

Received  
Washington State Supreme Court  
90965-5

NOV 17 2014  
E  
Ronald R. Carpenter  
Clerk

COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

WILLIAM C. WOMACK,

Appellant.

No. 42999-3-II

MOTION TO ADDRESS, AMEND, AND  
SUPPLEMENT THE RECORD AND  
SUPPORTING DECLARATION

1. Identity of Moving Party. William C. Womack, Appellant, seeks the relief requested in part 2 of this motion.

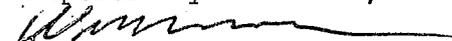
2. Statement of Relief Sought. Appellant would ask this Court to address, amend, and supplement the record with the "Factual History" within.

3. Facts Relevant to Motion. The facts relevant to this motion are set out in the attached declaration of Appellant.

4. Grounds for Relief Sought. Granting this motion will assure the record to have a correct, complete, and factual summary of the relevant history in which will assure Appellant the right to an effective appeal and due process under Wash. Const., art. 1, §22, as well as Wash. Const., art. 1, §3.

Dated this 9th day of August, 2013.

Respectively submitted,

  
William C. Womack  
Appellant

William Womack  
W.S.P.

1313 N. 13th Ave.  
Walla Walla, WA 99362-1065

MOTION TO ADDRESS, AMEND, AND  
SUPPLEMENT THE RECORD AND  
SUPPORTING DECLARATION -1

DECLARATION OF WILLIAM C. WOMACK

1 I, William C. Womack, am the author and the Appellant listed on page 1  
2 of this motion. Upon reading the "Appellants Brief" written by John Hays and  
3 the "Respondents Brief" written by Jody Newby, I have found that the "Factual  
4 History" written within the Statement of the Case on both briefs to be  
5 egregiously biased, partially incorrect, and many extremely relevant facts  
6 withheld. The following statements are argumentive:

7 Brief of the Appellant

8 On page 3 of the Brief of the Appellant it states:

9 "According to Alya (hereafter A.W.), in late 2002 the defendant started  
10 abusing her on a regular basis." (quoting RP 437-440)

11 However, A.W. additionally testified that the alleged abuse did not start until  
12 A.W. moved from a house downtown Kelso to a house in the suburbs of Kelso at  
13 151 Michaels Rd., which was in or arround May, 2004. RP 547 at 15-23, 648 at 6-10  
14 Additionally, the alleged first time of abuse was suppose to of been when Tammy  
15 (step-mom) was taking her boys to their dads for visitation in which she did  
16 not start taking her boys to Chehalis for visitation until at least a couple  
17 years later than 2002. RP 450-452, 750-751

18 On the top continued paragraph, I would ask this court to refer to the record  
19 for the list of events to see how A.W. was lead to say the alleged facts within.  
20 After the continued paragraph on page 4, it states:

21 "A.W. remembered that at some point early in the cycle of abuse she had  
22 developed some kind of rash on her buttocks and her father would have her  
23 undress so he could put cream on her. (quoting RP 437-440) He would then  
force her to have intercourse with him. She stated she later found out  
that he was rubbing lubricant on her instead of any type of medicated cream."  
(quoting RP 437-440)

24 This is allegedly the first occurrence which was to take place at age 8 or  
25 9, in which there was alleged penis to vaginal intercourse. RP 437 at 16-25

1 At the age of 8 or 9, there would be clear medical evidence of vaginal tearing  
2 in which absolutely no medical evidence was provided because it did not exist.  
3 During closing argument, Hunter explained to the jury that there was no medical  
4 evidence because the Womack made sure A.W. was too scared to come forward and  
5 be tested. RP 1280 at 8-13 There is no such testimony to support this. On  
6 cross examination, A.W. got caught in a lie about where this rash was located  
7 in which she stated in an earlier interview that the rash was on her lower  
8 back, not her buttocks. RP 544 A.W. also stated in a prior statement that  
9 her father put medicine on this rash but testified later that it was not  
10 medicine but lubricant by reading the bottle. RP 632, 644 (At what age are  
11 kids learning to read?)

12 On page 5 of the Brief of the Appellant it states:

13 "According to Tami, she was aware of what the defendant was doing to A.W.  
14 while she was in the bed when Tami and the defendant were having sex" (quoting  
RP 664)

15 Tami said the exact opposite of this. RP 664 at 7-9

16 On page 5 of the Brief of the Appellant it states:

17 "According to A.W., when she was 13 years old she told Tami that the defendant  
18 had been sexually molesting her." (quoting 475-480)

18 During direct examination, A.W. answered, "yeah", to a leading question by

19 Hunter in which ask, "When you were 13, did you tell Tammy what was going on?"

20 RP 476 at 21-23 During cross examination A.W. was ask, "...so when did you

21 tell Tammy?" A.W. answered with, "when I was 12 or 13." RP 541 at 21-22

22 During direct examination A.W. was ask when the alleged abuse ended in which

23 she also answered with 12 or 13. RP 487 at 11-12

1 On page 5 of the Brief of the Appellant it states:

2 "Tami reported that she confronted the defendant the next day about what  
3 he was doing to A.W., and the defendant promised her the abuse would stop."  
(quoting RP 475-480, 657-660)

4 A.W. never testified that he dad stated to Tami that the abuse would stop as  
5 quoted, and if she had it would be double hearsay. Tami was lead to say, "But,  
6 he did say, 'It will stop. It won't happen again,' in which was of course  
7 inadmissible hearsay. Womack testified that he absolutely did not rape A.W.  
8 ever. RP 1087 at 4-5

9 On page 5 of the Brief of the Appellant it states:

10 "However, a few weeks later when A.W. and her father had been drinking heavily,  
11 her father took her into his bed with Tami and ordered that she and Tami  
perform oral sex on him and each other, which they did." (quoting 480-487)

12 However, during direct examination, Hunter ask A.W., "Who told you what to  
13 do?" in which A.W. responded with, "I vaguely remember. Like I don't remember  
14 the order, ...". A.W. also testified that she was pretty drunk that night  
15 and high on marijuana, and she didn't remember because that night was "very  
16 fuzzy." RP 484 at 1-5, 485 at 12-15 Tami testified that she had drank a lot  
17 that same evening, and took a lot of pain medication that she didn't need to  
18 the point that she passed out the evening of the alleged three-some. RP 666  
19 at 19-22 Tami testified that out of herself, A.W., and Womack, Womack was  
20 by far the most sober. However, A.W. testifed that Tami was sober and herself  
21 and Womack had a lot to drink. RP 480 at 24-25, 481 at 1-2, 616 at 5-6, 632  
22 at 4-7, 640

23 ~~On page 5 of the Brief of the Appellant it states:~~

24 "He then used a two-headed dildo and penetrated both of them with it at the  
25 same time. According to A.W., the defendant had penile-vaginal intercourse  
with each of them." (quoting RP 480-487)

1 A.W. testified, "I think it was Dad" who put the dildo inside both her and  
2 Tammy. RP 486 at 4 A.W. also testified that during the 2nd CJAC interview  
3 she stated twice that she did not remember the night of the alleged three-some  
4 what-so-ever. RP 617 at 18-25, 618 at 1-6 A.W. never stated she had penile  
5 vaginal intercourse with the defendant as quoted in the Brief of the Appellant.  
6 Tami testified that in a earlier interview with Detective Voelker she stated  
7 it was possible that she inserted the dildo in A.W.. RP 976 at 10-25

8 On page 6 of the Brief of the Appellant it states:

9 "The Cowlitz County Prosecutor's Office later brought a charge of Second  
10 Degree Rape of a Child against Tami and allowed her to plead to a reduced  
charge of Second Degree Child Molestation." (quoting RP 674-675)

11 Tami was charged with two counts of Second Degree Rape of a Child in which  
12 carried a sentence range of over 100 months to a reduced charge of Second Degree  
13 Child Molestation in which carried a sentencing range of 20 months at the top  
14 of the scale, as a part of a deal for testifying against Womack. RP 675 at  
15 5-13, 754 at 21-25, 755 at 1-15

16 On page 6 and 7 of the Brief of the Appellant it states:

17 "Finally, while lodged in the Cowlitz County Jail the Defendant wrote three  
18 letters to Tami threatening that he would expose criminal activity on her  
part if she did not change her testimony at his trial." (quoting RP 1116-1121)

19 The fact is there was only 1 letter, not three, and it stated, "If you want  
20 the 'truth' to stay out of the news media" she better change her story, and  
21 Womack testified that letter was sent as a "ruse." RP 1117 at 4-8 This was  
22 also incorporated in the Brief of Appellant's Procedural History which was  
23 ~~also incorrect. Brief of Appellant page 7, RP 687-693 This letter was a birth-~~  
24 day card and a note in which was sent in July of 2011. RP 687 at 14-18 Womack told  
25 his attorney about Tami's sexual involvement with A.W. in January and provided

1 the information to his adoptive parents (in which A.W. was living) with the  
2 same information at the time he sent the letter. CP 16-21, RP 1179 at 23-25,  
3 1180 at 1-10 It was only after this that A.W. came forward with her sexual  
4 involvement with Tammy in which is why a second CJAC interview was scheduled  
5 on August 2nd, 2011.

6 Brief of the Respondent

7 On page 8 of the Brief of the Respondent it states:

8 "A.W. testified that she disclosed the abuse to Tammy Womack." (quoting RP 478)  
9 What is not said is that A.W. testified that she disclosed the abuse to Tammy  
10 in the summer when school was out, when she was 12 or 13. RP 563 at 20-25,  
11 564 at 1-4, 571 at 16-25, 572 at 1-12, 615 at 18-24 Tami testified that it  
12 was the exact oppisite in which A.W. told her about the alleged abuse in the  
13 month of February, 2008, in the middle of the winter while the kids were still  
14 in school. RP 735 at 5-13, 742 at 2-4

15 On page 8 of the Brief of the Respondent it states:

16 "After confronting him with the abuse, Womack replied, "It will stop. It  
17 won't happen again." He also stated that he had a vasectomy so she [A.W.]  
18 could not get pregnant and would not have to worry about disease." (quoting  
19 RP 660)

20 These statements allegedly made by Womack were absolute hearsay statements  
21 not made by Womack.

22 On page 8 of the Brief of the Respondent it states:

23 "A.W. also testified consistently with Tammy Womack about what is arguably  
24 Womack's most egregious act. A.W. testified to being abused one night by  
25 both the defendant and Tammy Womack when she was twelve or thirteen years  
old. (quoting 484-488, 667-673) Tammy Womack also testified about the same  
night, in which, in addition to ordering that A.W. and Tammy perform oral  
sex on him and each other, Womack penetrated them both himself and with a  
flesh colored double-ended dildo." (quoting 668-670)

1 First of all, the only thing A.W. testified to consistently with Tammy was  
2 the fact some kind of alleged three-some occurred some time when A.W. was 12  
3 or 13. The consistency stops there. A.W. stated the alleged three-some  
4 occurred two to three weeks after the initial disclosure in which was in the  
5 middle of summer when school was out and Tammy stated the disclosure happened  
6 in February of 2008, in the middle of the winter while the kids would be in  
7 school. RP 572 at 1-12, 615 at 18-24, 735 at 5-13 (Tammy never testified  
8 to when the alleged three-some happened but A.W. testified it allegedly happened  
9 two to three weeks after disclosure) Womack testified that there was sexual  
10 abuse between Tammy and A.W., but he was not involved in it, which his  
11 testimony was consistent. RP 1066-1068 A.W. testified to using drugs and  
12 alcohol to the extent that she could not really remember the night but she  
13 did remember the dildo. RP 484-485 A.W. testified that in the second CJAC  
14 interview she stated that she did not remember the alleged three-some what-  
15 so-ever. RP 617 at 18-25, 618 at 1-6 Hunter lead A.W. to state the double-  
16 ended dildo was used on Tammy and A.W. and then ask A.W. who put it there.  
17 A.W. stated, "I think it was Dad." RP 486 at 1-5 A.W. did remember that Tammy  
18 was "coherent, speaking, and involved with it." RP 486 at 22-25 A.W. stated  
19 that she passed out naked in parents bed and woke up later and left the room.  
20 RP 487 at 7-12 However, Tammy testified that A.W. stated she was done, and  
21 then got up and left the room as soon as the sex was over. RP 669 at 21-24  
22 Hunter ask Tammy who got out the double-ended dildo in which Tammy testified,  
23 ~~"I don't remember if he [appellant] got it [dildo] or if I got up and got it~~  
24 ~~out of the drawer."~~ RP 669 at 3-6 Tammy testified that in a previous interview  
25 on September 1st, 2011, with Detective Voelker, she stated, "I think he had

1 us do something to her and me -- I mean, like I say everything's a jumble."  
2 She also testified that she told Detective Voelker that it was possible that  
3 she inserted the dildo in A.W.. RP 669 at 9-10 During testimony this event  
4 is remembered with a lot of detail even after "drinking a large amount of  
5 alcohol on top of taking pain killers that she didn't need." RP 666 at 19-20  
6 Tammy also testified that she had other conversations with A.W. in which A.W.  
7 expressed an "interest and curiosity about girls." RP 667 at 18-23 Tammy  
8 also testified that during her internal investigation with the Cowlitz County  
9 Sheriff's Office, during the alleged disclosure of the alleged abuse, she ask  
10 A.W. if she was still a virgin in which she replied with, "I don't know, there  
11 was blood one time but I also started my period." RP 985 at 17-25 This would  
12 highly contradict the notion of penetration at the age of 8 as testified by  
13 A.W.. RP 437 at 13-22

#### 14 Additional Relevant Factual History

15 Tammy testified that A.W. never told her how <sup>s.t.d.</sup> she was when any of the allegations  
16 took place. RP 747 at 7-14 Tammy would allow A.W. to have boyfriends over  
17 behind fathers back during her middle school years. RP 574 at 6-16 A.W.  
18 testified that she had lied twice in earlier interviews about having contact  
19 with Tammy while Womack was incarcerated. RP 629 at 8-25, 630 A.W. testified  
20 that when she was 12 and younger, there was no penetration. RP 471 at 2-9  
21 A.W. testified that she started drinking at the age of 8 and become an  
22 alcoholic. RP 471 at 1-2 A.W. testified that Tammy found out about the alleged  
23 ~~abuse from herself, then contradicted herself and testified that she stated~~  
24 in a previous interview Tammy found out about the alleged abuse by another  
25 person named Star. RP 1001 at 10-12, 1001 at 21-23 A.W. testified that she

1 stated in a prior interview with Mr. Munger [Appellant's Private Investigator]  
2 on May 25, 2011, she forgot the "first time" of the alleged abuse and the  
3 "details of it." RP 587 at 14-22 (contradicts RP 447-450) Womack motioned  
4 the Court to have the jury list the reasoning in which a guilty verdict is  
5 found to document what specific acts attached to what specific charge. Both  
6 the Trial Judge and the State agreed to this yet it was never provided. RP 1164  
7 at 4-15 During the full time of the alleged abuse, A.W. had two younger step-  
8 brothers living in the same household full time. RP 435 at 18-25 A.W.  
9 testified that the abuse occurred "Most every day after school." RP 458 at  
10 4-13 There was no evidence from either step-brother supporting A.W.'s claim.  
11 A.W. testified that she didn't know who the first person she told was. RP 563  
12 at 13-17 A.W. testified that she told Cindy [Clem] about the allegations yet  
13 during testimony, Cindy denied this. RP 555 at 1-6, RP 907 at 3-15 A.W.  
14 testified multiple times that she did not start dating a boy named Thomas until  
15 after she moved out of her Dad's house, and then admitted she told Mr. Munger  
16 that she started dating Thomas just before moving out (Motive: Dad would now  
17 allow her to date a senior) in which turned into a sexual relationship. RP 599  
18 at 19025, 600-603, 608-610, 513 at 22-25, 614 at 1-19 A.W. contradicted herself  
19 10 times during Cross examination. RP 543, 549-550, 568, 585, 587, 601, 614,  
20 617, 622, 614. The Trial Court ask Appellant to be more organized because of  
21 the time it took to refer to the record and how often it was being done. RP 742  
22 at 15-25. Womack objected to every continuance "independently and separtely,"  
23 and is contesting every one except the first one. RP 75 at 6-9, 76 at 20-23,  
24 Statement of Additional Grounds No. 5, 7-11

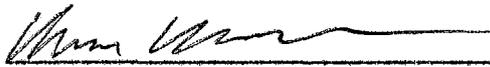
25  
MOTION TO ADDRESS, AMEND, AND  
SUPPLEMENT THE RECORD AND  
SUPPORTING DECLARATION -9

1 Conclusion

2 By the States theory, the first 4 counts rely on the testimony of A.W.  
3 versus Womack's. Counts 5 and 6 rely on the contradicting stories of A.W.  
4 and Tammy. The previous written "factual history" would open the door to errors  
5 being harmless due to the alleged overwhelming evidence. The previous written  
6 "factual history" should be amended with the relevant "factual history" within  
7 and the additional factual history should be added to the record to allow  
8 Appellant an effective appeal and due process.

9 Dated this 9th day of August, 2013.

10 I certify under penalty of perjury under the laws of the State of Washington  
11 that the content within this motion to be true and accurate to the best of  
12 my knowledge.

13 

14 William Womack

15 Washington State Penitentiary  
16 1313 N. 13th Ave.  
17 Walla Walla, WA 99362-1065

September 17, 2013

John A. Hays  
Attorney at Law  
1402 Broadway  
Longview, WA 98632

Re: State of Washington vs. William Charles Womack; Superior  
Court Cause No. 10-1-00974-1; Court of Appeals No. 42999-3-II

Dear Mr. Hays:

Within is what I have found to be argumentive to the states  
"Respondents Brief." This is notes for use during oral argument.  
This is to addition of the Motion to the previous Motion I wrote.

Facts Regarding "Respondent's Brief"

1.) On page 11, the State argues that Womack did not comply  
with CrR 3.3 (d)(3) procedures for objecting to the setting of  
a new trial date. On page 5 the State indicated that Womack  
moved the Court to dismiss the case due to a violation of his  
speedy trial rights. (quoting RP 57)

What the State is arguing, to ensure a defendant is  
guaranteed a speedy trial, the defendant must object to a Trial  
Judge's ruling, and then within 10 days object in writing and  
note a hearing to "rehear" it's prior ruling which was objected  
to. This not only makes no sense, it would place the burden  
of ensuring the defendant is ensured a speedy trial on the  
defendant.

"[1][2] The ultimate responsibility falls upon the trial court  
to ensure a trial is in accordance with 3.3." Malone, 72 Wn.App.  
429, 864 P.2d 990, 993 (1994)(quoting State v. Lemley,  
64 Wash.App. 724, 729, 828 P.2d 537, review denied, 119 Wash.2d  
1025, 838 P.2d 690 (1992).

Therefore, it is the Trial Court's responsibility, not the  
defendant's responsibilty, to ensure the defendant receives a  
speedy trial.

2.) On page 11, the State wrongfully alleges that "Womack only  
challenges the State's continuances on August 18, 2011." (footnote 3)  
This is not true, Womack argues every continuance on the state  
and federal level except for the first one in his Statement of  
Additional Grounds.

3.) On page 12, the State quotes Bobenhouse, 143 Wn.App. 315,  
322, 177 P.3d 209 (2008), which states: "And any party who fails,  
for any reason, to move for a trial date within the time limits  
of CrR 3.3 loses the right to object." Bobenhouse failed to

object at anytime to the dates set for trial. (emphasis added)  
Bobenhouse, at 177 P.3d 207, 212 (2008)

4.) Further, on page 13, the State insinuates a relevant instructive case would be City of Kennewick v. Vandergrift, 109 Wn.2d 99, 743 P.2d 811 (1987) In this case, unlike the case at bar, Vandergrift also failed to object at the time the trial date was given. For this reason, this case would not be a relevant instructive case.

5.) On page 15, the State would have one believe that no objection was made on August 25th, 2011. This theory fails for two reasons:

- a.) August 25th, 2011, was a hearing set to set the date of a new trial from a continuance, which was objected to, from August 18th, 2011. (Respondent's Brief page 16 quoting RP 47, 49)
- b.) On October 6th, 2011, Judge Evans declared that Womack did object to every continuance "independently and separately." RP 75 at 6-9, 76 at 20-23

6.) On page 17, the State alleges that the prosecutor is asking for a continuance on behalf of Womack's best interest claiming, "In order to ensure a meaningful pro se defense, the State must allow the defendant reasonable access to legal materials, paper, writing materials, and the like." This theory egregiously fails for three reasons:

- a.) Hunter clearly states that she prematurely told witnesses that the trial would be continued. RP 29 at 17-19
- b.) Hunter clearly states, "the State in not prepared to go to trial." RP 29 at 19-20
- c.) Not only is Hunter not prepared to go to trial on August 18th, 2011, she further is not prepared to go to trial on October 6th, 2011. RP 103 at 20-25, 104 at 1-3

7.) On page 19, the State argues, "If substantial evidence in the record supports the trial court's finding of fact, the findings will be considered verities on appeal." (quoting Miller, 92 Wn.App. 693, 704, 964 P.2d 363 (1997)).

The record clearly reflects that Detective Lorenzo Gladson stated, "At some point early on in Detective Voelker's questioning, he said something to the effect of you need to talk to my attorney at this point." emphasis added RP 214 at 5-11

On page 21, the state will lead one to believe that this statement was made later on in the interview in which the court took that statement to mean "Go away, I'm done" in which at that point the questioning ended. (quoting RP 229)

These two statement's contradict each other in which would reflect that substantial evidence in the record clearly does not support the trial court's finding of fact.

8.) On page 23-24, the State quotes United States v. Rambo, 365 F.3d 906, 911 (10th Cir. 2004), which the Courts held:

"In United States v. Glover, we discovered the factors articulated in Mosley to determine whether the police may reinitiate interrogation after the right to remain silent has been invoked:

[O]fficers can reinitiate questioning only if: (1) at the time the defendant invoked his right to remain silent, the questioning ceased; (2) a substantial interval passed before the second interrogation; (3) the defendant was given a fresh set of Miranda warnings; (4) the subject of the interrogation was unrelated to the first. 104 F.3d at 1580."

The Courts have further held:

"[4][5] While the district court concluded that the lack of questions indicated that there was no interrogation by Moran, the use of questions is not required to show that interrogation occurred. In Rhode Island v. Innis, the Supreme Court held that interrogation encompasses not only questioning but 'any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonable likely to elicit an incrimination response from the suspect.' 446 U.S. 291, 301, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980)(footnote omitted)." Rambo, at 909 emphasis added.

Miranda was only read in the State of Illinois by Detective Voelker on January 12th and 13th, 2011. Miranda was never read to Womack in the State of Washington yet the Trial Judge allowed statements allegedly made from Womack to Voelker throughout the year Womack was incarcerated in Cowlitz County Jail.

9.) On page 23, the State alleges that only 3 out of 10 statements occurred after Womack's alleged equivocal reference to an attorney. Detective Gladson clearly states that at some point early on in Detective Coelker's questioning, he said something to the effect of "You need to talk to my attorney at this point." The State is essentially alleging that 7 out of 10 of the referenced statements were made in the small window before "some point early on in Detective Voelker's questioning."

10.) On page 25, the State alleges that "After Womack mentioned that he wanted them to speak to his attorney, they stopped questioning him." Yet the record reflects Detective Coelker ask about a polygraph test after Womack invoked his right to counsel and somehow Womack was the one that [allegedly] "clearly reinitiated the conversation."

11.) On page 26, the State alleges that "Womack did not invoke his right to counsel, and because of this, "his statements were properly admitted at trial." This would only hold true if the repeated statement of, "You guys need to talk to my attorney, I'm done" is not invoking his right to counsel.

12.) On page 27, the State is actually trying to claim that "overwhelming evidence of guilt would make whatever constitutional violations harmless." In a recent case, State v. Guthier, Court of Appeals of Washington, Division I, No 67377-7-I (April, 2013), 2013 WL 1314971, at \*7, the Courts held:

"The question remains whether the error was harmless. We find constitutional error harmless only if convinced beyond a reasonable doubt that any reasonable jury would reach the same result absent the error, and where the untainted evidence is so overwhelming that it necessarily leads to a finding of guilt. Burke, 163 Wash. 2d at 222, 181 P.3d 1. Where the error is not harmless, the defendant must have a new trial. State v. Easter, 130 Wash.2d 228, 242, 922 P.2d 1285 (1996).

In Burke, also a rape case, the entire trial boiled down to whether the jury believed or disbelieved Burke's story. 163 Wash.2d at 222, 181 P.3d 1. Their repeated reference to Burke's silence as evidence that he had something to hide undermined his credibility as a witness. Guthier's trial boiled down to whether the jury believed his story about prostitution gone bad or T.A.'s story that he forced her to perform a sex act."

Like Guthier, the case at bars entire trial boiled down to the jury believed or disbelieved Womack's consistent story versus Tammy and A.W.'s inconsistent stories that he was involved in their sex act. In both cases, the Courts did not find this to be overwhelming evidence of guilt.

13.) On page 28, the State alleges that "when Womack was in custody he wrote Tammy Womack a letter in which he told her to change her story if she wanted "it" to stay out of the news media. (quoting RP 687, Supp. CP. Ex. #59) But if you look at the letter (CP. Ex. #59) it really states that if she wanted the "truth" to stay out of the news media, then she better change her story. (Womack testified that the only crime that was committed was between Tammy Womack and A.W. in which Tammy Womack spent 20 months in prison and testified that the Appellant was "involved and solicited the crime" as a plea bargain)

I understand that some of these points were covered in your brief, but I have further researched the case law the State has used. Once again I want to thank you for your time and your hard work and hope to hear something good soon. If there is anything you need let me know.

Sincerely,

William Womack

William Womack 354117 BB-205  
Washington State Penitentiary  
1313 N. 13th Ave.  
Walla Walla, WA 99362

February 19, 2014

Court of Appeals,  
Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402-4454

Re: State v. William Womack, No. 42999-3-II

Dear Clerk of the Court:

On April 25, 2013, I mailed a Statement of Additional Grounds which consisted of 54 pages and an Affidavit of Service by Mailing. On April 14, 2013, I mailed a Motion for Permission to File Oversize Statement of Additional Grounds and Supporting Declaration and an Affidavit of Service by Mailing. On August 9, 2013, I mailed a Motion to Address, Amend and Supplement the Record and Supporting Declaration and Affidavit of Service by Mailing. On November 19, 2013, my attorney John Hays filed a Amended Brief (changing a couple words of the original). I have not received any kind of conformation that the Statement of Additional Grounds was received/accepted, or the Motion to Address, Amend, and Supplement the Record and Supporting Declaration was received or addressed. Can you affirm that these documents were received and addressed and let me know what the status is on my appeal. This would be greatly appreciated. Thank you for all your hard work.

Sincerely,



William Womack

TIMELINE

- 01-13-11 Defendant arrives at Cowlitz County Jail from Illinois.
- 01-14-11 An unknown Judge prolongs arraignment for somewhere around a week.
- 01-25-11 Judge sets Pretrial to Feb. 22 and Trial to Mar. 14th.
- 02-22-11 Hearing is rescheduled to Feb. 24th.
- 02-24-11 Defense attorney Thad Scudder admits he hasn't "had a chance" to interview the complaining witness, what he fails to mention is he hasn't had time to talk to Defendant yet either. (Trial is only 3 weeks away!) The judge orders that all discovery will be turned in by the end of the business day of 03-14-11. A readiness hearing is set for 03-03-11, and a trial date is set for 03-14-11.
- 03-03-11 Unknown what happened on this date.
- 03-10-11 A continuance is granted to Defense Counsel Scudder that Mr. Womack signed with a commencement date of Mar. 15th, 2011. Prosecutor Hunter ask for a Jun. 13th trial and Judge Stonier denies this because that date would be outside the speedy trial quota. At this time Judge Stonier states, "you now must be tried within 60 days of Mar. 15th", which would make speedy trial end May 14th. A Readiness hearing is set for May 5th, and Trial is set for May 9th.
- 05-06-11 No one seems to know what happened to May 5th. Judge Bashor goes and gives continuance to Defense Attorney Scudder stating, "I don't know whose fault it is but I'm continueing this because Defense Attorney Scudder is not prepared to go to trial and won't be within speedy trial. He then states, "I'm not hearing anybody, essentially, pointing fingers as to anybody being at fault, other than that we're not ready to go on this case". Then Counselor Shaffer lies to the Judge by stating that the state had a strong case because there was video evidence of the rapes and molestation, to keep the Judge from lowering the bail. Defense Attorney ask for evidence from the computers and Judge Bashor states that Defense should get the computers within 30 days, and then set a review for May 17th. This is also the first time I ask for my stuff back (video camera, cell phone, and laptop). Trial is also set set for Jun. 20th.
- 05-17-11 Defense Attorney Thad Scudder states, "Your Honor, I think the issues have been essentially resolved. At the last hearing there was some mention of a video that the State believed they had -- basically, it was represented that they did have it and I think that was a little premature. (A nice way of saying they were lying) There was -- there's certainly a possibility at some point they might, (Of course the Defendant knew for a fact that there was not because he is innocent)but what's happening is there are computers that are being examined in a lab that may or may not have video on them. And we're just awaiting, I guess, the results of that testing". Judge Stonier then sets a Readiness/Pretrial for Jun. 7th. Trial date is still set for Jun. 20th.
- 06-07-11 Judge Stonier grants continuance on the unavailability of a material witness to which of course Mr. Womack objected. Prosecutor Hunter at this time does not disclose the month long vacation she has got set. Judge Stonier new set a Pre-trial for Jul. 5th and a new trial date to Aug. 1st.

*verbally  
but its in  
her motion*

TIMELINE

07-05-11 Defense Counsel Scudder states, "My client has -- the case has been continued a couple of times over his objection and we very much need that testing to be done because we believe it's going to be exculpatory." 1362 at 13-17, and, "We need those results." 1362 at 21-23 When asked when the computers were submitted to the lab, Scudder states, "It was submitted, I believe, in June." 1363 at 1. The actual date was June 3rd according to Detective Voelker's police report. Judge Evans then states, "there's a lot of reasons why it could have been submitted then as opposed to earlier. So, we could set a review for the July 19th and check status of discovery on the forensics." 1364 at 4-7 and, "And then just any -- any efforts that can be exerted to get that done quickly and to the Defense, that'd be great." 1364 at 11-14 At this point Judge Evans sets a new review date to July 19th to check the status of the forensic examination of the computers. 1365 at 1-3

07-19-11 ????? State has forensic results back from lab but what happened to review hearing? (according to police report)

07-26-11 ~~No court because of conflict of scheduling~~, but because the State waited till the 25th to give the results to the lab, and now trial is only a week a way, now Defense Counsel files a Motion for Continuance.

07-28-11 Now instead of arguing the fact of late discovery, Scudder states, "Your Honor, I have filed a motion. It should be in the Court file. I filed it on Tuesday and the matter was set to today. The basis for the continuance is that on Monday, (July 25th) I received discovery that I'd been anticipating from the lab that -- and then the addition of two experts, Dr. Blaine Tolby and then Tony Dowdy from the state -- Washington State Patrol Crime Lab. And I think in order to effectively represent Mr. Womack, I need to get my own experts to assist me in both understanding the evidence and challenging it." Now Mr. Womack representing himself later proved that all of this evidence was not admissible acting Pro Se with no experience what so ever. Scudder further states, "The -- only real issue is that Mr. Womack **does not wish to waive his right to a speedy trial**, but I don't think I can be effective in representing without taking the steps I set out in the declaration." (First quote was 1366 at 7-18 and second quote was 18-23.) Commissioner Maher ask, "And when does the speed trial run?" and Scudder replies with, "It already has." Then Commissioner Maher ask, "It already has?" Prosecutor Hunter tries to interrupt, but Scudder then answers, "Well, It's been continued in the past over Mr. Womack's objection." Commissioner Maher ask, "It has been continued in the past?" and Scudder responds with, "Yes". Hunter again interrupts and states, "on June 7th, the Court found good cause. We set the trial to today, so that we would have 30 days after today -- Monday's date. After the trial date, that's when it was --" So what Hunter is stating is that a continuance is granted and a new trial date is set, she thinks that speedy trial does not end until 30 days after the new trial date set. Commissioner Maher finishes Hunters statement with, Without having to continue it any further? Not -- without having to have a further ruling or waiver, is that what you're saying."

TIMELINE

07-28-11  
Cont.

Hunter continues on with, "Correct. That's within our speedy time. So, we have speedy through the end of August. 1367 at 3-25 and 1368 at 1. Defendant then ask, "I don't see how I -- I don't understand how I could have speedy trial through August. I've been here for nine months and waived the sixty-day waiver." meaning he only signed one 60 day waiver. Hunter goes on and lies by stating, "The information both Defense Counsel and I were waiting for from the State crime lab has indicated potential new charges, additionally that that evidence would be admissible as evidence in this case." (Defendant quote is 1368 at 4-7 and Hunters quote is 1368 at 12-17) Commissioner Maher then ask, "Do we have a potential trial date within the existing speedy trial time?" 1368 at 22-24 and then states, "My inclination is to set it within the 30 days of Monday's date. If you have a problem, then we could address at a subsequent readiness hearing between now and the trial date." 1369 at 4-7 (30 days from Monday the 25th would be August 24th) Commissioner Maher then sets a readiness hearing for August 18th and a trial date for August 22nd." 1369 at 16-23 Commissioner Maher then states he is finding "good cause" based on Council's Motion, by answering, "Yes" to Hunter's inquiring questions. 1370 at 1-8 Then another hearing is set for Thursday, August 4th.

08-04-11  
08-18-11

Still have no record of this hearing.  
At the start of this hearing Defense Counsel Scudder and Prosecutor Hunter are both working together with the thought of Scudder filing yet another continuance. Hunter states, "Trial is scheduled for Monday, and I believe Counsel is going to be making a motion to continue." 24 at 10-12 Hearing this was the last straw, and Defendant states, "At this time I would like to fire my Counsel and represent myself." 24 at 20-22. When ask why by Judge Evans, Defendant states, "I just don't feel that he's got the time, nor do I feel that he is working on my behalf." 25 at 18-20 Judge Evans then ask, "Tell me why you think you would be in a better position than he to represent yourself, recognizing that he has got a lot more experience and familiarity with the law than, assuming you would admit, than yourself." 26 at 3-7 Defendant responds with, "One thing I -- supposed to have a speedy trial. I signed a 60-day waiver, due to the fact that I had some DNA evidence that I wanted processed that I gave to him numerous months ago, before March 10th, which I signed that waiver. Its 102 days later, now, to this date, since I've signed. The end of that waiver's been up up. And he had not had the time to either do anything with the evidence, and -- nor he just does a continuance after continuance after continuance. I have denied every continuance that's been set. On August 2nd I was in front of Stonier, and he said there would be no more continuances, so they just forced another court date for two days later, and and a continuance was onto the 22nd. I just want to go to trial! 26 at 8-23

TIMELINE

08-18-11

Defendant then states, "I have had eight months in jail and have not had the privilege to use the law library." 27 at 12-14 At first Judge Evans was going to deny the Defendant his right to fire his attorney and represent himself, but after Hunter tells him that Defendant has that right, he decides to review the matter. 28 at 13-25 and 29 at 1-14 Now at this time Hunter clearly states, "the State's not prepared to proceed to trial. So, Counsel is at least helping but Defendant is representing himself, I'm sure he is going to want to go to trial. and that will lead to other issues." 29 at 19-23 Judge Evans ask, "And so, tell me again why you don't want to have an attorney help you." and Defendant responds with, "Because I feel that the attorney's works for the County here, and the attorney's working directly with Ms. Hunter. 35 at 7-12 At one time Defendant ask if was allowed to get a different lawyer, and Judge Evans states, "Lets finish up with this, and then we can talk about that." 37 at 6-9 Defendant was asked repeatedly why he wanted to represent himself, and his answer was, "I feel I would be able to get to the jury a lot better than my attorney." Judge Evans assures the Defendant that he is assumed innocent until proven guilty, and Defendant replies with, "I really haven't felt that way." 40 at 24 and 41 at 1-3 Again the Defendant pleads, "I just need to go to trial." and was willing to represent himself to get there. 43 at 8. Once again after learning that if another lawyer was appointed to Defendant it would be random and more likely from the same County, the Judge ask, again, "And tell me why you wouldn't want to have a licensed attorney help you with that, recognizing that's a significant penalty, if convicted?" And the Defendant replied with, "I -- I guess my best answer was the only person I really trust at this point is myself." 45 at 13-19 Hunter then states, "The stae would be moving to continue the trial." 47 at 22-23 and Judge Evans ask, "OK. And the reason for the State's motion to continue is what?" and Hunter states, "One, Your Honor, Defense Counsel indicated to the State that this matter was not going to proceed to trial next week because Defense Counsel was not prepared to proceed to trial. He wished to have a computer expert appointed that he could consult in regards to the computer information. The State was not ready to proceed to trial on the 22nd on that basis. Additionally, we have indicated to our witnesses that that was the case. Moreover, one of our detectives, Detective Voelker, is unavailable the latter half of that week. And we indicted to him that because we were not expecting this to go that he should continue with his plans." 48 at 3-16 The Defendant then states, "On August 2nd, I went in front of Judge SDtonier, and he said there would be no more continuances. Yet I went in fron of, I believe you, on August 4th, and got a continuance granted to the 22nd. (I believe the correct dates were July 26th and July 28th) I have already been continued so many times it's not even funny. The State has had a year to be ready for this. I just want my trial." 49 at 1-9

Discovery  
due 22nd Aug

TIMELINE

- 08-18-11 Hunter then states, "Your Honor, just point of clarification, in looking at my file I don't show that Mr. Womack was ever before a Court on August 2nd. Lastly, his last time in front of Court with Judge Stonier, appears to be July 26th, at which point Judge Stonier recused himself." The interesting thing is I've been told that there was no hearing on July 26th yet the minute sheet shows that Counsel Britan represented the State, and both Defense Counsel Scudder and Defendant were present with Judge Stonier residing. Now on the 28th Defense Counsel tried to get a continuance and was granted by Commissioner Maher. So at this time Judge Evans finds good cause to continue based on the Defendant needing time to prepare for trial even though the Defendants wish was to go to trial. 50 at 21-25 and 51 at 1-14. He then sets a review date for August 25th was ~~set to set~~ <sup>FOR THE DEF.</sup> a new trial date. 53 at 8-9 For a second time ~~ask~~ <sup>ask</sup> for personal property back that the State was holding illegally. And then ~~DEF~~ <sup>DEF</sup> verbally motion the court to dismiss due to the fact that his speedy trial rights have been violated." 56 at 8-12 in which Judge Evans denies because "good cause was found" according to the records. 57 at 8-18 So not only was Defendant further denied a speedy trial, another continuance is granted prolonging it yet even further. w47666
- 08-25-11 Hunter now wants to "move" Motion IN Limine hearing due to law enforcement is investigating material witness which could affect Motion In Limine. (I still don't get this one) 1373 at 21-25 and Judge Evans explains this one 1374 at 21-25 and 1375 at 1-4, in which Defendant objects. 1375 at 7-8. At Judge Evans request, he sets two hearings on October 6th, 1377 at 7-15, in which Hunter states, "we'll need to have the readiness hearing definitely at 9:00 AM with the motions at 1:30." 1377 at 19-21 Judge Evans reaffirms that, "October 6th at 9 o'clock in the morning, that would be the readiness hearing". 1378 at 12-14 and, "Then we'll also set a hearing -- a motion in limine hearing and just a general hearing in preparation for the trial on that same afternoon at 1:30 in the afternoon on October 6th." 1378 at 17-22 He then orders a copy of the hard drives to Defense (this is the second time) 1391 at 21-22 and 1392 at 13-17 He also states Defendant is entitled to see cd of evidence. 1394 at 13-17 (Defendant never saw these) Then Defendant ask for Sherriff records on Tami, an internal investigation that was done. 1398 at 20-25 (Defendant has to fight for this later) Judge Evans sets a Pre-Trial for September 13th. 1382 at 3-4 and a Trial was already set for October 10th. 1376 at 23-25 During this trial Judge Evans also pre-assigns himself. 1381 at 23-25
- 09-13-11 ????? Supposed to be a Pre-Trial.
- 10-06-11 Morning docket at 9:00 AM ????? Suppose to be a Readiness Hearing.

TIMELINE

10-06-11

Afternoon Docket (1:30) which is supposed to be the Motion in Limine hearing. This hearing starts out as a 3.3 hearing which was a written Motion to dismiss by Défense. Hunter lies and states, "This case has been continued a number times, and one time it was continued when two witnesses weren't available. They were absolutely necessary for the State. The State had every intention of trying that case -- trying this case that day (June 7th), except for those witnesses were gone on a pre-scheduled vacation. 69 at 11-15 Yet on 8-18 Hunter clearly states she still is not ready to go to trial. 29 at 19-23 Hunter's argument is that, "Defendant is trying to go back six months, three months, two months later and object to the Court's finding, asking the Court to overrule another judge's determination of good cause. What we are here to do is to determine whether there was a violation of the speedy trial rights after there was a finding of good cause. The Court should not go back and overrule another Court's ruling as to whether good cause was there. That's not what the Defendant seeks. That's not what's laid out in his motion." 70 at 2-12 Hunter further explains, "What we are here to determine is based on the facts present, meaning every good cause continuance was based on fact, whether there's a violation of speedy trial. No, there is not, because in each and every instance what happens is you have that excluded period, meaning from the point good cause is found to the next available trial date is an excluded period. So from that next available trial date you have 30 days beyond that speedy trial. 70 at 12-22 I think this says it all right here. When Defendant is to respond to this, the Judge sets a two minute time limit, 72 at 7-8, and shortly after sets a 30 second time limit, 73 at 22, I'm not sure how anyone can adequately respond in two minutes. Now Evans states, "And so now we are working with 3.3, and so, I think the parties have represented what that rule means, basically, and that rule basically means that if there's a trial setting and there's a -- and then a trial has to be held within 30 days of that." 74 at 13-19 Judge Evans further states, "And I do note also that the time when Mr. Womack was not representing himself, but had Counsel, he's independently and separately indicated that he objected." 75 at 6-9 He then states, "So, I am not going to go back and revisit the Court's finding of good cause on those different -- different -- on those different dates on which good cause was granted. I will make a finding also that all the good causes found by the prior trial courts occurred prior to the 30 days expiring after a jury trial date was set." 75 at 21-24 and 76 at 1-3 then finishes up by stating, "I'll deny the motion for dismissal for the violation of speedy trial rules because I find that there was not a violation of speedy trial rules. Okay." 76 at 20-23 Defense finally got a copy of the hard drives. 87 at 16-18 Then Judge Evans ask, "So at this point in time, no matter whethe Mr. Engkraf (Defense's new computer expert) is able to help you or not able to help you with looking at the disk drives, is it your position you want to go to trial on Monday the 10th of October?" which Defendant answered, "Yes" 88 at 23-25 and 89 at 1-4

TIMELINE

10-06-11

Now at this time the State objects to any evidence from the computers because the State would be receiving it the morning of trial after they held onto them until the last minute. 90 at 18-20 The State had access to everything on the computers for a year, and the Defense had access to them for less than a month. 91 at 10-22 Then Judge Evans states, "you have the absolute right to go to trial on October 10th, but frankly don't know if it's going to be ready on October 10th, and I'm inclined to find -- potentially find good cause and move it to a later date, because I am concerned at this point in time if we've got an appointment with Mr. Engkraf tomorrow at noon, let's say, and I don't know how big the CDs are --" 92 at 18-25 and, "The hard drives, and searching them and making sense out of rather an immense amount of data, and looking at specific dates and times, and even, you know, what type of software is being used, and the like, I think it's a relatively tall order that may not happen." 93 at 3-8 At another point once again Hunter states, "My concern is I am trying to get ready for trial." showing she is still not ready for trial. Defendant states he would filed motions sooner, but jail staff took 5 days, if not more to get 2 to 3 hundred pages printed off of the law library computer. (Hunter's quote above 103 at 20-21) (Defendant quote 105 at 3-10) Now because of the jail staff dragging their feet Judge Evans further punishes Defendant by stating, "It's (current motion filed in late because of jail staff) basically filed today, or two days before trial, one-and-a-half days before trial. The State is entitled to have an opportunity to respond in writing and research that. So I am inclined to grant a motion to continue to move the trial date from the 10th, move it to a later date, then have a hearing on -- a continued readiness hearing on October 13th. That's where I'm at." 106 at 19-25 and 107 at 1-5 No trial date is set. Judge Evans further states, "I think I am going to find good cause to continue the trial date on October 10th, which is a Monday." 110 at 12-14, and, "There's the issue of the hard drives. I count 1, 2, 3, 4 hard drives that were produced today that potentially Mr. Engkraf can load at tomorrow" 110 at 21-23 and, "So that's the basis of my motion to continue, and why I am finding good cause, because I specifically find that the -- this opportunity to promote and seek justice really is frustrated by the fact that there's just not enough time to squeeze it all in within that inverted, well, the right side up funnel." 111 at 6-12 and, "I find that he is not prejudiced by the continuance. Actually, I think that his case may very -- may be better served, as having a greater opportunity to talk to Mr. Engkraf and what those images do or don't say, and the manner in which the information was found, when -- the dates and times they were alleged to have been created. So I think it has a potential, at least from what's been laid before the Court, so I find that there's no undue prejudice to Mr. Womack by granting the good cause continuance." 111 at 22-25 and 112 at 1-8

## TIMELINE

- 10-06-11 Judge Evans then sets a motion hearing for October 20th and a jury trial on October 31st. 114 at 24-25 and 115 at 1-2 He then states, "And just to the parties are clear, all motions need to be filed prior to October 20th, and that we'll hear all motions on October 20th. And so, just make sure all motions are filed prior to that date. 115 at 4-8
- 10-20-11 The State starts this hearing out with a proposal of yet another continuance which of course Defendant acting Pro Se once again objected. 125 at 10-13 Judge Evans states, "So I can appreciate Mr. Womack's concerns, and it sounds like really frustrated, that it's -- you're still in custody and the case hasn't gone to trial. And kind of an exasperated objection to the continuance. So, I think given the circumstances, I am going to find good cause to grant the motion to continue based on the pre-assignment of the Mack case to me. And we are still within the speedy trial timeframe. And I want to schedule it within that speedy trial time, prior to November 30th." 126 at 12-22 The "Mack" case that some how got priority over the Womack case had a commencement date of October 1st, 2011, which gave him to November 28th for speedy trial. When ask to be heard on Defendants thought on Judge Evans being pre-assigned to the Mack case the Defendant stated, "Well, from what I understand, I don't think it's possible for another judge to see this, is it?" 137 at 1-3 Judge Evans replied with, "Well, there's Judge Bashor, and then the new judge, Marilyn Hahn, starts the first of November" and Hunter states, "She wouldn't be able to hear it if it was on its current trial date, because she doesn't start her job then." 137 at 9-15 Once again Judge Evans states, "We are still within the speedy trial good cause that was found before until November 30th." 139 at 8-10 This is based on the theory that a continuance was granted and a new trial date was set, and speedy trial does not run out till after 30 days of that trial date being set, meaning the last trial date was October 31st. Hunter then states, "you are finding good cause because of the pre-assignment of the Mack case and there is still speedy trial left in this case?." Judge Evans answered with, "That's accurate. And also my prior involvement with this case." The Defendant ask, "Are you finding it for good cause, or just moving it (inaudible)?", and Judge Evans answers with, "I'm moving it within the previously found good cause period." 140 at 2-10 Defendant was not able to argue a validity of a search warrant motion due to jail hindering his access to legal phone calls. 143 at 10-15 Defendant then states, "As far as the rest of the motions, I just got the same stack, this whole stack here, just got that today", 143 at 15-18 even though Judge Evans just ruled that all hearing will be in prior to October 20th. 115 at 4-8 Judge Evans then sets a hearing for October 27th at 1:30 PM. 146 at 5-6