

Court of Appeals, Div. 2, of Washington

Washington  
v.  
Cyrus Nelson Plush, Jr.

Div. 2 # 49104-4-II

RE: Brief of Cyrus Plush,

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Brief filed by Cyrus Plush.

Sent to Court Division two; Prosecutor of GHC;  
Attorney J. Freeman.

Cyrus Plush  
CBCC-720626  
1830 Eagle Crest Way  
Clallam Bay, WA 98326

Pgs. Brief of Cyrus Plush.

Facts of Case

I, Cyrus Plush, was framed, set up by Aberdeen police department, Grays Harbor Sheriff's Department and prosecuting attorney's office of GHC. The Judges of GHC are corrupt.

An intruder was in my apartment and I shot him with a pellet rifle. I was arrested because I could not prove that he intended to rob me only trespass and no one can stop people from trespassing if they got a criminal history, especially of custodial assaults and conviction of a sex crime, irregardless that on King 5 news a police department wanted to buy a steak dinner for a guy who tackled some one in his neighbors front yard for looking in the window of some neighbors house. Also while I did 90-days plus 10-illegally beyond sentence I seen on tv 4 to 6 others praised or found not guilty stopping intruders/trespassers, NOT robbers. I was facing 5-yrs so I plead guilty. As my attorney said do want to go to prison for 60-months or just do 90-days. The trial alone will go or push me out to 60-days even if found not guilty. So I did 100-days on 90-day sentence.

Before/as I was being released sheriff ordered and demanded I sign documents showing I registered or I would be put in holding cell. I don't know how long they would keep me there and I don't know if I would spend more time in jail and taken back up stairs or even charged right there for failure to register. He said "Aren't you going to register as homeless." I asked "why". He gave me a dirty look and did not say anything. I suspect he knows of me

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being set up. That was on January 14th, '16.

I went to my apartment and locks was changed, I banged on door nobody answered. I went to police department in Aberdeen and reported apartment burglarized. Officer talked to Sgt. and after about a half hour the same officer gave me two pieces of paper dealing with eviction and abandonment. He said that apartment being burglarized is a civil matter. Yet I'm fucking in prison.

With discretionary review and all other reports this Court of Appeals is well familiar with this case of intrapment.

I was, and did file civil suit against the prosecutor, GHC Jail, Aberdeen police, and the apartment manager and owner in Thurston Co. Superior Court, for several Millions plus for the building.

I was told to stay away from the apartment and "at the end of the road your looking at a big pay day." Quote by the Aberdeen police officer that I reported my apartment burglarized to.

So I stayed away for two-weeks and was arrested on 4th see police reports attached. Attachment A.

I was released on 27th you ~~are~~ being fucking Court of Appeals not 22nd. You lying piece of shit court of appeals going by Grays Harbor County Jail of when arrested of 26th because that is went brought to county Jail yet completely ignore that the fact is in police report attached that it says he interviewed me at 9:17 A.M. morning of 2-26-16 because I was in the Aberdeen jail overnight and even the court transcripts kept pointing out by prosecuting attorney that

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I was arrested on 25th in aberdeen and taken to the aberdeen jail.

Fact on the streets, that is released just 16 hrs ago. Not three working days you lying fucks Court of Appeals two Melnick, Johanson, Maxd.

Fact set up and introped, and sent to prison with judge, prosecutor and police knowing I'm innocent and the three judges above know I am innocent by their obvious lie and saying going by date of Gladys harbor county and not by the date of being in aberdeen jail.

Fact The document read by Lushy is wrong and the pro. Att. withheld it up to date of trial. In fact it was not even printed out until date of trial and I told judge that there is no documents showing when I was locked up in jail and judge said maybe we can get that printed out. That was at trial and motion to dismiss for withholding evendence denied.

My two witnesses was denied by judge and no investigator was appointed to get names of officer at the aberdeen jail who would testify that I was arrested on 25th which prosecutor even said but this piece of shit court is ignoring on purpose. I was also not allowed to call jailers in Nalsamally as witnesses who would testify that I was released on 24th around 7:00 P.M. I was not allowed to call as witnesses two employees in Olympia at a store that would testify of the 25th of just getting out of jail.

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Missing from Court transcripts is ~~the~~ the motion for me to dismiss for not being allowed to call the new witnesses of a Hobson's choice and the Judges testimony and mine is edited from the court transcripts. I don't know why. Also, edited out is my request for dismissal for withholding evidence of the document that Lusby read, which is wrong, I was fucking on streets for 16-hours. Both above was at trial May 5th, 2016.

Third thing edited out is the Judges sarcastic remarks on April 25th 2016 page 5 right after line 6 there is a whole conversation missing about me having to call new witnesses. Missing is his smart aleck comments you better start calling them then and you better start brushing up on your jury instructions and third and final was to my objection was "If that's your strategy to object to everything" unquote.

That is Judge Stephen Brown and because of that I objected only once or twice at trial and I was not able to challenge multiple times of misconduct or other issues. All three statements are edited out and maybe that is why it took a year for the court to get transcripts. Had to make sure everything is edited just right. Note that I could not cross-examine George Kelley the arresting officer who arrested me before warrant came in, about being arrested on 25th proving that Court of Appeals Div. 2 Judges are lying corrupt no good bastards and bitches who on their own initiative is calling prosecutor, me, court transcripts, police reports, Detective all liars. Unless I have to register while in jail and so far the answer is yes. Also notice that my objection to

The witnesses was edited out. That was at trial before jury brought in. Especially Ristow of hearsay of not witnessing anything just over and over saying there is no exception to the registering requirement including gun to head. I did object to her testify but of course edited out.

## Argument of case

### Ground one.

Hobson's choice of waiving right to speedy trial or not being able to call witnesses and gather evidence.

My attorney went over the above however with the court transcripts edited on different days there is two conversations missing.

One is my bring up the above at trial saying I need witnesses of two store clerks, Aberdeen cop and Sgt. Nasqually jail officers and even jail prisoners/inmates at Nasqually.

The judge said if you want to waive your speedy trial right I will post pone the trial. I refused I said this is a hobson's choice of waive my speedy trial right or not be able to call witnesses of Aberdeen police officer and Sgt., etc, see above. The judge about three to four times said "do you want to waive your speedy trial right?" I said no. The judge refused to set trial ~~for~~ a week and refused to appoint an investigator. See my sworn statement.

Also it is in Court transcripts pg. 3 of Judge saying "no

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I would ~~not~~ need to waive my speedy trial right. See page 9 of my attorney's brief.

I needed an investigator to get the witnesses and jail print out sheets that are correct and not printed out by prosecutor to suit her theory.

Missing in transcripts is where I said "my attorney keeps telling me that this is all you I'm only your stand by counsel." I could not get him to do god damn fucking thing. See my Sworn Statement.

It is a clear violation of State v. Crawford, 147 Wn.2d 424 at 432 (2002) I noticed my attorney did not cite this case yet it is specific to this case here.

Quote at 432, "The Court of Appeals aptly noted that this court traditionally has not required a defendant to waive one right to preserve another." Unquote.

That Crawford case cited Michielle, 132 Wn.2d 229 (1997) My attorney also cited Michielle case however she could not cite to the edited parts of where I said precisely what witnesses I wanted to bring.

Note that Judge on 25th of April, '16 refused to hear my motions and appoint a investigator. See page 6 of those hearing transcripts. Attachment F.

The trial transcripts has been heavily edited so the Judge and myself talking about Hobson choice is not listed. See page 5 of this argument.

This conviction therefore should be overturned or if not publish this courts opinion on overturning Crawford.

Ground Two.

Denied right to call witnesses. Under WA Const. and U.S. Const. defendants have a right to have witnesses appear on their behalf. U.S. Const. Amd. §1 §5 §6 §14

This is absolutely clearly 100% violated. The Judge Quashed the subpoenas. See attachment B.

Notice the date of May the 5th, '16 day of trial, that the judge signed it in open court and I was there, yet the transcripts do not have that and it was done outside of Jurors presence before ~~me~~ being called into Court room, o"

Attachment C. Shows the pretrial just before trial. I received this from the prosecutors response to Discretionary review that this court absurdly denied.

Judge Denied my witnesses and the motion was not served to me 5-working days in advance. There was no reason given why my witnesses, only witnesses was denied.

The witnesses of jail officers in Nasqually Jail and officer in Aberdeen, Sgt. in Aberdeen and two store clerks in Olympia all denied because I had stand by counsel so no investigator to get names of witnesses.

As counsel said many times, "This is all you?" Either I have a right to call witnesses or I don't. The Judge asked me several times do you want to waive your speedy trial rights. That was in regards to my statements to judge that I need to bring as witnesses now since I have none two store clerks, officer in Aberdeen, two or more Nasqually jail officers. See Sworn Statement.

If WA Constitution and U.S. Const. means anything at all for denying my witnesses this charge has to be overturned.



## Ground Three

Denied right to present evidence. That is under U.S. Const. Amd. §4, §5 §6, §14 and WA's Const. equivalent.

This overlaps with ground two. The evidence I was not allowed to present and the prosecutor withheld is documents from the jail showing when I was in jail and when I was not.

I could not get documents from Gray Harbor/Monterano jail, showing arrest and release dates, and also Aberdeen jail, Hoquiam jail and Nasqually jail.

Prisons, jails are the right arm of the prosecuting attorney according to case law. The theory that the prosecutor does not have to provide those documents as she said at trial. See sworn statement. Is absurd, a lie. See attachment C. It mentions the witness lists. Proof her lies is in the Discretionary ~~review~~ I sent to this Court of Appeals. (Brief)

The witness list has stamped on it Prosecutors office and the court's stamp and date on it. However this court knows all about it as it was thoroughly argued in Discretionary review. For a copy, with out the stamp see attachment D.

Also see attachment C of cell ph. being denied. The texts and video's show that I was ~~only~~ only released 16-hrs before not 3-days.

Stand by counsel grabbed my arm 3 to 4 times saying I can't show video's and texts. Still to this day there is no record showing correct dates of in the abovelisted jails all four of them.

This is grounds for dismissal.

## Ground Four

Illegally with holding evidence. The prosecutor withheld jail reports from all four jails of Nasqually, Aberdeen, Hoquiam, Montesano.

If the court transcripts was not edited see attachment C. It will show my verbal motion at trial to dismiss for refused to turn over arrest and release reports. This is a Due process of law violation under 14th Amd. of U.S. Const. and WA's Due process of Law, Art. I §3.

Also I requested the report interview not the summary, see attachment A. of when detective interviewed me. It would show perjury on part of ~~the~~ cop who was allowed to tailor his testimony. I could not question him about how the questions was about Nov, and Dec. and how I'm being set up.

The prosecutor specifically said she is not obligated to turn over all documents including jail arrest and release, dates and interview documents. Showing it was more than clerical error on charging documents and arrest warrant. See sworn statement.

The Judge denied motion to dismiss for refusing to turn over documents. This was at trial before a jury brought. Transcripts edited!!!

If prosecutor is required by law to turn over exculpatory evidence then this charge needs to be overturned. See attachment D and C. ~~\_\_\_\_\_~~

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## Ground Five

Is a new or different element of amended charge a new charge and therefore require dismissal.

My attorney argued about only having 10-days to prepare for trial. However she did not argue the element part. She argued on page 7 and 8, etc. Quite effectly, however the transcripts has been edited, and attachment C, Sent to me by prosecuting attorney shows alot left out.

Time element, is Key to this type of charge of failure to register. While attorney argued the point to prepare a ~~defense~~ defense in only 10-days. I am arguing that while the statute number remains the same the element changes of time. That is why the amended charge was filed because of wrong dates. That is I was in jail during those dates.

It is like being charged with a felony either A, B, or C, ~~as~~ as in say burglary or robbery 2nd degree felony then prosecutor changes it to 2nd degree assault and the prosecution argues that both are class B felonies and the amount of time of sentence stays the same.

The U.S. S. Crt. has ruled that it is not double jeopardy when some one is convicted of same act twice but under different statutes if just one element between the two is different.

A case of the U.S. S. Crt. is a man was charged with rape and sentence to 30-years. After that trial he was charged with a rape of a minor which was the sole difference between the two charges under two different statutes.

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The U.S. Supreme Court upheld both convictions. The WA. Supreme Court goes by the same standard and a man was charged and found guilty of reckless driving. Then charged with vehicle manslaughter.

In that case the WA. Supreme Court overturned the manslaughter charge because the elements in first charge are all in the vehicle manslaughter statute.

Here in this case of 'FTR'. The element changed because of time line not a new theory of committing the same crime as he committed murder with a axe not a knife. The statute and elements would remain the same, however, not for FTR.

While some one commits an assault or robbery on a specific date, the prosecutor can be off by several weeks. When some one says he stabbed me and it was between the 5th of the month and 25th of the month the prosecutor met the time lines as a general time frame.

Now when it comes to 'FTR' that is not the case. The statute and requirements are quite lengthy dealing with the time frame of when guilty and when not guilty.

While the above example of between 5th and 25th is cited, when it comes to 'FTR' exact dates are a requirement. In this case here I am appealing is exactly what I'm talking about. The prosecuting attorney specifically cited november 5th to 12th of november. A 7-day period. Those are the elements of the charge. ~~It~~ changed by amended info. between Jan. 18th and February 26th of 2016. Now I have to prove innocence on new time

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frame. When the prosecution cites days while in jail or living at my residence then I did not commit a crime because time frame is an element of charge.

I have no access to law books, statutes, etc. That is very well documented.

This therefore violates WA Const. Art. 1 § 22 and my attorney cites Purdum, 106 Wn. 2d 745 at 749, and the quote of my attorneys brief on page 7 of Purdum,  
"... new charge."

See attachment B. Quashing my witnesses and not allowed to bring any other witnesses that I mentioned at trial that is missing from transcripts, and shows new charge.

Also with the amended charge being allowed and if upheld means all and mean all people, any one charged with FTR now has to defend against all 5 years of statutory range regardless what the charging info. says. Essentially saying I have to prove innocence by recording on video's and maybe written log that I have to keep, etc.

The element of time makes this in fact a new charge and by U.S. Supreme Court decision and WA S. Ct. decision this charge should be overturned.

### Ground Six

Illegal ~~XXXXXXXXXX~~ JURY INSTRUCTIONS that I was denied right to object to.

The judge specific says "well you don't any jury instructions so I'm going to read these anyways?"

I notice that also has been edited out. ~~XXXX~~  
There is a whole conversation missing talking about

the jury instructions between the Judge and I.

What I am saying is illegal about the Jury instructions is number 6. See attachment E. of the Jury instruction no. 6. violates beyond a reasonable doubt.

The first paragraph leads some one to believe that knowingly does not mean what it says. Taken as a whole just on that paragraph alone leads any one to believe that not knowing is not a requirement for ~~it~~ if the crime occurred then you are guilty because as it says "or result."

Second part of same top paragraph says ~~I~~ quote "It is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful or an element of ~~the~~ a crime." Unquote.

That right there got rid of my intire defense that I stated of not knowing and that when I got the call from the detective I went in and pigfuckers arrested me for a probation violation.

Third paragraph at bottom completely gets rid of the knowingly requirement. That is a complete misstatement of the Statute of knowingly required to register. That Jury instruction is for assaults, robbery etc.

An example of that not being allowed in a case is when some one buys stolen goods at a yard sale or a pawn shop and is arrested for possession of stolen property. In that case I read a few years back, the Judge said "it is not completely true of ignorance of the law is no excuse when some one buys stolen property and does not realize that it is stolen."

That is the same here in this charge. I kept arguing

that the circumstances of my apartment being robbed and trying to get a court order against apartment manager and the fact that apparently I have to stay at apartment or residence 4-days out of the week and if I leave on a camping trip or vacation for 4-days in a row by law that is a failure to register.

The jury instructions are misleading and contradicts the law and statute of 'FTR'.

I quoted Abraham Lincoln in a motion to the County Court to dismiss this charge and it was denied. I also quoted the same quote in my Discretionary appeal that this court affirmed illegally but did not get access to law library until months later past the time frame to appeal to the WA. S. Ct. court.

The quote is from the book by Stephen B. Oates (1977), 'With Malice Toward None, the life of Abraham Lincoln'. It was in regards to the State of Illinois and Kansas.

In Illinois by law, Blacks could not settle in Illinois with-out a legally stamped certificate of freedom. In Kansas the pro slavery wanted Kansas left as a neutral state where in reality Blacks would be run off by force from land and from the jobs when rarely found. Kansas was ~~the~~ the beginning of the civil war. Causing Mr. Lincoln to say quote "Absurdity - no less that a thing may be lawfully driven away from where it has a lawful right to be." Unquote.

That is exactly what happened to me. I proved it in court with the apartment managers statements in the Court transcripts of his confession of ~~the~~ burglary and illegally renting apartment out. See May 5th, 16<sup>th</sup> crf, transcr's of James Rutz page 48 at line 19, ~~pg~~ 19 line 5 & 6, Pg. 51 to

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page 63. No eviction order was issued and I sent documents to Rutz in September and October explaining why I am with holding rent.

On page 57 and 58 The court says on page 58 at top quote "whether the eviction was right or wrong is not really relevant." Unquote of Judge.

That is why I quoted Mr. Lincoln of "Absurdity - no less that a thing may be lawfully driven away from where it has a lawful right to be."

I have a legal right to be there, yet driven away by police for trespassing, ~~that~~ I get arrested for FTR for registering my lawful residence.

The issue is do I lawfully live at registered address. Not at a vacant home for rent that if I would break into and register would be illegal. See ~~the~~ transcripts of Judge reading the Jury instructions on page 108 lines 24 and 25.

Quote "Instruction Number 10. Fixed residence means a building that a person lawfully, habitually uses as living quarters a majority of the week." Unquote.

Yet the Judge on page 59, denied my pursuit of questioning to status of lawfulness. See also page 58 lines 14, 15 and 16 of Judge saying that's where we are going to end the eviction situation. So therefore I was not allowed to pursue a defense that is part of the Jury instructions and as the WA Supreme Court has said that information in charging documents becomes elements of the crime even if not in the statute when wrongly added even if inaccurate. Here this is similar except Judges statement on 57 & 58 and not allowing me to prove I lawfully



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lived at apartment. That has to be illegal to give jury instruction that I have to lawfully live there and then give that comment and deny me to pursue questioning in that regards see page 57 court transcripts.

Therefore charge should be overturned, as a due process of law violation of U.S. & WA. Const's.  
Ground Seven

~~Did~~ knowingly, that is did I knowingly fail to register?

At first this seems like an issue for jury, as facts for jury, issues of law for courts.

How ever this overlaps with the above ground six. The Jury instruction number 6 relieves the prosecution of its burden of the element of proving that I willingly and knowingly failed to register. Attachment E.

I went over the ~~Jury~~ Jury Instruction number 6 of intentionally and knowingly already above. The way it is written relieves the State of its burden and that is illegal. Even the prosecutor in her Brief on page 16 second paragraph says quote "Testimony established that the defendant believed he was not in violation of his duty to register..." Unquote.

Also page 23 the prosecutors statements show that I believed and still believe to this day that I am innocent and the prosecutor agrees with that.

I can only cite Constitution as I have no access to legal books or a law library. U.S. Const, Amd's 3, 4, 5, 6, 14, and WA. States equivalent, of due process of law.

This charge should be dismissed for the above reasons.

## Ground Eight

Knowingly filing a false arrest warrant.  
Did the prosecutor file a false arrest warrant? Jury instructions that is common is No. 6 in attachment E.

I won't quote the whole thing just last paragraph.  
"When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact."

Unquote.

Since the prosecutor submitted to a Judge to sign a arrest warrant on this charge the acting knowingly to submit a false arrest warrant has been proven.

The top paragraph of jury instruction no. 6 quote "A person knows or acts knowingly or with knowledge with respect to a fact, circumstance, or result when he or she is aware of that fact, circumstance, or result..."

Unquote.

The prosecuting attorney is aware of the result, i.e. Sent to prison so therefore that has been established.

The warrant is false for the registered address is my lawful residence as jury instruction no. 10 says is required. No eviction order was obtained and apartment was not abandoned. The court transcripts proves this.

The warrant on page 2 says I was released December 21st, 2015. False not until Jan. 14th, 2016. That has been proven. 2nd Lie 30-days with credit time served. 3rd Lie or error on pg. two, line 27 says Detective made contact on November 3rd, 2016, ~~It was~~ It was February 3rd, 2016.

Fourth Lie. Saying I said "I did not live there." The last sentence on page 2 is cut off and does

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continue on page 3. Lie Five, Page 3, line 2, says I had 72-hours to report in. That is from Feb. 3rd, 2016 for by Nov. 3rd 2016 I was already in prison on this charge.

On same page 3 at line 8 the phrase 'not been there for some time.' Can be anything from a few hours or months and is misleading.

Lie Six, Page 3, line 9. Says I would be in to update his address with her... The court transcripts of Ristow's testimony established that she does not register any one and does not even see any one who does. See pages 32, 33 and 34. on Page 34 lines 15 to 17 shows that she does not register any one only handles paper work.

Page 3, line 10 shows awareness of DOC warrant and therefore knew I was in jail, or should have known.

Line 11, says I have not had any contact with Ristow. She testified that she don't see or have contact with any one who registers so the warrant is false by indicating that I have to register with her. So that is Lie seven.

Lie Eight. Says on lines 10 through 12 that I have not had any contact with sheriff's department. I actually came to sheriff's dept. jail booking to register and as soon as I was through ~~the~~ sliding locked doors I was ordered in holding cell and arrested and searched and wallet, etc. taken from me. I was arrested 5 to 10 feet from booking, finger printing room in the jail. That was on Feb. 4th, 2016.

The warrant says on Feb. 9th and 12th data base shows my apartment address so warrant was issued yet I was in jail. Therefore prosecutor filed

a false arrest warrant for testimony shows arrest date of Feb. 4th and release date Feb. 22nd, 2016.

That establishes false arrest warrant so therefore the prosecutor is guilty.

Note that the copies of warrant are after my arrest for this charge. I was arrested on 25th of Feb. 2016 and the warrant was issued while I was already in the jail in Aberdeen and the dates are Feb. 29th, 2016 and another copy I got it, not even dated, just says Feb. 2016 not ~~the~~ the day of Feb.

Does the above violate Due process of law under WA Const. Art. I § 21; 22; U.S. Const. Amd. 4; 5; 6; 14.

State v. Cameron, 39 Wn. App. 229, (1982).

Ground Nine

### Entrapment

By Jury instruction No. 6, if a person acts or in my case fails to act that person knowingly committed the crime. So was I entrapped in any way is the issue.

The warrant for arrest on page two says I was released ~~on~~ Dec. 21, 2015 from jail after serving 30 days. That is a lie that the court transcripts prove.

Since the prosecution failed to check and the officers failed to check to see if I am in jail in Dec. and Jan. of 2015 and 2016 that proves knowingly committing entrapment.

Page 3 at top and several lines down says I had 72 hrs to register and then says that I had a active DOC warrant and then says I did not change my address

at lines 13 and 14. Page 3 also says I did not make any contact with Ristow who testify that she does. ~~not~~ ~~not~~ ~~not~~  
Do not in anyway register any one.

So all that is LIES.

Lie is also of saying I did not have contact with the sheriff's Department. Where the fuck do you think I was arrested at? IN FUCKING

booking. So that is a lie so fucking huge and that is what the warrant is based on proves entrapment for a fact. See Sworn Statement.

They Grays Harbor sheriffs arrest me in their booking area then refer a warrant for my arrest. They knew about DOC probation violation called community placement, which the courts says is the something but just a name change w/ political reasons.

If this court of appeals does not over turn this charge that shows how corrupt this court is and that appeals are 100% meaningless.

Note! That the only warrant I've seen signed and dated was for the 29th of February, yet kidnaped on 25th of February 2016. Even though ~~this lying ass~~ court says 26th with police report saying I'm in the Aberdeen fucking jail at 7:55 A.M. But court goes by Montesano jail records which is the county jail. Hey you stupid fucking judges there, are more then one jail in a county. But to pretend not to know that is bull shit absurd. Due process violations of the following.

This violates U.S. Const., Canada's, Mexico's Constitution, and WA's Constitution. WA. is a state in name only. See, (5:17 P.2d 248, 10 Wn. App. 235, Div. 1, 1973, at [3] Entrapment)

## Ground Ten

### Speedy Trial Violation.

My attorney in her brief page 8 says I was charged on February 29th, 2016 in open court and bail was set and Attorney appointed and I received a copy of charging info. and yet the county court is saying I was arraigned on March 7th, 2016 because of speedy trial issue, would be violated by court if not changed. It is well known and many court case laws that the arraignment is the first court appearance not the second or third or randomly chosen by court.

See, Sworn Statement of 4-14-18. Also see attachment G, Superior Court Case Summary printed by Court clerk of GHC.

On page one, numbers 1 to 9 are all dated February 29th, 2016.

1 is charging info. handed to me; 2 - is the Motion for warrant handed to me; ~~3 - is the Motion for~~ 3 - is Order of Warrant dated February 29th and Motion for Warrant dated Feb. 29th, 2016; 4 - is the bail setting; 5 - financial statement submitted by prosecuting attorney; 6 - is order assigning lawyer and order of arraignment, action arraignment; 7 - says Application, which I don't know what that means.

~~7 - says Application~~ Above of no. 6 is the arraignment action showing that the arraignment took place 2-29-2016.

No. 8, Order establishing conditions of release. That is the arraignment. No. 9 simply says "Preliminary Appearance." That is the key to starting the 60-day speedy trial clock. It has never been otherwise. With bail being set, charging info. and warrant handed to me, in courtroom and not being released from the jail it is absurd to say that the 60-day speedy trial

begins when attorney is appointed, however even the Court summary says on No. 10 Notice of appearance 3-1-16.

The WA. S. Ct. has ruled that when a warrant has been issued and he is in prison in WA. State, and he sends a notice of appearance that starts the 60-day speedy trial clock on day that the Court clerk files it, receives it. I personally wrote up four of them from prison and three warrants was dropped and the fourth one was taken back to court. ~~Those was done for other prisoners.~~

Now the case summary establishes arraignment on Feb. 29th, 2016. The trial was May 5th, 2016 which puts the 60-days at April 29th, 2016

I do not have access to a computer to look up case laws, statutes, etc. See sworn statements. This speedy trial violation falls under U.S. Const. Amd.'s 3, 4, 5, 6, 8 and 14; WA. Const. Art. 1 § 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28. See State v. Frank, 12 Wn. App. 515 (2002).

One of those should be dealing with speedy trial rights. U.S. Supr. Ct. say 90-days, however, WA. Supr. Ct. has said for this State it is 60-days.

This charge should be dismissed.

### Ground Eleven

#### Vindictive & Selective Prosecution, and Malicious Prosecution.

The prosecuting attorney knew that the warrant was false or should have known it was false by checking

the computer to see if I was in jail which she did not or didn't care. Also, it is malicious prosecution because she filed the amended info. that encompassed the entire time of me being locked up in February. The police reports attachment A, shows that I was in jail most of Feb. yet the prosecutor cited those dates knowing that they were/are false.

Note that to quote Jury instruction No. 6

"When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact"

Unquote.

Since the amended info. motion was dated April 17, 2016 and the report is dated February 26th, 2016 and I got the copy from the prosecutor there is no excuse. Plus there is several motions sent to Both Court and a copy of each sent to the prosecutor stating I was in jail in Feb. My police statement was even withheld from me.

To quote Jury instruction no. 6 the top half "A person knows or acts knowingly or with knowledge with respect to a fact, circumstance, or result when he or she is aware of that fact, circumstance, or result..." Unquote.

The prosecutor knew I was in jail in ~~Nov~~ 2015 to Jan. 14th & still charged me. The prosecutor knew I was arrested for DOC warrant when I came to county jail in Montesano to register a change of address of different apartment Number same fucking address, in Feb. 4th 2016. So therefore that proves vindictive, malicious prosecution.

Malicious prosecution is illegal by Peterson vs. Little John (1989 yr.) court of Appeals, WA. Calus indifference is the words used.



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On the warrant page 3, line 10, shows that the prosecutor Jany knew I had a DOC warrant so knew that I was in jail or should have known. No Fucking EXCUSES.

Much of this I went over in Ground Eight of knowingly filing a false arrest warrant, which I realize now is also vindictive and malicious prosecution.

Again I'll say that the Amended info. dated April 17th and approved April 25th 2016 shows dates of me being in jail in Febr. including on this charge of upto 26th of February, yet arrested or really kidnapped on February 25th 2016 at 11:00A.M.

See 'State v. Cameron, 30 Wn. App. 229 (1981) (Rev. Denied)

"The filing of a completely unfounded info. may subject the prosecution to court sanctions and disciplinary proceedings."

The info. is completely unfounded for she knew I was in jail and I am fucking sick of writing that over and over.

The warrant is for February for it says "more than a week later..." LIE On Feb. 9th, 2016 it says they checked data base, ~~and~~ made contact with sheriff's dept. that is all lies. I was arrested / kidnapped in the jail booking area, on Feb. 4th 2016 which attachment A proves and court transcript proves. Yet the prosecutor filed the amended charge anyway. Also she calls me a dog fucker in her response to deny motion to be released pending appeal. That shows vindictiveness.

The warrant is all about Febr. of not reporting in the phone call by Detective Weiss, said I have 72-hours to fucking report in and I was not on the run. Did I run or hide? Why the FUCK did I report to DOC probation office?

LEGAL MAIL

Probation officers carry guns and hand-cuffs and are authorized to arrest people for a DOC violation. If I was not reporting in and homeless why would I be in a fucking hick town that is small with no jobs available? Explain that!!

The prosecution, Johnny. Withheld jail reports of Montezano Jail where trial took place and Aberdeen, Hoquim and 4th Jail, Nasqually. She said at trial that she is not obligated to hand over something she don't have. She never got any print outs except what the judge said of "maybe we can get those" and the prosecutor only got Nasqually's, none of the others that is specifically Aberdeen and Hoquim.

What Lushy read (May 5th, 2016) at 96. Was never even verified as accurate. No more than the judgment and sentences that was not accepted.

The Montezano jail report read by Lushy did not include Aberdeen jail and this court is not fooling any one thinking that you can simple go by what Lushy said then say he read two days but we will go by report that he read and ignore police report of where the interview took place. ~~at~~ see attachment A. It is part of the fucking record. So this court believes I volunteered to get in police car hand-cuffed to be taken to Aberdeen jail forced out of my clothes by sex predators of cops, spent the night and as report says escorted from jail cell at 7:55 A.M. and that is not being arrested according to fucking pieces of shit judges of Viv, 2 of three judges.

Pen nearly out of ink so I have to end this now.

LEGAL MAIL

Can't get pen until tomorrow and I have more to say and argue/talk about this ground. I will send with a memorandum and one other ground and my sworn statement tomorrow because a pen is handed out once a day. More in explanation tomorrow. I have to send this tonight to meet 30-day deadline.

Cyber Plm

April 14th, 2018,

G-R 3.1 deemed filed  
day of delivered in  
internal prison system.

DECLARATION OF SERVICE BY MAIL

CR 3.1

I, Cyrus Plush, declare that, on this 14 day of April, 2018 I deposited the forgoing documents:

Brief & attachments

or a copy thereof, in the internal legal mail system of

C BCC  
1830 Eagle Crest Way  
Clallam Bay, WA, 98326

And made arrangements for postage, addressed to: (name & address of court or other party.)

Court of Appeals,  
Crt. Clk. Byrne  
950 Broadway, Ste. 300  
Tacoma, WA, 98402

Prosecuting Attorney's Office,  
E. C. Jahn  
102 W. Broadway Ave, Rm. 102,  
Montesano, WA, 98563

Att. J. Freeman, Dept. of assigned counsel,  
949 Market St. #334, Tacoma, WA, 98402

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Clallam Bay, WA, on April 14th, 2018.  
(City & State.) (Date)

Cyrus Plush  
Signature

Cyrus Plush  
Type/Print Name

# ATTACHMENT

ATTACHMENT A

02/12/16  
14:53Aberdeen Police Department  
Supplemental ReportPage: 0  
1Incident Number: 16-A02034 Nature: Sex Offender Incident Date: 02/12/16  
Name: Jeff Weiss Date: 14:36:23 02/12/16

On 02-01-16 at 0900 hrs, I Detective Jeff Weiss was assigned follow-up to case #16-A02034. The initial facts of the case were provided by Officer Jon Hudson.

On 02-03-16 at approximately 1300 hrs, I contacted Cyrus Plush via phone at 360-500-0732. This number was obtained by Plush's information in my local database. A male answered and identified himself as Cyrus Plush when I asked whom I was talking to. I identified myself as Detective Jeff Weiss and advised him that I was checking on his RSO registration as another officer advised me that he wasn't living at 209 1/2 East Wishkah Street #218, and hadn't been for quite some time. Plush told me that when he went to jail, his landlord rented out his apartment and he was working on getting back into it. I advised Plush that he needed to contact the Grays Harbor County Sheriff's Department and provide a new address. Plush continued to tell me that his landlord double-rented his apartment. I explained to Plush that he had 72 hrs to check in with the Sheriffs Department with a new address. Plush stated that he would take care of it.

On 02-03-16 at approximately 1330 hrs, I contacted Leanna Ristow at the Grays Harbor County Sheriffs Department. I advised Ristow that Plush was not living at the address provided to her and hadn't been for some time. I advised Ristow that Plush stated he would be in to update his address with her. I also advised that Plush has an active DOC warrant.

On 02-09-16, I followed up with Ristow as I had not heard from her. Ristow advised that she has not seen or heard from Plush.

On 02-12-16, I checked Spillman database and Plush is still listed at his old address indicating that he has not attempted to change it. At this time, Plush is well past his 72 hour window to report a change of address. Case has been forwarded to the Grays Harbor County Prosecutors Office for the issuance of an arrest warrant.

Plush's whereabouts unknown at this time.

-----  
*Jeff Weiss*  
-----  
Responsible LEO:

-----  
Approved by:

2-12-16  
-----  
Date

02/26/16  
11:00

Aberdeen Police Department  
Supplemental Report

Page: 0  
1

Incident Number: 16-A02034 Nature: Sex Offender Incident Date: 02/26/16  
Name: J. Perkinson Date: 09:17:30 02/26/16

On 02/26/16 at 0755 hours I conducted an interview of Plush at the Aberdeen Police Department in reference to this case. C/O Tarrence escorted Plush from the Aberdeen City Jail to the Investigations Interview room where I made contact with him. I introduced myself to Plush and advised him that everything in the room was being audio and video recorded. Plush advised that he understood. I advised him of his Miranda Warnings from the Aberdeen Police Department's Advisement of Rights Form. Plush advised that he understood and agreed to speak with me. He signed on both portions of the form indicating that he understood and was waiving his rights to speak with me.

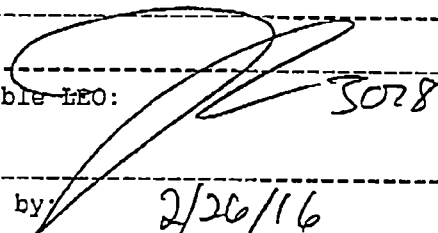
Plush advised that he was in custody for 70 days on a DOC issue. He was released in late January, possibly the 29/30th. When he returned to his residence at 209 1/2 E. Wishkah St. he found that the landlord was trying to kick him out. Plush claims that he was never evicted, and still receives mail at the location. He admitted that he was having a civil issue with the landlord and that his personal belongings had been removed and the locks changed by the landlord. He claims that he received a phone call from a detective asking about his sex offender residency and status. The detective told him that he had to go to the Sheriff's Department that day and register his current address. He claims that he took a bus to Montesano and arrived there just before 5pm. While at the Sheriff's Office they took him to another part of the jail while he was being processed. However before the completion of his registration, he was arrested again and subsequently sent back over and held at the Hoquiam jail. He was just released when he got arrested again for this. Plush claimed that he still lives at the address because that's where his mail goes. The interview was concluded and he was escorted back to the jail without incident.

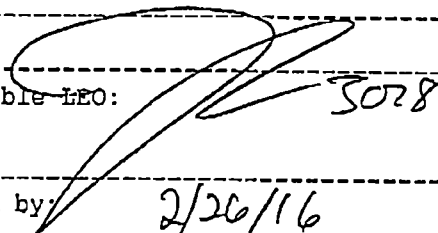
I contacted DOC Ofc. N. Kiser to verify incarceration times stated by Plush as follows: 02/04/16 Plush was arrested by DOC and transferred to Hoquiam City Jail on DOC Hold.

02/09/16 Plush was transferred to Nisqually Jail for 18 day hold on violation.

02/22/16 Plush was released from Nisqually Jail.

02/25/16 Plush came into the DOC Aberdeen Office where he checked in and reported that he was homeless again to his case officer.  
NFI

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Responsible LEO:  3028

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Approved by: 

2/26/16

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Date

# ATTACHMENT

ATTACHMENT B



FILED  
GRAYS HARBOR COUNTY  
C. BROWN, CLERK

2016 MAY 5 AM 9:21

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SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,  
  
Plaintiff,  
  
v.  
  
CYRUS NELSON PLUSH, II,  
  
Defendant.

No.: 16-1-96-0  
  
ORDER QUASHING SUBPOENAS

IT IS HEREBY ORDERED, that the subpoena issued on May 4, 2016 to Judge Stephen E. Brown and Deputy Jeff Niles for the above-name case, are quashed and the witnesses appearance ~~is~~ are excused.

DATED: 5/5/16

J. Marshall Cauley  
JUDGE

Presented by:  
  
KATHERINE L. SVOBODA  
Prosecuting Attorney  
for Grays Harbor County  
  
BY: L.C. Jany  
ERIN C. JANY  
Deputy Prosecuting Attorney  
WSBA #43071

Approved (for entry) (as to form):  
  
\_\_\_\_\_  
Defendant

# ATTACHMENT

ATTACHMENT C

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

CAUSE NO: 16-1-96-0  
COURT CONVENES AT: 8:30 a.m.  
DATE: 05-05-2016

STATE OF WASHINGTON

Plaintiff  
VS.  
CYRUS PLUSH II

HON. JUDGE: F MARK MCCAULEY

COURT REPORTER: BRENDA  
JOHNSTON  
COUNTY CLERK: CHERYL BROWN

Defendant

DEPUTY CLERK: CINDY BALSLEY

PRETRIAL

---

Cause comes on regularly for hearing at 8:30 A.M. . Plaintiff is represented by K. Svoboda on Motion to Quash Subpoenas and Ms. Erin Jany Prosecuting Attorney. Defendant is appearing in person is in custody is and is representing himself. Stand by Counsel Mr. Eric Kupka.

8:45 a.m. Court is in Session

Ms. Svoboda addressed the Subpoena for Judge Brown, and Officer Jeff Niles.

Court explained to Mr. Plush that documents can be used to show a signature for any appeal issues. Order Quashing the Subpoenas were presented and signed.

Ms. Svoboda excused herself.

Ms. Jany informed the Court that she had not received a witness list or any evidence list from Mr. Plush

Mr. Plush stated that he had not received a witness list from Ms. Jany.

Ms. Jany stated witnesses are in the Omnibus Response filed on March 3, 2016.

Mr. Plush wanted to use his cell phone information to support time frame and action he took concerning his civil action and incarceration in another county and here. Mr. Kupka stated that no audio or video had been prepared for court and he had not seen anything either.

Court went over several things with Mr. Plush on how the day was going to proceed, including certain procedures during voir dire jury selection, opening statements, cross examination, and exhibits.

9:20 a.m. Court adjourned

# ATTACHMENT

*J*

ATTACHMENT

*J*

Page 1.

3-23-'16, Wednesday

To: Prosecuting Attorney,

Case Name: State of WA. v. Cyrus Nelson Plush, I.I.

Case No. 16-1-96-0

This is the witness list and evidence I am submitting.

- 1) Judge Brown, of Superior Court of Montesano.
- 2) Sgt. Niles, sheriff at the Grays Harbor County Jail.
- 3) James Rutz, Manager of Grays Apartments, at 209 1/2 E. Wishkah St., Apto 105, Aberdeen, WA, 98520
- 4) Judgement & sentence documents, Montesano Jail booking & release docs.
- 5) Video recordings on cell phone in custody of Sheriff's dept. at Montesano.
- 6) Aberdeen, WA. Jail booking & release documents.

Please, send your list of witnesses and copies of evidence of documents and videos to me at: Cyrus Plush, 3-18-B, Montesano County Jail, P.O. Box 630, Montesano, WA, 98563

Here is a partial list I expect in return.

- 1) Judgement & sentence and/or documents of Montesano Jail showing arrest and release dates.
- 2) Witnesses you will bring with contact info.
- 3) Kiask/computer correspondence with Sgt. Niles and Cyrus Plush.
- 4) And any other documents that may show my innocence as in the Aberdeen Jail showing arrest & release dates.

Signed, Cyrus Plush, Dated, 3-23-'16, Wednesday

2016 MAY 16 PM 1:34

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

CYRUS NELSON PLUSH II,

Defendant.

NO. 16-1-~~000~~96-0

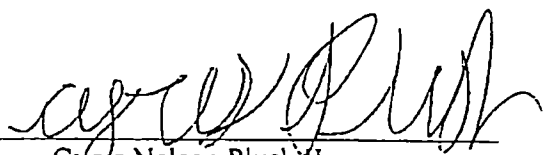
RE: Motion to Dismiss for  
withholding exculpatory  
evidence.

For a fact prosecuting Attorney with held ~~exculpatory~~ evidence proving  
innocence. one was the print out of arrest & release dates submitted  
at trial, two J&S, Third my signed ~~my~~ statement of being questioned  
~~about~~ about november proving no clerical error occurred, Fourth  
my statement recording on Feb. 26th that ~~proves~~ proves that I was  
questioned about Nov. 2015 proving that the dates was not a

DATED: May 14th, 2016.

Respectfully Submitted,

CYRUS NELSON PLUSH II  
Pro Se Defendant

By   
Cyrus Nelson Plush II

Clerical error. It is a Due Process of law violation and case law violation to withhold evidence under 14th Am. of U.S. and Due Process of Law under WA. State.

The prosecuting Attorney committed perjury by saying at trial that I did not submit a witness and evidence list or its a confession of a new crime, ~~either~~ either way Due Process of law was violated.

The 'Memorandum of Authorities RE: C-R 3.5' to allow my statements be admissible in Court says on page 2 that I gave a signed statement and it was recorded, yet ~~the~~ Prosecuting Attorney refused to turn them over. All evidence submitted by prosecution was specifically related to that memorandum. The prosecution wrote it after the deadline to turn over evidence and that is why there was a hearing to allow it ~~to~~ to be submitted as evidence. I agreed to allow it, that is all the documents submitted to be allowed in because they show that I am innocent.

The written statement and recording will show that I was in fact questioned about November the 5th and that amended charge is not a clerical error. The prosecution submitted the evidence in April and approved in court April 15th ~~the~~. On April 18th prosecution submitted the new charging information which I objected to. On April 25th Judge Brown agreed to the Amended information with comments of you better get to calling new witnesses, know I had only 10-days until trial. I don't know if that was a trial tactic to make it impossible to mount any defense or not.

The prosecution submitted with Memorandum my signed waiver of Attorney but no statement or recording as the memorandum indicate

The fifth evidence withheld is correspondence on kiosk as I request -ed an witness and evidence list submitted. See copy stamped by prosecutions office. The sixth evidence withheld is my police report to aberdeen police of breaking & enter/burgery and theft of access device and illegally double renting Apt. which with officers statements proves intrapment.

By withholding six different documents that is a due process of law and case law. Therefore charge should be dismissed.

cyra Allen, May 14th 2016

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON, )  
)  
Plaintiff, )  
vs. )  
)  
CYRUS NELSON PLUSH II, )  
)  
Defendant. )

NO. 16-1-~~200~~96-0

RE: Motion to Dismiss Charges  
Because of 100% Proof of  
Innocence On Cell Phone  
And Release and Arrest Dates

The State argued in closing, argued through out trial and in closing arguement that jury had option of finding guilt between Feb. 22nd and Feb. 26th, 2016. My cell phone will show that in a text message that I was released Feb. 24th and stuck in Olympia until morning of Feb. 25th, 2016. The documents that the State is

DATED: May 14th, 2016.

Respectfully Submitted,  
CYRUS NELSON PLUSH II  
Pro Se Defendant

By *Cyrus Plush*  
Cyrus Nelson Plush II



Withholding on arrest & release dates also show for a fact that I could not have committed crime as I was on streets 16-hours.

This is a Due Process violation, therefore charges should be dismissed.

cyrus Allen

May 14th, 2016

# ATTACHMENT

ATTACHMENT

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# ATTACHMENT

ATTACHMENT F

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IN THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON IN AND FOR THE  
COUNTY OF GRAYS HARBOR

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. 16-1-96-0
	)	
CYRUS PLUSH, II,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE JUDGE STEPHEN BROWN

- April 25, 2016 -

Grays Harbor County Courthouse  
Montesano, Washington

A P P E A R A N C E S

FOR THE PLAINTIFF: MS. ERIN JANY  
PROSECUTING ATTORNEY

FOR THE DEFENDANT: MR. CYRUS PLUSH  
PRO SE

MR. ERIK KUPKA  
STAND BY COUNSEL

REPORTED BY: CARMAN PRANTE, CCR (#2513)  
OFFICIAL COURT REPORTER  
GRAYS HARBOR SUPERIOR COURT  
102 W. BROADWAY, #203  
MONTESANO, WA 98563

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PROCEEDINGS

- April 25, 2016 -

THE COURT: 16-1-96-0, Cyrus Plush. A motion to amend dates.

MS. JANY: Yes, Your Honor. The State's moving to amend the dates. I believe Your Honor has a copy already. If not, I have another one.

And, Your Honor, this was brought about primarily because Mr. Plush pointed out that the dates that the State had alleged, I think they were just completely mistaken, were during a time when he was incarcerated, so we have made that change.

This was heard by Judge Edwards and it was just set over to give counsel a chance to look at - and Mr. Plush a chance to look at the amendment. He had explained to Mr. Plush that the State has a - the ability to do the amendment up until time of trial and that there isn't a - necessarily an issue with that. He just reserved it to give counsel a chance to have any response, if any.

THE COURT: Okay. Mr. Plush.

MR. PLUSH: I object to it, because one of the key things about amendment - and it says right in

1 the information to amend, that I was given by the  
2 prosecution, to substantial rights of the defendant  
3 not prejudiced.

4 Now, I've got documents here sending to the  
5 prosecuting attorney -- and it's stamped with their  
6 stamp on it, prosecuting attorney, dated March the  
7 17th -- a motion to dismiss for lack of cause to  
8 arrest. So that was over a - about over a month ago.  
9 So they knew about this over a month ago. The  
10 substantial rights that will be implicated is that  
11 all of the witnesses that I gave on my witness list  
12 that I sent letters out to appear in court would no  
13 longer be valid. I've been trying to defend myself  
14 for those dates. And I sent - and that - and I - and  
15 the dates and the evidence and the witnesses that I  
16 got was for November. The evidence list is for  
17 November. So I pretty much would have ten days until  
18 trial to start everything all over on my - I've got  
19 three witnesses that I wanted to bring, I've got  
20 evidence of videotapes that I wanted to bring, and  
21 everything that I would have to start over again.

22 The witnesses - I've got witnesses for these  
23 new dates to bring in then. I've got sheriffs in  
24 Aberdeen. I would have to literally - there would  
25 like be like two or three new witnesses that I would

1 have to try to track down. There's evidence that I  
2 have would have to track down then, so it would be  
3 pretty much starting my whole case over within ten  
4 days.

5 MS. JANY: And, Your Honor, just for the  
6 Court's information. Judge Edwards already ruled on  
7 the motions. He denied the motions to dismiss.

8 THE COURT: So this is the first amendment to  
9 the complaint?

10 MS. JANY: Correct, Your Honor. It was  
11 presented last week or two weeks ago. It's just  
12 being heard today for Your Honor.

13 THE COURT: Okay. Well, Mr. Plush, those  
14 dates were covered in the prosecutor's initial  
15 statement of probable cause, so - although all - all  
16 the dates were covered, including the dates now  
17 referred to in the amended information. So it does  
18 change the focus of your defense somewhat, but as  
19 those dates were included in the original affidavit  
20 for probable cause, the witnesses, the officers  
21 referred to, the Court finds that the amended  
22 information will be - can be appropriately granted  
23 and allowed to be filed and will - I don't think that  
24 creates any new or different information for - as far  
25 as you're concerned.

1 All right. So now you know the specific  
2 dates and times. Your focus - rather than trying to  
3 cover the entire period, you can focus on that  
4 shorter period of time. It actually kind of reduces  
5 some of your burden.

6 Okay. Anything further in this matter?

7 MS. JANY: Your Honor, the other thing that  
8 we do have is we do have a stipulation. It's  
9 commonly referred to as an old chief stipulation as  
10 to the defendant's underlying sex offense. I'll hand  
11 that forward. Other than that, I don't know if  
12 there's anything else.

13 THE COURT: So it doesn't have a date on it.  
14 It has a received by the sheriff and it has both  
15 signatures, Ms. Jany and Mr. Plush, but there's no  
16 date. It just says blank day of April 2016. So is  
17 that as of today then?

18 MS. JANY: Sure, Your Honor, we can just  
19 make it for today. It was signed two different  
20 dates, because I had to provide it to Mr. Plush at  
21 the jail.

22 THE COURT: So is that all right, the  
23 stipulation will be considered as of today,  
24 Mr. Plush?

25 MR. PLUSH: Yes.

*Handwritten notes on the right margin:*  
L18  
Nov 5th to Nov 24th  
is on the way  
7 days  
Jan 15 to Jan 31  
Feb 25th

*Handwritten marks on the left margin:*  
A large handwritten 'R' and some scribbles.



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THE COURT: All right. Okay.

MR. PLUSH: I would like to confirm the jury trial for May the 5th?

THE COURT: And anything else?

MS. JANY: I don't believe so, Your Honor.

THE COURT: Okay.

MR. PLUSH: I have a - wanted - I have a motion here. I wanted to - to compel the witnesses to appear that I listed earlier.

THE COURT: So for the Court to hear a motion, unless you have a - if you wanted to discuss it with the prosecutor and have someone present an agreed order for the Court to hear a motion, you need to file that in writing and serve a copy on the prosecutor and note it for hearing. That's the motion practice.

MR. PLUSH: Yeah. I did that on - on -- what was it -- Thursday night, I sent it to the --

THE COURT: Five days.

MR. PLUSH: All right.

THE COURT: It requires five days notice, unless the prosecutor agrees to something else or the Court grants you an order shortening time.

MR. PLUSH: All right.

THE COURT: And - for a five-day notice it

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doesn't include Saturday and Sunday.

MR. PLUSH: All right.

THE COURT: All right.

MS. JANY: Thank you, Your Honor.

(End of Proceedings.)

C E R T I F I C A T E

I, CARMAN PRANTE, a duly authorized Notary Public in and for the State of Washington, residing at Grays Harbor, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I, DO FURTHER CERTIFY that the foregoing transcript constitutes a full, true, and accurate transcript of that portion of my stenograph notes so taken and so ordered.

I, DO FURTHER CERTIFY that I am not related to any of the parties to this lawsuit, nor am I interested in the outcome thereof.

Dated this 16th day of March, 2017.

\_\_\_\_\_  
Carman Prante  
CCR #2513

March 27, 2018

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

CYRUS NELSON PLUSH II,

Appellant.

No. 49104-4-II

UNPUBLISHED OPINION

MELNICK, J. — Cyrus Nelson Plush, II appeals his conviction and sentence for failure to register as a sex offender. Plush contends the trial court erred by granting the State’s motion to amend the information, the prosecutor committed prosecutorial misconduct during her closing remarks, and at sentencing the State failed to provide proof of Plush’s prior offenses. We affirm Plush’s conviction but remand for resentencing.

**FACTS**

Plush’s 1992 felony sex conviction required him to register as a sex offender. RCW 9A.44.130(1)(a).

Plush last registered on January 14, 2016 at an apartment in Aberdeen, Washington. Plush lived there from May to November 2015. The apartment manager posted a three-day eviction notice on the apartment door in November 2015 because at that point the manager had not seen Plush “in over a month and he was late on his rent.” Report of Proceedings (RP) (May 5, 2016) at 49. A new tenant began renting the apartment in December 2015.

On January 24, 2016, Aberdeen Police Officer Jon Hudson went to Plush's registered address to verify Plush's residence. The new tenant confirmed Plush did not live there. On February 3, 2016 Aberdeen Detective Jeffrey Weiss located Plush and notified him that he was required to register a change of address within 72 hours. Weiss checked and by February 12 Plush had not registered a new address.

On February 29 the State charged Plush with one count of failure to register as a sex offender between "November 5, 2015, and ending November 12, 2015." Clerk's Papers (CP) at 1. The declaration for an order for a warrant of arrest, filed with the information, detailed Plush's recent incarcerations and his residency at the Wishkah address, and stated "On February 9, 2016, . . . Weiss . . . was advised that the Defendant had not made any contact with . . . the Grays Harbor County Sheriffs Department" and "[o]n February 12, 2016, Detective Weiss checked the Spillman data base and saw the Defendant was still listed at his old registered address." CP at 5.

Plush filed a motion to dismiss, arguing that he was in custody between November 5 and November 12, 2015 and, therefore, was not required to register. The State then filed a motion to file an amended information. The trial court denied Plush's motion to dismiss because the State set a motion to amend the information dates to be heard on a specific date. At the hearing, the trial court granted the State's motion to amend the information, because "the dates now referred to in the amended information . . . were included in the original affidavit for probable cause." RP (Apr. 25, 2016) at 4. Plush filed a motion to reconsider that the trial court denied. The State's amended information alleged Plush failed to register between January 18 and February 26, 2016.

The matter proceeded to trial. Dennis Lusby, a Grays Harbor County Sheriff's Office corrections lieutenant who is responsible for bookings, testified that Plush was in custody from November 6, 2015 to January 15, 2016 and February 4, 2016 to February 22, 2016 on unrelated

charges and from “February 26th, 2016”<sup>1</sup> until the date of trial on the current failure to register charge. RP (May 5, 2016) at 94.

During her closing remarks, the prosecutor stated, “the State’s allegation . . . is that the defendant failed to register from January 18th until February 26th. Now, the State doesn’t need to prove that entire time . . . just that he failed to register some period of time in there that was more than three days.”<sup>2</sup> RP (May 5, 2016) at 112. The prosecutor continued by arguing there were “two times frames” one of them was “from January 18th, 2016 until February 4th, 2016” and the other was “from February 22nd when he was released . . . until February 25th when he was picked up again.” RP (May 5, 2016) at 113. There was no objection to these comments.

The jury found Plush guilty. During sentencing, the State offered a statement of Plush’s extensive criminal history. Plush did not object. The sentencing court questioned the prosecutor about whether the correct county was listed for one of the prior convictions. The prosecutor stated that the wrong county was listed and stated, “[T]he cause number is correct, it’s just the wrong county. I have the Judgment and Sentence with me today.” RP (June 3, 2016) at 17.

The sentencing court calculated Plush’s offender score at 14 and imposed a standard range sentence. Plush got frustrated because the trial court would not hear his arguments regarding entrapment and false imprisonment. Plush stated, “This is f\*\*\*ing crazy” and refused to sign the judgment and sentence. RP (June 3, 2016) at 22. He appeals.

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<sup>1</sup> Lusby later testified “on 2/25 Plush was taken into custody for new failing to register charges.” RP (May 5, 2016) at 96. Since Lusby’s earlier testimony regarding “February 26th” is referring to the date on a computer printout of inmate bookings and since Lusby includes the exact time Plush was taken into custody on February 26 (“09:15”), we use February 26, 2016 as the date Plush was re-incarcerated. RP (May 5, 2016) at 94.

<sup>2</sup> Under RCW 9A.44.130(4)(a)(i), offenders have three business day from the time of release from custody to register. We take judicial notice that February 22, 2016 was on a Monday.

## ANALYSIS

## I. AMENDMENT OF INFORMATION

Plush first contends the trial court erred by granting the State's motion to amend the information. We disagree.

We review a trial court's ruling on a motion to amend an information for abuse of discretion. *State v. Schaffer*, 120 Wn.2d 616, 621-22, 845 P.2d 281 (1993). A trial court abuses its discretion if its decision is manifestly unreasonable or is based on untenable grounds or for untenable reasons. *State v. Lord*, 161 Wn.2d 276, 283-84, 165 P.3d 1251 (2007). A defendant has the constitutional right to be notified of the nature of the charges against him. WASH. CONST. art I, § 22. A trial court may permit the State to amend the information at any time before verdict or finding if the defendant's substantial rights are not prejudiced. CrR 2.1(d). The burden is on the defendant to show prejudice. *State v. Gosser*, 33 Wn. App. 428, 435, 656 P.2d 514 (1982).

Here, Plush was in and out of custody several times as set forth in the declaration of probable cause filed with the original information. The trial court allowed the State to amend the information after it became aware that Plush was incarcerated on the dates originally alleged. Plush argues the timing of the State's motion prejudiced him "because he was forced to choose between his right to a speedy trial or being adequately prepared for trial." Br. of Appellant at 8. However, as the trial court stated, the dates were alleged in the declaration of probable cause. An amendment changing the charging dates "[m]oments before the trial court made its ruling" is permissible if it does not prejudice the defense. *State v. Downing*, 122 Wn. App. 185, 193-94, 93 P.3d 900 (2004). Plush fails to show that if he had additional time the trial outcome would have been different. The trial court did not err in granting the State's motion to amend the information.

II. PROSECUTORIAL MISCONDUCT

Plush next contends the prosecutor committed misconduct by arguing facts not in evidence during her closing remarks. We disagree.

To establish prosecutorial misconduct, a defendant bears the burden of proving the prosecutor's conduct was both improper and prejudicial. *State v. Thorgerson*, 172 Wn.2d 438, 442, 258 P.3d 43 (2011). Where, as here, a defendant fails to object to alleged prosecutorial misconduct, he is deemed to have waived any error unless he shows the misconduct "was so flagrant and ill intentioned that an instruction could not have cured the resulting prejudice." *State v. Emery*, 174 Wn.2d 741, 760-61, 278 P.3d 653 (2012). To meet this heightened standard, the defendant must show that "(1) 'no curative instruction would have obviated any prejudicial effect on the jury' and (2) the misconduct resulted in prejudice that 'had a substantial likelihood of affecting the jury verdict.'" *Emery*, 174 Wn.2d at 761 (quoting *Thorgerson*, 172 Wn.2d at 455).

During the prosecutor's closing remarks, she stated, "the State's allegation . . . is that the defendant failed to register from January 18th until February 26th. Now, the State doesn't need to prove that entire time . . . just that he failed to register some period of time in there that was more than three days." RP (May 5, 2016) at 112. The prosecutor continued by arguing there were "two times frames" one of them was "from January 18th, 2016 until February 4th, 2016" and the other was "from February 22nd when he was released . . . until February 25th when he was picked up again." RP (May 5, 2016) at 113. Plush did not object to these comments.

Plush contends these comments are improper because "it is impossible to determine if he did in fact fail to register for three business days . . . after his release from jail on February 22, 2016." Br. of Appellant at 14. However, Lusby testified that Plush was in custody on November 6, 2015 to January 15, 2016; February 4, 2016 to February 22, 2016; and "February 26th, 2016"



until the date of trial. RP (May 5, 2016) at 94. While the prosecutor stated February 25 instead of February 26, the facts in the record show February 26 was the day Plush was re-incarcerated. Plush fails to show that a curative instruction addressing the misstatement would not have obviated any prejudicial effect. Moreover, he fails to show that the comment resulted in prejudice that had a substantial likelihood of affecting the jury verdict since the prosecutor initially stated that Plush failed to register from January 18 until February 26 and that the State only needed to show that he failed to register some period of time that was more than three days. Thus, the prosecutor's remarks were unlikely to have affected the jury's verdict in light of the other incriminating evidence. Plush's prosecutorial misconduct claim fails.

### III. OFFENDER SCORE

Plush next contends the State failed to prove any prior convictions by a preponderance of the evidence. We agree.

A defendant's offender score is generally calculated by adding together the defendant's current offenses and prior convictions. *State v. Hunley*, 175 Wn.2d 901, 908-09, 287 P.3d 584 (2012). At sentencing, the State must prove any prior convictions by a preponderance of the evidence and must "introduce 'evidence of some kind to support the alleged criminal history.'" RCW 9.94A.500(1); *Hunley*, 175 Wn.2d at 910 (quoting *State v. Ford*, 137 Wn.2d 472, 480, 973 P.2d 452 (1999)). "The best evidence of a prior conviction is a certified copy of the judgment", but the State may offer "other comparable documents of record or transcripts of prior proceedings to establish criminal history." *In re Pers. Restraint of Adolph*, 170 Wn.2d 556, 566, 243 P.3d 540 (2010) (quoting *Ford*, 137 Wn.2d at 480)). "[The] burden is 'not overly difficult to meet' and may be satisfied by evidence that bears some 'minimum indicia of reliability.'" *Adolph*, 170 Wn.2d at 569 (quoting *Ford*, 137 Wn.2d at 480-81). The State is relieved of its burden only if the defendant

“affirmative[ly] acknowledge[es]” the “*facts and information*” the State introduces regarding criminal history. *State v. Mendoza*, 165 Wn.2d 913, 928, 205 P.3d 113 (2009), *disapproved of on other grounds by State v. Jones*, 182 Wn.2d 1, 338 P.3d 278 (2014).

During sentencing, the State offered a statement of Plush’s extensive criminal history. The sentencing court questioned the prosecutor about whether the correct county was listed for one of the prior convictions and the prosecutor acknowledged the error and stated, “[T]he cause number is correct, it’s just the wrong county. I have the Judgment and Sentence with me today.” RP (June 3, 2016) at 17. Based on our record there is no indication that the prosecutor provided the court with all the additional judgments to support Plush’s other prior convictions. Moreover, our record does not show that Plush affirmatively acknowledged the facts and information that the State introduced. To the contrary, Plush refused to sign the judgment and sentence.

Because the State failed to introduce evidence to support the alleged criminal history and because Plush did not affirmatively acknowledge his criminal history, we conclude that Plush is entitled to a new sentencing hearing to allow both parties to present relevant evidence regarding Plush’s criminal history under RCW 9.94A.530(2).<sup>3</sup> If the State fails to carry its burden, the court must amend Plush’s offender score and resentence him using the correct offender score and standard range.

#### IV. APPELLATE COSTS

Plush asks that this court decline to impose appellate costs if the State prevails on appeal. Because there is no substantially prevailing party on review, we deny appellate costs.

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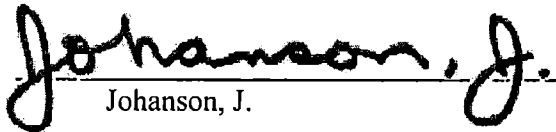
<sup>3</sup> RCW 9.94A.530(2) states: “On remand for resentencing following appeal or collateral attack, the parties shall have the opportunity to present and the court to consider all relevant evidence regarding criminal history, including criminal history not previously presented.”


We affirm the conviction but remand for resentencing.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
\_\_\_\_\_  
Melnick, J.

We concur;

  
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Johanson, J.

  
\_\_\_\_\_  
Maxa, A.C.J.

**PIERCE COUNTY ASSIGNED COUNSEL**

**April 27, 2018 - 3:09 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 49104-4  
**Appellate Court Case Title:** State of Washington, Respondent v. Cyrus N. Plush, II, Appellant  
**Superior Court Case Number:** 16-1-00096-0

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