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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,  
Plaintiff,  
v.  
DINO J CONSTANCE,  
Defendant.

No. 07-1-00843-8

STATE'S RESPONSE TO DEFENDNAT'S  
MOTION TO DISQUALIFY THE CLARK  
COUNTY PROSECUTING ATTORNEY'S  
OFFICE

**FACTS**

This matter is currently set for hearing on the defendant's CrR 7.8 motion. Now, prior to the hearing, the defendant brings a motion to disqualify the Clark County Prosecutor's office. In this motion, the defense argues Tony Golik is a necessary witness in the hearing currently set.

**ARGUMENT**

Generally, a court should not disqualify an attorney absent compelling circumstances. Pub. Util. Dist No. 1 of Klickitat County v. Int'l Ins. Co. 124 Wn.2d 789, 812, 881 P.2d 1020 (1994). To demonstrate compelling circumstances, a party must show that the attorney will provide material evidence unobtainable elsewhere. PUD at 812. The analysis regarding

1 whether the Prosecutor is a necessary witness comes down to the test of whether the evidence  
2 is obtainable anywhere else. The allegations made by the defense in this matter can be  
3 rebutted through testimony of individuals other than the Prosecutor. Therefore, the motion to  
4 disqualify should be denied.

### 6 **The "ZACH BROWN" ISSUE**

7 The defense alleges the State made a deal with Zach Brown whereby he would get a no  
8 contact order dropped in exchange for testimony. The defense based this allegation on  
9 speculation. Prior to trial in this matter, Stefanie Urick was the paralegal working on this case.  
10 As part of her duties, Ms. Earl contacted Zach Brown to schedule his testimony. Zach Brown  
11 asked Urick how he could get a no contact order lifted. Urick put Brown in contact with the  
12 paralegal at the Domestic Violence (D.V.) Center. Urick did not inform the prosecutor on the  
13 case, Tony Golik, that she had taken this action. See Exhibit A, p. 9. (Transcript of Stefanie  
14 Urick interview).  
15

16 After Brown was referred to the D.V. Center, he received the same treatment any other  
17 individual would have received. He was in compliance with his treatment, the underlying assault  
18 was minor and the victim wanted the order dropped. See exhibit B, P. 13. (Transcript of Anna  
19 Klein interview). Brown didn't receive special treatment in exchange for testimony. Further, it is  
20 quite clear from Stefanie Urick's statement that all action regarding Brown's no contact order  
21 were done without prosecutor Golik's knowledge. Prosecutor Golik is not a necessary witness  
22 in this issue.  
23

### 24 **THE "SPYING" ISSUE**

1 While the defendant was in jail pending trial in this mater, another informant came  
2 forward. A warrant was authorized by the court to record the defendant's communication with  
3 this informant in jail. Prior to trial, the State provided the defense with copies of the recordings  
4 made under authority of the warrant. No charges were filed as a result of those recordings.

5 The defense has stated the recordings capture conversations the defendant had with  
6 counsel. These recordings are hours long. The defense has made this indication with no  
7 specificity as to where in the recordings the communication with counsel is captured on the  
8 recording.

9  
10 Prosecutor Golik is not a necessary witness in this issue, and he has not listened to the  
11 recordings. The "spying" that occurred was done with authority of a valid judicially authorized  
12 warrant. Any evidence needed for this issue, if any, can be obtained from sources other than  
13 prosecutor Golik.

14  
15 **CONCLUSION**

16 The defendant has made many allegations in his CrR 7.8 motion. A hearing is set to  
17 take testimony on the issues. The defendant has made no showing that prosecutor Golik is a  
18 necessary witness regarding any issues he has raised.  
19

20  
21 DATED this 24<sup>th</sup> day of January, 2011

22  
23 Respectfully submitted,

24  
25   
26 \_\_\_\_\_  
27 Anthony F. Golik WSBA# 25172  
Prosecuting Attorney

*Alan E. Kivney WSBA 25205  
Senior Deputy Prosecuting Attorney  
for Anthony Golik*

**EXHIBIT A**

**TRANSCRIPT OF**

**STEFANIE URICK INTERVIEW**

STATE'S RESPONSE TO MOTION TO DISQUALIFY

EXHIBIT A  
TRANSCRIPT OF STEFANIE URICK INTERVIEW

**INTERVIEW WITH STEPHANIE URICK  
STATE V. DINO CONSTANCE  
Cause No. 07-1-00843-8  
(December 2, 2010)**

AH: Alan Harvey, Deputy Prosecuting Attorney  
SU: Stephanie Urick, Interviewee

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AH: Okay. It's the 2<sup>nd</sup> of December, 2010 and it's 11:07. My name is Alan Harvey. I'm a Deputy Prosecuting Attorney. I'm currently sitting in a room here in the Prosecutor's Office with a former employee and I'm going to ask her to state her full name and spell her last name?

SU: Stephanie Urick, U R I C K.

AH: Your former – you worked here at some point?

SU: Yes.

AH: Okay. Before we get to that, do you consent to be recorded?

SU: Yes.

AH: And you see the recorder going right now?

SU: Yes.

AH: And this is in relation to 07-1-00843-8, Dino J. Constance.

SU: Okay.

AH: And you and I have spoken about this before we started taping?

SU: Yes.

AH: You had an opportunity to review an older paralegal file. Is that correct?

SU: Yes.

AH: And in fact for purposes of this discussion, you and I initially discussed the Constance file in general. Is that correct?

SU: Yes.

AH: And I'm going to go over the procedure that we followed before we started taping. Ah, at the beginning of this discussion, did you have the paralegal file in front of you?

SU: No.

AH: Okay. At the beginning of this discussion, had you and I spoken about any of the substance of any motions that the defense had filed?

SU: No.

AH: Had you prepared or read anything in the paper in relation to this?

SU: No.

AH: And when I say in the paper, I mean in the last year?

SU: No.

AH: Have you seen or heard about any motions that the defendant or his attorney has filed, Mr. Constance, in this matter?

SU: No.

AH: So when you walked in here, how much time or review had you prepared for this discussion?

SU: None. I just – when you had told me it was regarding this case and so, you know, I just thought about it, about what I remembered from it but I didn't like -

AH: Now when you asked me when we set up our meeting –

SU: Uh huh.

AH: You did ask me about what it was about?

SU: Uh huh.

AH: And I gave you a general description. I'm going to ask you to tell me what you recall I gave you?

SU: You said that it was regarding the Dino Constance matter and possibly some e-mails that I had sent to Peggy Watson.

AH: Okay. Do you recall if it was voice specific about anything after that?

SU: Well specifically, we didn't talk about anything else. We just scheduled a meeting.

AH: Okay. So regarding the e-mails that I referred to, when I mentioned the word e-mails and Dino Constance and Peggy Watson, did you have a recollection about this?

SU: I did.

AH: Okay. And regarding your recollection, did you indicate that to me at that time?

SU: No, I don't believe I did.

AH: Okay. And so ah, as you - at was what about a day or so since we set the -

SU: Yeah, Tuesday.

AH: Tuesday, okay. Today's Thursday?

SU: Yeah.

AH: Okay. So that would have been the 29<sup>th</sup>, sorry -

SU: 30<sup>th</sup>.

AH: Yeah 30<sup>th</sup>. You're right. It's was the 30<sup>th</sup>. It's the 2<sup>nd</sup> today. I keep forgetting that, so the 30<sup>th</sup> of November when we set this up. So, in the interim, have you spent any time cause we've got to cover that area too. Since we talked, just to be clear, you have access to computers in your office.

SU: Right.

AH: And you're currently employed where?

SU: At the City of Vancouver Attorney's office.

AH: Okay. Have you tried to look up anything or talk to anybody since we talked?

SU: No.

AH: Okay. Outside of myself?

SU: No.

AH: So Dino Constance. Let's go back in time. You did formerly work here at the Clark County Prosecutor's Office. Is that correct?

SU: Yes.

AH: And what was your title?

SU: Legal Assistant.

AH: When you left?

SU: I was a Legal Assistant in the Major Crimes Unit.

AH: Thank you.

SU: And regarding Dino Constance. Was that a case that you worked on?

AH: Yes. In fact I made a reference earlier to a paralegal file. In the file, you've had an opportunity to look at it?

SU: Yes.

AH: Tell me what a paralegal file is?

SU: Well my para – everyone probably has different things in their file, but I make a paralegal file on a case because I've been asked to schedule interviews on it, normally, and so what I do I just keep notes of my conversations with defense attorneys interviews, phone numbers, witnesses, just in regards to trying to schedule these interviews which are usually quite difficult to try to get scheduled and take a lot of time and a lot of rescheduling so it is good to have some notes about it.

AH: Okay. And in those notes when you, depending on the circumstances, do you ever write things down that a witness may say to you or –

SU: Yes.

AH: You had an opportunity to look at this, this paralegal file, and I say this one in relation to Mr. Constance?

SU: Yes.

AH: And was there anything that you could see in the file that was related to contacts that you had with Zachary Brown?

SU: Ah, I have this phone number written down a few times. Ah, I'm just looking through real quick to see. You know, there's references that - from the e-mails to and from defense that we need to try and schedule the interviews.

AH: Right now you're kind of thumbing through that?

SU: Yeah.

AH: That's the page action that is going to be on the tape?

SU: I have an e-mail that is dated August 1<sup>st</sup> in which I have hand written on it that on 8/1 I left a message with my initial and then on 8/2 voice mail from Zack Brown.

AH: And that's related to Zack Brown.

SU: Yeah.

AH: Alright. So outside of that, was there anything else in the file, any notes about conversations?

SU: Ah, no. It looks like an interview had been scheduled for September 12<sup>th</sup> at 3:00 p.m. And there was some conver - or there was an e-mail, that August 1<sup>st</sup> e-mail, I - Detective or Deputy John O'Mara had said that he had been trying to attempt to reach him but didn't have success.

AH: Him being?

SU: Ah, Zachary Brown.

AH: Uh huh.

SU: And he was, he had told me that he had been able to track down his ex-girlfriend and a phone number.

AH: So that's Detective O'Mara is telling you all that in the e-mail?

SU: Yes, yes.

AH: Okay. Outside of that, your recollection of your communications with Peggy Watson?

SU: Yes.

AH: You do remember engaging in e-mails between you and she and where was she assigned?

SU: The Domestic Violence Unit.

AH: Here in Clark County?

SU: Yeah, the Vancouver-Clark County Domestic Violence Unit.

AH: Got it. The combined unit of the City of Vancouver and the Clark County Prosecutor's Office. Is that your understanding?

SU: Yes.

AH: Now you worked here and now you work at the other side of it. Correct?

SU: Right.

AH: And when I say the other side of it, I mean the City of Vancouver. Now who took your spot in Major Crimes?

SU: Peggy Watson.

AH: The same person you were communicating with?

SU: Yes.

AH: Okay. And were there – in that paralegal file were there not some communications and items from Peggy Watson?

SU: No.

AH: Ah, anything, anything dated, any letters that have her name on it?

SU: Oh. There is that when she took over, she was continuing to try to schedule interviews on the case so there were e-mail messages that were printed out between Peggy and the defense attorney's assistant.

AH: Got it. And the reason why I point that out is because you're both in that file?

SU: Yes.

AH: Okay. And you're both in that file because you left and went to the City?

SU: Right.

AH: And she came in behind you?

SU: Right.

AH: Okay. But that's just a function of basically someone had to fill your spot?

SU: Right. And so I just left her the files of the cases that I was working on at the time so that she would know where I was at and it would be easier for her to get up to speed.

AH: Excellent. Okay. So - now moving forward to kind of some more detail issues, let's go to the e-mail. You recall, I did show you a section of the defendant's motion that related to you and it was on page 22, enumerated No. 46?

SU: Yes.

AH: Okay. And you had an opportunity to kind of look at that?

SU: I did.

AH: Okay. Now, can you tell me, you mentioned some things before we started taping about what your general practice was regarding witnesses when they made requests of you and anyway. Can you explain a little bit about that?

SU: So, do you mean like with regard to requests other than interviews on the case or –

AH: Yes, ah they would come to you with some random requests regarding –

SU: Right.

AH: Okay. Now let me finish that cause of the taping.

SU: Sorry.

AH: No that's okay. They come to you with some – I think what you indicated in this summary is they came to you with some random request that would be related to from anything to their status as a driver or what's going on in their life in the legal system, and you kind of relayed that to me. You said you would as your practice do certain things?

SU: Yes.

AH: Can you explain on that?

SU: Well basically, you know, when I get a hold of somebody or they are calling me back because I called them in regards to scheduling an interview. They don't really understand how this whole system works and so they will ask me random questions about other things, maybe other cases or if, you know, I don't know but normally –

AH: What was your general practice when you –

SU: Normally, my general practice would be to try and help them to get the answer for whatever it is they are looking for and it wouldn't –

AH: Why would you do that?

SU: I just try to be helpful. And it wouldn't necessarily have to be a witness or a victim in one of my cases. A lot of times I would randomly get calls transferred to me where people would ask questions and so I would try to get them the answer or put them in the right direction so they can get the answer.

AH: Okay. Now let me ask you a question. There's a quote here attributed to you in the e-mail, it says that when you are communicating with Peggy Watson that Mr. Brown, there was a request by Mr. Brown to get a No Contact Order dropped and that you put also in there that he's a witness in our murder for hire case.

SU: Yeah.

AH: Did anybody direct you who was an attorney in our office to communicate with Peggy Watson?

SU: No. I would have done that completely as a side bar. I wouldn't have even connected the two together.

AH: Now you are saying I would have. Do you have a specific recollection in this case whether or not a prosecutor told you to contact?

SU: No, no. There's not a prosecutor that asked me to do that. I just probably hung up with Zachary Brown and tried to call Peggy and if she didn't answer her phone, I shot her an e-mail and that would be my guess as to what happened.

AH: Before you walked in here today you did have, after we spoke, just for the scheduling and I said there was an e-mail, did you have an independent recollection of what this was about?

SU: I remembered that I had e-mailed Peggy about Mr. Brown because he was inquiring as to where they were at on the No Contact Order. He had indicated that they a child or children in common and that he had been doing all the things that he was suppose to be doing in regards to treatment or paying money. I can't remember specifically, but it was probably those things and for purposes of child care and child drop off and things that him and his girlfriend or wife were wanting the No Contact Order dropped and he was wondering where they were at in that process and I told him that I would check on it for him and let him know so my intent in contacting Peggy would be to find out where they were in that process.

AH: I asked you a general question earlier. I'm going to ask you a more specific one but I'll do kind of a foundational one first. Who, who in your recollection was assigned to this case from the Prosecutor's Office?

SU: Tony Golik.

AH: And specifically did Tony Golik relate to you in any way that you should have this No Contact Order dropped?

SU: Absolutely not.

AH: Alright. Is it your position or are you indicating that this communication with Peggy Watson was something that you were doing because Mr. Brown was asking you to do it?

SU: Yes.

AH: And you're pretty adamant about that so are you indicating that your one hundred percent sure that Mr. Golik never asked?

SU: I'm a one hundred percent sure because I wouldn't have connected it with the case that was at hand. I would just have done that as a side bar for the witness just to try and help him and as a matter of fact, probably if I would have told Tony that I was doing that he probably would have told me not to waste my time. (Laughter).

AH: Well and I appreciate your probably based on prior experiences with other witnesses I'm assuming.

SU: Yes.

AH: And I appreciate that but where I'm getting back to Mr. Brown, your recollection then in your communications with Ms. Watson is that Ms. Watson did it or engaged in some activity on that. Did she follow up or did you?

SU: I'm pretty sure that she told me what, where it was at, the status of the request. I can't remember if she had said that there was a court date that had been set or if she had got a court date set for it, but, you know, I was just trying to inquire as to where they were so I could let him know.

AH: Okay. Now any of the stuff that you communicated to me was Tony Golik in any of these e-mail exchanges?

SU: No.

AH: Did you communicate and I think you answered this earlier but do you recall ever communicating to him about this No Contact Order?

SU: No, I probably – no I wouldn't have because like he said he probably would have said, you know, why are you spending extra time doing that and I wouldn't have wanted him to say that to me so I would have just done it without telling him. (Laughter).

AH: Okay. And we talked about this earlier, you indicated something along the lines of because of your job, your current job and your own job, you do this because you look at it you're a public servant. The public pays you.

SU: Right.

AH: Is that fair?

SU: Well yes and I've always found that it's much easier to help somebody understand the system or understand where a case is at in the system or where they need to go or give them the right number. It makes them feel better. It keeps them from continually calling around the city or the county asking questions of people who don't know. A lot of times, these people, by the time they get to me, they have been transferred two, three, four times from court, corrections or wherever and so usually I just try and take the little extra few minutes, look it up and try and see if I can help them get to where they are trying to go.

AH: Now, that is your regular practice –

SU: Yes.

AH: And not just in this case.

SU: Yes. And even now –

AH: Even now?

SU: At the City, I will do the same thing. As long as a person is being, you know, cooperative and not being abusive, then I'm willing to help them, yes.

AH: Okay. I appreciate your candor on that. I guess to kind of recap and in closing, you and I have worked together in this office as a general proposition, In other words, we've been and worked in the same office. Is that correct?

SU: We've both been employed here at the same time.

AH: Have we ever worked on the same team?

SU: No.

AH: But you know who I am?

SU: Yes.

AH: Okay. Alright. Were any promises made to you in relation to any of the things you said today?

SU: No.

AH: Were any threats made to you?

SU: No.

AH: Did you come here voluntarily?

SU: I did.

AH: Okay. I really appreciate your time and we're going to go off the weapon.

SU: Okay. Thank you.

End of interview

**EXHIBIT B**

**TRANSCRIPT OF**

**ANNA KLEIN INTERVIEW**

STATE'S RESPONSE TO MOTION TO DISQUALIFY

EXHIBIT B  
TRANSCRIPT OF ANNA KLEIN INTERVIEW

**INTERVIEW WITH ANNA KLEIN**  
**STATE V. DINO CONSTANCE**  
**Cause No. 07-1-00843-8**  
**(January 18, 2011)**

AH: Alan Harvey, Senior Deputy Prosecuting Attorney  
AK: Anna Klein, Deputy Prosecuting Attorney

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AH: Okay. We're on the record. It is, let me get the correct time so I'll use my cell phone, 4:06 in the afternoon just – this being the 18<sup>th</sup> of January, 2011. This is an interview conducted at the Clark County Prosecutor's Office. I'm sitting; I'm Alan Harvey, Deputy, Senior Deputy Prosecuting Attorney sitting with Anna Klein. Could you introduce yourself?

AK: Anna Klein, Deputy Prosecuting Attorney.

AH: Your current assignment?

AK: Children's Justice Center.

AH: And Anna how long have you been with the Clark County Prosecutor's Office?

AK: Since October 1, 2007.

AH: So ah, 2007 before October 1<sup>st</sup>, who was your employer?

AK: City of Vancouver.

AH: Did you have an opportunity while with the City of Vancouver to ever handle any County cases?

AK: Yes. I worked in the Domestic Violence Prosecution Center and I was cross-deputized as a Deputy Prosecuting Attorney.

AH: Now do you recall when you started in that unit, would have started roughly handling county cases?

AK: Ah –

AH: A month?

AK: I think it was approximately February of 2006 –

AH: Okay.

AK: Maybe a little sooner.

AH: Okay. And I know you don't have your little cross deputization certificate with you but it would probably correspond to sometime around that date. Is that fair?

AK: Yes.

AH: Okay. So February, 2006 –

AK: Yes.

AH: Now, can you explain, you said County cases so when you got there, someone immediately handed you a felony file and you started doing felonies right out of the gate, right?

AK: No.

AH: Right. So can you tell me the policy procedures, how that works when you start in the City and you start doing cases there and what's the general practice?

AK: Well, when I started out in the Domestic Violence Unit, I was only handling District Court cases, some misdemeanors, and I started getting a few felony cases, I believe, around January of 2007.

AH: So is that – from your understanding is that kind of a normal progression at the DV Center?

AK: Well, it kind of depends on the particular prosecutor. There are some there that have been there for awhile longer than that that are still not doing felonies.

AH: Okay. It depends on comfort level, skill, abilities, there's a whole combination. Is that fair?

AK: Yes.

AH: So about eleven months or so in your starting to take the felony filings?

AK: Correct.

AH: Okay. Now Art Curtis, at this point in time, is the person in Clark County. He is the elected prosecutor?

AK: Correct.

AH: He would be the person who is signing that cross-deputization document?

AK: Yes.

AH: And swear yourself in right?

AK: Yes.

AH: Now is it fair to say that the reason why you don't just walk right in and start doing those cases is because immediately the County prosecutor wanted to be able to see that people had the necessary comfort level, training, etc. to be able to handle the felonies?

AK: That's a fair statement.

AH: Okay. Now having said that and kind of laying that history out with respect to a guy named Zachary William Brown and he has a couple of cause numbers that I'll refer to throughout this interview and let's just get those out right now. First cause number that I'm going to reference and ask you some questions about and that's 2006. It's an 06-1-02294-7 and now, right now we have two files in front of us. Correct?

AK: Yes.

AH: Are these court files from the County court or are they court files or our files, how would you describe them?

AK: These are prosecuting attorney files.

AH: Okay. They are the files that each one of us have normally with any case?

AK: Yes.

AH: Okay. And ah, in these ah – the file that I just read from, the 06 file, you had an opportunity to look over this today?

AK: Yes.

AH: And before you looked over this, did that name look familiar to you before you had an opportunity to look over this?

AK: Yes.

AH: Okay. Had you in the past – had anyone from our office discussed this file with you in say the last year or so?

AK: Yes.

AH: Okay. Can you tell me how many people came to discuss or contacted you in relation to this file?

AK: Two, Tony Golik and Denny Hunter.

AH: Now, when you say Tony Golik and Denny Hunter, those were the same time, separate, how did that work?

AK: Those were separate times.

AH: Okay. Who was first?

AK: Tony contacted me first over the phone.

AH: Okay. Do you recall, can you recall kind of the content of the communication?

AK: He called me and asked me whether or not we had an agreement on the Zachary Brown case relating to his involvement in the Dino Constance case.

AH: Okay. First of all, do you recall when this was?

AK: No.

AH: What year?

AK: I think it was 2010. It could have even been 2009.

AH: Okay. You said we, did we have some kind of deal. What did you mean by we?

AK: Whether or not I had made a plea bargain, the State had made a plea bargain in the Zachary Brown case.

AH: Which case?

AK: The 06-1-02294-7 that gave him some sort of deal in exchange for testimony in the Dino Constance case.

AH: Now, we have two cases and how does the other case, what's the cause number on the other case?

AK: The other case is 05-1-01852-6.

AH: (Laughter) sorry. Okay. Now that second one you just read off, was that a case that you actually dealt with from the time that it was filed and down through original resolution?

AK: No, this was a tracking probation violation with the 06 case but had already had a guilty plea on it when I had it tracking with my 06 case.

AH: Okay. Now the two are related in that the charging there is an existing No Contact Order from the 05 case. Is that right?

AK: I believe so. Let me make sure. Referencing the charging document in the 06 case, the No Contact Order violation in the 05 case was the basis for the Count 1 felony, Domestic Violence court order violation so the underlying No Contact Order was the one that was violated in the 06 case.

AH: It was kind of related two ways, right? One is that there's a tracking PV and two it's the predicate No Contact Order for the subsequent 06 filing?

AK: Predicate No Contact Order that was violated.

AH: Right, right. I just one moment – I'm coming but I'm doing Constance stuff so I have to go to my meeting ah I'll keep going. I apologize Ms. Klein so we kind of have laid out a little of the foundation of how the files, in your contact with the files, just to be clear, any resolution in relation to two, who was it, there was an attorney on the other side?

AK: At the time of the filing of the 06 case, Jan Anderson was appointed.

AH: Now based on your review of the file, your communications with Jan Anderson would have occurred approximately from the time it was filed which would have been what day?

AK: The charging document is dated December 6, 2006.

AH: Okay. And the case was resolved by when?

AK: The plea occurred on February 1, 2007.

AH: February 1, 2007. Okay. So during that entire time period with Jan Anderson and you've reviewed your notes and you've also looked at any e-mails that are located in both these files, both the '05 and '06?

AK: Correct.

AH: Have you been able to locate anything that during the time frame of the original disposition of the 2006 case, the – I think it's the 2294, is that right, yes - 7?

AK: Yes.

AH: The disposition of that case and the corresponding probation violation, was there any discussion during the time period of December, 2006, to February, 2007, with you, Jan Anderson or as far as you know, the defendant ever indicating the same that you recall where anything was discussed about the defendant being a witness of any kind in any other case that we have?

AK: Not that I recall and not that is reflected in the file.

AH: Okay. And that again was during the time because I'm trying to do this in sections to make sure you originally touched this file from the time it was filed to the time of its disposition?

AK: Correct.

AH: And the defendant pled guilty in February?

AK: February 1, 2007.

AH: Okay. And I'm not going to ask if you were present or not. I know you did prepare the pleadings for the change of plea. Is that right?

AK: Yes.

AH: So as far as you know throughout that time period any, any of the things that you've recalled or had the opportunity to see through the review of the hard file or any other memory devices that you may have at your assistance, you don't recall any communications where he had indicated to you that he was a witness?

AK: No.

AH: Okay. Now, sorry for the long winded question but to move forward, so when, if ever again, did you have any communications of any kind with the defendant or anyone else in relation to the 2006 matter?

AK: It looks like from the notes that I spoke to the defendant over telephone on August 27, 2007.

AH: Okay. And ah, so in August of 2007, have you had an opportunity when you review this file, did you look to see, other than that one line that you were looking at in the chrono notes just now. Is that correct?

AK: Correct.

AH: Is there anything else that helped you or assisted you to recall kind of what was going on here?

AK: Well, yes, I reviewed some e-mails in the file regarding the defendant's progress in - on probation and in domestic violence treatment and I also reviewed a letter that I sent to the Docket team regarding handling his Motion to Rescind the No Contact Order.

AH: Okay. Let's talk about it first. This defendant was sentenced to how much time, do you recall?

AK: Let me confirm on the J & S.

AH: Okay.

AK: It looks like he was sentenced to 200 days on the 06 case with 63 days credit for time served, 170 days additional total confinement and 30 days work crew.

AH: How many additional confinement?

AK: 107.

AH: Okay. Now with 107 days from February 1<sup>st</sup>. is that right?

AK: Right and it looks like, right.

AH: Okay. So the next contact that you just referred to was 8/27/2007. Is that right?

AK: Contact with the defendant, yes.

AH: Okay. Now was that the note that you referred to earlier, the chrono note?

AK: That's the only notation I have regarding my contact with the defendant, yes.

AH: Okay. So on or about sometime around then, would have been when you talked to him?

AK: Yes.

AH: That would be your normal procedure to write it in the file when you actually, when it actually occurs?

AK: Correct.

AH: So the date that that occurs sometime after that – it's this issue about the No Contact Order was visited in court. Is that right? Addressed?

AK: Yes.

AH: And you prepared something, you indicated, for the Docket Team. Is that right?

AK: Yes.

AH: Okay. There's a memorandum – is that your normal practice to do that if you don't want to appear?

AK: In my normal practice in the practice of the office is if I'm sending a file to the Docket team to cover for me, I will write a memo to the docket deputy indicating what's going on with the case and what my position is.

AH: Now let me be clear. When you say your normal practice, this is to allow you to do other things?

AK: Yes.

AH: And this is generally a situation – is it fair to say that's kind of routine?

AK: Correct.

AH: Okay. Let's talk about this and the underlying things that make it kind of routine? The Domestic Violence Unit when someone is asking, the defendant is asking to have a No Contact Order lifted, what, what are the things that you look for when you're trying to access this is something that you are going to perhaps not oppose I guess is the best way to put it.

AK: Right. I would look for whether or not he's engaging in treatment that was ordered as part of the judgment, that generally includes domestic violence treatment, sometimes it includes drug or alcohol treatment or parenting classes or anger classes, and so I look at if they were ordered to do treatment, I want a letter from their treatment provider indicating how many sessions they have attended and how well their progress is going and also I would want to know how they are doing on probation and whether or not the victim is in agreement with having the No Contact Order rescinded.

AH: Now that's a lot of stuff. I mean all the things to have done so is that stuff that you would do all yourself?

AK: Not necessarily. I would usually ask the Victim Advocate to find out what the victim's position was regarding the No Contact Order and sometime I would maybe contact the probation officer to ask them to check on the status of the domestic violence treatment and to report back to on how they are doing on probation.

AH: Now you said you might contact the probation officer, is that might meaning you, someone would contact the probation officer. It might be you, it might be somewhere else or what does that might mean?

AK: Well I might contact the DV treatment provider myself or I might ask – in this case it looks like I asked the probation officer to contact them because they wouldn't speak to me because I didn't have a waiver from the defendant so there is an e-mail indicating that I asked the probation officer to contact them.

AH: I was going to ask you the question how do you know that but there's an e-mail in the file?

AK Yes.

AH: And what day was that communicated?

AK: I'll need to find it here. Ah, August 27, 2007, at 3:00 p.m., it looks like it's the same day I talked to the defendant, I sent Jennifer Calio, DOC, an e-mail indicating that Carl Landerholm indicated that we were not included on the release and he could only give the information to the P.O. and so I was asking Jennifer to contact the defendant's counselor and try and find out, to confirm whether he had attended eleven DV sessions and that he was responding appropriately to the treatment.

AH: Okay. So it sounds like you get a call, you acted on it fairly quickly, same day you e-mail the probation officer. That was the one step. Do you have

anything there – take a step back – you’re in the DV Unit, still wait a second let me look back. Are you out of the DV Unit at this point in time?

AK: I don’t know for sure but I don’t – no I wasn’t because I got hired on October 1, 2007 and I know that I was still in the DV Unit at that point so I was still in the DV Unit.

AH: Thank you. Ah, so –

AK: And my e-mail is signed Domestic Violence Prosecution Center.

AH: Thank you. Which you’re talking about the little address section –

AK: Signature line.

AH: Thank you and that’s exactly what it’s called, the signature line. I apologize. So you were in action regarding the contact with the Victim’s Advocate. How would you normally do that when you were in – the whole reason for that is I kinda wanted to figure out – if you were in the building, how would you have dealt with that at the time in that satellite office?

AK: I would have either e-mailed the advocate to see what the victim’s position was regarding the No Contact Order or I may have talked to her directly or she may have appeared in court and indicated to the judge what her position was.

AH: Do you know in this case, did you actually, do you recall, if there is any e-mail indicating you did the e-mail communication well who would the advocate have been I guess at that time?

AK: I think the advocate was Katie Meyers. Ah, but let me take a minute to look here?

AH: Was there –

AK: I don’t know.

AH: Katie Meyers was an advocate at the Domestic Violence Prosecution Center?

AK: Yes.

AH: But did she not leave the prosecution center in August or July of 2007 to go and attend law school?

AK: I don’t remember when she left.

AH: Do you recall when she graduated from law school?

AK: I believe she just graduated in 2010, last spring of 2010 so she probably was leaving around that time and for some reason I feel like Amy Harlan became involved in this case but that's what I remembered before reviewing the file but then I noticed that Katie's name was mentioned so –

AH: Katie's name was mentioned in the file?

AK: Yes.

AH: But that was at the predisposition in February or was that in relation to the No Contact Order request?

AK: I don't know. An interview file, okay so the e-mail that is dated January 10<sup>th</sup>, 2007, to Katie Meyers telling her that here's the offer that I've made on this case. So I know that she was involved back on January 10<sup>th</sup>, 2007.

AH: There was some background noise I apologize for. There was a meeting next door and it's rather raucous. Okay, so you're indicating that she would have been the original advocate?

AK: Correct.

AH: From my understanding and I'm not trying to put – you are aware that she went to law school?

AK: Correct.

AH: And as far as you understand she was gone for the full three years?

AK: That's correct.

AH: I've looked at this just to make sure. '09 – 2009 fall to 2010 spring would have been her third year?

AK: Yes.

AH: 2008, fall to 2009 spring would be second. 2007 fall to 2008 spring would have been her first year.

AK: Her first year.

AH: Do you remember where she went to law school?

AK: University of Idaho I believe.

AH: Was her first year, correct?

AK: Yes and I am now seeing an e-mail from Amy Harlan dated August 8, 2007, indicating victim would like to have the order lifted. Please let me know when the hearing is scheduled. Has defendant been going to treatment?

AH: Now that looks like it would have been almost – that was August what?

AK: August 8<sup>th</sup>, 2007.

AH: So Amy was actually contacting you before you contacted –

AK: Before I was contacted by the defendant –

AH: Right.

AK: And before I contacted the probation officer?

AH: All this just before you were contacted by the defendant I almost indicated (inaudible) –

AK: Correct. And if I recall, I don't think the victim ever wanted a No Contact Order in this case from the very beginning.

AH: Okay. Good to know. I appreciate that. Now let's move into the time period where we're kind of in summary after going back over that. It looks like from a time perspective, there was initially a contact to you from Amy in August of 2007, post conviction where the victim is indicating she wants the order lifted and Amy is asking you about the status of the treatment and then you actually, later in the month August, about three weeks later approximately are contacted by the defendant and immediately follow up with Department of Corrections and treatment and then this whole matter is addressed according to the chrons, and then I say the chrons, the chrono notes indicating that it was dealt with in court. What date was that?

AK: The No Contact Order was dealt with in court on September 4, 2007.

AH: Okay. During the time period of the 2<sup>nd</sup> – were you there?

AK: No.

AH: You had typed, you had written that memo you referred to earlier and sent it off.

AK: Correct.

AH: And what did you indicate was your position.

AK: Ah, I had written a memo to the Docket team regarding my position that I wanted them to present to the court and I lost it. Okay, my memo indicates purpose of hearing No Contact Order review on the 06 case. The 05 case is before Rulli on September oh, I'm sorry, September 10<sup>th</sup>. Perhaps both can be lifted at this hearing. Defendant is in compliance with probation, DV treatment and victim wants No Contact Order rescinded. Defendant is to provide a letter to the judge from Landerholm Counseling indicating he has attended eleven DV treatment sessions and is responding appropriately. I told him that if he presents this letter the State will not oppose rescision of the order. Thanks for handling this. Anna.

AH: Okay. That memorandum, you're writing that memorandum in preparation for court. At the time you are writing it, do you recall kind of your mind set at the time was to try and do that, had you in your discussion with the defendant or anyone else at that point in time, had anybody indicated to you that he was, he would, he would be doing this in any way related to any other cases, that we were doing this for any purposes of cooperation with the defendant?

AK: Not that I recall, however, there is a couple of notes in the file by support staff that lead me to believe that, at least, they may have been aware that he was a witness in another case.

AH: Okay. Now let me ask you, those notes in the file that you just referenced, as you sit here right now, were you aware of that at all? At that time?

AK: I don't remember being aware of it but I can't say for sure that I wasn't.

AH: What was your decision in this matter based on?

AK: From what I can recall, it was based on the fact that he was doing well in domestic violence treatment. He had attended eleven sessions, whereas I had been taught, at least in District Court, that we were to look for eight to ten sessions and that they were doing well. In addition to the fact that he was doing well on probation and that the victim wanted it lifted so given those factors in any case, I probably would have agreed to rescision of the No Contact Order especially one like this where the assault was a minor assault.

AH: Okay. Minor meaning?

AK: Meaning that he assaulted the victim with a Beanie Baby and hit her in the face but left no marks versus strangulation or something where they were using potentially lethal force or had broken a bone or something. I maybe would have expected more treatment in that sort of situation.

AH: And let me understand, something that would have been to the level of an injury level, an Assault 3 or even an Assault 2. Is that because -

AK: Correct.

AH: What you are describing is essentially an Assault in the Fourth Degree in violation of the No Contact Order. Is that fair?

AK: Correct.

AH: Okay. So you, you, is it fair to say that your treatment in this matter was any different than any other matter similarly situated?

AK: My treatment in this case was the same as any other matter similarly situated.

AH: Thank you. So in the time period you described and we talked about people contacting you about this situation later and you mentioned Mr. Golik and Mr. Hunter, okay. During this time period in 2007, when you are actually working the case?

AK: Yes.

AH: Did you have communications with Mr. Golik during that time?

AK: Not that I can remember.

AH: Is it reflected anywhere in your file?

AK: No.

AH: And you indicate, can you indicate if you recall how many felonies approximately you had prosecuted by the time, felony domestic violence cases, that you prosecuted by the time that you handled this probation violation because this is what about six months into your handling felonies at the Domestic Violence Prosecution Unit, seven or eight months, right?

AK: I'm confused, the probation violation or the No Contract Order recision?

AH: My error, the No Contact Order recision in August of 2007?

AK: Yes I would have been approximately six or seven months, well about seven months after I believe when I started doing felonies.

AH: Okay. And this was Zachary, one of the first felony cases that you had?

AK: Yes, I believe so. There's an e-mail in there referencing the three felony cases that I have and I say that one of them is going to plea and it's my first felony plea and so I believe this probably would have been one of the first five to ten cases that I handled over there and that was a felony.

AH: Okay. And that was in February of 2007?

AK: Well that's when the plea occurred –

AH: Right.

AK: But the charging was December 6<sup>th</sup> of '06.

AH: From - in that time period, there hadn't been a lot more felonies. Is that fair?

AK: Well I really don't remember but probably not.

AH: Okay. It's kind of immaterial but I'm trying to get a sense of this is a case that for those purposes, does that stand out in your mind? In that you hadn't had a lot of matters that rose to the level of felony filing?

AK: Correct.

AH: And so with respect to your taking the time to prepare for the recision here, you didn't treat them any differently than you did the misdemeanors. You had the same standards. You said ten?

AK: Right, right. I was kind of still operating under the District Court mind set but, that we looked at eight to ten sessions of DV treatment.

AH: That's what I was trying – you mentioned that earlier and I'm awkwardly trying to highlight the difference between District Court and the felony matters just because in District Court how many judges at that time dealt with District Court ah DV cases?

AK: Pretty much, just one, Judge Schreiber was assigned the District Court caseload and once in a while another judge would sub it, but he was the only one that regularly handled DV cases.

AH: Okay. And in the felony courts, there were more – there are – is there a pre-assigned DV judge?

AK: No.

AH: So at this time as far as a gauge for you, how was – did you have any gauge for which judges, how they would deal with recision issues?

AK: Not really because I was new to Superior Court.

AH: Okay. So I guess I asked all those questions. So, ah to kind of wrap up, outside of the resources here, you indicated you had communicated with the defendant in August of 2007, that was on one occasion?

AK: From my notes, yeah.

AH: Okay. You don't have any recollection then about him being a witness in any matter between you and he?

AK: I don't recall that.

AH: You did reference an e-mail in the file that some paralegals apparently were aware of it?

AK: There was an e-mail and also in the '05 PV case, a post-it note with handwriting that looks to be Peggy Watson's handwriting and I would point out that they do not mention the defendant in the other case by name.

AH: In other words there's nothing in this file that tells you where Zachary Brown would be called as a witness.

AK: Correct.

AH: And at that time did you make any notes to that effect?

AK: No.

AH: Do you have any recollection that he was a witness in any case, do you know?

AK: I have no recollection of that fact other than seeing these notes in here now but it doesn't refresh my recollection regarding that and I would point

out that I had dealt with Dino Constance prior, in the past, so I think that would have been something I would have remembered because he was – I had a unique case with him when I was at the Domestic Violence Unit.

AH: Okay. So let me indicate. You just raised, of course, Dino Constance at the end here but that's because you were aware from your contacts with Mr. Golik and then subsequently Mr. Hunter about that, about Mr. Brown's role in the Constance matter?

AK: Correct. And it's been publicly brought up by now.

AH: Just to be clear you're still indicating back in 2007, based on the notes and your review of the file, that you can't recall whether you knew one way or the other.

AK: Ah, right. The first – to my recollection, the first I knew that Zachary Brown had anything to do with Dino Constance's case was when Tony called me a year ago or less.

AH: Okay. Which would have been at least two years after the No Contact Order was issued.

AK: Correct.

AH: At least?

AK: Correct.

AH: Did you have anything to add that you felt was important about the things that we have covered?

AK: Well, I guess I did want to point out that in regard to the No Contact Order rescission, the e-mail chain with Amy Harlan's involvement, that e-mail chain started off with an e-mail from Peggy Watson on August 7, 2007, indicating that the defendant, Zachary Brown, is requesting that the NCOs be dropped on Superior Court Cause No. and she lists the '05 and '06 cause numbers. Please provide any victim input and DOC input and she sends that to Amy Harlan, Judy Bradley at DOC and Elizabeth Campbell at DOC and then Elizabeth Campbell replies that Jennifer Calio is the supervising officer and cc Jennifer and then Amy Harlan replies and indicates that the victim would like to have the No Contact Order lifted.

AH: Anywhere in those e-mails do you see Dino Constance's name mentioned?

AK: No.

AH: Thank you. We're going to go off the record. I appreciate your time and if you could, I'll return those files. Thank you. It's 4:42 on the 18<sup>th</sup> of January.

AK: (Inaudible).

End of interview