

Case # 311686

**Statement of Additional Grounds
for Review**

State of Washington

v.

Elivs Camillo Renteria Lopez

COPY



FILED

SEP 30 2013

Court of Appeals
Of The State Of Washington
Division 3

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY

State of Washington
Respondent,

NO. 31168-6-III

V.
Elvis Camilo R.
Lopez,
Appellant,

Statement of additional
Grounds For Review
RAP1010

I Elvis Lopez, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this statement of additional grounds for review when my appeal is considered on the merit.

Additional Ground 1

I feel the court violated my 60 day Speedy trial right twice. Once on September 21, 2011 which my 60 days commenced on that day.

I Stated to the court: "I Object.

My conStitution rights. I'm ready to have assistance of effective

counsel and Speedy trial and it

Says in the rule that 60 days is enough." The court: "You've made

your record. I understand." The

court reset the trial to December

12, 2011. which is over my 60 days

See; Exhibit (A) See; In State v.

Flinn, 110 P.3d 748, 154 Wn.2d

193, (wash. 2005). see; State v.

Ramsay 704 P.2d 657, 41 Wn.App.380 (wash. 1985)

Then the second Speedy trial

violation. was when the court

commenced my 60-days on December

7, 2011 resetting trial date to

march 5, 2012 which is over

my 60-days. I did Object to

going ^{past} my speedy trial deadline. See Exhibit (B). See; In State v. Lackey 216 P.3d 1072w, (wash. App. Div. 2 2009) Also arguing the reason the court didn't start my 60 days within the time limit is court congestion.

The time for trial rule in superior court sets a specific number of days in which a criminal defendant must be brought to trial. when a defendant is in custody while awaiting trial the time-for-trial is 60 days. CrR 3.3 (b) (1) CrR 3.3 (c) (1) establishes that the initial commencement date is the date of arraignment. The rule excludes certain periods from the computation of the 60 day period and provides that the last allowable time for trial is extended to 30 days beyond the end of any such period crR 3.3 (b) (5) (e). If more than 60 days elapses after arraignment and

there has been no excluded period or event resetting the commencement date, then time for trial is not timely under the rule and the charges must be dismissed with prejudice CrR 3.3(h).

If any period of time is excluded pursuant to section (e), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.

The initial "commencement" date is the date of arraignment CrR 3.3 (c) (1) Read in context, "commencement date" here refers to the date upon which the 60-day trial period commences, not the date the trial must begin. See, In State v. Nelson 125 P. 3d 1008, 131 Wn. App. 108 (Wash. App. Div. 3 2006)

Additional Ground 2

I feel that I should get my robbery thrown out because I

personally did not take anything from Remona Gonzalez, I had spare keys on my person and I had no intent to robb Remona Gonzalez because I was intoxicated and suicidal. I feel that I should get my robbery conviction dismissed with prejudice, Because I didn't literally take nothing from Remona Gonzalez person and, I lived with her and it was a on and off relationship. See police report where, "Gonzalez stated Lopez lives with her and they had just broken up last night, 4-12-10." See; Exhibit (C). See; In State v. Nam 150 P.3d 617, 136 Wn.App. 698 (Wash. App. Div. 2 2007). Also, I feel if someone live with a person they can't robb that person because it is that person resident to.

Additional Ground 3

I feel I should have my case remanded back to trial because I had conflict of interest with my attorney, I Objected 5 days before trial on 12-7-11. See; Exhibit (B)

I notified the court that I had a conflict of interest with my attorney. The court did nothing about it, until I submitted my Speedy trial motion, See Exhibit (D) that's when they noticed I had a conflict of interest with my attorney. And my attorney Scott Etherton Violating Rule 1.1, Rule 1.2, Rule 1.4, and Rule 8.4 Misconduct, Rule 1.3, "Rules of professional conduct."

He representing me when we had a conflict of interest when I had two attorneys Kim Ouren and Scott Etherton. And Etherton was being dishonest and selfish motives when he know he was going to

have Knee Surgery which was the time of my trial date. And still representing me at trial. See; In State v. Regan, 177 P.3d 783, 143 Wn.App. (Wash. App. Div. 3 2008).

Additional Ground 4

I felt that I had prosecutorial misconduct due to the fact that the prosecutor Megan A. Whitmire, let Shawna Nissen lie in trial, which I felt was prejudice towards me in trial, and because of that I didn't have a fair trial. It prejudice me because the jury was most likely to believe the prosecutor. In hearing the statement of Shawna Nissen, which I feel I should have my charges dismissed with prejudice, because I was denied a fair trial. See; In State v. Jones 183 P.3d 307, 144 Wn.App. 284, (Wash. App. Div. 2 2008).

There is evidence that proves Ms. Shawna Nissen lied, because of the 9.11. call, when she said I pushed my ex-girlfriend. On the stand Shawna Nissen said I picked my ex-girlfriend up by the neck or head and shoved her into the ground twice. I feel the prosecutor Megan A. Whitmire was be vindictive and malicious prosecution letting Shawna Nissen testify. My attorney Scott Etherton did objected to Letting Shawna Nissen testify.

Prosecutorial misconduct can also be seen when the prosecutor vouches for witnesses, And the prosecutor Magen A. Whitmire had knowledge of Shawna Nissen 9.11. call and Remona Gonzalez Statement to the officer Scott Timms, where Remona Gonzalez stated, that I live with her. see; Exhibit(C)

And on the stand Remona Gonzalez stated I never live with her. I felt it prejudice me because if Gonzalez would of told the ~~the~~ truth that I live with her then I couldnt of been found guilty of robbing some body I live with and in a romantic relationship with. By the prosecutor having knowledge of the events and still putting the witnesses on the stand for perjury ~~testimony~~ Magen A. Whitmire was vouching for them which denied me of a fair trial. Violating my due process rights.

Factor in wether prosecutor impermissible vouching for witness requires reversal include form of vouching, how much vouching implies that prosecutor has extra-record knowledge of or capacity to

monitor witness's truthfulness, any inference that court is monitoring witness's veracity, degree of personal opinion asserted, timing of vouching, extent to which witness's credibility was attacked, specificity and timing of curative instruction, and importance of witness's testimony and vouching to case overruled. Violating my due process rights. See; In U.S. v. Combs, 379 F.3d 564 (C.A. 9(Cal.) 2004) And I feel that it amounts to governmental misconduct and I should have my charges dismissed with prejudice.

Additional Ground 5

I felt I also had prosecutorial vindictiveness because when the prosecutor changes the charges to a ~~more~~ harsher charge. When in the first trial Ms. Whitmire charged me with assault in the second

degree and then changing it to a Robbery in the first the degree in the second trial. See; In Miracle v. Estelle 592 F. 2d 1269, (C.A.5 (Tex.) 1979). I see it as retaliation and harassment violating my ~~the~~ due process rights.

Additional Ground 6

I felt that I had Ineffective assistance of counsel because my attorney Scott Etherton should of impeached Shawna and Remona Gonzalez for inconsistent statements by using Remona Gonzalez's statements to officer Scott Timms. "Gonzalez stated Lopez lives with her and they had just broken up late last night, 04-12-10. ^{See Exhibit (C)} My attorney Scott Etherton should of used the police report admitting it into evidence as a recorded recollection under ER 803

(a) (5). See; In State v. Derouin 64 P.3d 35, 116 Wn.App. 38, (Wash. App. Div. 1 2003). when Gonzalez stated on the stand that I never live with her. Then Shawna Nissen 9.11. call stating in the 9.11. call that I just push my ex-girlfriend and then ~~p~~ on the stand Shawna said. I picked my ex-girlfriend up by the neck or head and shoved her into the ground twice. which prejudice me by having a fair trial

Also, Scott Etherton could of used officer ~~off~~ Scott Timms to testify on behave, that my ex-girlfriend told him that I live with her. They could of use statement about Gonzalez stated to officer Scott Timms as excited utterances. That I live with Gonzalez. See Exhibit(c)

See; In State v. Olson 168 P.3d 1273, 162 Wn.2d 1 (wash. 2007).

where the officer had direct contact after incident and he made a report about the Statement of the victim.

Also, my attorney was Ineffective assistance of counsel. when the trial court told Scott Etherton it was his choice to bring back Shawna Nissen to testify again because she was release from her subpoena to answer why her testimony didn't mach what she said in the 9.1.1. call. which I felt it was prejudice to me because he didn't bring her back to answer that in front of the jury. Which denying me of a fair trial. And failing to communicate with me ~~if~~ failing to advise me about the 9.1.1. of Shawna Nissen

fail to investigate my Speedy trial claims when I was telling him about my claims. Also, Scott could of advise the witness's Shawna Nissen, and Remona Gonzalez that they could get charge with perjury for lieing.

Scott was also ineffective assistance of counsel. Because I gave him information about Remona Gonzalez son, Marce Saenz stating to REF. "marcel told REF that Remona boyfriend, Elvis Lopez, resides in the home and has for about a year." I told Scott to bring in Remona gonzalez kids to testify on my behave and he could of use the information for my benifit. See, Exhibit (E)

Exhibit

A

1 September 21, 2011
2 Kennewick, Washington
3

4 P R O C E E D I N G S
5

6 MR. ETHERTON: We have an omnibus. We
7 received an offer not long ago from the prosecution and
8 here is the long and short of it today. I want a
9 continuance. I don't want a minimal continuance. I want
10 somewhere between 45 and a 60 day continuance. My client
11 does not want to sign a speedy waiver for trial. He has
12 been in jail for quite awhile and I am his fourth
13 attorney. The problem is we haven't had time to get into
14 it. We haven't had the opportunity to go over all the
15 discovery with him. The discovery is considerable.
16 Having said that, I think a 60 day continuance on 13
17 felony counts at this point is well within reason, at
18 least from our point of view as being his defense
19 attorney. Again the defendant does not want any more
20 continuances. He does not want to sign a waiver for
21 speedy trial. We think it's necessary for us to have this
22 continuance so we can give effective assistance of
23 counsel. Obviously we don't want to be caught in a
24 Washington Strickland situation. That's where we are at.
25 I'm not sure where the prosecutor is at on this.

1 MS. WHITMIRE: Your Honor, I cannot say
2 that a continuance isn't reasonable but I will defer to
3 the Court. This is counsel's motion. It doesn't surprise
4 me that any other attorney in his position would feel the
5 same way.

6 THE COURT: Where are we with speedy trial.

7 MS. WHITMIRE: At the very end the 17th is
8 the last date.

9 THE COURT: Mr. Etherton indicated he
10 cannot be prepared unless he is gets this continuance.
11 That sounds like good cause.

12 THE DEFENDANT: I object. My
13 constitutional rights. I'm ready to have assistance of
14 effective counsel and speedy trial and it says in the rule
15 that 60 days is enough.

16 THE COURT: You've made your record. I
17 understand.

18 THE DEFENDANT: And I object.

19 THE COURT: Trial date.

20 MS. WHITMIRE: State would suggest December
21 12th.

22 THE CLERK: Pretrial November 30th.

23 THE COURT: Omnibus on October 19th.

24 MR. ETHERTON: Yes, Your Honor.

25 THE COURT: That's where in the time frame

1 you requested. Is that right Mr. Etherton?

2 MR. ETHERTON: The trial is, yes, Your
3 Honor.

4 THE COURT: Very good.

5 (End of proceedings)
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Exhibit

B

1 wants to keep the trial date. Well, those two things are
2 counter to each other.

3 Then we have the issue of whether there needs to be a
4 guardianship, etcetera. I don't want to go that far now, but
5 it's clear to us that another assessment with regard to this
6 particular diagnosis, and if you want me to mention it, I
7 will. Needs to be done.

8 Further, as I mentioned before, I have surgery coming up
9 and would not be able to do the trial on the 12th. Another
10 matter is discovery. One, we just found out that there are a
11 couple videos. And prosecutor, we're not claiming any
12 misconduct or anything like that. The prosecutor didn't know
13 anything about it, but there was a video about one of the
14 instances where there was claimed assault. One of the
15 assault 2s there is actually a video of the incident. We
16 have not seen that. Therefore we have not interviewed the
17 officer. We have not had a chance really to know who that
18 officer is. So we need to interview that officer. We need
19 to view that video. We don't even have it yet.

20 It also has come to our attention that on the tasers
21 themselves were video. So there's an actual video of the
22 incident that occurred where Mr. Lopez was tased. We just
23 learned of that. When I say recently, I mean recently,
24 today. We also need to view that discovery and interview
25 those officers.

1 With regard to his defenses, it is clear the defense of
2 diminished capacity at the very least is necessary. To do
3 that we need a psychiatrist or a psychologist on board. One
4 psychologist we know has seen him, Dr. Mays. Dr. Mays is not
5 available on Monday. He will not be available until sometime
6 in February at the earliest. Not only that, we're probably
7 going to want to get another psychologist. We believe these
8 motions are in the best interest of Mr. Lopez, and that we're
9 looking out for his best interest and that by doing this, by
10 granting us this, the Court is protecting itself from at
11 least to a greater extent being overturned on -- being
12 overturned on appeal. Again if he's found incompetent or not
13 able to assist in his own defense because of the diagnosis,
14 which I have not heretofore mentioned, then that brings
15 another whole category for purposes of determining trial,
16 etcetera.

17 Further for the record, and I mentioned this before,
18 surgery on the 12th, I'll be out at least four weeks,
19 possibly six weeks, but I don't think so. So we once again
20 implore the Court for -- and again just to reiterate we
21 looked at the file. We thought, well, Miss Ouren is not on
22 the file. She's not the attorney of record. I am.

23 MR. LOPEZ: Um, I would like to speak, your Honor.

24 THE COURT: Not yet. Let's hear from the other
25 side.

1 MS. WHITMIRE: Your Honor, with regard to the
2 discovery, that's where I would like to start. It came to my
3 attention in speaking with one of the officers yesterday that
4 -- and I don't think it was just one video. It sounds as
5 though there were several videos. There are actually cameras
6 in the deputy's cars that it -- I don't know to what extent
7 they covered the event, but according to the officers he said
8 there's video of the whole thing. I haven't looked at these
9 videos. Our office was able to get those last night. We
10 provided them to counsel today. Should we proceed to trial
11 Monday, I am not going to offer these as evidence. It's
12 obviously very late discovery.

13 However, should there be a continuance, and I indicated
14 this to counsel, depending what's on them, I may want to
15 offer them if we don't have a trial date until some date in
16 the future. I'm going to defer to the Court with regard to
17 counsel's request for a continuance. I can say that I am
18 assisting another prosecutor in a trial Monday involving
19 three co-defendants, three defense counsel that involves a
20 drive-by shooting. I anticipate that case will take the
21 better part of next week. Should both of these be ready to
22 go on Monday, my suggestion in that event would be that we
23 pick a jury for this case Monday and start testimony portion
24 of it the following week, but that's all I really have to say
25 about the matter, your Honor.

1 THE COURT: I show, Mr. Etherton, that there was
2 oral substitution on August 17th. Is that when you got
3 involved?

4 MR. ETHERTON: That may be, to be honest with you.
5 I don't recall the specific date as to the videos. They're
6 at the very least covered under Brady, and I think we're
7 going to need to --

8 THE COURT: I'm trying to resolve these things just
9 one at a time.

10 MR. ETHERTON: OK. Sorry.

11 (pause)

12 THE COURT: I guess, Mr. Etherton, my question would
13 be is who did Mr. Lopez hire?

14 MR. ETHERTON: Well, as a matter of -- I'm not sure
15 how far I should be answering that question. As a matter of
16 fact obviously it's Kim Ouren's old law firm. I worked for
17 her, and again I'm not sure how far I should go with regard
18 to that. I have been handling the case, and I don't think
19 there's been any objection to that.

20 THE COURT: Well, that's not what I -- what I think
21 I've heard from Mr. Lopez in the past. I don't show a
22 written -- it says here: Ouren to file notice of appearance.
23 That was on November 2nd. That's probably because I probably
24 asked who was representing. And I wrote in the file at that
25 time Kim Ouren. So I don't know what was in court on the

1 2nd, but the Court sure had the opinion it was Kim Ouren, but
2 neither one of you have filed a notice of appearance.

3 MR. ETHERTON: That's correct, and I don't remember
4 what happened on that hearing, either. All I know is I was
5 the one, and I don't recall specifically obviously, but I was
6 the one that appeared at that hearing and have continued to
7 appear.

8 THE COURT: Well, people appear all the time for
9 someone else. That doesn't mean you're attorney of record.
10 I don't have any formal notice of appearance. I do have you
11 representing that you were going to -- an oral substitution.

12 MR. ETHERTON: Correct, and --

13 THE COURT: Which frankly you should have followed
14 up on.

15 MR. ETHERTON: And I do have. I do have a written
16 notice of substitution. I just need Mr. Swanberg to sign off
17 on that, and it'll be filed. But.

18 THE COURT: Well, I need to know who represents Mr.
19 Lopez.

20 MR. ETHERTON: Well, it's our position obviously
21 that I represent Mr. Lopez. I think under the Rules, the
22 Washington Rules, I represent Mr. Lopez.

23 THE COURT: Well, I don't think so. If you haven't
24 -- I mean you've appeared here in court.

25 MR. ETHERTON: Correct, and that is an appearance

1 for purposes of the Rules, your Honor.

2 THE COURT: And I was also advised that Miss Ouren
3 was going to file a notice of appearance.

4 MR. ETHERTON: I can't answer that.

5 THE COURT: That's what the note --

6 MR. ETHERTON: Our office was coming on. I think
7 that was said there, but obviously again Miss Ouren is kind
8 of the umbrella, because I work for her. So I'm not sure
9 what that was in reference to.

10 THE COURT: --All right. -- Did you want your client to
11 speak to the Court or not?

12 MR. ETHERTON: Well, I think --

13 THE COURT: He was asking to speak to the Court.

14 MR. ETHERTON: He is going to say what he has said
15 before, and I know what he's going to say, and his argument
16 is going to be with regard to his speedy and mishandling of
17 the case. All I would say to that is there have been four
18 attorneys. Each time that happens there is a resetting of
19 speedy. There was a time where he was on hold for, you know,
20 mental reason, etcetera, etcetera. Whether there is --
21 whether there's an argument or not hasn't been fully
22 explored. I've done plenty of felonies in my time, and one
23 or two felony cases it's not unusual to take six months to a
24 year, sometimes even longer. Here we have a 13-felony count
25 with significant discovery. How many officers, who knows?

1 At least 10, maybe as many as 20 officers, newly discovered
2 evidence with regard to the videos, which I think we have to,
3 whether they're used for trial or not, we have to see them at
4 least under Brady, and if we don't, there's ineffective
5 assistance of counsel. Now there's an issue with the
6 psychiatrist not being able to be here. We feel based on
7 some information that there may be a cause for new competency
8 hearing, and we're going to have to interview these officers.

9 MS. OUREN: May I speak, your Honor?

10 THE COURT: There you are. Miss Ouren. Yes.

11 MS. OUREN: I have been here. I've not appeared in
12 this case until last week when the issue came up as to who
13 was counsel on this case. I had not met with Mr. Lopez
14 until -- when was it? Monday of this week. His family hired
15 us. It was our understanding that Mr. Etherton would be
16 working on the case. Mr. Etherton went to jail and met with
17 Mr. Lopez, has done all those interviews, has done all those
18 appearances. I had not met with him until this week, not
19 been to court until this last week when this issue arose
20 about who was counsel, and I don't know why the substitution
21 wasn't filed back in August, but I've not been -- I've been,
22 you know, not even back seat to this case.

23 THE COURT: And I suspect we should get the
24 substitution. Mr. Swanberg's right here.

25 MS. OUREN: Right.

1 THE COURT: We should get that filed.

2 MR. ETHERTON: We should, your Honor. We're ready.

3 (pause)

4 THE COURT: Now, Mr. Lopez, it appears that your
5 family has engaged this group to represent you.

6 MR. LOPEZ: Yes.

7 THE COURT: And Mr. "Etherington" was going to --

8 MR. LOPEZ: Represent me?

9 THE COURT: -- take the lead in your case. Yes.

10 MR. LOPEZ: Yes.

11 THE COURT: OK.

12 MR. LOPEZ: Um, I still object. I still want my
13 speedy trial. Um, it is my right to have my speedy trial.

14 THE COURT: How do you propose that I do that if
15 he's going to be having surgery next week?

16 MR. LOPEZ: Um, that's -- I don't -- I don't know
17 how, but I mean I'm entitled to my right to have a speedy
18 trial, a speedy, um, public trial, and, um, it is prejudiced
19 me in you guys not denying me a speedy public trial.

20 THE COURT: I will grant a continuance of a time
21 reasonably necessary for you to explore the new discovery and
22 get this case ready for trial. I don't know that we're going
23 to necessarily start all over with a psychiatrist. You've
24 got Mr. May, Dr. Mays already. Why don't you ask him the
25 question about this one further diagnosis? If he's done all

1 these interviews. But that's kind of up to you. I'm not
2 telling you you can't, but I would suggest you try and start
3 with him.

4 MR. ETHERTON: Sure.

5 THE COURT: Because we also have Mr. Lopez' right to
6 speedy trial at issue here.

7 So we don't want to go out too much longer, although
8 there has been substantial delay for mental health
9 evaluations already. So that might be an area that needs to
10 be explored as you indicated.

11 What date do you think would be appropriate, Mr.
12 Etherington, with your surgery and what needs to be done in
13 this case?

14 MR. ETHERTON: Given that I'm going to be out for a
15 month and there's going to be a little bit of catchup, I'm
16 going to say less -- well, I'll say first or second week of
17 March for trial. And that will give us also the opportunity
18 to interview.

19 THE COURT: It'll be March 5th. What will be the
20 pretrial for that?

21 THE CLERK: February 22nd.

22 THE COURT: Set an omnibus for January 18th.

23 MR. LOPEZ: Your Honor, um, I object to that. Um,
24 State worth -- forms worth, he objected. You're supposed to
25 object within ten days of resetting of trial date. Um,

1 two-month delay I have another case law that -- that states a
2 two-month delay is a violation of my speedy trial rights.

3 THE COURT: Well, your attorney, who is Mr.
4 Etherington according to the record here --

5 MR. LOPEZ: Yeah.

6 THE COURT: -- is not available on the date that you
7 want to go to trial.

8 MR. LOPEZ: It's solely --

9 THE COURT: He has indicated to me that as a fairly
10 new attorney on the record, on the case, that he needs to do
11 some more things to get this ready for trial.

12 MR. LOPEZ: You're denying me, um, um, speedy public
13 trial?

14 THE COURT: I'm continuing it for good cause and
15 still in my mind a speedy trial within the Rule where your
16 attorney has given ground, including mental health issues, as
17 a basis for continuing this.

18 MR. LOPEZ: With all due respect I -- I already had
19 a mental health evaluation.

20 THE COURT: Right, and you were found competent to
21 go to trial, but now he's raised a question about diminished
22 capacity is what I heard.

23 MR. ETHERTON: Correct, your Honor.

24 MR. LOPEZ: But still I have the right to have --
25 after -- after -- after two years almost 20 months this is

1 going to be 20 months on the 13th of this month. It's going
2 to be 20 months, and you're saying you have good cause. I
3 don't -- I don't feel that you have good cause into doing
4 that. I believe that you, that you are going excessively
5 beyond your -- the statute of limitation. And there's no --
6 I don't feel that there is no good-cause continuance to let
7 this happen. But, um, all right. That's -- and, oh, your
8 Honor, um, too, I have a motion, a motion, um, that I wanted
9 -- I have a little bit of conflict of interest with my
10 attorneys because for the fact is I have a motion here right
11 here on speedy trial grounds, and I want him to submit it,
12 but he won't submit it.

13 MR. ETHERTON: I haven't seen it, your Honor.

14 MR. LOPEZ: That's why I'm trying to give it to him
15 right now in front of court, and I want it stated on record
16 that I am going to give it to him. I would like him to file
17 it, and, um, I would like also, too, for him to file for 8
18 point -- 8.3 dismissal on mismanagement, because this is
19 going way beyond the speedy trial and mismanagement.

20 MR. ETHERTON: Thank you, your Honor.

21 MS. WHITMIRE: Your Honor, one other issue. Since
22 we're setting this out so long, would the Court maybe want to
23 have us fill out those omnibus sheets?

24 THE COURT: You can.

25 MS. WHITMIRE: To keep us on track.

1 THE COURT: That would be a good approach. Why
2 don't we --

3 MS. WHITMIRE: Should it be --

4 THE COURT: I set this over to January 18th thinking
5 that that would be about the time that Mr. Etherington would
6 be back from surgery. Why don't you bring those forms back
7 at that time.

8 MR. ETHERTON: Thank you, your Honor.

9 THE COURT: All right.

10 MR. LOPEZ: -- Your Honor, I have something else to
11 say. I would like to have my attorney to come visit me in
12 the county jail if you can have that mandated, because I
13 would like to see the information.

14 THE COURT: Well, he's working for you. He
15 certainly can come up there.

16 MR. ETHERTON: I saw him this Monday, your Honor,
17 just so you know.

18 MR. LOPEZ: But with no paperwork. I need
19 paperwork. I need to see the evidence. I need to see all
20 his stuff.

21 THE COURT: Well, it appears that you have
22 additional things to do to get ready for trial. So I would
23 ask -- Mr. Etherton may not be able to do it on Monday
24 because it may be impossible.

25 MR. LOPEZ: I object again, just to state it on the

1 record.

2 THE COURT: Speedy trial is not just an absolute
3 thing. It's a constitutional thing, and that's different
4 than the rule for speedy trial. The rule has lots of ground
5 for continuances, and this is one of them. I think in
6 interests of justice this is the right thing to do.

7 MR. ETHERTON: Thank you, Judge. All right.

8 (Proceedings in this matter concluded.)

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Exhibit

C

Incident / Investigation Report

Richland Police Department

OCA: 10-08676

Status Codes L = Lost S = Stolen R = Recovered D = Damaged Z = Seized B = Burned C = Counterfeit / Forged F = Found U = Unknown

D
R
U
G
S

Status	Quantity	Type Measure	Suspected Drug Type

O
F
F
E
N
D
E
R

Offender(s) Suspected of Using <input type="checkbox"/> Drugs <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Alcohol <input type="checkbox"/> Computer	Offender 1 Age: 26 Race: W Sex: M	Offender 2 Age: Race: Sex:	Offender 3 Age: Race: Sex:	Primary Offender Resident Status <input checked="" type="checkbox"/> Resident <input type="checkbox"/> Non-Resident <input type="checkbox"/> Unknown
	Offender 4 Age: Race: Sex:	Offender 5 Age: Race: Sex:	Offender 6 Age: Race: Sex:	

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Name (L, F M) Lopez, Elvis Camillo OF1 AKA Elvis Camillo Renteri Lopez, Elvis Renteria...	Home Address 1112 Thayer Dr, Richland, WA 99354	Home Phone (509) 943-6047
Occupation	Business Address None	Business Phone

DOB. / Age	Race	Sex	Hgt	Wgt	Build	Hair Color	Eye Color
2/6/1984 / 26	W	M	5'06	220		Brown	Brown
					Hair Style	Hair Length	Glasses

Scars, Marks, Tattoos, or other distinguishing features (i.e. limp, foreign accent, voice characteristics)
; Scar/Right Finger - Top Of Thumb; Glas/ - ; Scar/ Fing -

Hat	Shirt/Blouse	Coat/Suit	Socks
Jacket	Tie/Scarf	Pants/Dress/Skirt	Shoes

Was Suspect Armed?	Type of Weapon	Direction of Travel	Mode of Travel
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VYR	Make	Model	Style/Doors	Color	Lic/Lis	Vin
2005	NISSAN	SENTRA	SEDA...	WHI	208TXU - WA	3N1CB51D15L536815

Suspect Hate / Bias Motivated:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Type:
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Name (Last, First, Middle)	D.O.B.	Age	Race	Sex
Miers, Tad Layne	10/9/1964	45	W	M

Home Address	Home Phone	Employer	Phone
1112 Thayer Dr, Richland, WA 99352	(509) 943-6047		

Assisting Officers
 (678491) CROSKREY, TOM
 (671550) RUEGSEGER, BRIAN
 (647790) KANE, RICHARD
 (618220) LAWRENCE, JASON

NARRATIVE:

On 04-13-10 at approximately 1250 hours I responded to 1123 Thayer regarding a possible stolen vehicle. Upon arrival I made contact with RAMONA GONZALEZ, who was the reporting person. GONZALEZ stated her ex-boyfriend, ELVIS LOPEZ, took her car without permission. GONZALEZ stated LOPEZ lives with her and they had just broken up late last night, 04-12-10. GONZALEZ indicated LOPEZ previously had authority to drive the vehicle but after they broke up she didn't want him to drive the vehicle. GONZALEZ stated she had returned home today to give LOPEZ some of his belongings out of the trunk of the vehicle. When GONZALEZ met up with LOPEZ he took the vehicle after she had told

ted at: 4/14/2010 09:05

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OCA: 10-08676

Officer's Narrative (continued)

him he was not allowed to have the vehicle. GONZALEZ stated LOPEZ was very upset and was making suicidal statements about killing himself. GONZALEZ didn't want to report the vehicle as stolen at this time due to LOPEZ stating he was going to bring the vehicle back in a couple of hours. I advised GONZALEZ to report the vehicle stolen if he doesn't return the vehicle within a couple of hours. I then cleared the call.

On 04-13-10 at approximately 1520 hours I was again dispatched to 1123 Thayer regarding an assault that just occurred between a female and a male. The female was ID'ED as GONZALEZ and the male was ELVIS LOPEZ. Upon arrival to the location I quickly contacted GONZALEZ, who was crying and had an abrasion on the left side of her face. GONZALEZ stated LOPEZ had returned with the vehicle but refused to return it to her and as she attempted to get the keys out of the vehicle he grabbed her, shoving her to the ground. GONZALEZ landed on the left side of her face on the pavement of Thayer. LOPEZ then got into the vehicle and drove off in her vehicle NB on Thayer. GONZALEZ wanted to report the vehicle as stolen (taking vehicle w/o permission). I attempted to locate the vehicle, driving NB on Thayer. As I drove north on Thayer I was getting waved down by citizens who were reporting a white Nissan vehicle driven by a male driving in an erratic manner and at a high rate of speed. The vehicle was the vehicle being driven by LOPEZ, which he had taken without authority of the owner GONZALEZ.

I was contacted by approximately 5 witnesses who were reporting the high speed of the vehicle. As I drove north on Thayer I started to notice fresh skid marks on the NB roadway at several intersections, possibly where LOPEZ had come to a skidding stop at the stop signs. The last witness observed the white Nissan in the area of Alder and Birch. I requested additional units to assist in the search of the vehicle. Officer Croskrey located the vehicle and was able to ID the driver as LOPEZ. Officer Croskrey got into a vehicle pursuit with the vehicle for a short time before officer Croskrey terminated the pursuit due to safety reasons. Refer to Officer Croskrey's report for additional information and his positive ID of LOPEZ as the driver of the vehicle.

I responded to 1123 Thayer and made contact with GONZALEZ. GONZALEZ again told me she wanted to report the vehicle as stolen. I obtained all the vehicle information and requested our police records to enter the vehicle as a stolen vehicle and to list LOPEZ as an officer safety alert due to his statements about not going back to prison and wanting to kill himself. I had GONZALEZ complete a written statement regarding the two separate incidents with LOPEZ and her vehicle. I provided GONZALEZ DV notification paperwork and took photographs of her injuries. GONZALEZ stated she did want a protection order filed against LOPEZ if he was arrested. While talking with GONZALEZ she received several phone calls from LOPEZ and he continued to state he wanted to kill himself and wanted to die. GONZALEZ was picked up by a family member and her and her two daughters were transported to a secure location.

LOPEZ'S phone number and cell carrier were provided to dispatch and they were able to ping his cell signal to an area out in Benton County. Benton County units were dispatched to the area and located the vehicle. LOPEZ was still driving the vehicle and proceeded to get into another vehicle pursuit with County deputies. During the pursuit LOPEZ was again driving very erratic, reckless, at high rate of speeds and without care for other people. LOPEZ attempted to hit a county patrol vehicle on two occasions and also came into contact with another patrol vehicle. Refer to BCSO deputies reports for additional information regarding the pursuit of LOPEZ and the collisions with BCSO vehicles (BCSO #10-5530)

The pursuit ended in Richland after the vehicle LOPEZ had been driving was boxed in by County deputies. After LOPEZ was arrested and placed into the back of a RPD police vehicle he was read his Miranda right by Officer Parish. During our contact with LOPEZ it was determined he was showing

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Officer's Narrative (continued)

several signs of impairment. Refer to Officer Grant's and Officer Parish's reports for additional information regarding their observations of LOPEZ. When I made contact with LOPEZ, post Miranda, I immediately noticed a moderate odor of an alcoholic beverage coming from his person and breath, his eyes were bloodshot/watery and his speech was slurred. Officer Grant told me LOPEZ had admitted to drinking three beers earlier. LOPEZ was very emotional and was having mood swings while talking with him.

LOPEZ was transported to the station and held in a temporary holding room while I applied for a search warrant for a blood draw. I made phone contact with Judge Butler and after providing her with my contact and probably cause she authorized the warrant for the blood draw. After obtaining the warrant LOPEZ was transported to Kadlec ER where he was medically cleared (taser deployment) and the blood draw was conducted. LOPEZ was then transported to the BC jail where he was booked and lodged on several felony counts. LOPEZ was provided with a copy of the search warrant return of service. PPA Farabee authorized a 72 hour felony hold for LOPEZ. Judge Butler also authorized a temporary no contact order preventing LOPEZ from contacting GONZALEZ.

I later enter the blood from LOPEZ (ST-3) and a copy of the search warrant (ST-2) into RPD property. A copy of the DUI investigation packet was completed and included in the case file. The blood was requested to be sent to the WSP crime lab for analysis. The vehicle LOPEZ was driving was towed to the PD and a warrant will be served and the vehicle searched at a later date and time.

Related to: LOPEZ, ELVIS CAMILLO - DRIVER
2005 NISSAN SENTRA SEDAN, 4 DOOR - WHITE
Owner: FRIAS, MARIA SUSANNA
VIN: 3N1CB51D15L536815 License: WA/208TXU

Related to: Tomren, Patrick Alan - DRIVER
2007 FORD (ALSO SEE ENGLISH, FRENCH,... CROWN VICTORIA SEDAN, 4 DOOR -
Owner: Benton County Sheriff
VIN: 2FAHP71W97X141516 License: WA/79387C

Related to: Reining, Arin Christine - DRIVER
2007 FORD (ALSO SEE ENGLISH, FRENCH,... CROWN VICTORIA SEDAN, 4 DOOR -
Owner: Benton County Sheriff
VIN: 2FAHP71W67X141523 License: WA/82128C

Related to: Hughes, David Preston - DRIVER
2007 FORD (ALSO SEE ENGLISH, FRENCH,... EXPEDITION SUV -
Owner: Benton County Sheriff
VIN: 1FMFI16557LA61694 License: WA/82139C

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Officer's Supplement

Officer (627660) TIMMS, SCOTT

Date / Time Reported TU Apr 13, 2010 15:22

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Elvis Lopez assaulted his girlfriend and left in her vehicle without her permission. He was located but eluded RPD units. Lopez was located again in Benton City and eluded BCSO units back into Richland. Spike strips were deployed and Lopez's vehicle was brought to a stop after reaching Jadwin and Torbett. He was tazed and taken into custody without further incident. He was booked into BC Jail on numerous charges.

Exhibit

D

State of Washington No. 10-1-00407-0

Motion

VS.
ELVIS camillo R. Lopez

Motion to Dismiss: Under CrR 3.3
for violation

November 30, 2011 I objected to
resetting of my Speedy Trial date
then the Judge scheduled my Trial
date to its original date which was
the 12th of December 2011, Kim Duren
was supposed to represent my
case that day so before Trial
there was another court date
which was December 7, 2011. I was
there. Kim Duren and Scott
Eherton were present there.
Kim was supposed to represent my
case on the 12th December 2011
they were both my Attorneys
at that time Scott Eherton was
talking to the Judge telling him
about his surgery he was supposed
to have, he asked for about
5 to 6 week continuance the Judge
granted him 97 day continuance.

So I was complaining about the length of the continuance and more that I forgot but it should be on the record and the transcripts. My point I am trying to get across is that Scott Etherton was available as of January, 18 2012 and my trial date wasn't set until March, 19 2012. As is stated in 129 P.3d 821, 131 Wn App 815. State v. Nguyen (Wash. App Div. 1 2006) the court granted the state a continuance over the defendant's objection therefore the case was dismissed due to a violation of the speedy trial rule.

The 4th June 2012 was the last day for my Speedy Trial sentencing State v. Ellis 884 P.2d 1360 76 Wn. App. 391 (Wash. App Div 3 1994) give 40 day for Speedy Trial sentence in the State of Washington

Exhibit

E

	School	Richland, WA 99352-0000	
M, SOFIA SAENZ	Carmichael Middle School	620 Thayer Drive, Richland, WA 99352-0000	

CHILD ABUSE/NEGLECT ISSUES AND ALLEGATIONS OR CONCERNS

Primary Address: 1123 Thayer Drive Richland, WA 99354 Phone: (509)840-7465	Incident Address: 1123 Thayer Drive Richland, WA 99354 Phone(509)840-7465
Directions to primary address:	

ALLEGATIONS

Victim	Subject	Subject Relationship to Victim	CA/N	Fatality
SONJA M. SAENZ	RAMONA R. GONZALEZ	Parent Birth/Adoptive	Negligent Treatment or Maltreatment	<input type="checkbox"/>
SONJA M. SAENZ	ELVIS C. LOPEZ	Parent's Partner	Physical Abuse	<input type="checkbox"/>
SOFIA M. SAENZ	RAMONA R. GONZALEZ	Parent Birth/Adoptive	Negligent Treatment or Maltreatment	<input type="checkbox"/>
SOFIA M. SAENZ	ELVIS C. LOPEZ	Parent's Partner	Physical Abuse	<input type="checkbox"/>

NARRATIVE

Allegations/Concerns: FAMILY COMPOSITION & BACKGROUND INFORMATION:
The referer (REF) is a probation counselor for 14 year old Marcel Gonzalez. Marcel resides at the primary address in Richland with his mother, Ramona Gonzalez. Also in the home are Ramona's other children: 13 year old Sofia Saenz and 16 year old Sonja Saenz. REF's report (which was dated 8/31/09 and mailed to DCFS intake) pertains to concerns relevant to Sofia and Sonja.

Coincidentally, Ramona called DCFS intake on 8/26/09 and requested FRS services due to Marcel's behaviors (the case is open to SW April Galstad). The intake suggests that no one else resides in the home with Ramona, Marcel, Sofia and Sonja. However, Marcel told REF that Ramona's boyfriend, Elvis Lopez, resides in the home and has for about a year.

Marcel reports that Elvis is about 35 years old. No other demographic data was provided by REF about Elvis.

This worker ran the name "Elvis Lopez" through DAPS which is a database that contains data on licensed drivers throughout the state of Washington as well as data on people that have Washington State Identification cards. Only 3 names came up via this large database and only 1 of them is for an Elvis Lopez residing in the Tri-Cities (the other 2 reside in Everett and Royal City). The Elvis in Tri-Cities is 25 years old. DAPS also shows that the Elvis Lopez in Tri-Cities, as of 4/9/09, was residing in Richland at 1112 Thayer (an A-House-Duplex) which, per MapQuest, is only 0.02 miles from Ramona's home which is also on Thayer. ACES shows that Elvis was residing at the 1112 Thayer address (in the "B" section of the A-House-Duplex) when he applied for food stamps on 03/17/2009 (which were paid through 8/27/09).

In spite of the discrepancies identified i.e., the intake from Ramona which suggests she does not have a paramour in the home; the age differences identified (i.e., Marcel said Elvis is roughly 35 but DAPS lists a 25 year old Elvis in Richland) and different addresses (i.e., Marcel says Elvis lives "in" the home but the Elvis identified may actually live "near" the home), it is presumed that the Elvis located in DAPS is the one Marcel was referring to. This conclusion is based in large measure on the fact that DAPS, which is a substantial database, only lists 3 Elvis Lopez's and 1 of them happens to have an address of record in very close proximity to Ramona. Furthermore, inasmuch as ACES and DAPS indicate that Elvis' aforementioned address was registered into the respective databases in the Spring of 2009 (i.e., in March and April, respectively), it is conceivable that Elvis could have moved into Ramona's home by now.

ALLEGATIONS:

The narrative of REF's report is as follows:

"While interviewing Marcel Saenz (DOB: 9/26/1994), in detention on 8/31/09, for new criminal charges over the weekend of August 29th, 2009, he disclosed that his mother's boyfriend Elvis Lopez (did not know date of birth but reported that he is roughly 35 years old), physically threw his 16 year old sister, Sonja Saenz (DOB: 7/9/93) down on the ground causing her to hit her face, which caused a deep black eye. This occurred around the middle of July 2009. He reported that she did not leave the house in fear that someone would ask what happened to her. He also reported that Elvis has gotten upset with Sonja in the past, where he bit her finger causing it to bruise. Marcel reported that his mother is well aware of her boyfriend's behavior toward her children and continues to let Elvis live in the home. Marcel reports that Elvis has lived in the home for approximately one year."

Assuming the correct Elvis has been identified, it should be noted that some concerning things were identified germane to him in JIS and/or SCOMIS. More specifically, SCOMIS shows that Elvis was convicted of 1^o robbery with a deadly weapon on or about 7/13/00 in Benton County Superior Court (case #00-1-00144-8). In addition, Elvis was found guilty of disorderly conduct on or about 12/29/99 in Benton County Juvenile Court (case #99-8-01038-7); this was amended from 4^o assault. Too, per review of JIS, Elvis was found guilty of negligent driving on 8/23/06 in Benton County District Court (case #R00019477); this was amended from DUI. In addition, SCOMIS shows that Elvis was found guilty of possession of marijuana (as a prisoner) in Benton County Superior Court on or about 8/9/00 (case #00-1-00530-3). Elvis was also found guilty of MIP/MIC in Benton County Juvenile Court on or about 3/1/00 (case #00-8-00023-4). He was also found guilty of drug paraphernalia use on or about 7/7/99 in Benton County Juvenile Court (case #99-8-00544-8).

***I&R to the Richland Police Department.

Child Characteristics: 1. Vulnerability/Self protective skills - 13 & 16 years old; no other significant information was provided by the referrer and/or recent (past 18 months) SDM RA regarding vulnerability and self protective skills.

2. Developmental Delays/Special needs/Behavior problems/Past Victimization - No conditions/situations noted by REF and/or recent (past 18 months) SDM RA. Regarding past victimization, prior founded intakes were not located on Ramona or Elvis.

3. Childcare known? Marcel, Sofia and Sonja are too old for childcare.

Caregiver Characteristics: 1. Substance abuse - Per review of JIS, Elvis was found guilty of negligent driving on 8/23/06 in Benton County District Court (case #R00019477); this was amended from DUI. In addition, SCOMIS shows that Elvis was found guilty of possession of marijuana (as a prisoner) in Benton County Superior Court on or about 8/9/00 (case #00-1-00530-3). Elvis was also found guilty of MIP/MIC in Benton County Juvenile Court on or about 3/1/00 (case #00-8-00023-4). He was also found guilty of drug paraphernalia use on or about 7/7/99 in Benton County Juvenile Court (case #99-8-00544-8).

2. Mental-Emotional, Intellectual, or Physical Impairments - Insufficient information from the referrer and/or recent (past 18 months) SDM RA: no significant concerns noted.

3. Parenting skills/Expectations of child - Insufficient information from the referrer and/or recent (past 18 months) SDM RA: no significant concerns noted.

4. Empathy, Nurturing, and Bonding - Insufficient information from the referrer and/or recent (past 18 months) SDM RA: no significant concerns noted.

5. History of violence by or between caregivers (towards peers and/or children) - SCOMIS shows that Elvis was convicted of 1^o robbery with a deadly weapon on or about 7/13/00 in Benton County Superior Court (case #00-1-00144-8). In addition, Elvis was found guilty of disorderly conduct on or about 12/29/99 in Benton County Juvenile Court (case #99-8-01038-7); this was amended from 4^o assault.

6. Protection of child by non-abusive caregiver - Insufficient information from the referrer and/or recent (past 18 months) SDM RA: no significant concerns noted.

7. Recognition of problem/Motivation to change - Insufficient information from the referrer and/or recent (past 18 months)

Exhibit

F

Kennewick, Washington

1
2 (Proceedings heard before the Honorable CRAIG J. MATHESON:)

3 MR. ETHERTON: Good afternoon, your Honor.

4 THE COURT: Good afternoon.

5 MR. ETHERTON: Number 5 Elvis Lopez.

6 THE COURT: It's on for pretrial today and
7 apparently omnibus also.

8 MR. ETHERTON: Correct, your Honor. Here's the
9 status. We've talked to -- may I? Yeah. We've talked to
10 the prosecutor. Couple things are going on here. One is I
11 have surgery scheduled. When we set these dates I hadn't had
12 the surgery scheduled, and we weren't herd when it was going
13 to be. As it is, it's scheduled. I've notified all the
14 courts. I don't know if want me to say it on the record when
15 that is, but the fact of the matter is it's major surgery,
16 and I'll be out a minimum of four weeks. The physical
17 therapist, etcetera are saying I'm going to probably be out
18 six maybe, eight, but I figure five weeks to be honest with
19 you. So having said that, my surgery runs the same week that
20 this is supposed to go to trial.

21 Now the client, the defendant Mr. Lopez, does not want
22 to, he does not agree to continuation of his speedy trial
23 right. However, there are also a couple of matters with
24 regard to discovery, and I haven't discussed this with the
25 prosecutor, because right now it seems like the main issue is

1 my surgery. But we need to, for our purposes, we need to
2 kick it out. I'll be ready probably mid February, maybe late
3 February, and I'd like to push the trial out to there. But
4 again the defendant Mr. Lopez does not agree to that, but I
5 think for us to effectively assist Mr. Lopez and certainly to
6 be ready for trial on a 13-felony count that it's reasonable
7 under the circumstance. And that's the name of that tune.

8 MS. WHITMIRE: Your Honor, Mr. Etherton came aboard
9 on August 17th. It's been over, a little bit over 90 days.
10 This case is obviously gone on for a long time. I think Mr.
11 Etherton's the fourth lawyer on this. Yes. I am not going
12 to stand here and oppose his request. This is -- I don't
13 think it qualifies as a technically complicated case, but
14 it's certainly more than your run of the mill, given the
15 number of counts. And it's rather voluminous discovery. You
16 know, I think probably the Court at this point would be
17 inclined to set a firm trial date, but I'm not going to
18 object under the circumstance that Mr. Etherton finds himself
19 in.

20 MR. LOPEZ: Your Honor, I want to. I don't -- I don't
21 find that there's good cause to continue this. I object to
22 this. I have case law saying that to object within ten days,
23 prior to within 12 days right now of my trial date right now
24 to object. I have this case law Washington -- or state
25 versus Jenkins objection. He won his objection of objecting

1 within ten days, and he beat the case. I'm objecting to
2 further continuances. I want to go to trial. I already have
3 an attorney. I have two attorneys. I have one who's willing
4 -- she said she can go to the court to trial on her own or
5 without Mr. Scott. So I would rather go with Kim Ouren my
6 attorney. So I have two attorneys. So I could go to trial,
7 and I don't find that good cause to continue this for further
8 continuance.

9 MR. ETHERTON: Just for the record, that's not what
10 was told him. He may be misconstruing something.

11 MR. LOPEZ: And I would like for you to -- I want to
12 know the reason why I was on diminished capacity almost for a
13 year? I would like for you to state it on record, and I
14 would like to know why was the reason for that, for that
15 delay and the reason why you're delaying it if you delay it.

16 THE COURT: Well, I don't know the reason why you
17 were on diminished capacity for a year.

18 MR. LOPEZ: And you guys are out of your
19 jurisdiction, because I have been locked up for almost two
20 years.

21 THE COURT: Is notice of appearance from Miss Ouren
22 or Mr. Etherton?

23 MR. ETHERTON: We both signed the NOA.

24 THE COURT: OK.

25 MR. ETHERTON: But I have been. I've gone to all

1 the appearance, etcetera.

2 THE COURT: I think he makes a good argument. He
3 can go with either attorney. I'm going to hold the trial
4 date.

5 MR. ETHERTON: Well, your Honor, I mean this, I have
6 been primarily handling this matter. Miss Ouren would have
7 to be kept up to speed or put up to speed on a couple of
8 matters. This is somewhat why -- how do I say this? She
9 took this case because I was her associate because I was
10 going to be helping, handling this matter. Obviously she's
11 on the case, and I don't think she feels comfortable going to
12 trial without me. I've done criminal law, both felony, both
13 federal and state for ten years and more than one state, and
14 I think she feels like her experience isn't quite up to par,
15 and she wants to make sure there is effective assistance of
16 counsel. She feels more confident with me at least, if not
17 being first chair, certainly second chair, but I think I have
18 been first chair. I've been lead counsel on this matter from
19 the beginning. And we'd like the Court to take that into
20 consideration.

21 THE COURT: Well, I'm trying to balance what your
22 client's saying with what you're saying. And apparently he
23 wants to go that route.

24 MR. LOPEZ: Your Honor, could I also say something
25 again?

1 MS. OUREN: Your Honor, Mr. Lopez was aware and
2 spoken to at length when he and his family retained my office
3 that I would get into the case on the condition that Mr.
4 Etherton was co-counsel with me, that I would be playing a
5 lesser role. I have not participated in the case, haven't
6 been to hearings, haven't communicated with the prosecutor,
7 have taken a very back seat. So to shove me out there this
8 date this close to trial, I think it works a disservice to
9 Mr. Lopez. I tried to explain that to him. He's not hearing
10 me on that topic. But from the onset when I was retained,
11 that was discussed.

12 MR. LOPEZ: Your Honor, could I say something real
13 quick? OK. Again I see no justification for doing that,
14 because for my reason by a client's decision concerning the
15 objectives of the representation and -- and required to by
16 Rule 1.4 shall consult with client to -- as to the means by
17 which they are to pursue. Because the client controls the
18 goals, the litigation where the client goal is to go to trial
19 and not the client has rejected further negotiation, and
20 strategy to delay trial for further negotiation is a breach
21 of the attorney ethical duty. OK. State v. Cross. OK. It
22 says client's goal determination was strategy available, for
23 example, for a competent defendant may forbid counsel to put
24 up a mitigation case if he has his goal is to go -- have the
25 death penalty imposed, but when the defendant decides he does

1 not wish to be put to death, he, the strategy is largely in
2 the hands of the attorney.

3 OK. I wish to go to trial. And that's it.

4 MR. ETHERTON: The only other thing I add, your
5 Honor, is something you have to balance obviously, is with
6 regard to appeal. I will just state that I hope, I believe,
7 whether there's an appeal or not is not the issue. What
8 happens on appeal is the issue I believe I'm trying to
9 protect the Court to some extent from appeal in that what
10 we're saying, you know, should we go to trial on that date,
11 and should bad things happen from our standpoint, I believe
12 if the Court allows what my motion, if you want to put it
13 that way, that the Court will be more protected. That's my
14 view. Maybe I'm wrong, but that's what I think.

15 MS. WHITMIRE: Your Honor, if I can just pipe in for
16 what it's worth. Mr. Etherton is the fourth counsel, because
17 every time we get close to trial, well, not every time we get
18 to trial, because obviously we've been close to trial a
19 number of times. It's been Mr. Lopez' request to get new
20 counsel, and that's played a significant role in the delay of
21 this case.

22 MR. LOPEZ: And I'm not -- I'm not trying to delay
23 no trial. Oh what she's trying to say that I'm trying to --

24 THE COURT: I'm just going to let you talk when I
25 ask you to talk at this point.

1 MS. OUREN: Your Honor, if I may speak briefly?

2 THE COURT: You may.

3 MS. OUREN: I've done one Superior Court trial and
4 had co-counsel. And so when we took this case, the
5 discussion was that Mr. Etherton would be lead. Mr. Lopez
6 wanted me to be his lawyer, but he understood that I needed
7 Mr. Etherton to assist. This isn't a small factual case.
8 There's lots and lots of counts. There's lots of issues. It
9 would serve Mr. Lopez to have Mr. Etherton available for
10 trial and not just myself, and then I'd have a month, even if
11 I had loads of experience, a month to get familiar with the
12 case. So I have nothing further than that.

13 THE COURT: Well, I see a number of possible
14 solutions. One is you could associate with another
15 co-counsel. I'm going to under the circumstances given the
16 age of the case and the defendant's adamant assertion of his
17 rights to speedy trial, I'm going hold the trial date.

18 MS. WHITMIRE: Your Honor, with that could we please
19 schedule a 3.5 hearing for next Wednesday? It was scheduled
20 for the 16th, but we had to cancel that. So we will need it
21 to go on the 7th.

22 THE COURT: 12-7, 1:30.

23 MS. WHITMIRE: Yes. And, your Honor, should I
24 assume that another courtroom would be open? If I were to
25 subpoena my officers for 1:30? Or is that --

1 THE COURT: I think you should get them here at
2 1:30. And the bottom line is that really it's nice to be
3 courteous to the officers, but I think they have should be
4 here at 1:30 when we set hearing at 1:30. Sometimes we can
5 have other judges, and sometimes we can't. But it's awful
6 tough to start these hearings at 3 and 4 o'clock in the
7 afternoon after a long day. So. Today to I could have done
8 a hearing at 1:30. We were sitting around with nothing to
9 do. So OK. Next week. 1:30.

10 MR. ETHERTON: Thank you, your Honor.
11 (Proceedings in this matter concluded.)

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OCT 07 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

10-2-13

Dear Court of Appeals

I made one small error on my statement of additional ground. On additional grounds # 5, I put that the prosecutor Ms. Whitmire charge me with assault in the second in the first trial. But it was actually a fourth degree assault that she actually charge me in the first trial. Changing it to a robbery in the second trial. It was under prosecutorial vindictiveness. I would like to know if you could make a note of that for me please.

Elvis camilo R. Lopez

Elvis Lopez

cause # 31168-6-III

Thank you
for your time

