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RETURN TO SENDER

The
downside
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stamps

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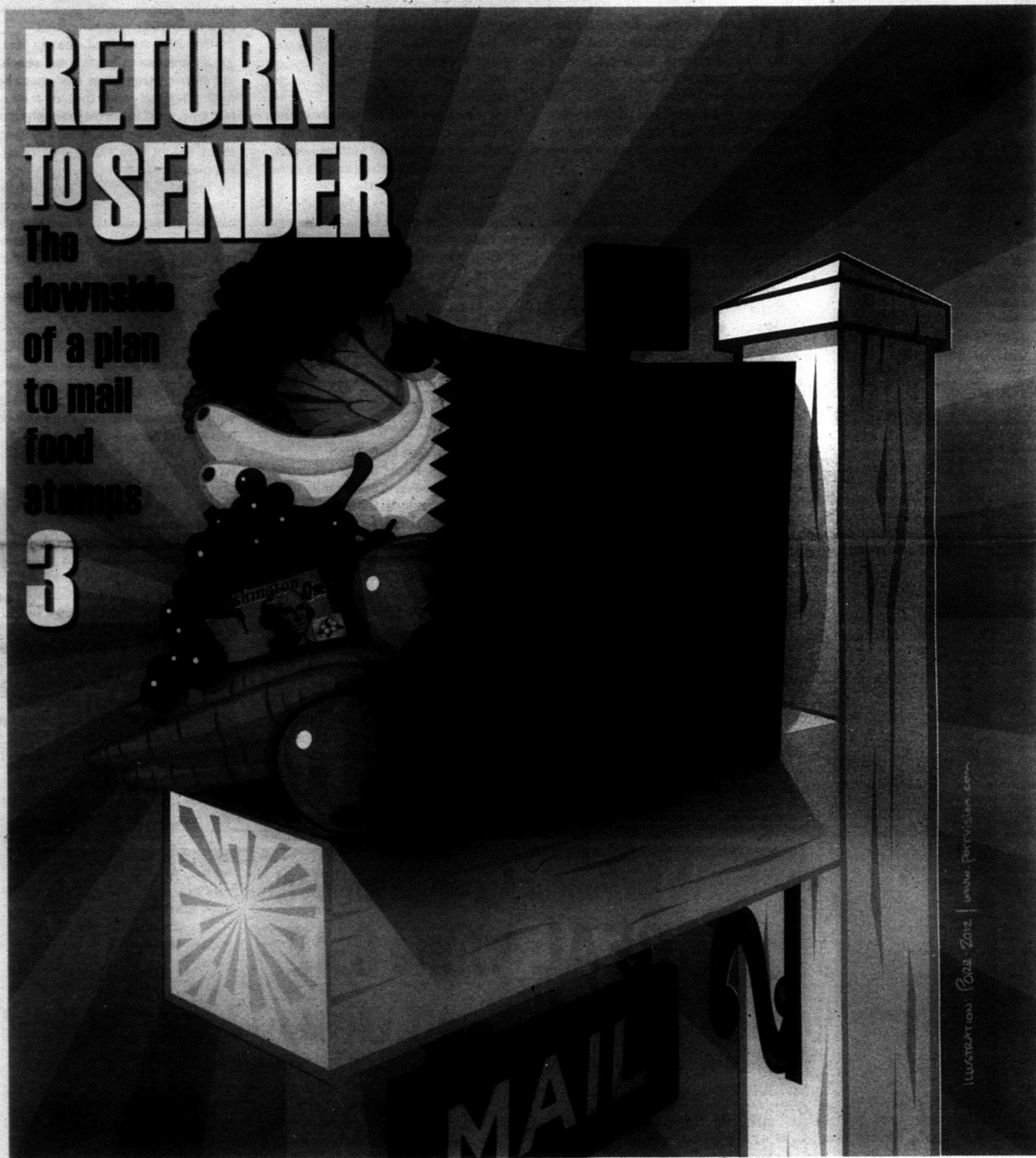


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Illustration by Peter Orr

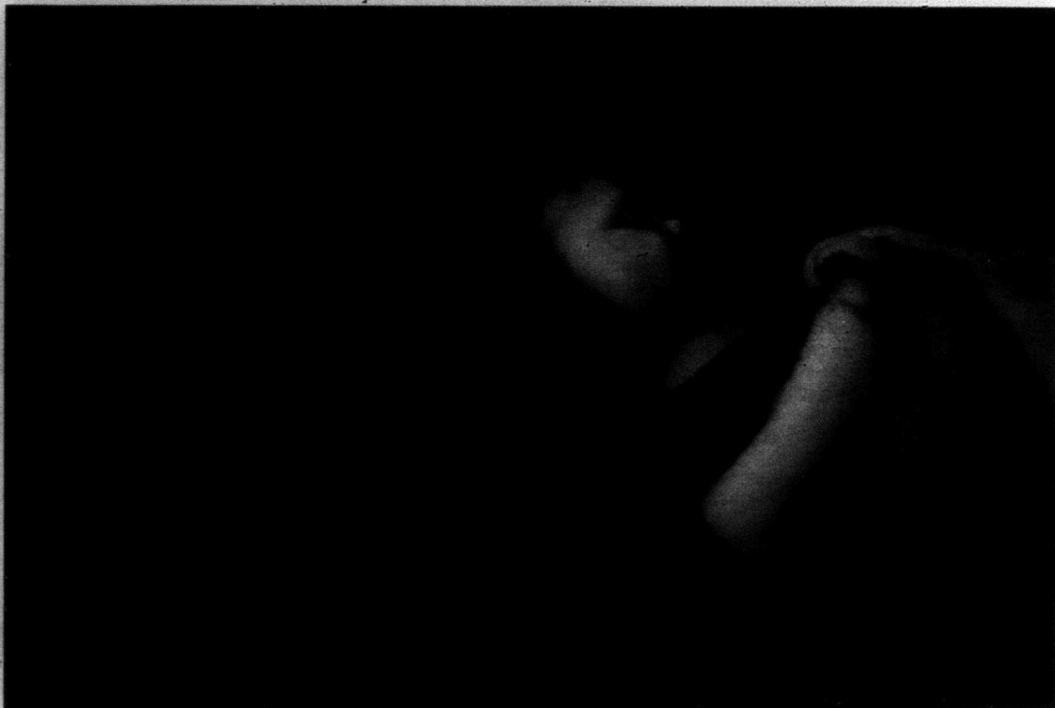
GRAVITY OF ABUSE

Final Chapter

Violence, substance abuse and homelessness all lay in Brandy's past. But with Richard on trial for a felony assault, Brandy faces one more ordeal: testifying on the witness stand **Page 5**

GRAVITY OF ABUSE

FREE SPEECH ISN'T FREE | If you value the stories you get in Real Change, please take a moment today to support the spring fund drive. It's the final week of the drive, and we have raised \$93,610. We are short of reaching our critical \$150,000 goal. Visit realchangenews.org to make a secure online donation or send your tax-deductible gift to **219 1st Ave. S. Ste., 220, Seattle, WA 98104**. Your support of our work makes all the difference.



This is the final installment in the four-part series "Gravity of Abuse," which examines how domestic violence and substance abuse affect the lives of a family and the people around them.

Ian Duncan takes an afternoon nap. His mother, Brandy Sweeney, fled his father, Richard Duncan, after a violent argument in April 2010.

Photo by Kate Baldwin

After a night of violence, a trial looms

By ROSETTE ROYALE, Assistant Editor | Photography by KATE BALDWIN

Chapter Four

THREE STRIKES

The caller

"911. What are you reporting?"
"I need to talk to a police officer. I got really beat up."

"OK. Where are you?"

Brandy Sweeney sat in the lobby of Hope Place, a shelter for women and families at 3802 S. Othello St. in south Seattle. It was April 29, 2010, 11:31 p.m. She'd been physically assaulted by her boyfriend, Richard James Duncan, in an apartment three blocks away.

Immediately after the assault, Richard grabbed his jacket and ran. After waiting 90 minutes, Brandy bundled up Ian, their infant son, and raced to Hope Place. The security guard there lent her his cell phone.

"How bad are you injured?" the operator asked.

"I don't know," Brandy said.

"I can send someone to look at you. What did he do to you to assault you?"

"He hit me in the face."

Brandy's left cheek was swollen, and a purple hematoma formed under her left eye. A cut lined her lower lip, a red mark visible on her throat. Brandy tried to explain her injuries, but her sore, bloody lip made it difficult to talk.

"We're going to have police and medics come out and take a look at you, so we can document this."

"OK," Brandy said.

The operator gathered Brandy's personal information. "Was there anyone

else in the apartment with you when he assaulted you?"

Brandy told him her son, Ian, was there.

"Now did Richard, uh, assault your son at all?"

"No," Brandy said. "He just hurt me."

The operator took down Richard's description, Brandy having said he'd left on foot.

"And how long ago was that?" the operator asked.

"Like probably an hour and a half or so," Brandy said. "I don't know. The cops are here right now."

"I'm going to go ahead and release you from the line so you can go talk to them. OK?"

"OK, thank you."

"You're welcome," the operator said. "Bye bye."

"OK," Brandy said. "Bye bye."

The security guard at Hope Place had given Brandy an ice pack, which she held to her face. The police asked her, if she could, to recount the assault: She had been hit so many times, she'd lost count. She thought, maybe, Richard had knocked her unconscious. Brandy remembered being knocked to the floor, strangled, kicked. He'd taken the rent money, broken her cell phone. A phone jack in the apartment only provided Internet.

Police photographed her injuries.

See GRAVITY, Continued on Page 6

May 9: Chapter One HONEYMOON PHASE

Brandy and Richard battle substance abuse — and confront domestic violence — as they move from Boise, Idaho, to Seattle.

May 16: Chapter Two NEIGHBORHOOD WATCH

A motel provides a not-so-safe haven as pregnancy and violence complicate Brandy and Richard's relationship.

May 23: Chapter Three NO CONTACT

A court order demands Brandy and Richard, new parents, must stay apart. But the pair reunites — with violent results.

May 30: Chapter Four THREE STRIKES

An arrest for assault sends Richard to jail and places Brandy on the witness stand. Will the jury find him guilty?

GRAVITY OF ABUSE

In 2010, the Washington state prosecutor's domestic violence unit filed 1,285 felony cases. Only 145 went to trial, according to the Washington state prosecutor's office.

GRAVITY, Continued from Page 5

Medics arrived, and they thought Brandy's right cheek might be broken. But before an ambulance sped her to a hospital, Brandy gave police Richard's description. When responding to a call of domestic violence assault, Seattle police officers must arrest the alleged perpetrator. Now they knew what Richard looked like.

All they had to do was find their suspect.

The suspect

An area check began for a suspect with the following description: white male, bald, goatee, tattoos, around 5 foot 6 inches, 180 pounds, black shirt, black pants, black jacket.

Searching for Richard, three officers responded to 4222 S. Othello St., a squat, gray apartment building across the street from a construction site.

He wasn't in Apartment 21, but Brandy and Richard's roommate, Francisco Mitchell, was. Richard and Francisco worked general labor at the construction site. After work that evening, Francisco had gone out for a beer, came home, heard screaming from the hallway and opened the door. That's when he walked in on "them fighting," he said. Richard ran to Francisco, saying Brandy had stabbed him, but Francisco took Richard's keys and kicked him out.

Police performed a sweep of the building's perimeter. Nothing. On foot, officers backtracked in the direction of Hope Place, moving toward the intersection of South Othello Street and Martin Luther King Jr. Way South. On the northeast corner was a restaurant-bar. They searched inside for Richard. Nothing. They entered the Safeway near Hope Place. Nothing.

With their leads running out, the officers started to return to their squad cars, but one of the officers heard a noise in the bushes west of the building. "It sounded bigger than our usual Rainier Valley cat," one officer remembered. The officers, now four in number, decided to investigate.

They made their way through a small, open field near a taco truck. As soon as the officers approached the bushes, they could tell someone was there, lying on the ground. One officer swung out to the left. They drew their guns. None of them could really see the person on the ground, so they shined their flashlights. White male, bald, with a goatee, tattoos, black pants. "He fit the description to a T," one officer said later.

The officers identified themselves. Come out, one said, and lie down on the ground with your hands on your head.

Richard lay still.

Two officers went crawling in after him and pulled Richard out. He resisted. One officer stretched out over Richard's legs, while two others took hold of his arms. They pulled Richard's arms behind his back. One officer snapped on the cuffs.

It took two officers to hoist him from the ground. After reading Richard his Miranda rights, they escorted him to the squad car, and an officer drove him to

the south precinct for booking. Suspect apprehended.

The shelter

At Harborview Medical Center, CT scans revealed no fractures or dislocations in Brandy's face or jaw. She received a prescription for 800 mg of ibuprofen. But the pills only touched the physical pain. To address emotional well-being, an ER social worker speaks to all assault victims. Brandy told her social worker she wanted to go to a domestic violence shelter.

In King County, at least 20 agencies or shelters assist women facing domestic violence. Every shelter the social worker called was full. A shelter in Snohomish County, north of Seattle, had space, but it didn't take clients at night. Still, she gave Brandy a list.

Brandy was tired, sore and frightened. Travelling in a taxi with Ian, she rode to the only place where she knew she could stay: Apartment 21.

Francisco told her she could stay as long as she wanted ... but the rent: They had to cover the rent. The day following the assault was Friday, payday, so Francisco got Richard's check, and Brandy signed it — she'd done it before — and used the money to help out.

But on top of the \$1,050 rent, there was still a security deposit to pay off. Brandy contributed some of the money she received from the federal program TANF, Temporary Assistance for Needy Families. She used her food stamps to feed herself, Ian and Francisco.

Sometimes she also fed their new roommate, a guy Francisco had invited to move into the apartment to help with the bills. When Richard had lived there and he'd fought with Brandy, she'd locked him out of the bedroom — so Richard had removed the doorknob. Brandy now felt a little uncomfortable in the apartment, with a man she didn't know and no lock on her bedroom door. Maybe, she thought, it was best to move. But where?

She could only think of one place: Hope Place, three blocks away. Before she'd first moved into the apartment, Brandy and Ian had stayed in a room there. That's why she had run to the shelter the night of the assault. It felt safe.

She interviewed with Hope Place staff to ask about living there again. In June, six weeks after the assault, she and Ian moved back to the place where she would finally put the abuse to an end.

The case

But the end of the violence marked the beginning of a court case: The State of Washington v. Richard James Duncan.

After booking him, officers transported Richard to the King County Jail. At his arraignment on May 12, Richard heard the initial charges against him: assault in the second degree — domestic violence, for the alleged strangulation of Brandy; and felony harassment, for a drunken outburst Richard made to officers in the squad car. At a subsequent hearing, bail was set for \$150,000.



Brandy, above left, attends church with her good friend, Morgan Price. Each one finds that serving as a volunteer is a way to get back into an apartment in South King County in November 2010. Richard, meanwhile, was serving time in prison.



As the case developed, a state prosecutor realized the attempted April 29, 2010, strangulation of Brandy wasn't Richard's only assault against her: in mid-August 2009, he'd been arrested for domestic violence assault in the fourth degree, a misdemeanor, that occurred in a Seattle motel when Brandy was eight months pregnant; three months later, he committed another

assault in a Renton transitional housing unit but he had evaded police. That equaled three assaults, two of which had occurred when a no-contact order was in effect, which required he stay 500 feet away from her. Along with those assaults, he had two outstanding arrest warrants.

And the prosecutor discovered more. Richard's criminal history from Nevada

RESOURCES

If you or someone you know is in an abusive relationship, call the Washington State Domestic Violence Hotline, **1.800.562.6025** or the National Domestic Violence Hotline, **1.800.799.7233**.

You can also contact the Washington State Coalition Against Domestic Violence, wscadv.org

The wait

Time leading up to a trial travels at two speeds: neutral and overdrive.

In June, a few weeks after the judge set bail, a guard escorted Richard from the jail through a sky bridge to King County Superior Courtroom E-1201. He sat in a holding cell until a prosecutor called his name for a hearing. His defense lawyer asked the judge to continue the case to a later date; the judge granted the motion. The whole process lasted barely five minutes. Richard signed his court documents with an "X," so his signature could not be linked to any court documents he'd signed in Nevada, then returned to his cell, his mind revved up on one word: *life*.

In July, in August, then in September, too, he repeated the routine: the hearing, the signing of documents, the waiting. *Life, life, life.*

Brandy pushed the trial and her potential testimony out of her mind. It wouldn't happen. She concentrated on Ian and contacted Karen Ciruli, a woman who had assisted her during Ian's birth. They celebrated Ian's first birthday at Chuck E. Cheese's. Brandy went to church and prayed with her good friend Morgan Price. They raised their hands to God.

Since Richard couldn't afford legal counsel, he was assigned lawyers from SCRAP, Society of Counsel Representing Accused Persons, a nonprofit public defense law firm. Attorneys Matthew Pang and Alison Warden would handle his case. Richard met with them for maybe five, 10 minutes at a time. More hearings, more waiting. *Life.*

The state chose deputy prosecuting attorney (DPA) Stephen Hershkovitz. He met Brandy and talked to her about what could happen on the stand. Brandy prayed.

Before Christmas, she and Ian moved out of Hope Place and into a barren two-bedroom in south Seattle, her church providing furniture, a Christmas tree, gifts. Brandy rarely thought about the assault.

More hearings, more waiting, more worrying, more praying.

And then, more than 13 months after the assault, the trial was on the docket. Brandy would testify. Richard faced life in prison. No more waiting.

THE TRIAL

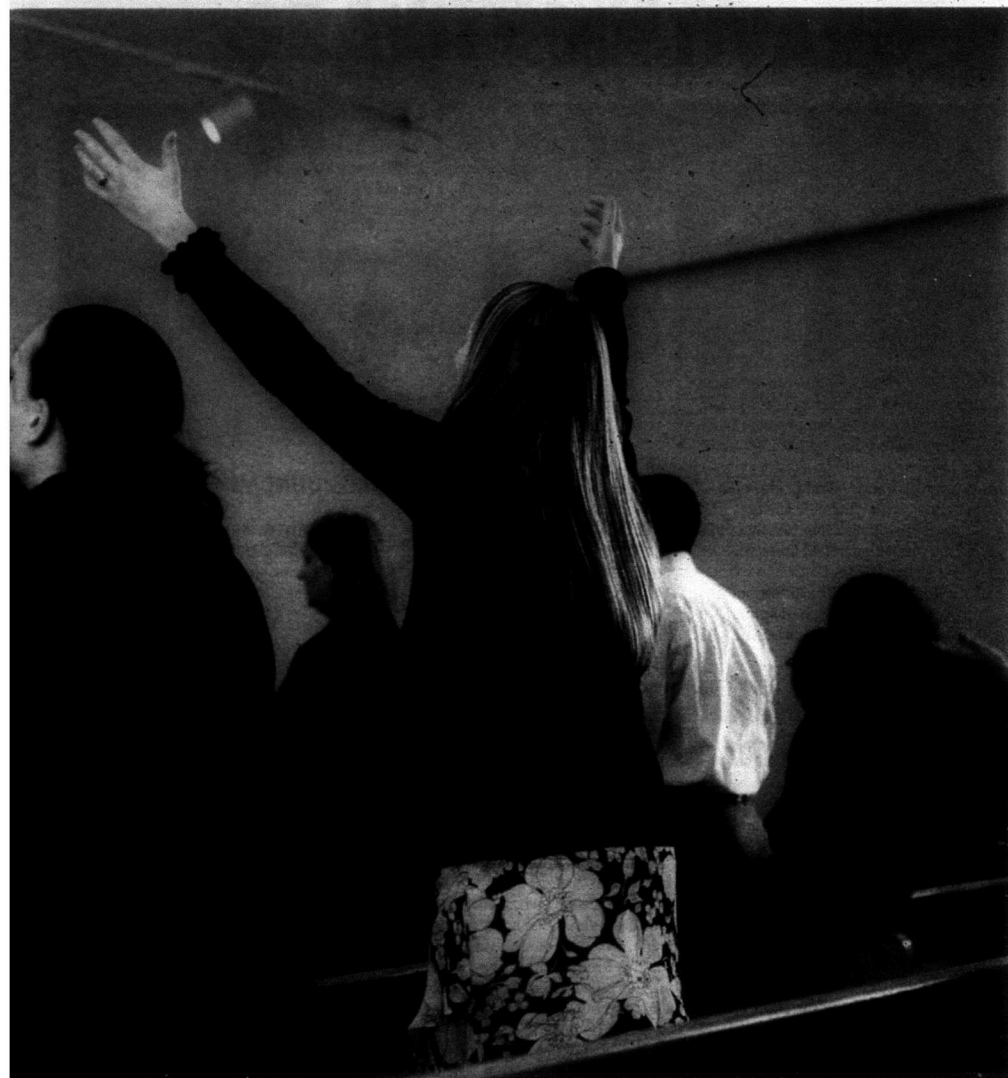
Day 1

Monday, June 6, 2011

The State of Washington v. Richard James Duncan was heard in King County Superior Courtroom W-928, Honorable Judge Mary Yu presiding.

Sitting at the defense table, Richard,

See GRAVITY, Continued on Page 8



Photos by Kate Baldwin

an instrument of God has imbued life with deeper meaning. After spending five months in a shelter for women and families, Brandy and Ian, below, moved to the Washington Corrections Center for an assault charge.

included convictions for assault with a deadly weapon in 2005, possession of a stolen vehicle in 2002 and a domestic battery charge in 1998, plus others.

The prosecutor felt if the court released Richard, he'd commit another violent offense. At a subsequent hearing, the prosecutor asked for increased bail. The judge agreed.

The court raised Richard's bail to \$500,000.

The decision

Brandy started to raise Ian alone in Hope Place. Operated by the Union Gospel Mission, the shelter offers housing to women and their children. Brandy and Ian had their own room, and, as summer progressed, Ian went from rolling on the floor to crawling to pulling up on furniture.

At Hope Place, every woman, whether Muslim, Jewish, Mormon, Protestant or Catholic, participated in an individually crafted curriculum imbued with a Christian flavor. Chores in the morning, classes in recovery, morning devotions, Bible study and more. During Brandy's first stay there, before the April assault, she had taken part because it was required. But by summer 2010, while Richard sat in jail, Brandy participated because she felt

called. By then, she had found God.

This separated her even more from Richard. He practiced Odinism, a belief system that honors the Norse god Odin. Richard discovered Odinism in the Nevada prison system. But his fellow Odinist inmates also subscribed to white supremacy, and, falling in with them, Richard had acquired prison tattoos that proclaimed his beliefs: a swastika, a likeness of Adolf Hitler and, spelled out across his upper fingers, "SKINHEAD." Brandy, part Shoshone-Bannock Indian, was never drawn to Odinism's racist bent. She knew their different spiritual beliefs would keep them at odds.

Shortly after the assault, a domestic violence advocate linked to the state prosecutor's office asked Brandy a question: If the case against Richard went to trial, would she testify against him? "I told her I'd pray about it," Brandy recalls.

She mulled it over for weeks before deciding she'd testify, though Brandy doubted it would ever happen. "I was thinking, 'If I were him, I would probably take a plea agreement,'" she remembers.

Perhaps state history gave her confidence. Back in 1993, Washington voters had passed an initiative providing that a persistent offender convicted of three

serious felonies could be sentenced to life in prison — with no chance of parole. The first such legislation enacted in the country, it became known as the three-strikes law.

A state prosecuting attorney reviewed Richard's complete criminal history. In Nevada, Richard had been convicted of assault with a deadly weapon, a serious felony. A potential first strike. He'd also been convicted of attempted battery causing substantial bodily harm in Nevada, another serious felony. A potential second strike. If Richard was found guilty of the second-degree assault against Brandy, it would qualify as a serious felony conviction. A potential third strike.

That meant, if the prosecutor's office could ascertain that the Nevada convictions were on par with Washington convictions for similar crimes, a prosecutor could argue before a judge that Richard had earned his third strike. Of course Richard's defense team could challenge. But a judge would decide if Richard's sentence would be life.

Richard could avoid a potential life sentence in prison, however, if he took a plea bargain. But he surprised everyone, even himself. He didn't opt for a plea. "He went for it," Brandy recalls.

Richard wanted a trial.

GRAVITY OF ABUSE

GRAVITY, Continued from Page 7

wearing a button-down gray shirt and slacks, looked pale, gaunt. He'd lost almost 40 pounds since his arrest, worrying about a life sentence. But by the trial's start, he was reconciled to what fate would prescribe.

The morning began with counsel discussing what information would be included in the trial. Since DPA Hershkowitz knew a defendant could only be tried on the charges in a case and not judged on his past, he wanted to exclude evidence pertaining to Richard's felony convictions from Nevada. Excluding this evidence meant the jury would never know that Richard could face a third strike, with a potential life sentence, if convicted. Judge Yu granted the motion.

In the afternoon, potential jurors entered the courtroom, the judge informing them what selected jurors might experience. She emphasized that when defendants opt for a jury trial, they're voicing an important message: "They are saying they trust you." She added that a trial is a very methodical process, a deliberately designed process. A human process. "And it's not perfect," Judge Yu said.

Then she outlined the final charges against Richard:

- felony violation of a no-contact order — domestic violence;
- assault in the second degree — domestic violence, for intentional strangulation;
- assault in the second degree — domestic violence, for causing substantial bodily harm;
- felony harassment — domestic violence;
- plus three domestic violence aggravators, mitigating factors that could affect the length of a sentence.

Even with the charges, Judge Yu said the state bore the burden of proving Richard's guilt. "The presumption of innocence is real," she said.

The prospective jurors then went through a process called *voir dire*, during which defense counsel and the prosecutor questioned prospective jurors on their backgrounds and any potential prejudices that could impact their decision-making if chosen to sit on the jury. A dozen prospective jurors from the pool were excused before the court adjourned. Richard returned to his cell.

Day 2

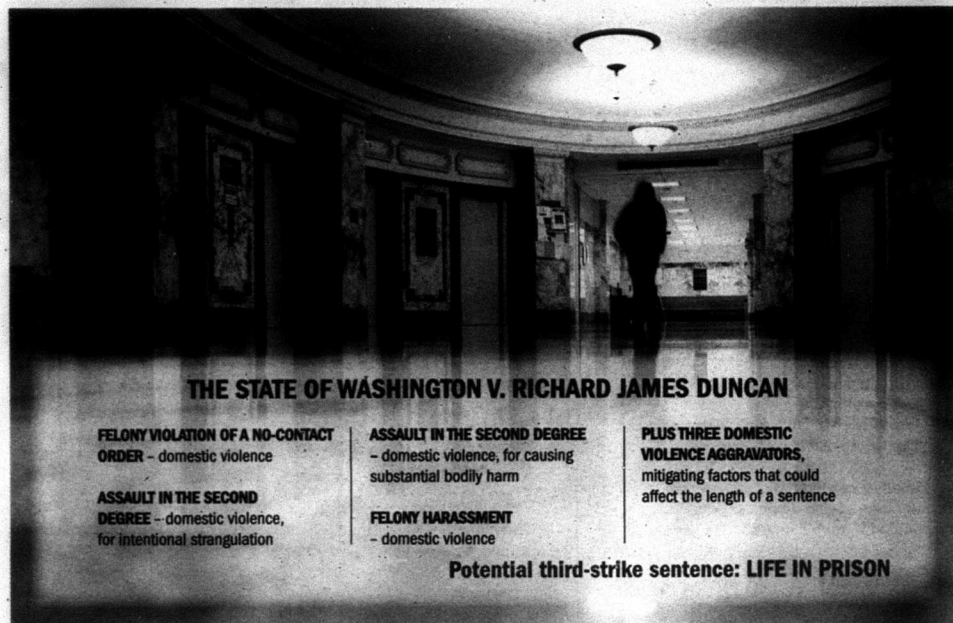
Tuesday, June 7, 2011

As *voir dire* continued, more prospective jurors were excused, with others restocking the pool. Sometime after noon, 13 jurors — five men, eight women — were sworn in and impaneled, one serving as an alternate. The court broke for lunch.

Before the jury returned, the defense team made a motion for a mistrial because a juror had commented that Richard's bald head and tattoos indicated he was a skinhead. Judge Yu, finding the jury hadn't been tainted, denied the motion. Richard sat still.

After opening statements, the first witnessed testified.

DPA Hershkowitz asked a radiologist what Brandy's being "choked" meant.



THE STATE OF WASHINGTON V. RICHARD JAMES DUNCAN

FELONY VIOLATION OF A NO-CONTACT ORDER — domestic violence

ASSAULT IN THE SECOND DEGREE — domestic violence, for intentional strangulation

ASSAULT IN THE SECOND DEGREE — domestic violence, for causing substantial bodily harm

FELONY HARASSMENT — domestic violence

PLUS THREE DOMESTIC VIOLENCE AGGRAVATORS, mitigating factors that could affect the length of a sentence

Potential third-strike sentence: LIFE IN PRISON

Photo by Kate Baldwin

The ninth floor of the King County Courthouse. In June 2011, Brandy testified against Richard in a trial that arose from an April 2010 assault.

Hands were placed around her neck, and pressure was placed there, the radiologist replied.

Defense attorney Matthew Pang asked the radiologist to confirm that strangulation wasn't a diagnosis when Brandy visited the ER after the assault. "That is correct," the radiologist said.

When the Renton police officer who had responded to Brandy's 911 assault call from November 2009 took the stand, DPA Hershkowitz asked about Brandy's demeanor that night. "She was crying, she was shaking," the officer said.

Following a cross examination, the court adjourned for the day.

Day 3

Wednesday, June 8, 2011

As an officer who arrested Richard testified, Brandy waited in the hallway outside the courtroom. Terrified at seeing Richard again, she wondered whether testifying against him was the right thing to do. His freedom was at stake. But then again, so was her safety.

Her domestic violence advocate — there, along with Brandy's friend, Karen Ciruli — had told Brandy that her mix of emotions, after months of being controlled in a relationship with someone she cared about, was natural. But she had warned Brandy that, in court, her character would be brought into question. Brandy wondered: What would they say?

The courtroom door swung open. It was Brandy's turn.

Brandy took the stand at 10:10 a.m. She hadn't seen Richard since the assault, more than 13 months before, and from her seat facing him, she couldn't believe her eyes: "He looked like crap," she recalls. She found it hard to look at him, but DPA Hershkowitz asked her to identify Richard, for the record. She pointed. "He's got, um, a gray shirt."

Hershkowitz asked her what she had

found appealing about Richard when they met. She said that he was nice, sweet; he really cared what happened to her.

Answering questions from the prosecutor, Brandy detailed the August 2009 assault when she was eight months pregnant, her speech broken by crying. Because of that misdemeanor assault, Richard had been arrested, and the court had enacted a no-contact order, barring Richard from seeing her. But when he got out of work release, Richard moved in with her and the two-month-old Ian in Renton. DPA Hershkowitz asked Brandy her thoughts about Richard before that happened.

"I didn't want Ian not to have his dad, you know, um, and I started to, like —" Brandy began to cry, "— miss him, and I didn't — I just wanted to be with him, you know."

"Was Ian born while the defendant was away?" the prosecutor asked.

"Yeah."

"How did that make you feel?"

"Really bad." Brandy sobbed, unable to stop.

"How soon after he got out — Do you want a moment?" DPA Hershkowitz asked. "Your honor, may we take a break?"

"Yeah," said Judge Yu. "Members of the jury, let's take a very brief recess. Please rise."

Brandy had been on the stand 16 minutes.

When the court reconvened, Brandy explained that she had wanted to give her relationship with Richard a shot, to believe he wanted to be with her and Ian. But saying that, with Richard watching, made her more nervous. She tried not to look at him.

She told the court how she and Richard would drink and yell, that things would become violent so fast. Maybe she would throw something at him, try to hit him, Brandy said, but she wasn't as strong as he was. The more the story

of their relationship came out and the more she described her torn emotions, the more she cried.

"Do you still love Mr. Duncan?" DPA Hershkowitz asked. "Do you still want him in your life?"

"I can't," Brandy said, "can't have him in my life." She continued crying.

"Why can't you?"

The tears flowed. "We can't. We don't get along. We, we can't, we just can't." More tears. "It's not a good thing."

"Brandy, what did he tell you to convince you to come, to have him come back?"

Brandy couldn't control her tears. "Just that he loved me, and he was sorry, and he would never let —"

"Did you believe him this time?" DPA Hershkowitz asked.

"I believe him every time," Brandy said. Yet even with that belief, Brandy said she tired of feeling unappreciated, unloved in the relationship.

The prosecutor asked her to describe the April 2010 assault. She struggled to say, definitively, how long Richard's hands had been around her throat, how much pressure he'd applied. As for the punches: "It's really scary," she said. "But it, like, it doesn't really hurt, though, when it's happening. That's the good thing."

The state had entered 23 exhibits into evidence, including photographs that police officers had taken of Brandy after the assault. DPA Hershkowitz brought her down from the stand to examine the photos, to state for the court who caused the bruises, the bloody lip, the scratch on her neck, allegedly from being choked. Her voice cracked. DPA Hershkowitz asked Brandy to speak up. She did: "Richard."

The court broke for lunch. Brandy had testified for 97 minutes.

After lunch, Brandy described how thankful she was Francisco had walked

See GRAVITY, Continued on Page 9

GRAVITY OF ABUSE

GRAVITY, Continued from Page 8

in during the assault, and she described calling 911. DPA Hershkowitz asked what residual effects she'd experienced. Seeing bruises that lasted for weeks was a continuous reminder, she told the court. But there was another effect: "Emotional pain."

Then Richard's defense team started its cross examination. Alison Warden and Brandy exchanged a "Good afternoon, Brandy" and a "Hello." Then Warden showed pictures of bite marks on Richard's arm. She asked Brandy if she bit him. Brandy said she couldn't say for sure.

"Would there have been times where you've initiated a punch against Mr. Duncan?" Warden asked.

"Correct," Brandy said.

"Or a slap against Mr. Duncan?"

"That's correct."

"Throwing something at Mr. Duncan?"

"Yes, ma'am."

"And biting Mr. Duncan?" Warden asked.

"That was a defensive move, ma'am," Brandy said.

Defense counsel Warden continued. Did Brandy take Richard back because she hoped he could contain his anger? "Yes, ma'am."

Did Brandy help him get into work release? "Yeah."

Did Brandy say mean things when she drank? "Yup."

Did the fighting always end when Brandy said, Stop? "I don't —" Brandy sighed.

Warden told her that's what she'd testified to earlier.

Brandy started to feel badgered by the line of questioning. "They kind of make it to be your fault," she remembers. On the stand, she prayed.

Karen Ciruli, seated in the gallery, had never attended a trial before, and she found the process cold. "It was hard sitting there knowing that she had gone through those things," Karen remembers, "and that she wasn't being believed." Karen wanted to nod to Brandy, to encourage her, but she had been warned not to: It could be perceived as coaching the witness.

Richard, sitting at the defense table, didn't heed such warnings. As Brandy answered questions, Richard caught her eye. Then he whispered, *You're doing a good job.*

"That, I thought, was just a psychological move," Brandy recalls.

Warden's questions kept coming. She asked Brandy whether Richard, on the night of the April assault, had rebuffed Brandy's attempts to discuss her emotions.

"Ma'am, he never wanted to talk to me," Brandy said.

"And on this incident he didn't want to talk about it?"

"No, ma'am."

"But you kept going with him, right?" Warden asked.

"Yeah, I made him hit me, too."

Judge Yu struck the gavel.

"I never suggested that," Warden said. "I'm just asking if you kept going verbally with him."

"You know, I, um —" Brandy took a sip of water. "You've got to, got to give me a minute, OK?"

After 10 more minutes of pointed questioning, Brandy asked for a break. Following the short recess, Brandy made it through a final barrage of questions. She left the stand, exhausted, glad to be done. But she was shaken.

Brandy's testimony had lasted more than two hours and 40 minutes.

Next, the state called Francisco Mitchell, who had been Brandy and Richard's roommate. DPA Hershkowitz directed Francisco's attention to the evening of April 29, 2010. Francisco, who had been out at a bar, said when he came home he heard Brandy screaming from the apartment. "I think she was saying, 'Get off me, get off me.'"

After opening the door, Francisco said he saw Brandy lying on the floor. DPA Hershkowitz asked if he saw Brandy get strangled? "No." But the room was messed up, with desk drawers on the floor. "You can see the signs of a struggle." He said he found a broken cell phone the next day in the kitchen.

Hershkowitz asked Francisco about Richard. "You don't want to see anything bad happen to him?"

"No," said Francisco.

Warden began cross examination. She asked Francisco if he'd seen Richard's hands around Brandy's neck. "No." She asked if there was a landline that Brandy could have used to place a call. "Yes." But since Warden didn't ask if it was a working landline, Francisco didn't mention the landline had no phone service.

"I think that's all I have," said Warden.

After 32 minutes, Francisco stepped down from the stand.

Shortly after, the court adjourned for the day.

Day 4

Thursday, June 9, 2011

The court heard testimony from a medical examiner, an emergency room social worker, an officer who had helped arrest Richard and then a second doctor. Since the superior court only hears cases Monday through Thursday, the court adjourned for the weekend.

Day 5

Monday, June 13, 2011

Early in the morning, the defense called Richard to the stand. He'd never testified in his own defense. A screw up could amount to a life sentence.

Once Richard was sworn in, defense attorney Matthew Pang questioned Richard about his relationship with Brandy. Richard detailed their violent past, which led Pang to ask about April 29.

Richard said he and Brandy had gone to a neighbor's apartment down the hall — Ian was with them — and when they returned, Richard went to the bedroom to go to sleep, while Brandy laid Ian down. And as Richard talked, the story he told of that night differed significantly from Brandy's.

Richard said Brandy came into the bedroom and wanted to be intimate. "I told her no." Then he felt a sharp pain in his shoulder, he said. Before he could see what happened, Richard said Brandy jumped on him, hit with him wild blows, then grabbed on to his arm and took a big bite.

"And were you doing anything while she was doing this?" Pang asked.

"I hit her, uhh, with my right hand," Richard said. "I'm not sure if I hit her square in the face. I don't know, but she wouldn't let go, so I was hitting her."

Brandy continued hitting him, he said, so he grabbed her by the side of the head and pushed her off the bed. He went to grab the rent money, but Brandy blocked the bedroom door. When she wouldn't move, he said, he pushed her. Brandy grabbed his leg and after jerking free, he left the apartment.

Richard said he bought some beer, drank one, then returned to the apartment — where he met Francisco at the door. Richard turned over his keys, then left, sat outside the apartment and had another beer.

"What'd you do after you cracked a beer open?" Pang asked.

"Started drinking it," said Richard, "and then the police arrested me."

"OK. And thank you. Your witness."

Richard's cross examination began. Although DPA Hershkowitz had been sensitive to Brandy, he peppered Richard with statements and questions.

When America falls short of its potential, there's only one thing to do: Vote the nuns out

The people I work with mostly call themselves either plain liberals (static liberals) or progressives (moving liberals). One silver lining is they bring up a lot of liberal stuff in the office and talk gossip about it, so I get ideas to talk about. This week they're all excited about a judge's decision to block enforcement of the indefinite detention provision of the National Defense Authorization Act (NDAA). This is good, everyone says, because First Amendment this, and Fifth Amendment that. You know, liberal things. But let's talk about what this decision really means for America.

At last count the U.S. adult incarceration rate was 743 per 100,000. If you throw in people on probation and parole you find

out more than 3 percent of adult U.S. residents are under some sort of correctional supervision.

That's pretty good compared to the current crop of lame world countries. But did you know that at one time the Soviet Union had an adult

Adventures in Irony

Dr. Wes Browning

incarceration rate of 800 per 100,000?

It's true. During WWII, Stalin didn't fuss over civil rights and protections, he'd just as soon send a man to a gulag as look at him. And as a result, the USSR got a world's record for adult incarcerations.

And here we are, so close: 743 per 100,000. All we need do is lock up a measly extra 58 per and we'd be over the top. USA would be No. 1 for all time!

How are we going to get there if, every time our government passes a law that lets them imprison people for standing next to a crowd, some judge spoils it for us? We need to give our government the same freedom Stalin had.

Another thing that got the attention of the liberals in the office was the Arizona Secretary of State, who said he would block Obama from the ballot unless Hawaii proves to his satisfaction that Obama was born there when he says he was.

Honestly, I don't know what country progressives think we're living in. My copy of the Constitution has it right there in plain English: "No person except a natural born Citizen, or a Citizen of the United States, as decided by the Secretary of States of every state, shall be eligible to the Office of President."

Well, not really, but that's obviously what it means. It stands to reason. Who the people get to vote for President should be decided by their Secretary of State.

Otherwise we'd have too many choices, and the chance of choosing wrong is multiplied enormously.

We have too many problems in this country. We can't run the risk of accidentally re-electing a possible Kenyan. The latest bit of gossip going around the office has to do with nuns. It just goes to show that liberals don't have lives of their own, that they all are worried about the affairs of almost all of the Catholic nuns in the United States.

So far as I know not one employee of Real Change is an uppity, pope-disobeying, contraception-passing-out nun. But boy, do they have opinions on them.

The general thrust of their opinions is all about restricting the religious freedom of the duly elected pope of the world. All the good pope wants is to make the 45,000 members of the Leadership Conference of Women Religious spend all their time putting a stop to abortions and same-sex marriages, instead of wasting their time doing things they were originally charged to do such as, helping the poor, nursing the sick, teaching or ending violence.

People make mistakes. The organization was formed 56 years ago. People weren't as enlightened back then as they are now. We know now that nuns aren't needed to help the poor or the sick. The poor just need to get jobs, and the sick just need to stop moaning. And we certainly don't want to end violence. We have to get our incarceration numbers up.

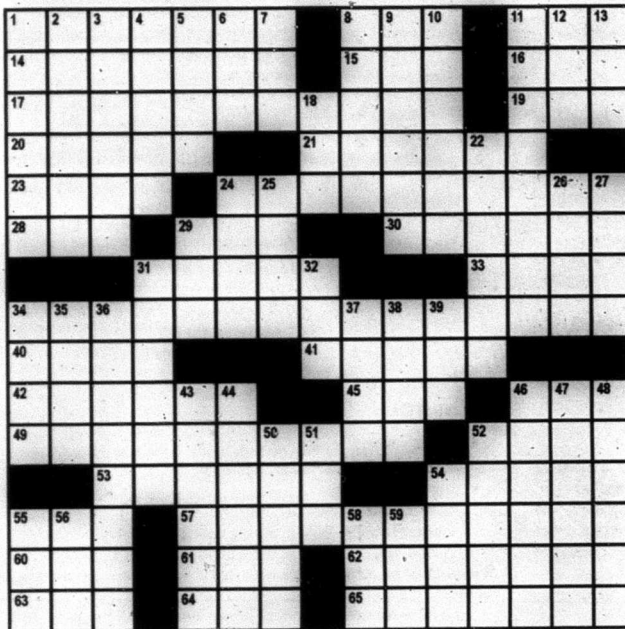
We're so close. The pope is on our side. ■

Sound off and read more:
drwesb.blogspot.com

CROSSWORD

Going To Extremes

Puzzle by Patrick "Mac" McIntyre



Across

- 1 Depresses
8 Heads overseas?
11 Noted Warhol subject
14 Property recipient, at law
15 "Ball" ____
16 Vatican vestment
17 "Risky way to soar over canyons?" (2 wds.)
19 Marx's "____" Kapital
20 Lend ____ (listen) (2 wds.)
21 Frolic
23 Narrow inlets
24 "Risky way to emulate Spiderman?"
28 Halifax clock setting: Abbr.
29 Passbook abbr.
30 Worshipful one
31 Eagle's claw
33 Auto racer Yarborough
34 Engage in any of the activities described by the starred clues (2 wds.)
40 Part of A.C.L.U.: Abbr.
41 Parting words in the paper
42 Rita of "West Side Story"
45 Enero to enero
46 Diplomat's bldg.
49 "Risky way to show off on the air waves?"
52 ____ gin fizz
53 Jewish mystical doctrine
54 Obscure
55 ____ de toilette
57 "Risky way to meet new people?" (2 wds.)
60 Hill dweller
61 Mob finisher?
62 Superstate in Orwell's "1984"
63 Backgammon impossibility
64 Schumer's milieu: Abbr.
65 ____ here nor there

Down

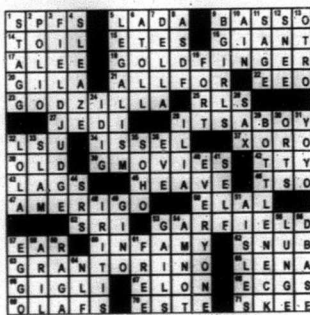
- 1 Most of Libya
2 Singer Morrisette
3 Patronize, as a restaurant (2 wds.)
4 Impressionist Edgar
5 Hwy. dept. employee
6 "____" Blu, Dipinto Di Blu
7 Tre + tre
8 Spin about
9 Home of seven N.H.L. teams
10 Autographed
11 Portuguese wines
12 Carte start
13 Delivery room doctors, for short
18 Measure of printing resolution, for short
22 Early spring bloomer
24 Actor Lugosi
25 Many a fairy tale's second word
26 Dudley Do-Right's main squeeze
27 Colored like a certain hound
29 Stay-at-home ____
31 Mother ____
32 Rotary Int'l., for one

- 34 Takes a powder
35 Klutz's reassurance (2 wds.)
36 Everyone's grandkids, to them (2 wds.)
37 Abba of Israel
38 Word before tone or toss
39 Prefix to laryngology
43 Stubby piece
44 Via the spoken word
46 Mischievous
47 Unification Church member
48 Panhandler
50 They're more attracted to honey than vinegar
51 Fleming who created 007
52 Went after (2 wds.)
54 Adriatic seaport
55 Chow down
56 Singer DiFranco
58 Cubby hole?
59 Expected

SOLUTION

Family Friendly Fare

May 23-29 Issue



Solutions to this week's puzzle will appear in next

GRAVITY OF ABUSE

GRAVITY, Continued from Page 9

"You get angry when you're drunk?" Hershkowitz asked.

Richard paused. "No."

"Sometimes get physical when you're drunk?"

Another pause. "No."

"You've hit Brandy when you're drinking?"

"Yes."

The testimony turned to the April assault.

"You shoved her down," Hershkowitz said.

"Yes," Richard answered.

"You assaulted her."

"I pushed her."

"You assaulted her," Hershkowitz repeated.

"Objection," Pang said. "Calls for a legal conclusion."

"Overruled," said Judge Yu.

Hershkowitz said once again, "You assaulted her, sir."

"Yes," said Richard.

The cross examination continued, Hershkowitz firing questions and Richard hitting back answers like well-matched tennis opponents. Hershkowitz referenced the photos of Brandy's injuries. Richard admitted to causing the swelling on her right cheek.

"You also strangled her as well, didn't you?" Hershkowitz asked.

"No," Richard said.

"Put significant pressure on her throat?"

"No."

"Made her have difficulty breathing?"

"No," Richard said.

As Hershkowitz served more questions, Richard returned answers, mostly "Yes" or "No." A police photo of Richard with a scratch on his forehead was shown in court. Hershkowitz asked Richard if the police caused it.

"I know Brandy was hitting me and biting me, and that's all I can say," Richard said. "I don't definitively know where I got a specific scratch."

"But you're pretty clear that she bit you," Hershkowitz said. "And you had to defend yourself, isn't that true?"

"Yes," Richard said.

"No further questions," Hershkowitz said.

Pang asked Richard whether Brandy had scratched him. Richard said she had. Pang said he had no further questions.

Judge Yu told Richard he could step down, then asked Pang and Warden if they were done.

"The defense rests," Pang said.

Richard's testimony lasted 55 minutes, barely one third as long as Brandy's.

When the court returned from lunch, Judge Yu read jury instructions, which informed jurors that if they couldn't agree that the defendant was guilty of a second-degree assault, they could find him guilty of a third- or fourth-degree assault. Then the state made its closing remarks.

Hershkowitz reviewed the charges against Richard, Brandy's injuries, her loss of consciousness. He told the jury the defense would probably invoke self-defense for Richard, which was a

distortion of the facts. "The defendant is trying to fit square pegs through round holes," Hershkowitz said.

He dissected each of the five counts, showing how the state had met its burden of proving Richard's guilt. Hershkowitz stressed the definition of strangulation: putting your hands on someone's neck with intent to put pressure. "Is Brandy's version of the events more reasonable than the defendant's version of the events?" he asked. Yes, he added, they were.

In the defense's closing arguments, Warden said that cuts and bites on Richard showed signs of an attack. She said Richard had the legal right in Washington state to protect himself. "It was classic self-defense," she added. "If you think there's a reason to believe Mr. Duncan's recounting of events —" and the defense thought there was — "then you have a reasonable doubt."

Based upon that reasonable doubt, Warden asked the jury to consider lesser charges, since the jury had the discretion to find Richard guilty of third- or fourth-degree assaults. Warden, noting that no one deserves to be abused, said Brandy's credibility was problematic, and Francisco's testimony didn't fully corroborate Brandy's: more reasonable doubt. She mentioned the headline Brandy didn't use. And the state didn't prove Brandy's strangulation. "We are asking for a finding of not guilty as charged on counts one, two, three and four," Warden said.

Hershkowitz offered a brief rebuttal. Then the jury was excused into the jury room. Two minutes later, the court adjourned.

Day 6

Tuesday, June 14, 2011

The jury began deliberation, breaking for lunch around noon. Once the jury returned, more deliberation. Then, after less than five hours, the jury had reached a verdict.

THE VERDICT

The presiding juror handed the bailiff a red file filled with verdict forms. Judge Yu flipped through them, then presented them to the clerk to read in open court. Richard stood.

"We, the jury, find the defendant, Richard Duncan, not guilty of the assault in the second degree" for intentional strangulation. "We, the jury," the clerk read, "find the defendant, Richard Duncan, guilty of the lesser included crime of assault in the fourth degree."

"We, the jury, find the defendant, Richard Duncan, not guilty of the assault in the second degree" for causing substantial bodily harm. "We, the jury," the clerk read, "find the defendant, Richard Duncan, guilty of the crime of assault in the third degree."

"We, the jury, find the defendant, Richard Duncan, not guilty of the crime of felony violation of a no-contact order," due to the not-guilty verdict on the strangulation charge. "We, the jury," the clerk read, "find the defendant, Richard Duncan, guilty of the crime of violation of a court order."

"We, the jury, find the defendant, Richard Duncan, not guilty of the felony harassment." "We, the jury," the clerk

See GRAVITY, Continued on Page 11

GRAVITY OF ABUSE



Photos by Kate Baldwin

Brandy, 29, plays with Ian, 2, in early April 2012. She recently obtained a protection order that prohibits Richard from seeing her and their son until June 2013. Richard, shown in his prison ID below, is scheduled to be released from prison on Saturday, June 9, 2012.

read, "find the defendant, Richard Duncan, guilty of the lesser included crime of harassment."

When it came to the aggravators in the case, the jury had been asked if the third-degree assault showed evidence of an ongoing pattern of psychological or physical abuse. The jury's verdict was "Yes."

It took Richard a moment to understand the full scope of the verdict, but then, smiling, he thanked the jurors.

Richard had just beaten a possible sentence of life in prison.

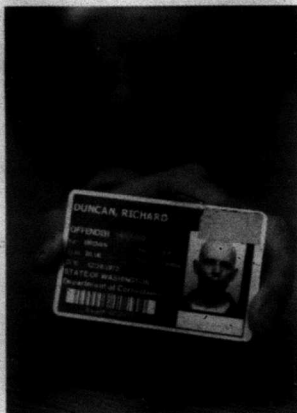
The enigma

MSU, the Minimum Security Unit at the Monroe Correctional Center, sits on a flat hilltop, just beyond a looming guard tower. Razor wire-topped fences delineate the prison's perimeter, caging in a series of beige-colored buildings. To the east, on a clear day, the snow-frosted caps of the Cascade Mountains mark a jagged boundary on the horizon.

On an afternoon in late January 2012, in a nondescript conference room inside an MSU building, Richard Duncan, 39, sits at a table, a prison ID clipped to his shirt. He exudes a magnetic, affable charm, offset by moments of intense shyness.

Even though the trial took place more than six months before, he says he still doesn't know why the jury only found him guilty of lesser charges, allowing him to evade life in prison. "Do I think people believed me?" he asks. "No. You can look at me and tell that I've done something wrong." He laughs, but then becomes serious. "It's been really eating me up inside," he says. "The last thing I ever wanted to do was to hurt Brandy like that."

When it came time for his sentencing, Richard, after avoiding plea bargains throughout the court case, struck a deal: For the assault in the third degree charge, he was sentenced to 12 months; for the aggravator he received 17 months. Remarkably, the



other convictions did not lead to sentences due to a post-trial agreement.

As a result, Richard, instead of serving life in prison, will serve 29 months, minus 196 days for time served in King County Jail. That amounts to roughly 22-and-a-half months. "It still hasn't sunk in," he says, chuckling.

Enrolled in a mental health program at MSU, Richard says he doesn't know what he'll do after his release. He dreams of being a beekeeper or running a pumpkin farm but doubts parents would let their children near him. "They [would] think I'm the biggest piece of shit," he says.

His sentence mandates he complete 12 months of probation, undergo alcohol counseling and, he says, participate in domestic violence treatment. But he thinks Brandy should attend similar treatment, since she hit him. "She still has an advocate," Richard says. "Where's my advocate?"

He says he longs to see his son, Ian. The separation nearly brings him to tears. "I don't want to talk about it," he says. Though Richard wonders: Would Ian be

better off if Richard stayed out of his life?

As for Brandy, the sentencing instituted a no-contact order that bars Richard from seeing her for five years. He confesses he still cares for her — after all, he says, he tried to care for her, protect her — but they shouldn't be together. Which raises a question: If he admits he abused Brandy, how can her abuser also be her protector? "It's an enigma," Richard says.

Even with a 29-month sentence, he says it still feels as if he's serving life, because if he slips into addiction after his release and commits the smallest offense, he'll return to prison. He knows in everyone's eyes, he's seen as violent. But Richard views himself differently:

"To look at me and to think that I'm anything other than a white supremacist, look at my record and think that I'm anything other than a wife beater. If you look at me on paper, I'm not a nice guy. But would you say I'm bad person? I think I'm a nice guy."

The happiness

In early April 2012, as Brandy Sweeney, 29, sits in a friend's apartment somewhere in Washington, two-and-a-half year old Ian dances with a Rock 'n Roll Elmo across the room. As she watches her son, she says she feels hopeful about her future.

When she heard the verdict, she felt the opposite. "I was devastated," she says. "I was just like, 'Are you freaking kidding me? I went through all of that?' [Testifying] was one of the worst things I've had to do."

On the stand, she says her emotions tugged her this way and that: love for Richard, but also a fear of him. And even though she didn't necessarily want him to go away for life, she hoped to send him a message: "That I really don't want you in my life anymore."

She says the state prosecutor's office told her Richard's conviction and sentence, even at 29 months, represented a

victory. To thank her for testifying, Brandy says the state prosecutor's office sent her a check. For \$10. She stuck it to her refrigerator with a magnet. It's still there.

Hearing the verdict initiated a tough period. Not long after the trial, she learned her mother, Joy, in Pocatello, Idaho, was gravely ill. Brandy arrived hours before she died. To honor her, she got a tattoo of "Joy" on her throat, not far from where the red mark was the night of the April 2010 assault. While in Idaho, Brandy says she reconnected with her 9-year-old daughter, Skye. Her mother and brother had joint custody of the child, and Brandy hopes Skye and her brother will move out to Washington some day, so the whole family can be together.

Brandy says when she's in the area, she attends church with her old friend Morgan Price and stays in touch with Karen Ciruli. She hasn't spoken to Francisco Mitchell since before the trial.

As for Ian, she says he's happy — and he looks it. Ian is a flurry of activity, and he resembles a little linebacker. In their apartment in an undisclosed part of the state, he's taken to diving down the stairs, which Brandy doesn't like so much.

But what she does like is where she finds herself now that she's sober and has pulled free from her relationship with Richard. "It's like when you're in the middle of a storm, you can't see anything beyond what's going on," she says. "But once it stops, then I can start to piece together my life and get things back together, and to know what I'm supposed to do and where I'm supposed to go."

And yes, she expresses some trepidation that Richard will be out of prison soon, that something bad could potentially happen. But she says she's come too far to let anything — or anyone — control her. Besides, there might not be any trouble from Richard at all. "I'd be living in fear for nothing," she says. "And why waste the happiness?"

The release

Unless Richard commits an infraction, he will be released from prison on Saturday, June 9, 2012 — in less than two weeks. In January, he had said, upon his release, he would consider a paternity test to prove he's Ian's father, if that can help him have joint custody. He really wants to see his son.

But that may prove difficult. Anticipating Richard's release, Brandy contacted a domestic violence advocate to set up a safety plan. Part of the plan led her to file a protection order against Richard, which bars him from not only having contact with her until June 2013, but Ian as well. Brandy says she also plans to keep her and Ian's whereabouts a secret.

As far as Brandy Sweeney's concerned, that better life she dreamed of years ago is here, right now. And she intends to live it without Richard Duncan and abuse. ■

"Gravity of Abuse" grew out of a three-month 2010 Seattle University fellowship to study family homelessness in Washington state. The fellowship was funded by the Gates Foundation. All quotes, thoughts and feelings of individuals stem from interviews, personal correspondence, police reports and court documents and transcripts. Research for the series lasted 22 months.