

No. 22-5564

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

SEP 01 2022

OFFICE OF THE CLERK

MICHAEL MUTHEE MUNYWE — PETITIONER
(Your Name)

vs.

STATE OF WASHINGTON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

WASHINGTON STATE COURT OF APPEALS (DIVISION TWO)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL MUTHEE MUNYWE
(Your Name)

1313 N 13TH AVE
(Address)

WALLA WALLA, WA 99362
(City, State, Zip Code)

509 524 7716
(Phone Number)

QUESTION(S) PRESENTED

QUESTION ONE

WHETHER THE LENGTH OF DELAY IN BRINGING AN ACCUSED'S CASE TO TRIAL PASSES THE THRESHOLD FROM NOT PREJUDICIAL INTO PRESUMPTIVELY PREJUDICIAL WHEN GOVERNMENTAL NEGLIGENCE CAUSES OVER 425 DAYS TRIAL DELAY, OVER 7 TIMES AS THAT IS GENERALLY SUFFICIENT TO TRIGGER BARKER INQUIRY AND JUDICIAL REVIEW; AND WHETHER, WHEN THE PRESUMPTION OF PREJUDICE IS NEVER PERSUASIVELY REBUTTED, THE DEFENDANT IS ENTITLED TO RELIEF IN THE RARE AND EXTRAORDINARY FORM OF DISMISSAL WITH PREJUDICE PURSUANT TO WASHINGTON STATE'S CrR 3.3 (h), WASHINGTON STATE CONSTITUTION ART. 1 § 22 AND SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

QUESTION TWO

WHETHER FAIR TRIAL; FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF ACCUSED PERSONS ARE VIOLATED WHEN TRIAL COURT SHOWS TO THE JURY DEFENDANTS' GENITALS BY PLAYING TO JURY A CROSS GENDER SEARCH VIDEO OF A FEMALE STRIPPING NAKED, PHOTOGRAPHING, AND SWABBING, ACCUSED MALE'S GENITALS IN THE INTERROGATION ROOM IN THE PRESENCE OF OTHER MALE AND FEMALE DETECTIVES IN THE INTERROGATION ROOM; AND WHERE THE ACCUSED WAIVES MIRANDA RIGHTS AND INTERPRETER AFTER 8 HOURS OF TORTURE, TORMENT AND MISTREATMENT.

QUESTION THREE

WHETHER STATE COURT DENIES SIXTH AMENDMENT RIGHT AND DUE PROCESS OF LAW IN VIOLATION OF THE 14TH AMENDMENT; AND VIOLATES DOUBLE JEOPARDY WHEN DURING SENTENCING, THE COURT IMPLIEDLY ADDS A THIRD COUNT. THAT WAS NEVER CHARGED, NEITHER PROSECUTED NOR PRESENTED TO THE JURY, AS A BASIS OF JUSTIFICATION TO ADD 3 MORE YEARS TO DEFENDANT'S SENTENCE.

QUESTION FOUR

WHETHER WASHINGTON STATE COURT DENIES DEFENDANT A FAIR TRIAL BY AN IMPARTIAL JURY AS GUARANTEED BY SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN IT CONTRAVENES IT'S OWN LONG LINE OF PRECEDENTS, IT'S CODES RCW 2.36.110 AND CRIMINAL RULE CrR 6.5 WHEN IT FAILED TO EXCUSE UNFIT JUROR.

QUESTION FIVE

WHETHER WHEN DEFENSE ATTORNEY IN STIPULATION WITH PROSECUTOR AND THE COURT CAUSES DEFENDANT TO WAIVE CERTAIN CONSTITUTIONAL RIGHTS IN EXCHANGE TO PRESERVE OTHER CONSTITUTIONAL RIGHTS, IT AMOUNTS TO CONFLICT OF INTEREST AND INADEQUATE LEGAL ASSISTANCE THAT SO UNDERMINES PROPER FUNCTIONING OF ADVERSARIAL PROCESS.

"

"

"

QUESTION SIX

WHETHER TRIAL COURTS UNFAIRLY PREJUDICE DEFENDANTS, DENYING THEM FAIR TRIAL AND SIXTH AMENDMENT RIGHT BY IMPROPERLY COMMENTING ON THE EVIDENCE WHEN THEY ANONYMIZE COMPLAINANT'S BY USING INITIALS RATHER THAN THEIR NAMES IN THE TO-CONVICT INSTRUCTIONS AND EXPLAIN TO THE JURY THAT INITIALS ARE USED TO PROTECT RAPE VICTIMS.

QUESTION SEVEN

WHETHER ACCUSED PERSONS SUFFER SIXTH AMENDMENT VIOLATIONS WHEN DEFENCE ATTORNEY, WITHOUT EXPRESS AUTHORITY FROM DEFENDANT, STIPULATES WITH PROSECUTOR AND COURT NOT TO PRESENT DEFENSE'S SCIENTIFIC MEDICAL EVIDENCE AND DEFENCE WITNESS AT TRIAL.

QUESTION EIGHT

WHETHER SUPPRESSION OF DNA EVIDENCES FAVOURABLE TO AN ACCUSED, BY THE PROSECUTOR IN COLLABORATION WITH DNA ANALYST, CONSTITUTES BRADY VIOLATION EVEN THOUGH DEFENCE ATTORNEY MADE NO PRE TRIAL MOTION TO REQUEST THE SPECIFIC EVIDENCES.

QUESTION NINE

WHETHER STATE COURT ACTS WITHOUT STATUTORY AUTHORITY AND DENIES FAIR TRIAL TO A DEFENDANT WHEN IT RAISES A DEFENDANT'S OFFENDER SCORE, CONVERTS A MISDEMEANOR INTO A FELONY, ADDS A SEXUAL MOTIVATION ENHANCEMENT AND THREE MORE YEARS INTO DEFENDANT'S SENTENCE, BASED ON AN ABSOLUTELY NULL AND VOID SPECIAL VERDICT.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT.....	18
CONCLUSION.....	39

INDEX TO APPENDICES

APPENDIX A — DECISION OF STATE COURT OF APPEALS

APPENDIX B — ORDER OF STATE COURT OF APPEALS

DENYING MOTION FOR RECONSIDERATION

APPENDIX C — DECISION OF STATE TRIAL COURT

FINDINGS OF FACT & CONCLUSIONS OF LAW, J & S

APPENDIX D — ORDER OF STATE SUPREME COURT

DENYING REVIEW

APPENDIX E — STATE TRIAL COURT'S STATEMENT OF

PRIOR RECORD AND OFFENDER SCORE

APPENDIX F — JURY'S SPECIAL VERDICT; VERDICT RP 994

APPENDIX G — DEFENDANT'S S.A.G'S 1, 2 & 3; ADDITIONAL AUTHORITIES

APPENDIX H — TRIAL CONTINUANCES

APPENDIX I — DEFENDANT'S LETTERS TO TRIAL COURT

APPENDIX J — DECISIONS ON USE OF PSEUDONYMS

APPENDIX K — CHARGING INFORMATION

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>STATE CASES</u>	
STATE V. BROOKS, 149 Wn. App. 373, 387, 203 P. 3d 397 (2009) - - - - -	33
STATE V. BECKER, 132 Wn. 2d 54, 64, 935 P. 2d 1321 (1997) - - - - -	34
STATE V. LAWLER, 194 Wn. App. 275, 284, 374, 374 P. 3d 278 (2016) - - - - -	31
STATE V. LEVY, 156 Wn. 2d 709, 721, 132 P. 3d 1076 (2006) - - - - -	34
STATE V. JONES, 168 Wn. 2d 713, 720, 230 P. 3d 576 (2010) - - - - -	36
STATE V. MICHELLE, 132 Wn. 2d 229, 246, 937 P. 2d 587 (1997) - - - - -	33
STATUTES AND RULES	
STATE V. PRICE, 94 Wn. 2d at 814 - - - - -	33
STATE V. ROHRICH, 149 Wn. 2d at 649 - - - - -	33
STATE V. SANSEN VAN ELSON, 191 Wn. 2d 798, 806, 425 P. 3d 807 (2018) - - - - -	30
STATE V. UNGA, 165 Wn. 2d 95, 100, 196 P. 3d 645 (2008) - - - - -	27
<u>FEDERAL CASES</u>	
APPENDI V. NEW JERSEY, (2000) 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 - - - - -	29
OTHER BARKER V. WINGO, 407, U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972) - - - - -	19
BLAKELY V. WASHINGTON, 542 U.S. 296, 306 (2004) - - - - -	38
BROWN V. MISSISSIPPI, 297 U.S. 278, 80 L. Ed. 682, 56 S. Ct. 461 (1936) - - - - -	26
BYRD V. MARICOPA CTY. SHERIFFS DEPT, 629 F.3d 1135, 1146 (9th Cir 2011) - - - - -	27

FEDERAL CASES Cont'd

BRADY V. MARYLAND, 373 U.S. 83, 87 (1963)	- - - - -	37
CLERK V. ARIZONA, 548 U.S. 735, 769, 126 S.Ct. - - - -	- - - - -	36
2709, 165 L.Ed. 2d 842 (2006)	- - - - -	36
COLORADO V. CONNELLY, 479 U.S. 157, 107 S.Ct. 515, 93		
L.Ed. 2d 473 (1986)	- - - - -	24
CONE V. BELL, 556 U.S. 449, 469 (2009)	- - - - -	37
CRANE V. KENTUCKY, 476 U.S. 683, 106 S.Ct. 2142, - - - -	- - - - -	36
GOL. ED. 636, 20 Fed. R. Evid. Serv. (CBC) 801 (1986)	- - - - -	36
DOE V. ADVANCED TEXTILE CORP., 214 F.3d 1058,		
1068 (9th Cir. 2000)	- - - - -	35
DOE V. CABRERA, 307 F.R.D. 1, 10 (D.D.C. 2014)	- - - - -	35
DOE V. ROSE, No. CV-15-07503-MWF-JCX 2016 WL		
9150620, at *3 (C.D. Cal. Sept. 22 2016) (unpub.)	- - - - -	35
FARE V. MICHAEL C., 442 U.S. 707, 724-25, 99		
S.Ct. 2560, 61 L.Ed. 2d 197 (1979)	- - - - -	27
GREEN WARD V. WISCONSIN, 390 U.S. 519, 88 S.Ct. 1152,		
20 L.Ed. 2d 77 (1968)	- - - - -	27
HOLMES V. SOUTH CAROLINA, 547 U.S. 319, 126 S.Ct.		
1727, 164 L.Ed. 2d 503 (2006)	- - - - -	36
JAMES V. JACOBSON, 6 F.3d 233, 240-41 (4th Cir. 1993)	- - - - -	35
KYLES V. WHITLEY, 514 U.S. at 434-35	- - - - -	37
LYONS V. OKLAHOMA, 322 U.S. 596, 88 L.Ed. 1481, 64 S.Ct. 1208	- - - - -	26
MIRANDA V. ARIZONA, 384 U.S. 436, 444-45, 16 L.Ed.		
694, 86 S.Ct. 1602 (1960)	- - - - -	24
PEOPLE V. SOUTH, 177 Ad. 2d 607, 607-08, 576		
NYS 2d 314 (App. Div. 1991)	- - - - -	30
SMITH V. CAIN, 132 S.Ct. 627, 630 (2012)	- - - - -	37

FEDERAL CASES Con'd

STRICKLAND V. WASHINGTON, 466 U.S. 668, 687,	
104 S.Ct. 2052, 80L.Ed. 674 (1984) - - - - -	32
UNITED STATES V. LOCKHART, 844 F.3d 501, 509 (5 th Cir 2016) - - - - -	36
UNITED STATES V. MARZUMI, 526 F.2d 848, 851 (5 th Cir 1976) - - - - -	19
UNITED STATES V. RAMIREZ-CORTEZ, 213 F.3d 1149, 1155 (9 th Cir 2000) - - - - -	23
WILLIAM V. TAYLOR, 529 U.S. 362, 393 n.17, 120	
S.Ct. 1495, 146 L.Ed. 2d 389 (2000) - - - - -	33

STATE STATUTE

R.C.W. 2.36.110 - - - - -	30, 31
---------------------------	--------

FEDERAL STATUTE

18 USC § 1361 (7)(c) - - - - -	23
--------------------------------	----

RULES

C.R.R. 3.3(b)(1)(i) - - - - -	23
C.R.R. 3.3(f) - - - - -	23
C.R.R. 3.3(h) - - - - -	18, 23
C.R.R. 6.4(c)(1) - - - - -	31
C.R.R. 6.5 - - - - -	31
R.P.C. 3.2 - - - - -	22
C.R.R. 3.1.b1 & 2 - - - - -	11
C.R.R. 3.1.c1 & 2 - - - - -	11

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the WASHINGTON STATE TRIAL court appears at Appendix C to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 01/19/2022. A copy of that decision appears at Appendix A .

☒ A timely petition for rehearing was thereafter denied on the following date: 02/17/2022, and a copy of the order denying rehearing appears at Appendix B .

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

<u>STATE CONSTITUTIONAL PROVISIONS</u>	<u>PAGES</u>
Wash. Const. Art 1 § 9	28
Wash. Const. Art 1 § 22	18, 30, 36
Wash. Const. Art IV § 16	
<u>STATE STATUTE</u>	
RCW 2.36.110	30, 31
<u>FEDERAL CONSTITUTIONAL PROVISIONS</u>	
UNITED STATES CONSTITUTION Amend IV	24
UNITED STATES CONSTITUTION Amend V	24, 25, 28, 29
UNITED STATES CONSTITUTION Amend VI	18, 24, 27, 39, 34, 36, 38
UNITED STATES CONSTITUTION Amend XIV	24, 27, 37
<u>FEDERAL STATUTE</u>	
18 U.S.C.S § 1361 (7) (C)	23

3.

STATEMENT OF THE CASE

MICHAEL MUTHEE MUNYWE, THE PETITIONER IN THIS CASE HAD NEVER BEEN ARRESTED BEFORE, HAD NO CRIMINAL HISTORY ANYWHERE, HAD JUST LEGALLY IMMIGRATED TO THE UNITED STATES AND HAD NO PRIOR EXPERIENCE WITH THE AMERICAN JUSTICE SYSTEM.

MUNYWE IS A KENYAN CITIZEN AND HIS PRIMARY LANGUAGE IS SWAHILI. HE WAS ARRESTED AT 5:30 PM, NOVEMBER 21, 2018 BY TWO TACOMA POLICE DEPARTMENT PATROL OFFICERS FOR WHAT THEY CALLED 'UNKNOWN TROUBLE'. MUNYWE WAS TIGHTLY HANDCUFFED BEHIND HIS BACK AND PLACED IN THE OFFICERS' SQUAD CAR FOR ONE HOUR BEFORE BEING RESTRAINED ON TOXIC CHEMICAL-SOAKED FLOOR, AT 6:31 PM IN A POLICE HOLDING CELL.

THE CHEMICALS ON THE FLOOR HAD CHOKING AND IRRITATING TOXIC FUMES AND WHENEVER MUNYWE REQUESTED TO BE CHANGED TO ANOTHER CELL THE OFFICERS REFUSED. MUNYWE REPEATEDLY COMPLAINED OF THE OVERLY TIGHT HANDCUFFS BEHIND HIS BACK AS HE LAY ON THE FLOOR IN PAIN BUT THE OFFICERS REFUSED TO LOOSEN OR REMOVE THE CUFFS. THE TWO PATROL OFFICERS JEFFREY THIRY AND BRIAN SHE, AND TWO DETECTIVES WILLIAM MUSE AND JULE DIER, AGAIN, REFUSED MUNYWE'S REQUESTS FOR DRINKING WATER AND TO USE BATHROOM. THEY LAMENTED MUNYWE HAD A 'CRAZY THICK ACCENT' AND AFTER LEARNING FROM MUNYWE THAT HE WAS FROM KENYA, THEY INDICATED IT MAKES IT EVEN WORSE.

MUNYWE STRUGGLED ON THE FLOOR IN PAIN ENDURING BRUISES, CUTS, SCARRINGS AND HIS BODY WAS SORE AND NUMB DUE TO THE OVERT TIGHT RESTRAIN. MUNYWE, SUFFERED BREATHING AND INHALING IRRITATING AND CHOKING TOXIC FUMES FROM CHEMICAL-SOAKED CELL FLOOR AS THE FOUR OFFICERS WATCHED MUNYWE SUFFER THROUGH THE GLASS WALL.

ON NOVEMBER 22, 2018 AT 1:30AM, PAST MIDNIGHT, MUNYWE WAS REMOVED FROM THE HOLDING CELL TO INTERROGATION ROOM BY DETECTIVE WILLIAM MUSE WHO THEN AGREED TO UNCUFF MUNYWE AND LATER GAVE HIM DRINKING WATER IN FRONT OF RECORDING VIDEO CAMERA. MUNYWE WAS THIRSTY, VERY TIRED, EXHAUSTED, IN PAIN, SORE, NUMB AND DISORIENTED AND AGREED TO SIGN THE MIRANDA WAIVER FORM.

DETECTIVES WILLIAM MUSE AND JULIE DIER INTERROGATED MUNYWE FROM 1:34AM WHILE PATROL OFFICER JEFFREY THIRY WATCHED FROM THE OPPOSITE SIDE OF THE GLASS. THE DETECTIVES INSISTED THAT MUNYWE WAS NOT TELLING THE TRUTH AND CALLED A FEMALE TECHNICAL MALEKIE RAMOS TO PHOTOGRAPH AND SWAB MUNYWE'S GENITALS IN THE INTERROGATION ROOM IN THE PRESENCE OF WILLIAM MUSE AND THE FEMALE DETECTIVE JULIE DIER WHILE OFFICE JEFFREY THIRY WATCHED FROM ADJACENT ROOM. THE SURFACES, TABLES WERE NOT SANITIZED IN ADVANCE. MUNYWE WAS TOLD TO REMOVE ONE PIECE OF CLOTHING AFTER THE OTHER,

AS MS MALERIE RAMOS TOOK SERIES OF PHOTOGRAPHS: MUNYWE WAS INSTRUCTED TO ASSUME DIFFERENT POSITIONS FOR THE PHOTOGRAPHING AND WHILE MS MALERIE RAMOS PHOTOGRAPHED AND SWABED MUNYWE'S GENITALS. THE DETECTIVES THEN INFORMED MUNYWE THAT THEY WERE GIVING LAST CHANCE TO ANSWER QUESTIONS AND TELL THE TRUTH.

DURING TRIAL, THE DEFENSE CROSS EXAMINED DETECTIVE WILLIAM MUSE AND WENT AS FOLLOWS :-

DEFENSE: " AND THIS WOULD HAVE BEEN EIGHT HOURS AFTER THE POINT IN TIME THAT MR MUNYWE WAS TAKEN INTO CUSTODY?

DETECTIVE MUSE: APPROXIMATELY, YES.

DEFENSE : THE INTERVIEW ROOM ITSELF, HOW BIG IS THIS ROOM?

DETECTIVE MUSE: I BELIEVE THE INTERVIEW ROOM IS 9 FEET BY 9 FEET APPROXIMATELY.

DEFENSE: AND THERE WINDOWS IN IT ?

DETECTIVE MUSE: THERE ARE NO WINDOWS THAT OPEN TO THE OUTSIDE WORLD.

DEFENSE: AND THERE IS NO CLOCK IN THAT ROOM, IS THERE ?

DETECTIVE MUSE: NO THERE IS NOT.

DEFENSE: DID YOU EVER ASK HIM WHETHER OR NOT HE WANTED AN INTERPRETER OR THAT YOU COULD GET HIM AN INTERPRETER ?

DETECTIVE MUSE: NO I DID NOT

DEFENSE: AND YOU HAVE NOW OFFERED HIM A DRINK OF WATER

TO TAKE CARE OF HIM. ISN'T THAT PART OF THAT RAPPORT BUILDING PROCESS?

DETECTIVE MUSE: IT CAN BE PART OF THE RAPPORT BUILDING PROCESS.

DEFENSE: WELL, IS THAT THE POINT OF OFFERING HIM A GLASS OF WATER? HE'S IN CUSTODY FOR EIGHT HOURS, AND YOU THEN SHOW UP WITH A GLASS OF WATER TO GIVE HIM, RIGHT?

DETECTIVE MUSE: (NO ANSWER) (QUESTION OBJECTED BY THE STATE, SUSTAINED BY COURT.)

DEFENSE: SO, IS IT PART OF THE INTERROGATION PROCESS TO DENY A PERSON WATER FOR AN EXTENDED PERIOD OF TIME AND THEN FOR YOU TO SHOW UP AND GIVE THEM A CUP OF WATER?

DETECTIVE MUSE: ABSOLUTELY NOT, COUNSELOR, NO.

DEFENSE: IS IT PART OF YOUR TRAINING AND EXPERIENCE ON INTERROGATION TECHNIQUES TO EXPOSE A PERSON'S GENITALS AND THEN ASK HIM AGAIN ABOUT THE FACTS OF THE CASE?

DETECTIVE MUSE: IN THIS CASE IN THE VIDEO, I OFFERED HIM AN OPPORTUNITY, KNOWING THAT WE WERE GOING TO THESE LENGTHS THAT I WAS AUTHORISED BY LAW TO BE ABLE TO DO, THERE THERE'S ANYTHING ELSE --- HE KNEW HOW SERIOUS THINGS WERE AND ---

DEFENSE: SO MY QUESTION WAS IT PART OF YOUR TRAINING AND EXPERIENCE TO EXPOSE A PERSON'S GENITALS

AND THEN TO ASK THEM FACTS ABOUT THE CASE AGAIN?

DETECTIVE MUSE: THE WAY YOU'RE PHRASING IT, COUNSELOR,
NO, IT IS NOT PART OF MY TRAINING AND
EXPERIENCE TO DO THAT.

DEFENSE: SO MY QUESTION, DETECTIVE, IS THE QUESTION
YOU ASKED HIM AT THAT POINT IN TIME AFTER HE
HAD ALREADY EXPOSED HIMSELF, ISN'T THAT A
QUESTION THAT YOU'D ALREADY ASKED HIM REPEATEDLY
PRIOR TO HIM DROPPING HIS PANTS?

DETECTIVE MUSE: YES.

DEFENSE: WELL, WASN'T HUMILIATING HIM ACTUALLY PART
OF THE PROCESS?

DETECTIVE MUSE: ABSOLUTELY NOT, COUNSELOR.

DEFENSE: DETECTIVE DIER IS IN THERE THE ENTIRE
TIME THAT HE DROPS HIS PANTS AND HIS PENIS
IS GETTING SWABBED, RIGHT?

DETECTIVE MUSE: YES, SHE IS. I ALSO INDICATED ON THE
VIDEO THAT EVERYONE IS A PROFESSIONAL.

DEFENSE: SHE WASN'T CONDUCTING ANY OF THE PENIS SWABS?

DETECTIVE MUSE: NO, SHE WAS NOT.

DEFENSE: DID SHE COLLECT THE CLOTHES?

DETECTIVE MUSE: NO, I DO NOT BELIEVE SHE DID.

DEFENSE: I UNDERSTAND FROM YOUR REPORT, DETECTIVE, THAT
WHEN MR. MUNYWE WAS FIRST BROUGHT INTO THE
INTERVIEW ROOM HE COMPLAINED ABOUT HOW THE
HANDCUFFS WERE AFFECTING HIM?

DETECTIVE MUSE: THAT IS CORRECT

DEFENSE: AND THAT YOU TOOK TIME TO CHECK TO SEE WHETHER OR NOT HE HAD BEEN INJURED BY THE HANDCUFFS,

IS THAT RIGHT?

DETECTIVE MUSE: THAT IS CORRECT.

DEFENSE: AND ALL THAT THAT HAPPENED ON THE VIDEO? WAS THAT ALL IN THE INTERVIEW ROOM?

DETECTIVE MUSE: YES IT DID.

DEFENSE: SO, IS IT PART OF INTERROGATION TRAINING

OR PRACTICE TO HAVE A PERSON HANDCUFFED FOR

EIGHT HOURS BEFORE BEGINNING AN INTERVIEW?

DETECTIVE MUSE: (NO ANSWER) THE STATE OBJECTED, THE

COURT SUSTAINED.

DEFENSE: SO, MY QUESTION IS HE COULD BE WEIGHING

HANDCUFFS EITHER BECAUSE HE WAS IN HANDCUFFS

THE ENTIRE TIME IN THE HOLDING CELL BEFORE BEING

BROUGHT TO THE INTERVIEW ROOM OR HE COULD HAVE

HANDCUFFS THAT YOU PLACED ON HIM WHEN HE

WAS TRANSPORTED, RIGHT, EITHER OF THOSE TWO

THINGS?

DETECTIVE MUSE: I BELIEVE SO.

DEFENSE: AND DO YOU HAVE A SPECIFIC MEMORY OF YOU PLACING

HANDCUFFS ON HIM FOR THAT TRANSPORT?

DETECTIVE MUSE: I DO NOT RECALL ME SPECIFICALLY PUTTING

HANDCUFFS ON HIM. I BELIEVE I ASSISTED IN

TAKING THEM OFF.

DEFENSE: SO WHEN YOU GET TO THE INTERVIEW ROOM,
THAT'S THE PART WE CAN SEE ON TAPE WHERE
YOU'RE TAKING THE HANDCUFFS OFF, RIGHT?

DETECTIVE MUSE: THAT'S CORRECT.

DEFENSE: AND HE WAS COMPLAINING THAT HE BELIEVED
HE WAS INJURED OR UNCOMFORTABLE FROM THE
ACTUAL HANDCUFFS?

DETECTIVE MUSE: THAT'S CORRECT

DEFENSE: AND THAT'S WHEN YOU CHECKED TO INQUIRE TO
SEE IF HE HAD BEEN INJURED?

DETECTIVE MUSE: THAT'S CORRECT

WHILE MUNYWE WAS IN PRETRIAL CUSTODY,
HAVING BEEN CHARGED BY THE STATE IN COUNT ONE CRIME
OF RAPE IN THE FIRST DEGREE; AND COUNT TWO CRIME
OF KIDNAPPING IN THE FIRST DEGREE WITH A SEXUAL
MOTIVATION, ON APRIL 17, 2019, MUNYWE SENT TWO LETTERS
TO THE TRIAL COURT. THE LETTERS WERE SENT 5 MONTHS
AFTER ARREST AND 10 MONTHS BEFORE TRIAL AND THEY
INFORMED THE COURT MUNYWE'S MANY CONSTITUTIONAL RIGHTS
HAD BEEN VIOLATED DURING ARREST, IN HOLDING CELL, DURING
INTERROGATION AND IN PRETRIAL CUSTODY. Appendix I

THE LETTERS WERE WRITTEN IN SWAHILI LANGUAGE AND COPIES
WERE SERVED TO THE STATE AND DEFENSE COUNSEL.

IN THE FIRST LETTER, MUNYWE INFORMED THE COURT
THAT DURING INTERROGATIONS THE DETECTIVES DID NOT ADVISE
HIM THAT HE WAS PERMITTED TO HAVE AN INTERPRETER AND

DID NOT GIVE HIM THE CHANCE TO HAVE AN INTERPRETER. MUNYWE TOLD THE COURT THAT HE THEREFORE DID NOT MAKE AN INTELLIGENT DECISION WHEN AGREEING TO SIGN THE MIRANDA WAIVER FORM. HE ALSO INDICATED THAT SITUATION MADE HIM NOT ASK FOR A LAWYER TO REPRESENT HIM. MUNYWE TOLD THE COURT THAT HE WAS DENIED JUSTICE ACCORDING TO WASHINGTON STATE'S CrR 3.1-b1 and 2 AND ALSO CrR 3.1-c 1 and 2. MUNYWE ALSO TOLD THE COURT THAT THE SITUATION DENIED HIM 14TH AMENDMENT AND 5TH AMENDMENT THEREFORE BEING FORCED TO INCRIMINATE HIMSELF. MUNYWE MOVED THE COURT TO DISMISS HIS CHARGES. THE COURT NEVER ADDRESSED MUNYWE'S LETTER OR THE MOTION TO DISMISS AND MUNYWE'S APPOINTED COUNSEL TOOK NO ACTION UPON THE LETTER AND MUNYWE'S COMPLAINTS.

IN HIS SECOND LETTER TO THE COURT, MUNYWE DID COMPLAIN TO COURT OF DENIAL OF SPEEDY TRIAL. MUNYWE TOLD THE COURT THAT HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL ARE BEING VIOLATED. MUNYWE INDICATED THAT IF TRIAL IS DELAYED FURTHER IT WOULD DENY HIS RIGHT TO PRESENT A DEFENSE SINCE HIS ONLY WITNESS WOULD HAVE TRAVELLED. MUNYWE LAMENTED TO THE COURT THAT HE WOULD BE DENIED PRESENTATION OF A MEANINGFUL DEFENSE AND HIS 6TH AMENDMENT RIGHT WOULD BE VIOLATED.

MUNYWE INFORMED THE COURT THAT SINCE HE HAD BEEN GIVEN A NEW COMMENCEMENT DATE, HE WAS GIVING 14 DAYS CURE PERIOD AND AFTER THAT HE WAS TO COUNT 60 DAYS, AND

AFTER THAT, IF A TOTAL OF 74 DAYS ELAPSE BEFORE HIS CASE GOES TO TRIAL, HE WOULD MOVE THE COURT, THROUGH HIS APPOINTED ATTORNEY FOR DISMISAL OF HIS CHARGES WITHOUT PREJUDICE. AGAIN, THE SECOND LETTER WAS NEVER ADDRESSED EITHER BY COURT OR BY MURPHY'S ATTORNEY. FROM THE DAY MURPHY SENT THOSE TWO LETTERS TO THE COURT, IT WOULD BE UNTIL AFTER ALMOST ELEVEN MORE MONTHS AND MANY TRIAL CONTINUANCES BEFORE THE CASE WENT TO TRIAL.

ON FRIDAY, SEPTEMBER 27, 2019, MURPHY'S ATTORNEY STIPULATED WITH COURT AND PROSECUTOR THAT BLOOD TEST SHOULD NOT BE DONE. THE COURT INDICATED THAT MURPHY HAVE TO SIGN A FORM THAT HE WAIVES THE BLOOD TEST, AND SHOULD SIGN FOR TRIAL CONTINUANCE DESPITE HIS OBJECTION TO TRIAL CONTINUANCE, IT WENT AS FOLLOWS:-

THE COURT: I GUESS I WOULD LIKE SOMETHING AFFIRMATIVE FROM THE DEFENDANT INDICATING THAT HE'S WAIVING HIS RIGHT TO HAVE WHATEVER TEST YOU WERE WORKING ON THAT YOU NO LONGER WANT BECAUSE I DON'T WANT THAT TO COME UP AGAIN.

DEFENSE ATTORNEY: WELL ---

THE COURT: BECAUSE IT SOUNDS THAT'S THE REASON FOR THE LAST CONTINUANCE OR MAYBE MORE.

DEFENSE ATTORNEY: YES. IT'S BEEN ABOUT THREE OF THEM ACTUALLY.

THE COURT: RIGHT, SO NOW YOU'RE CHANGING DIRECTION.

THAT'S FINE, BUT I'D LIKE THAT DOCUMENTED,
AND I'D LIKE TO HAVE HIM WAIVE HIS RIGHT TO
PRESENT WHATEVER THAT IS.

THE COURT: --- MR. MUNKWE, DO YOU UNDERSTAND WHAT'S
GOING ON HERE TODAY?

MR. MUNKWE: I UNDERSTAND

THE COURT: SO, YOUR ATTORNEY'S ASKING THAT WE CONTINUE
THIS TRIAL TO FEBRUARY... FEBRUARY... DECEMBER
5TH, HE INDICATES HE'S NOT GOING TO BE
AVAILABLE ON THE TRIAL DATE, AND HE NEEDS TO
DO SOME WORK ON THIS CASE IN TERMS OF
INTERVIEWING WITNESSES. DO YOU UNDERSTAND THAT?
DO YOU WANT HIM TO BE PREPARED FOR TRIAL?

MR. MUNKWE: YES I WOULD LIKE ---.

THE COURT: SO I WILL --- I AM GOING TO ASK YOU GUYS
TO STEP BACK AND HAVE HIM SIGN A NEW ONE.
I KNOW IT'S KIND OF A MESS, BUT I WANTED IT
TO BE CLEAR.

UNIDENTIFIED SPEAKER: ABSOLUTELY
THE COURT: AND THEN I'LL SIGN IT AND PERHAPS HE WILL
TOO.

THAT DAY, MUNKWE'S TRIAL WAS CONTINUED ONCE AGAIN UP TO
DECEMBER 5, 2019, WHERE IT WOULD BE CONTINUED AGAIN
TO JANUARY 21, 2020 AND AGAIN TO JANUARY 22, 2020.
MUNKWE WAS FORCED TO WAIVE RIGHT TO PRESENT MEANINGFUL
DEFENCE AND RIGHT TO A SPEEDY TRIAL.

IN TOTAL, FROM THE DAY OF ARRAIGNMENT IN COURT, ON NOVEMBER 26, 2018, MUMFEE'S COURT APPEARANCES WERE CONTINUED OVER 20 TIMES AND THE TRIAL WAS CONTINUED SIX TIMES DESPITE MUMFEE'S OBJECTIONS. ON THE FIRST DAY OF TRIAL, MUMFEE ADDRESSED THE COURT AND COMPLAINED THAT HE HAD BEEN DENIED DISCOVERABLE MATERIALS AND WAS NOT AWARE OF ANY DEFENSE STRATEGY. MUMFEE INFORMED THE COURT THAT HIS SPEEDY TRIAL RIGHT HAD BEEN VIOLATED, AND MOVED THE COURT TO DISMISS THE CASE DUE TO THE CONSTITUTIONAL RIGHTS VIOLATIONS. THE COURT DENIED THE MOTION AND REFUSED HYBRID REPRESENTATION. THE DEFENSE ATTORNEY DID NOT ADDRESS MUMFEE'S COMPLAINTS.

DURING TRIAL, THE COURT OBSERVED THAT JUROR 8 WAS INATTENTIVE AND "HACKING AND DRYING HER EYES AND FLANKLY GUMMING OUT HER NEIGHBORS ON THE JURY" AND COULD NOT BE PAYING ATTENTION TO ALL THE EVIDENCE COMING OUT. THE COURT WOULD HAVE TO INTERRUPT THE WITNESS'S TESTIMONY TO HAVE JUDICIAL ASSISTANT GET JUROR 8 SOME WATER TO DRINK. THE COURT STATED THAT THE "CONCERN IS THAT SHE COULDN'T POSSIBLY BE PAYING ATTENTION TO ALL OF THE EVIDENCE".

THE COURT INDICATED THAT "SHE'S BEEN DISTRACTED" THAT "WE HAD TO STOP THE PROCEEDINGS TODAY TO TRY TO ACCOMMODATE HER". THE DEFENSE INDICATED THAT IF THE COURT "WERE TO INQUIRE TOMORROW, I THINK THAT WOULD BE ONE OF THE QUESTIONS, WHETHER SHE HAS MISSED ANY EVIDENCE".

THE STATE CHARGED TO THE JURY THE INSTRUCTIONS ARE "PUBLIC DOCUMENTS" AND "WE DON'T PUT RAPE VICTIMS' FULL NAMES IN THERE," THE JURY RETURNED A VERDICT OF LESSER INCLUDED CRIMES OF SECOND DEGREE RAPE AND UNLAWFUL IMPRISONMENT. THE JURY ALSO RETURNED A SPECIAL VERDICT FORM G THAT HAD BEEN SIGNED ON BOTH BLANKS, ONE "YES" AND THE OTHER FOR "THE ANSWER SECTION ABOVE HAS BEEN INTENTIONALLY LEFT BLANK"

THE COURT, NEVERTHELESS USED THE SPECIAL VERDICT, WHICH WOULD BE NULL, TO ADD A SEXUAL MOTIVATION ENHANCEMENT ON THE UNLAWFUL IMPRISONMENT, ELEVATING IT FROM A MISDEMEANOR TO A FELONY, ADDING FELONY POINTS TO MUNYWE'S OFFENDER SCORE CALCULATION, ADDING THREE MORE YEARS TO MUNYWE'S SENTENCE

DURING SENTENCING, THE COURT REFUSED TO FIND THAT MUNYWE'S CONDUCT WAS SAME CRIMINAL CONDUCT FOR SENTENCING PURPOSES. THE COURT MISAPPLIED THE LAW AND USED A NON-CHARGED, NON-PROSECUTED AND NON-PROVED THIRD COUNT OF A SECOND UNLAWFUL IMPRISONMENT TO DECIDE THAT THE JURY COULD HAVE PROVED THERE WAS SEPERATE INCIDENTS. THE COURT ENDED UP ADDING THREE MORE YEARS TO MUNYWE'S SENTENCE. MUNYWE WAS THEREFORE GIVEN A SENTENCE OF 136 MONTHS TO LIFE IN PRISON.

REASONS FOR GRANTING THE PETITION

MUNYME'S CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL WAS VIOLATED WHEN GOVERNMENTAL NEGLIGENCE CAUSED OVER 425 DAYS TRIAL DELAY DESPITE MUNYME'S OBJECTIONS, PREJUDICING THE CASE AND THE TRIAL ITSELF AND THE ONLY RELIEF AVAILABLE TO MUNYME IS THE RARE AND EXTREME DISINCENTIVE OF DISMISSAL WITH PREJUDICE PURSUANT TO WASHINGTON STATE'S CrR 3.3 (b), Article I, § 22 OF WASHINGTON STATE CONSTITUTION AND UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION. (see App'x H)

THIS ISSUE IN THIS CASE IS VERY IMPORTANT TO THE PUBLIC BECAUSE THERE IS NEED FOR THIS COURT TO HELP SUBSTANTIATE WHETHER REALLY WHEN STATES GOVERNMENT'S NEGLIGENCE CAUSES DELAY NEARLY EIGHT TIMES AS THAT IS GENERALLY SUFFICIENT TO TRIGGER BARKER INQUIRY AND OTHER JUDICIAL REVIEW, AND THE PREJUDICE TO THE DEFENSE IS NEITHER EXTENUATED AS BY THE DEFENDANT'S ACQUIESCENCE NOR PERSUASIVELY REBUTTED, WHETHER, THE DEFENDANT IS ENTITLED TO RELIEF AND NO OTHER REMEDY IS AVAILABLE OTHER THAN REVERSAL.

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I § 22 OF THE WASHINGTON STATE CONSTITUTION DO PROVIDE DEFENDANTS WITH THE RIGHT TO A SPEEDY TRIAL. THE SIXTH AMENDMENT PROVIDES, IN PART: " IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT

TO A SPEEDY AND PUBLIC TRIAL". IN DETERMINING WHETHER A DEFENDANT'S CONSTITUTIONAL SPEEDY TRIAL RIGHTS HAVE BEEN VIOLATED, THE COURT LOOKS AT (1) THE LENGTH OF THE DELAY; (2) THE REASON FOR THE DELAY; (3) THE DEFENDANT'S ASSERTION OF THE RIGHT TO A SPEEDY TRIAL, AND (4) THE PREJUDICE TO THE DEFENDANT. *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). THESE FACTORS ARE RELATED AND MUST BE CONSIDERED TOGETHER, AS NONE OF THEM ARE EITHER NECESSARY OR SUFFICIENT INDIVIDUALLY TO PROVE A VIOLATION OF THE SIXTH AMENDMENT'S SPEEDY TRIAL RIGHT. *Barker*, 407 U.S. at 533.

BARKER FACTOR #1: LENGTH OF DELAY

THE LENGTH OF DELAY IS A THRESHOLD ISSUE. MUNYWE'S CASE WAS DELAYED 425 DAYS BEFORE IT WAS BROUGHT TO TRIAL. THIS DELAY WAS LONG ENOUGH TO CROSS THE PRESUMPTIVELY PREJUDICIAL THRESHOLD AND THIS LONG DELAY BECOMES ONE OF THE FACTORS IN THE FOUR-PART BALANCING TEST.

AS THE COURT IN *BARKER* PUT IT, "UNTIL THERE IS SOME DELAY WHICH IS PRESUMPTIVELY PREJUDICIAL, THERE IS NO NECESSITY FOR INQUIRY INTO THE ~~MATTER~~ OTHER FACTORS THAT GO INTO THE BALANCE. FOR EXAMPLE, THE FIFTH CIRCUIT, HELD THAT "SEVEN MONTH DELAY BETWEEN ARRAIGNMENT AND TRIAL HELD NOT PRESUMPTIVELY PREJUDICIAL WHERE NO PREJUDICE WAS CLAIMED BY DEFENDANT AND DELAY WAS NOT ADEQUATELY EXPLAINED". *United States v. Maizumi*, 526 F.2d 848, 851 (5th Cir 1976).

BARKER FACTORS #2 AND #3 - REASON FOR THE DELAY; ASSERTION FOR RIGHT

MUNYWE'S TRIAL WAS DELAYED FOR 425 DAYS, AGAINST MUNYWE'S WILL AND DESPITE MULTIPLE OBJECTIONS.

ON NOVEMBER 26, 2018; MUNYWE WAS ARRAIGNED IN SUPERIOR COURT OF PIERCE COUNTY STATE OF WASHINGTON AND HIS TRIAL WAS SCHEDULED FOR JANUARY 14, 2019.

ON JANUARY 3, 2019; THE DAY OF THE SECOND OMNIBUS HEARING WITHOUT AN INTERPRETER; MUNYWE WAS BLINDSIDED AND MADE TO SIGN THE TRIAL CONTINUANCE FORM AND THE COURT CONTINUED THE TRIAL TO APRIL 9, 2019. THE DEFENSE ATTORNEY STIPULATED WITH PROSECUTOR FOR THE CONTINUANCE AND THE COURT CLAIMED THE CONTINUANCE WAS REQUIRED IN THE ADMINISTRATION OF JUSTICE. THE PARTIES CLAIMED DNA RESULTS NOT YET READY AND ARE NEEDED FOR TRIAL AND NEGOTIATIONS.

ON MARCH 20, 2019; AGAIN, THE DEFENSE ATTORNEY AND PROSECUTOR STIPULATED FOR TRIAL CONTINUANCE CITING DNA RESULTS STILL PENDING AND THAT PROSECUTOR AND DEFENSE NEEDS AN ADDITIONAL BLOOD TESTING. THE COURT AGREED CONTINUANCE IS REQUIRED IN THE ADMINISTRATION OF JUSTICE AND CONTINUED THE TRIAL TO SEPTEMBER 5, 2019 DESPITE MUNYWE'S OBJECTION TO THE CONTINUANCE. (see App'x H)

ON AUGUST 23, 2019; DEFENSE ATTORNEY AND PROSECUTOR, STIPULATED FOR TRIAL CONTINUANCE CITING THAT THE STATE IS HAVING PROBLEMS COMPLETING ADDITIONAL TESTING OF DEFENDANT'S STD'S. THE COURT AGREED CONTINUANCE IS REQUIRED IN THE ADMINISTRATION OF JUSTICE AND CONTINUED THE TRIAL TO OCTOBER 8, 2019 DESPITE MUNYWE'S OBJECTION.

ON SEPTEMBER 27, 2019, DEFENSE ATTORNEY AND THE PROSECUTOR STIPULATED FOR TRIAL CONTINUANCE CITING THAT DEFENSE NO LONGER NEEDS THE TESTS AND THAT PARTIES NEED TIME TO PREPARE FOR TRIAL AND INTERVIEW WITNESSES. THE COURT PUT AWAY THE FORM THAT MUNKWE HAD ALREADY OBJECTED AND COERCED MUNKWE TO BE GIVEN ANOTHER CLEAN FORM TO SIGN FOR CONTINUANCE DESPITE MUNKWE'S OBJECTION AND RELUCTANCY. THEREFORE, MUNKWE WAS FORCED TO WAIVE HIS RIGHTS TO BLOOD TEST RESULTS AND TO SPEEDY TRIAL. THE COURT CONTINUED MUNKWE'S TRIAL TO DECEMBER 5, 2019, DESPITE MUNKWE'S INITIAL OBJECTIONS AND AGAINST HIS WILL. ON NOVEMBER 8, 2019, DEFENSE COUNSEL MOVED FOR TRIAL CONTINUANCE CITING THAT HE WAS UNAVAILABLE FOR THE TRIAL. THE COURT AGREED THAT CONTINUANCE IS REQUIRED IN THE ADMINISTRATION OF JUSTICE AND CONTINUED THE TRIAL TO JANUARY 21, 2020, DESPITE MUNKWE'S OBJECTION. ON JANUARY 21, 2020, THE COURT CONTINUED THE TRIAL "FOR ADMINISTRATIVE NECESSITY" CITING THAT DEPARTMENT WAS SICK AND CONTINUED THE TRIAL TO JANUARY 22, 2020 DESPITE MUNKWE'S OBJECTION. MUNKWE'S OBJECTIONS TO TRIAL CONTINUANCE WAS REGULAR THROUGHOUT THE LAST SEVERAL MONTHS.

BARBER FACTOR #4 PREJUDICIAL HARMS

THIS COURT, IN THE CONTEXT OF BARBER, HAS HELD THAT A DEFENDANT IS NOT REQUIRED TO SUBSTANTIATE ACTUAL PREJUDICE TO HIS ABILITY TO DEFEND HIMSELF BECAUSE EXCESSIVE DELAY PRESUMPTIVELY COMPROMISES THE RELIABILITY OF A TRIAL IN WAYS

THAT ARE DIFFICULT FOR EITHER PARTY TO IDENTIFY, PROVE OR DISPROVE. COURTS DO, HOWEVER, PRESUME THAT THIS PREJUDICE TO THE ACCUSED INTENSIFIES OVER TIME.

MUNYWE HAD NO PRIOR CRIMINAL HISTORY AND HIS LANGUAGE AND CULTURAL BARRIERS WERE SIGNIFICANTLY MULTIPLIED BY HIS LONG PRETRIAL CONFINEMENT. MUNYWE'S COMMUNICATION TO HIS FAMILY IN AFRICA WAS MINIMAL AND VISITATION NOT POSSIBLE. MUNYWE'S ABILITY TO PREPARE FOR TRIAL AND PRESENT A DEFENSE WAS INHIBITED DUE TO LENGTH OF DELAY AS MEMORY FADED AND ABILITY TO RECALL WAS COMPROMISED. THE DELAY AFFECTED MUNYWE'S ABILITY TO MEANINGFULLY PREPARE AND PRESENT HIS DEFENSE AND THUS HIS RIGHT TO A FAIR TRIAL WAS AFFECTED.

MUNYWE'S DEFENSE KEY WITNESS, ONCE AVAILABLE, WAS NO LONGER AVAILABLE AFTER THE LONG DELAY. THE COURT HAD BEEN NOTIFIED BY MUNYWE ABOUT THIS PROBLEM THROUGH A LETTER ON APRIL 7, 2019 THAT TOO MUCH DELAY MAY CAST MUNYWE HIS ONLY KEY WITNESS.

Please See APPENDIX I. , AT TRIAL, MUNYWE HAD NO KEY WITNESS, AND NO CASE TO PRESENT DUE TO THIS LONG DELAY. THE DELAY HAD CAUSED MUNYWE NEEDLESS ANXIETY AND STRESS THAT DISTURBED MUNYWE'S MIND.

ON FIRST DAY OF TRIAL, JANUARY 22, 2020, MUNYWE ADDRESSED TRIAL COURT AND EXPLAINED HOW MUCH HE HAD BEEN PREJUDICED BY THE DELAY, AND MOVED FOR CASE DISMISSAL, WHICH COURT REFUSED.

" A LAWYER SHALL MAKE REASONABLE EFFORTS TO EXPEDITE LITIGATION CONSISTENT WITH THE INTERESTS OF THE CLIENT." R.P.C. 3.2. FEDERAL COURT INDICATED THAT "NEGOTIATING PLEA DISPOSITION, HOWEVER, IS NOT

A PERMISSIBLE BASIS FOR EXCLUDING TIME " United States v. Ramirez-Cortez, 213 F.3d 1149, 1155 (9th Cir. 2000). WASHINGTON STATE'S CrR 3.3(b)(1)(i) REQUIRES A DEFENDANT WHO IS DETAINED IN JAIL TO BE BROUGHT TO TRIAL WITHIN 60 DAYS OF THE COMMENCEMENT DATES AND IT ATTACHES AT ARRAIGNMENT. "A CHARGE NOT BROUGHT TO TRIAL WITHIN THE TIME LIMIT UNDER THIS RULE SHALL BE DISMISSED WITH PREJUDICE" CrR 3.3(h).

THE FEDERAL GOVERNMENT HAS CLEARLY INDICATED THAT "NO CONTINUANCE SHALL BE GRANTED BECAUSE OF GENERAL CONGESTION OF A COURT'S CALENDAR, OR LACK OF DILIGENT PREPARATION OR FAILURE TO OBTAIN AVAILABLE WITNESSES," 18 U.S.C.S § 1361 (7)(c) WASHINGTON STATE'S CrR 3.3(f) READS IN PERTINENT PART: " --- THE COURT MAY CONTINUE THE TRIAL DATE TO A SPECIFIED DATE, WHEN SUCH A CONTINUANCE IS REQUIRED IN THE ADMINISTRATION OF JUSTICE AND THE DEFENDANT WILL NOT BE PREJUDICED IN THE PRESENTATION OF HIS OR HER DEFENSE --- ". IN MUNYWE'S CASE, PREJUDICE AND LACK OF PREJUDICE WAS NEVER PERSUASIVELY REBUTTED AND THEREFORE MUNYWE'S ENTIRE CASE AND TRIAL WAS UNFAIRLY PREJUDICED BY THE TRIAL DELAY.

DUE TO THE MAGNITUDE OF PREJUDICE IN MUNYWE'S CASE AND TRIAL, MUNYWE'S DEFENSE DID NOT DARE PRESENT IT'S OWN CASE, NO EXPERT WITNESS IN A CASE THAT HEAVILY RELIES ON NVA, NO DEFENSE KEY WITNESS BECAUSE HE WAS ALREADY NO LONGER NEARBY AND THEN MUNYWE WAS NOT ABLE TO PRESENT TESTIMONY. MUNYWE'S DEFENSE DEPENDENT ON THE MERCHES OF WHATEVER WAS BROUGHT BY PROSECUTION ON TRIAL. MUNYWE'S CASE AND TRIAL WAS PREJUDICED.

TRIAL COURT VIOLATED MUNYWE'S FAIR TRIAL RIGHT AND MIRANDA RIGHTS INCLUDING THE FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHEN THE COURT PLAYED CROSSGENDER GENITAL SWABING AND PHOTOGRAPHING VIDEO TO JURY AND WHEN THE CROSSGENDER SEARCH WAS CONDUCTED IN THE PRESENCE OF OTHER FEMALE AND MALE DETECTIVES AND POLICE IN THE INTERROGATION ROOM IN THE ABSENCE OF AN EMERGENCY AFTER MUNYWE HAD BEEN TORTURED AND MISTREATED WITH HIS HANDS TIGHTLY TIED BEHIND HIS BACK FOR 8 HOURS ON A CHEMICAL-SOAKED FLOOR.

THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION GUARANTEES RIGHT FROM "UNREASONABLE SEARCHES AND SEIZURES" THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES IN PERTINENT PART THAT "NO PERSON ---- SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF". U.S. CONST. AMEND. V.

THIS COURT HAS HELD THAT PERSONS SUBJECT TO CUSTODIAL INTERROGATION ARE ENTITLED TO RECEIVE INFORMATION REGARDING THEIR RIGHT TO HAVE A LAWYER APPOINTED TO ASSIST THEM IF THEY ARE UNABLE TO AFFORD A LAWYER PRIOR TO ANY QUESTIONING. *Miranda v. Arizona*, 384 U.S. 436, 444-45, 16 L. Ed 694, 86 S. Ct. 1602 (1960). THIS COURT, SIMILARY IN *Colorado v. Connelly*, STATED THAT COERCIVE POLICE IS A NECESSARY PREDICATE TO FINDING THAT A CONFESSION IS NOT VOLUNTARY UNDER DUE PROCESS CLAUSE. *Colorado v. Connelly*. (1986), 479 U.S. 157, 107 S. Ct 515, 93 L. Ed. 2d 473 (1986).

IN MUNYWE'S CASE, RECORDS SHOW THAT HE WAS A LAW-ABIDING IMMIGRANT, A SWATHILI SPEAKING FOREIGNER WHO HAD NO PRIOR EXPERIENCE WITH THE AMERICAN JUSTICE SYSTEM. MUNYWE HAD NEVER BEEN ARRESTED BEFORE AND THIS DAY, THE OFFICERS TIGHTLY CUFFED HIS HANDS BEHIND HIS BACK AND RESTRAINED HIM FOR OVER 8 HOURS ON A TOXIC CHEMICAL-SOAKED FLOOR OF POLICE CELL, LAYING ON HIS BELLY, DENIED DRINKING WATER AND USE OF BATHROOM. MUNYWE'S CRY FOR HELP WAS DENIED TO HAVE HIS HANDS UNTIED OR THE CUFFS LOOSENED AS HE BREATHED AND INHALED TOXIC CHEMICALS WITH CHOKING IRRITATING FUMES. AFTER 8 HOURS OF TORTURE AND MISTREATMENT, MUNYWE WAS TRANSPORTED TO INTERROGATION ROOM WHERE HE WAS UNCUFFED AND HE SIGNED A FORM TO WAIVE HIS MIRANDA RIGHTS. HE WAS ALSO GIVEN A GLASS OF WATER. HOWEVER, UNDER THE TOTALITY OF CIRCUMSTANCES, THE MIRANDA RIGHTS WAIVER WAS NOT VOLUNTARY. Please see APPENDIX G at SAG 5, Page 3 of 21

THIS COURT SHOULD GRANT WRIT IN THIS ISSUE, SINCE THE GENERAL PUBLIC WOULD GENERALLY ASK: SHOULDNT CONFESSIONS BE VOLUNTARY AND WITHOUT COMPELSION WHERE FORCE, PAIN AND SUFFERING IS USED TO COMPEL AN ACCUSED PERSON TO CONFESS AND GIVE STATEMENTS THAT ARE ADMITTED IN COURT TO SECURE A CONVICTION ?

THE 5TH AMENDMENT RIGHT AGAINST SELF INCRIMINATION, AND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT SHOULD NOT BE DENIED TO ACCUSED PERSONS AND THE VOLUNTARINESS TEST

" IS CONTROLLED BY THAT PORTION OF THE FIFTH AMENDMENT ---

COMMANDING THAT NO PERSON 'SHALL BE COMPULSED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF' " *Brown v. Mississippi*, 297 US 278, 80 Fed 682, 56 S.Ct 461 (1936) (reversing a criminal conviction under the due process clause because it was on a confession obtained by physical coercion).

This court should also grant writ because the MIRANDA waiver was invalid based on the totality of circumstances ~~being~~

THAT SURROUNDED MUNYWE THAT TIME, THE PRECEDING CONDITIONS OF TORTURE AND THE HARSH CONDITIONS OF MANY HOURS OF DEPRIVATION OF BASIC HUMAN RIGHTS. Also, IT HAS BEEN THE GENERAL HOLDING

OF THIS COURT THAT IF A COERCED CONFESSION BY THE ACCUSED IS INTRODUCED AT TRIAL, A JUDGMENT OF CONVICTION WILL BE SET ASIDE

EVEN THOUGH THE EVIDENCE APART FROM THE CONFESSION MIGHT HAVE BEEN SUFFICIENT TO SUSTAIN THE JURY'S VERDICT. IT HAS BEEN HELD BY THIS COURT THAT WHETHER THE OTHER EVIDENCE IN RECORD IS

SUFFICIENT TO JUSTIFY THE GENERAL VERDICT OF GUILTY IS NOT NECESSARY TO CONSIDER. IF SUCH ADMISSION OF THIS CONFESSION

DENIED A CONSTITUTIONAL RIGHT TO DEFENDANT, THE ERROR REQUIRES REVERSAL. *Lyons v. Oklahoma*, 322 US 596, 88 Fed 1481, 64 S.Ct 1208

MUNYWE'S INVOLUNTARINESS GROUND, IS THAT TACOMA POLICE

DEPARTMENT OFFICERS EXERCISED SUCH PRESSURE ON HIM PRIOR TO HIS STATEMENTS, THAT HIS WILL WAS OVERBORNE AND HIS CONFESSION

WAS NOT VOLUNTARY. ALL STATEMENTS WERE INVOLUNTARY AND NOT AS A RESULT OF A FREE AND RATIONAL CHOICE ON THE PART OF MUNYWE.

4

SEE ALSO, Byrd v. Mariagera City Sheriff's Dept, 629 F.3d 1135, 1146 (9th Cir. 2011)

STATE OF WASHINGTON COURTS HAVE HELD THAT "[T]HE DETERMINATION WHETHER STATEMENTS OBTAINED DURING CUSTODIAL INTERROGATION ARE ADMISSIBLE AGAINST THE ACCUSED IS TO BE MADE UPON AN INQUIRY INTO THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING TO THE INTERROGATION TO ASCERTAIN WHETHER THE ACCUSED INTERACT KNOWINGLY AND VOLUNTARILY DECIDED TO FOREGO HIS RIGHTS TO REMAIN SILENT AND TO HAVE THE ASSISTANCE OF COUNSEL" State v. Unga, 165 Wn.2d 95, 100, 196 P.3d 645 (2008) quoting Fare v. Michael C, 442 U.S. 707, 724-25, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979)) HOWEVER, MUNTWE'S TRIAL COURT NEVER HELD AN INQUIRY ABOUT THE TOTALITY OF CIRCUMSTANCES SURROUNDING THE INTERROGATION. Please See Appendix C at finding of fact and conclusions of law.

THIS COURT HELD A CONFESSION INVOLUNTARY WHERE DEFENDANT WAS PUT IN CELL WITH PLANK AS BED, AWAKENED EARLY AND PUT IN BULL PEN, NO FOOD OR MEDICATION ALL MORNING, UNTILL CONFESSION. Green Wald v. Wisconsin, 390 U.S. 519, 88 S.Ct. 1152, 20 L.Ed.2d 77 (1968).

THE INTERROGATION VIDEO SHOWN TO THE JURY WAS OBSCURED BY THE DEFENSE, BUT COURT ADMITTED IT WITH KNOWLEDGE IT WAS A CROSS GENDER GENITAL SEARCH VIDEO, WHERE, IN THE INTERROGATION ROOM, FEMALES SEARCHED, PHOTOGRAPHED AND SWABED MUNTWE'S GENITALS IN PRESENCE OF OTHER FEMALE AND MALES IN PRESENCE OF ANY EMERGENCY AND WHERE MALE TECHNICIANS WERE AVAILABLE. MUNTWE'S FOURTH AMENDMENT RIGHT AND NINE PROCEED WERE VIOLATED AND THE VIDEO WAS PREJUDICIAL AND INFLAMMATORY TO JURY. THIS COURT SHOULD GRANT WRIT AND CASE REVERSED.

SIXTH AMENDMENT,

THE TRIAL COURT DENIED MUMFLEY'S A DUE PROCESS OF LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND VIOLATED DOUBLE JEOPARDY WHEN IT USED A THIRD NON-EXISTENT COUNT THAT WAS NEITHER CHARGED, PROSECUTED, NOR PRESENTED TO THE JURY, AS A BASIS OF JUSTIFICATION TO ADD THREE MORE YEARS TO MUMFLEY'S SENTENCE.

THE UNITED STATES CONSTITUTION GUARANTEES ACCUSED PERSONS DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. ACCORDINGLY, THE DOUBLE JEOPARDY CLAUSE OF THE 5TH AMENDMENT AND WASHINGTON STATE CONSTITUTION ARTICLE 1 § 9 PROTECT AGAINST MULTIPLE PUNISHMENTS FOR THE SAME OFFENSE.

DURING SENTENCING, MUMFLEY'S TRIAL COURT MISAPPLIED THE LAW AND CREATED A THIRD COUNT OF A SECOND UNLAWFUL IMPRISONMENT TO JUSTIFY A FINDING THAT THERE WERE TWO SEPARATE INCIDENTS AND THEREFORE THAT MUMFLEY'S CONVICTION SHOULD NOT SHOW SOME CRIMINAL CONDUCT FOR SENTENCING PURPOSES. THIS MISAPPLICATION OF LAW, CONSISTED A VIOLATION OF DUE PROCESS AND DOUBLE JEOPARDY AND IT ADDED THREE MORE YEARS IN MUMFLEY'S SENTENCE THAT HAD NOT BEEN AUTHORIZED BY THE JURY. THE STATE HAD CHARGED MUMFLEY WITH ONLY ONE COUNT OF KIDNAPING. Please see APPENDIX K at Changing Information, HOWEVER, DURING SENTENCING THE COURT SAID THAT "THE JURY COULD HAVE EASILY CONCLUDED THAT HE WAS SIMPLY GOING TO TAKE HER TO ANOTHER LOCATION AND RAPE HER AGAIN" THE COURT IMPLIED OF A THIRD COUNT OF SECOND UNLAWFUL IMPRISONMENT THAT

2

THE JURY COULD HAVE EASILY PROVED. THIS WAS WRONG, ARGUMENT THAT THE COURT DEVELOPED TO JUSTIFY A FINDING OF A THIRD COUNT OF A SEVERATE INCIDENT OF ASSAULT WHICH OF COURSE HAD NOT BEEN CHARGED OR PROSECUTED BY THE STATE.

ACCORDING TO WASHINGTON STATE LAW, THE COURT WAS SUPPOSED TO APPLY CORRECT LAW AND FIND THAT THE PROVED TWO COUNTS OF RAPE 2 AND OF UNLAWFUL IMPRISONMENT WERE ONE SAME CRIMINAL CONDUCT FOR SENTENCING PURPOSES, BUT THE COURT, MISAPPLIED THE LAW SUGGESTING THAT THE COULD HAVE BEEN PROVED AN EXTRA ADDITIONAL UNLAWFUL IMPRISONMENT AFTER A PERIOD OF TIME HAD PASSED. MUNYWE WAS THEREFORE, DENIED ONE PROCESS OF LAW AND DOUBLE JEOPARDY CLAUSE OF 5TH AMENDMENT WAS VIOLATED.

THE COURT HELD THAT THE RIGHT TO A JURY TRIAL WAS NO MORE PROCEDURAL FORMALITY, BUT A FUNDAMENTAL RESERVATION TO THE PEOPLE OF CONTROL OVER THE JUDICIARY IN THE NATIONS CONSTITUTIONAL STRUCTURE, AS THE SUPREME COURT'S HOLDING IN *Apprendi v. New Jersey* (2000) 530 U.S. 466, 147 L.ED. 2d 435, 120 S.Ct. 2348.

THIS COURT, IN *Blakely*, HELD THAT BECAUSE THE FACTS SUPPORTING PETITIONER'S EXCEPTIONAL SENTENCE WERE NEITHER ADMITTED BY PETITIONER NOR FOUND BY JURY, THE SENTENCE VIOLATED HIS SIXTH AMENDMENT RIGHT TO A JURY. MUNYWE WAS SENTENCED TO THREE YEARS BEYOND WHAT THE LAW ALLOWED FOR THE PROVED CRIMES ON THE BASIS OF A JUDICIAL DETERMINATION THAT HAD NOT BEEN CHARGED BY THE STATE OR PROVED BY THE JURY. THIS ISSUE IS OF GREAT IMPORTANCE TO THE PEOPLE AND SOCIETY AS A WHOLE.

STATE COURTS CONTRAVENED THEIR REVISED CODE, CRIMINAL RULES, AND LONG LINE OF PRECEDENTS BY FAILURE TO EXCUSE UNFIT JUROR, THEREBY DENYING MUMFEE A FAIR TRIAL BY AN IMPARTIAL JURY AS GUARANTEED BY SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1 SECTION 22 OF WASHINGTON CONSTITUTION GUARANTEE THE RIGHT TO A FAIR TRIAL "BY AN IMPARTIAL JURY". IN REFUSING TO EXCUSE JUROR 8 BASED ON CLEAR EVIDENCE OF INATTENTION AND UNFITNESS, THE TRIAL COURT ABUSED ITS DISCRETION. *People v. South*, 177 A.D.2d 607, 607-08, 576 N.Y.S. 2d 314 (App. Div. 1991). THIS ABUSE OF DISCRETION, CAUSED MUMFEE A TRIAL BEFORE A JUROR "WHO HAS NOT HEARD ALL THE EVIDENCE IN THE CASE" THIS VIOLATING MUMFEE'S RIGHT TO TRIAL BY JURY, RESULTING IN MANIFEST CONSTITUTIONAL ERROR. *South*, 177 A.D. 2d at 608.

Also, COURTS IN WASHINGTON STATE REVEAL A TRIAL COURT'S DECISION TO DISCHARGE A JUROR FOR ABUSE OF DISCRETION. *State v. Sassen van Elsdod*, 191 Wn.2d 798, 806, 425 P.3d 807 (2018) AGAIN, WASHINGTON STATE'S REVISED CODE STATES THAT "IT SHALL BE THE DUTY OF A JUDGE TO EXCUSE FROM FURTHER JURY SERVICE ANY JUROR, WHO IN THE OPINION OF THE JUDGE, HAS MANIFESTED UNFITNESS AS A JUROR BY REASON OF BIAS, PREJUDICE, INDIFFERENCE, INATTENTION OR ANY PHYSICAL OR MENTAL DEFECT OR BY REASON OF CONDUCT OR PRACTICES INCOMPATIBLE WITH PROPER AND EFFICIENT JURY SERVICE. RCW 2.36.110.

Also, WASHINGTON STATE CRIMINAL RULES CLEARLY STATE

THAT " IF AT ANY TIME BEFORE SUBMISSION OF THE CASE TO THE JURY A JUROR IS FOUND UNABLE TO PERFORM THE DUTIES THE COURT SHALL ORDER THE JUROR DISCHARGED, AND THE CLERK SHALL DRAW THE NAME OF AN ALTERNATE WHO SHALL TAKE THE JUROR'S PLACE ON THE JURY." CrR 6.5

BOTH RCW 2.36.110 AND CrR 6.4(c)(1) CREATE A MANDATORY DUTY TO DISMISS AN UNFIT JUROR EVEN IN THE ABSENCE OF A CHALLENGE. State v. Lawler, 194 Mo. App. 275, 284, 374 P.3d 278 (2016).

IN THIS CASE, THE TRIAL COURT IN MUNKWEIL'S CASE, FAILED TO INQUIRE WHETHER, THE JUROR 8 HAD MISSED ANY EVIDENCE FOR THE WHOLE WEEK SHE HAD BEEN SICK. THE ONLY SIGNIFICANT WORD THE COURT RECEIVED FROM JUROR 8 WAS THAT "YES, I AM STILL LISTENING." THE COURT HAD BEEN CONCERNED JUROR 8 HAD "BEEN DISTRACTED" AND LAMENTED THAT "WE HAD TO STOP PROCEEDINGS TODAY TO TRY TO ACCOMMODATE HER".

THIS COURT SHOULD FIND THAT THE LOWER COURTS CONTRAVENED THEIR LONG LIST OF PRECEDENTS, THE REVISED CODE OF WASHINGTON AND CRIMINAL RULES, AND ABUSED DISCRETION TO DENY MUNKWEIL THE OBVIOUS CONSTITUTIONAL RIGHT OF A FAIR TRIAL BY AN IMPARTIAL JURY.

THIS ISSUE PRESENTS A FUNDAMENTAL QUESTION OF HOW WASHINGTON COURTS ABUSE DISCRETION AND DENY ACCUSED PERSONS CONSTITUTIONAL RIGHTS GUARANTEED TO THEM BY REFUSING TO APPLY PRECEDENTS UNIFORMLY TO ALL PERSONS ACCUSED OF CRIME.

WHENEVER DEFENSE COUNSEL PARTNERS WITH PROSECUTOR AND COURT TO FORCE DEFENDANT TO WAIVE CERTAIN CONSTITUTIONAL RIGHTS IN EXCHANGE TO SAFEGUARD OTHER CONSTITUTIONAL RIGHTS IT AMOUNTS TO CONFLICT OF INTEREST AND INADEQUATE LEGAL ASSISTANCE THAT SO UNDERMINES PROPER FUNCTIONING OF ADVERSARIAL PROCESS AND VIOLATES SIXTH AMENDMENT TO U.S. CONSTITUTION AND STRICKLAND V. WASHINGTON.

ONE REASON FOR GRANTING WRIT IN THIS ISSUE IS BECAUSE THIS ISSUE PRESENTS A FUNDAMENTAL QUESTION UNDER STRICKLAND V. WASHINGTON, 466 U.S. 668, 683, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). THE QUESTION IS OF GREAT PUBLIC IMPORTANCE SINCE IT HELPS CHECK CLAIMS OF COUNSEL'S DEFICIENT PERFORMANCE SUCH THAT THE DEFENSE IS RESTORED. PARTICULAR IMPORTANCE IS BECAUSE COURTS "INVOLVE A STRONG PRESUMPTION THAT COUNSEL'S CONDUCT FALLS WITHIN THE RANGE OF REASONABLE ASSISTANCE" STRICKLAND, 466 U.S. at 689, AND THEREFORE THE COURTS WILL DETERMINE WHETHER DEFENSE COUNSEL'S ASSISTANCE WOULD BE PRESUMED REASONABLE WHEN COUNSEL PARTNERED WITH PROSECUTION AND TRIAL COURT TO ^{FORCE} ~~COERCE~~ THE DEFENDANT TO ABANDON AND WAIVE HIS PROTECTED CONSTITUTIONAL RIGHTS SO AS TO SAFEGUARD OTHER CONSTITUTIONAL RIGHTS, EVEN WHEN MUNEWE KEPT SEEKING A SPEEDY TRIAL AND OBJECTING TO THE MANY CONTINUANCE AND REFUSING TO SIGN TRIAL CONTINUANCE FORMS AND WHEN MUNEWE WAS ALSO ENTITLED TO FORENSIC MEDICAL TESTS AND EFFECTIVE ASSISTANCE OF COUNSEL.

ACCORDING TO STRICKLAND, IN THIS CASE "THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS,

THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. A REASONABLE PROBABILITY IS PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME" *Id.* at 694.

THIS COURT HAS DETERMINED THAT PREJUDICE COMPONENT OF THE STRICKLAND TEST "FOCUSES ON THE QUESTION WHETHER COUNSEL'S DEFICIENT PERFORMANCE RENDERS THE RESULT OF THE TRIAL UNRELIABLE OR THE PROCEEDING FUNDAMENTALLY UNFAIR". *Williams v. Taylor*, 529 U.S. 362, 393 n.17, 120 S. Ct. 1495, 146 L.Ed. 2d 389 (2000) (citations and internal quotations marks omitted).

ANOTHER REASON IS BECAUSE LOWER COURTS CONTRAILED DOWN LONG LIST OF PRECEDENTS THAT PROHIBIT DEFENDANTS BEING FORCED TO CHOOSE BETWEEN TWO OR MORE CONSTITUTIONAL RIGHTS. LOWER COURTS DISMISSED MUMFEE'S ISSUE PRESENTED IN MUMFEE'S STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW. Please see APPENDIX G at SAG 3 and at Additional Authorities

"THE STATE CANNOT BY IT'S OWN UNEXCUSE CONDUCT FORCE A DEFENDANT TO CHOOSE BETWEEN HIS SPEEDY TRIAL RIGHTS AND HIS RIGHT TO EFFECTIVE COUNSEL WHO HAS THE OPPORTUNITY TO ADEQUATELY PREPARE A MATERIAL PART OF HIS DEFENSE" *State v. Brooks*, 149 Wn. App. 373, 387, 203 P. 3d 397 (2009) (citing *State v. Price*, 94 Wn. 2d at 814). ALSO, *State v. Michelli*, 132 Wn. 2d 229, 246, 937 P. 2d 587 (1997); *State v. Brooks*, 149 Wn. App. 373, 387, 203 P. 3d 397 (2009); *State v. Rohrich*, 149 Wn. 2d at 649. THEREFORE IT'S IMPORTANT FOR THIS COURT TO GRANT THE WRIT IN THIS CASE.

MUNYME WAS UNFAIRLY PREJUDICED AND DENIED FAIR TRIAL IN VIOLATION OF SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN TRIAL COURT COMMENTED ON THE EVIDENCE BY USING COMPLAINANTS INITIALS IN THE TO-CONVICT INSTRUCTIONS, TO ANONYMIZE THE COMPLAINT AND EXPLAINED TO THE JURY THAT INITIALS ARE USED TO PROTECT RAPE VICTIMS. (APPX J.)

THIS ISSUE'S IMPORTANCE IS ENHANCED BY THE FACT THAT COURT BELOW SERIOUSLY DENIED THE FACT THAT THE USE OF INITIALS IN THE TO-CONVICT INSTRUCTIONS AND EXPLAINING TO THE JURY THAT IT IS TO PROTECT RAPE VICTIMS IS A COMMENT ON THE EVIDENCE AND PREJUDGES DEFENDANT. [IN FACT, STATE OF WASHINGTON HAS HELD THAT "COVEYING TO THE JURY I, THE COURTS] PERSONAL ATTITUDES TOWARDS THE MERITS OF THE CASE OR INSTRUCTING A JURY THAT MATTERS OF FACT HAVE BEEN ESTABLISHED AS A MATTER OF LAW." State V. Levy, 156 Wn.2d 709, 721, 132 P.3d 1076 (2006) (quoting State V. Becker, 132 Wn.2d 54, 64 935 P.2d 1321 (1997)). Also, WASHINGTON STATE CONSTITUTION Art IV § 16 STATES THAT "JUDGES SHALL NOT CHARGE JURIES WITH RESPECT TO MATTERS OF FACT, NOR COMMENT THEREON, BUT SHALL DECLARE THE LAW."

IN THIS CASE, THE TRIAL COURT INSTRUCTED THE JURORS WITH THE COMPLAINANTS INITIALS ON THE TO-CONVICT INSTRUCTIONS TO IMPLY THAT THE COMPLAINANT WAS ALREADY A VICTIM WHO NEEDED PROTECTION. THE STATE EXPLAINED THEY DONT PUT RAPE VICTIMS NAMES THERE WHEN THE COURT WAS INSTRUCTING THE JURY BEFORE SENDING THEM FOR DELIBERATIONS.

2

MANY COURTS REMARK THAT A JURY MAY PERCEIVE A GRANT OF ANONYMITY AS A SUBLIMINAL COMMENT ON THE HARM THE ALLEGED ENCOUNTER WITH THE DEFENDANT HAS CAUSED" Doe V. Cabrera, 307 F.R.D 1, 10 (D.D.C 2014). THE FEDERAL COURT HAS ESTABLISHED THAT "[T]HE VERY KNOWLEDGE BY THE JURY THAT PSEUDONYMS WERE BEING USED WOULD CONVEY A MESSAGE TO THE FACT-FINDER THAT THE COURT THOUGHT THERE WAS MERIT TO THE PLAINTIFF'S CLAIMS" James V. Jacobson, 6 F.3d 2233, 2440-41 (4th Cir.1993); Doe V. Advanced Textile Corp., 214 F.3d 1058, 1068 (9th Cir.2000)

THE FEDERAL COURT HELD THAT "THE EFFECT OF THIS 'SUBLIMINAL' SUGGESTION... IS LIKELY TO BE STRONG ENOUGH THAT A LIMITING INSTRUCTION WOULD NOT SUFFICIENTLY ELIMINATE THE RESULTING PREJUDICE" DOE V. ROSE, No. CV-15-07503--MWF-JCX, 2016 WL 9150620, at *3 (C.D. Cal., Sept. 22, 2016) (unpub.).

LOWER COURTS IN THIS CASE HAVE CONTRADICTED THEIR OWN CONSTITUTION AND THEIR REASONING IS UNPERSUASIVE BECAUSE IT DOES NOT MATTER THAT THE COMPLAINANTS' NAME IS NOT AN ELEMENT, BUT THE EXPLANATION TO JURY THAT "WIE DO NOT PUT RARE VICTIMS FULL NAMES IN THERE" COMMUNICATED THAT COMPLAINANT WAS A VICTIM WHO NEED PROTECTION AND THEREFORE MUVNWE HAS COMMITTED A CRIME. IT IS EVIDENT THAT GRANTING ANONYMITY TO ANY DEGREE IN ANY CONTEXT RISKS BEING PERCEIVED AS A SUBLIMINAL COMMENT" ON THE NEED FOR PROTECTION FROM THE DEFENDANT, Doe, 307 F.R.D at 10. THIS COURT SHOULD GRANT WRIT.

MUNYWE'S CONSTITUTIONAL RIGHT TO PRESENT A MEANINGFUL DEFENSE WAS DENIED, IN VIOLATION OF HIS SIXTH AMENDMENT RIGHT WHEN DEFENSE ATTORNEY, WITHOUT EXPRESS AUTHORITY FROM MUNYWE, STIPULATED WITH PROSECUTION AND THE COURT NOT TO PRESENT DEFENSE'S SCIENTIFIC MEDICAL EVIDENCE AND WITNESS AT TRIAL.

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND WASHINGTON STATE CONSTITUTION Art 1 § 22 GUARANTEE A CRIMINAL DEFENDANT THE RIGHT TO PRESENT A DEFENCE. See *State v. Jones*, 168 Wn.2d 713, 720, 230 P.3d 576 (2010); *Holmes v. South Carolina*, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed. 2d 503 (2006).

THE COURT HELD THAT EXCLUSION OF TESTIMONY REGARDING THE CIRCUMSTANCES OF CONFESSION VIOLATED ACCUSED'S FUNDAMENTAL CONSTITUTIONAL RIGHT TO A FAIR ~~TRIAL~~ OPPORTUNITY TO PRESENT COMPLETE DEFENSE -- WHERE ACCUSED SOUGHT TO INTRODUCE TESTIMONY IN ISSUE TO SHOW CONFESSION UNWORTHY OF BELIEF, WHERE INTRODUCTION OF PROFFERED EVIDENCE WAS ALL BUT IN-DISPENSABLE TO SUCCESS OF DEFENDANT, AND WHERE NO RATIONAL JUSTIFICATION HAD BEEN ADVANCED FOR EXCLUSION OF SUCH EVIDENCE. *Craze v. Kentucky*, 476 U.S. 683, 106 S.Ct. 2142, 90L. ed 636, 20 Fed. R. Evid. Serv. (CRC) 801 (1986).

ALSO, THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE GUARANTEES A DEFENDANT'S RIGHT TO PRESENT EVIDENCE FAVOURABLE TO HIMSELF ON AN ELEMENT THAT MUST BE PROVEN TO CONVICT HIM" United States v. Lockhart, 844 F.3d 501, 509 (5th Cir. 2016) (quoting *Clerk v. Arizona*, 548 U.S. 735, 769, 126 S.Ct. 2709, 165 L.Ed. 2d 842 (2006)).

WHEN THE PROSECUTOR IN COLLABORATION WITH DNA ANALYST
WITHHELD FROM MUNYWE EVIDENCE FAVOURABLE TO HIM
AND THAT IS MATERIAL TO HIS GUILT OR PUNISHMENT, IT
VIOLATED MUNYWE'S RIGHT TO DUE PROCESS OF LAW IN
VIOLATION OF THE FOURTEENTH AMENDMENT TO UNITED
STATES CONSTITUTION.

A BRADY VIOLATION OCCURS WHEN EVIDENCE IS
FAVOURABLE TO THE ACCUSED BECAUSE IT IS EXCULPATORY OR IMPEACHING,
EVIDENCE WAS SUPPRESSED BY THE PROSECUTION, EITHER WILFULLY OR
INADVERTENTLY AND PREJUDICE ENSUED. FAVOURABLE EVIDENCE
IS "MATERIAL" IF THERE IS REASONABLE PROBABILITY THAT
DISCLOSURE OF THE EVIDENCE WOULD HAVE CHANGED THE OUTCOME OF
THE PROCEEDING. BRADY V. MARYLAND, 373, U.S. 83, 87 (1963)

THIS COURT HELD THAT "EVIDENCE IMPEACHING WITNESS IS
MATERIAL WHEN OTHER EVIDENCE IS NOT STRONG ENOUGH TO SUPPORT
VERDICT" SMITH V. CAIN, 132 S. CT 627, 630 (2012)

THE STATE IN PARTNERSHIP WITH DNA ANALYST WITHHELD MANY
DNA EVIDENCES CRUCIAL IN MUNYWE'S CASE. Please see
APPENDIX G at SAG 3.

THIS COURT IN KYLES V. WHITLEY, 514 U.S. at 434-35,
EXPLAINED THAT "THE QUESTION IS NOT WHETHER THE DEFENDANT WOULD
MORE LIKELY THAN NOT HAVE RECEIVED A DIFFERENT VERDICT WITH
THE [UNDISCLOSED] EVIDENCE, BUT WHETHER IN IT'S ABSENCE HE
RECEIVED A FAIR TRIAL, UNDERSTOOD AS A TRIAL RESULTING IN AN
VERDICT WORTHY OF CONFIDENCE. Id at 434 : Cone V. Bell,
556 U.S. 449, 469 (2009) . THIS ISSUE IS IMPORTANT TO
THE PUBLIC IN THEIR FAITH TO THE JUSTICE SYSTEM.

TRIAL COURT ACTED WITHOUT STATUTORY AUTHORITY AND DENIED FAIR TRIAL TO MUNTWE BY RAISING MUNTWE'S OFFENDER SCORE, CONVERTING UNLAWFUL IMPRISONMENT FROM MISDEMEANOR INTO A FELONY, ADDING A SEXUAL MOTIVATION ENHANCEMENT AND ADDING THREE MORE YEARS INTO MUNTWE'S SENTENCE BASED ON A NULL AND VOID SPECIAL VERDICT. (see App'x F)

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION STATES THAT 'THE ACCUSED SHALL ENJOY THE RIGHT TO A . . . PUBLIC TRIAL, AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHERE-IN THE CRIME SHALL HAVE BEEN COMMITTED . . . ' U.S Const. Amend. VI.

THIS COURT HAS HELD THAT THE RIGHT TO JURY TRIAL IS A FUNDAMENTAL RESERVATION OF POWER MEANT TO ENSURE THAT PEOPLE ULTIMATE CONTROL OF THE JUDICIARY. See *Blakely v. Washington*, 542 U.S 296, 306 (2004).

AFTER DELIBERATIONS, JURY ANSWERED THE SPECIAL VERDICT FORM G BY THE PRESIDING JUDGE SIGNING, DATING AND ADDING HIS NAME ON THE BLANK OF THE SECTION "THE ANSWER ABOVE HAS BEEN INTENTIONALLY LEFT BLANK" THE JURY IMPLIED THEIR INTENTION WAS TO LEAVE THE ANSWER SECTION BLANK, EVEN THOUGHT THEY HAD WRITTEN "YES" IN THE BLANK. Please See APPENDIX F at Special Verdict form G. THE SPECIAL VERDICT IN SPECIAL VERDICT FORM G WOULD HAVE BEEN DEEMED NULL AND VOID BY THE COURT TO PREVENT DENIAL OF DUE PROCESS AND A FAIR JURY TRIAL.

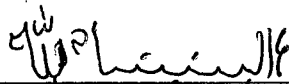
ALSO, THE TRIAL COURT READ PARTIAL RESULTS OF THE SPECIAL VERDICT FORM G GIVING INCORRECT FINDINGS OF THE JURY. THE COURT READ: "----- DID THE DEFENDANT MICHAEL MUTAEE MUNYWE COMMIT THE CRIME OF UNLAWFUL IMPRISONMENT WITH A SEXUAL MOTIVATION? THE ANSWER IS "YES" AND IT IS SIGNED"
Please See APPENDIX F at Verdict RP 994.

THE COURT FAILED TO READ THE ENTIRE ANSWER OF THE SPECIAL VERDICT FORM G, WHERE IT SIGNED THE LOWER SECTION TOO TO INDICATE INTENTION TO LEAVE ANSWER SECTION BLANK.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: AUGUST 31, 2022