,

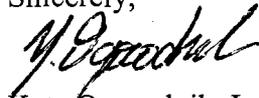
For your records enclosed to this letter please find investigator reports that contain the following witness interviews.

1. Crow Investigations Reports
 - a. Ira Lynny Foreman, interviewed by Jerry Crow on 08/15/2012.
 - b. Shonda Mari Bailey, interviewed by Jerry Crow on 08/16/2012.
 - c. Stefanie Foreman, interview by Jerry Crow on 08/16/2012.

2. DAC Investigation Reports
 - a. Clare Strain, interviewed by Glenn Glover and Karen Husks on 03/15/2012.
 - b. Officer Peterson, interviewed by Glenn Glover on 04/03/2012.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Kate Ogorodnik, Legal Assistant to
Kent W. Underwood
Attorney At Law

Enclosure(s) as cited

File -



Crow Investigations
2522 N. Proctor #416
Tacoma, WA 98406
Ph. (253) 314-5364
Fax. (253) 314-5536

To: Kent Underwood, Attorney
From: Jerry Crow, Investigator
Re: State v. Ronald Holtz
#:11-1-03845-1

Witness Interviews

Ira Lynny Foreman
DOB: 2/5/1983
Pierce County Jail: 3WA11

On 8/15/12 I interviewed Witness Foreman at the Pierce County Jail. Witness Foreman is in jail awaiting the outcome of an unrelated matter. Witness Foreman is a friend of our client and was present at the Sunshine Motel on the evening in question.

Witness Foreman stated that on the evening of the incident he and his wife arrived at the Sunshine Motel early in the evening to visit our client. The only people present in the room were Witness Foreman, Foreman's wife, and our client. Witness Foreman and our client had a shot together and soon after our client left the room. At this time Witness Foreman and his wife were in the room by themselves.

Witness Foreman said that a short time later he looked out the front door of the room to see the police arrive and our client get arrested. Witness Foreman and his wife did not see our client interact with the alleged victim at all that evening.

Witness Foreman gave me the phone number for his wife, Stefanie, but he does not know any contact information for the alleged victim.

Shonda Marie Bailey
DOB: 4/7/1955
Address Refused
Phone: (425) 877-7805

On 8/16/12 I spoke with Witness Bailey by telephone. Witness Bailey was the neighbor of our client and the alleged victim at the Sunshine Motel during the time of

the incident.

Witness Bailey said that on the evening of the incident she, our client, and the alleged victim walked to the store together and purchased wine. Witness Bailey does not remember what time in the evening this occurred, but does remember that it was dark out.

Witness Bailey stated that after they returned to the hotel her, our client, and the alleged victim went to Witness Bailey's room and had a few drinks. A short time later our client became agitated and started yelling at the alleged victim. At this time Witness Bailey told our client to leave. Our client then left the room. Witness Bailey does not remember what the argument was about.

Witness Bailey said that a short time later the alleged victim decided to leave the room. Witness Bailey watched as the alleged victim was walking in the parking lot towards her own room and saw our client approach the alleged victim. Our client then proceeded to yell at the alleged victim, snatched her purse, and threw it to the ground. At this point Witness Bailey saw the employee of the motel get involved. Witness Bailey did not see anything further.

Witness Bailey seemed to be cooperative throughout the phone conversation. However, when I asked her for her address towards the end of the conversation she became nervous and abruptly ended the phone call.

Stefanie Foreman

DOB: 7/14/1968

Phone: (253) 666-0655

130 11th St SE

Auburn, WA 98002

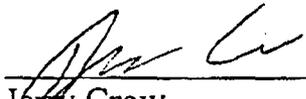
On 8/16/12 I spoke to Witness Foreman by telephone at the above listed phone number. Witness Foreman is the wife of Ira Foreman and was present at the Sunshine Motel on the evening of the incident.

Witness Foreman said that she does not know our client very well and has only met him a couple times. However, our client is a friend of her husband, Ira Foreman.

Witness Foreman stated that on the evening of the incident her and her husband drove to a motel in Fife. Witness Foreman said that she was pregnant and not drinking, but her husband wanted to have a drink with our client.

Witness Foreman stated that when they arrived at the Motel that she and her husband hung out with our client alone in a room. Witness Foreman's husband and our client had a drink and our client then left the room saying he was going next door. A short time later Witness Foreman and her husband looked out the door and saw the police arrive. They then saw our client and an unknown white female being handcuffed and arrested.

Witness Foreman does not know the alleged victim and has no way to get in touch with her.



Jerry Crow
Investigator

DAC Investigations

Memo

To: Robert DePan

From: Karen Hucks

Date: March 15, 2012

Re: Clare Strain interview

Glenn Glover and I interviewed Clare Jane Strain from 2:10 to 2:45 p.m. today, March 15, 2012. She came here to DAC and we talked in Glenn's office.

Strain said she met Keal in 2008, and they have dated off and on since 2010. She said she fell in love with him, partly because of his intelligence. Strain is the victim in a 2011 Lakewood Municipal Court domestic violence incident, for which Keal had a no-contact order that required him to stay away from her.

She said she and Keal had been sharing a room at the Sunshine motel in Fife together for two to three days when the September incident occurred. They'd been staying at the motel on and off since June. The motel management knew they were there together.

That day, Strain said, Keal had friends visiting their room and got mad at her for being in the room next door. Strain had purchased items for the woman, and was providing her the change from the store.

Keal came to the room and screamed that Strain was being disrespectful to their guests. Strain said she screamed back at him. She said Keal threw her purse out into the parking lot and its contents scattered across the parking lot. The doors to the woman's room and to their room were open.

Strain said Connie, who works at the motel, called the police. When the police arrived, Strain was picking up her things in the parking lot.

She said Keal never assaulted her, and he never assaulted Connie.

Strain was arrested for violating a SOAP/SODA order. She said Keal gave the officers his new name, Ronald Holtz. She thought that was stupid because he still had the same face and fingerprints and police would figure out who he was. They did. He was arrested for violating the no-contact order.

Strain said she pointed out Keal's medication in their room because he would need it.

Although Strain denies that any assault occurred, she understands why the management would have called the police when they were being so loud.

Karen Hucks, intern investigator

**Pierce County Department of Assigned Counsel
INVESTIGATIVE REPORT**

Defendant: Ronald Keal

Cause No: 11-1-03845-1

Charge: Domestic Violence Court Order Violation Occurrence Date: 9/19/11

Attorney: DePan

Investigative Intern: Hucks

Interview with: Officer K. Peterson Interview Date: 04/03/12

On 4/03/12 at approximately 1430 Glenn Glover interviewed Officer Peterson in the presence of Intern Investigator Amparo Medina-Perez, and Prosecuting Attorney J. Sievers.

Officer Peterson stated that he brought his report from the night in question along with him as a refresher. Off. Peterson also stated that he has been working with the Milton Police Department for four years and stated that he was previously with Bellevue Police Department the first year. Peterson stated that his duties included but not limited to patrol officer, marijuana unit, but mostly patrol duties.

Officer Peterson shares radio frequency with the Fife Police Department and responded on 9/19/11 to assist with a Motel incident at the Sunshine Motel in Fife. A fourth party called dispatch in regards to a physical altercation occurring between a male and female, and the male was seen pushing the female. At which time Officer Peterson arrived on scene after Officer in charge Morales was already there and interviewing the parties involved. Peterson stated that Officer Morales had both parties separated and was interviewing the male involved. Peterson was motioned to the male by Officer Morales, at which time the male stated that he was involved, that he just got back to the hotel and was chilling out. Morales then went to the female and started interviewing her at which time she then accused the male of doing something and became upset.

Officer Peterson stated that he doesn't respond to Motel calls on a regular basis. Officer Peterson then asked the male known to him as Holtz if he pushed or shoved female. Mr. "Holtz" stated that he did not touch females. Officer Peterson stated that Mr. "Hotlz" appeared intoxicated with blood shot eyes but no real slurred speech. Peterson stood by Mr. "Hotlz" until Officer Morales returned. Peterson stated that when Officer Morales arrived he asked Mr. "Hotlz" to turn around and that he was being placed under arrest. "Hotlz" was not seen causing an altercation when placed under arrest, but did say a couple of things in regards to his arrest. Mr. "Hotlz" stated that Fife wouldn't take him based on his medical condition at which time dispatch advised of a different names and an aka, and that he had been in jail the week before in Fife and was denied booking. They then proceeded back to the room and found prescription, Glenn asked specifics about the prescriptions and details, Peterson did not recall seeing any prescriptions under the name of "Hotlz", what the prescriptions were, nor what they said or details about the

prescriptions but bagged it and tagged it with required information. Dispatch stated his aka was Keal, they then transported Keal to Fife jail with meds, Officer at the jail processed Keal in Fife and held Keal until Pierce County picked Mr. Keal up and transported him to the jail. At this time Officer Peterson stated that he was done at this time and duties were turned over to Fife. Peterson also stated that he had never dealt with Keal before this incident. Peterson did not speak with victim at all and did not go to the Motel office.

-EXHIBIT-

#3-

- A) Booking Time
- B) IDENTIFICATION DEPT. OF LICENSING
- C) N6 CONTACT No. #TLO369
- D) FIRE REP. 9/20/11 & CAD REP.
- E) INFORMATIONAL CASE No. #11-1-03845-1
- F) PROBABLE CAUSE
- G) STATEMENT OF CONNIE ELBERT 9/19/11 @ 9:30 PM
- H) UNSIGNED - STIPULATION ON PRIOR RECORD AND OFFENDER SCORE

HOLD
\$0.00

HOLTZ, RONALD HODGE

Bag: 1124

**Pierce County Detention and Corrections Center
Inmate Property Inventory**

Booking ID: 2011262083

Race: BLACK

Gender: M

Booking Date: 9/19/2011 11:56 PM

Ethnicity: NON-HISPANIC

Age: 45

Booking Officer: 06-036

Date Added	Item	Qty	Amt	Comments	Property Release Date	Property Released To
09/20/11	Cellular Phone	1		blk		
09/20/11	Cigarettes	1		open		
09/20/11	Hat	1		tan		
09/20/11	Medication	1		7 bottles		
09/20/11	Pants	1		blu		
09/20/11	Shirt	1		blu		
09/20/11	Shoes	2		brown		
09/20/11	Socks	2		white		
09/20/11	State Id Card	1		2 wa		
09/20/11	Wallet	1		brown		

Initial Booking Amount \$0.00

RCW 70.48.390 authorizes the PCDC to collect a booking fee of up to \$100 for anyone booked into the county jail. The booking fee will be deducted at the time of booking, as listed below.

Booking Fee \$0.00

Account Balance \$0.00

This is an accurate record of my property at the time of booking x _____
Inmate Signature

Items _____

I accept responsibility for the personal property I keep on my person x _____
Inmate Signature

Per RCW 70.48.390 you may have this booking fee refunded if you are not charged, are acquitted, or if all charges are dismissed. If you qualify for a refund you should contact Jan Rose at the PCDC Administration office at 798-4431.



STATE OF WASHINGTON
DEPARTMENT OF LICENSING
P. O. Box 9030 • Olympia, Washington 98507-9030

October 20, 2011

SS

The information in this report pertains to the driving record of:

Lic. #: HOLTZRH345LP
Name: HOLTZ, RONALD HODGE
2011 E 57TH ST
TACOMA WA 98404-5114

Birthdate: June 17, 1966
Eyes: BRN Sex: M
Hgt: 5 ft 09 in Wgt: 210 lbs
License Issued: May 9, 1985
License Expires: June 17, 1986

After a diligent search, our official record indicates that the status on was:

Personal Driver License Status:

Commercial Driver License Status:

The following also applied:

PDL Attachments:

CDL Attachments:

Attachments:

- Certified Photo



Having been appointed by the Director of the Department of Licensing as legal custodian of driving records of the State of Washington I certify under penalty of perjury that such records are official, and are maintained within the Department of Licensing.

Custodian of Records
Place: Olympia, Washington
Date: October 20, 2011

We are committed to providing equal access to our services.
If you need accommodation, please call 360-902-3900 or TTY 360-664-0116.

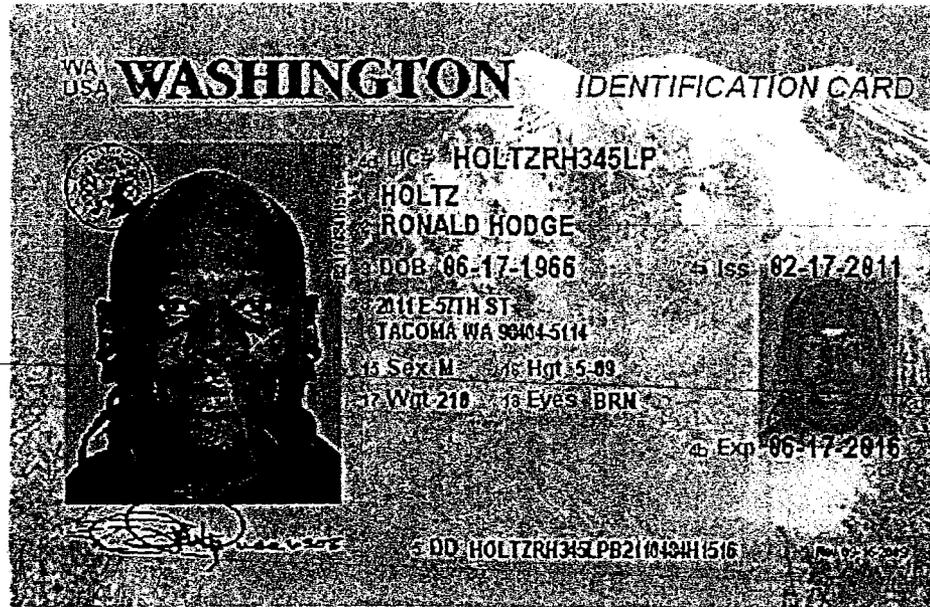
[New search](#)

Views

[Photo](#)

[Card](#)

[Data](#)



PIC #:	HOLTZRH345LP
Control #:	B2110484H1516
Name:	HOLTZ, RONALD HODGE
Production status:	Mailed
Issue date:	2/17/2011
Mailed date:	2-21-2011

Photo Verification v 0.5 ©2002 Digimarc Corporation



DOMESTIC VIOLENCE



Supplemental Report Form

Page 1 of 2

Violation - no contact order Violation - restraining order Violation - protection order.

VICTIM

Name: (Last) Strain (First) Clare (Middle) Jane
 Address: (Street) 2304 (City, St) Jefferson Ave (Zip Code) Tacoma WA 98402
 Phone Number (Home) (Work) (Message)

Incident Number
11-3461

RELATIONSHIP BETWEEN VICTIM AND SUSPECT

Spouse Former Spouse Cohabitants Former Cohabitants
 Engaged/dating Former Dating Same Sex Child in Common
 Child Parent Emancipated Minor Other _____

INCIDENT

Alcohol Involved? Yes No By Suspect Victim Property Damage? Yes No
 Other/Drugs? Yes No By Suspect Victim If Community Property, List: _____ Value: _____
 If other than community property, list name, address, phone number(s) of property owner(s): _____ Value: _____
 Vehicle Damaged? Yes No By Suspect Victim Describe Damage: _____
 Weapon Used? Yes No Gun Knife Other: _____
 Physical Only? Yes No Punched Slapped Choked Pushed Grabbed
 Threat Only? Yes No To Kill Victim To Kill Other(s) To Damage Property
 To Hurt victim To Hurt Other(s) Other Threat: _____
 Children Present? Yes No If yes, Names/Ages: _____

VICTIM DEMEANOR/INJURIES

Victim Appeared? Angry Apologetic Crying Fearful Hysterical Nervous
 Afraid Threatening Calm Other: intoxicated
 Did Victim Receive Medical Treatment? Yes No If Yes, Where: _____
 Were Victim's Injuries Visible/Apparent? Yes No If Yes, Describe: _____
 Bruise (s) Abrasion (s) Laceration (s) Contusion (s) Minor Cut (s)
 Complaint of Pain Other: _____

EVIDENCE COLLECTED

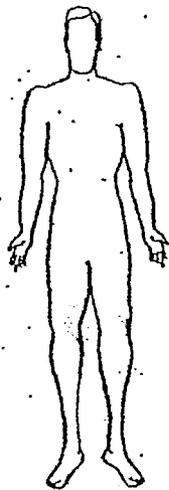
Photos of Victim's Injuries Photos of Suspect's Injuries Weapon Used During Incident Weapon Impounded
 Medical Release Signed Other Evidence, Describe: _____

IMPORTANT INFORMATION

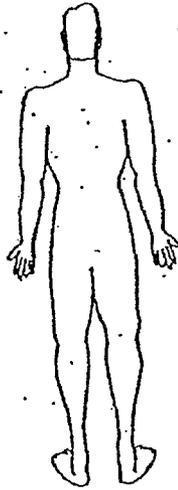
Length of Relationship _____ years 4 months Date Relationship Ended: _____ Prior History of Domestic Violence Yes Police Order
 Prior History Documented? Yes Number of Prior Incidents: 2 Date of Last Incident Feb 2011
 Investigating Agency: Lakewood PD Prior Case Number (s) and/or Cause Number (s) _____
 Probation Officer Name: _____ Is There an Existing Protection Order? _____ Jurisdiction? _____

Investigating Officer: A. Morales Unit/ID #: 230
 Investigating Officer: _____ Unit/ID #: _____

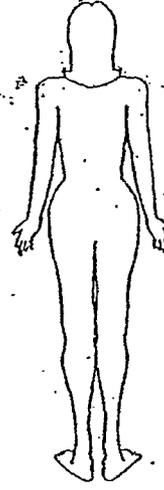
VICTIM'S ACCOUNT OF INJURIES



MALE



FEMALE



Incident Number
11-3461

TO THE VICTIM:

Mark the areas where you were hit or injured. Indicate as much detail as possible without over simplifying or over exaggerating your injuries. Other than the Police, did you call or speak to anyone else about the assault? Yes No

If Yes, Who did you contact?

Victim will be at a temporary address...

Yes No

If Yes, Attach a memo.

Completed by OFFICER / victim was unavailable...

Yes No

VICTIM'S STATEMENT:

- I have physically pointed out to the Officer where I was injured.
- I have indicated on the diagram where I was injured.
- I was able to point out to the Officer the person who injured me.
- I have pointed out to the Officer the object used to injure me.
- I understand all of the questions.

- Yes No

Victim's Statement:

Declined

"I DECLARE, UNDER PENALTY OF PERJURY, UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE ABOVE STATEMENTS ARE TRUE AND CORRECT."

Declined
Victim's Signature

9/19/11
Date

Witness

Date

LIST AT LEAST ONE PERSON WHO HAS FREQUENT CONTACT WITH YOU

- 1. (Name) Richard Stoney (Phone) 253 254 3901 (Relationship) Friend
- (Name) Jim Hickenbottom (Phone) 253 686 9006 (Relationship) Friend

CRIMINAL TRAFFIC **NON-TRAFFIC**

C 33474

IN THE DISTRICT MUNICIPAL COURT OF FIFE
 STATE OF WASHINGTON, PLAINTIFF VS. NAMED DEFENDANT
 COUNTY OF PIERCE
 CITY/TOWN OF FIFE
 PIERCE COUNTY, WASHINGTON

L.E.A. ORI #: WA0270700

COURT ORI #: WA027111J

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO.	STATE	EXPIRES	PHOTO I.D. MATCHED
389NN	WA	08/14	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
NAME: LAST	FIRST	MIDDLE	COL
Strain	Clare	Jane	<input type="checkbox"/> YES <input type="checkbox"/> NO
ADDRESS	<input type="checkbox"/> IF HEV ADDRESS		
2304 Jefferson Ave			
CITY	STATE	ZIP CODE	EMPLOYER
Tacoma	WA	98402	
DATE OF BIRTH	RACE	SEX	HEIGHT
081562	W	F	5-06
RESIDENTIAL PHONE NO.	CELLPAGER NO.	WORK PHONE NO.	HAIR
()	()	()	Blu
VIOLATION DATE	MONTH	DAY	YEAR
ON OR ABOUT	09	19	11
TIME	2133		
AT LOCATION	<input type="checkbox"/> INTERPRETER NEEDED		
3801 Pacific Hwy E	LANG:		
	Fife/Pierce		

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND

VEHICLE LICENSE NO.	STATE	EXPIRES	VEH. YRL	MAKE	MODEL	STYLE	COLOR
TRAILER #1 LICENSE NO.	STATE	EXPIRES	TRL. YRL	TRAILER #2 LICENSE NO.	STATE	EXPIRES	TRL. YRL
OWNER/COMPANY IF OTHER THAN DRIVER							
ADDRESS							
CITY							
STATE							
ZIP CODE							
ACCIDENT	BAC	CMV	15+	HAZMAT	EXEMPT	FARM	FIRE
NO	NR	R	I	F	READING	VEHICLE	FLV
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

#1 VIOLATION/STATUTE CODE	<input type="checkbox"/> DV
KMC 9.72.030	
Violation of a SOAP/SODA ORDER	
#2 VIOLATION/STATUTE CODE	<input type="checkbox"/> DV
/	

MANDATORY COURT APPEARANCE OR BAIL FORFEITURE IN U.S. \$

APPEARANCE DATE	NO.	DY.	YFL	TIME	RELATED #	DATE ISSUED
	9	30	11	0830	11-3461	091911

Served on Violator
 Sent to Court for Mailing
 Referred to Prosecutor

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S).

OFFICER: A. Morales 230

COMPLAINT / CITATION

ABSTRACT OF JUDGMENT	CRG	PLEA	CNG	FINDINGS	FINE	SUSPENDED	SUB-TOTAL	FIND/JUDG DATE
	1	G	NG		G NG D BF	\$	\$	\$
2	G	NG		G NG D BF	\$	\$	\$	TO SERVE
OTHER COSTS \$							WITH	DAYS SUP.
RECOMMENDED NONEXTENSION OF SUSPENSION: <input type="checkbox"/>				LICENSE SUR-RENDER DATE	TOTAL COSTS \$	CREDIT / TIME SVO		

C
 33474

Copy for case folder

In the Municipal Court of Fife, WA

STATEMENT OF ARRESTING OFFICER / PRELIMINARY FINDINGS REGARDING PROBABLE CAUSE

STATE OF WASHINGTON)
) SS.
COUNTY OF PIERCE)

FIFE CASE NUMBER: C-33474
C-
FIFE PD INCIDENT REPORT NUMBER: 11 3461

Comes now A.Morales #230, a Law Enforcement Officer within the Fife Police Department, and states that the following person was arrested by this officer at the following time and place:

Defendant's name (last, first, MI): Strain, Clare Jane

DOB: 08/15/62 Sex: Female Race: Caucasian

I arrested the defendant on 09/19/11 at 2133 hours at 3801 Pacific Hwy E Fife, WA
on the following charges: FMC 9.72.030

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the following is true and correct and that I arrested the defendant based upon the following facts and circumstances.

I responded to the Sunshine Motel for a report of a physical domestic dispute. STRAIN was the victim of felony violation of a no contact order and her significant other was arrested. A records check on STRAIN returned with a valid SOAP/SODA order (copy attached). STRAIN was arrested and booked into the Buckley jail.

09/20/11 Fife Police Dept, Fife, WA
(Date and Place)

A. Morales 230
(Officer's Signature)

Original PC document filed with Fife Court: YES NO :>>>>> If "NO", indicate where original filed: Not Applicable

THE UNDERSIGNED JUDGE, HAVING EXAMINED THE ABOVE STATEMENT OF THE ARRESTING OFFICER, FINDS:

PROBABLE CAUSE EXISTS AT THIS TIME: There is probable cause to believe one or more of the crimes listed as

Booking Charges and that the named individual committed such crimes, to wit:

FMC 9.72.030 0 0

Based upon the above findings, the custody personnel normally used by the arresting law enforcement agency are authorized to hold the named arrested individual in custody upon the normal booking conditions set for such offenses. The named arrested individual shall be brought before (or ordered to appear at, if released) the appropriate court during normal court hours for arraignment or preliminary appearance as required by the Washington Rules of Court.

PROBABLE CAUSE DOES NOT EXIST AT THIS TIME

Probable cause not existing at this time, the custody personnel normally used by the arresting law enforcement agency are directed to release any hold upon the individual based upon the listed booking charges and release the individual if there are no other warrants or holds. If other warrants or holds exist, the defendant shall be held only upon the conditions thereon. This finding does not preclude the prosecuting agency from filing formal charges at a later time.

DATED this _____ day of _____, 200____, at _____ hours.

Judge/Commissioner/Pro tem

Municipal Court of Washington
For the City of Lakewood / City of University Place

CITY OF LAKEWOOD
 CITY OF UNIVERSITY PLACE

KEAL, Ronald Holtz

DOB: 6/17/1946 SEX: M RACE: Black HGT: 5-9 EYE: Brown HAIR: Black

WOT: 118

No. 1110349 ORIGINAL

Domestic Violence MAY 16 2011

No-Contact Order (Mediation) (sf = NOCON)

Pre-trial
 Post conviction
 Clerk's action required

1. Based upon the certificate of probable cause and/or other documents contained in the case record, testimony, and the statements of counsel, the court finds that the defendant has been charged with, arrested for, or convicted of a domestic violence offense, and further finds that to prevent possible recurrence of violence, this Domestic Violence No-Contact Order shall be entered pursuant to chapter 10.99 RCW. This order protects (Name):

Clare Jane STRAIN (8/15/1962)

2. The court further finds 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 other family or household member as defined in RCW 10.99.

3. (Pretrial order) The court finds pursuant to RCW 9A.41.800 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.

4. Duration

This No-Contact Order expires on 5/13/2016

This No-Contact Order expires 5 years from today's date:

Defendants is **Prohibited** from:

A. Causing or attempting to cause physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking the protected person(s).

B. Coming near and from having any contact whatsoever, in person or through others, by phone, mail or any means, directly, except for mailing or service of process of court documents by a 3rd party or contact by defendant's lawyers with the protected person(s).

C. Entering or knowingly coming within or knowingly remaining within 500' feet (distance) of the protected person(s)'s residence school workplace other: person

D. (Pretrial RCW 9A.41.800 findings made) Obtaining or possessing a firearm, other dangerous weapon or concealed pistol license.

(Conviction of offense listed in RCW 9A.10.040(2)) Obtaining, owning, possessing or controlling a firearm.

MUNICIPAL COURT
6000 Main St SW
Lakewood, WA 98495-5027
253-512-2258

It is Further Ordered,

- (Pretrial Order) The defendant shall immediately surrender all firearms and other dangerous weapons within the defendant's possession or control and any concealed pistol license to the applicable law enforcement agency.
- The appropriate law enforcement agency shall at a reasonable time and for a reasonable duration assist the defendant in obtaining personal belongings located at:

Warnings to the Defendant: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

Willful violation of this order is punishable under RCW 26.50.110. Violation of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. Also, a violation of this order is a class C felony if the defendant has at least 2 previous convictions for violating a protection order issued under Titles 7, 10, 26 or 74.

If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, the defendant may be subject to criminal prosecution in federal court under 18 U.S.C. § 2261, 2261A, or 2262.

In addition to the state and federal prohibitions against possessing a firearm upon conviction of a felony or a qualifying misdemeanor, upon the court issuing a no-contact order after a hearing at which the defendant had an opportunity to participate, the defendant, if a spouse or former spouse, a parent of a common child, or a current or former cohabitant as intimate partner of a person protected by this order, may not possess a firearm or ammunition for as long as the no-contact order is in effect. 18 U.S.C. § 922(g). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1). If the defendant is convicted of an offense of domestic violence, the defendant will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); RCW 9A.1.040.

You Can Be Arrested Even if the Person or Persons Protected by This Order Invite or Allow 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 upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the 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: Pierce County Law Enforcement Support Agency (LESA) which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

*****See Page One for the Expiration Date of This No-Contact Order.*****

Done in open court in the presence of the defendant this date: 5/13/2011

Prosecuting Authority
WSBA No. 32239
Print Name: Kell

Attorney for Defendant
WSBA No.
Print Name:

Judge Print Name:

RONALD H. KEAL
Defendant
Print Name:

1 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

2 STATE OF WASHINGTON,

3 Plaintiff,

CAUSE NO. 11-1-03845-1

4 vs.

5 RONALD HODGE HOLTZ,

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE

6 Defendant.

7 LORI KOOIMAN, declares under penalty of perjury:

8 That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police
9 report and/or investigation conducted by the FIFE POLICE DEPARTMENT, incident number
2011003461;

10 That the police report and/or investigation provided me the following information;

11 That in Pierce County, Washington, on or about the 19th day of September, 2011, the defendant,
12 RONALD HODGE HOLTZ, did commit the crime of Domestic Violence Court Order Violation and
Assault in the Fourth Degree.

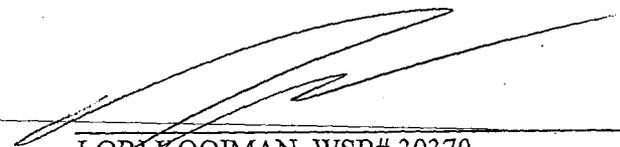
13 Based on the report of Fife PD Officer Morales, they responded to the Sunshine Motel and contacted
14 Clare Jane Strain. She acknowledged that her boyfriend, Ronald Holtz, hereinafter referred to as the
defendant, became angry with her for having a drink with another occupant at the hotel. The defendant
15 threw her purse out in the parking lot, she denied any assault. The defendant was contacted and placed
under arrest. He was advised of his Miranda Rights. He admitted to a verbal argument, but denied
assaulting Strain.

16 A witness who is employed at the hotel advised officers she observed the two arguing and they slammed
17 the door when they saw her. Later she observed the defendant push Strain out the door. Strain walks with
a cane.

18 The defendant has more than two convictions for violation of a court order. Lakewood Municipal Court
entered a No Contact Order prohibiting the defendant from having any contact whatsoever with Strain.
19 The order was entered under cause no. 11L000369 on the 13th of May, 2011. The order was signed by the
defendant, his AKA of Ronald Holtz Keal. The order expires on the 13th of May, 2016.

1 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

2 DATED: September 20, 2011
3 PLACE: TACOMA, WA

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LORI KOOIMAN, WSB# 30370

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Fife Police Department
Case Number 2011003461 (WA0270700)

Incident Detail Report

Printed On: Tue, Sep 20, 2011

Narrative

On 091911, at about 2133 hours, I was dispatched for a report of a domestic dispute at Sunshine Motel 3801 Pacific Hwy E. The reporting party Connie ELLIOT reported that the occupants of room 116 were in a physical dispute. I requested a Milton unit to assist me.

Upon arrival I contacted a female in the room who was identified as Clare STRAIN. STRAIN advised me she was ok and that she had an argument with her boyfriend Ronald HOLTZ. I asked STRAIN where HOLTZ was and she pointed to a male standing in the doorway of room 117. Milton Ofc Peterson arrived and I asked him to contact the HOLTZ.

I asked STRAIN what the argument was about, she stated that HOLTZ was upset because she was visiting the resident of room 117, was paying her money that she owed and had a drink. It should be noted that both STRAIN and HOLTZ were intoxicated. STRAIN stated that she and HOLTZ argued and he threw her purse into the parking lot. I advised STRAIN that ELLIOT had reported an assault. STRAIN stated that ELLIOT must be mistaken.

HOLTZ told Ofc Peterson a similar story that the argument was verbal only. I advised HOLTZ that ELLIOT had reported an assault he replied that no assault occurred. I asked Ofc Peterson to stand by with both subjects so I could speak with ELLIOT.

I contacted ELLIOT in the motel office and asked what she had observed. ELLIOT stated she was cleaning an upstairs room and heard loud arguing she looked out and saw that it was the occupants of room 116. HOLTZ and STRAIN saw ELLIOT and the door of room 116 slammed shut. Later ELLIOT was in the laundry room and heard more arguing. ELLIOT looked out of the laundry room and observed STRAIN backing out of the room then HOLTZ shoved ELLIOT. I asked ELLIOT if STRAIN fell to the ground, she stated almost but she caught herself with her cane. Please note that STRAIN is handicapped from Osteoporosis and Osteoarthritis and uses a cane to walk. ELLIOT later filled out a statement form.

I returned to Ofc Peterson and advised HOLTZ he was under arrest. I observed as Ofc Peterson handcuffed HOLTZ. I read the Miranda warnings from a prepared card and HOLTZ verbally acknowledged understanding his rights. A DOL check on STRAIN returned with a served no contact order with HOLTZ as the respondent however it was under an AKA of Ronald Holtz KEAL, same DOB, SSN and physicals. STRAIN returned with a valid SOAP/SODA order out of the Fife Municipal Court. I had Ofc Peterson transport HOLTZ to the Fife Jail for holding.

I arrested STRAIN placing her in handcuffs (double locked). I read the Miranda warnings from a prepared card and STRAIN verbally acknowledged understanding her rights. I transported STRAIN to the Fife Jail for holding. I went through a DV packet with STRAIN, she declined to make a statement or sign a medical release form. I provided STRAIN with a DV Resource Pamphlet and Safety Plan.

At the Fife Jail I issued STRAIN a Citation with court date as follows:

C33474 – FMC 9.72.030 Violation of a SOAP/SODA order.

STRAIN was later transported by Fife Corrections to the Buckley Jail where she was booked.

HOLTZ was transported to the Pierce County Jail where he was booked on the following charge:

RCW 10.99.050.2b Violation of a No Contact Order – DV Assault

Please forward this report to the Pierce County Prosecutor's Office and the Fife City Prosecutor's Office.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true

Fife Police Department
Case Number 2011003461 (WA0270700)

Incident Detail Report

Printed On: Tue, Sep 20, 2011

Narrative

and correct. (RCW 9A.72.085)

Ofc. A. Morales *A. Morales* 230 Fife Police Department
Officer Signature Badge # Agency

Fife Police Department 09 20 11
Place Signed Date Signed

September 20 2011 9:53 AM

KEVIN STOCK
COUNTY CLERK

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-03845-1

vs.

RONALD HODGE HOLTZ,

INFORMATION

Defendant.

DOB: 6/17/1966

SEX : MALE

RACE: BLACK

PCN#: 540534454

SID#: 12641502

DOL#: WA HOLTZRH345LP

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse RONALD HODGE HOLTZ of the crime of DOMESTIC VIOLENCE COURT ORDER VIOLATION, committed as follows:

That RONALD HODGE HOLTZ, in the State of Washington, on or about the 19th day of September, 2011, did unlawfully and feloniously violate the terms of a court order issued pursuant to RCW 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34, by willfully having contact with Clare Jane Strain when such contact was prohibited by a court order, to wit: Lakewood Municipal Court Cause No. 11L000369, and after having had actual notice of the existence of the court order, and that further, the defendant has two previous convictions for violating orders issued under chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, 74.34, or a valid foreign protection order as defined in RCW 26.52.020, thereby invoking the provisions of RCW 26.50.110(5) and increasing the classification of the crime, contrary to RCW 26.50.110 and 26.50.110(5), a domestic violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse RONALD HODGE HOLTZ of the crime of ASSAULT IN THE FOURTH DEGREE, a crime of the same or similar character, and/or a crime based on the same

INFORMATION- 1

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1 conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or
2 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 others, committed as follows:

3 That RONALD HODGE HOLTZ, in the State of Washington, on or about the 19th day of
4 September, 2011, under circumstances not amounting to assault in the first, second, or third degree, or
custodial assault, did unlawfully, intentionally assault Clare Jane Strain, contrary to RCW 9A.36.041(1)
5 and 9A.36.041(2), a domestic violence incident as defined in RCW 10.99.020, and against the peace and
6 dignity of the State of Washington.

7 DATED this 20th day of September, 2011.

8 FIFE POLICE DEPARTMENT
WA02707

MARK LINDQUIST
Pierce County Prosecuting Attorney

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10 lak

By: /s/ LORI KOOIMAN
LORI KOOIMAN
Deputy Prosecuting Attorney
WSB#: 30370

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September 20 2011 9:54 AM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-03845-1

vs.

RONALD HODGE HOLTZ,

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE

Defendant.

LORI KOOIMAN, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the FIFE POLICE DEPARTMENT, incident number 2011003461;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 19th day of September, 2011, the defendant, RONALD HODGE HOLTZ, did commit the crime of Domestic Violence Court Order Violation and Assault in the Fourth Degree.

Based on the report of Fife PD Officer Morales, they responded to the Sunshine Motel and contacted Clare Jane Strain. She acknowledged that her boyfriend, Ronald Holtz, hereinafter referred to as the defendant, became angry with her for having a drink with another occupant at the hotel. The defendant threw her purse out in the parking lot, she denied any assault. The defendant was contacted and placed under arrest. He was advised of his Miranda Rights. He admitted to a verbal argument, but denied assaulting Strain.

A witness who is employed at the hotel advised officers she observed the two arguing and they slammed the door when they saw her. Later she observed the defendant push Strain out the door. Strain walks with a cane.

The defendant has more than two convictions for violation of a court order. Lakewood Municipal Court entered a No Contact Order prohibiting the defendant from having any contact whatsoever with Strain. The order was entered under cause no. 11L000369 on the 13th of May, 2011. The order was signed by the defendant, his AKA of Ronald Holtz Keal. The order expires on the 13th of May, 2016.

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

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I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: September 20, 2011
PLACE: TACOMA, WA

/s/ LORI KOOIMAN
LORI KOOIMAN, WSB# 30370

Fife Police Department

Case Supplemental Information

Printed On: Tue, Sep 20, 2011

<i>Description:</i> Dispatch Notes		<i>Sequence:</i> 001	<i>Report Date:</i> 09/19/2011
<i>Case Number:</i> 2011003461	<i>NCIC:</i> WA0270700	<i>Off Cd:</i> 71011	<i>Report Type:</i> Notes
<i>Officer:</i> 204 - Deines, Ami	<i>Approval Process:</i>	<i>Secured:</i> No	
<i>CSI Status:</i> CAD Import	<i>Status By:</i> -	<i>Status D/Tm:</i> 09/19/2011 23:12	

Notes

Capture D/T: 09/19/2011 21:33:36 BY: areynolds Notes: PHYSICAL MALE AND FEMALE
 Capture D/T: 09/19/2011 21:34:40 BY: areynolds Notes: CLAIR JANE STRAIN 08151962
 Capture D/T: 09/19/2011 21:34:43 BY: areynolds Notes: NO MALE REG TO ROOM —
 Capture D/T: 09/19/2011 21:34:52 BY: areynolds Notes: UNKN WEAPONS
 Capture D/T: 09/19/2011 21:47:52 BY: areynolds Notes: OIC BY 744
 Capture D/T: 09/19/2011 21:47:56 BY: areynolds Notes: F IC BY 230
 Capture D/T: 09/19/2011 21:54:49 BY: areynolds Notes: TRANSPORTING 1 MALE TO FIFE JAIL
 Capture D/T: 09/19/2011 21:56:06 BY: areynolds Notes: ARR V FIFE JAIL W/ 1 MALE
 Capture D/T: 09/19/2011 22:00:19 BY: areynolds Notes: TRANSPORTING 1 F TO FIFE JAIL ON MILES 77.8
 Location: 3801 RM 116, PACIFIC HWY E;FIFE (38TH AVE E / 41ST AVE E)

CPI DETAILS
 Caller Name: CONNIE
 Caller Phone:
 Location:

Media

<u>Date</u>	<u>Identification</u>	<u>Narrative</u>
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Response Information

<i>D T Notified:</i>	<i>Weather:</i>	<i>Investigator:</i> -
<i>D T Arrived:</i>	<i>Work Status:</i>	<i>Investigator Status:</i>
<i>D T Completed:</i>	<i>How Received:</i>	<i>Lead Investigator:</i> -

Latent Info

<i>Nbr Lifts:</i>	<i>Nbr Elimination:</i>	<i>Processing Status:</i>			
<i>Latent:</i> No	<i>Palms:</i> No	<i>Tire:</i>	No	<i>Shoe:</i>	No
<i>Smudge Cloth:</i> No	<i>Articles:</i> No	<i>V I N:</i>	No		
<i>Video:</i> No	<i>Other:</i> No				

Photographs

Death Info

Burglary Information



FIFE POLICE DEPARTMENT
STATEMENT FORM

FPD CASE NUMBER

11-3461

S R P V W O

LAST NAME

Elliott

FIRST NAME

Connie

MIDDLE NAME

Evans

ADDRESS: 3801 Pac Hwy E Apt 121

ZIP CODE: 98424

PLACE OF EMPLOYMENT: Sunshine Motel

DATE OF BIRTH: 03-05-64

HOME PHONE: (253) 926-0937

WORK PHONE: (253) 330-6702

On 9-19-11 about 9:30 PM I was cleaning a room on the second floor when heard an arguement I looked to observe 116 arguing they noticed me and slammed the door several moments later I was in the laundry room. I heard yelling again looked over at unit # 116 and observed Clare backing out of the room yelling the man then approached her and shoved her backwards at which ~~time~~ time I ran to the office and called fife police

I HAVE READ EACH PAGE OF THIS STATEMENT CONSISTING OF 1 PAGE(S), EACH PAGE OF WHICH BEARS MY SIGNATURE AND CORRECTIONS, IF ANY, BEAR MY INITIALS. I CERTIFY THAT THE FACTS CONTAINED HEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

DATE & PLACED SIGNED: 9-19-11 fife wa

Signature of Connie Elliott
SIGNATURE OF PERSON MAKING STATEMENT

WITNESS

PAGE 1 OF ___ PAGE(S)

Did not agree/sign stipulation

Rioting w/ WEAPON -

See ^{PAST} ALIASES w/ no "RONALD HODGE HOLTZ"

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-03845-1

vs.

RONALD HODGE HOLTZ,

STIPULATION ON PRIOR RECORD
AND OFFENDER SCORE
(Plea of Guilty)

Defendant.

Upon the entry of a plea of guilty in the above cause number, charge DOMESTIC VIOLENCE COURT ORDER VIOLATION, the defendant RONALD HODGE HOLTZ, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions:

WASHINGTON STATE CONVICTIONS

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/ Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
ASSAULT 3	09/14/88	PIERCE, WA	07/13/88	A		C	1	FELONY
ROBBERY 2	09/14/88	PIERCE, WA	08/23/88	A		B	1	FELONY
ATT ROE 2	11/30/89	PIERCE, WA	10/09/89	A		C	1	FELONY
THEFT 1 st DEG	12/03/90	PIERCE, WA	06/28/90	A		B	1	FELONY
ROBBERY 2	04/02/92	PIERCE, WA	04/19/91	A		B	1	FELONY
ROBBERY 1	01/05/94	PIERCE, WA	08/31/93	A		A	1	FELONY
ASSAULT 3	07/18/03	PIERCE, WA	05/18/07	A		C	1	FELONY
RIOT	05/18/11	PIERCE, WA	05/21/10	A		C	1	FELONY
COMM CUSTODY							1	FELONY
THEFT/RESIST/AS LT	UNKNOWN	TACOMA MUNI, WA	06/30/85	A	MISD			MISD
THEFT	UNKNOWN	TACOMA MUNI, WA	10/28/85	A	MISD			MISD
IMPERSONATION OF PEACE OFFICER	UNKNOWN	TACOMA MUNI, WA	02/02/87	A	MISD			MISD
INVOL	UNKNOWN	TACOMA MUNI, WA	12/01/87	A	MISD			MISD

STIPULATION ON PRIOR
RECORD - 1
jsprior.dot

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

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RESIST ARREST	UNKNOWN	TACOMA MUNI, WA	01/14/88	A	MISD		MISD
SIMPLE ASSAULT	06/21/88	PIERCE, WA	04/22/88	A	MISD		MISD
SHOPLIFT	UNKNOWN	TACOMA MUNI, WA	04/26/89	A	MISD		MISD
DUI	UNKNOWN	PIERCE, WA	02/06/07	A	MISD		MISD
RESIST ARREST	UNKNOWN	PIERCE, WA	05/18/07	A	MISD		MISD
DWLS	UNKNOWN	TACOMA MUNI, WA	08/17/07	A	MISD		MISD
DWLS	UNKNOWN	TACOMA MUNI, WA	02/31/08	A	MISD		MISD
ASSAULT	UNKNOWN	LAKEWOOD MUNI, WA	08/27/09	A	MISD		MISD
VPO	UNKNOWN	LAKEWOOD MUNI, WA	09/10/09	A	MISD		MISD
VPO	UNKNOWN	LAKEWOOD MUNI, WA	10/22/09	A	MISD		MISD
VPO	05/18/11	PIERCE, WA	07/20/10	A	MISD		MISD
ASSAULT 4 th	UNKNOWN	LAKEWOOD MUNI, WA	03/17/11	A	MISD		MISD

Concurrent conviction scoring:

CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
NONE KNOWN OR CLAIMED								

Concurrent conviction scoring:

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9	V	60 MONTHS		60 MONTHS	5 YRS/ \$10,000

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present.

The defendant further stipulates:

- Pursuant to Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt.

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-03845-1

vs

RONALD HODGE HOLTZ, aka RONALD
HOLTZ KEAL

Defendant

SID: 12641502
DOB: 06/17/1966

JUDGMENT AND SENTENCE (JIS)

- Prison RCW 9.94A.712 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline Mandatory Discretionary

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 09/06/2012 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	DOMESTIC VIOLENCE COURT ORDER VIOLATION/DV (147V)	26.52.020 26.50.110(5) 26.50.110 10.99.020			2011002461 FIFE POLICE DEPARTMENT

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the AMENDED Information

JUDGMENT AND SENTENCE (JS)

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- The State has pleaded and proved that the crime charged in Count(s) I involve(s) domestic violence.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	ASSAULT 3	09/14/88	PIERCE, WA	07/13/88	A	
2	ROBBERY 2	09/14/88	PIERCE, WA	08/23/88	A	
3	ATT ROB 2	11/30/89	PIERCE, WA	10/09/89	A	
4	THEFT 1 st DEG	12/03/90	PIERCE, WA	06/28/90	A	
5	ROBBERY 2	04/02/92	PIERCE, WA	04/19/91	A	
6	ROBBERY 1	01/05/94	PIERCE, WA	08/31/93	A	
7	ASSAULT 3	07/18/08	PIERCE, WA	05/18/07	A	
8	RIOT	05/18/11	PIERCE, WA	05/21/10	A	
9	COMM CUSTODY					
10	THEFT/RESIST/ASLT	UNKNOWN	TACOMA MUNI, WA	06/30/85	A	MISD
11	THEFT	UNKNOWN	TACOMA MUNI, WA	10/28/85	A	MISD
12	IMPERSONATION OF PEACE OFFICER	UNKNOWN	TACOMA MUNI, WA	02/02/87	A	MISD
13	NVOL	UNKNOWN	TACOMA MUNI, WA	12/01/87	A	MISD
14	RESIST ARREST	UNKNOWN	TACOMA MUNI, WA	01/14/88	A	MISD
15	SIMPLE ASSAULT	05/21/88	PIERCE, WA	04/22/88	A	MISD
16	SHOPLIFT	UNKNOWN	TACOMA MUNI, WA	04/26/89	A	MISD
17	DUI	UNKNOWN	PIERCE, WA	02/06/07	A	MISD
18	RESIST ARREST	UNKNOWN	PIERCE, WA	05/18/07	A	MISD
19	DWLS	UNKNOWN	TACOMA MUNI, WA	08/17/07	A	MISD
20	DWLS	UNKNOWN	TACOMA MUNI, WA	03/31/08	A	MISD
21	ASSAULT	UNKNOWN	LAKEWOOD MUNI, WA	08/27/09	A	MISD
22	VPO	UNKNOWN	LAKEWOOD MUNI, WA	09/10/09	A	MISD
23	VPO	UNKNOWN	LAKEWOOD MUNI, WA	10/22/09	A	MISD
24	VPO	05/18/11	PIERCE, WA	07/20/10	A	MISD
25	ASSAULT 4 th	UNKNOWN	LAKEWOOD MUNI, WA	03/17/11	A	MISD

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9	V	60 MONTHS		60 MONTHS	5 YRS/ \$10,000

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 2 of 12

IDENTIFICATION OF DEFENDANT

SID No. 12641502 Date of Birth 06/17/1966
(If no SID take fingerprint card for State Parol)

FBI No. 160448DA9 Local ID No. _____

PCN No. 540534454 Other _____

Alias name, SSN, DOB: RONALD HOLTZ KEAL; SHERRILL KEAL; MARK LAMONT GOODNIGHT;
LAMONT H GOODNIGHT; DONALD KEAL; MARK LAMONT GOOD;
RONALD H KEAL;

Race: [] Asian/Pacific [X] Black/African-American [] Caucasian [] Hispanic [X] Male
[] Native American [] Other: [X] Non-Hispanic [] Female

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Michael E. East Dated: 9/21/12

DEFENDANT'S SIGNATURE: X Defendant refuses to sign

DEFENDANT'S ADDRESS: _____

JUDGMENT AND SENTENCE (IS)

(Felony) (7/2007) Page 12 of 12

- EXHIBIT -

- 4 -

- A) CrR 7.8 Insufficient charging document
violating Essential Elements rule
 - B) REPLY BRIEF
 - C) Supplemental SAG, Prosecutorial
misconduct / Brady violations
-

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON

Respondent

vs.

RONALD HODGE HOLTZ

Petitioner

CAUSE No. 11-1-03845-1

MOTION FOR RELIEF

FROM JUDGMENT

PURSUANT TO CR 7.8 et seq.

(CLERK'S ACTION REQUIRED)

I. - IDENTITY OF MOVANT -

Petitioner/Appellant Ronald Holtz, hereby moves this Court in a "MOTION FOR RELIEF FROM JUDGMENT" pursuant to CR 7.8

II. - FACTS OF CASE -

The Petitioner Ronald Holtz, comes before this Court after a conviction for felony violation of a No Contact Order RCW 10.99.020 and RCW 26.50.110(5) on September 6, 2012, before Judge Kathryn J. Nelson, Dept #3, sentenced to 60 months on September 21, 2012 in Department of Corrections and is timely within RCW 10.73.090 & .100 ONE YEAR.

III. ARGUMENT

A. CONSTITUTIONALLY DEFICIENT COMPLAINTS OF NO CONTACT ORDER VIOLATIONS

The Petitioner/Appellant, Ronald Holtz, challenges the validity of the prior misdemeanor Complaints and Superior Court of Pierce County Judge Kathryn J. Nelson, Dept #13 use of information in order to substantiate prior convictions and current charges.

These were used for initial charge on 9/19/11, conviction by jury trial September 4th, 5th, 6th, 2011, and at 9/21/12 sentencing where he was sentenced to the maximum of 60 months in the Department of Corrections by way of insufficiently defective and unconstitutional charging documents, Complaints and information.

Thus, rendering Mr. Holtz, conviction invalid upon it's face.

- LAKEWOOD MUNICIPAL COURT -

EXH. #1	No. 9L-1035	10/16/09 (amended Complaint)	VNCO
EXH. #2	No. 9L-1035	9/11/09 (Original Complaint)	VNCO
EXH. #3	No. 9L-1203	10/23/09	VNCO
EXH. #4	No. 9L-1000	8/31/09	2 DV ASSAULT
EXH. #5	No. 11L-0369	3/17/11	2 DV ASSAULT

- PIERCE COUNTY SUPERIOR COURT -

EXH. #6	No. 10-1-02212-2	9/19/11 corrected 7/20/10	VNCO
EXH. #7	No. 11-1-03845-1	7/20/10 corrected 9/19/11	VNCO

The violation of No Contact orders plainly fail to describe the conduct that, in fact, violated the order nor do they adequately state the required elements of the crime.

STATE V. TAYLOR, 140 Wn.2d 229, 237, n.32, 996 P.2d 571 (2000).

STATE V. BARRERA, 147 Wn.2d 353, 360, 58 P.3d 245 (2002). The "essential elements rule" requires that a charging document allege facts supporting every element of the offense, in addition to adequately identifying the crime charged. Form, requisites, and sufficiency. Omitting an essential element from the charging document violates a defendant's due process right to be informed of the charges. U.S.C.A. Const. Amend. 14; West's RCWA Const. Art. 1 § 3.

When a charging document is not challenged until after the verdict, the reviewing court decides whether there is at least some charging language that gives notice of the allegedly missing elements and whether there was actual prejudice to the defendant.

see: CITY OF BOTHELL V. KAISER, 152 WASH. APP. 466, 217 P.3d 339 (2009).

Defendant charged with misdemeanor violation of a no-contact order was not required to show that he was prejudiced by omission, from citation which also served as a complaint because it was signed and issued by a prosecutor, of information sufficient to identify the order he allegedly violated, in order to obtain dismissal of the complaint because it failed to satisfy the due process requirement of informing him of the essential elements of the charge.

The due process requirement of informing defendant of the essential elements of the charge; amended complaint merely stated that defendant knowingly violated a no-contact order and that the order contained a statement that a violation of its terms was a criminal offense and would subject defendant to arrest, and amended complaint merely cited the relevant statutes, but amended complaint did not identify the order by stating the date or court of issuance, or by naming the protected person. U.S.C.A. Const. Amend. 14; West's RCWA Const.

Art. 183, RCWA 26.50.110; CrRLJ 2.1(a)(2). [SEE; EXH. #1 Amended Complaint No. 9L1035.]

The Birth date of "Deborah Arlene Keal" is not present on the Complaint 10/16/09 placing in question the exact identification of this person. Also, this was a violation of a pre-trial (NCO) which merely constituted "Contempt RCW 7.21.050(b); JAGUES V. SHARP, 83 Wn. 532, 922 P.2d 145 (1996) RCW 26.50.060(b) CrRLJ 3.2 is a misdemeanor when knowingly violated, see; Also STATE V. ARTHUR, 126 Wn. App. 243, 108 P.3d 169 (2005). It is not an element of a Felony offense.

In reflection of the current case where Complaint No. #9L1035 fails to provide the Birth date of the alleged victim; TN STATE V. LEACH 113 WASH. 2d 679, 695, 782 P.2d 552 (1989). Leach also held that a complaint for public indecency was defective because it omitted the victim's age, an "essential elements rule" simply requires that the complaint "be a plain, concise and definite written statement of the essential facts constituting the offense charged." If a misdemeanor citation or complaint omits a statutory element of the charged offense, the document is constitutionally defective for failure to state an offense and is subject to dismissal.

In CITY OF SEATTLE V. TERMAIN, 124 Wn. App. 798, 103 P.3d 209 (Wash. App. Div. 1, 2004) where the Superior Court reversed, review was granted to prosecution but reversal was affirmed. THE COURT HELD: THAT A COMPLAINT ALLEGING A MISDEMEANOR VIOLATION OF A DOMESTIC VIOLENCE ORDER MUST IDENTIFY THE ORDER ALLEGED TO HAVE BEEN VIOLATED, OR MUST INCLUDE OTHER SUFFICIENT FACTS TO APPRISE THE DEFENDANT OF THE FACTS SUPPORTING THE CHARGES TO SATISFY THE ESSENTIAL ELEMENTS RULE. AS WE EXPLAINED: IN DOMESTIC VIOLENCE CASES, THE CULPABLE ACT NECESSARY TO ESTABLISH THE VIOLATION OF A NO-CONTACT ORDER IS DETERMINED BY THE SCOPE OF THE PREDICATE ORDER. THE NO-CONTACT ORDER IS ESSENTIAL TO THE CRIME CHARGED AND HAD TO GUESS AT THE CRIME HE WAS ALLEGED TO HAVE COMMITTED. TERMAIN'S HELD THAT "WHERE THERE IS NO REFERENCE TO

the identity of the victim or to the underlying domestic violence order or facts of the crime, the information lacks an essential element." Further, "Elements of the charged crime and the conduct of the defendant which is alleged to have constituted the crime must be found within the four corners of the charging document."

Observing Exhibits 1, 2, 3, 6, & 7, you will find that nowhere in the four corners of these documents "Complaints" for No Contact violations, will you even vaguely see elements of the charged crime or the conduct alleged to constitute the crime.

Therefore, these documents can not be used to substantiate prior (NCO) violations and must be dismissed as well as this current conviction/sentence of 60 months.

Further, see RCW 10.99.040(c) "By January 11, 2011, the Administrative Office of the Courts shall develop a pattern form for all no-contact orders issued under this chapter. A no-contact order issued under this chapter must substantially comply with the pattern form developed by the Administrative Office of the Courts." So, it is plain that prior to this date, forementioned, that all contact orders and complaints were defective and not in compliance with law. In light of these facts all Petitioners/Appellants must be dismissed.

B. CONSTITUTIONALLY DEFECTIVE AND INSUFFICIENT CHARGING DOCUMENTS

The defective and insufficient Lakewood Municipal Court Complaints and information are considered "charging documents" merely for Arguendo Exhibits #4 & #5 No. 9L-1000 and No. #11-0369 both lack the conduct alleged to constitute the crime but all elements as a requirement for a charging document. As these documents are examined upon their prima facie value, they in turn render the current judgment and sentence invalid.

SEE, STATE V. FRANKS, 150 Wn. App. 950, 22 P.3d 269 (Wash. App. Div. I 2001)

Information that fails to state the essential elements of the charged crime raises an issue that can be considered on appeal despite the lack of an objection below, but the issue raised is lack of due process, not lack of jurisdiction. U.S.C.A. Const. Amend. 14; RCWA Const. Art. 4 § 6.

When a defendant challenges the charging document for the first time on appeal, the Appellate Court must liberally construe all of the information in the document in favor of validity. Test to determine the sufficiency of a charging document has two prongs: (1) whether the necessary facts appear in any form, or by fair construction can be found, in the charging document; and, if so, (2) whether the defendant can show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice. In determining, on a challenge to the sufficiency of a charging instrument, whether the necessary facts appear in any form, or by form, or by fair construction can be found, court looks at the face of the document only; the information must be written in such a manner as to enable persons of common understanding to know what is intended. Reviewing court asked to determine the sufficiency of a charging instrument does not reach the second prong of the test if, upon scrutiny of the document under the first prong, the necessary elements are not found or fairly implied; in that case, prejudice is presumed. The two crucial prongs: (1) inaccuracies in charging instrument. (2) It was his sister's name not defendant's throughout the body of information amounted to failure to include a necessary fact.

A charging document must include all essential elements of a crime Taylor, 140 Wn.2d at 236. This essential elements rule is grounded in the Federal and state constitutional requirements that criminal defendants be informed of the accusations against them. The United States Constitution provides: that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation U.S. Const. Amend VI.

The Washington Constitution contains a similar provision. In criminal prosecutions the accused shall have the right to demand the nature and cause of the accusation against him (and) to have a copy thereof Const. Art. I sec. 22. Also, as established by Court Rule, the initial pleading by the state in all criminal proceedings is to be plain, concise and definite written statement of the essential facts constituting the offense charged. CrR 2.1(a)(1).

All essential elements of a crime must be included in the charging document, so as to apprise the defendant of the charges against him and to allow him to prepare a defense. *State v. Hopper*, 118 Wn.2d 151, 155 (1992). As one can examine the four corners of the exhibits presented this basic fundamental yet, critical elements are missing and even under close scrutiny with liberal intent, the simple description of an event to display conduct is most certainly not present to satisfy the constitutional requirement.

MR. Holtz, constitutional rights have most surely been abridged on all counts.

The standard of review for evaluating the sufficiency of a charging document is determined by the time at which the motion challenging its sufficiency is made. *Taylor*, 140 Wn.2d at 237. When a charging document is challenged for the first time after the verdict, it is to be liberally construed in favor of validity. *State v. Kjorsvik*, 117 Wn.2d 93, 102 (1991). In contrast, however when an information is challenged before the verdict, the charging language must be strictly construed. In *State v. Vanderpen*, 125 Wn.2d 782, 791 (1995). A strict construction case where the charging document was challenged just after the state rest its case, the court of appeals held that the remedy for an information's failure to include the essential element of premeditation was reversal of the defendant's attempted first degree murder charge. The Vanderpen court stated, "merely citing to the proper statute and naming the offense is insufficient to charge a crime unless the name of the offense

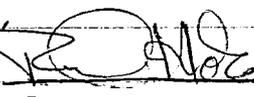
apprises the defendant of all essential elements of the crime. *Id.* at 787. This essential elements rule requires the defendant be apprised of the elements of the crime charged, and the "conduct" of the defendant which is alleged to have constituted that crime, citing *State v. Leach*, 113 Wn.2d 679, 782 P.2d 552 (1989) IF the state fails to do so, the defendant's constitutional rights of notice, and due process are violated and a new trial is required. The defendant must be notified of what elements the state intends to prove, see *State v. Rouse*, 66 Wn.2d 552, 556 (1965) (expressly connecting what must be alleged, with what must be proved). *State v. Atkins*, 156 Wn. App. 799, 807 (2010). In recent decisions the only just remedy by law is dismissal.

IV. - CONCLUSION -

The Petitioner/Appellant, Ronald Holtz, prays the just remedy by law be granted in light of the unconstitutional deficient complaints and information that they be dismissed enabling the modification of this 60 month sentence. As they are deficient and invalid upon their fact, rendering this conviction/sentence the same.

THIS 18th, DAY OF September, 2013.

sui juris:


RONALD HOLTZ
WA-1-308

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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

RONALD HOLTZ,

Petitioner

No. 43995-6-II

PETITIONER'S REPLY TO STATE'S
RESPONSE

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. ISSUE RAISED ON THE FIRST TIME ON APPEAL "PRESUMPTION OF PREJUDICE DOCTRINE" AND "MANIFEST ERROR" RAP 2.5(A)(3), CONSTITUTIONAL MAGNITUDE.
2. THE CHARGING DOCUMENT, INFORMATION, ACCUSATION, AND STATEMENT IS CONSTITUTIONALLY INADEQUATE TO GIVE NOTICE VIOLATING "ESSENTIAL ELEMENTS RULE."
3. DOES SUBSTANTIAL EVIDENCE EXIST FOR A FACTUAL FINDING & RAP 16.14(b) AND SPECIAL RULE FOR ORDER ON SUMMARY JUDGMENT? RAP 9.12.

B. STATUS OF PETITIONER:

Petitioner, Ronald Holtz, is restrained pursuant to a judgment and sentence entered in Pierce County Cause No. 11-1-03845-1. He has

Petitioner's Reply To
STATE'S RESPONSE

Filed A direct Appeal of his conviction, #43995-6-II. on September 24, 2013, Petitioner Filed A Motion For Relief From Judgment pursuant to CrR 7.8 and was transferred on September 26, 2013 by Superior Court Judge Kathryn Nelson pursuant to CrR 7.8(1)(2) to Division II Court of Appeals No. #45427-1-II AS A (PRP) October 11, 2013. on or about October 23, 2013, Petitioner filed an Objection to transfer due to it's "RECHARACTERIZATION" of which the Court of Appeals Acting Chief Judge denied on November 13, 2013.

The state claims Petitioner was convicted of Felony violation of A No-Contact Order (NCO) and Assault in the Fourth degree. In the contrary, this is incorrect as the Judgment & Sentence will show only the (NCO) violation.

C. ARGUMENT:

1. ISSUE RAISED ON THE FIRST TIME ON APPEAL "PRESUMPTION OF PREJUDICE DOCTRINE" AND "MANIFEST ERROR" RAP 2.5 (1)(3), CONSTITUTIONAL MAGNITUDE.

Petitioner proceeds to state the standard of review of A CrR 7.8 motion transferred to the Appellate Court AS A (PRP). "A motion in trial court for relief from judgment, order, or proceeding is the functional equivalent of a (PRP) in the Court of Appeals. (In some cases) emphasis STATE V. MADSEN, 153 Wash. App. 471, 228 P.3d 24 (2009).

SEE: STATE V. SANDOVAL, 171 Wn.2d 163 (2011). Ordinarily, a personal restraint petitioner alleging constitutional error must show actual and substantial prejudice. SEE IN RE PERS. RESTRAINT OF LORD, 152 Wn.2d 182, 188, 94 P.3d 952 (2004). This actual and substantial prejudice standard does not apply when the petitioner has not had a prior opportunity to appeal the issue to a disinterested judge. SEE IN RE PERS. RESTRAINT OF GRANTHAM, 168 Wn.2d 204, 214, 227 P.3d 285 (2010). However, if some other showing of

prejudice is required by the law underlying the petitioner's claim of constitutional error, the petitioner must make the requisite showing of prejudice. *Id.* at 214-15. Sandoval had to bring a (PRP) to meet his burden of proving ineffective assistance of counsel because his counsel's advice does not appear in the trial court record. See *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). ("IF A DEFENDANT WISHES TO RAISE ISSUES ON APPEAL THAT REQUIRE EVIDENCE OR FACTS NOT IN THE RECORD OR EXISTING TRIAL RECORD, THE APPROPRIATE MEANS OF DOING SO IS THROUGH A PERSONAL RESTRAINT PETITION, WHICH MAY BE FILED CONCURRENTLY WITH THE DIRECT APPEAL"). *Grantham*, 168 Wn.2d at 214. Sandoval, has not already had an opportunity to appeal to a disinterested judge. Thus, does not have to show actual prejudice; has only burden to show he's entitled to relief for one of the reasons listed in RAP 16.4(c). See *Grantham*, 168 Wn.2d at 214. For Ineffective Assistance of Counsel based on an Attorney's Advice during the plea bargaining process, see *Padilla v. Kentucky*, ___ U.S. ___, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010); *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Counsel "Kent Underwood," did in fact, raised the issue of prior charging documents used to substantiate prior violations in order to constitute a third for a Felony (NCO) violation. Also, the birth date missing in Lake Wood Municipal Court charging document No. *911035 used as one in the prior history. Defendant Holtz did not stipulate either (Sept. 4, 2012 - Pg. #107 line 7-19). In transcripts.

HOWEVER, A PARTY MAY RAISE AN ERROR FOR THE FIRST TIME ON APPEAL IF IT IS A MANIFEST ERROR AFFECTING A CONSTITUTIONAL RIGHT. AS THIS COURT RECENTLY HELD IN *STATE V. GRIMES*, 165 Wn. App. 172, 185-86, 267 P.3d 454 (2011). (CITING *STATE V. O'HARA*, 167 WASH. 2D 91, 98, 217 P.3D 756 (2009), REV. DEN., 175 WASH. 2D 1010, 287 P.3D 594 (2012)), FOR THIS RAP 2.5(A)(3) EXCEPTION TO APPLY.

SEE HISTORY FOR MANIFEST ERROR FOUND IN: *STATE V. BEETHEAD*, 165 Wn. App. 393, 267 P.3d 511 (WASH. APP. DIV. 2 2011); FOR INSTANCE, IN 1861, WHEN "WASHINGTON" STILL INCLUDED THE WHOLE OF IDAHO AND PARTS OF COLORADO AND MONTANA, THE SUPREME COURT OF THE WASHINGTON TERRITORY DECIDED *Blumberg v. McNEAR*, 1 WASH. TERR. 141 (1861). IN THIS WHARFAGE CASE, Blumberg petitioned

For a mistrial because the trial court refused to give his proposed jury instructions. Justice Cliphart's opinion noted,

These instructions are not properly before the Court, not having been excepted to at the time. When a party wishes the action of the Court below to be reviewed upon a writ of error, for refusing or granting a new trial -- to the admission or rejection of evidence -- refusing to give instructions prayed for -- or to the charge of the Court, he must except or object, as the case may be, at the time, and have the same noted by the judge, or else they will not be regarded by the Supreme Court.

Blumberg, 1 Wash. Terr. at 141-42 (emphasis added)

see "PLAIN ERROR" - Thus, 115 years before the adoption of RAP 2.5(a)(3), absent a contemporaneous objection at trial, an appellate court could not properly review an assignment of error. And, although the Blumberg Court did not address whether an appellate court could review a manifest error raised for the first time on appeal, in Williams v. Ninemire, 23 Wash. 393, 63 P. 534 (1900), the court did review an erroneous jury instruction not objected to at trial that, in effect, directed a [163 Wn. App. 408] verdict against the appellant. Thus, the exception allowing review of an error raised for the first time on appeal for "manifest error affecting a constitutional right," long existed before the adoption of RAP 2.5(a)(3).

RAP 2.5(a)(3), in 1976, the Washington Supreme Court handed down over 50 cases that, in one way or another, addressed "manifest error". Black's Law Dictionary dates the first English usage of "manifest error" to the 18th century and describes it as:

"[A]n error that is plain and undisputable, and that amounts to a complete disregard of the controlling law or credible evidence in the record."

Black's Law Dictionary 622 (9th ed. 2009). Review of over 100 years of Washington jurisprudence confirms this. Constituting

REVERSIBLE ERROR. In STATE v. Phillips, 59 WASH. 252, 259, 109 P. 1047 (1910)
For instance, the Supreme Court stated;

"The Aid of Counsel is GUARANTEED by the Constitution to EVERY PERSON ACCUSED OF A CRIME, AND THIS IS UNIVERSALLY RECOGNIZED AS ONE OF THE SUREST SAFEGUARDS AGAINST INJUSTICE AND OPPRESSION. ANY CONDUCT OR STATEMENT ON THE PART OF THE COURT THAT TENDS TO IMPAIR THE INFLUENCE OR DESTROY THE USEFULNESS OF COUNSEL IS PALPABLE AND MANIFEST ERROR."

And in Sawley v. Spokane Falls & Northern Railway Co., 27 WASH. 536, 538-89, 67 P. 1094 (1902), the PERVASIVE USAGE OF THE TERM IS MADE CLEAR:

"And in Support of their position, [Counsel Argues] that AN ASSIGNMENT OF ERROR IS AN ASSIGNMENT OF IGNORANCE, FOR ERROR IMPLIES IGNORANCE; THAT TO CHARGE GROSS, PALPABLE, OR MANIFEST ERROR, -- TERMS WHICH ARE COMMONLY FOUND IN BRIEFS FILED IN APPELLATE COURTS, -- IS TO CHARGE UNCOMMON ERROR, WHICH IS UNCOMMON IGNORANCE; AND THAT TO SAY THAT THE ACTION OF THE COURT WAS AN "EXTRA JUDICIAL ASSUMPTION OF POWER" WAS TO SAY THAT THE JUDGE ASSUMED TO DECIDE THAT WHICH DID NOT BELONG TO THE JUDGE TO DETERMINE."

(Emphasis Added.) In McLain v. Fasley, 146 WASH. 377, 381-82, 264 P. 714 (1928), THE SUPREME COURT WENT SO FAR [165 Wn. App. 409] AS TO RECOGNIZE ITS OWN MANIFEST ERROR ON A MOTION FOR RECONSIDERATION.

IF AN APPELLANT SUCCESSFULLY SHOWS THAT THE UNPRESERVED TRIAL ERROR IS BOTH CONSTITUTIONAL IN MAGNITUDE AND MANIFEST, IN THAT IT HAD PRACTICAL AND IDENTIFIABLE CONSEQUENCES BELOW, THE BURDEN THEN SHIFTS TO THE STATE TO PROVE THAT THE ERROR WAS HARMLESS UNDER CHAPMAN STANDARD

beyond a reasonable doubt. RAP 2.5(A)(3). *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824 (U.S. Ct. 1967). A party may raise an error for the first time on appeal if it is a manifest error affecting a constitutional right. As this court recently held in *State v. Grimes*, 165 Wn. App. 172, 185-86, 267 P.3d 454 (2011). (Citing *State v. O'Hara*, 167 Wash. 2d 91, 98, 217 P.3d 756 (2009), *rev. den.*, 175 Wash. 2d 1010, 287 P.3d 594 (2012)), for this RAP 2.5(A)(3) exception to apply.

Petitioner is entitled to review even though the trial court record does support the mere stated phrases in objection with the raising of issue by counsel briefly and Defendant's objections to stipulate to the invalid upon their face charging documents, from Lake Wood and Pierce County. Even if it had not been, constitutional issues of such magnitude under the "presumption of prejudice doctrine" and "manifest error" have the right to be brought for the first time on appeal for review in light of "Plain Error" as well.

2. THE CHARGING DOCUMENT, INFORMATION, ACCUSATION, AND STATEMENT IS CONSTITUTIONALLY INADEQUATE TO GIVE NOTICE VIOLATING "ESSENTIAL ELEMENTS RULE".

Petitioner properly raised the issue of constitutionally deficient complaints of no contact order violations (NCO) and defective and insufficient charging documents in his CrR 7.8 motion to the Pierce County Superior Court. As represented by counsel whom, in fact, did briefly refer to the prior charging documents which Defendant's refusal to stipulate to due to deeming (esp.) No. 9L-1035 as insufficient because of missing the birth date, counsel informed him that it was an issue only to be raised on appeal which during research defendant discovered, *City of Bothell v. Kaiser*, 152 Wash. App. 466, 217 P.3d 339 (2009). Defendant charged with misdemeanor violation of a no-contact

order was not required to show that he was prejudiced by omission, from citation which also served as a complaint because it was signed and issued by a prosecutor, of information sufficient to identify the order he allegedly violated, in order to obtain dismissal of the complaint because it failed to satisfy the due process requirement of informing him of the essential elements of the charge. (Also cited; CITY OF SEATTLE V. TERMAIN, 124 Wn. App. 798, 103 P.3d 209 (Wash. App. Div. 1 2004); STATE V. ARTHUR, 126 Wn. App. 243, 108 P.3d 169 (2005); STATE V. BORRERO, 147 Wn.2d 353, 360, 58 P.3d 245 (2002); STATE V. LEACH, 113 WASH. 2d 679, 689, 782 P.2d 552 (1989).

The due process requirement of informing defendant of the essential elements of the charge; amended complaint merely stated that defendant knowingly violated a no-contact order and that the order contained a statement that a violation of its terms was a criminal offense and would subject defendant to arrest, and amended complaint merely cited the relevant statutes, but amended complaint did not identify the order by stating the date or court of issuance, or by naming the protected person. U.S.C.A. Const. Amend. 14; West's RCWA Const. Art. 1 § 3, RCWA 26.50.110; CrLJ 2.1 (A)(2).

- LAKEWOOD MUNICIPAL COURT -

I) Exh. #1 & #2, No. 9L-1035 (VNCO) (original complaint) 9/11/09 and (amended complaint) 10/16/09. Both are deficient charging documents, which only cite the statutes but does not describe the conduct or particular circumstance that violated that law satisfying the "essential elements" requirement. The amended complaint 10/16/09 is deficient as the birth date is omitted, devoid of notice.

II) Exh. #3, No. 9L-1203 (VNCO), 10/23/09. does not cite the nature of conduct/circumstance nor particular circumstances constituting the violation and/or crime other than citing the statute which violates notice and essential elements doctrine.

III) Exh. #4, No. #9L-1000, 4 DV ASSAULT, 8/31/09, This charging document is as deficient by merely citing statute without the specific conduct described in order to define that this specific crime by the "Essential Elements," violated the law.

IV) Exh. #5, No. #11L-0369, 4 DV ASSAULT, 3/17/11, This charging document is deficient with no plain, concise written statement of the Essential Facts constituting the offense charged and does not meet the "Essential Element Rule" requirement.

V) Exh. #6, - PIERCE COUNTY SUPERIOR COURT -
No. #10-1-02212-2 (NCO), 7/20/10, does not cite the nature of accusation/conduct nor particular circumstances in a plain and concise written statement of the Essential Facts constituting the offense charged nor provide notice in satisfying the "Essential Elements" Rule.

VI) Exh. #7, No. #11-1-03845-1 (VNCO), 9/19/11, This charging document is deficient by merely citing statute without the specific conduct described in order to define this specific crime by the "Essential Elements" Rule requirement and is thus, "invalid upon its face."

The state is only responding to No. #9L-1035 and #11L-0369. Then is Non-Responsive on charging documents of numbers #9L-12-03, #9L-1000, #10-1-02212-2, and #11-1-03845-1 of which Petitioner moves to STRIKE any response and grant relief on these, being they were cited in initial briefing.

Petitioner states that in order to capture the body of the argument of the case in chief one must delv into the history for the true sake of Arguendo being case in point. The First Washington case

to overturn a conviction due to the insufficiency of the charging document was LEONARD V. TERRITORY, 2 WASH. TERR. 381, 7 P. 872 (1885). In holding that the indictment was insufficient to sustain a charge of murder, the Court specifically rejected an argument that the missing element could be inferred from the language of the indictment. Under our laws an indictment must be direct and certain, both as regards the crime charged and as regards the particular circumstances thereof, when they are necessary to constitute a complete crime.

The state has relied upon STATE V. KJORSVIK and STATE V. LEACH. Again petitioner will cite both for arguendo, as in STATE V. KJORSVIK, 812 P.2d 86, 117 Wn.2d 93 (Wash. 1991) the following is found: [117 Wn.2d 98]

In the case of STATE V. LEACH, 113 WASH. 2D 679, 689, 782 P.2D 552 (1989), we recently stated that "the 'essential elements' rule requires that a charging document allege facts supporting every element of the offense, in addition to adequately identifying the crime charged". This core holding of LEACH requires that the defendant be apprised of the elements of the crime charged and the conduct of the defendant which is alleged to have constituted that crime. LEACH explains that merely reciting the statutory elements of the crime charged may not be sufficient. Because statutory language may not necessarily define a charge sufficiently to apprise an accused with reasonable certainty of the nature of the accusation against that person, so that the accused may prepare a defense and plead the judgment as a bar to any subsequent prosecution for the same offense, mere recitation of the statutory language in the charging document may be inadequate.

[117 Wn.2d 99] LEACH, 113 WASH. 2D AT 688, 782 P.2D 552. WE HAVE RECENTLY REITERATED THAT IT IS SUFFICIENT TO CHARGE IN THE LANGUAGE OF A STATUTE IF THE STATUTE DEFINES THE OFFENSE WITH CERTAINTY.

CONCLUSION, ALL ESSENTIAL ELEMENTS OF A CRIME, STATUTORY OR OTHERWISE MUST BE INCLUDED IN A CHARGING DOCUMENT IN ORDER TO AFFORD NOTICE

to AN ACCUSED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM. THIS CONCLUSION IS BASED ON CONSTITUTIONAL LAW AND COURT RULE. CONST. ART. 1, § 22 (AMEND. 10) PROVIDES IN PART:

"In criminal prosecutions the accused shall have the right... to demand the nature and cause of the accusation against him,..." [117 Wn.2d 98]

U.S. Const. Amend. 6 provides in part:

"In all criminal prosecutions, the accused shall... be informed of the nature and cause of the accusation;..."

CrR 2.1(b) provides in part that,

"the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged."

The following most recent cases dealing with misdemeanors and felonies, all contain the same language of insufficient and/or defective charging document. The "Essential Element Rule" STATE V. COCHRANE, 253 P.3d 95, 160 Wn. App. 18 (Wash. App. Div. 1 2011) (DUI prior misdemeanors were used to establish a felony with an insufficient charging document). STATE V. JOHNSON, 297 P.3d 710, 172 Wn. App. 112 (Wash. App. Div. 1 2012) (Information charging unlawful imprisonment was constitutionally deficient). STATE V. RIVES, 278 P.3d 686, 168 Wn. App. 882 (Wash. App. Div. 2 2012) (Element of malicious mischief missing constituting an insufficient and defective charging document. (WE REVIEW CHALLENGES TO THE SUFFICIENCY OF A CHARGING DOCUMENT DE NOVO). STATE V. PHUONG, 299 P.3d 37, 174 Wn. App. 494 (Wash. App. Div. 1 2013) (A charging document is constitutionally adequate only if all the essential elements of a crime are included in the charging document).

Petitioner states that the cases of Kaiser, Leach, and Cochrane specifically deal with prior misdemeanor defective information/charging documents used to establish a current felony charge, where if the prior are invalid so is the current conviction as well as the cur-

-next INSUFFICIENCIES invalidating the Felony charging documents.

Just like in LEACH the omitting of the victim's age is similar to LAKEWOOD Municipal Court No. #9L-1035 AND KAISER AS THE AMENDED COMPLAINT FAILED TO RELATE BACK. THESE COUPLED WITH TERMAIN, KJORSVIK, BORRERO, SUTHERLAND, COCHRANE, JOHNSON, RIVAS, AND PHUONG SUM UP NO. 151 #9L-1203, #9L-1000, #11L-0369, #10-1-02212-2, AND #11-1-03845-1 BY ADDRESSING THE ESSENCE OF THE ISSUE. THESE CHARGING DOCUMENTS AND/OR COMPLAINTS ARE A "PLAIN ERROR" BY THEIR CONSTRUCTION BEING DEFECTIVE IN VIOLATION STATE, FEDERAL CONSTITUTION AND LAW. THE "ESSENTIAL ELEMENTS RULE" REQUIRES THAT A CHARGING DOCUMENT ALLEGE FACTS SUPPORTING EVERY ELEMENT OF THE OFFENSE, IN ADDITION TO ADEQUATELY IDENTIFYING THE CRIME CHARGED. THE PETITIONER IS ENTITLED TO RELIEF AS A MATTER OF LAW WITH "PLAIN ERROR" CONSTITUTING A MANIFEST INJUSTICE TO BE DISMISSED WITH PREJUDICE AS THE REMEDY.

3. DOES SUBSTANTIAL EVIDENCE EXIST FOR A FACTUAL FINDING RAP 16.14(b) AND SPECIAL RULE FOR ORDER ON SUMMARY JUDGMENT RAP 9.12?

PETITIONER CITES THAT COUNSEL FOR THE STATE MISINTERPRETS THE DOCTRINE OF THIS CASE AND HISTORY, AS THE BODY OF THE FACTUAL ARGUMENT LITERALLY SUMS UP TO THE LAW OF THE CASE DOCTRINE. THIS IS SIMPLY THAT THE FAILURE TO INCLUDE ALL ELEMENTS WITH FACTS SUPPORTING THE OFFENSE, IN ADDITION TO ADEQUATELY IDENTIFYING THE CRIME CHARGED, CONSTITUTES A INSUFFICIENT OR DEFECTIVE COMPLAINT OR CHARGING DOCUMENT. THIS VIOLATES THE "ESSENTIAL ELEMENTS" RULES WHICH IS A MANIFEST AND PLAIN ERROR, REVIEWED DE NOVO ON THE FIRST TIME ON APPEAL. "SUBSTANTIAL EVIDENCE", AS A STANDARD FOR FACTUAL FINDINGS IN PERSONAL RESTRAINT PETITION (PRP) REFERENCE HEARINGS, EXISTS WHEN THE RECORD CONTAINS EVIDENCE OF SUFFICIENT QUANTITY TO PERSUADE A FAIR-MINDED, RATIONAL PERSON THAT THE DECLARED PREMISE IS TRUE. RAP 16.14(b). IN LIEU OF THE FACTS PRESENTED WITH PLAIN ERROR AS THE

Presumption of prejudice doctrine has automatically attached, viewing the Constitutional Magnitude, Petitioner must seek remedy pursuant to RAP 9.12's Special Rule For Order on Summary Judgment For the Petitioner based upon the merit of Facts.

D. CONCLUSION:

The information in this case with exhibits and argument based in law that the Complaints/charging documents are factually deficient not only were they objected to but irregardless can be raised for the first time on appeal. Petitioner requests reversal, vacate, and dismissal with prejudice.

DATED: February 24, 2014.



uce 1-308

Ronald Holtz #945319
Washington State Penitentiary
1313 N. 13th Ave. TRU-NF3
Walla Walla, WA. 99362

PETITIONER'S Reply To
STATE'S RESPONSE

MUNICIPAL COURT FOR THE CITY OF LAKEWOOD
COUNTY OF PIERCE, STATE OF WASHINGTON

CITY OF LAKEWOOD,)
)
Plaintiff,)
)
vs.)
)
KEAL, Ronald H,)
DOB: 6/17/1966,)
)
Defendant.)

NO. 9L1000
COMPLAINT

FILED
AUG 31 2009
LAKEWOOD MUNICIPAL
COURT

The City of Lakewood, a municipal corporation of the State of Washington, does hereby accuse the above-named defendant of the crime of Assault in the Fourth Degree, Domestic Violence, a gross misdemeanor, contrary to Section 9.14.900 of the Lakewood Municipal Code, which incorporates by reference RCW 9A.36.041, and against the peace and dignity of the City, committed as follows:

On or about 8/27/2009, within the corporate boundaries of the City of Lakewood, the defendant did intentionally touch or strike in a harmful or offensive manner another person, Deborah Arlene KEAL, DOB: 6/17/1959; and Furthermore, the defendant did commit the above crime against a family or household member; contrary to Revised Code of Washington 10.99.020.

The undersigned city prosecutor does certify, under penalty of perjury, that the city prosecutor has reasonable grounds to believe, and does believe that the above-named defendant committed the offense(s) described above, contrary to City Ordinance and law.

Dated this 31st day of August 2009.

- Heidi Ann Wachter, City Attorney, WSBA #18400
- Michael McKenzie, Asst. City Attorney, WSBA #23258
- Anita Booker-Hay, Asst. City Attorney, WSBA #23409
- Matthew S. Kaser, Assoc. City Attorney, WSBA# 32239

Lakewood Municipal Court

The document to which this certificate is attached is a full true and correct copy of the original on file and of record in my office same having been filed

Attest Nov 2 2011
By [Signature] clerk

MUNICIPAL COURT FOR THE CITY OF LAKEWOOD
COUNTY OF PIERCE, STATE OF WASHINGTON

CITY OF LAKEWOOD,)
)
Plaintiff,)
)
vs.)
)
KEAL, Ronald Holtz)
DOB: 6/17/1966,)
Defendant.)

NO. 9L1035
AMENDED COMPLAINT

FILED
OCT 16 2009
LAKEWOOD MUNICIPAL
COURT

The City of Lakewood, a municipal corporation of the State of Washington, does hereby accuse the above-named defendant of the crime of Violation of Order (Domestic Violence), a gross misdemeanor, committed as follows

That on or about, 9/10/2009, the above-named defendant did, within the corporate boundaries of the City of Lakewood, State of Washington, did unlawfully violate the terms of a court order issued pursuant to RCW 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, and/or 74.34, by willfully having contact with Deborah Arlene KEAL when such contact was prohibited by such court order(s), to wit: Lakewood Municipal court No Contact Order No. 9L1000 and/or Pierce County Protection Order No. 09-2-03248-9, and after having had actual notice of the existence of the court order(s) contrary to RCW 26.50.110(1) (which has been adopted by Section 9.26.900 of the Lakewood Municipal Code) and against the peace and dignity of the City; and Furthermore, the defendant did commit the above crime against a family or household member, contrary to Revised Code of Washington 10.99.020.

(Maximum Penalty For First or Second Offense—One (1) year in jail or \$5,000 fine, or both, pursuant to RCW 26.50.110(1) and RCW 9.92.020, plus restitution, assessments and court costs.)

The undersigned city prosecutor does certify, under penalty of perjury, that the city prosecutor has reasonable grounds to believe and does believe that the above-named defendant committed the offense(s) described above, contrary to City Ordinance and law.

Dated this 16th day of October 2009.

- Heidi Ann Wachter, City Attorney, WSBA #18400
- Michael McKenzie, Asst. City Attorney, WSBA #23258
- Anita Booker-Hay, Asst. City Attorney, WSBA #23409
- Matthew S. Kaser, Assoc. City Attorney, WSBA# 32239

Lakewood Municipal Court
The document to which this certificate is attached is a full true and correct copy of the original on file and of record in my office same having been filed
Attest _____
By _____
2009

MUNICIPAL COURT FOR THE CITY OF LAKEWOOD
COUNTY OF PIERCE, STATE OF WASHINGTON

CITY OF LAKEWOOD,)	NO. 9L1035
)	
Plaintiff,)	COMPLAINT
)	
vs.)	
)	
KEAL, Ronald Holtz,)	
DOB: 6/17/1966,)	
)	
Defendant.)	

FILED
SEP 11 2009
LAKEWOOD MUNICIPAL
COURT

The City of Lakewood, a municipal corporation of the State of Washington, does hereby accuse the above-named defendant of the crime of Violation of Order (Domestic Violence), a gross misdemeanor, committed as follows

That on or about, 9/10/2009, the above-named defendant did, within the corporate boundaries of the City of Lakewood, State of Washington, did unlawfully violate the terms of a court order issued pursuant to RCW 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, and/or 74.34, by willfully having contact with Deborah Arlene KEAL, DOB: 6/17/1959, when such contact was prohibited by such court order(s), to wit: Lakewood Municipal Court No Contact Order No. 9L1000, and after having had actual notice of the existence of the court order(s) contrary to RCW 26.50.110(1) (which has been adopted by Section 9.26.900 of the Lakewood Municipal Code) and against the peace and dignity of the City; and Furthermore, the defendant did commit the above crime against a family or household member, contrary to Revised Code of Washington 10.99.020.

(Maximum Penalty For First or Second Offense—One (1) year in jail or \$5,000 fine, or both, pursuant to RCW 26.50.110(1) and RCW 9.92.020, plus restitution, assessments and court costs.)

The undersigned city prosecutor does certify, under penalty of perjury, that the city prosecutor has reasonable grounds to believe, and does believe that the above-named defendant committed the offense(s) described above, contrary to City Ordinance and law.

Dated this 11th day of September 2009.

- Heidi Ann Wachter, City Attorney, WSBA #18400
- Michael McKenzie, Asst. City Attorney, WSBA #23258
- Anita Booker-Hay, Asst. City Attorney, WSBA #23409
- Matthew S. Kaser, Assoc. City Attorney, WSBA# 32239

The document attached to this certificate is a full true and correct copy of the original on file and of record in my office same having been filed

WASU
WASU
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cla

IN THE MUNICIPAL COURT OF THE CITY OF LAKEWOOD
PIERCE COUNTY, STATE OF WASHINGTON

CITY OF LAKEWOOD,

Plaintiff,

Vs.

KEAL Ronald Holtz
DOB: 6/17/1966,

Defendant.

No. 11L0369

COMPLAINT

MUNICIPAL COURT

MAR 18 2011

FILED

COMES NOW, the Plaintiff, City of Lakewood, by and through the undersigned attorney and hereby alleges that contrary to the form, force and effect of the ordinances and/or statutes in each case made and provided and against the peace and dignity of the City of Lakewood, that the above-named defendant did commit the following offense(s) -

Count I

Assault In The Fourth Degree (Domestic Violence) - RCW 9A.36.041

On or about 3/17/2011, within the corporate boundaries of the City of Lakewood, the defendant did assault another person, Clare Jane STRAIN, DOB: 8/15/1962; and Furthermore, the defendant did commit the above crime against a family or household member; contrary to Revised Code of Washington 10.99.020; all in violation of RCW 9A.36.041.

NG

(Maximum Penalty - One (1) year in jail or \$5,000.00 fine, or both, pursuant to RCW 9A.36.041(2) and 9A.20.021(2), plus restitution, assessments and court costs.)

(Mandatory Penalty - Upon conviction, the defendant may not possess, own, or have under their control any firearm unless the right to do so is restored by a superior court in Washington State, and by a federal court if required. The defendant must immediately surrender any concealed pistol license. RCW 9.41.040.)

The undersigned city attorney does certify, under penalty of perjury, that the city attorney has reasonable grounds to believe, and does believe that the above-named defendant committed the offense(s) described above, contrary to City Ordinance and law.

Dated this 18 day of March, 2011.

- Heidi Ann Wachter, City Attorney, WSBA #18400
- Michael McKenzie, Asst. City Attorney, WSBA #23258
- Anita Booker-Hay, Asst. City Attorney, WSBA #23409
- Matthew S. Kaser, Assoc. City Attorney, WSBA# 32239

The document to which this certificate is attached is a full true and correct copy of the original on file and of record in my office same having been filed
Lakewood Municipal Court
Attest: [Signature] Clerk
2011



CITY OF LAKEWOOD
Legal Department
6000 Main Street
Lakewood, WA 98499
(253) 589-2489 FAX (253) 589-3774

1
2
3
4
5
6 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

7 STATE OF WASHINGTON,

8 Plaintiff,

CAUSE NO. 11-1-03845-1

9 vs.

10 RONALD HODGE HOLTZ,

INFORMATION

11 Defendant.

12 DOB: 6/17/1966

SEX : MALE

RACE: BLACK

PCN#: 540534454

SID#: 12641502

DOL#: WA HOLTZRH345LP

COUNT I

13 I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority
14 of the State of Washington, do accuse RONALD HODGE HOLTZ of the crime of DOMESTIC
15 VIOLENCE COURT ORDER VIOLATION, committed as follows:

16 That RONALD HODGE HOLTZ, in the State of Washington, on or about the 19th day of
17 September, 2011, did unlawfully and feloniously violate the terms of a court order issued pursuant to
18 RCW 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34, by willfully having contact with Clare
19 Jane Strain when such contact was prohibited by a court order, to wit: Lakewood Municipal Court Cause
20 No. 11L000369, and after having had actual notice of the existence of the court order, and that further, the
21 defendant has two previous convictions for violating orders issued under chapter 7.90, 9.94A, 10.99,
22 26.09, 26.10, 26.26, 26.50, 74.34, or a valid foreign protection order as defined in RCW 26.52.020,
23 thereby invoking the provisions of RCW 26.50.110(5) and increasing the classification of the crime,
24 contrary to RCW 26.50.110 and 26.50.110(5), a domestic violence incident as defined in RCW
10.99.020, and against the peace and dignity of the State of Washington.

COUNT II

23 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
24 authority of the State of Washington, do accuse RONALD HODGE HOLTZ of the crime of ASSAULT
IN THE FOURTH DEGREE, a crime of the same or similar character, and/or a crime based on the same

INFORMATION- 1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or
2 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 others, committed as follows:

3 That RONALD HODGE HOLTZ, in the State of Washington, on or about the 19th day of
4 September, 2011, under circumstances not amounting to assault in the first, second, or third degree, or
5 custodial assault, did unlawfully, intentionally assault Clare Jane Strain, contrary to RCW 9A.36.041(1)
6 and 9A.36.041(2), a domestic violence incident as defined in RCW 10.99.020, and against the peace and
dignity of the State of Washington.

7 DATED this 20th day of September, 2011.

8 FIFE POLICE DEPARTMENT
WA02707

MARK LINDQUIST
Pierce County Prosecuting Attorney

9
10 lak

By:



LORI KOOIMAN
Deputy Prosecuting Attorney
WSB#: 30370

September 20 2011 11:09 AM

Pierce County Clerk

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO.: 11-1-03845-1

vs.

RONALD HODGE HOLTZ

Defendant.

Domestic Violence No-Contact Order
(orncpd)

PENDING DISPOSITION

SID NO.: 12641502

Date of Birth: 06/17/1966

Sex: MALE

Eyes: BROWN

Race: BLACK

Weight: 225lbs.

Height: 5'9"

Expires on: Sep 20, 2016

(Clerk's Action Required)

1. Based upon the certificate of probable cause and/or other documents contained in the case record, testimony, and the statements of counsel, the court finds that the defendant has been charged with, arrested for, or convicted of a domestic violence offense, and further finds that to prevent possible recurrence of violence, this Domestic Violence No-Contact Order shall be entered pursuant to chapter 10.99 RCW.

This order protects: CLARE JANE STRAIN, Date of Birth 08/15/1962.

2. The court further finds that the defendant's relationship to the person protected by this order is **CURRENT OR FORMER DATING RELATIONSHIP.**

It is Ordered:

Defendant is ***Restrained*** from:

- A. Causing or attempting to cause physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking the protected person(s).
- B. Coming near and from having any contact whatsoever, in person or through others, by phone, mail or any means, directly or indirectly, except for mailing or service of process of court documents by a 3rd party or contact by defendant's lawyers with the protected person(s).
- C. Entering or knowingly coming within or knowingly remaining within **1000 ft** of the protected person'(s) residence, school, place of employment.
- D. Obtaining, owning, possessing or controlling a firearm.

It Is Further Ordered:

Warnings to the Defendant: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

Willful violation of this order is punishable under RCW 26.50.110. Violation of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or RCW 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury in another person is a class C felony. Also, a violation of this order is a class C felony if the defendant has at least two previous convictions for violating a protection order issued under Titles 7, 10, 26, or 74.

If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, the defendant may be subject to criminal prosecution in federal court under 18 U.S.C. § 2261, 2261A, or 2262.

In addition to the state and federal prohibitions against possessing a firearm upon conviction of a felony or a qualifying misdemeanor, upon the court issuing a no-contact order after a hearing at which the defendant had an opportunity to participate, the defendant, if a spouse or former spouse, a parent of a common child, or a current or former cohabitant as intimate partner of a person protected by this order, may not possess a firearm or ammunition for as long as the no-contact order is in effect. 18 U.S.C. § 922(g). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. If the defendant is convicted of an offense of domestic violence, the defendant will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); RCW 9.41.040.

You can be Arrested even if the Person or Persons who Obtained the Order Invite or Allow 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 upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the 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 Law Enforcement Agency where the case is filed, which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

This No-Contact Order Expires On September 20, 2016, or until modified or terminated by the court.

Done in Open Court in the presence of the Defendant: September 20, 2011.

Electronically signed by
/s/ MEAGAN M. FOLEY

Judge/Commissioner

RONALD HODGE HOLTZ
Defendant
Defendant Refused to Sign.

A completed law enforcement information sheet must be attached for identification purposes by the police or sheriff.

September 20 2011 11:09 AM

Pierce County Clerk

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

STATE OF WASHINGTON,

Plaintiff

No. 11-1-03845-1

vs.

RONALD HODGE HOLTZ

Defendant

**ORDER ESTABLISHING CONDITIONS OF
RELEASE PENDING PURSUANT TO CrR 3.2
(orecrp)**

Arresting Agency : FIFE POLICE DEPARTMENT

Incident Number : 2011003461

Charges

- DOMESTIC VIOLENCE COURT ORDER VIOLATION
- ASSAULT IN THE FOURTH DEGREE

THE COURT HAVING found probable cause, establishes the following conditions that shall apply pending in this cause number or until entry of a later order; IT IS HEREBY ORDERED

Release Conditions:

- Defendant shall be released upon execution of a surety bond in the amount of \$50,000.00 or posting cash in the amount of \$50,000.00.

*****NEW BAIL*****

Conditions that take effect upon release from custody:

- Defendant is to reside/stay only at this address **2011 E 57TH ST TACOMA, WA 98404 USA**
- Travel is restricted to the following counties **Pierce, King, Thurston, and Kitsap Counties.**
- The defendant is not to drive a motor vehicle without a valid license and insurance.
- Defendant is to keep in contact with the defense attorney.

Conditions that take effect immediately:

- Defendant is to have no violations of the criminal laws of this state, any other state, any political subdivision of this state or any other state, or the United States, during the period of his/her release.
- That the Defendant have no contact with the alleged victim(s), witness(es), co-defendant(s). This includes any attempt to contact, directly or indirectly, by telephone and/or letter at their residence or place of work.

- Defendant shall not possess weapons or firearms.
- Defendant shall not consume or possess alcohol or non prescription drugs, or associate with any known drug users or sellers.
- Remain in contact with the defense attorney.

Dated : September 20, 2011.

Electronically Signed By
/s/MEAGAN M. FOLEY
JUDGE/COMMISSIONER

I agree and promise to appear before this court or any other place as this court may order upon notice delivered to me at my address stated below or upon notice to my attorney. I agree to appear for any court date set by my attorney and I give my attorney full authority to set such dates. I understand that my failure to appear for any type of court appearance will be a breach of these conditions of release and a bench warrant may be issued for my arrest. I further agree and promise to keep my attorney and the office of Prosecuting Attorney informed of any change of either my address or my telephone number.

I have read the above conditions of release and any other conditions of release that may be attached. I agree to follow said conditions and understand that a violation will lead to my arrest. FAILURE TO APPEAR AFTER HAVING BEEN RELEASED ON PERSONAL RECOGNIZANCE IS AN INDEPENDENT CRIME, PUNISHABLE BY 5 YEARS IMPRISONMENT OR \$10,000 OR BOTH (RCW 10.19).

Address: **2011 E 57TH ST TACOMA, WA 98404 USA**

Phone: **(253) 475-0162**

Defendant Refused to Sign.

MUNICIPAL COURT
Lakewood University Place
6000 Main Street S.W.
Lakewood, WA 98499
(253) 512-2258 Fax (253) 512-2267

COURT ORDER

TAPE #
DPA
ATTY

DEFENDANT: Keal, Ronald H
ADDRESS:
CITY, STATE, ZIP:
BIRTHDATE: 6/17/66
TELEPHONE NUMBER:
In Custody: [X]
Probable Cause: YES [] NO []
Jail Time Consecutive [] Concurrent []

Table with columns: Case No., Charge / Section / BAC, Amended to, Dispo, Jail Time, Jail Susp, Credit Time Stud, Fine, Fine Susp, \$. Contains 6 rows of case details.

YOU MUST PAY FINE/COST/FEES OF \$ 500 BY 8/20/11
DO HOURS OF COMMUNITY SERVICE IN LIEU OF \$
BAIL FIXED AT \$
BAIL BOND: EXONERATED REINSTATED CASH BAIL REFUNDED TO POSTER RETAIN \$ AS
DETOX PROOF BY OR REPORT TO JAIL
REPORT TO JAIL ON
COURT JURISDICTION IS EXTENDED UNTIL 5/13/16

YOU ARE ORDERED AS FOLLOWS:
[] Do not drive without valid license and insurance
[] Have law abiding behavior
[] No mood altering substances without prescription
[] Comply with terms and conditions of disposition
[] Have no similar incidents
[] Have no alcohol/drug related offenses
[] Have no criminal traffic convictions
[] No refusal of BAC
[] No consumption of drugs/alcohol
[] Comply with attached/existing
[] No Contact Order / Protection Order
[] SOAP Order [] SODA Order
[] Have no hostile contact with
[] Abide by all previously imposed conditions
[] Do not relocate out of state without prior court approval
[] Do not possess firearms [] pending disposition [] until rights restored
[] Screen for public defender by
[] Direct appointment to the public defender

YOU MUST COMPLETE THE FOLLOWING WITH WRITERS:
[] File monthly status reports
[] Anger management class [] 8 hour [] 16 hour
[] Defensive driving school [] Level 1 [] Level 2
[] Alcohol/Drug assessment [] Recommended treatment
[] Alcohol/Drug information school (ADIS)
[] Batterer's assessment and any recommended treatment
[] Consumer awareness program
[] OF TO COURT BY 7/20/11
[] testing at health department
[] Mental health evaluation
[] Attend Sober Support meetings per week
[] Intim Impact Panel [] Domestic Violence [] DUI
[] Other conditions:

YOU MUST REPORT TO MUNICIPAL COURT FOR Probation [] Work Crew [] EHM on
@ FAILURE TO COMPLY WILL RESULT IN WARRANT FOR YOUR ARREST

9L1000 - Violation found Sanctions reserved - City's
rec - 170 days credit first will consider credit against
inpatient * NCC can be proceeded when in compliance

[] Appearance at hearing waived if in compliance with all court conditions.
You must return to Court on MAY 8/5/11 at 8.30 am/pm FOR Sentencing/Review
You must return to Court on at am/pm FOR
You must return to Court on at am/pm FOR

I have read and understand all conditions contained on both sides of this order:
DONE IN OPEN COURT 5/13/11
Court

LAKEWOOD MUNICIPAL COURT
6000 Main Street S.W.
Lakewood, WA 98499
(253) 512-2258 • Fax (253) 512-2267

COURT ORDER

TAPE 1019-42
DPA ASB
ATTY BSMA (DI)

DEFENDANT <u>Neal, Ronald H</u>	AKA
ADDRESS	BIRTHDATE <u>6-17-1966</u>
CITY, STATE, ZIP	TELEPHONE NUMBER
I will notify the court of any change of address within 24 hrs.	Jail Time Consecutive <input type="checkbox"/> Concurrent <input type="checkbox"/>
	In Custody <input checked="" type="checkbox"/>
	Probable Cause YES <input type="checkbox"/> NO <input type="checkbox"/>

Case No.	Charge / Section / BAC	Amended to	Dispo	Jail Time	Jail Susp	Credit Time Svcd	Fine	Fine Susp	\$
1. <u>9L1035</u>	<u>Protect. Ord. 101</u>		<u>G</u>	<u>365</u>	<u>365</u>		<u>5000</u>	<u>5000</u>	<u>0</u>
2.									
3. <u>9L1000</u>	<u>4th Assault DV</u>		<u>G</u>	<u>365</u>	<u>365</u>	<u>46</u>	<u>5000</u>	<u>4000</u>	<u>1000</u>
4.									
5.									
6.									

YOU MUST PAY FINE/COST/FEE OF \$ 1000 BY 1-5-2010 OR SET UP ACCT WITH SIGNAL PRIOR DO _____ HOURS OF COMMUNITY SERVICE IN LIEU OF \$ _____ FILE PROOF OF COMPLETION BY _____

BAIL FIXED AT \$ _____ CASH/BOND RELEASE IMMEDIATELY PR'D

BAIL BOND: EXONERATED REINSTATED CASH BAIL REFUNDED TO POSTER RETAIN \$ _____ AS _____

REPORT TO JAIL ON _____ @ _____ : _____ DETOX PROOF BY _____

COURT JURISDICTION IS EXTENDED UNTIL 10-22-2011 **FILED**

YOU ARE ORDERED AS FOLLOWS:

- Do not drive without valid license and insurance
- Have law abiding behavior
- No mood altering substances without prescription
- Comply with terms and conditions of probation
- Have no similar incidents
- Have no alcohol/drug related offenses
- Have no criminal traffic convictions
- No refusal of BAC
- No driving after consuming drugs/alcohol
- Comply with attached / existing
- No Contact Order / Protection Order
- SOAP Order SODA Order
- Have no hostile contact with _____
- Abide by all previously imposed conditions
- Do not relocate out of state without prior court approval
- Do not possess firearms pending disposition until rights restored
- Screen for public defender by _____
- Direct appointment to the public defender

OCT 22 2009
LAKEWOOD MUNICIPAL COURT

YOU MUST COMPLETE THE FOLLOWING WITH WRITING: REPORT TO COURT BY 1-5-2010

- File monthly status reports
- Anger management class 8 hour 16 hour
- Defensive driving school Level 1 Level 2
- Alcohol/Drug assessment Recommended treatment
- Alcohol/Drug information school (ADIS)
- Anger management evaluation and any recommended treatment
- Batterer's assessment and any recommended treatment
- Consumer awareness program
- Random drug testing at health department
- Mental health evaluation
- Psychosexual evaluation and program
- Attend Sober Support meetings _____ per week
- Victim Impact Panel Domestic Violence DUI
- Other conditions: _____

YOU MUST REPORT TO LAKEWOOD MUNICIPAL COURT FOR Probation Work Crew EHM on _____

FAILURE TO COMPLY WILL RESULT IN WARRANT FOR YOUR ARREST
Def may file comparable evaluation (Alcohol) from Doctor
and plea entered

Def advised to have strict compliance w/ No contact order or jail
to be imposed regardless of medical conditions.
Appearance at hearing waived if in compliance with all court conditions. (Verify with Court prior to hearing.)

You must return to Court on 1-14-2010 at 9:00 am/pm FOR Review in compliance
You must return to Court on _____ at _____ am/pm FOR _____
You must return to Court on _____ at _____ am/pm FOR _____

I have read and understand all conditions contained on both sides of this order: [Signature] DONE IN OPEN COURT 10-22-2009
[Signature] [Signature]

FIFE MUNICIPAL COURT
 3737 PACIFIC HIGHWAY EAST
 FIFTH WASHINGTON 98424
 PHONE: (253) 92-6635
 FAX: (253) 926-5135 www.cityoffife.org to make credit card payment

COURT ORDER

PROBABLE CAUSE

YES NO

Public Defender Appointed/Standby
 Interpreter: _____

CASE NO.	CHARGE(S)	AMENDED TO	DISPOSITION	JAIL TIME IMPOSED	JAIL TIME SUSPENDED	CREDIT FOR TIME SERVED	FINES	CODES
1. C 23221	Disorderly Conduct		G	30				
2. C 27306	viol soap/soda order		G	30				purged upon
3. C 27306	viol soap/soda order		G	30				street compliance
4. C 29641	use/del drug parapher.		Dismissal - no					
5. C 29641	viol soap/soda order		Dismissal - no					

YOU MUST PAY \$ _____ (Plus any previously imposed costs). Due today or contact Clerk for time payment arrangement. See Cost Sheet
 Contact Alliance One and arrange a payment plan. Jurisdiction until 10-25-11

YOUR JAIL STATUS Released

Authorized Bail: \$ _____ Cash Only Cash/bond And / Or Electronic Monitoring w/ alcohol sensor (at your expense)
 Ball Bond # _____ exonerated/reinstated Bail Bond # _____ exonerated/reinstated
 Cash bail refunded to poster Retain \$ _____ cash bail as _____

THIS CASE CONTINUED with / without stipulation to facts sufficient and with / without finding until _____
 Upon compliance Dismissal Amended to _____
 Upon non-compliance Reading of Record and Sentencing Local Bail Forfeiture policy. Close upon payment in full.

Your license will be suspended for _____ days / years through the Department of Licensing.

YOU ARE ORDERED AS FOLLOWS:

- Do not drive without valid driver's license and insurance
- No criminal law charges.
- Comply with terms and conditions of deferred prosecution/ treatment
- Have no alcohol/drug related charges.
- Have no criminal traffic charges
- No positive test results for alcohol or non-prescription drugs

- DO NOT drive a motor vehicle if a test of your breath/blood would result in a positive reading of alcohol or drugs w/in 4 hours of driving.
- DO NOT refuse to submit to a test of your breath or blood to determine alcohol concentration upon the lawful request of a law enforcement officer.
- SOAP SODA --- (see map)
- No Contact Order ordered / recalled / remains
- File monthly status reports (treatment)

YOU MUST COMPLETE THE FOLLOWING WITH WRITTEN PROOF TO THE COURT BY _____

- Obtain valid vehicle insurance reduce to \$ _____
- Obtain a valid driver's license
- Defensive driving school Level 1 / Level 2
- Alcohol/Drug assessment and recommended treatment
- Alcohol/Drug Information School (ADIS)
- Anger management evaluation and recommended treatment
- DV Assessment and recommended treatment
- Clear outstanding warrants
- HIV testing at health department
- Mental health evaluation
- Work crew _____ days in lieu of \$ _____ fine/jail _____
- Pay restitution: \$ _____ to _____
- Attend Alcoholics/Narcotics Anonymous meetings _____ per week
- Victim Impact Panel DUI: _____ DV _____
- Apply for Ignition Interlock license through Department of Licensing
- Provide proof of financial support by _____

IF APPLYING FOR PUBLIC DEFENDER, APPLICATION AND SUPPORTING DOCUMENTS MUST BE FILED WITHIN 2-WEEKS PRIOR TO NEXT HEARING.

Defendant shall return to court on _____ at _____ AM / PM for _____ Transport on _____ from _____ Jail
 Defendant shall return to court on _____ at _____ AM / PM for _____ Transport on _____ from _____ Jail

Defendant need not appear if in compliance

COMPLIANCE WITH THIS ORDER WILL BE MONITORED BY THE PROBATION ADMIN DIVISION. ICAOS

Veronica (Interpreted)

I understand that if I fail to comply with all conditions of this order or fail to appear for any subsequent court hearing, the court may issue a warrant for my arrest, my drivers license may be suspended, and additional costs and/or jail time may be imposed. Any balance owing may be sent to a collection agency if I fail to pay as scheduled. I have read the rights, conditions, and warnings on the back.

DONE IN OPEN COURT 070810

Clare Strain
 ATTORNEY BAR # 36793
Clare Strain
 DEFENDANT

White
 JUDGE/PRO-TEM
 WHITE - Original CANARY - Counsel

PINK-Defendant GOLDENROD - Other Rev. 03/2010

COURT OF APPEALS DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

RONALD HODGE HOLTZ,
Appellant,

No. 43995-6-II

SUPPLEMENTAL BRIEF
TO STATEMENT OF
ADDITIONAL GROUNDS
(SAG)

I. - INTRODUCTION -

Appellant Ronald Holtz, moves this Court in a Supplemental (motion) BRIEF TO STATEMENT OF ADDITIONAL GROUNDS.

II. - STATEMENT OF FACTS -

Appellant files this brief incorporating all arguments, evidence, documents, exhibits, and reflecting upon the records cited to (SAG) filed JUNE 17th or THEREAFTER 2013.

III. ARGUMENT

MR. HOLTZ WAS DEPRIVED OF A FAIR TRIAL BY MULTIPLE BRADY VIOLATIONS WHICH PREJUDICED PROCEEDINGS

Appellant Ronald Holtz contends that distinct ensued by his being deprived of exculpatory evidence that was timely requested by him and if not for the state's failure to provide in discovery, it more likely than not would have change the outcome of proceedings. Mr. Holtz, filed an in depth motion for discovery on March 16, 2012 where he requested; the motel surveillance video, record of Holtz at Fife jail, 9-1-1 call record, information for interview of Fife jail officer "LARKINS". This would prove that officer MORALES falsely stated that "MR. Holtz" was linked to A.K.A. "KEAL" by dispatch, no contact order with name on it, that he was taken to Fife to be identified by officer LARKINS, and that he did not push "CLARE STRAIN". Thus, it would have changed the outcome of the June 4, 2012 hearing by defense to dismiss for lack of probable cause CrR 3.5 & 3.6. see; Findings and Conclusions on Admissibility of Evidence CrR 3.5 & 3.6 by Judge J. McCarthy Pg. #1 Ln. 19-21 where officer MORALES testimony is alleged to be, "honest, credible, accurate, reasonable, and without bias or prejudice". see; Pg. #4 Ln. 11-13 It alleges this is how Mr. Holtz was identified. However, later this would be proven to be untrue yet, if proper discovery had been obtained or released and/or truth told Mr. MORALES could have been discredited or impeached at the 6/4/12 hearing. [6/11/12 Pg. #4 Ln. 1-12; Pg. #5 Ln. 11-25; Pg. #6 Ln. 3-22; Pg. #9 Ln. 22-25; Pg. #10 Ln. 1-17; & Pg. #18 Ln. 6-25 - Judge Confirms witness Pg. #22 Ln. 8-21 discovery request Filed Pg. #1-13, 9/16/12, Pg. #367 Ln. 1-25 & Pg. #368 Ln. 1-16. 8/9/12-

Pg. #3 Ln. 5-11; Pg. #8 Ln. 17-25; Pg. #9 Ln. 1-25; Pg. #10 Ln. 9-10.] THESE ARE JUST A FEW OF THE DATED TRANSCRIPTS THAT ATTEST TO THE FAILURE TO COMPLY WITH ITS OBLIGATION TO DISCLOSE EVIDENCE WHICH WAS A GROSS MISCARRIAGE OF JUSTICE AND A VIOLATION OF DEFENDANT'S RIGHT TO DUE PROCESS OF LAW. WASH. ST. CONST. ART. 1 § 3, ART. 1 § 22.

STATE V. NORRIS, 157 Wn. App. 50, 236 P.3d 225 (Wash. App. Div. 2 2010). LET US REASON THAT THERE CANNOT BE A CAD REPORT WITHOUT A DISPATCH NOR A DISPATCHES RESPONSE WITHOUT A 9-1-1 CALL.

The United States Supreme Court has since held that there is a duty to disclose such evidence even with when there has been no request by the accused, United States v. Agurs, 427 U.S. 97, 107, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976), and that the duty encompasses impeachment evidence as well as exculpatory evidence, United States v. Bagley, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985). Significant evidence known only to police investigators, In RE Stenson, 174 Wn. 2d 474, 276 P.3d 286 (Wash. 2012).

Significantly, "[t]here are three components of a true Brady violation: the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is [174 Wn. 2d 487] impeaching; that evidence must have been suppressed by the state, either willfully or inadvertently; and prejudice must have ensued." Id., at 281-82, 119 S. Ct. 1936. With respect to the third Brady factor, the terms "material" and "prejudicial" are used interchangeably see; United States v. Price, 566 F.3d 900, 911 n. 12 (9th Cir. 2009).

CASE IN POINT THAT PROSECUTORS HORIBE, SEEVERS, AND EGGERTSEN, HAD AN OBLIGATION TO DIVULGE THE TRUTH, IN ORDER TO UPHOLD JUSTICE NOT TO SUPPRESS, EXCLUDE, OR HIDE IT FOR A MERE EGO'S GAIN OF A WIN, AS IF BUT A GAME. THE SCOPE OF STATE'S DUTY UNDER BRADY AND DUE PROCESS PRINCIPLES TO DISCLOSE EVIDENCE FAVORABLE TO THE DEFENDANT INCLUDES THE INDIVIDUAL PROSECUTOR'S DUTY TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO THE OTHERS ACTING ON THE GOVERNMENT'S BEHALF INCLUDING

the police, U.S.C.A. Const. Amend. 14. A major issue of disclosure is if Prosecutor E. Eggertsen had disclosed all discovery requested in information as well as admitted prior to 6/4/12 and trial that "Mr. Holtz" was not linked to "Mr. Keal" until 9/19/11 at 11:56 pm upon being booked into Pierce County jail officers Morales and Peterson; credibility, testimony, and statements would have been used prior to trial to impeach, moving to dismiss. Showing that they did not know who he was and proved that he had in fact been arrested to be identified at Five Police station. She only admits this in closing argument [9/6/12 Pg. #356 Ln. 20-22]

However, Ms. Eggertsen did not produce this fact at trial either. DEFENSES questioning of Fingerprint Specialist Kimberly Howard" on [9/4/12 - Pg. #85 Ln. 7-18; 22-25; Pg. #86 Ln. 1-14 & 19; Pg. #104 Ln. 20-25 (Ln. 9); Pg. #105 Ln. 10-25; Pg. #106 Ln. 1-25 specifically Ln. 19-25]. This was not disclosed as she allowed officers Morales and Peterson to give false testimony as she did herself in efforts to conceal the truth. A showing of materiality, in context of a claimed Brady violation is not a sufficiency of evidence test, and, thus, does not require demonstration by a preponderance of the evidence test, that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal. Question of materiality, in context of a claimed Brady violation, is not whether the defendant would more than likely not have received a different verdict with the undisclosed evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. To prove materiality, in context of a claimed Brady violation, defendant must show there is a reasonable probability that, had the evidence been disclosed to the defense, the result of proceedings would have been different, with "reasonable probability" of a different result being shown when the government's evidentiary suppression undermines confidence in the outcome of the trial.

The Factors of a Brady claim relating to whether the evidence

AT ISSUE IS FAVORABLE TO THE ACCUSED AND WHETHER THAT EVIDENCE WAS SUPPRESSED BY THE STATE ARE FACTUAL QUESTIONS.

IT IS PLAIN TO VIEW THAT THE FAILURE TO PRODUCE CRITICAL/CRUCIAL EXCULPATORY EVIDENCE "DISCOVERY" DID EFFECT THE OUTCOME OF PRIOR 3.5 & 3.6 HEARING AND ULTIMATELY TRIAL. THIS CHIEFLY DUE TO THE FACT THAT OFFICER'S TESTIMONY BEING CREDIBLE WAS A MAJOR ISSUE IN WHICH DECISIONS OF THE JUDGE AND JURY DEPENDED UPON. AS THE MATERIALITY OF SUCH FALSE STATEMENTS TAKE US INTO ANOTHER ASPECT LEADING FROM BARDY

PROSECUTORIAL MISCONDUCT AND IMPACHED FALSE TESTIMONY

APPELLANT IN LIGHT OF THE BARDY VIOLATIONS DISPLAYING AN ASPECT BEING FAILURE TO INFORM DEFENSE OF EXCULPATORY EVIDENCE WITH IMPACHMENT OF PERJURED TESTIMONY AND ITS PREJUDICIAL EFFECT BEING A MATERIALITY ISSUE ON APPEAL IN THE CONTEXT OF "REASONABLE PROBABILITY" OF THIS CHANGING THE OUTCOME OF THE TRIAL.

ONE NEED NOT PONDER WHETHER PROSECUTORS WERE AWARE OF THE FALSE TESTIMONIES OF WITNESSES FLORES, PETERSON, AND ELLIOTT OR THEIR MISLEADING EFFECTS UPON JUDGE(S) AND JURY. FROM TESTIMONY OF FINGERPRINT EXPERT KIMBERLY HOWARD TO PROSECUTOR'S CLOSING ARGUMENT THAT MR. HOLTZ WAS TAKEN TO PIERCE COUNTY JAIL WHERE HE WAS BOOKED, FINGERPRINTED, AND IDENTIFIED. [9/6/12 Pg. #356 Ln. 209-22] THIS WAS NOT ADMITTED UNTIL CLOSING ARGUMENT THOUGH THE DISCOVERY WOULD HAVE PROVED THIS WITHOUT HER ADMISSION. OFFICERS CLAIMED MR. HOLTZ "WAS LINKED TO MR. KENT" BY DISPATCH, WHEN HE WAS NOT BOOKED UNTIL 11:56 PM NOR WAS EITHER NAMED LINKED FOR "HOLTZ" HAD NEVER BEEN FINGERPRINTED BY A.F.I.S. UNDER THIS NAME AS STATED BY "K. HOWARD" FINGERPRINT SPECIALIST. SEE: *IN RE STENSON*, 174 Wn.2d 474, 276 P.3d 286 (WASH. 2012); *STATE V. SINGH*, 167 Wn. App. 971, 275 P.3d 1156 (WASH. APP. DIV. 3 2012). (2) HEIGHTENED PROOF REQUIREMENTS FOR PERJURY ARE SATISFIED WHEN THE EVIDENCE OF THE KNOWINGLY FALSE STATEMENT IS RECORDED PRIOR TO THE HEARING

At which the perjury is subsequently committed; and First degree perjury is committed "if in any official proceeding" a person makes a materially false statement [167 Wn. App. 976] which he knows to be false under an oath required or authorized by law. Former RCW 9A.72.020(1)(1975). A "materially false statement" is one "which could have affected the course or outcome of the proceeding." RCW 9A.72.010(1). Prosecutors are unlike other attorneys and enjoy special status as "quasi-judicial officers." See STATE V. SUAREZ-BRAND, 72 Wn. App. 359, 367, 864 P.2d 426 (1994). Along with the status, however, comes responsibility, including the duty to ensure that a defendant receives a constitutionally fair trial and to seek a verdict free of prejudice, based on reason and law. See STATE V. MONDAY, 171 Wn.2d 667, 257 P.3d 55 (2011); Berger v. United States, 295 U.S. 78, 88, 55 S. Ct. 629, 79 L.Ed. 2d 1314 (1935). Overruled in part and on other grounds by Stirone v. United States, 361 U.S. 212, 80 S.Ct. 270, 4 L.Ed. 2d 252 (1960). As a result, a prosecutor must act in seeking justice instead of making himself a "partisan" who is trying to "win" a conviction at all costs. See STATE V. RIVERS, 96 Wn. App. 672, 981 P.2d 16 (1999). HAYES V. WOODFORD, 301 F.3d 1054 (9th Cir. 2002) because it is impeaching, prosecutor has a constitutional duty to correct evidence he knows is false. SKINNER V. SWITZER, 5 U.S. L.Ed. 2d, 131 S.Ct. 1289 (2011); In STATE V. LAPAGE, 231 F.3d 488, 491 (9th Cir. 2000) Due process clause entitles defendants in criminal cases to fundamentally fair procedures, and it is fundamentally unfair for prosecutor to knowingly present perjury to jury U.S.C.A. Amend. 5. because use of known lies to obtain conviction violates due process of law, such a conviction must be reversed unless false testimony was harmless beyond reasonable doubt; conviction must be reversed if there is any reasonable likelihood that false testimony could have affected judgment of jury. U.S.C.A. Const. Amend. 5.

The due process clause entitles defendants in criminal cases to fundamentally fair procedures, it is fundamentally unfair for a prosecutor to knowingly present perjury to the jury. Over forty

YEARS AGO, THE SUPREME COURT MADE IT CLEAR THAT A CONVICTION OBTAINED THROUGH THE USE OF FALSE EVIDENCE, KNOWN TO BE SUCH BY REPRESENTATIVES OF THE STATE, MUST FALL UNDER THE FOURTEENTH AMENDMENT. THE RESULT OBTAINS WHEN THE STATE, ALTHOUGH NOT SOLICITING FALSE EVIDENCE ALLOWS IT TO GO UNCORRECTED WHEN IT APPEARS.

THE COURT EXPLAINED THAT THIS PRINCIPLE DOES NOT CEASE TO APPLY MERELY BECAUSE THE FALSE TESTIMONY GOES ONLY TO THE CREDIBILITY OF THE WITNESS. RATHER (A) LIE IS A LIE, NO MATTER WHAT IT'S SUBJECT. BECAUSE THE USE OF KNOWN LIES TO GET A CONVICTION DEPRIVES A DEFENDANT OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW, WE MUST REVERSE LAPAGES CONVICTION UNLESS MANESS FALSE TESTIMONY WAS HARMLESS BEYOND A REASONABLE DOUBT, THAT IS, WE MUST REVERSE, IF THERE IS ANY REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY COULD HAVE AFFECTED THE JUDGMENT OF THE JURY." MESAROSH V. U.S., 352 U.S. 1, 164 ED. 2D 72, 77 S. CT. 8 (U.S. PA 1956) "UNITED STATES GOVERNMENT WILL NOT ALLOW A CONVICTION OF A PERSON BASED ON TAINTED TESTIMONY OF A WITNESS TO STAND."

MR. HOLTZ, CONVICTION WAS OBTAINED BY PERJURED FALSE TESTIMONY, FAILURE TO DISCLOSE EXCULPATORY EVIDENCE BRADY VIOLATIONS, AND PROSECUTORIAL MISCONDUCT WHICH MUST BE REVERSED AND DISMISSED AS THE ONLY JUST REMEDY BY LAW.

SPEEDY TRIAL VIOLATIONS CRR 33 AND INSUFFICIENCY OF RECORD ON APPEAL VIOLATING RIGHT TO APPEAL

APPELLANT INCORPORATES THE FOLLOWING ARGUMENTS ON APPEAL WITH HIS STATEMENT OF ADDITIONAL GROUNDS VIOLATING HIS SPEEDY TRIAL RIGHTS AS THE RECORD IS CITED. TRANSCRIPTS:

A) 1/12/12 BEFORE JUDGE STOLZ: Pg. 5 Ln. 1-3 SHE ADMITS ATTORNEY HARRY STEINMETZ WAS ALLOWED TO WITHDRAW ON THE DAY OF TRIAL WHICH DEFENDANT OBJECTED TO AND REQUESTED DISMISSAL. B) ATTORNEY

Robert Deegan admits to conflict of interest with defendant and Judge B. Grant disqualifying him. Pg. #5 Ln. 8-25; Pg. #6 Ln. 1-10 He objects. B) The following are speedy trial verifications, ineffective assistance of counsel, abuse of discretion by Judge Stolz with bias misconduct. Pg. #8 Ln. 5-25; Pg. #9 Ln. 1-6 & Ln. 12-25; Pg. #10-13. Defines the speedy trial objections.

C) 2/14/12, Judge Stolz: Pg. #14-20 ineffective assistance of counsel, abuse of discretion, Judge misconduct and bias. Ln. 23-25, Pg. #20 Ln. 13-22 Speedy trial motion CrR 3.3 showing violation. Pg. #21 drug out of court and assaulted by staff.

At Ln. 9 (The defendant was not present) Boone Club violation... Judge enters an order ex-parte "He may wish to represent himself."

D) 3/6/12 - Judge Stolz, Pg. #22-27 - DEF. placed in a "Hobson's choice" to sign for conflict free counsel (after being forced to hire his own) signs after 90 days speedy trial violation under threat, duress, and coercion (DC)

E) 5/24/12 - Judge R.M. Stolz, Pg. #28-34 signed by attorney as motion in objection to speedy trial violations

Appellant incorporates as part of the trial record the continuance motions where he refuses to sign in order to present documented evidence "material" to the issue and argument in his (SAG) which will show his refusal/objection. Also, where it was necessary for him to agree/sign pursuant to CrR 3.3(F)(1), as well as verbal, and written objections. STATE V. SAUNDERS, 153 Wn. App. 209, 220 P.3d 1238 (Wash. App. Div. 2, 2009); WA. St. Const. Art. 1 § 22; STATE V. Kenyon, 167 Wash. 2d 230, 216 P.3d 1024 (2009); STATE V. Iniguez, 167 Wash. 2d 273, 281-85, 290-95, 217 P.3d 768 (2009); STATE V. GEORGE, 160 Wash. 2d 727, 735, 158 P.3d 1169 (2001); STATE V. KONE, 165 Wn. App. 420, 266 P.3d 916 (Wash. App. Div. 1, 2011); STATE V. CHAVEZ-ROMERO, 285 P.3d 195 (Wash. App. Div. 3, 2012) Even in light of the December 1, 2012 revision.

of Superior Court Criminal Rule - Rights of Defendants - Rule 3.3 Time For Trial. Appellant's (SAG) Argument with this Supplemental Brief/Motion is within the guidelines. Though, there has been objections in writing and on record even if one was to consider due to lack of record CrR 3.3(d)(4) loss of right to object. Aids further in such argument. [SEE Exhibit #1]

- TRANSCRIPTS OF PROCEEDINGS REQUESTED -

DATES	COURT REPORTER	JUDGE
12/6/12, 11/29/11, 10/25/11	Angela McDougall	Edmund Murphy
3/20/12 & 4/19/12	Kim O'Neill	Katherine Stolz
5/12/12	Katrina Smith	Bryan Chushcoff
5/31/12	Syndie Hagardt	Beverly Grant

Appellant contends that these are crucial Court transcripts that were during critical stages of proceedings which would make a clear showing from Attorney Harry Steinmetz being allowed to walk out of the courtroom on trial date 1/29/13 to showing his request for more time 10/25/11 yet, no motions being drafted to the speedy trial objections, ineffective assistance of counsel, discovery, numerous Brady violations, mental health issues, prosecutorial misconduct and much more. See, State v. Hanson, 62 Wash. 2d 64, 66, 381 P.2d 120 (1963). The entire verbatim report of proceedings was lost and the court concluded that Appellate Counsel, who had not acted as trial counsel, had no means by which to assess the sufficiency of the narrative summary provided by the trial court. 62 Wash. 2d at 67, 381 P.2d 120. And Tilton, 149 Wash. 2d at 783, 72 P.3d 735, two cases

in which our Supreme Court concluded that the record was insufficient for review. RAP 9.5(c). This prejudices the Appellant by an incomplete record on review denying Appellant of direct testimony enabling him to effectively identify and argue on appeal particularly a claim for ineffective assistance of counsel based on mental health issues counsel's failure to raise a diminished capacity defense. Titom, 149 Wash. 2d at 182-83. STATE V. HARVEY, 175 Wn. 2d 922, 288 P.3d 1113 (2012). Under RAP 9 Appellant claims that the only just remedy by law is reversal, remand for either record reconstruction or dismissal. The October 17, 2013 ruling of Commissioner Schmidt states that there is no proceeding on record to be transcribed which a new trial will not rectify the enumerated violations that took place causing irreparable constitutional damage as a miscarriage of justice.

- CONCLUSION / RELIEF -

Appellant requests the relief of reverse, remand for suppression hearing and vacate / dismissal (CR 8.3(b)).

THIS 15th DAY OF NOVEMBER, 2013.


RONALD HOLTZ

- EXHIBIT

"CONTINUANCE ORDERS"

1

- EXHIBIT -

- CR 3.5 to 3.6 FINDINGS
AND CONCLUSIONS -

2

-EXHIBIT-

-5-

July 31 2012 12:37 PM

KEVIN STOCK
COUNTY CLERK
NO: 11-1-03845-1

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*INFORMED NOTICE OF DISCOVERY
mine/before his motions
Brady violations*

INT _____ N

STATE OF WASHINGTON,

Plaintiff,

v.

RONALD HODGE HOLTZ,

Defendant.

NO. 11-1-03845-1

**NOTICE OF APPEARANCE
DEMAND FOR DISCOVERY
DEMAND FOR SPEEDY TRIAL
MOTION FOR JOINDER OF OFFENSES**

TO: CLERK OF THE COURT, and
TO: PROSECUTING ATTORNEY

I. NOTICE OF APPEARANCE

YOU AND EACH OF YOU please take notice that Kent W. Underwood, Attorney at Law, hereby appears in the above-entitled cause on behalf of the above-named defendant and requests that all further papers and pleadings herein, except original process, be served upon the undersigned attorney at the address stated below.

II. DEMAND FOR DISCOVERY

The defendant hereby makes written demand for all discovery pursuant to CrR 4.7/CrRLJ 4.7, including but not limited to:

NOTICE OF APPEARANCE
DEMAND FOR DISCOVERY - 1

The Law Office of
KENT W. UNDERWOOD LLC
1111 Fawcett Ave., Suite 101
Tacoma, WA 98402
Phone (253) 627-2600
Fax (253) 591-7086

COPY

- 1 1. Copies of all forms, reports, notes, memoranda, or other documentation of law
2 enforcement personnel or other governmental agency generated by the investigation
3 resulting in this prosecution or that is otherwise pertinent to this case; including, but
4 not limited to, all drafts, control sheets indicating drafts and/or changes to the
5 master report;
- 6 2. The names, addresses, and phone numbers of any and all persons whom the
7 prosecuting authority intends to call as witnesses at hearing or trial, together with
8 any written or recorded statements and substance of any statements of such
9 witnesses;
- 10 3. Any and all written or recorded statements and the substance of any oral statements
11 made by the defendant, or co-defendant if the trial is to be a joint one, including
12 copies of any and all forms read to or signed by the defendant or codefendant;
- 13 4. The names and curriculum vitae of any experts consulted by the prosecuting
14 authority, or governmental agency investigating this matter, together with any
15 forms, reports, notes, memoranda, or other documentation or statements of such
16 experts made in connection with the particular case, including results of physical or
17 mental examinations and scientific tests, experiments, or comparisons, whether the
18 prosecuting authority intends to call such experts to give testimony or not;
- 19 5. Any and all books, papers, documents, photographs, or tangible objects which the
20 prosecuting authority intends to use at hearing or trial or which were obtained from
21 or belonged to the defendant;
- 22 6. Any record of prior criminal convictions known to the prosecuting authority of the
23 defendant and of persons whom the prosecuting authority intends to call as
24 witnesses at hearing or trial; **INCLUDING ALL 404(b) evidence.**

25

- 1 7. Any and all electronic surveillance, including wiretapping, of the defendant's
2 premises or conversations to which the defendant was a party and any record
3 thereof;
- 4 8. Any material or information within the prosecuting authority's knowledge which
5 tends to negate the defendant's guilt to the offense charged or to any material
6 element thereof, and any and all information indicating entrapment of the defendant;
- 7 9. Any and all affidavits, reports, statements, or other documentation or testimony
8 supporting the seizure of any evidence pertinent to this matter or supporting the
9 search of any area pertinent to this matter, and the results thereof;
- 10 10. Disclosures of the relationship to the prosecuting authority, if any, of any person
11 involved in the investigation of this matter or intended to be called as a witness at
12 hearing or trial of this matter;
- 13 11. Copies of any recordings or videotapes made of the defendant, including all
14 authorizations for such recordings;
- 15 12. A copy of any tape recording of all radio broadcasts and transmissions occurring
16 between the state trooper and/or officer who detained, arrested and/or transported
17 the defendant on the date of the alleged incident herein, and any other agency,
18 officer or station during the course of the detention, arrest, transportation, testing
19 and booking or charging of the defendant;
- 20 13. A copy of any tape recording of radio or telephone communications made over or
21 through the "911" system and relating to the identity, investigation, detention,
22 arrest and booking or charging of the defendant;
- 23 14. The defendant requests the State produce at trial the Criminalist who performed the
24 drug and/or chemical analysis, in the event the charge is any violation of the
25 Uniform Controlled Substances Act or any comparable County or City Code

September 20 2011 9:54 AM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-03845-1

vs.

RONALD HODGE HOLTZ,

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE

Defendant.

LORI KOOIMAN, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the FIFE POLICE DEPARTMENT, incident number 2011003461;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 19th day of September, 2011, the defendant, RONALD HODGE HOLTZ, did commit the crime of Domestic Violence Court Order Violation and Assault in the Fourth Degree.

Based on the report of Fife PD Officer Morales, they responded to the Sunshine Motel and contacted Clare Jane Strain. She acknowledged that her boyfriend, Ronald Holtz, hereinafter referred to as the defendant, became angry with her for having a drink with another occupant at the hotel. The defendant threw her purse out in the parking lot, she denied any assault. The defendant was contacted and placed under arrest. He was advised of his Miranda Rights. He admitted to a verbal argument, but denied assaulting Strain.

A witness who is employed at the hotel advised officers she observed the two arguing and they slammed the door when they saw her. Later she observed the defendant push Strain out the door. Strain walks with a cane.

The defendant has more than two convictions for violation of a court order. Lakewood Municipal Court entered a No Contact Order prohibiting the defendant from having any contact whatsoever with Strain. The order was entered under cause no. 11L000369 on the 13th of May, 2011. The order was signed by the defendant, his AKA of Ronald Holtz Keal. The order expires on the 13th of May, 2016.

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
2 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

3 DATED: September 20, 2011
4 PLACE: TACOMA, WA

5 /s/ LORI KOOIMAN
6 LORI KOOIMAN, WSB# 30370

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DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -2

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

Fife Police Department

Case Supplemental Information

Printed On: Tue, Sep 20, 2011

Description: Dispatch Notes		Sequence: 001	Report Date: 09/19/2011
Case Number: 2011003461	N C I C: WA0270700	Off Cd: 71011	Report Type: Notes
Officer: 204 - Deines, Ami	Approval Process:	Secured: No	
CSI Status: CAD Import	Status By: -	Status D/Tm: 09/19/2011 23:12	

Notes

Capture D/T: 09/19/2011 21:33:36 BY: areynolds Notes: PHYSICAL MALE AND FEMALE
 Capture D/T: 09/19/2011 21:34:40 BY: areynolds Notes: CLAIR JANE STRAIN 08151962
 Capture D/T: 09/19/2011 21:34:43 BY: areynolds Notes: NO MALE REG TO ROOM —
 Capture D/T: 09/19/2011 21:34:52 BY: areynolds Notes: UNKN WEAPONS
 Capture D/T: 09/19/2011 21:47:52 BY: areynolds Notes: OIC BY 744
 Capture D/T: 09/19/2011 21:47:56 BY: areynolds Notes: F IC BY 230
 Capture D/T: 09/19/2011 21:54:49 BY: areynolds Notes: TRANSPORTING 1 MALE TO FIFE JAIL
 Capture D/T: 09/19/2011 21:56:06 BY: areynolds Notes: ARR V FIFE JAIL W/ 1 MALE
 Capture D/T: 09/19/2011 22:00:19 BY: areynolds Notes: TRANSPORTING 1 F TO FIFE JAIL ON MILES 77.8
 Location: 3801 RM 116, PACIFIC HWY E;FIFE (38TH AVE E / 41ST AVE E)

CPI DETAILS
 Caller Name: CONNIE
 Caller Phone:
 Location:

Media

<u>Date</u>	<u>Identification</u>	<u>Narrative</u>
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Response Information

D T Nollified:	Weather:	Investigator:	-
D T Arrived:	Work Status:	Investigator Status:	
D T Completed:	How Received:	Lead Investigator:	-

Latent Info

Nbr Lifts:	Nbr Elimination:	Processing Status:	
Latent: No	Palms: No	Tire: No	Shoe: No
Smudge Cloth: No	Articles: No	V I N: No	
Video: No	Other: No		

Photographs

Death Info

Burglary Information



FIFE POLICE DEPARTMENT
STATEMENT FORM

FPD CASE NUMBER

11-3461

S R P V W O

LAST NAME

Elliott

FIRST NAME

Connie

MIDDLE NAME

Evans

ADDRESS: 3801 Pac Hwy E Apt 121

ZIP CODE: 98424

PLACE OF EMPLOYMENT: Sunshine Motel

DATE OF BIRTH: 03-05-64

HOME PHONE: (253) 926-0937

WORK PHONE: (253) 330-6702

On 9-19-11 about 9:30 PM I was cleaning a room on the second floor when heard an arguement I looked to observe 116 arguing they noticed me and slammed the door several moments later I was in the laundry room. I heard yelling again looked over at unit # 116 and observed Clare backing out of the room yelling the man then approached her and shoved her backwards at which ~~the~~ time I ran to the office and called fife police

I HAVE READ EACH PAGE OF THIS STATEMENT CONSISTING OF 1 PAGE(S), EACH PAGE OF WHICH BEARS MY SIGNATURE AND CORRECTIONS, IF ANY, BEAR MY INITIALS. I CERTIFY THAT THE FACTS CONTAINED HEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

DATE & PLACED SIGNED: 9-19-11 fife wa

Signature of Connie J. Elliott
SIGNATURE OF PERSON MAKING STATEMENT

WITNESS

PAGE 1 OF ___ PAGE(S)

Did not agree/sign stipulation
Rioting w/ WEAPON -
See ^{PASTA} ALIASES w/ no "RONALD HODGE HOLTZ"

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-03845-1

vs.

RONALD HODGE HOLTZ,

STIPULATION ON PRIOR RECORD
AND OFFENDER SCORE
(Plea of Guilty)

Defendant.

Upon the entry of a plea of guilty in the above cause number, charge DOMESTIC VIOLENCE COURT ORDER VIOLATION, the defendant RONALD HODGE HOLTZ, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions:

WASHINGTON STATE CONVICTIONS

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/ Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
ASSAULT 3	09/14/88	PIERCE, WA	07/13/88	A		C	1	FELONY
ROBBERY 2	09/14/88	PIERCE, WA	08/23/88	A		B	1	FELONY
ATT ROB 2	11/30/89	PIERCE, WA	10/09/89	A		C	1	FELONY
THEFT 1 ST DEG	12/03/90	PIERCE, WA	06/28/90	A		B	1	FELONY
ROBBERY 2	04/02/92	PIERCE, WA	04/19/91	A		B	1	FELONY
ROBBERY 1	01/05/94	PIERCE, WA	08/31/93	A		A	1	FELONY
ASSAULT 2	07/18/08	PIERCE, WA	05/18/07	A		C	1	FELONY
RIOT	05/18/11	PIERCE, WA	05/21/10	A		C	1	FELONY
COMM CUSTODY							1	FELONY
THEFT/RESIST/AS LT	UNKNOWN	TACOMA MUNI, WA	06/30/85	A	MISD			MISD
THEFT	UNKNOWN	TACOMA MUNI, WA	10/28/85	A	MISD			MISD
IMPERSONATION OF PEACE OFFICER	UNKNOWN	TACOMA MUNI, WA	02/02/87	A	MISD			MISD
INVOL	UNKNOWN	TACOMA MUNI, WA	12/01/87	A	MISD			MISD

STIPULATION ON PRIOR
RECORD - 1
jsprior.dot

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

1									
2	RESIST ARREST	UNKNOWN	TACOMA MUNI, WA	01/14/88	A	MISD			MISD
3	SIMPLE ASSAULT	06/21/88	PIERCE, WA	04/22/88	A	MISD			MISD
4	SHOPLIFT	UNKNOWN	TACOMA MUNI, WA	04/26/89	A	MISD			MISD
5	DUI	UNKNOWN	PIERCE, WA	02/06/07	A	MISD			MISD
6	RESIST ARREST	UNKNOWN	PIERCE, WA	05/18/07	A	MISD			MISD
7	DWLS	UNKNOWN	TACOMA MUNI, WA	08/17/07	A	MISD			MISD
8	DWLS	UNKNOWN	TACOMA MUNI, WA	03/31/08	A	MISD			MISD
9	ASSAULT	UNKNOWN	LAKEWOOD MUNI, WA	08/27/09	A	MISD			MISD
10	VPO	UNKNOWN	LAKEWOOD MUNI, WA	09/10/09	A	MISD			MISD
11	VPO	UNKNOWN	LAKEWOOD MUNI, WA	10/22/09	A	MISD			MISD
12	VPO	05/18/11	PIERCE, WA	07/20/10	A	MISD			MISD
13	ASSAULT 4 th	UNKNOWN	LAKEWOOD MUNI, WA	03/17/11	A	MISD			MISD

Concurrent conviction scoring:

CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
NONE KNOWN OR CLAIMED								

Concurrent conviction scoring:

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9	V	60 MONTHS		60 MONTHS	5 YRS/ \$10,000

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

The defendant further stipulates:

- Pursuant to *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt.

1 Defendant waives any such right to a jury determination of these factors and asks this
2 court to sentence according to the stipulated offender score set forth above.

3 2) That if any additional criminal history is discovered, the State of Washington may
4 resentence the defendant using the corrected offender score without affecting the validity
5 of the plea of guilty;

6 3) That if the defendant pled guilty to an information which was amended as a result of plea
7 negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the
8 State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced
or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such
later prosecution;

9 4) That none of the above criminal history convictions have "washed out" under RCW
10 9.94A.360(3)/9.94A.525 unless specifically so indicated.

11 If sentenced within the standard range, the defendant further waives any right to appeal or seek
12 redress via any collateral attack based upon the above stated criminal history and/or offender
score calculation.

13 Stipulated to this on the 21st day of September, 2012.

15 

16 Erica L M Eggertsen
17 Deputy Prosecuting Attorney
WSB # 40447

15 Refused to sign

16 RONALD HODGE HOLTZ

18 KENT W UNDERWOOD

WSB # 27250

20 mld

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-03845-1

vs.

JUDGMENT AND SENTENCE (FJS)

RONALD HODGE HOLTZ, aka RONALD HOLTZ KEAL

Defendant

- Prison RCW 9.94A.712 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline Mandatory Discretionary

SID: 12641502
DOB: 06/17/1966

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 09/06/2012 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	DOMESTIC VIOLENCE COURT ORDER VIOLATION/DV (147V)	26.52.020 26.50.110(S) 26.50.110 10.99.020			2011003461 FIFE POLICE DEPARTMENT

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the AMENDED Information

JUDGMENT AND SENTENCE (JS)

(Falcony) (7/2007) Page 1 of 12

- The State has pleaded and proved that the crime charged in Count(s) I involve(s) domestic violence.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	ASSAULT 3	09/14/88	PIERCE, WA	07/13/88	A	
2	ROBBERY 2	09/14/88	PIERCE, WA	08/23/88	A	
3	ATT ROE 2	11/30/89	PIERCE, WA	10/09/89	A	
4	THEFT 1 ST DEG	12/03/90	PIERCE, WA	06/28/90	A	
5	ROBBERY 2	04/02/92	PIERCE, WA	04/19/91	A	
6	ROBBERY 1	01/05/94	PIERCE, WA	08/31/93	A	
7	ASSAULT 3	07/18/08	PIERCE, WA	05/18/07	A	
8	RIOT	05/18/11	PIERCE, WA	05/21/10	A	
9	COMM CUSTODY					
10	THEFT/RESIST/ASLT	UNKNOWN	TACOMA MUNI, WA	06/30/85	A	MISD
11	THEFT	UNKNOWN	TACOMA MUNI, WA	10/28/85	A	MISD
12	IMPERSONATION OF PEACE OFFICER	UNKNOWN	TACOMA MUNI, WA	02/02/87	A	MISD
13	NVOL	UNKNOWN	TACOMA MUNI, WA	12/01/87	A	MISD
14	RESIST ARREST	UNKNOWN	TACOMA MUNI, WA	01/14/88	A	MISD
15	SIMPLE ASSAULT	06/21/88	PIERCE, WA	04/22/88	A	MISD
16	SHOPLIFT	UNKNOWN	TACOMA MUNI, WA	04/26/89	A	MISD
17	DUI	UNKNOWN	PIERCE, WA	02/06/07	A	MISD
18	RESIST ARREST	UNKNOWN	PIERCE, WA	05/18/07	A	MISD
19	DWLS	UNKNOWN	TACOMA MUNI, WA	08/17/07	A	MISD
20	DWLS	UNKNOWN	TACOMA MUNI, WA	03/31/08	A	MISD
21	ASSAULT	UNKNOWN	LAKEWOOD MUNI, WA	08/27/09	A	MISD
22	VPO	UNKNOWN	LAKEWOOD MUNI, WA	09/10/09	A	MISD
23	VPO	UNKNOWN	LAKEWOOD MUNI, WA	10/22/09	A	MISD
24	VPO	05/18/11	PIERCE, WA	07/20/10	A	MISD
25	ASSAULT 4 TH	UNKNOWN	LAKEWOOD MUNI, WA	03/17/11	A	MISD

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	2	V	60 MONTHS		60 MONTHS	5 YRS/ \$10,000

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 2 of 12

IDENTIFICATION OF DEFENDANT

SID No. 12641502 Date of Birth 06/17/1966
(If no SID take fingerprint card for State Parrol)

FBI No. 160448DA9 Local ID No. _____

PCN No. 540534454 Other _____

Alias name, SSN, DOB: RONALD HOLTZ KEAL; SHERRILL KEAL; MARK LAMONT GOODNIGHT;
LAMONT H GOODNIGHT; DONALD KEAL; MARK LAMONT GOOD;
RONALD H KEAL.

Race: Asian/Pacific Black/African-American Caucasian Hispanic Male
 Native American Other: Non-Hispanic Female

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously

I attest that I saw the same defendant who appered in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Donald E. [unclear] Dated: 9/21/12

DEFENDANT'S SIGNATURE: X Defendant refuses to sign

DEFENDANT'S ADDRESS: _____

- EXHIBIT -

- 4 -

- A) CrR 7.8 Insufficient charging document
violating Essential Elements Rule
 - B) REPLY BRIEF
 - C) Supplemental SAG Prosecutorial
misconduct / Brady violations
-

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON

Respondent

vs.

RONALD HODGE HOLTZ

Petitioner

CAUSE No. 11-1-03845-1

MOTION FOR RELIEF
FROM JUDGMENT

PURSUANT TO CR 7.8 et seq.

(CLERK'S ACTION REQUIRED)

I. - IDENTITY OF MOVANT -

Petitioner/Appellant Ronald Holtz, hereby moves this Court in a "MOTION FOR RELIEF FROM JUDGMENT" pursuant to CR 7.8

II. - FACTS OF CASE -

The Petitioner, Ronald Holtz, comes before this Court after a conviction for felony violation of a No Contact Order RCW 10.99.020 and RCW 26.50.110(5) on September 6, 2012, before Judge Kathryn J. Nelson, Dept #3, sentenced to 60 months on September 21, 2012 in Department of Corrections and is timely within RCW 10.73.090 & .100 one year.

III. ARGUMENT

A. CONSTITUTIONALLY DEFICIENT COMPLAINTS OF NO CONTACT ORDER VIOLATIONS

The Petitioner/Appellant, Ronald Holtz, challenges the validity of the prior misdemeanor complaints and Superior Court of Pierce County Judge Kathryn J. Nelson, Dept. #13 use of information in order to substantiate prior convictions and current charges.

These were used for initial charge on 9/19/11, conviction by jury trial September 4th, 5th, 6th, 2012 and at 9/21/12 sentencing where he was sentenced to the maximum of 60 months in the Department of Corrections by way of insufficiently defective and unconstitutional charging documents, complaints and information.

Thus, rendering Mr. Holtz, conviction invalid upon its face.

- LAKEWOOD MUNICIPAL COURT -

EXH. #1	No. 9L-1035	10/16/09 (amended complaint)	VNCO
EXH. #2	No. 9L-1035	9/11/09 (original complaint)	VNCO
EXH. #3	No. 9L-1203	10/23/09	VNCO
EXH. #4	No. 9L-1000	8/31/09	2 DV ASSAULT
EXH. #5	No. 11L-0369	3/17/11	2 DV ASSAULT

- PIERCE COUNTY SUPERIOR COURT -

EXH. #6	No. 10-1-02212-2	9/19/11 corrected 7/20/10	VNCO
EXH. #7	No. 11-1-03845-1	7/20/10 corrected 9/19/11	VNCO

The violation of No Contact orders plainly fail to describe the conduct that, in fact, violated the order nor do they adequately state the required elements of the crime.

STATE V. TAYLOR, 140 Wn.2d 229, 237, n.32, 996 P.2d 571 (2000).

STATE V. BARRERA, 147 Wn.2d 353, 360, 58 P.3d 245 (2002). The "essential elements rule" requires that a charging document allege facts supporting every element of the offense, in addition to adequately identifying the crime charged. Form, requisites, and sufficiency. Omitting an essential element from the charging document violates a defendant's due process right to be informed of the charges. U.S.C.A. Const. Amend. 14; WEST'S RCWA Const. Art. 1 § 3.

When a charging document is not challenged until after the verdict, the reviewing court decides whether there is at least some charging language that gives notice of the allegedly missing elements and whether there was actual prejudice to the defendant.

see; CITY OF BOTHELL V. KAISER, 152 WASH. APP. 466, 217 P.3d 339 (2009).

Defendant charged with misdemeanor violation of a no-contact order was not required to show that he was prejudiced by omission, from citation which also served as a complaint because it was signed and issued by a prosecutor, of information sufficient to identify the order he allegedly violated, in order to obtain dismissal of the complaint because it failed to satisfy the due process requirement of informing him of the essential elements of the charge.

The due process requirement of informing defendant of the essential elements of the charge; amended complaint merely stated that defendant knowingly violated a no-contact order and that the order contained a statement that a violation of its terms was a criminal offense and would subject defendant to arrest, and amended complaint merely cited the relevant statutes, but amended complaint did not identify the order by stating the date or court of issuance, or by naming the protected person. U.S.C.A. Const. Amend. 14; WEST'S RCWA Const.

ART. 1.83, RCWA 26.50.110; CrRLJ 2.1(2)(2). [SEE; EXH. #1 Amended Complaint No. 9L1035.]

The Birth date of "Deborah Arlene Keal" is not present on the Complaint 10/16/09, placing in question the exact identification of this person. Also, this was a violation of a pre-trial (NCO) which merely constituted "Contempt RCW 7.21.050(b); JAGUES V. SHARP, 83 Wn. 532, 922 P.2d 145 (1996) RCW 26.50.060(b) CrRLJ 3.2 is a misdemeanor when knowingly violated, see; Also STATE V. ARTHUR, 126 Wn. App. 243, 108 P.3d 169 (2005). It is not an element of a Felony offense.

In reflection of the current case where Complaint No. #9L1035 fails to provide the Birth date of the alleged victim; IN STATE V. LEACH 113 WASH. 2d 679, 695, 782 P.2d 552 (1989). Leach also held that a complaint for public indecency was defective because it omitted the victim's age, an "essential elements rule" simply requires that the complaint "be a plain, concise and definite written statement of the essential facts constituting the offense charged." IF A MISDEMEANOR CITATION OR COMPLAINT omits a statutory element of the charged offense, the document is constitutionally defective for failure to state an offense and is subject to dismissal!

In CITY OF SEATTLE V. TERMAIN, 124 Wn. App. 798, 103 P.3d 209 (Wash. App. Div. 1, 2004) where the Superior Court reversed, review was granted to prosecution but reversal was affirmed. THE COURT HELD: THAT A COMPLAINT ALLEGING A MISDEMEANOR VIOLATION OF A DOMESTIC VIOLENCE ORDER MUST IDENTIFY THE ORDER ALLEGED TO HAVE BEEN VIOLATED, OR MUST INCLUDE OTHER SUFFICIENT FACTS TO APPRISE THE DEFENDANT OF THE ACTIONS SUPPORTING THE CHARGES TO SATISFY THE ESSENTIAL ELEMENTS RULE. AS WE EXPLAINED: IN DOMESTIC VIOLENCE CASES, THE CULPABLE ACT NECESSARY TO ESTABLISH THE VIOLATION OF A NO-CONTACT ORDER IS DETERMINED BY THE SCOPE OF THE PREDICATE ORDER. THE NO-CONTACT ORDER IS ESSENTIAL TO THE CRIME CHARGED AND HAD TO GUESS AT THE CRIME HE WAS ALLEGED TO HAVE COMMITTED. TERMAIN'S HELD THAT "WHERE THERE IS NO REFERENCE TO

the identity of the victim or to the underlying domestic violence order or facts of the crime, the information lacks an essential element." Further, "Elements of the charged crime and the conduct of the defendant which is alleged to have constituted the crime must be found within the four corners of the charging document."

Observing Exhibits 1, 2, 3, 6, & 7, you will find that nowhere in the four corners of these documents "Complaints" for no contact violations, will you even vaguely see elements of the charged crime or the conduct alleged to constitute the crime.

Therefore, these documents can not be used to substantiate prior (NCO) violations and must be dismissed as well as this current conviction/sentence of 60 months.

Further, see RCW 10.99.040(2)(c) "By January 11, 2011, the Administrative Office of the Courts shall develop a pattern form for all no-contact orders issued under this chapter. A no-contact order issued under this chapter must substantially comply with the pattern form developed by the Administrative Office of the Courts." So, it is plain that prior to this date, fore mentioned, that all contact orders and complaints were defective and not in compliance with law. In light of these facts all Petitioners/Appellants must be dismissed.

B. CONSTITUTIONALLY DEFECTIVE AND INSUFFICIENT CHARGING DOCUMENTS

The defective and insufficient Lakewood Municipal Court Complaints and information are considered "charging documents" merely for Arguendo Exhibits #4 & 5 No. #9L-1000 and No. #11L-0369 both lack the conduct alleged to constitute the crime but all elements as a requirement for a charging document. As these documents are examined upon their prima facie value, they in turn render the current Judgment and sentence invalid.

See, STATE V. FRANKS, 150 Wn.App. 950, 22 P.3d 269 (Wash. App. Div. 1 2001)

Information that fails to state the essential elements of the charged crime raises an issue that can be considered on appeal despite the lack of an objection below, but the issue raised is lack of due process, not lack of jurisdiction. U.S.C.A. Const. Amend. 14; RCWA Const. Art. 4 § 6.

When a defendant challenges the charging document for the first time on appeal, the Appellate Court must liberally construe all of the information in the document in favor of validity. Test to determine the sufficiency of a charging document has two prongs: (1) whether the necessary facts appear in any form, or by fair construction can be found, in the charging document; and, if so, (2) whether the defendant can show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice. In determining, on a challenge to the sufficiency of a charging instrument, whether the necessary facts appear in any form, or by fair construction can be found, court looks at the face of the document only; the information must be written in such a manner as to enable persons of common understanding to know what is intended. Reviewing court asked to determine the sufficiency of a charging instrument does not reach the second prong of the test if, upon scrutiny of the document under the first prong, the necessary elements are not found or fairly implied; in that case, prejudice is presumed. The two crucial prongs: (1) inaccuracies in charging instrument. (2) It was his sister's name not defendant's throughout the body of information amounted to failure to include a necessary fact.

A charging document must include all essential elements of a crime Taylor, 140 Wn.2d at 236. This essential elements rule is grounded in the Federal and state constitutional requirements that criminal defendants be informed of the accusations against them. The United States Constitution provides: that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation U.S. Const. Amend VI.

The Washington Constitution contains a similar provision. In criminal prosecutions the accused shall have the right to demand the nature and cause of the accusation against him (and to have a copy thereof Const. Art. I sec. 22. Also, as established by Court Rule, the initial pleading by the state in all criminal proceedings is to be plain, concise and definite written statement of the essential facts constituting the offense charged. CrR 2.1(a)(1).

All essential elements of a crime must be included in the charging document, so as to apprise the defendant of the charges against him and to allow him to prepare a defense. *State v. Hooper*, 118 Wn. 2d 151, 155 (1992). As one can examine the four corners of the exhibits presented this basic fundamental yet, critical elements are missing and even under closer scrutiny with liberal intent, the simple description of an event to display conduct is most certainly not present to satisfy the constitutional requirement.

MR. Holtz, constitutional rights have most surely been abridged on all counts.

The standard of review for evaluating the sufficiency of a charging document is determined by the time at which the motion challenging its sufficiency is made. *Taylor*, 140 Wn. 2d at 237. When a charging document is challenged for the first time after the verdict, it is to be liberally construed in favor of validity. *State v. Kjorsvik*, 117 Wn. 2d 93, 102 (1991). In contrast, however when an information is challenged before the verdict, the charging language must be strictly construed. In *State v. Vanderpen*, 125 Wn. 2d 782, 791 (1995). A strict construction case where the charging document was challenged just after the state rest its case, the court of appeals held that the remedy for an information's failure to include the essential element of premeditation was reversal of the defendant's attempted first degree murder charge. The Vanderpen court stated, "merely citing to the proper statute and naming the offense is insufficient to charge a crime unless the name of the offense

apprises the defendant of all essential elements of the crime. *Id.* At 787. This essential elements rule requires the defendant be apprised of the elements of the crime charged, and the "conduct" of the defendant which is alleged to have constituted that crime, citing *State v. Leach*, 113 Wn.2d 679, 782 P.2d 552 (1989) IF the state fails to do so, the defendant's constitutional rights of notice, and due process are violated and a new trial is required. The defendant must be notified of what elements the state intends to prove, see *State v. Rouse*, 66 Wn.2d 552, 556 (1965) (expressly connecting what must be alleged, with what must be proved), *State v. Atkins*, 156 Wn. App. 799, 807 (2010). In recent decisions the only just remedy by law is dismissal.

IV. - CONCLUSION -

The Petitioner/Appellant, Ronald Holtz, prays the just remedy by law be granted in light of the unconstitutionally deficient complaints and information that they be dismissed enabling the modification of this 60 month sentence, as they are deficient and invalid upon their fact, rendering this conviction/sentence the same.

THIS 18th, DAY OF SEPTEMBER, 2013.

sui juris:


RONALD HOLTZ

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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

RONALD HOLTZ,

Petitioner

No. 43995-6-II

PETITIONER'S REPLY TO STATE'S
RESPONSE

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. ISSUE RAISED ON THE FIRST TIME ON APPEAL "PRESUMPTION OF PREJUDICE DOCTRINE" AND "MANIFEST ERROR" RAP 2.5(A)(3), CONSTITUTIONAL MAGNITUDE.
2. THE CHARGING DOCUMENT, INFORMATION, ACCUSATION, AND STATEMENT IS CONSTITUTIONALLY INADEQUATE TO GIVE NOTICE VIOLATING "ESSENTIAL ELEMENTS RULE."
3. DOES SUBSTANTIAL EVIDENCE EXIST FOR A FACTUAL FINDING & RAP 16.14(b) AND SPECIAL RULE FOR ORDER ON SUMMARY JUDGMENT? RAP 9.12.

B. STATUS OF PETITIONER:

Petitioner, Ronald Holtz, is restrained pursuant to a Judgment and sentence entered in Pierce County Cause No. 11-1-03845-1. He has

Petitioner's Reply To
STATE'S RESPONSE

Filed A direct Appeal of his conviction, #43995-6-II, on September 24th, 2013, Petitioner Filed A Motion For Relief From Judgment pursuant to CrR 7.8 and was transferred on September 26, 2013 by Superior Court Judge Kathryn Nelson pursuant to CrR 7.8(c)(2) to Division II Court of Appeals No. #45427-1-II AS A (PRP) October 11, 2013. on or about October 23, 2013, Petitioner filed an Objection to transfer due to its "RECHARACTERIZATION" of which the Court of Appeals Acting Chief Judge denied on November 13, 2013.

The state claims Petitioner was convicted of Felony violation of A No-Contact Order (NCO) and ASSAULT in the Fourth degree. In the contrary, this is incorrect as the Judgment & Sentence will show only the (NCO) violation.

C. ARGUMENT:

1. ISSUE RAISED ON THE FIRST TIME ON APPEAL "PRESUMPTION OF PREJUDICE DOCTRINE" AND "MANIFEST ERROR" RAP 2.5 (A)(3), CONSTITUTIONAL MAGNITUDE.

Petitioner proceeds to state the standard of review of A CrR 7.8 motion transferred to the Appellate court AS A (PRP). "A motion in trial court for relief from judgment, order, or proceeding is the functional equivalent of A (PRP) in the Court of Appeals. (In some cases) emphasis STATE V. MADSEN, 153 WASH. APP. 471, 228 P.3D 24 (2009).

SEE; STATE V. SANDOVAL, 171 Wn.2d 163 (2011). Ordinarily, A personal restraint petitioner alleging constitutional error must show actual and substantial prejudice. SEE In RE Pers. Restraint of Lord, 152 Wn.2d 182, 188, 94 P.3d 952 (2004). This actual and substantial prejudice standard does not apply when the petitioner has not had a prior opportunity to appeal the issue to a disinterested judge. SEE In RE Pers. Restraint of Grantham, 168 Wn.2d 204, 214, 227 P.3d 285 (2010). However, if some other showing of

prejudice is required by the law underlying the petitioner's claim of constitutional error, the petitioner must make the requisite showing of prejudice. *Id.* at 214-15. Sandoval had to bring a (PRP) to meet his burden of proving ineffective assistance of counsel because his counsel's advice does not appear in the trial court record. See *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). ("IF A DEFENDANT WISHES TO RAISE ISSUES ON APPEAL THAT REQUIRE EVIDENCE OR FACTS NOT IN THE RECORD OR EXISTING TRIAL RECORD, THE APPROPRIATE MEANS OF DOING SO IS THROUGH A PERSONAL RESTRAINT PETITION, WHICH MAY BE FILED CONCURRENTLY WITH THE DIRECT APPEAL"). *Grantham*, 168 Wn.2d at 214. Sandoval, has not already had an opportunity to appeal to a disinterested judge. Thus, does not have to show actual prejudice; has only burden to show he's entitled to relief for one of the reasons listed in RAP 16.4(c). See *Grantham*, 168 Wn.2d at 214. For Ineffective Assistance of Counsel based on an Attorney's Advice during the plea bargaining process. See *Pedilla v. Kentucky*, ___ U.S. ___, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010); *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Counsel "Kent Underwood," did in fact, raised the issue of prior charging documents used to substantiate prior violations in order to constitute a third For a Felony (NCO) violation. Also, the birth date missing in Lake Wood Municipal Court charging document No. *911035 used as one in the prior history. Defendant Holtz did not stipulate either. Sept. 4, 2012 - Pg. 107 line 7-19. In transcripts.

However, a party may raise an error for the first time on appeal if it is a manifest error affecting a constitutional right. As this court recently held in *State v. Grimes*, 165 Wn. App. 172, 185-86, 267 P.3d 454 (2011) (citing *State v. O'Hara*, 167 Wash.2d 91, 98, 217 P.3d 756 (2009), rev. den., 175 Wash.2d 1010, 287 P.3d 594 (2012)), for this RAP 2.5(a)(3) exception to apply.

see History For Manifest Error Found in: *State v. Beetrand*, 165 Wn. App. 393, 267 P.3d 511 (Wash. App. Div. 2 2011); For instance, in 1861, when "Washington" still included the whole of Idaho and parts of Colorado and Montana, the Supreme Court of the Washington Territory decided *Blumberg v. McNear*, 1 Wash. Terr. 141 (1861). In this wharfage case, Blumberg petitioned

For a mistrial because the trial court refused to give his proposed jury instructions. Justice Oliphant's opinion noted,

These instructions are not properly before the Court, not having been excepted to at the time. When a party wishes the action of the Court below to be reviewed upon a writ of error, for refusing or granting a new trial -- to the admission or rejection of evidence -- refusing to give instructions prayed for -- or to the charge of the Court, he must except or object, as the case may be, at the time, and have the same noted by the judge, or else they will not be regarded by the Supreme Court.

Blumberg, 1 Wash. Terr. at 141-42 (emphasis added)

see "PLAIN ERROR" - Thus, 115 years before the adoption of RAP 2.5(a)(3), absent a contemporaneous objection at trial, an appellate court could not properly review an assignment of error. And, although the Blumberg Court did not address whether an appellate court could review a manifest error raised for the first time on appeal, in Williams v. Ninemire, 23 Wash. 393, 63 P. 534 (1900), the court did review an erroneous jury instruction not objected to at trial that, in effect, directed a [165 Wn. App. 408] verdict against the appellant. Thus, the exception allowing review of an error raised for the first time on appeal for "manifest error affecting a constitutional right," long existed before the adoption of RAP 2.5(a)(3).

RAP 2.5(a)(3), in 1976, the Washington Supreme Court handed down over 50 cases that, in one way or another, addressed "manifest error". Black's Law Dictionary dates the first English usage of "manifest error" to the 18th century and describes it as:

"[A]n error that is plain and undisputable, and that amounts to a complete disregard of the controlling law or credible evidence in the record."

Black's Law Dictionary 622 (9th ed. 2009). Review of over 100 years of Washington jurisprudence confirms this. Constituting

REVERSIBLE ERROR. In *STATE v. Phillips*, 59 Wash. 252, 259, 109 P. 1047 (1910).
For instance, the Supreme Court stated;

"The Aid of Counsel is guaranteed by the Constitution to EVERY PERSON ACCUSED OF A CRIME, AND THIS IS UNIVERSALLY RECOGNIZED AS ONE OF THE SUREST SAFEGUARDS AGAINST INJUSTICE AND OPPRESSION. ANY CONDUCT OR STATEMENT ON THE PART OF THE COURT THAT TENDS TO IMPAIR THE INFLUENCE OR DESTROY THE USEFULNESS OF COUNSEL IS PALPABLE AND MANIFEST ERROR."

And in *Sawley v. Spokane Falls & Northern Railway Co.*, 27 Wash. 536, 538-89, 67 P. 1094 (1902), the pervasive usage of the term is made clear:

"And in support of their position, [Counsel Argues] that an assignment of error is an assignment of ignorance, for error implies ignorance; that to charge gross, palpable, or manifest error, - terms which are commonly found in briefs filed in appellate courts, - is to charge uncommon error, which is uncommon ignorance; and that to say that the action of the court was an "extra judicial assumption of power" was to say that the judge assumed to decide that which did not belong to the judge to determine."

(Emphasis Added.) In *McLain v. Easley*, 146 Wash. 377, 381-82, 264 P. 714 (1928), The Supreme Court went so far [165 Wn. App. 409] as to recognize its own manifest error on a motion for reconsideration.

IF AN APPELLANT SUCCESSFULLY SHOWS THAT THE UNPRESERVED TRIAL ERROR IS BOTH CONSTITUTIONAL IN MAGNITUDE AND MANIFEST, IN THAT IT HAD PRACTICAL AND IDENTIFIABLE CONSEQUENCES BELOW, THE BURDEN THEN SHIFTS TO THE STATE TO PROVE THAT THE ERROR WAS HARMLESS UNDER CHAPMAN STANDARD.

beyond a reasonable doubt. RAP 2.5(A)(3). *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824 (U.S. Ct. 1967). A party may raise an error for the first time on appeal if it is a manifest error affecting a constitutional right. As this court recently held in *State v. Girmes*, 165 Wn. App. 172, 185-86, 267 P.3d 454 (2011). (citing *State v. O'Hara*, 1167 Wash. 2d 91, 98, 217 P.3d 756 (2009), Rev. den., 175 Wash. 2d 1010, 287 P.3d 594 (2012)), for this RAP 2.5(A)(3) exception to apply.

Petitioner is entitled to review even though the trial court record does support the mere stated phrases in objection with the raising of issue by counsel briefly and defendant's objections to stipulate to the invalid upon their face charging documents, from Lake-wood and Pierce County. Even if it had not been, constitutional issues of such magnitude under the "presumption of prejudice doctrine" and "manifest error" have the right to be brought for the first time on appeal for review in light of "Plain Error" as well.

2. THE CHARGING DOCUMENT, INFORMATION, ACCUSATION AND STATEMENT IS CONSTITUTIONALLY INADEQUATE TO GIVE NOTICE VIOLATING "ESSENTIAL ELEMENTS RULE."

Petitioner properly raised the issue of constitutionally deficient complaints of no contact order violations (NCO) and defective and insufficient charging documents in his CrR 7.8 motion to the Pierce County Superior Court. As represented by counsel whom, in fact, did briefly refer to the prior charging documents which defendant's refusal to stipulate to due to deeming (esp.) No. 9L-1035 as insufficient because of missing the birth date, counsel informed him that it was an issue only to be raised on appeal which during research defendant discovered, *City of Bothell v. Kaiser*, 152 Wash. App. 466, 217 P.3d 339 (2009). Defendant charged with misdemeanor violation of a no-contact

order was not required to show that he was prejudiced by omission, from citation which also served as a complaint because it was signed and issued by a prosecutor, of information sufficient to identify the order he allegedly violated, in order to obtain dismissal of the complaint because it failed to satisfy the due process requirement of informing him of the essential elements of the charge. (Also cited; CITY OF SEATTLE V. TERMAIN, 124 Wn. App. 798, 103 P.3d 209 (Wash. App. Div. 1 2004); STATE V. ARTHUR, 126 Wn. App. 243, 108 P.3d 169 (2005); STATE V. BARRERO, 147 Wn.2d 353, 360, 58 P.3d 245 (2002); STATE V. LEACH, 113 WASH. 2d 679, 689, 782 P.2d 552 (1989).

The due process requirement of informing defendant of the essential elements of the charge; amended complaint merely stated that defendant knowingly violated a no-contact order and that the order contained a statement that a violation of its terms was a criminal offense and would subject defendant to arrest, and amended complaint merely cited the relevant statutes, but amended complaint did not identify the order by stating the date or court of issuance, or by naming the protected person. U.S.C.A. Const. Amend. 14; West's RCWA Const. Art. 1 § 3, RCWA 26.50.110; CrLJ 2.1 (A)(2).

- LAKEWOOD MUNICIPAL COURT -

I) Exh. #1 & #2, No. 9L-1035 (VNCO) (original complaint) 9/11/09 and (amended complaint) 10/16/09. Both are deficient charging documents which only cite the statutes but does not describe the conduct or particular circumstance that violated that law satisfying the "essential elements" requirement. The amended complaint 10/16/09 is deficient as the birth date is omitted. devoid of notice

II) Exh. #3, No. 9L-1203 (VNCO), 10/23/09. does not cite the nature of conduct/circumstance nor particular circumstances constituting the violation and/or crime other than citing the statute which violates notice and essential elements doctrine.

III) Exh. #4, No. #9L-1000, 4 DV ASSAULT, 8/31/09, This charging document is AS deficient by merely citing statute without the specific conduct described in order to define this specific crime by the "Essential Elements", violated the law.

IV) Exh. #5, No. #11L-0369, 4 DV ASSAULT, 3/17/11, This charging document is deficient with no plain, concise written statement of the Essential Facts constituting the offense charged and does not meet the "Essential Element Rule" requirement.

V) Exh. #6, - PIERCE COUNTY SUPERIOR COURT -

No. #10-1-02212-2 (VNCO), 7/20/10, does not cite the nature of accusation/conduct nor particular circumstances in a plain and concise written statement of the essential facts constituting the offense charged nor provide notice in satisfying the "Essential Elements" Rule.

VI) Exh. #7, No. #11-1-03845-1 (VNCO), 9/19/11, This charging document is deficient by merely citing statute without the specific conduct described in order to define this specific crime by the "Essential Elements" rule requirement and is, thus, "invalid upon its face."

The state is only responding to No. #9L-1035 and #11L-0369. Then is Non-Responsive on charging documents of numbers #9L-12-03, #9L-1000, #10-1-02212-2, and #11-1-03845-1 of which Petitioner moves to strike any response and grant relief on these, being they were cited in initial briefing.

Petitioner states that in order to capture the body of the argument of the case in chief one must delv into the history for the true sake of Arguendo being case in point. The First Washington case

to overturn a conviction due to the insufficiency of the charging document was LEONARD V. TERRITORY, 2 WASH. TERR. 381, 7 P. 872 (1885). In holding that the indictment was insufficient to sustain a charge of murder, the Court specifically rejected an argument that the missing element could be inferred from the language of the indictment. Under our laws an indictment must be direct and certain, both as regards the crime charged and as regards the particular circumstances thereof, when they are necessary to constitute a complete crime.

The state has relied upon STATE V. KJORSVIK and STATE V. LEACH. Again petitioner will cite both for acquiescence, as in STATE V. KJORSVIK, 812 P.2d 86, 117 Wn.2d 93 (Wash. 1991) the following is found: [117 Wn.2d 98]

In the case of STATE V. LEACH, 113 WASH. 2D 679, 689, 782 P.2D 552 (1989), we recently stated that "the 'essential elements' rule requires that a charging document allege facts supporting every element of the offense, in addition to adequately identifying the crime charged." This core holding of LEACH requires that the defendant be apprised of the elements of the crime charged and the conduct of the defendant which is alleged to have constituted that crime. LEACH explains that merely reciting the statutory elements of the crime charged may not be sufficient. Because statutory language may not necessarily define a charge sufficiently to apprise an accused with reasonable certainty of the nature of the accusation against that person, so that the accused may prepare a defense and plead the judgment as a bar to any subsequent prosecution for the same offense, mere recitation of the statutory language in the charging document may be inadequate.

[117 Wn.2d 99] LEACH, 113 WASH. 2D AT 688, 782 P.2D 552. WE HAVE RECENTLY REITERATED THAT IT IS SUFFICIENT TO CHARGE IN THE LANGUAGE OF A STATUTE IF THE STATUTE DEFINES THE OFFENSE WITH CERTAINTY.

CONCLUSION, ALL ESSENTIAL ELEMENTS OF A CRIME, STATUTORY OR OTHERWISE MUST BE INCLUDED IN A CHARGING DOCUMENT IN ORDER TO AFFORD NOTICE.

to AN ACCUSED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM. THIS CONCLUSION IS BASED ON CONSTITUTIONAL LAW AND COURT RULE. CONST. ART 1, § 22 (AMEND. 10) PROVIDES IN PART:

"In criminal prosecutions the ACCUSED shall have the right... to demand the NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM,..." [117 Wn.2d 98]

U.S. Const. Amend. 6 provides in part:

"In all criminal prosecutions, the ACCUSED shall... be informed of the NATURE AND CAUSE OF THE ACCUSATION;..."

CrR 2.1(b) provides in part that,

"the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged."

The following most recent cases dealing with misdemeanors and felonies, all contain the same language of insufficient and/or defective charging document. The "essential element rule" STATE V. COCHRANE, 253 P.3d 95, 160 Wn. App. 18 (Wash. App. Div. 1 2011) (DUI prior misdemeanors were used to establish a felony with an insufficient charging document). STATE V. JOHNSON, 297 P.3d 710, 172 Wn. App. 112 (Wash. App. Div. 1 2012) (Information charging unlawful imprisonment was constitutionally deficient). STATE V. RIVES, 278 P.3d 686, 168 Wn. App. 882 (Wash. App. Div. 2 2012) (Element of malicious mischief missing constituting an insufficient and defective charging document). (WE REVIEW CHALLENGES TO THE SUFFICIENCY OF A CHARGING DOCUMENT DE NOVO). STATE V. PHUONG, 299 P.3d 37, 174 Wn. App. 494 (Wash. App. Div. 1 2013) (A charging document is constitutionally adequate only if all the essential elements of a crime are included in the charging document).

Petitioner states that the cases of RAISER, LEACH, AND COCHRANE specifically deal with prior misdemeanor defective information/charging documents used to establish a current felony charge, where if the prior are invalid so is the current conviction as well as the cur-

-ent. insufficiencies invalidating the Felony charging documents.

Just like in Leach the omitting of the victim's age is similar to Lakewood Municipal Court No. #9L-1035 and Keiser as the amended Complaint failed to relate back. These coupled with TERMAIN, Kjorsvik, Borrero, Sutherland, Cochrane, Johnson, Rivas, and Phuong Sum up No. 61 #9L-1203, #9L-1600, #11L-0369, #10-1-02212-2, and #11-1-03845-1 by addressing the essence of the issue. These charging documents and/or Complaints are a "Plain Error" by their construction being defective in violation State, Federal Constitution and law. The "Essential Elements Rule" requires that a charging document allege facts supporting every element of the offense, in addition to adequately identifying the crime charged. The Petitioner is entitled to relief as a matter of law with "Plain Error" constituting a Manifest Injustice to be dismissed with prejudice as the remedy.

3. DOES SUBSTANTIAL EVIDENCE EXIST FOR A FACTUAL FINDING RAP 16.14(b) AND SPECIAL RULE FOR ORDER ON SUMMARY JUDGMENT RAP 9.12?

Petitioner cites that Counsel for the State misinterprets the Doctrine of this case and history, as the body of the Factual argument literally sums up to the law of the case doctrine. This is simply that the failure to include all elements with facts supporting the offense, in addition to adequately identifying the crime charged, constitutes a insufficient or defective Complaint or charging document. This violates the "Essential Elements" Rules which is a Manifest and Plain Error, reviewed de novo on the first time on appeal. "Substantial Evidence", as a standard for Factual Findings in personal Restraint petition (PRP) reference hearings, exists when the record contains evidence of sufficient quantity to persuade a fair-minded, rational person that the declared premise is true. RAP 16.14(b). In lieu of the facts presented with Plain Error as the

Presumption of prejudice doctrine has automatically attached, viewing the Constitutional Magnitude, Petitioner must seek remedy pursuant to RAP 9.12's Special Rule For Order on Summary Judgment For the Petitioner based upon the merit of Facts.

D. CONCLUSION:

The information in this case with exhibits and argument based in law that the Complaints/charging documents are factually deficient not only were they objected to but irregardless can be raised for the first time on appeal. Petitioner requests reversal, vacate, and dismissal with prejudice.

DATED: February 24, 2014.



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PETITIONER'S REPLY TO
STATE'S RESPONSE

MUNICIPAL COURT FOR THE CITY OF LAKEWOOD
COUNTY OF PIERCE, STATE OF WASHINGTON

CITY OF LAKEWOOD,)
)
 Plaintiff,)
)
 vs.)
)
 KEAL, Ronald H,)
 DOB: 6/17/1966,)
)
 Defendant.)

NO. 9L1000
COMPLAINT

FILED

AUG 31 2009

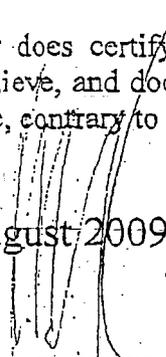
LAKEWOOD MUNICIPAL
COURT

The City of Lakewood, a municipal corporation of the State of Washington, does hereby accuse the above-named defendant of the crime of Assault in the Fourth Degree, Domestic Violence, a gross misdemeanor, contrary to Section 9.14.900 of the Lakewood Municipal Code, which incorporates by reference RCW 9A.36.041, and against the peace and dignity of the City, committed as follows:

On or about 8/27/2009, within the corporate boundaries of the City of Lakewood, the defendant did intentionally touch or strike in a harmful or offensive manner another person, Deborah Arlene KEAL, DOB: 6/17/1959; and Furthermore, the defendant did commit the above crime against a family or household member; contrary to Revised Code of Washington 10.99.020.

The undersigned city prosecutor does certify, under penalty of perjury, that the city prosecutor has reasonable grounds to believe, and does believe that the above-named defendant committed the offense(s) described above, contrary to City Ordinance and law.

Dated this 31st day of August 2009.



- Heidi Ann Wachter, City Attorney, WSBA #18400
- Michael McKenzie, Asst. City Attorney, WSBA #23258
- Anita Booker-Hay, Asst. City Attorney, WSBA #23409
- Matthew S. Kaser, Assoc. City Attorney, WSBA# 32239

Lakewood Municipal Court

The document to which this certificate is attached is a full true and correct copy of the original on file and of record in my office same having been filed

Attest Nov 2 2011
By [Signature] clerk

MUNICIPAL COURT FOR THE CITY OF LAKEWOOD
COUNTY OF PIERCE, STATE OF WASHINGTON

CITY OF LAKEWOOD,)
)
Plaintiff,)
vs.)
)
KEAL, Ronald Holtz)
DOB: 6/17/1966,)
Defendant.)

NO. 9L1035
AMENDED COMPLAINT

FILED
OCT 16 2009
LAKEWOOD MUNICIPAL
COURT

The City of Lakewood, a municipal corporation of the State of Washington, does hereby accuse the above-named defendant of the crime of Violation of Order (Domestic Violence), a gross misdemeanor, committed as follows

That on or about, 9/10/2009, the above-named defendant did, within the corporate boundaries of the City of Lakewood, State of Washington, did unlawfully violate the terms of a court order issued pursuant to RCW 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, and/or 74.34, by willfully having contact with Deborah Arlene KEAL when such contact was prohibited by such court order(s), to wit: Lakewood Municipal court No Contact Order No. 9L1000 and/or Pierce County Protection Order No. 09-2-03248-9, and after having had actual notice of the existence of the court order(s) contrary to RCW 26.50.110(1) (which has been adopted by Section 9.26.900 of the Lakewood Municipal Code) and against the peace and dignity of the City; and Furthermore, the defendant did commit the above crime against a family or household member, contrary to Revised Code of Washington 10.99.020.

(Maximum Penalty For First or Second Offense—One (1) year in jail or \$5,000 fine, or both, pursuant to RCW 26.50.110(1) and RCW 9.92.020, plus restitution, assessments and court costs.)

The undersigned city prosecutor does certify, under penalty of perjury, that the city prosecutor has reasonable grounds to believe, and does believe that the above-named defendant committed the offense(s) described above, contrary to City Ordinance and law.

Dated this 16th day of October 2009.

- Heidi Ann Wachter, City Attorney, WSBA #18400
- Michael McKenzie, Asst. City Attorney, WSBA #23258
- Anita Booker-Hay, Asst. City Attorney, WSBA #23409
- Matthew S. Kaser, Assoc. City Attorney, WSBA# 32239

Lakewood Municipal Court
The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office same having been filed
Attest _____
By _____
2009

MUNICIPAL COURT FOR THE CITY OF LAKEWOOD
COUNTY OF PIERCE, STATE OF WASHINGTON

CITY OF LAKEWOOD,)	NO. 9L1035
)	
Plaintiff,)	COMPLAINT
)	
vs.)	
)	
KEAL, Ronald Holtz,)	
DOB: 6/17/1966,)	
)	
Defendant.)	

FILED
SEP 11 2009
LAKEWOOD MUNICIPAL
COURT

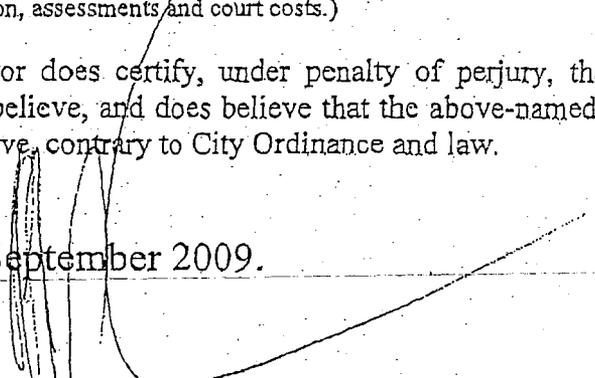
The City of Lakewood, a municipal corporation of the State of Washington, does hereby accuse the above-named defendant of the crime of Violation of Order (Domestic Violence), a gross misdemeanor, committed as follows

That on or about, 9/10/2009, the above-named defendant did, within the corporate boundaries of the City of Lakewood, State of Washington, did unlawfully violate the terms of a court order issued pursuant to RCW 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, and/or 74.34, by willfully having contact with Deborah Arlene KEAL, DOB: 6/17/1959, when such contact was prohibited by such court order(s), to wit: Lakewood Municipal Court No Contact Order No. 9L1000, and after having had actual notice of the existence of the court order(s) contrary to RCW 26.50.110(1) (which has been adopted by Section 9.26.900 of the Lakewood Municipal Code) and against the peace and dignity of the City; and Furthermore, the defendant did commit the above crime against a family or household member, contrary to Revised Code of Washington 10.99.020.

(Maximum Penalty For First or Second Offense—One (1) year in jail or \$5,000 fine, or both, pursuant to RCW 26.50.110(1) and RCW 9.92.020, plus restitution, assessments and court costs.)

The undersigned city prosecutor does certify, under penalty of perjury, that the city prosecutor has reasonable grounds to believe, and does believe that the above-named defendant committed the offense(s) described above, contrary to City Ordinance and law.

Dated this 11th day of September 2009.



- Heidi Ann Wachter, City Attorney, WSBA #18400
- Michael McKenzie, Asst. City Attorney, WSBA #23258
- Anita Booker-Hay, Asst. City Attorney, WSBA #23409
- Matthew S. Kaser, Assoc. City Attorney, WSBA# 32239

Lakewood Municipal Court
The document has been filed and this certificate is attached is a full true and correct copy of the original on file and of record in my office same having been filed
test _____
_____ 20 11

IN THE MUNICIPAL COURT OF THE CITY OF LAKEWOOD
PIERCE COUNTY, STATE OF WASHINGTON

CITY OF LAKEWOOD,

Plaintiff,

Vs.

KEAL Ronald Holtz
DOB: 6/17/1966,

Defendant.

No. 11L0369

COMPLAINT

MUNICIPAL COURT

MAR 18 2011

FILED

COMES NOW, the Plaintiff, City of Lakewood, by and through the undersigned attorney and hereby alleges that contrary to the form, force and effect of the ordinances and/or statutes in each case made and provided and against the peace and dignity of the City of Lakewood, that the above-named defendant did commit the following offense(s) -

Count I

Assault In The Fourth Degree (Domestic Violence) - RCW 9A.36.041

On or about 3/17/2011, within the corporate boundaries of the City of Lakewood, the defendant did assault another person, Clare Jane STRAIN, DOB: 8/15/1962; and Furthermore, the defendant did commit the above crime against a family or household member, contrary to Revised Code of Washington 10.99.020; all in violation of RCW 9A.36.041.

NE

(Maximum Penalty - One (1) year in jail or \$5,000.00 fine, or both, pursuant to RCW 9A.36.041(2) and 9A.20.021(2), plus restitution, assessments and court costs.)

(Mandatory Penalty - Upon conviction, the defendant may not possess, own, or have under their control any firearm unless the right to do so is restored by a superior court in Washington State, and by a federal court if required. The defendant must immediately surrender any concealed pistol license. RCW 9.41.040.)

The undersigned city attorney does certify, under penalty of perjury, that the city attorney has reasonable grounds to believe, and does believe that the above-named defendant committed the offense(s) described above, contrary to City Ordinance and law.

Dated this 18 day of March 2011.

- Heidi Ann Wachter, City Attorney, WSBA #18400
- Michael McKenzie, Asst. City Attorney, WSBA #23258
- Anita Booker-Hay, Asst. City Attorney, WSBA #23409
- Matthew S. Kaser, Assoc. City Attorney, WSBA# 32239

Lakewood Municipal Court
The document to which this certificate is attached is a full true and correct copy of the original on file and of record in my office same having been filed
Attest: [Signature] Clerk
2011



CITY OF LAKEWOOD
Legal Department
6000 Main Street
Lakewood, WA 98499
(253) 589-2489 FAX (253) 589-3774

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-03845-1

vs.

RONALD HODGE HOLTZ,

Defendant.

INFORMATION

DOB: 6/17/1966
PCN#: 540534454

SEX : MALE
SID#: 12641502

RACE: BLACK
DOL#: WA HOLTZRH345LP

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse RONALD HODGE HOLTZ of the crime of DOMESTIC VIOLENCE COURT ORDER VIOLATION, committed as follows:

That RONALD HODGE HOLTZ, in the State of Washington, on or about the 19th day of September, 2011, did unlawfully and feloniously violate the terms of a court order issued pursuant to RCW 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34, by willfully having contact with Clare Jane Strain when such contact was prohibited by a court order, to wit: Lakewood Municipal Court Cause No. 11L000369, and after having had actual notice of the existence of the court order, and that further, the defendant has two previous convictions for violating orders issued under chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, 74.34, or a valid foreign protection order as defined in RCW 26.52.020, thereby invoking the provisions of RCW 26.50.110(5) and increasing the classification of the crime, contrary to RCW 26.50.110 and 26.50.110(5), a domestic violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse RONALD HODGE HOLTZ of the crime of ASSAULT IN THE FOURTH DEGREE, a crime of the same or similar character, and/or a crime based on the same

INFORMATION- 1

1 conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or
2 so closely connected in respect to time, place and occasion that it would be difficult to separate proof of
3 one charge from proof of the others, committed as follows:

4 That RONALD HODGE HOLTZ, in the State of Washington, on or about the 19th day of
5 September, 2011, under circumstances not amounting to assault in the first, second, or third degree, or
6 custodial assault, did unlawfully, intentionally assault Clare Jane Strain, contrary to RCW 9A.36.041(1)
and 9A.36.041(2), a domestic violence incident as defined in RCW 10.99.020, and against the peace and
dignity of the State of Washington.

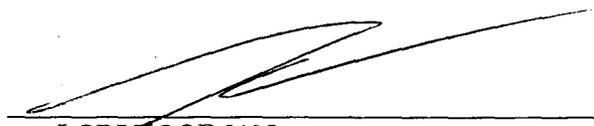
7 DATED this 20th day of September, 2011.

8 FIFE POLICE DEPARTMENT
WA02707

MARK LINDQUIST
Pierce County Prosecuting Attorney

9
10 lak

By:



LORI KOOIMAN
Deputy Prosecuting Attorney
WSB#: 30370

September 20 2011 11:09 AM

Pierce County Clerk

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO.: 11-1-03845-1

vs.

RONALD HODGE HOLTZ

Defendant.

Domestic Violence No-Contact Order

(orncpd)

PENDING DISPOSITION

SID NO.: 12641502

Date of Birth: 06/17/1966

Sex: MALE

Eyes: BROWN

Race: BLACK

Weight: 225lbs.

Height: 5'9"

Expires on: Sep 20, 2016

(Clerk's Action Required)

1. Based upon the certificate of probable cause and/or other documents contained in the case record, testimony, and the statements of counsel, the court finds that the defendant has been charged with, arrested for, or convicted of a domestic violence offense, and further finds that to prevent possible recurrence of violence, this Domestic Violence No-Contact Order shall be entered pursuant to chapter 10.99 RCW.

This order protects: CLARE JANE STRAIN, Date of Birth 08/15/1962.

2. The court further finds that the defendant's relationship to the person protected by this order is **CURRENT OR FORMER DATING RELATIONSHIP.**

It is Ordered:

Defendant is ***Restrained*** from:

- A. Causing or attempting to cause physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking the protected person(s).
- B. Coming near and from having any contact whatsoever, in person or through others, by phone, mail or any means, directly or indirectly, except for mailing or service of process of court documents by a 3rd party or contact by defendant's lawyers with the protected person(s).
- C. Entering or knowingly coming within or knowingly remaining within **1000 ft** of the protected person'(s) residence, school, place of employment.
- D. Obtaining, owning, possessing or controlling a firearm.

It Is Further Ordered:

Warnings to the Defendant: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

Willful violation of this order is punishable under RCW 26.50.110. Violation of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or RCW 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury in another person is a class C felony. Also, a violation of this order is a class C felony if the defendant has at least two previous convictions for violating a protection order issued under Titles 7, 10, 26, or 74.

If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, the defendant may be subject to criminal prosecution in federal court under 18 U.S.C. § 2261, 2261A, or 2262.

In addition to the state and federal prohibitions against possessing a firearm upon conviction of a felony or a qualifying misdemeanor, upon the court issuing a no-contact order after a hearing at which the defendant had an opportunity to participate, the defendant, if a spouse or former spouse, a parent of a common child, or a current or former cohabitant as intimate partner of a person protected by this order, may not possess a firearm or ammunition for as long as the no-contact order is in effect. 18 U.S.C. § 922(g). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. If the defendant is convicted of an offense of domestic violence, the defendant will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); RCW 9.41.040.

You can be Arrested even if the Person or Persons who Obtained the Order Invite or Allow 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 upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the 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 Law Enforcement Agency where the case is filed, which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

This No-Contact Order Expires On September 20, 2016, or until modified or terminated by the court.

Done in Open Court in the presence of the Defendant: September 20, 2011.

Electronically signed by
/s/ MEAGAN M. FOLEY
Judge/Commissioner

RONALD HODGE HOLTZ
Defendant
Defendant Refused to Sign.

A completed law enforcement information sheet must be attached for identification purposes by the police or sheriff.

September 20 2011 11:09 AM

Pierce County Clerk

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

STATE OF WASHINGTON,

Plaintiff

No. 11-1-03845-1

vs.

RONALD HODGE HOLTZ

Defendant

**ORDER ESTABLISHING CONDITIONS OF
RELEASE PENDING PURSUANT TO CrR 3.2
(orecrp)**

Arresting Agency : FIFE POLICE DEPARTMENT

Incident Number : 2011003461

Charges

- DOMESTIC VIOLENCE COURT ORDER VIOLATION
- ASSAULT IN THE FOURTH DEGREE

THE COURT HAVING found probable cause, establishes the following conditions that shall apply pending in this cause number or until entry of a later order; IT IS HEREBY ORDERED

Release Conditions:

- Defendant shall be released upon execution of a surety bond in the amount of \$50,000.00 or posting cash in the amount of \$50,000.00.

*****NEW BAIL*****

Conditions that take effect upon release from custody:

- Defendant is to reside/stay only at this address **2011 E 57TH ST TACOMA, WA 98404 USA**
- Travel is restricted to the following counties **Pierce, King, Thurston, and Kitsap Counties.**
- The defendant is not to drive a motor vehicle without a valid license and insurance.
- Defendant is to keep in contact with the defense attorney.

Conditions that take effect immediately:

- Defendant is to have no violations of the criminal laws of this state, any other state, any political subdivision of this state or any other state, or the United States, during the period of his/her release.
- That the Defendant have no contact with the alleged victim(s), witness(es), co-defendant(s). This includes any attempt to contact, directly or indirectly, by telephone and/or letter at their residence or place of work.

- Defendant shall not possess weapons or firearms.
- Defendant shall not consume or possess alcohol or non prescription drugs, or associate with any known drug users or sellers.
- Remain in contact with the defense attorney.

Dated : September 20, 2011.

Electronically Signed By
/s/MEAGAN M. FOLEY
JUDGE/COMMISSIONER

I agree and promise to appear before this court or any other place as this court may order upon notice delivered to me at my address stated below or upon notice to my attorney. I agree to appear for any court date set by my attorney and I give my attorney full authority to set such dates. I understand that my failure to appear for any type of court appearance will be a breach of these conditions of release and a bench warrant may be issued for my arrest. I further agree and promise to keep my attorney and the office of Prosecuting Attorney informed of any change of either my address or my telephone number.

I have read the above conditions of release and any other conditions of release that may be attached. I agree to follow said conditions and understand that a violation will lead to my arrest. FAILURE TO APPEAR AFTER HAVING BEEN RELEASED ON PERSONAL RECOGNIZANCE IS AN INDEPENDENT CRIME, PUNISHABLE BY 5 YEARS IMPRISONMENT OR \$10,000 OR BOTH (RCW 10.19).

Address: **2011 E 57TH ST TACOMA, WA 98404 USA**

Phone: **(253) 475-0162**

Defendant Refused to Sign.

MUNICIPAL COURT
 Lakewood University Place
6000 Main Street S.W.
Lakewood, WA 98499
(253) 512-2258 Fax (253) 512-2267

COURT ORDER

TAPE # _____
DPA mk
ATTY Euenhoelter

DEFENDANT <u>Keal, Ronald H</u>		AKA
ADDRESS	BIRTHDATE <u>6/17/66</u>	In Custody <input checked="" type="checkbox"/>
CITY, STATE, ZIP	TELEPHONE NUMBER	Probable Cause YES <input type="checkbox"/> NO <input type="checkbox"/>
I will notify the court of any change of address within 24 hrs		Jail Time Consecutive <input type="checkbox"/> Concurrent <input type="checkbox"/>

Case No.	Charge / Section / BAC	Amended to	Dispo	Jail Time	Jail Susp	Credit Time Stud.	Fine	Fine Susp	\$
1. <u>11L3109</u>	<u>ASS + UN - DV</u>		<u>6</u>	<u>365</u>	<u>365</u>	<u>0</u>	<u>5000</u>	<u>500</u>	<u>500</u>
2. <u>9L1000</u>	<u>ASS + UN - DV</u>		<u>Rev</u>	<u>-</u>	<u>violation</u>	<u>Found</u>	<u>release</u>		
3. <u>9L1035</u>	<u>prot ord VID</u>		<u>Rev</u>		<u>release</u>				
4. <u>9L1203</u>	<u>prot ord VID</u>		<u>Rev</u>		<u>release</u>				
5.									
6.									

YOU MUST PAY FINE/COST/FEES OF \$ 500 BY 8/20/11 OR SET UP ACCT WITH SIGNAL PRIOR DO _____ HOURS OF COMMUNITY SERVICE IN LIEU OF \$ _____ FILE PROOF OF COMPLETION BY _____

BAIL FIXED AT \$ _____ CASH/BOND RELEASE IMMEDIATELY PR'D _____

BAIL BOND: EXONERATED REINSTATED CASH BAIL REFUNDED TO POSTER RETAIN \$ _____ AS _____

DETOX PROOF BY _____ OR REPORT TO JAIL _____

REPORT TO JAIL ON _____ @ _____ FIFE JAIL PIERCE COUNTY JAIL PHOTO ID REQUIRED

COURT JURISDICTION IS EXTENDED UNTIL 5/13/16

- YOU ARE ORDERED AS FOLLOWS:**
- Do not drive without valid license and insurance
 - Have law abiding behavior
 - No mood altering substances without prescription
 - Comply with terms and conditions of probation
 - Have no similar incidents
 - Have no alcohol/drug related offenses
 - Have no criminal traffic convictions
 - No refusal of BAC
 - No consumption of drugs/alcohol
 - Comply with attached/ existing
 - No Contact Order / Protection Order
 - SOAP Order SODA Order
 - Have no hostile contact with Clare Strain / Keal
 - Abide by all previously imposed conditions
 - Do not relocate out of state without prior court approval
 - Do not possess firearms pending disposition until rights restored
 - Screen for public defender by _____
 - Direct appointment to the public defender

YOU MUST COMPLETE THE FOLLOWING WITH WRITING:

File monthly status reports _____

Anger management class 8 hour 16 hour _____

Defensive driving school Level 1 Level 2 _____

Alcohol/Drug assessment Recommended treatment _____

Alcohol/Drug information school (ADIS) _____

Batterer's assessment and any recommended treatment _____

Consumer awareness program _____

Report to court by 7/20/11

Testing at health department _____

Mental health evaluation _____

Attend Sober Support meetings _____ per week

Victim Impact Panel Domestic Violence DUI _____

Other conditions: _____

YOU MUST REPORT TO MUNICIPAL COURT FOR Probation Work Crew EHM on _____

@ _____ FAILURE TO COMPLY WILL RESULT IN WARRANT FOR YOUR ARREST

9L1000 - violation found sanctions reserved - city's rec - 170 days credit for 57 will consider credit against inpatient

* NCO can be received when in compliance with court conditions

Appearance at hearing waived if in compliance with all court conditions. (Verify with court prior to hearing.)

You must return to Court on May 8/5/11 at 8:30 am/pm FOR Sentencing/Review

You must return to Court on _____ at _____ am/pm FOR _____

You must return to Court on _____ at _____ am/pm FOR _____

I have read and understand all conditions contained on both sides of this order: _____

DONE IN OPEN COURT 5/13/11

[Signature] COURT [Signature] JUDGE

The document attached to which this certificate is attached is a full true and correct copy of the original on file and of record in my office. Same having been filed by _____ ATTORNEY AT LAW _____ 2011 clerk

MUNICIPAL COURT
MAY 13 2011
Clare Strain / Keal

COURT ORDER

TAPE 10#7-42
 DPA ABH
 ATTY BSMH (DE)

DEFENDANT Yeal, Ronald H AKA _____
 ADDRESS _____ BIRTHDATE 6-17-1966 In Custody
 CITY, STATE, ZIP _____ TELEPHONE NUMBER _____ Probable Cause YES NO
 I will notify the court of any change of address within 24 hrs. Jail Time Consecutive Concurrent

Case No.	Charge / Section / BAC	Amended to	Dispo	Jail Time	Jail Susp	Credit Time Svcd	Fine	Fine Sust	\$
1. <u>9L1035</u>	<u>Protect. Ord. 1101</u>		<u>G</u>	<u>365</u>	<u>365</u>		<u>500</u>	<u>500</u>	<u>0</u>
2.									
3. <u>9L-1000</u>	<u>4th Assault DV</u>		<u>G</u>	<u>365</u>	<u>3A</u>	<u>46</u>	<u>5000</u>	<u>4000</u>	<u>1000</u>
4.									
5.									
6.									

YOU MUST PAY FINE/COST/FEE OF \$ 1000 BY 1-5-2010 OR SET UP ACCT WITH SIGNAL PRIOR
 DO _____ HOURS OF COMMUNITY SERVICE IN LIEU OF \$ _____ FILE PROOF OF COMPLETION BY _____
 BAIL FIXED AT \$ _____ CASH/BOND RELEASE IMMEDIATELY PR'D _____
 BAIL BOND: EXONERATED _____ REINSTATED _____ CASH BAIL REFUNDED TO POSTER _____ RETAIN \$ _____ AS _____
 REPORT TO JAIL ON _____ @ _____: _____ DETOX PROOF BY _____
 COURT JURISDICTION IS EXTENDED UNTIL 10-22-2011 **FILED**

YOU ARE ORDERED AS FOLLOWS:

- Do not drive without valid license and insurance
- Have law abiding behavior
- No mood altering substances without prescription
- Comply with terms and conditions of probation
- Have no similar incidents
- Have no alcohol/drug related offenses
- Have no criminal traffic convictions
- No refusal of BAC
- No driving after consuming drugs/alcohol
- Comply with attached / existing
- No Contact Order / Protection Order
- SOAP Order SODA Order
- Have no hostile contact with _____
- Abide by all previously imposed conditions
- Do not relocate out of state without prior court approval
- Do not possess firearms pending disposition until rights restored
- Screen for public defender by _____
- Direct appointment to the public defender

OCT 22 2009

LAKEWOOD MUNICIPAL COURT

YOU MUST COMPLETE THE FOLLOWING WITH WRITING OF TO COURT BY 1-5-2010
 File monthly status reports
 Anger management class 8 hour 16 hour
 Defensive driving school Level 1 Level 2
 Alcohol/Drug assessment Recommended treatment
 Alcohol/Drug information school (ADIS)
 Anger management evaluation and any recommended treatment
 Batterer's assessment and any recommended treatment
 Consumer awareness program
 Victim testing at health department
 Mental health evaluation
 Psychosexual evaluation and program
 Attend Sober Support meetings _____ per week
 Victim Impact Panel Domestic Violence DUI
 Other conditions: _____

YOU MUST REPORT TO LAKEWOOD MUNICIPAL COURT FOR Probation Work Crew EHM on _____
 FAILURE TO COMPLY WILL RESULT IN WARRANT FOR YOUR ARREST

Def may file comparable evaluation (Alcohol) from Doctor
mind plea entered

Def advised to have strict compliance w/ No contact order or jail
to be imposed regardless of medical conditions.
 Appearance at hearing waived if in compliance with all court conditions. (Verify with Court prior to hearing.)

You must return to Court on 1-14-2010 at 9:00 am/pm FOR Review th compliance
 You must return to Court on _____ at _____ am/pm FOR _____
 You must return to Court on _____ at _____ am/pm FOR _____

I have read and understand all conditions contained on both sides of this order: 12/21/08 DONE IN OPEN COURT 10-22-2009
Ewert Hey

The original is a full true and correct copy of the attached to which this certificate is attached. This original on file and correct copy of the attached to which this certificate is attached. Some having been filed.

FIFE MUNICIPAL COURT
 3737 PACIFIC HIGHWAY EAST
 FIFT WASHINGTON 98424
 PHONE: (253) 92-6635
 FAX: (253) 926-5135 www.cityoffife.org to make credit card payment

COURT ORDER

PROBABLE CAUSE
 YES NO

Public Defender Appointed/Standby
 Interpreter: _____

CASE NO	CHARGE(S)	AMENDED TO	DISPOSITION	JAIL TIME IMPOSED	JAIL TIME SUSPENDED	CREDIT FOR TIME SERVED	CODES
1. C 23221	Disorderly Conduct		G	30			
2. C 27306	NiO soap/soda order		G	30			
3. C 27306	NiO soap/soda order		G	30			
4. C 29641	use/del drug paraphen.		Dismissal - no				
5. C 29641	NiO soap/soda order		Dismissal - no				

YOU MUST PAY \$ _____ (Plus any previously imposed costs). Due today or contact Clerk for time payment arrangement. See Cost Sheet
 Contact Alliance One and arrange a payment plan. Jurisdiction until 10-25-11

YOUR JAIL STATUS Released

Authorized Bail: \$ _____ Cash Only Cash/bond And / Or Electronic Monitoring w/ alcohol sensor (at your expense)
 Ball Bond # _____ exonerated/reinstated Ball Bond # _____ exonerated/reinstated
 Cash ball refunded to poster Retain \$ _____ cash bail as _____

THIS CASE CONTINUED with / without stipulation to facts sufficient and with / without finding until _____
 Upon compliance Dismissal Amended to _____
 Upon non-compliance Reading of Record and Sentencing Local Bail Forfeiture policy. Close upon payment in full.

Your license will be suspended for _____ days / years through the Department of Licensing.

YOU ARE ORDERED AS FOLLOWS:

- Do not drive without valid driver's license and insurance
- No criminal law charges.
- Comply with terms and conditions of deferred prosecution/ treatment
- Have no alcohol/drug related charges.
- Have no criminal traffic charges
- No positive test results for alcohol or non-prescription drugs

- DO NOT drive a motor vehicle if a test of your breath/blood would result in a positive reading of alcohol or drugs w/in 4 hours of driving.
- DO NOT refuse to submit to a test of your breath or blood to determine alcohol concentration upon the lawful request of a law enforcement officer.
- SOAP SODA --- (see map)
- No Contact Order ordered / recalled / remains
- File monthly status reports (treatment)

YOU MUST COMPLETE THE FOLLOWING WITH WRITTEN PROOF TO THE COURT BY _____

- Obtain valid vehicle insurance reduce to \$ _____
- Obtain a valid driver's license
- Defensive driving school Level 1 / Level 2
- Alcohol/Drug assessment and recommended treatment
- Alcohol/Drug Information School (ADIS)
- Anger management evaluation and recommended treatment
- DV Assessment and recommended treatment
- Clear outstanding warrants
- HIV testing at health department
- Mental health evaluation
- Work crew _____ days in lieu of \$ _____ fine/jail _____
- Pay restitution: \$ _____ to _____
- Attend Alcoholics/Narcotics Anonymous meetings _____ per week
- Victim Impact Panel DUI _____ DV _____
- Apply for Ignition Interlock license through Department of Licensing
- Provide proof of financial support by _____

IF APPLYING FOR PUBLIC DEFENDER, APPLICATION AND SUPPORTING DOCUMENTS MUST BE FILED WITHIN 2-WEEKS PRIOR TO NEXT HEARING

Defendant shall return to court on _____ at _____ AM / PM for _____ Transport on _____ from _____ Jail
 Defendant shall return to court on _____ at _____ AM / PM for _____ Transport on _____ from _____ Jail

Defendant need not appear if in compliance

COMPLIANCE WITH THIS ORDER WILL BE MONITORED BY THE PROBATION ADMIN DIVISION. ICAOS

probation (interdicted)

I understand that if I fail to comply with all conditions of this order or fail to appear for any subsequent court hearing, the court may issue a warrant for my arrest, my drivers license may be suspended, and additional costs and/or jail time may be imposed. Any balance owing may be sent to a collection agency if I fail to pay as scheduled. I have read the rights, conditions, and warnings on the back.

DONE IN OPEN COURT 070810

White
 JUDGE/PRO-TEM
 WHITE - Original

36793
 ATTORNEY
Clare Strain
 DEFENDANT
 PINK-Defendant

CANARY - Counsel

GOLDENROD - Other

COURT OF APPEALS DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

RONALD HODGE HOLTZ,
Appellant,

No. 43995-6-II

SUPPLEMENTAL BRIEF
TO STATEMENT OF
ADDITIONAL GROUNDS
(SAG)

I. - INTRODUCTION -

Appellant Ronald Holtz, moves this Court in a Supplemental (Motion) BRIEF TO STATEMENT OF ADDITIONAL GROUNDS.

II. - STATEMENT OF FACTS -

Appellant Files this brief incorporating all arguments, evidence, documents, exhibits, and reflecting upon the records cited to (SAG) Filed JUNE 17th or THEREAFTER 2013.

III. ARGUMENT

MR. HOLTZ WAS DEPRIVED OF A FAIR TRIAL BY MULTIPLE BRADY VIOLATIONS WHICH PREJUDICED PROCEEDINGS.

Appellant Ronald Holtz contends that distinct ensued by his being deprived of exculpatory evidence that was timely requested by him and if not for the state's failure to provide in discovery, it more likely than not would have change the outcome of proceedings. Mr. Holtz, filed an in depth motion for discovery on March 16, 2012 where he requested; the motel surveillance video, record of Holtz at Fife jail, 9-1-1 call record, information for interview of Fife jail officer "Larkins". This would prove that officer Morales falsely stated that "Mr. Holtz" was linked to A.K.A. "Keat" by dispatch, no contact order with name on it, that he was taken to Fife to be identified by officer Larkins, and that he did not push "Clare Strain". Thus, it would have changed the outcome of the June 4, 2012 hearing by defense to dismiss for lack of probable cause CrR 3.5 & 3.6. see; Findings and Conclusions on Admissibility of Evidence CrR 3.5 & 3.6 by Judge J. McCarthy Pg. #1 Ln. 19-21 where officer Morales testimony is alleged to be, "honest, credible, accurate, reasonable, and without bias or prejudice". see; Pg. #4 Ln. 11-13 IF alleges this is how Mr. Holtz was identified. However, later this would be proven to be untrue yet, if proper discovery had been obtained or released and/or truth told Mr. Morales could have been discredited or impeached at the 6/4/12 hearing. [6/11/12 Pg. #1 Ln. 1-12; Pg. #5 Ln. 11-25; Pg. #6 Ln. 3-22; Pg. #9 Ln. 22-25; Pg. #10 Ln. 1-17; & Pg. #18 Ln. 6-25 - Judge Confirms witness Pg. #22 Ln. 8-21 discovery request Filed Pg. #1-13, 9/6/12, Pg. #367 Ln. 1-25 & Pg. #368 Ln. 1-16, 8/9/12 -

Pg. #3 Ln. 5-11; Pg. #8 Ln. 17-25; Pg. #9 Ln. 1-25; Pg. #10 Ln. 9-10.] THESE ARE JUST A FEW OF THE DATED TRANSCRIPTS THAT ATTEST TO THE FAILURE TO COMPLY WITH ITS OBLIGATION TO DISCLOSE EVIDENCE WHICH WAS A GROSS MISCARRIAGE OF JUSTICE AND A VIOLATION OF DEFENDANT'S RIGHT TO DUE PROCESS OF LAW. WASH. ST. CONST. ART. 1 § 3, ART. 1 § 22.

STATE V. NORRIS, 157 Wn. App. 50, 236 P.3d 225 (WASH. APP. DIV. 2 2010). LET US REASON THAT THERE CANNOT BE A CAD REPORT WITHOUT A DISPATCH NOR A DISPATCHES RESPONSE WITHOUT A 9-1-1 CALL.

The United States Supreme Court has since held that there is a duty to disclose such evidence even when there has been no request by the accused, United States v. Agurs, 427 U.S. 97, 107, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976), and that the duty encompasses impeachment evidence as well as exculpatory evidence, United States v. Bagley, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985). Significant evidence known only to police investigators, In RE Stenson, 174 Wn. 2d 474, 276 P.3d 286 (WASH. 2012).

Significantly, "[t]here are three components of a true Brady violation: the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is [174 Wn. 2d 487] impeaching; that evidence must have been suppressed by the state, either willfully or inadvertently; and prejudice must have ensued." Id., at 281-82, 119 S. Ct. 1936. With respect to the third Brady factor, the terms "material" and "prejudicial" are used interchangeably see; United States v. Price, 566 F.3d 900, 911 n. 12 (9th Cir. 2009).

CASE IN POINT THAT PROSECUTORS HORIBE, SEEVERS, AND EGGERTSEN, HAD AN OBLIGATION TO DIVULGE THE TRUTH, IN ORDER TO UPHOLD JUSTICE NOT TO SUPPRESS, EXCLUDE, OR HIDE IT FOR A MERE EGO'S GAIN OF A WIN, AS IF BUT A GAME. THE SCOPE OF STATE'S DUTY UNDER BRADY AND DUE PROCESS PRINCIPLES TO DISCLOSE EVIDENCE FAVORABLE TO THE DEFENDANT INCLUDES THE INDIVIDUAL PROSECUTOR'S DUTY TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO THE OTHERS ACTING ON THE GOVERNMENT'S BEHALF INCLUDING

the police, U.S.C.A. Const. Amend. 14. A major issue of disclosure is if Prosecutor E. Eggertsen had disclosed all discovery requested in information as well as admitted prior to 6/4/12 and trial that "Mr. Holtz" was not linked to "Mr. Keal" until 9/19/11 at 11:56 pm upon being booked into Pierce County jail officers Morales and Peterson's credibility, testimony, and statements would have been used prior to trial to impeach, moving to dismiss. Showing that they did not know who he was and proved that he had in fact been arrested to be identified at Five Police station. She only admits this in closing argument [9/6/12 Pg. #356 Ln. 20-22]

However, Ms. Eggertsen did not produce this fact at trial either. DEFENSES questioning of Fingerprint Specialist Kimberly Howard" on [9/4/12 - Pg. #85 Ln. 7-18; 22-25; Pg. #86 Ln. 1-14 & 19; Pg. #104 Ln. 20-25 (Ln. 9); Pg. #105 Ln. 10-25; Pg. #106 Ln. 1-25 specifically Ln. 19-25]. This was not disclosed as she allowed officers Morales and Peterson to give false testimony as she did herself in efforts to conceal the truth. A showing of materiality, in context of a claimed Brady violation is not a sufficiency of evidence test, and, thus, does not require demonstration by a preponderance of the evidence test, that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal. Question of materiality, in context of a claimed Brady violation, is not whether the defendant would more than likely not have received a different verdict with the undisclosed evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. To prove materiality, in context of a claimed Brady violation, defendant must show there is a reasonable probability that, had the evidence been disclosed to the defense, the result of proceedings would have been different, with "reasonable probability" of a different result being shown when the government's evidentiary suppression undermines confidence in the outcome of the trial.

The Factors of a Brady claim relating to whether the evidence

AT ISSUE IS FAVORABLE TO THE ACCUSED AND WHETHER THAT EVIDENCE WAS SUPPRESSED BY THE STATE ARE FACTUAL QUESTIONS.

IT IS PLAIN TO VIEW THAT THE FAILURE TO PRODUCE CRITICAL/CRUCIAL EXCULPATORY EVIDENCE "DISCOVERY" DID EFFECT THE OUTCOME OF PRIOR 3.5 & 3.6 HEARING AND ULTIMATELY TRIAL. THIS CHIEFLY DUE TO THE FACT THAT OFFICER'S TESTIMONY BEING CREDIBLE WAS A MAJOR ISSUE IN WHICH DECISIONS OF THE JUDGE AND JURY DEPENDED UPON. AS THE MATERIALITY OF SUCH FALSE STATEMENTS TAKE US INTO ANOTHER ASPECT LEADING FROM BRADY

PROSECUTORIAL MISCONDUCT AND IMPACHED FALSE TESTIMONY

Appellant in light of the Brady violations displaying an aspect being failure to inform defense of exculpatory evidence with impeachment of perjured testimony and its prejudicial effect being a materiality issue on appeal in the context of "Reasonable Probability" of this changing the outcome of the trial.

ONE NEED NOT PONDER WHETHER PROSECUTORS WERE AWARE OF THE FALSE TESTIMONIES OF WITNESSES FLORALEZ, PETERSON, AND ELLIOTT OR THEIR MISLEADING EFFECTS UPON JUDGE(S) AND JURY. FROM TESTIMONY OF FINGERPRINT EXPERT KIMBERLY HOWARD TO PROSECUTOR'S CLOSING ARGUMENT THAT MR. HOLTZ WAS TAKEN TO PIERCE COUNTY JAIL WHERE HE WAS BOOKED, FINGERPRINTED, AND IDENTIFIED. [9/6/12 Pg. #356 Ln. 20-22] THIS WAS NOT ADMITTED UNTIL CLOSING ARGUMENT THOUGH THE DISCOVERY WOULD HAVE PROVED THIS WITHOUT HER ADMISSION. OFFICERS CLAIMED MR. HOLTZ WAS LINKED TO "MR. KEAL" BY DISPATCH, WHEN HE WAS NOT BOOKED UNTIL 11:56 AM NOR WAS EITHER NAMED LINKED FOR "HOLTZ" HAD NEVER BEEN FINGERPRINTED BY A.F.I.S. UNDER THIS NAME AS STATED BY "K. HOWARD" FINGERPRINT SPECIALIST. SEE; IN RE STENSON, 174 WA 2D 474, 276 P.3D 286 (WASH. 2012); STATE V. SINGH, 167 WA APP. 971, 275 P.3D 1156 (WASH. APP. DIV. 3 2012). (2) HEIGHTENED PROOF REQUIREMENTS FOR PERJURY ARE SATISFIED WHEN THE EVIDENCE OF THE KNOWINGLY FALSE STATEMENT IS RECORDED PRIOR TO THE HEARING

At which the perjury is subsequently committed; and First degree perjury is committed "if in any official proceeding" a person makes a materially false statement [167 Wn. App. 976] which he knows to be false under an oath required or authorized by law. Former RCW 9A.72.020(1)(1975). A "materially false statement" is one "which could have affected the course or outcome of the proceeding." RCW 9A.72.010(1). Prosecutors are unlike other attorneys and enjoy special status as "quasi-judicial officers." See State v. Suarez-Bravo, 72 Wn. App. 359, 367, 864 P.2d 426 (1994). Along with the status, however, comes responsibility, including the duty to ensure that a defendant receives a constitutionally fair trial and to seek a verdict free of prejudice, based on reason and law. See State v. Monday, 171 Wn.2d 667, 257 P.3d 55 (2011); Berger v. United States, 295 U.S. 78, 88, 55 S. Ct. 629, 79 L.Ed. 2d 1314 (1935). Overruled in part and on other grounds by Skirone v. United States, 361 U.S. 212, 80 S. Ct. 270, 4 L.Ed. 2d 252 (1960). As a result, a prosecutor must act in seeking justice instead of making himself a "partisan" who is trying to "win" a conviction at all costs. See State v. Rivers, 96 Wn. App. 672, 981 P.2d 16 (1999). Hayes v. Woodford, 301 F.3d 1054 (9th Cir. 2002) because it is impeaching, prosecutor has a constitutional duty to correct evidence he knows is false. Skinner v. Switzer, U.S. L.Ed. 2d, 131 S. Ct. 1289 (2011); In State v. LaPage, 231 F.3d 488, 491 (9th Cir. 2000) Due process clause entitles defendants in criminal cases to fundamentally fair procedures, and it is fundamentally unfair for prosecutor to knowingly present perjury to jury U.S.C.A. Amend. 5. Because use of known lies to obtain conviction violates due process of law, such a conviction must be reversed unless false testimony was harmless beyond reasonable doubt; conviction must be reversed if there is any reasonable likelihood that false testimony could have affected judgment of jury U.S.C.A. Const. Amend. 5.

The due process clause entitles defendants in criminal cases to fundamentally fair procedures, it is fundamentally unfair for a prosecutor to knowingly present perjury to the jury. Over forty

YEARS AGO, THE SUPREME COURT MADE IT CLEAR THAT A CONVICTION OBTAINED THROUGH THE USE OF FALSE EVIDENCE, KNOWN TO BE SUCH BY REPRESENTATIVES OF THE STATE, MUST FALL UNDER THE FOURTEENTH AMENDMENT. THE RESULT OBTAINS WHEN THE STATE, ALTHOUGH NOT SOLICITING FALSE EVIDENCE ALLOWS IT TO GO UNCORRECTED WHEN IT APPEARS.

THE COURT EXPLAINED THAT THIS PRINCIPLE DOES NOT CEASE TO APPLY MERELY BECAUSE THE FALSE TESTIMONY GOES ONLY TO THE CREDIBILITY OF THE WITNESS. RATHER (A) LIE IS A LIE, NO MATTER WHAT IT'S SUBJECT. BECAUSE THE USE OF KNOWN LIES TO GET A CONVICTION DEPRIVES A DEFENDANT OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW, WE MUST REVERSE LAPAGES CONVICTION UNLESS MANESS FALSE TESTIMONY WAS HARMLESS BEYOND A REASONABLE DOUBT, THAT IS, WE MUST REVERSE, IF THERE IS ANY REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY COULD HAVE AFFECTED THE JUDGMENT OF THE JURY." *MESAROSH V. U.S.*, 352 U.S. 1, 16d. 2d 72, 77 S.Ct. 8 (U.S. PA 1956) "UNITED STATES GOVERNMENT WILL NOT ALLOW A CONVICTION OF A PERSON BASED ON TAINTED TESTIMONY OF A WITNESS TO STAND."

MR. HOLTZ, CONVICTION WAS OBTAINED BY PERJURED FALSE TESTIMONY, FAILURE TO DISCLOSE EXCULPATORY EVIDENCE BRADY VIOLATIONS, AND PROSECUTORIAL MISCONDUCT WHICH MUST BE REVERSED AND DISMISSED AS THE ONLY JUST REMEDY BY LAW.

SPEEDY TRIAL VIOLATIONS CR 33 AND INSUFFICIENCY OF RECORD ON APPEAL VIOLATING RIGHT TO APPEAL

APPELLANT INCORPORATES THE FOLLOWING ARGUMENTS ON APPEAL WITH HIS STATEMENT OF ADDITIONAL GROUNDS VIOLATING HIS SPEEDY TRIAL RIGHTS AS THE RECORD IS CITED. TRANSCRIPTS:

A) 1/12/12 BEFORE JUDGE STOLZ: Pg. #s 1-3 SHE ADMITS ATTORNEY HARRY STEINMETZ WAS ALLOWED TO WITHDRAW ON THE DAY OF TRIAL WHICH DEFENDANT OBJECTED TO AND REQUESTED DISMISSAL. B) ATTORNEY

Robert Deegan admits to conflict of interest with defendant and Judge B. Grant disqualifying him. Pg. #5 Ln. 8-25; Pg. #6 Ln. 1-10 He objects. B) The following are speedy trial verifications, ineffective assistance of counsel, abuse of discretion by Judge Stolz with bias misconduct. Pg. #8 Ln. 5-25; Pg. #9 Ln. 1-6 & Ln. 12-25; Pg. #10 #13. Defines the speedy trial objections.

C) 2/14/12, Judge Stolz: Pg. #14-20 ineffective assistance of counsel, abuse of discretion, Judge misconduct and bias. Ln. 23-25, Pg. #20 Ln. 13-22 Speedy trial motion CrR 3.3 showing violation. Pg. #21 drug put of court and assaulted by staff.

At Ln. 9 (The defendant was not present) Boone Club violation... Judge enters an order ex-parte "He may wish to represent himself."

D) 3/6/12 - Judge Stolz, Pg. #22-27 - DEF. placed in a "Hobson's choice" to sign for conflict free counsel (after being forced to hire his own) signs after 90 days Speedy trial violation under threat, duress, and coercion (DC)

E) 5/24/12 - Judge R.M. Stolz, Pg. #28-34 signed by attorney as motion in objection to speedy trial violations

Appellant incorporates as part of the trial record the continuance motions where he refuses to sign in order to present documented evidence "material" to the issue and argument in his (SAG) which will show his refusal/objection. Also, where it was necessary for him to agree/sign pursuant to CrR 3.3(F)(1), as well as verbal, and written objections. STATE V. SAUNDERS, 153 Wn. App. 209, 220 P.3d 1238 (Wash. App. Div. 2, 2009); WA. St. Const. Art. 1 § 22; STATE V. Kenyon, 167 Wash. 2d 230, 216 P.3d 1024 (2009); STATE V. Iniguez, 167 Wash. 2d 273, 281-85, 290-95, 217 P.3d 768 (2009); STATE V. GEORGE, 160 Wash. 2d 727, 735, 158 P.3d 1169 (2007); STATE V. Kane, 165 Wn. App. 420, 266 P.3d 916 (Wash. App. Div. 1, 2011); STATE V. CHAVEZ-ROMERO, 285 P.3d 195 (Wash. App. Div. 3 2012) Even in light of the December 1, 2012 revisions

OF Superior Court Criminal Rule - Rights OF DEFENDANTS - Rule 3.3 TIME FOR TRIAL. Appellant's (SAG) ARGUMENT with this Supplemental BRIEF / motion is within the guidelines. Though, there has been objections in writing and on record EVEN IF ONE WAS TO CONSIDER DUE TO LACK OF RECORD CrR 3.3(d)(4) loss of right to object. Aids further in such argument. [SEE exhibit #1]

- TRANSCRIPTS OF PROCEEDINGS REQUESTED -

DATES	COURT REPORTER	JUDGE
12/6/12, 11/29/11, 10/25/11	Angela McDougall	Edmund Murphy
3/20/12 & 4/19/12	Kim O'Neill	Katherine Stolz
5/12/12	Katrina Smith	Bryan Chushcoff
5/31/12	Syndie Hagarth	Beverly Grant

Appellant contends that these are crucial court transcripts that were during critical stages of proceedings which would make a clear showing from Attorney Harry Steinmetz being allowed to walk out of the courtroom on trial date 1/29/13 to showing his request for more time 10/25/11 yet, no motions being drafted to the speedy trial objections, ineffective assistance of counsel, discovery, numerous Brady violations, mental health issues, prosecutorial misconduct and much more. See, *State v. Larson*, 62 Wash. 2d 64, 66, 381 P.2d 120 (1963). The entire verbatim report of proceedings was lost and the court concluded that Appellate Counsel, who had not acted as trial counsel, had no means by which to assess the sufficiency of the narrative summary provided by the trial court. 62 Wash. 2d at 67, 381 P.2d 120. And *Tilton*, 149 Wash. 2d at 783, 72 P.3d 735, two cases

in which our Supreme Court concluded that the record was insufficient for review, RAP 9.5(c). This prejudices the Appellant by an incomplete record on review denying Appellant of direct testimony enabling him to effectively identify and argue on appeal particularly a claim for ineffective assistance of counsel based on mental health issues counsel's failure to raise a diminished capacity defense. *Tilton*, 149 Wash.2d at 182-83. *State v. Harvey*, 175 Wn.2d 922, 288 P.3d 1113 (2012). Under RAP 9 Appellant claims that the only just remedy by law is reversal, remand for either record reconstruction or dismissal. The October 17, 2013 ruling of Commissioner Schmidt states that there is no proceeding on record to be transcribed which a new trial will not effectively remedy the enumerated violations that took place causing irreparable constitutional damage as a miscarriage of justice.

- CONCLUSION / RELIEF -

Appellant requests the relief of reverse, remand for suppression hearing and vacate / dismissal (CR 8.3(b)).

THIS 15th DAY OF NOVEMBER, 2013.


RONALD HOLTZ

- EXHIBIT -

"CONTINUANCE ORDERS"

1

- EXHIBIT -

- CR 3.5 to 3.6 FINDINGS
AND CONCLUSIONS -

2

-EXHIBIT-

-5-

July 31 2012 12:37 PM

KEVIN STOCK
COUNTY CLERK
NO: 11-1-03845-1

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*INFORMED NOTICE OF DISCOVERY
mine/before his motions
BRADY violations*

IN T _____ N

STATE OF WASHINGTON,

NO. 11-1-03845-1

Plaintiff,

**NOTICE OF APPEARANCE
DEMAND FOR DISCOVERY
DEMAND FOR SPEEDY TRIAL
MOTION FOR JOINDER OF OFFENSES**

v.

RONALD HODGE HOLTZ,

Defendant.

TO: CLERK OF THE COURT, and

TO: PROSECUTING ATTORNEY

I. NOTICE OF APPEARANCE

YOU AND EACH OF YOU please take notice that Kent W. Underwood, Attorney at Law, hereby appears in the above-entitled cause on behalf of the above-named defendant and requests that all further papers and pleadings herein, except original process, be served upon the undersigned attorney at the address stated below.

II. DEMAND FOR DISCOVERY

The defendant hereby makes written demand for all discovery pursuant to CrR 4.7/CrRLJ 4.7, including but not limited to:

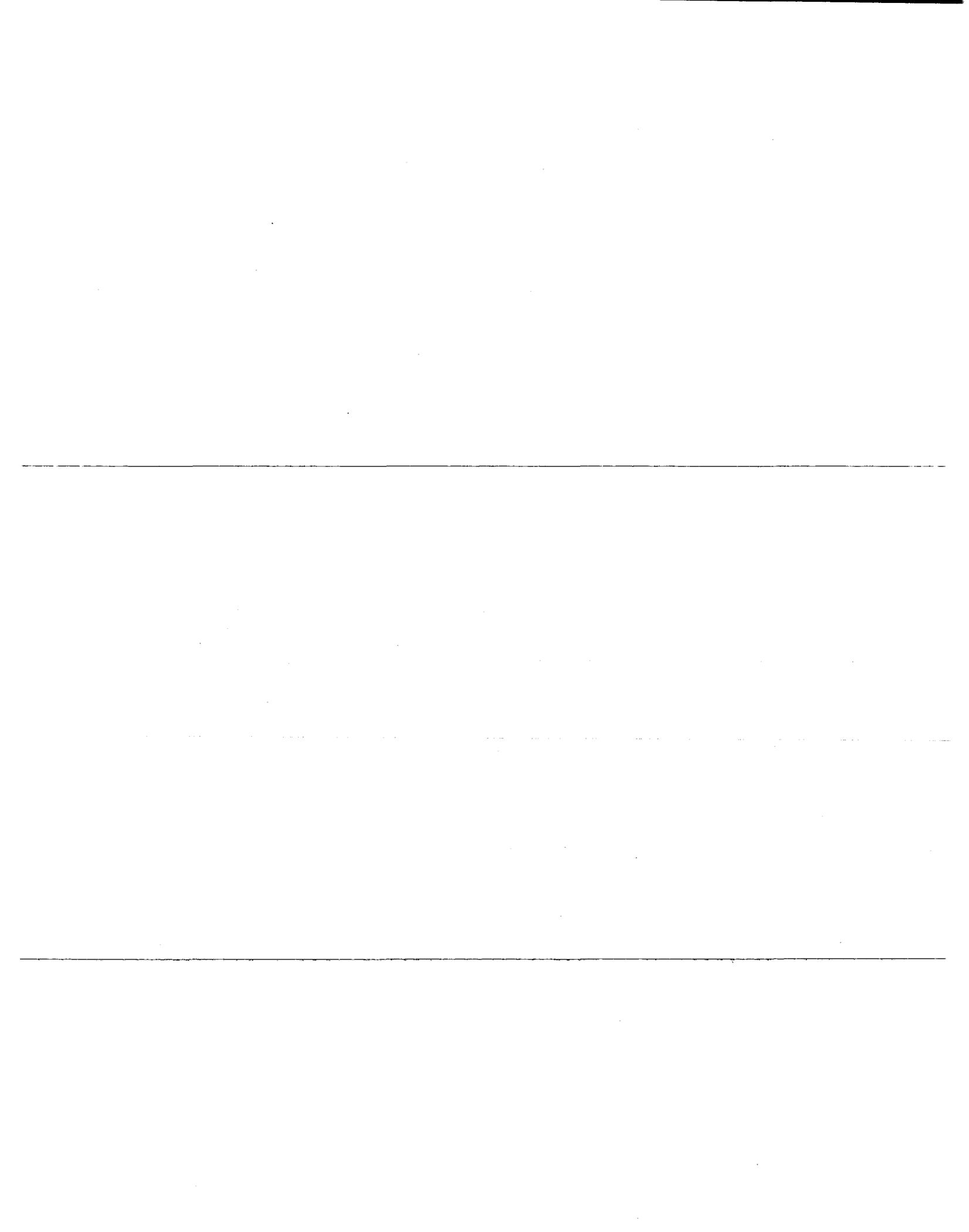
NOTICE OF APPEARANCE
DEMAND FOR DISCOVERY - 1

The Law Office of
KENT W. UNDERWOOD LLC
1111 Fawcett Ave., Suite 101
Tacoma, WA 98402
Phone (253) 627-2600
Fax (253) 591-7086

COPY

- 1 1. Copies of all forms, reports, notes, memoranda, or other documentation of law
2 enforcement personnel or other governmental agency generated by the investigation
3 resulting in this prosecution or that is otherwise pertinent to this case; including, but
4 not limited to, all drafts, control sheets indicating drafts and/or changes to the
5 master report;
- 6 2. The names, addresses, and phone numbers of any and all persons whom the
7 prosecuting authority intends to call as witnesses at hearing or trial, together with
8 any written or recorded statements and substance of any statements of such
9 witnesses;
- 10 3. Any and all written or recorded statements and the substance of any oral statements
11 made by the defendant, or co-defendant if the trial is to be a joint one, including
12 copies of any and all forms read to or signed by the defendant or codefendant;
- 13 4. The names and curriculum vitae of any experts consulted by the prosecuting
14 authority, or governmental agency investigating this matter, together with any
15 forms, reports, notes, memoranda, or other documentation or statements of such
16 experts made in connection with the particular case, including results of physical or
17 mental examinations and scientific tests, experiments, or comparisons, whether the
18 prosecuting authority intends to call such experts to give testimony or not;
- 19 5. Any and all books, papers, documents, photographs, or tangible objects which the
20 prosecuting authority intends to use at hearing or trial or which were obtained from
21 or belonged to the defendant;
- 22 6. Any record of prior criminal convictions known to the prosecuting authority of the
23 defendant and of persons whom the prosecuting authority intends to call as
24 witnesses at hearing or trial; **INCLUDING ALL 404(b) evidence.**

- 1 7. Any and all electronic surveillance, including wiretapping, of the defendant's
- 2 premises or conversations to which the defendant was a party and any record
- 3 thereof;
- 4 8. Any material or information within the prosecuting authority's knowledge which
- 5 tends to negate the defendant's guilt to the offense charged or to any material
- 6 element thereof, and any and all information indicating entrapment of the defendant;
- 7 9. Any and all affidavits, reports, statements, or other documentation or testimony
- 8 supporting the seizure of any evidence pertinent to this matter or supporting the
- 9 search of any area pertinent to this matter, and the results thereof;
- 10 10. Disclosures of the relationship to the prosecuting authority, if any, of any person
- 11 involved in the investigation of this matter or intended to be called as a witness at
- 12 hearing or trial of this matter;
- 13 11. Copies of any recordings or videotapes made of the defendant, including all
- 14 authorizations for such recordings;
- 15 12. A copy of any tape recording of all radio broadcasts and transmissions occurring
- 16 between the state trooper and/or officer who detained, arrested and/or transported
- 17 the defendant on the date of the alleged incident herein, and any other agency,
- 18 officer or station during the course of the detention, arrest, transportation, testing
- 19 and booking or charging of the defendant;
- 20 13. A copy of any tape recording of radio or telephone communications made over or
- 21 through the "911" system and relating to the identity, investigation, detention,
- 22 arrest and booking or charging of the defendant;
- 23 14. The defendant requests the State produce at trial the Criminalist who performed the
- 24 drug and/or chemical analysis, in the event the charge is any violation of the
- 25 Uniform Controlled Substances Act or any comparable County or City Code



1 that evidence is known to the prosecutor or merely to the police. *Kyles v.*
2 *Whitley*, supra.

3 Finally, you are reminded that, pursuant to *Kyles*, supra, and to *Hanna v.*
4 *United States*, 55 F.3d 1456 (9th Cir. 1995), *United States v. Howell*, 231
5 F.3d 615 (9th Cir. 2000), and *Commonwealth of N. Mariana Islands v. Bowie*,
6 243 F.3d 1109 (9th Cir. 2001), the requirement to provide the defense with
7 exculpatory evidence includes the requirement that the prosecution turn over
8 to the defense evidence bearing on the "slovenliness", quality (or lack
9 thereof), thoroughness (or lack thereof), objectivity (or lack thereof), and
10 good faith (or lack thereof) of the police investigation, including but not

11 limited to evidence of all inconsistent statements made by EVERY witness
12 INCLUDING POLICE OFFICERS.

13 17. Please include all notes, taken by victims advocates related to this case; all
14 statements obtained from alleged victims and witnesses, and include all notes in the
15 VMAS note field in LINX.

16 FURTHER, the defendant objects to the date of arraignment and demands a trial
17 within the time period specified in CrR 3.3/CrRLJ 3.3;

18 FURTHER, the defendant moves for a joinder of offenses.

19 RESPECTFULLY SUBMITTED this 31st day of July 2012.

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KENT W. UNDERWOOD
WSBA #27250
Attorney for the Defendant

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

RONALD HOLTZ,

DEFENDANT.

NO. 11-1-03845-1

MOTION FOR CONTINUANCE

COMES NOW, THE DEFENDANT, RONALD HOLTZ, (sui-juris)
MOVES THIS COURT IN A "MOTION FOR CONTINUANCE"
PURSUANT TO CrR 3.3

THIS 11th, DAY OF MARCH, 2012.


RONALD HOLTZ

- 1 of 1 -

MOT. CONT.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,

vs.

RONALD HOLTZ,
Defendant.

NO. 11-1-03845-1

MOTION FOR PRO-SE
REPRESENTATION

(IMPROPIA PERSONA/SUI JURIS)

COMES NOW Defendant, RONALD HOLTZ, hereby moves this Court in a "MOTION FOR PRO-SE REPRESENTATION" (impropiA PERSONA/SUI JURIS) pursuant to Washington STATE Constitution Art. 1 § 22; STATE V. MADSEN, 168 Wn. 2d 496, 503, 229 P.3d 714 (2010).

THIS 16th DAY OF MARCH, 2012.


RONALD HOLTZ

- 1 of 1 -

MOT. PRO-SE Rep.

- MAILING -
- DECLARATION OF RONALD HOLTZ -

I, DEFENDANT, RONALD HOLTZ (SUI-JURIS) did place in mail the following documents to the address below:

- 1) "Motion For Pro SE Representation" 1 pg.
- 2) "Motion And Demand Plaintiff To Disclose Evidence" 2 pg.
- 3) "Motion For Continuance" 1 pg.
- 4) "Declaration of mailing" 1 pg.
- 5) "MOTION FOR DOCKET" 1 pg.

TO: Kevin Stock, County Clerk
CLERK OF SUPERIOR COURT
930 TACOMA AVE. S. RM. #110
TACOMA, WA. 98402.

THIS 16th DAY OF MARCH, 2012.


TS/ RONALD HOLTZ
BKG #2011262083 3-W-B-3
PIERCE COUNTY JAIL
910 TACOMA AVE, South
TACOMA, WA. 98402

DECL. OF R. HOLTZ

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,

vs.

RONALD HOLTZ,
Defendant.

No. 11-1-03845-1

MOTION FOR DOCKET
(CLERK'S ACTION REQUIRED)

COMES NOW, THE DEFENDANT, RONALD HOLTZ, sui-juris
(PRO-SE) MOVES THIS COURT IN A "MOTION FOR DOCKET" FOR
HEARING ON 20TH, DAY OF, MARCH, 2012. AT 8:30pm RM# 260.

IN "MOTIONS FOR PRO-SE REPRESENTATION", "MOTION AND DEMAND
PLAINTIFF TO DISCLOSE EVIDENCE", AND "MOTION FOR CONTINUANCE"
AND THE CLERK OF THE SUPERIOR COURT IS REQUESTED TO NOTE
THE SAME AT THE DATE AND TIME ON THE CRIMINAL MOTIONS
CALENDAR.

THIS 16TH, DAY OF MARCH, 2012.


RONALD HOLTZ

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
PLAINTIFF,
VS.
RONALD HOLTZ,
DEFENDANT.

No. 11-1-03845-1
DEFENDANT'S MOTION AND DEMAND
PLAINTIFF TO DISCLOSE EVIDENCE
(DMPDE)

COMES NOW the DEFENDANT RONALD HOLTZ, Sui Juris and impropria Persona (PRO-SE), pursuant to CrR 4.7 and CrR 3.3 / Civil Rules, moves the COURT FOR AN ORDER AND DEMAND the PLAINTIFF to disclose all relevant evidence to defendant, by date of Mon. MARCH 26th, 2012, related to the ABOVE ENTITLED CASE, AS FOLLOWS;

1. The date, place, and time of ARREST.
2. All ARRESTING OFFICERS NAMES (FIRST, MIDDLE, LAST), badge-number, department addresses, RANK, and years of employment.
3. All ARRESTING OFFICERS notes, reports, complaints, and photographs of victims/ as well as victim impact statement or statement.
4. All of victims names (FIRST, MIDDLE, LAST), date of births, ages, and, and RESPECTIVE RACES.
5. All victims place of employment department - NAMES, ADDRESSES, RANK, years of employment, name and address of SUPERVISORS.

(DMPDE)

- 1 of 2 -

6. All physicians names, dates, place, and addresses that physically examined the victims.

7. All physicians medical evaluation notes, and reports.

* 8. All FFE County jail reports, booking information, time, date, notes and/or entries of Officers) Larkins and Morales of Sept 19, 2011.

* 9. All audio/video surveillance recordings, transferred to shilled frames on printed photograph copies with dates and digital clocktimes of the Sunshine Motel - 3801 Pacific Hwy. E. FFE, WA. 98424

10. All and/or any recorded audio, printed, copied, spoken between dispatch "Armi Deines #204 and Officers) Allen Morales" and Peterson of Milton police department, CAD reports, Also, 911 call of witness "Connie Elliott" from Sept 19, 2011.

11. Names and addresses of all witnesses.

12. Criminal records of all witnesses.

DATED THIS 16th day of MARCH, 2012.

/s/ Ronald Holz
RONALD HOLZ, SUTURS/PRO SE
BKG# 201122083 3-W-B-3
FARGE COUNTY OHIO
910 TRACONT AVE. SOUTH
TRACONT, WA. 98402

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

9 STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-03845-1

10 vs.

(Clerk's Action Required)

11 RONALD HODGE HOLTZ,

ORDER PROHIBITING CONTACT

(Domestic Violence)

12 Defendant.

13 Physical Description: SEX MALE; RACE
14 BLACK; EYES BROWN; WEIGHT 225;
HEIGHT 5' 9"; DOB 06/17/66

AS A CONDITION OF SENTENCE

15 THIS MATTER having come before the undersigned Judge of the above-entitled court, and the
16 court having considered the records and files herein and being fully advised in the premises,
17 now, therefore,

18 IT IS HEREBY ORDERED pursuant to RCW 10.99 and 26.50 that the defendant shall have no
19 contact, directly or indirectly, in person, in writing, by telephone, or electronically, either
personally or through any other person, with: CLARE STRAIN, DATE OF BIRTH:
08/15/1962 relationship to defendant if known: Current or former dating relationship until:

- 20 Expires: Non-Expiring (Class A)
21 Expires: Ten (10) years (Class B)
22 Expires: Five (5) years (Class C)
23 Expires: Two (2) years (Gross Misdemeanor)
or until modified or terminated by the court. It is further

24 ORDERED that the Clerk of the Court shall forward a copy of this order on or before the next
25 judicial day to the Law Enforcement Support Agency (LESA), who shall enter it in the
computer-based intelligence system available in this state used by law enforcement to list
outstanding warrants.

26 WARNINGS TO THE DEFENDANT: Violation of this order is a criminal offense under
27 chapter 10.99 RCW and 26.50 RCW and will subject a violator to arrest; any assault, drive-by
28 shooting, or reckless endangerment that is a violation of this order is a felony. You can be
arrested even if any person protected by the order invites or allows you to violate the order's

1 prohibitions. You have the sole responsibility to avoid or refrain from violating the order's
2 provisions. Only the court can change the order. If the violation of the order prohibiting contact
3 involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct
4 within the special maritime and territorial jurisdiction of the United States, which includes tribal
5 lands, you may be subject to criminal prosecution in federal court under 18 U.S.C sections 2261,
2261A, or 2262.

6 Effective immediately, and continuing as long as this order prohibiting contact is in effect, you
7 may not possess a firearm or ammunition. 18 U.S.C. Section 922(g)(8). A violation of this
8 federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000
9 fine. An exception exists for law enforcement officers and military personnel when carrying
department/government-issued firearms. 18 U.S.C. Section 925(a)(1). If you are convicted of an
offense of domestic violence, you will be forbidden for life from possessing a firearm or
ammunition. 18 U.S.C. Section 922(g)(9); RCW 9A.1.040

10 You can be arrested even if any person protected by this order invites or allows you to
11 violate the order's provisions. You have the sole responsibility to avoid the persons
12 protected or to refrain from violating the order's provisions. Only the court can change
this order.

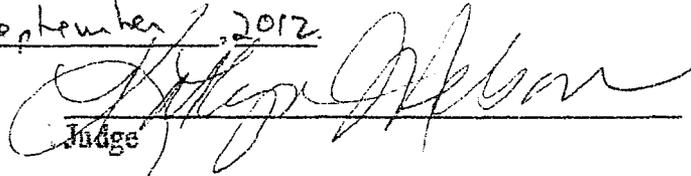
13 Pursuant to 18 U.S.C. Section 2265, a court in any of the 50 states, the District of Columbia,
14 Puerto Rico, any United States territory, and any tribal land within the United States shall accord
full faith and credit to the order.

15 NOTICE TO: Sheriff of Pierce County, Chief of Tacoma Police Department and ALL PEACE
16 OFFICERS:

17 YOU ARE HEREBY DIRECTED to maintain a record of this Order Prohibiting Contact and
enforce its provisions.

18 PLEASE NOTIFY the Pierce County Prosecuting Attorney's Office, 930 Tacoma Avenue
19 South, Room 946, Tacoma, Washington 98402 (253) 798-7400 if the defendant violates the
terms of the Order.

20 DATED this 21st day of September, 2012.

21 
22 Judge

23 Copy received:

Entry noted:

24 Present - Refused to sign
25 Defendant

24 Kent L. Underwood
25 Defense Counsel 27250

26 Victim: CLARE STRAIN

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-03845-1

vs

RONALD HODGE HOLTZ, aka RONALD HOLTZ
KEAL

Defendant.

ORDER FOR BIOLOGICAL SAMPLE DRAW
FOR DNA IDENTIFICATION ANALYSIS

THIS MATTER having come on regularly before the undersigned Judge for sentencing following defendant's conviction for:

[] A felony sex offense, which occurred after July 1, 1990, as defined by RCW 9A.030(33), to wit:

_____ and/or

[] A violent offense, which occurred after July 1, 1990, as defined by RCW 9A.030(38), to wit:

_____ and/or

NO Any felony offense for which a conviction was obtained after July 1, 2002, to wit:

felony violation of court order.

Pursuant to RCW 43.43.754, therefore, it is hereby ordered that the defendant provide a biological sample to be used for DNA identification analysis as follows:

PLACE TO BE TESTED

[] (Out-of-Custody) Report immediately to the Pierce County Sheriff's Office located on the 1st Floor of the County City Building, 930 Tacoma Ave S, Tacoma, Washington for a biological sample draw.

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(Out-of-Custody) Contact your CCO or other DOC representative to make an appointment to submit a DNA sample. Your sample must be submitted within 60 days of today's date or the date you are released from jail, whichever comes later.

(In-Custody DOC) Submit to the biological sample draw by the Department of Corrections.

(In-Custody PC Jail) Submit to biological sample draw by the Pierce County Jail.

DONE IN OPEN COURT this 21st day of September, 2012.



JUDGE

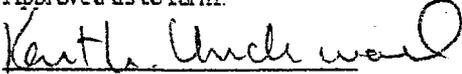
Presented by:



ERICA EGGERTSEN

Deputy Prosecuting Attorney
WSB# 32719

Approved as to form:



KENT UNDERWOOD

Attorney for Defendant
WSB# 27250

Refused to sign - present

RONALD HODGE HOLTZ, aka RONALD HOLTZ KEAL
Defendant

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-03845-1

vs.

RONALD HODGE HOLTZ, aka RONALD HOLTZ
KEAL

Defendant.

ADVICE OF RIGHT TO APPEAL

RIGHT TO APPEAL

Judgment and Sentence having been entered, you are now advised that:

1.1 You have the right to appeal:

a determination of guilt after a trial.

a sentencing determination relating to offender score, sentencing range, and/or exceptional sentence unless you have waived this right as part of a plea agreement.

other post convictions motions listed in Rules of Appellate Procedure 2.2.

1.2 Unless a notice of appeal is filed with the clerk of the court within thirty (30) days from the entry of judgment or the order appealed from, you have irrevocably waived your right of appeal.

1.3 The clerk of the Superior Court will, if requested by you, file a notice of appeal on your behalf.

1.4 If you cannot afford the cost of an appeal, you have the right to have a lawyer appointed to represent you on appeal and to have such parts of the trial record as are necessary for review of errors assigned transcribed for you, both at public expense.

ACKNOWLEDGMENT

Regarding the foregoing advice of my "Right to Appeal":

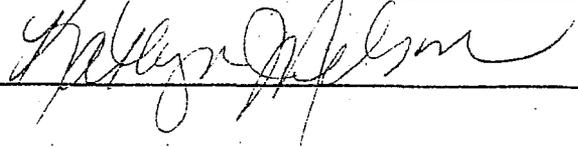
- 1. I understand these rights, and
- 2. I waive formal reading of these rights, and
- 3. I acknowledge receipt of a true copy of these rights.

DATE: 9-21-12

DEFENDANT: ^{KUM} ~~A refused to sign.~~ 

DEFENDANT'S ATTORNEY: Kent L. Underwood

DATE: 9-21-12

JUDGE:  27240

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

STATE OF WASHINGTON,

Plaintiff,

vs.

Defendant.

NO. 10-1-03313-2
ORDER MODIFYING SENTENCE

THIS MATTER coming on regularly for hearing before the above entitled court on the petition of a Deputy Prosecuting Attorney for Pierce County, Washington, for an order modifying sentence heretofore granted the above named defendant on the 18 day of _____,

2011, pursuant to defendant's plea of guilty to/trial conviction for the charge of _____

_____, the defendant appearing in person and being represented by

Robert Dutton, his/her attorney, and the State of Washington being represented

by Kara Sanchez, Deputy Prosecuting Attorney for Pierce County, Washington, the

court having examined the files and records herein, having read said petition, and

receiving evidence in support thereof or;

defendant having stipulated to the violation(s);

and it appearing therefrom that the defendant has by various acts and deeds violated the terms

and conditions of said sentence by failure to report comply pay, and the court being in

all things duly advised, Now, Therefore,

DOC # 18571

CAUSE # 18-1-03845-4

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Judgment and Sentence granted the defendant on the 14 day of April, 2018, is hereby modified as follows:

The defendant shall be confined for a period not to exceed sixty days for each violation, for a total confinement of 2 days, the court having found 2 violation(s) with credit for 7 days served awaiting his/her hearing on non-compliance. **The defendant is to be responsible to report*

The court finding that non-payment of monetary obligations was not willful; the court modifies the earlier order in the following manner: Defendant to pay \$ _____ in LFOs per month starting _____ or \$ _____ in LFOs by _____.

_____ hours of community service are re-converted back to _____ days in jail, which are included in the above total.

Terminate supervision. Legal Financial Obligation only

Report within 24 hours of release to Supervising CCO at _____.

Probation tolled from _____ to _____.

Can be released on payment of \$ _____ toward LFOs. _____

All other conditions remain in full force and effect.

DONE IN OPEN COURT this 14 day of April, 2018.

SIGNED IN THE PRESENCE OF THE DEFENDANT AGREED ORDER

[Signature]
Deputy Prosecuting Attorney

[Signature]
JUDGE

[Signature]
Defendant

Corrections Officer

[Signature]
Defense Attorney

DOC # _____

CAUSE # 11-1-11212

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Judgment and Sentence granted the defendant on the 11 day of Jan, 2011, is hereby modified as follows:

The defendant shall be confined for a period not to exceed sixty days for each violation, for a total confinement of 30 days, the court having found 1 violation(s) with credit for 37 days served awaiting his/her hearing on non-compliance.

extract 1/11/11 1/19/11 4/11/11 5/11/11 6/11/11 7/11/11 8/11/11 9/11/11 10/11/11 11/11/11

The court finding that non-payment of monetary obligations was not willful; the court modifies the earlier order in the following manner: Defendant to pay \$ _____ in LFOs per month starting _____ or \$ _____ in LFOs by _____.

_____ hours of community service are re-converted back to _____ days in jail, which are included in the above total.

Terminate supervision. Legal Financial Obligation only

Report within _____ hours of release to Supervising CCO at _____.

Probation tolled from _____ to _____.

Can be released on payment of \$ _____ toward LFOs. _____.

The above conditions are to be in full force and effect.

All other conditions remain in full force and effect.

DONE IN OPEN COURT this 1 day of Jan, 2011.

SIGNED IN THE PRESENCE OF THE DEFENDANT AGREED ORDER

[Signature]
Deputy Prosecuting Attorney

[Signature]
JUDGE
[Signature]
Defendant

Corrections Officer

Defense Attorney

IN THE SUPERIOR COURT
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff,

v.

RONALD HOLTZ KEAL,
Defendant.

No. 10-1-02212-2

MOTION FOR DOCKET

(CLERK'S ACTION REQUIRED)

Comes Now, (The Defendant) RONALD HOLTZ KEAL, moves this Court in a "Motion For Docket" pursuant to CrR 8.1, RCW 3.66.067, .068, .069, and CR 6; shortening of time to hear "Motion to Recuse and/or Disqualify Judge" Filed MARCH 14, 2012. on Tuesday, April 24, 2012. IF Not sooner in the above said Court and the papers/pleadings herein included.

THIS 13th Day of April, 2012.


RONALD HOLTZ KEAL

MOT. FOR DOCKET

IN THE SUPERIOR COURT
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff,

v.

RONALD HOLTZ KEAL,
Defendant.

No. #10-1-02212-2

MOTION FOR DOCKET

(Clerk's ACTION REQUIRED)

Comes Now, the Defendant RONALD HOLTZ KEAL moves this Court in a "Motion For Docket" pursuant to CrR 8.1, RCW 3.66.067, 068, 069, and CR 6 shortening of time to hear "MOTION to RECUSE and/or Disqualify Judge" Filed MARCH 14, 2012. on Tuesday April 24, 2012. if not sooner in the above said Court and the papers/pleadings herein, included.

THIS 13th Day of April, 2012.


RONALD HOLTZ KEAL

MOT. FOR DOCKET

IN THE SUPERIOR COURT FOR PIERCE
COUNTY WASHINGTON

STATE OF WASHINGTON,
Plaintiff,

v.

RONALD HOLTZ KEAL,
Defendant.

No. 10-1-02212-2

MOTION FOR PRO-SE
(impropia PersonA)
REPRESENTATION

Defendant, RONALD H. HOLTZ, hereby comes now
before this court (moving) in a MOTION FOR PRO-SE (impropia
personA) Representation. Citing Wash. State Constitution
Article 1, § 21 and § 22.

THIS 9th DAY OF DECEMBER, 2011.


RONALD H. HOLTZ

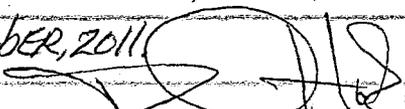
- DECLARATION IN SUPPORT -

1. DEFENDANT EXERCISES HIS RIGHT TO IMPROPIA PERSONA / SUI JURIS REPRESENTATION RATHER THAN SUFFER AT THE HANDS OF COUNSEL ROBERT DEPAN WHO HAS LIED, ATTEMPTED TO ANTAGONIZE, REFUSED TO PRESENT DISCOVERY OR COMMUNICATE STRATEGY OF DEFENSE BY PHONE, VISITATION, LETTER OR OTHERWISE. VIOLATING RPC 1.2-1.10.6 WASH. ST. CONST. ART. 1 § 22...

2. ON 09/23/11 ONCE BEHIND CLOSED DOORS IN AN INTERVIEW ROOM HE TOLD ME THAT (A) HE WOULDN'T DO ANYTHING I REQUESTED. (B) HE DID/WOULDN'T HAVE TO COME SEE ME OR COMMUNICATE W/ME. (C) I WAS JUST A CRIMINAL WHO DIDN'T DESERVE HIS TIME AND HE WAS THE BOSS. HE THEN MADE TO LUNGE @ THE GLASS SAYING, "YOU WANNA HIT ME, DON'T YOU AND CAN'T GET TO ME. HA-HA-HA!" HIS VERY "HOSTILE," AS I FOUND THIS VERY APPALLING, SHOCKING AND UNPROFESSIONAL.

3. I HAVE NOT SEEN HIM AT ALL EVEN AFTER SENDING HIM A CORRESPONDENCE ON 11-7-11 [SEE; COPY ATTACHED] W/NO RESPONSE OR ANY RETURN CALLS. UNTIL 12-6-11 CASE No. 11-1-03845-1, WHEN HE APPEARED TO BE REPRESENTING ME AS HE MISLEAD THE COURT (ON RECORD) STATING (DOC) IS TAKING "ME" TO COURT IN A VIOLATION HEARING NOT THAT I'D PETITIONED THE COURT FOR MY RIGHTS BEING VIOLATED. THERE IS A DISTINCT CONFLICT AND COMMUNICATION BREAK DOWN THAT'S IRREPARABLY DAMAGED.

I AFFIRM THE ABOVE IS TRUE AND CORRECT, UNDER PENALTY OF PERJURY.
THIS 9th DAY OF DECEMBER, 2011


RONALD H. HOLTZ

4616 25th Avenue NE
Number 552
Seattle, Washington 98105

STEPHANIE C. CUNNINGHAM
Attorney at Law

phone (206) 526-5001
fax (206) 374-2474
SCCAAttorney@yahoo.com

October 3, 2012

Ronald H. Holtz, DOC# 945319
Washington Corrections Center
P.O. Box 900
Shelton, WA 98584

RE: Your appeal in *State v. Holtz*
Pierce Co. No. 11-1-03845-1
Appeal No. 43995-6-II

Dear Mr. Holtz,

I have been appointed as your attorney for your appeal. This letter will tell you what to expect during the appeal process.

Appeal Process and Time-Line

First, an appeal is different from a trial. The Court of Appeals will review your case for mistakes of law made during the trial, hearings, or sentencing. If the Appeals court decides that mistakes were made and you were wrongly convicted or sentenced, it may reverse your conviction or sentence or even give you a new trial or sentencing. Because the appeal is limited to what already happened at trial and in hearings, I cannot use any new information from you or other witnesses in this appeal. **An appeal is not a new trial.**

I will tell the Superior Court to send the court file to the Appeals court, and I will ask the court reporters to make a written record (transcript) of any hearings and trial (not including jury voir dire and opening statements). The court reporters have about 60 days to make and file the transcripts. After I get the transcript, I will read it, along with the court file and begin to look for issues to appeal. If you feel there are any legal issues that should be appealed, please let me know. Then I will write the Opening Brief, which is like a memo setting out the facts of the case, and discussing the errors that we believe happened below. When I have filed our Opening Brief, I will send you a copy.

The State will pay for you to have a copy of the transcript, if you want one. If you want your transcript, send me a letter telling me and I will ask the court to mail you a copy. The court will not send your copy until **after** the Opening Brief is filed.

After I file the Opening Brief, you may write your own brief, if you want. This is called a "Statement of Additional Grounds for Review." The Court of Appeals will send you all the information about how to file the SAG. You can make your decision about whether or not to file a SAG after you have a chance to review my Opening Brief. If you choose to file a SAG, it will not be due until 30 days after the Opening Brief is filed, or until 30 days after you get your copy of the transcript.

After the Opening Brief is filed, the State will have 60 days to file its response brief. I then have 30 days if I need to file a reply brief. You will get copies of each of these briefs.

Once the briefs are all filed, the Court of Appeals will look at the case and decide whether to hold a hearing, called Oral Argument, or whether it can decide the case on the briefs only. The court usually takes about 1 to 3 months to decide whether or not to hold a hearing. If it does have Oral Argument, it usually takes place about 3 to 6 months after the briefs are all filed.

If there is argument, I will go to the court, along with the prosecutor, to argue your case either before a court commissioner or 3 judges. You are not required to come to this hearing. The commissioner or judges will not tell us their decision at that time—they will send a written decision a few weeks or months later.

After the court's decision is filed, there is a 30 day waiting period where either party can appeal it to the State Supreme Court. If neither side appeals, the court clerk sends out a "Mandate," which officially ends the appeal.

Consequences of Appealing

I must tell you that if you lose this appeal, the State may ask the court for an order charging you for the costs of appeal, which can average around \$3,000. This will not happen unless we lose every issue on appeal.

Also, if you are given a new trial or new sentencing hearing, your sentence could change. Although the prosecutor cannot punish you for appealing, in the time the appeal takes, the law may change or facts may become available that would change the prosecutor's recommendation or the court's sentencing decision.

You can choose to stop (withdraw) your appeal at any time—this is your choice alone. If you choose to withdraw your appeal before the Court of Appeals considers it, the Court may be willing to waive the imposition of costs. If you want to withdraw your appeal, contact me immediately and I will help you to do so.

Client Contact Policy

Please feel free to contact me with any information that may be helpful to your appeal. If you write me a letter with your questions or concerns, I will write back as quickly as I can. If you would like to talk with me by phone, I will accept appointments for collect calls if you arrange with me in advance by writing to me to let me know or asking your

counselor to call me to set the time. I will write back to set a time for the call. I am happy to talk with you at any time about your case, but please do not call just to chat. When you do speak to me, make sure you have told the prison staff you are talking to your attorney so they will set you up on a phone they do not monitor.

You must let me know whenever you are moved or your mailing address changes so that I can send you updates and important documents from your appeal.

You should be aware that my appointment does not include any other type of representation, such as family problems (including contact with family members), personal restraint petitions or post-trial motions in the trial court, parole hearings, or any other issues not directly related to your appeal. If you have concerns with any of these areas, I suggest that you either hire counsel of your own choice or contact your trial attorney. I only mention this in the hope that you will understand my limitations.

As you can see, the appeal is not likely to be completed for at least a year. There will be several long periods where it seems like nothing is happening. This is normal in an appeal, and does not mean that I have forgotten about you. It just means that I have no news to report. I will contact you whenever there is any new activity. Finally, while our contact may be limited, let me assure you that I do take each of my cases seriously and realize that you are depending on me. I will work hard for you and do my best to see you get a full and fair appeal.

Sincerely,



Stephanie C. Cunningham

April 3, 2013

Ronald H. Holtz, DOC# 945319
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326-0769

RE: Your appeal in *State v. Holtz*
Pierce Co. No. 11-1-03845-1
Appeal No. 43995-6-II

Dear Mr. Holtz,

I have received your letter dated March 27, 2013, and have also received a message from your counselor that you would like to arrange a phone call. However, I prefer, if possible, to respond to your questions in writing. That way, I can check any facts or law I need, and will be better able to answer your question completely. Plus, you will also have something that you can refer back to if you have any trouble remembering what I have said. So let me try to respond here to the concerns you listed in your letter. If I cannot, then we can arrange for a telephone call.

First, I am sorry that you are unhappy with my representation. But as I have explained in prior letters, the direct appeal is very limited. We cannot bring in any new evidence, we cannot argue that the jury should not have believed the State's witnesses, and we must show that any errors likely changed the outcome of trial. I tried my best to find all the issues I could raise within these limitations.

You mentioned that the officer did not have a way to connect you to the name Ronald Keel when he placed you under arrest. However, the officer arrested you for suspicion of assault. So the fact that the officer could not connect you to the name on the no contact order is not relevant for the purposes of determining whether he had grounds to detain and arrest you, and request your identification. The officer did not need to connect you to the no contact order before he was allowed to arrest you on suspicion of assault.

Also, once an officer has a reasonable suspicion to detain a person to investigate a crime, the officer can request identification. You would have been identified at some point, and a records check would have been conducted. I do not believe that I can

argue, based on these facts and the current case law in this State, that the trial judge should have suppressed your identity.

Next, the Court of Appeals will consider the testimony of the officers from trial, not the police report. At trial, Officer Morales testified that he went to the door of room 116, and that you were standing in room 117. However, because the two rooms were adjoining and the door between them was open, and Ms. Strain told the officers that you were her boyfriend and that you were arguing, I did not feel this detail was particularly relevant.

As I mentioned in my last letter, we are not allowed to argue that a witness was lying. The Court of Appeals will not review contradictions in a witnesses testimony, and will not reverse a conviction even if one version of events might show that a defendant is not guilty. If there is ANY evidence presented by the State which proves the elements of the crime, then the Court of Appeals must affirm the conviction.

The additional issues you mentioned (about the protection order being dropped, you not receiving medical records) also do not have legal and/or factual support and cannot be raised in this direct appeal. Although you mentioned the other cases and the medical issues in court, those documents are not in the record so I cannot prove to the Court of Appeals that they exist or that they contain the information you say they do. Also, the State is generally allowed to amend an Information after the close of the State's case, and a defendant who is represented by counsel is generally not allowed to file pro se motions.

I have also sent a letter to the Court saying that you want a copy of the transcripts. The Court will arrange for a copy to be sent to you within the next few weeks.

Again, I am sorry that you are disappointed, but please know that I take all my cases, including yours, very seriously, and want to argue any and all errors and issues to the Court of Appeals that I believe have merit. I do hope this letter has been helpful. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Stephanie C. Cunningham

April 3, 2013

David Ponzoha, Court Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

RE: *State v. Ronald H. Holtz*
Pierce Co. No. 11-1-03845-1
Appeal No. 43995-6-II

Dear Mr. Ponzoha,

Pursuant to RAP 10.10 and Division II General Order 2003-01, **please consider this letter as notification of the appellant's request for a copy of the transcript in this case.** I have received a request for a copy of the transcript from Mr. Holtz. The request is within the 30-day time limit established by RAP 10.10, and this letter is within the 10-day time limit established by GO 03-01.

Mr. Holtz's current mailing address is as follows:

Ronald H. Holtz, DOC# 945319
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326-0769

Sincerely yours,



STEPHANIE C. CUNNINGHAM
Attorney for Appellant Ronald H. Holtz

cc: Kathleen Proctor, DPA (pcpatcecf@co.pierce.wa.us)
Ronald H. Holtz, Appellant

mz. Cunningham,

4/9/13

I've received your letter dated April 3, 2013 and find it quite appalling (esp.) considering how you attempt to convince me that there are no issues. When in fact you didn't know that not only does memory serve me but I've had the the June 4th, 2012 verbatim reports Judge John A. McCarthy Dept. 11 - Cathy D. Schamu, RPR, CCR (253) 798-6432 since Sept. or July 2012. So, you can stop playing games now because I'm the one that orchestrated "HAVING" the hearing before trial in order to attempt dismissal and to make a record on these issues prior to trial.

1) Look at the CAD report referring to the Registry - "Connie Elliott Pg. 38 1-25 - ln. #17 and I only had one, and they said to describe the other party." ln. #16 "well they came in and they asked for I.D., as usual." Her SODA order popped up w/ the no contact violation "Ron Keal." "Fruits from the poisonous tree"... O.K. They can request I.D. but it was requested in attempts to connect to that person and illegal seizure when he walked outside of my presence w/ my I.D. Pg. 46 ln. 15-25.

I was arrested in order to be taken in and identified.

2) Pg. #10 ln. 16-24 - 23 "well, the female was in the room, and the male was standing in front of another doorway of a room."

3) Elliott's written statement - Pg. #40 1-17 ln. #13 "The first time they because they didn't know who he was."

Pg. #47 Ln. 23-25 "And so it would be correct also to say that you never did go out and point out the man that you say pushed Clair to the office", Pg. 48 ln. #1 "No, sir."

Pg. #35 ln. 6 "Okay, would you recognize him on sight? ln. #7 "yes."

Ln. #8 "Do you recognize anybody in the room today that you've known out -- that you know outside the courtroom?"

Ln. #10 "That gentleman". Ln. #11 "Okay. And can you tell me what he is wearing and where he is sitting at?" Ln. #13 "He is wearing gray scrubs, pink shirt." Ln. #22 "How do you know that person?"

Ln. #23 "Because that's the person that I saw that night."

See; Pg. 52 "Elliott's statement" written...

Pg. #39 Ln. 25 "Okay. Did you ever have any other interaction with Pg. #40 Ln. 1 either of the people staying in Room 116, 117 after that night? Ln. #3 "After that night?"

Ln. #4 "No, sir, I haven't seen them, and I haven't seen him until today, and I haven't seen Clair."

That my dear is an "in Court Identification" - "Impermissibly Suggestive" and prejudicial warranting Dismissal.

So, you allege no issues still, huh?

Also, OFFICER MORALES never testified that Rm. 116 & 117 were adjoining - Nor did you say that in your brief you put us both in (116). 😊 Yes, if you don't stop your lying game up, I will call you and trap you even further. Woman, I am not a child nor half ass intellectually. STOP IT!! Your attempting to play little British Accredited Regency (BAR) games w/one you know nothing about.

4) All medical records of (SSI) and mental issues were submitted and are on record. Even my statements in Court since arraignment and every proceeding is on record where I informed them that I am mentally and physically disabled.

Look At ALL hearings! Also, w/ Kent Underwood RCW 10.79
was ignored by the judge K. Nelson, ST. V. HEWLETT, 133 Wn.2d 314,
320, 944 P.2d 1026, 1029 (1997).

By the way - The state is NOT allowed to amend
charges once they've rested STATE V. ESCOBAR, 2012 Wn. App. LEXIS
1472 (Wash. Ct. App. June 11, 2012). STATE V. Vanderpin,

CR 3.3 (B) observe proceedings since 9/19/11 - when Harry Steinmetz
withdrew up to the hiring of "Sean Wickens" speedy trial violat-
ions which you want comment on STATE V. LUCAS, 167 Wn. App. 100 (2012).
AND the Conflict of w/ Atty: "Robert Depina" From Case No. 10-1-
02201-2.

Ms. Cunningham - is this you STATE V. A.N.J. violat-
ion of RPC 1.8(m). You are obviously NOT fair to me but
I will tell you one last time. IF you are serious about
aiding me, then file on these issues. IF NOT, please
get off my case and give it to someone who is sincere
because my briefs are about to make many pose
serious questions about you.

I shouldn't have to argue w/ you like you
a prosecutor in order to seek fair treatment or
adequate due process. You argue an analysis that
is already ruled not in favor of a petitioner, as an
(ONLY) sole issue and allege that it's fraud. You set
the case up to fail which is a dirty "sell-out". How
much did they pay you for me or is it a mere favor?

Either work for me or consider yourself Fired
PLEASE RESIGN FROM MY CASE! Sincerely,

April 17, 2013

Ronald H. Holtz, DOC# 945319
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326-0769

RE: Your appeal in *State v. Holtz*
Pierce Co. No. 11-1-03845-1
Appeal No. 43995-6-II

Dear Mr. Holtz,

I have received your letter dated April 10, 2013. I understand the points you are making, and understand that you believe the issues you mentioned have factual and legal support. As I have explained in my prior letters, I disagree. I am sorry that you believe that I am not being honest with you, or that I am ignoring the facts and the law. But I believe I have a full understanding of what happened below and an understanding of what issues we can and cannot raise on appeal based on the law and the record. I simply cannot do everything you want me to do because there are strict rules about what can and cannot be raised on appeal.

If you disagree, then I encourage you to present your issues in a Statement of Additional Grounds for review under RAP 10.10. According to the Court's web site, the Court has sent a complete copy of the transcripts to you, and you should be receiving them in the next few days. Your SAG, if you decide to file one, is due on May 6, 2013.

Finally, let me respond to your request that I withdraw from your case. I cannot withdraw without the Court's permission. The Court will generally not allow appointed counsel to withdraw except in extraordinary circumstances. I hope that you will see that I am trying my best to assist you, and I am on your side.

Sincerely,



Stephanie C. Cunningham

Dear Mr. Cunningham.

5/29/13

I must inform you that I made the Court in request of transcripts of all proceedings from 9/19/11 - 5/31/12 but specifically 4/23/12 & 4/24/12 as speeding trial issues. My letter was sent May 14, 2013 w/ his response May 20, 2013 directing me to you in this case # 13995-6-11. Please send them to me as you didn't send the full record. A copy of this will be sent to the Court AND others.

1. Merged Complaint Nov 13 - which is incorrect in Court like 21.B. to determine what it is, as with written

2. MD report showing how 3 men being men

3. Linné Elliott's M. design - what was it? And we held for 9 mths. when Montague was shown but In Court I.D. No!

4. Merged report that it was not - I thought you'd know why Kinsey Howard was questioned at length because she knew the only time for "lefts" come up is upon booking 9/19/11 at 11:56 pm - Both officers lied! I've never been arrested w/ my I.D. till then. Pg. 85 in 7.8.22.25; Pg. 86 in 114; Pg. 104 in 120.20 - (3rd) Pg. 105 in 115.5 before and 17, 11.11.13 NIS.

Sept. 1, 2012 Court - I had fun w/ it you should see. By the way - Pg. 107 in 117.11.13 this is a matter of Court Record.

5. Speedy Trial - Oct 13, 11:12 23:40 Nov 29, 11:00 am, Dec 6, 11 3:30 pm again extends 10 days, 2/14/12

None of the above did I sign - state v. Snowden. CR 3.3(1)(a)(ii) & (1)(ii) & (vii) - state v. Lance - Kovic. state v. Lewis - I have a number of arguments to finish. NEVER signs from May - Sept. Pay for you

... your letter in your soul's simon ...

Dear Ms. Cunningham,

6/7/13

I am replying to your 6/4/13 letter w/ motion for transcripts. (Appreciated). Please allow me to be quite blunt. Why wouldn't you have initially ordered transcripts for each hearing which was a continuance when more than 9 out of 10, this is where CrR 3.3 rights are violated? Whether it be checking the wrong boxes or excuses made. See; CrR 3.3.1F(1). This is another reason for me NOT to trust you at all.

Being blunt I would've sent motions for new counsel, Bar Complaints, Supreme Ct., DOJ, etc. Only God whom I fear has stayed me when I use to have a lot of respect for your work. I'm not attempting to insult you but either you've sold me out, gotten lazy or are personally refusing to do a proper appeal as feelings processed into your professional. Listen, the prosecutor was a little tricky yet, dry because she caught herself up on one of the most crucial issues of the case which was the "identification". Now, even Mr. Underwood caught it Sept. 4, 2012 - Pg. #86 ln. 1-14 - ln. 19 "Mistrial" - Pg. #104 ln. 20-25 "LESA RECORDS" - Pg. #105 ln. 10-25; Pg. #106 ln. 1-25 AND ln. 19-25. However, the powers that be, wanted me so he set it up for appeal. OK. Here's the repeated lie! Pg. #339 ln. 6-10 but she then tells the truth Pg. #356 ln. 20-22. Yes, the whole she knew about the lie that was told in order to try to connect/justify probable cause and inevitable discovery. I suggest you go back also to the Registry Argument, Art. 18 7, 4th Amend., Terry Stop, etc. for I dissolved the question or confusion prosecution attempted to push for not only does she "Pres. Eggertsen" admit that it is him speaking with dispatch but he is impeached in questioning about the running

of the Registry w/ Ms. Strain" but C. Elliott "gave his description as well.

Anyway, I am sending you a copy of my 6/6/13 to the Court before receipt of your letter in order to try to make it ahead because I am being transferred I believe to Walla Walla.

It is 49 pg.(s) that I kinda had fun writing/briefing as a relief not to be held to form restrictions like a Direct App., Habeas, PRP, etc. I'd like you to really read it for in my years of aiding others to get back to Court I rarely "reach" on issues. Usually, all mine are solid w/ murderous merit - There are 4 walkers dead on in this (SAG) yet, the others are only light due to no law library in this Seg.

I've had to use "notes" from my property and file §1983 & 28 U.S.C. § 2201 & 2202 Declaratory Judgment and 28 U.S.C. § 2283 & 2284 injunction. Back to Civil, gotta amend a suit...

Please pay extreme attention to what I've written esp. on Speedy Trial Saunders, Kenyon, and aspects of Iniguez - Do not have to motion in writing - I orally mot., objected, refused to sign, and objected w/ reason Speedy Trial on their cont. forms.

I am sharper than what you may believe and I know you are sharper than what your showing me or not showing me.

However, I hope God will touch your heart to invoke your mind to come forth and fight w/ me. They lied and we catch this procedurally by the record. Take your pick by using my (SAG) you'll see.

June 27, 2013

Ronald H. Holtz, DOC# 945319
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326-0769

RE: Your appeal in *State v. Holtz*
Pierce Co. No. 11-1-03845-1
Appeal No. 43995-6-II

Dear Mr. Holtz,

I have received your letter dated June 17, 2013, and the copy of your SAG. In response to your letter, I did not originally order the continuance hearings because we are generally not allowed to argue a violation of the speedy trial rules unless a written motion was filed and ruled upon in the Superior Court before trial. No such motion was made, so I did not believe that the continuance motions were necessary for review. You obviously disagree, so I have ordered the continuance hearings for you to use in conjunction with your SAG.

I also received your request to communicate through JPay. I am familiar with the JPay system, but I do not have an account. Although it may be more convenient than traditional US mail, I am concerned that messages to and from the prison through JPay might be monitored or read by prison staff, and that it may compromise your attorney/client privilege. Therefore, to protect your right to unmonitored contact with your attorney, I prefer to communicate through traditional mail service (where we can label the envelope "legal mail" to ensure that letters are not opened and ready by prison staff or through pre-arranged attorney phone calls (where the call will not be monitored or recorded).

Finally, let me say again that I am doing my best to represent you and to raise all the issues I believe that we can raise, considering the case law and strict rules on appeal. There are some things that you believe I should do or should argue, that are simply not allowed in a direct appeal. And I certainly am sorry that you still feel I am not on your side.

Sincerely,


Stephanie C. Cunningham

DEAR Ms. Cunningham,

7/7/13

I am writing you at this time not only due to a motion to clarify documents attached to my (SAG) but a very distinct issue concerning previous MISDEMEANOR NO CONTACT COMPLAINTS AND ORDERS FROM LAKEWOOD CORP. "CLARE STRAIN" WENT TO COURT 5X'S TO HAVE (NCO) DROPPED.

1) RCW 10.99.040 DUTIES OF COURT - NO CONTACT ORDER. (7) All courts shall develop policies and procedures by Jan. 11, 2011, to grant victims a process to modify or rescind a (NCO) issued under this chapter. THIS WAS NOT DONE!

2) FORMATTING REQUIREMENTS WASH. GEN. R 14(A) APPLY TO WA. REV. CODE § 10.99.040 (4)(b) CITY OF SEATTLE V. MAY, 171 Wn. 2d 897 (Oct. 21, 2010).

3) STATE V. GRAY, 134 Wn. App. 547, 556, 138 P.3d 1123 (2006) COURT HAD DUTY TO DETERMINE WHETHER PREVIOUS (NCO'S) ARE ADMISSIBLE. THIS WAS NOT DONE (ESP.) IN THIS FELONY VIOLATION OF (NCO) STATE V. RASWELL, 165 Wn. 186, 195, 196 P.3d 705 (2008). STATE MUST PROVE PRIOR (NCO) VIOLATIONS W/IN LIST OF QUALIFYING ORDERS UNDER RCW 26.50.110(5). PLEASE SEE ALL PREVIOUS LAKEWOOD MUNICIPAL

Crt. Complaints, they do not describe the exact act, description of conduct and are "VAQUE" w/out informing me of essential elements of charge and is deficient failing to satisfy due process requirement. (ESP.) IN No. 9L1035 Amended Complaint SEE CASE IN POINT CITY OF BOTHELL V. KAISER, 152 WASH. APP. 466, 217 P.3d 339 (2009). NONE OF LAKEWOOD COMPLAINTS ARE VALID NOR IS THERE AN ASPECT OF VIOLENCE. SEE; STATE V. MADRID, 145 Wn. App. 106, 192 P.3d 909 (Div. 2 2008) RCW 26.50.110(1) & RCW 10.31.100(2)(A) OR (B). KAISER IS SIMILAR TO MY CASE AND I'D LIKE TO SPEAK TO YOU ON BRIEFING THIS ISSUE - ALSO, WE AREN'T EVEN SURE IF LAKEWOOD CORP. HAS MUNICIPAL AUTHORITY OR ADOPTED SUCH SEE; CITY OF SPOKANE V. COUNTY OF SPOKANE, 158 Wn. 2d 666, 146 P.3d 893 (2006) & CITY OF MEDINA V. PRIMM, 160 Wn. 2d 268, 157 P.3d 379 (2007).

And I'd like to speak to you on briefing this issue - Also, we aren't even sure if Lakewood Corp. has Municipal Authority or adopted such see; CITY OF SPOKANE V. COUNTY OF SPOKANE, 158 Wn. 2d 666, 146 P.3d 893 (2006) & CITY OF MEDINA V. PRIMM, 160 Wn. 2d 268, 157 P.3d 379 (2007).

Sincerely,
[Signature]

P.S. COURT IMPROVEMENT ACT OF 1984 (CHPT. 3.50 RCW), THE INTERLOCAL COOPERATION ACT (CHPT. 39.34 RCW) ALL THE COMPLAINTS ARE DEFICIENT FROM LAKEWOOD AND THEY WERE MADE A MATTER OF RECORD AT TRIAL IN QUESTIONING KIM HOUNSED SEPT. 6th 2012 FINGERPRINT SPECIALIST.

Ms. Cunningham,

9/15/13

I am writing you due to the fact that not only have you Abrogated in your duty to properly defend me on appeal but further Failed to have my transcripts sent.

1. I've been waiting for the court hearing transcripts from 9/19/12 to 6/11/13 in order to support my CrR 3.3, Speedy trial issue. I've been waiting since July and have been in solitary 8/16/13 w/ no legal documentation.

2. Previously, I was given a deadline by the court of June 17, 2013 so, I sent my unfinished (SAG) w/ the trial or A) continuance motions from 9/19/11 to 9/21/12, sentencing w/ objections written in due to speeding trial violations, B) Copy of the Lakewood Complaint No. #921035 (showing no D.O.B. of alleged victim nor description of conduct) C) Copy of the CAD report verifying that the Motel Registry was viewed. Also, another exhibit - These were placed in the pouch and I sent a "Motion to Clarify" showing the relevancy.

3. I have never received the relevant transcripts to make a clear showing of speedy trial violation - my (SAG) was sent due to the deadline w/out receiving your motion prior to being sent to the court - otherwise I'd have waited for them before sending it. on both levels I am being deprived of due process by my exhibits in the pouch and the verbatim reports of hearings RAP 9.5. It is necessary for me to be provided the transcripts and the court to view the exhibits.

4. I am informing that the Lakewood Municipal Court complaints are all deficient as charging documents because they do not describe the conduct, act, nor event which violated the law. ONLY the alleged RCW - There's clear case law Kaiser v. City of Bothell, (2009) - Also, states the only remedy is dismissal. State v. Leach.

5. Do you remember Alleging that False statements Can not be brought up on Appeal? Interesting - U.S. v. LA PAGE, AS I'VE ALSO SHEP'D STATE CASE LAW BUT YOU KNEW THIS ALREADY DIDN'T YOU? YOU KNEW THAT NOT ONLY DID THE OFFICERS LIE BUT THE PROSECUTOR AS WELL CONCERNING MY BEING IDENTIFIED PRIOR TO BEING FINGERPRINTED. HOWEVER, YOU ALSO HAVE MY (SAG) ON THIS W/ THE TRANSCRIPTS TO SUPPORT.

By the way, we've discovered a few things about you and how you've refused to properly defend me on appeal while at the same time others in the legal field are flabbergasted reading your letters. Then seeing my (SAG) and the transcripts.

You've come to conclude w/out even knowing me or speaking to me, that I'm benath fighting for or representing zealously. (Esp) AFTER viewing a tainted presentencing w/ crimes I've never been convicted of nor was I guilty and your being (influenced) by another member of the bar.

You refuse to even discuss my case w/ me nor communicate w/ me on my defense either you believe "Superiority" and that I'm not worth speaking to you in behalf of my freedom or you are afraid of the truth. However, you will be held accountable for failing to represent/ defend my freedom on appeal.

As Allah is my witness!

P CC. RH

P.S. I'VE READ OTHERS APPEALS FROM (TRU) TO (CROW) TO (WSP) THAT YOU'VE DONE W/ LESS MERIT AND YOU BRIEFED OVER 4-6 DIFFERENT ISSUES. YET, A HALF ASS ONE W/ MINE?

This is discrimination!

July 8, 2013

David Ponzoha, Court Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

RE: *State v. Ronald H. Holtz*
Pierce Co. No. 11-1-03845-1
Appeal No. 43995-6-II

Dear Mr. Ponzoha,

Please be advised that Mr. Holtz, the appellant in this case, has moved. His current mailing address is as follows:

Ronald H. Holtz, DOC# 945319
Washington State Penitentiary
1313 N 13th Ave.
Walla Walla, WA 99362

If you have any questions, please do not hesitate to contact me.

Sincerely yours,



STEPHANIE C. CUNNINGHAM
Attorney for Ronald H. Holtz

cc: Thomas Roberts, DPA (pcpatcecf@co.pierce.wa.us)
Ronald H. Holtz, Appellant

Stephanie,

2/27/14

Unfortunately, though you attempt to sound quite reasonable in your 2/21/14 correspondence, we both know that there were words in the wind. Just as a deal w/ you is good as dust. You hung up on me our last conversation after you cornered in your corrupted weak, wicked, and worthless puerile responses. The arrogance of you, to believe that you could convince me by twists of treachery in attempts to refute the truth. How often have you sold someone out? Shame on you! As though I should be so shallow minded to be deceived by one as you.

To Point - 1) you did not reply to the state's response brief.
2) 2/10/14 letter from Clerk D. Panzotta on RAP 11.4(j) arguing on my appeal. I've seen no motion from you on this either. So, you had 10 days but chose not to argue any issue in my case.

Check it out - what's the use of writing you about my issues when you're going to do whatever anyway "NOTHING"?! You try to argue w/ me on issues that we both know are "Plain Error", "Benevolent violations", Brady & Bagley, in-court I.D., w/chains & jail grays impermissibly suggestive "presumption of innocence" prejudiced, "Prosecutorial misconduct", "False testimony", "Failure to disclose evidence", "Failure to produce or record crucial proceedings RAP 9.2(a)(c) to ineffective trial counsel. These are only but some of the record on issues that are apparent yet, you vehemently deny this w/ arguments that are contradictory to law. Please!

I know Wash. Bar would do nothing but don't even try cause I'm far from done. Let's see what you look like if it comes to the Supreme Ct. CrR 3.1 and I know you won't fail to motion the Court March 21, 2014 or before RAP 18.1(c), huh. Off! Perhaps, you should view my Reply to State's Response on (PRR), I cited mainly RAP 2.5(a)(3), 16.14(b), 9.12 etc. etc. It was a history lesson Blumberg v. McNear, 1 Wash. Terr. 141 (1861) & Leonard v. Territory, 2 Wash. Terr. 381, 79, 872 (1885). At this point would it hurt your soul to be truthful or will you continue allow a lie to suffice to hide the truth?

SERIOUSLY,



February 21, 2014

Ronald H. Holtz, DOC# 945319
Washington State Penitentiary
1313 N 13th Ave.
Walla Walla, WA 99362

RE: Your appeal in *State v. Holtz*
Pierce Co. No. 11-1-03845-1
Appeal No. 43995-6-II

Dear Mr. Holtz,

I received a message from your counselor requesting an attorney/client call with me. While I want to continue to communicate with you about your appeal, and want to answer any questions you have about your case, I think it best at this point if we correspond in writing whenever possible. That way, I can check any facts or law I need, and will be better able to answer your question completely. Plus, you will also have something that you can refer back to if you have any trouble remembering what I have said.

Accordingly, if you have any specific concerns or questions about your appeal, let me suggest that you send me a letter and I will try to respond in writing. If I am unable to do so, then I will contact your counselor to schedule a phone call.

Sincerely,



Stephanie C. Cunningham

March 22, 2013

Ronald H. Holtz, DOC# 945319
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326-0769

RE: Your appeal in *State v. Holtz*
Pierce Co. No. 11-1-03845-1
Appeal No. 43995-6-II

Dear Mr. Holtz,

Enclosed for your records is a copy of the Opening Brief of Appellant, which I filed on your behalf at the Court of Appeals. I thoroughly reviewed the documents and transcripts from your case, and chose the issues for the brief based on what I believe were the most arguable issues in light of the evidence presented at the trial, current case law, and the standards of review on appeal.

* It is important to understand that the standards of review for a direct appeal are very strict. The Court of Appeals will only consider facts that are in the existing record (documents in the court file or discussions that happened in open court and that were transcribed by the court reporter). The Court will also treat all of the prosecutor's evidence as if it were true. So we are not allowed to argue that a witness was lying or that the jury should not have believed a witness' version of events. We also must show not only that there was an error or that the trial judge made an incorrect ruling, but also that that error or ruling was prejudicial (in other words, that that error most likely changed the outcome of the trial).

* ~ What that means is that, even though there may be holes or contradictions in the testimony of State's witnesses, we cannot argue that they were lying or should not be believed. For example, we cannot argue that the jury should have believed Ms. Strain and not Ms. Elliott or the police officers. I have to assume, for the purposes of the brief, that the State's evidence is true.

* So, if we assume for the purposes of the brief that the State's witnesses were telling the truth, I believe that the evidence would establish the elements of each of the

crimes charged. I do not believe that I can argue that the State's evidence did not prove those crimes.

* I also researched whether the judge should have granted the motion to suppress, but found that the law was not in our favor. First, I believe based on my review of case law and the record in this case, that the police officers had grounds to at least detain and question you and Ms. Strain on suspicion of assault. And I think the Court of Appeals is likely to agree with the judge that the officers had probable cause to arrest you. However, even if the Court finds that the officers did not have probable cause, I do not believe that the Court will reverse your conviction on those grounds because an officer is allowed to ask for identification of a suspect during a detention and before arrest. So the officers had authority to ask for your name and to run a records check even if they did not have probable cause to arrest you for assault. So the evidence that would be suppressed (your identification) would have or could have been discovered regardless of whether the officers had probable cause to arrest.

* Next, as you will see when you read the brief, I argued that that the "to-convict" instructions improperly told the jury that they had a duty to convict. I researched several other issues, including those mentioned above, and whether your offender score and standard range were calculated correctly, and whether your attorney was ineffective. Unfortunately, I found that the law and/or the facts were not in our favor.

* Next, it is my duty to tell you that appeals are generally very difficult to win, and less than 10% of appeals actually result in the reversal of a conviction. Additionally, if you lose your appeal, the State may seek to recoup the costs of appeal from you. The costs include: attorney's fees, costs of transcribing the report of proceedings, costs of reproducing the clerk's papers, and the costs of copying the briefs and pleadings, and can vary from \$2,000 to \$3,000 or more. You are responsible for paying the amount designated in the cost bill. However, if you voluntarily withdraw your appeal before the Court considers your appeal, the State has been willing to waive the imposition of costs, but this is entirely discretionary.

* You should take these matters into consideration as you proceed. If you wish, you can choose to withdraw your appeal. If at any time in this process you want to withdraw your appeal, you may contact me and I will help you to do so. I do not tell you this because I believe you should withdraw, I just want you to have all the information you need so that you can make fully informed decisions regarding your appeal.

If you wish to proceed with your appeal, and if there are additional issues that you want raised that I did not include in the brief, you may raise those issues by filing a pro se "Statement of Additional Grounds for Review" (SAG) with the Court of Appeals. In the SAG, you can identify and discuss any issues that you believe were not adequately addressed by the brief I filed. Although the pro se Statement does not require citations to the trial record or to legal authority (cases, statutes, etc.), if you wish to have a copy of the transcript for your review you should **notify me in writing within 30 days** and I will arrange for you to receive a copy.

You are not required to file a SAG. But if you do, you must submit it to the Court of Appeals within 30 days from the date you received the enclosed Opening Brief, or

within 30 days from the date you receive your copy of the transcript (if you request it). The SAG does not require citations to the trial record or to legal authority (cases, statutes, etc.). Please refer to the Rules of Appellate Procedure (RAP) 10.10 for additional information regarding how to prepare and file a SAG.

Finally, the prosecutor now has 60 days to file a response brief. However, it is not unusual for the prosecutor to request and be granted an extension of time to file the brief, and I cannot control whether they are given an extension. But I will send you a copy of the prosecutor's brief as soon as it is filed.

If you have any questions or concerns, please do not hesitate to contact me. I will keep you informed of any action by the Appellate Court in this matter, and will send you copies of any additional documents filed in this case.

Sincerely,



Stephanie C. Cunningham

June 4, 2013

Ronald H. Holtz, DOC# 945319
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326-0769

RE: Your appeal in *State v. Holtz*
Pierce Co. No. 11-1-03845-1
Appeal No. 43995-6-II

Dear Mr. Holtz,

I have received your letter dated April 10, 2013. I did not originally order transcription of each of the continuance hearings because they did not appear to be "necessary" for the appeal. That is because the court can grant a continuance for "good cause" even if the defendant objects to a continuance. And in general, the Court of Appeals will not review a speedy trial violation argument on appeal unless there was a speedy trial objection/motion to dismiss filed before trial. In your case, there does not appear to have been a written objection/motion to dismiss filed.

However, if you want to have them for your SAG, I will ask the court for permission to order them for you now. Enclosed is a copy of the motion I have filed on your behalf. I will contact you when get a response from the Court about the motion.

The State has filed its Brief of Respondent, and your copy is enclosed. I reviewed the State's brief. Of course, I disagree with their arguments, but I did not see anything in their brief that we did not also address in our Opening Brief. I also believe we made our strongest arguments in the Opening Brief, so I do not feel that it is necessary for me to file a reply brief.

I will write you immediately when I hear from the Court about the motion. In the meantime, if you have any questions, do feel free to contact me.

Sincerely,



Stephanie C. Cunningham

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

vs.

RONALD HODGE HOLTZ,
Appellant.

Appeal No. 43995-6-II

MOTION FOR LEAVE TO FILE A
SUPPLEMENTAL STATEMENT
OF ARRANGEMENTS

1. IDENTITY OF MOVING PARTY

Appellant RONALD HODGE HOLTZ, through his court-appointed counsel, STEPHANIE C. CUNNINGHAM, asks for the relief designated in Part 2 below.

2. STATEMENT OF RELIEF SOUGHT

Appellant requests permission to file a Supplemental Statement of Arrangements requesting transcription of pretrial hearings.

3. FACTS RELEVANT TO MOTION

The facts relevant to this motion are contained in the Declaration of Counsel, below.

4. GROUNDS FOR RELIEF

The Rules of Appellate Procedure will be liberally interpreted to promote justice and facilitate the decision of cases on their merits. RAP 1.2(c). The appellate court may waive its rules to serve the ends of justice, including enlarging the time within which an act must be done. RAP 18.8(a).

5. CONCLUSION

Based on the above-stated authority counsel's declaration, Appellant respectfully requests that this Court grant this motion and allow him to order transcription of pretrial hearings.

DATED: June 4, 2013



STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Appellant Ronald H. Holtz

DECLARATION OF COUNSEL

I, STEPHANIE C. CUNNINGHAM declare as follows:

1. I am the court-appointed attorney of record for the appellant Ronald Hodge Holtz in this appeal and make this declaration upon personal knowledge and information.

2. Mr. Holtz was convicted in Pierce County Superior Court of violation of a protective order and sentenced to 60 months of confinement. Mr. Holtz filed a notice of appeal on September 25, 2012. The Opening Brief of Appellant was filed on March 22, 2013, and the Brief of Respondent was filed on May 23, 2013. Mr. Holtz's Statement of Additional Grounds is due on June 16, 2013.

3. Mr. Holtz has informed me that he believes his speedy trial rights were violated, and he wishes to raise a speedy trial issue in his SAG. Mr. Holtz believes that transcription of the pretrial continuance hearings is necessary so that he can fully argue this *pro se* issue.

4. If this Court grants this motion, I will file a Supplemental Statement of Arrangements on behalf of Mr. Holtz

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: June 4, 2013



STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Appellant Ronald H. Holtz

PIERCE COUNTY PROSECUTOR

May 23, 2013 - 10:37 AM

Transmittal Letter

Document Uploaded: 439956-Respondent's Brief.pdf

Case Name: State v. Ronald Holtz

Court of Appeals Case Number: 43995-6

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: hjohns2@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:

SCCAtrorney@yahoo.com



Pierce County

Office of the County Clerk

930 Tacoma Avenue South, Room 110
Tacoma, Washington 98402-2177
(253) 798-7455 • FAX (253) 798-3428

KEVIN STOCK
Clerk of the Superior Court and
Director of Arbitration

Ronald Holtz # 945319
Washington State Penitentiary
1313 N 13th Avenue
Walla Walla, WA 99362

STATE OF WASHINGTON VS. RONALD HODGE HOLTZ
CASE # 11-1-03845-1

I am writing to you, regarding your letter which was received by The Pierce County Superior Court Clerk's Office on January 6, 2014.

Our records indicate that the Notice of Appeal, filed October 28, 2013 was forwarded to the Court of Appeals, Division II on October 31, 2013. You will need to contact the Court of Appeals, regarding the status of that matter.

Court of Appeals, Division II Case 43995-6 records indicates you have attorney Stephanie Cunningham representing you, you will need to contact her regarding any questions on this matter.

Thank you,



IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

vs.

RONALD HODGE HOLTZ,
Appellant.

Appeal No. 43995-6-II

MOTION TO COMPEL
DUCES TECUM

(EMERGENCY MOTION)

(Appellant) Ronald H. Holtz, moves this court in a Motion to Compel 'DUCES TECUM' to produce the remaining preferred transcripts as ordered by Commissioner Schmidt's ruling on June 13, 2013, see Declaration of Ronald Holtz in support of this motion with exhibits A-D discerning the balance of the missing supplemental verbatim reports of proceedings. Also, all pages, exhibits, pleadings, depositions, and exhibits outlined in the clerk's bench denied enroute when held substance and merit as exculpatory evidence in due process of law, RAP 9.1, 9.3, 9.5, 10 et seq. and RAP 2.5 et seq. WHEREFORE, it is prayed this motion is granted.

THIS 4th DAY OF OCTOBER, 2013.


RONALD HOLTZ

MOTION TO COMPEL
DUCES TECUM -

STATE OF WASHINGTON
of
RONALD HOLTZ
DECLARATION

ss. COUNTY OF WALLA WALLA

I, Ronald Holtz, (Appellant) declare the following:

1. I am the Appellant in the above cited Division II Court of Appeals.

2. Who filed a notice of appeal on September 25, 2012. The opening Brief of Appellant was filed by Counsel Stephanie C. Cunningham on March 22, 2013, the Brief of Respondent was filed on May 23, 2013. Appellant's statement of Additional Grounds was due on June 16, 2013.

3. Appellant's statement of Additional Grounds was mailed on or about June 14, 2013 and filed June 19, 2013 w/ exhibits of Invalis No. Contact order violation Complaint, Affidavit of Connie Elliot (showing no description of Defendant), Ltd. Report of Motel Keystay viewing at run-ning name of Chae J. Strain, and a hearing continue documents showing refusal of Mr. Holtz to sign as well as written objection to CPR §13 speedy trial violations. Will require expert evidence in support of the record substantiating proof of grounds/claims.

4. On June 4, 2013 Counsel filed a Motion for leave to file A Supplemental Statement of Arrangements, and on June 13, 2013, a Ruling by Commissioner Schmidt granted this request. Providing 10 days for filing of Supplemental Statement of Arrangements, requesting numerous (11) even dates for transcripts of pre-trial proceedings to be produced. Mainly to make a showing of speedy trial violations, misconduct of defense Counsel and Prosecution. See Exhibits A, B, & C.]

5. Appellant was to receive the Supplemental Verbatim Report of proceedings 30 days of the Commissioner's ruling June 13, 2013 (which is) July 13, 2013, and once received, file (SAG) due 30

After receipt. This would have been August 29, 2013. However, the order was not adhered nor filled.

6. Appellant's Motion to Clarify "Filed June 30, 2013" outlining all documents from the pouch and transcripts and exhibits still was not responded to nor addressed or satisfied.

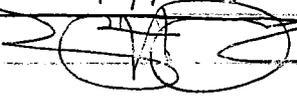
7. on September 27, 2013, clerk David G. Penzaha finally responded after 3 1/2 months and only has produced (4) dates of the (11) dates requested and ordered by Commissioner Schmidt almost 4 months ago, yet missing 7 dates of transcripts he has stipulated a 30 day deadline from September 27, 2013 to October 26, 2013 and Appellant received this on or about October 3, 2013. See exhibit "D".

8. Appellant is requesting the balance of transcripts ordered by the Commissioner in addition to Lopez Torres return in order to file a supplemental statement of additional grounds.

9. By Acts of Officers of the Court Appellant is being denied "Swift Justice Timely Appeal" - State v. Stein, 144 Wn. 2d 236 (2001). Article I, sec. 10, of Wash. St. Const. mandates justice in all cases shall be administered openly, and without unnecessary delay. The plain language of the section reveals the commitment of the framers to decide cases in a manner that is both just and swift. Accordingly, unnecessary delay in and of itself is an error of constitutional magnitude. Simply reinstating a criminal defendant's appeal after an extended period of unnecessary delay does nothing to cure the error. Where there is a wrong the Court should provide a remedy.

10. Appellant Requests that the necessary transcripts be produced expeditiously with the exhibits removed from the inactive Court Clerk pouch.

This 4th Day of October, 2013,
I declare under penalty of perjury that
the above is true and correct.
RONALD HOLTZ



A

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

vs.

RONALD HOLTZ,
Appellant.

Appeal No. 43995-6-II
Pierce Co. No. 11-1-03845-1

SUPPLEMENTAL STATEMENT
OF ARRANGEMENTS

Stephanie C. Cunningham, attorney for Appellant, states that on this day she ordered transcription of an original and one copy (paper or PDF) of the following verbatim reports of proceedings held in Pierce County Superior Court in this case:

DATE(S)	COURT REPORTER	JUDGE
10/25/11, 11/29/11, 12/6/12	Angela McDougall	Edmund Murphy
1/12/12, 2/14/12, 3/6/12, 3/20/12, 4/19/12, 5/24/12	Kim O'Neill	Kathernie Stolz
5/12/12	Katrina Smith	Bryan Chushcoff
5/31/12	Syndie Hagardt	Beverly Grant

Appellant arranged to pay the cost of transcription as follows: At public cost, based on the Order of Indigency filed in the Superior Court on 09/25/2012.

DATED: June 17, 2013

STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Appellant Ronald Holtz

CERTIFICATE OF SERVICE

I certify that on 06/17/13, I caused a PDF copy of this document to be served on: (1) Angela McDougall at amcdoug@co.pierce.wa.us; (2) Kim O'Neill at Oneillreporting@aol.com; (3) Katrina Smith at ksmith2@co.pierce.wa.us; and (4) Syndie Hagardt at hagardt@telebyte.ne.

STEPHANIE C. CUNNINGHAM, WSBA #26436



Washington State Court of Appeals
Division Two

B

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

June 13, 2013

Stephanie C Cunningham
Attorney at Law
4616 25th Ave NE # 552
Seattle, WA 98105-4183
SCCAAttorney@yahoo.com

Thomas Charles Roberts
Pierce County Prosecuting Attorney
930 Tacoma Ave S Rm 946
Tacoma, WA 98402-2171
TROBERT@co.pierce.wa.us

CASE #: 43995-6-II
State of Washington, Respondent v. Ronald Holtz, Appellant

Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY COMMISSIONER SCHMIDT:

Appellant's motion to supplement the verbatim report of proceedings is granted. A supplemental statement of arrangements is due within 10 days of the date of this ruling. The supplemental verbatim report of proceedings is due within 30 days of this ruling. Appellant's Statement of Additional Grounds for Review is due 30 days after he has received the supplemental transcript.

Very truly yours,

David C. Ponzoha
Court Clerk

C

June 17, 2013

Ronald H. Holtz, DOC# 945319
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326-0769

RE: Your appeal in *State v. Holtz*
Pierce Co. No. 11-1-03845-1
Appeal No. 43995-6-II

Dear Mr. Holtz,

The Court of Appeals has given us permission to order the additional pretrial transcripts. I am enclosing a copy of the document that I filed today requesting transcripts of the pretrial continuance and status hearings. Please note that not every hearing is conducted on the record (recorded or transcribed by a court reporter), but I have ordered all the hearings that were conducted on the record. Also, I have already ordered transcripts for all proceedings from 6/4/12 onward.

Once the transcripts are filed, the Court will send you copies. Your SAG will be due 30 days after you receive the additional transcripts.

Sincerely,



Stephanie C. Cunningham

Enclosures: Letter from COA
Supplemental SOA



Washington State Court of Appeals
Division Two

D

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

September 27, 2013

Stephanie C Cunningham
Attorney at Law
4616 25th Ave NE # 552
Seattle, WA, 98105-4183

Thomas Charles Roberts
Pierce County Prosecuting Attorney
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2171

Ronald Holtz
DOC #945319
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, WA 99362

CASE #: 43995-6-II
State of Washington, Respondent v. Ronald Holtz, Appellant

Dear Ronald Holtz:

Enclosed please find the supplemental transcripts for hearing dates January 12, 2012, February 14, 2012, March 6, 2012, and May 24, 2012. You must either notify this Court that you wish to keep the statement of additional grounds for review that was filed on June 19, 2013, or file a whole new statement of additional grounds for review no later than 30 days from date of this letter.

Since the Motion to Clarify that you filed with this Court pertains to the above, it will placed in the file without action.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:c

IN THE STATE OF WASHINGTON COURT OF APPEALS
DIVISION II

No. #43995-6-II

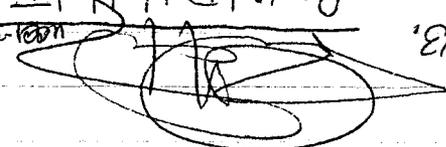
MOTION IN OBJECTION
AND TO SUPPLEMENT
THE RECORD

STATE OF WASHINGTON
Respondent,

v.

RONALD H. HOLTZ,
Appellant.

Appellant, RONALD HOLTZ, requests this court move to supplement the record as he objects to the court's 10/11/13/10/17/13 ruling to proceed without the ordered Superior Court records transcription within 60 days which is almost 4 months beyond mandated rule, pursuant to RAP 9.2, 9.5(a), 9.10, & 9.11 et seq. [SEE further detail/description in Declaration attached hereto.]

THIS 29th DAY OF October, 2013.

RONALD H. HOLTZ
WA091-308

MOT. IN OBJECTION
AND TO SUPPLEMENT
RECORD

STATE OF WASHINGTON
OF
RONALD HOLTZ
DECLARATION

I, Ronald Holtz, declare the following:

1. I am the Appellant in the above cited case No. #13995-6-II in the Division II Court of Appeals.

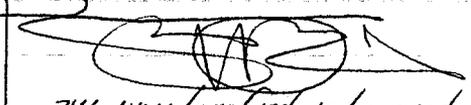
2. On or about June 13th & 17th, 2013, Attorney Stephanie G. Cunningham did Motion the Court in a statement of appointments for it different dates of transcripts from the Superior Court of Pierce County. These were requested by name of Judges and Court Reporters dates from 9/19/11 throughout 6/4/12.

3. Since this date on or about 10/4/13 after motions to clarify and to compel Duess Team, I have only received (4) dated transcripts reports out of the (11) with (7) remaining to be produced.

4. On or about 10/11/13 or 10/17/13, after Commissioner Schmidt previous order for transcription of hearings for Appeal. Clerk David G. Penzoha alleges that there is no Court Record to be transcribed due to it not being recorded yet, Mr. Holtz and Attorney S.C. Cunningham have listed them as verified by Pierce County Superior Court Clerk's Office Rm. #110 with the computerized minutes as well.

5. This Motion is in objection to the failure to present these critical exculpatory Superior Court Records on Appeal and to implement the record pursuant to RAP 9.2, 9.5(a), 9.11. In order to safeguard Mr. Holtz due process right to Appeal.

RONALD HOLTZ



THIS 29th Day of October, 2013.

pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

8. WHEREFORE, Appellant objects to failure to produce these transcribed Superior Court Records, the Court's October 11 or 17th, 2013 ruling and moves to Supplement the Record, pursuant to RAP 9.5(a), 9.10 & 9.11 et seq. Humbly requesting transcription of the (7) seven court hearings or dismissals, warrants, remand, and dismissals.

7. Appellant is entitled to all Superior Court Records on Appeal and is requesting out of necessity especially showing speedy trial violations - 10/25/11, 11/29/11 and such which will produce defendants request for dismissal due to Counsel Harry Steinhilber walking out of court on the day of trial when Mr. Holtz refused to agree to a 90 day extension of time. The record is crucial to make a showing in support of (SAG) argument. STATE V. TITMAN, 149 WASH.2D 775, 72 P.3D 735 (2003).

6. Pursuant to RAP 9.5(a) Filing and Service of Report of Proceedings -- Objections. The Court Reporter has failed to file the Report 60 days after the statement of arrangements was filed June 13th or 17th, 2013, see *Cit. of Sumner v. Walsh*, 148 WASH.2D 490, 61 P.3D 1111 (2003). Court Reporter has failed to timely prepare criminal trial transcripts reflecting defendants due process right to timely appeal his conviction which is so clearly established as to alert Court Reporter as to its constitutional obligations. WASH. ST. CONST. ART. 18. Reporter has not sought extension of time, submitted written explanation for delay or asked for assistance. Counsel Stephanie G. Cunningham has not pursued this matter in behalf of Appellant pursuant to CR 3.1 et seq. *Harroove v. Riley*, 100 F. Supp. 2d 1271 (E.D. Wash. 2000). U.S.C.A. Const. Amend. 74; 42 U.S.C. § 1983; WASH. RAP 9.5(a); STATE V. SULLIVAN, 2012 WL 4944861 (2012), (criminal law 1086, 4; Criminal law 110(7)).

Dear Clerk,

10/29/13

I am writing you out of pure necessity in order to obtain the docket and/or minutes in my case. I'm currently on appeal for.

However, I do not have the Superior Court Case # but I have the Appeal No. #43995-6-II -

Sentenced 9/12/12 - arrested on 9/19/11 for 4 assault and violation of No Contact Order.

~~State of Washington v. Ronald Hodge Holtz~~

10/25/11 omnibus Judge Edmund Murphy

11/29/11

Trial cont'd

12/6/11

1/5/12

Judge Catherine Stoh

2/14/12

This is pretty close but I need the whole year w/ Judge, Court Reporter, minutes, hearing description, etc. The Court of Appeals is having difficulty so, I must show the dates, etc. RHP 9.5(a) - Also, none of the Court Reporters have responded since a 6/13 or 6/17/13 statement of arrangements on file by Attorney Stephanie Cunningham.

Also, I filed a Civil Suit #12 U.S.C. § 1983 / Roush Title

which I have 90 days to serve - (Am I please get the

file number or a stamped copy along w/ the Court Service

Form - If it's one grouped or separate under ER 4

because there are all Pierce County Sheriff Dept. employees

who'll be defended by the Prosecutors Office Civ. Div.

Thank you for your time and assistance in

this matter.

I appreciate your experience as

I'm on time restrictions

Sincerely,



Personal Restraint Petition of: Ronald Holtz
Court of Appeals Case No. 45427-1-II

STATEMENT OF FINANCES:

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

1. I do do not ask the court to file this without making me pay the \$250 filing fee because I am so poor and cannot pay the fee.
2. I have \$ 9.00 in my prison or institution account.

(NOTE: you must complete #2 of this statement, whether you submit a copy of your prison account summary or not).

3. I do do not ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a lawyer.
4. I am am not employed. My salary or wages amount of \$ 0 a month. My employer is _____
5. During the past 12 months I did did not get any money from a business, profession or other form of self-employment. (please identify type of self-employment here 0) and the total income I received was \$ 0
6. During the past 12 months I:
I did did not receive any rent payments, if so, the total I received was \$ _____
I did did not receive any interest. If so, the total I received was \$ _____
I did did not receive any dividends. If so, the total I received was \$ _____
I did did not receive any other money. If so, the total I received was \$ _____

I do _____ do not have any cash except as said in question 2 of this statement of finances. If so the total amount I have is \$ _____

I do _____ do not have any savings or checking accounts. If so, the total amount in all accounts is \$ _____

I do _____ do not own stocks, bonds or notes. If so, their total value is: \$ _____

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

ITEMS

VALUE

Ø N/A

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

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

NAME & ADDRESS

RELATIONSHIP

AGE

Ø N/A

10. All the bills I owe are listed here:

Name & Address of Creditor

Amount Owed

D.O.C.

\$4,974.00

Not Reported in P.3d, 162 Wash.App. 1003, 2011 WL 1944219 (Wash.App. Div. 1)
(Cite as: 2011 WL 1944219 (Wash.App. Div. 1))

Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION, SEE RCWA
2.06.040

Court of Appeals of Washington,
Division 1.
STATE of Washington, Respondent,
v.
Dalphine **HOOPII**, Appellant.

No. 66730-1-I.
May 23, 2011.

Appeal from Pierce County Superior Court; Honorable Brian Maynard Tollefson, J.
Stephanie C. Cunningham, Attorney at Law,
Seattle, WA, for Appellant.

Stephen D. Trinen, Pierce County Prosecutors Ofc.,
Tacoma, WA, for Respondent.

UNPUBLISHED

COX, J.

*1 A warrantless search of a motel **registry** without individualized or particularized suspicion that the target of the search is a guest at the motel violates article I, section 7, of the state constitution unless an exception to the warrant requirement applies.^{FN1} No exception to the warrant requirement applies here. And the warrantless search of Dalphine **Hoopii's** individual motel **registry** was conducted without an individualized or particularized suspicion that she was a guest at the motel. Thus, the search was unlawful. We reverse the denial of her motion to suppress and remand for further proceedings.

FN1. See *State v. Jorden*, 160 Wn.2d 121,130, 156 P.3d 893 (2007).

The facts found by the trial court, which we summarize here, are not challenged on appeal. On

January 20, 2009, Community Corrections Officer (CCO) Joanne Springer went to the Hometel Inn in Fife to verify the living arrangements of two offenders, Robert Brown and Shirley Butts. Both had informed the Department of Corrections (DOC) that the Hometel Inn was their primary residence.

The Hometel Inn keeps two **registries**. The first is a one page master **registry** listing room numbers and the last name of each room's registered occupant. The second is an individual **registry** card for each room containing more detailed information, including the full name of the registered guest, the names of any other guests staying in the room, and the registered guest's photo identification and vehicle license information.

CCO Springer first asked to see the master **registry** to verify Brown's and Butts' room numbers. While looking at this **registry**, she noticed that the occupant of room 245 was named "**Hoopii**." CCO Springer knew two people with that last name. She also knew that one of them, Dalphine **Hoopii**, had an active DOC warrant for absconding from supervision.

CCO Springer then asked to see the individual **registry** card for room 245 to determine if the "**Hoopii**" listed as the occupant of that room on the master **registry** was Dalphine **Hoopii**. After reviewing the card and a copy of the occupant's photo identification, CCO Springer concluded that the occupant was Dalphine **Hoopii**.

A short time later, Fife Police Officers responded to a call from CCO Springer and accompanied her to room 245. After taking Dalphine into custody, CCO Springer and the officers searched the room and found three controlled substances—methamphetamine, Oxydodone, and Lorazepam.

The State charged **Hoopii** with three counts of possession of a controlled substance with intent to

Not Reported in P.3d, 162 Wash.App. 1003, 2011 WL 1944219 (Wash.App. Div. 1)
(Cite as: 2011 WL 1944219 (Wash.App. Div. 1))

deliver and one count of bail jumping. **Hoopii** moved to suppress the evidence seized during the search, arguing that it was the product of an unlawful search of the motel **registries**. In denying the motion, the trial court first noted that **Hoopii** had “diminished privacy rights.” It then found that “Springer looked at the motel **registry** solely for the purpose of conducting compliance checks on two offenders,” and that the discovery of **Hoopii**'s name on the master **registry** was inadvertent. It concluded that “Springer was not obligated to ignore **Hoopii**'s name when she knew that there was a felony warrant for her arrest.”^{FN2}

FN2. Clerk's Papers at 63.

*2 **Hoopii** waived her right to a jury trial, and the case was tried to the bench. The court found her guilty as charged.

Hoopii appeals.

SEARCHES OF MOTEL REGISTRIES

The information in a motel **registry** is a private affair protected by article I, section 7, of the state constitution.^{FN3} Absent an individualized or particularized suspicion about the target of the search or a valid exception to the warrant requirement, a warrantless search of a **registry** is unlawful.^{FN4} In reviewing a decision on a motion to suppress the fruits of a search, we treat unchallenged findings as verities and determine whether the findings support the court's conclusions of law.^{FN5} We review conclusions of law de novo.^{FN6}

FN3. *Jorden*, 160 Wn.2d at 130.

FN4. *Id.*

FN5. *State v. Louthan*, 158 Wn.App. 732, 740–41, 242 P.3d 954 (2010).

FN6. *Id.*

Hoopii's sole contention on appeal is that the superior court erred in denying her motion to suppress. Citing *State v. Jorden*,^{FN7} she argues that

the evidence supporting her convictions was the product of unlawful searches of the motel's master and individual **registries**.

FN7. 160 Wn.2d 121, 156 P.3d 893 (2007).

In *Jorden*, police discovered *Jorden*'s name and room number during a random, warrantless search of a motel **registry**.^{FN8} They proceeded to *Jorden*'s room and arrested him for outstanding warrants.^{FN9} Upon entering the room, police saw cocaine in plain view.^{FN10} The State charged *Jorden* with possession of cocaine and he moved to suppress the cocaine as the product of an unlawful search of the motel **registry**.^{FN11} The trial court denied the motion and *Jorden* was convicted as charged.^{FN12} The court of appeals affirmed, but the supreme court granted review and reversed.^{FN13} A majority of the court concluded that information in a motel **registry** is a private affair entitled to state constitutional protection, and that **registry** searches are unlawful absent “an individualized or particularized suspicion” or an exception to the warrant requirement.^{FN14}

FN8. *Id.* at 124.

FN9. *Id.* at 124–25.

FN10. *Id.* at 125.

FN11. *Id.*

FN12. *Id.*

FN13. *Id.* at 122–23.

FN14. *Id.* at 130.

Here, the challenged search involved two separate **registries**. Because the **registries** were physically separate and contained very different information, the State must demonstrate a lawful basis to search each of them. With respect to the master **registry**, the State contends the search was lawful because CCO Springer was conducting a residence

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verification under former RCW 9.94A.700(4). **Hoopii** counters that this search was unlawful because CCO Springer lacked a suspicion that Butts and Brown had either violated supervision conditions or were engaged in criminal activity. She also argues that CCO Springer could have verified their occupancy by simply asking the desk clerk whether their names were on that **registry**. We need not decide whether the search of the master **registry** was lawful. Assuming without deciding that it was lawful, the subsequent search of the individual **registry** was not.

As discussed above, a warrantless **registry** search must be supported by either an individualized or particularized suspicion regarding the subject of the search or an exception to the warrant requirement. The State correctly points out that CCO Springer had an individualized suspicion that Dalphine **Hoopii** had violated the conditions of her supervision. But CCO Springer still could not lawfully search the individual **registry** without an individualized suspicion that the "**Hoopii**" listed on the master **registry** was Dalphine **Hoopii**.^{FN15} The court's findings do not establish such suspicion. The fact that the occupant of room 245 and Dalphine **Hoopii** shared the same last name did not establish an individualized or particularized suspicion. Nor did the fact that **Hoopii** is allegedly an uncommon name. For example, CCO Springer admitted knowing another person named **Hoopii** who was not on warrant status.

^{FN15} Cf. *State v. Winterstein*, 167 Wn.2d 620, 629–30, 220 P.3d 1226 (2009) (to protect the privacy of innocent third parties, police conducting warrantless search of probationer's residence must not only have a reasonable suspicion of a probation violation, but must also have probable cause to believe that probationer resides there).

*3 The court's statement that "Springer was not obligated to ignore **Hoopii's** name [in the master **registry**] when she knew that there was a felony

warrant for her arrest" did not justify the search of the individual **registry**. And, as discussed in more detail below, the search was not justified by the court's observation that **Hoopii** had "diminished privacy rights" because she was on community custody.

For all of the above reasons, the court's findings fail to establish a basis to search the individual **registry**.

The State argues alternatively that the search of the registration card comes within two exceptions to the warrant requirement. First, the State points out that offenders on probation or community supervision have a diminished expectation of privacy and their residence, automobile, person and personal property may be searched without a warrant if officers have a well-founded suspicion that they have violated the conditions of probation or supervision.^{FN16} But this relaxed standard applies only if the thing or place to be searched is first linked to the supervisee with sufficient certainty to protect the privacy of innocent third parties.^{FN17} If a residence is to be searched, there must first be probable cause to believe that the supervisee resides there.^{FN18} Similarly, if a motel **registry** is to be searched, there must be an individualized or particularized suspicion that the supervisee is a guest of the motel.^{FN19} As discussed above, CCO Springer did not have a sufficiently individualized or particularized suspicion that Dalphine **Hoopii** was a guest of the motel.

^{FN16} *State v. Lucas*, 56 Wn.App. 236, 243–44, 783 P.2d 121 (1989), review denied, 114 Wn.2d 1009 (1990); RCW 9.94A.631.

^{FN17} See *Winterstein*, 167 Wn.2d at 629–30.

^{FN18} *Id.*

^{FN19} *Jorden*, 160 Wn.2d at 130.

Second, the State contends **Hoopii** impliedly

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consented to the search. The State points out that a copy of the following Fife Municipal Code provision, with the bolded section highlighted, was affixed to the motel's registration counter:

A. The operator of any facility held out to the public to be an inn, **hotel**, motel or other public lodging place where sleeping accommodations, with or without meals or cooking facilities, are provided for the use of transient guests shall be required to comply with the terms of this chapter.

B. The facility operator and the clerk, at the time of registration, are responsible for obtaining the name, current address, number of people, and the make, model and license number of the vehicle being used by the registering guest, unless payment is to be made by pre-approved company direct billing or by credit card. Verification of the customer's name and address should be provided by obtaining a copy of a valid driver's license, passport, or other form of government approved picture identification. The records required by this section shall be kept available for inspection by any police or code enforcement officer at any reasonable time, or in a police or fire emergency at any time of day or night.^[FN20]

FN20. Fife Municipal Code 5.34.010.

The State contends this language gave motel patrons "notice of the fact that [the motel] shared records with officers" and therefore all patrons knowingly and voluntarily consented to a search of the registry records.

*4 Consent is a narrow exception to the warrant requirement.^{FN21} It can be either express or implied.^{FN22} The State bears the burden of demonstrating by clear and convincing evidence that consent was freely and voluntarily given.^{FN23} Whether consent was given is generally a question of fact to be determined from the totality of the circumstances.^{FN24}

FN21. *State v. Hendrickson*, 129 Wn.2d 61, 71, 917 P.2d 563 (1996).

FN22. *State v. Johnson*, 16 Wn.App. 899, 902, 559 P.2d 1380, *review denied*, 89 Wn.2d 1002 (1977) (express or implied).

FN23. *State v. Smith*, 115 Wn.2d 775, 789, 801 P.2d 975 (1990).

FN24. *Id.*

Here, the court entered no findings or conclusions on the State's theory of consent. The absence of a finding of fact in favor of the party with the burden of proof is deemed to be a finding against that party.^{FN25}

FN25. *State v. Haydel*, 122 Wn.App. 365, 373, 95 P.3d 760 (2004).

In any event, the State did not present clear and convincing evidence of consent. The State attempted to establish implied consent through proof that a copy of the above-quoted ordinance was affixed to the motel's registration counter. Photographs and testimony from a Fife police officer established that the ordinance was printed on a sheet of paper located near the center of a fifteen foot registration counter. But, there was no evidence that registrants have to stand near the notice while registering. Nothing in the photographic exhibits suggests a designated spot on the counter where registration is supposed to occur. The testifying officer, who was familiar with the registration area and the notice, conceded that he could not read the notice when standing at either end of the counter. Finally, there was no evidence that motel employees required registration to take place at a particular spot on the counter or routinely directed registrants' attention to the notice. The State thus failed to carry its burden of demonstrating implied consent by clear and convincing evidence.

We reverse the denial of the motion to suppress and remand for further proceedings.

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WE CONCUR: SPEARMAN, J., and LEACH,
A.C.J.

Wash.App. Div. 1,2011.
State v. Hoopii
Not Reported in P.3d, 162 Wash.App. 1003, 2011
WL 1944219 (Wash.App. Div. 1)

END OF DOCUMENT

Westlaw Delivery Summary Report for UNDERWOOD,KENT W

Your Search:	hoopii & hotel & registry
Date/Time of Request:	Tuesday, September 25, 2012 11:02 Central
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Database:	WA-CS
Citation Text:	Not Reported in P.3d
Lines:	223
Documents:	1
Images:	0

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GRIEVANCE AGAINST A LAWYER



Office of Disciplinary Counsel
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

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- Read our information sheet Lawyer Discipline in Washington before you complete this form, particularly the section about consenting to disclosure of your grievance to the lawyer.
- If you have a disability or need assistance with filing a grievance, call us at (206) 727-8207. We will take reasonable steps to accommodate you.
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Bar Number (if known)

INFORMATION ABOUT YOUR GRIEVANCE

Describe your relationship to the lawyer who is the subject of your grievance:

- I am a client
 I am a former client
 I am an opposing party
 I am an opposing lawyer
 Other: _____

Is there a court case related to your grievance? ✓ YES _____ NO

If yes, what is the case name and file number?

STATE V. Holtz: Pierce Co. No. 11-1-03845-1 & Appeal No. # 43995-6-II

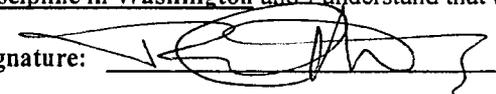
Cont: D next pg.

Explain your grievance in your own words. Give all important dates, times, places, and court file numbers. Attach additional pages, if necessary. Attach copies (not your originals) of any relevant documents.

10/12/12 - Initial Appeal Letter - where I'm informed at least 1 year on appeal
3/22/13 - Notice only after brief is filed, attacking only one issue w/ letter alleging that I have no issues, search of motel registry, detaining me, holding my I.D., speedy trial, in-court I.D., especially that I can't challenge contradicting testimony see, U.S. v. LA Page, 231 F.3d 488, 491 (9th Cir. 2000) A conviction cannot stand on false testimony which the Prosecutor knew about and repeated State v. Lindsay, 288 P.3d 641 (2013) (see upcoming SAG enclosed) Further, in pg. 2 of 3 para. 3-4 Ms. Cunningham, attempts to convince me to withdraw my appeal, even though she won an identical Motel Registry issue in State v. Hoopii (2011 WL 1944219 (Wash. App. Div. I) From May 23, 2011 to my case is Sept. 19, 2011 both in FIFE, WA. However, as you'll see we've debated by mail w/ her refusing to brief the issue.
4/3/13 - She responds to a letter where I request all issues to be raised on appeal and outline issues that are supported by record and how she falsely stated the record but she continues to refuse to brief all my issues. She alleges not supported by record.
4/9/13 - my 2 pg. quotes 6/4/12. Probable Cause hearing In-Court I.D., Mental health issue REV 10.99, Speedy trial C.R. 3.3, Amendment of charges, and her failure to brief relevant issues that have merit w/ support of the record.
4/17/13 - She still refuses to represent me zealously and will not withdraw.
5/27/13 - I again show violations of trial court by the record
6/4/13 - Ms. Cunningham admits to failing to order pre-trial transcripts for speedy trial violations and motions the court same date.
6/7/13 - my letter again showing her issues to be briefed to no avail.
6/14/13 - I mail my (SAG), sending her a copy w/ exhibits and of St. v. Hoopii.
6/27/13 - She lies concerning it must be a written motion for a speedy trial issue on appeal.

AFFIRMATION

I affirm that the information I am providing is true and accurate to the best of my knowledge. I have read Lawyer Discipline in Washington and I understand that the content of my grievance can be disclosed to the lawyer.

Signature: 

Date: October 4th, 2013

CONT, 'D

7/7/13 - I send letter on the invalid Complaints w/ multiple cases and the copy of the Complaints and a 6/30/13 copy of Motion to Clarify in order to obtain the transcripts as well as exhibits out of the pouch deemed non-active. She refuses to respond...

9/15/13 - I send letter concerning my (SAG), transcripts and her failure to respond.

Dear Sir/Ma'am,

I am sending you a copy of my (SAG) - Motion For Transcripts, and a copy of my CrR 7.8 "Motion For Relief From Judgment" as well as my transcripts so that you may see for yourself that Ms. Cunningham has in fact been ineffective.

I could go thru a slew of RPC violations 1.2, 1.7, 1.10 & misconduct RPC 1.8(m) but you know all too well.

I believe it simple to show NOT simply her using tactics but truly failing in her duty to represent me to the best of her abilities by observing the content of my brief, motions, and the transcripts that I cite.

I'm not being provided effective appellate counsel as my due process rights are being abridged on appeal by her ineffectiveness and further deprived of Swift Justice WA St. Const. Art. 1 § 10.

Please review all documents thoroughly for I've also included a copy of STATE V. Hoopil so, you can see that she's briefed on a registry case prior to mine. I'd like her to be cited, suspended, a written apology, and a new attorney.

I declare under penalty of perjury the above is true and correct.

THIS 4th day of October, 2013,

Sincerely,

