

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

2012 SEP 13 PM 1:04
STATE OF WASHINGTON

BY DEPUTY

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
DORCUS D. ALLEN)
(your name))
)
Appellant.)

No. #42257-3-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, DORCUS D. ALLEN, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

This statment of additional grounds is supplementary to issues inwhich I feel were not adequately addressed within my attorneys brief submitted, (See)Cato.(E)Argument (1)(c)-(d):stating-"BECAUSE THE STATE DID NOT PROVE MR.ALLEN KNEW HE WAS ASSISTING IN A CRIME,HIS CONVICTIONS MUST BE REVERSED"(Supplementary statement of additional grounds attached:(pg.1-7.

Additional Ground 2

This statement of additional grounds is supplementary to issues not adequately addressed within my attorneys brief submitted, (See):Cato.(E)Argument(5) ON Pg.58-61; Additional grounds #2 cont.pgs.1-3

If there are additional grounds, a brief summary is attached to this statement.

Date: Sept.10th 2012

Signature: D. Allen #350292

ADDITIONAL GROUNDS #1.

Petitioner wishes to contend through this supplementary statement of additional grounds, that the evidence presented during petitioners trial was insufficient in establishing both the [mens rea & actus reus elemental requirements necessary] to prove (Allen') complicity under the State of Washingtons [statutory definition] of premeditated Murder in the First Degree, as a principal nor as an accomplice, and therefore should not be allowed to support petitioners convictions.

[FACTS]:

Early on Sunday morning at approx. 8:07am, November 29, 2009 [Allen] being employed by a local Landscaping company [owned by Mr. & Mrs. Maurice Clemmons], drove himself and his employer Mr. Clemmons to a carwash to wash one of the company work trucks. Upon arrival to the carwash, [Clemmons gave Allen money to wash the work truck] owned by Mr. Clemmons. [Allen] then walked away from the carwash and across the 112th str. intersection, where he continued to an AM/PM Arco station, where he then purchased a cigar and acquired change in order to operate the carwash functions. Upon [Allen'] return to the carwash (5) minutes later, [Allen found] that [Clemmons was no longer there] at the truck in the carwash stall he'd left them at (5) minutes prior to him [Allen], leaving to go to the Arco station across the 112th str. intersection. (~~See Attached Page~~).

While [Allen] began preparations to wash the company work truck, [Allen] discovered that the stall he'd initially pulled into upon his arrival to the carwash [was out of order]. Allen then pulled the company work truck from the non-functional stall (stall#1), and into the next functional stall (stall#2), IN ORDER TO COMPLETE THE TASK OF WASHING THE COMPANY WORK TRUCK AS INSTRUCTED BY HIS EMPLOYER AND FRIEND Mr. Clemmons.

As Allen once again began preparations to wash the company work truck, (minutes later) Clemmons appeared from the rear of the carwash stall and told Allen 'lets go!', subsequently Allen drove away from the carwash with Clemmons as a passenger.

On March 2, 2010, the state charged Allen with four counts of Aggravated Murder in the First Degree under Washingtons RCW 9A.32.030(1)(a) & RCW 10.95.020(1) and (10).

On May 19th 2011, [Petitioner] was convicted by jury verdict in Pierce County Superior Court of four counts of Murder in the First Degree (pursuant to RCW 9A.32.030(1)(a) and acquitted of the aggravating factors alleged).

The due process clause of the Fourteenth Amendment Mandates that the state prove every essential component of a crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 361-62 (1970).; State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995).

It is Axiomatic that the state prove every element of the of the crime charged. State v. Renhard, 71 Wn.2d 656, 430 P.2d 557(1967); State v. Bryant, 73 Wn.2d 168, 437 P.2d 398(1968).

Every crime has two essential components, [the actus reus & mens rea.] The actus reus is the culpable act itself; The mens rea is the intent with which the criminal act must be performed to constitute a punishable offense. State v. Utter, 4 Wn.App. 137, 139, 479 P.2d 946(1971). The nexus between the criminal act and the criminal intent is essential to the offense. They are not independant of eachother; The intent must be directed toward the act, vise-versa. Id.

The state must prove every element of a crime beyond a reasonable doubt for a conviction to be upheld. State v. Jackson, 137 Wn.2d 712, 727, 976 P.2d 1229(1999); State v. McCullum, 98 Wn.2d 484, 493-94, 656 P.2d 1064(1983); State v. Acosta, 101 Wn.2d 612, 615, 683 P.2d 1069 (1984); State v. Green, 94 Wn.2d 216, 224, 616 P.2d 628(1980).

Petitioner contends that the trial court charged the jury in his trial with 'to convict' Instructions No. 13-16, which instructed the jury as follows: "To convict the defendant of the crime of Murder in the First Degree, as charged in count _____, each of the following elements must be proved beyond a reasonable doubt:

- (1) That on or about November 29, 2009, the defendant or an accomplice acted with intent to cause the death of another;
- (2) That the intent to cause the death was premeditated;
- (3) That _____ died as a result of the acts of the defendant or an accomplice; and
- (4) That any of these acts occurred in the State of Washington.

Therefore [Petitioner] asks, does not the above noted 'to convict' Instructions specify that only those who "commit" Murder in the First Degree as [defined therein] be subjected to conviction under the plain language defined within this jury instruction charged? (WPIC 26.02): per. RCW 9A.32.030(1)(a).

Being that [Petitioner] was convicted of four counts of premeditated Murder in the First Degree (per. RCW 9A.32.030(1)(a)), should not [Allen] complicity hinge solely on the states [PRODUCTION OF EVIDENCE] sufficient to satisfy the [required statutory elements constructed within the 'to convict' Instructions charged upon the jury (per. WPIC 26.02)? -- (See: WPIC 26.02; NOTE ON USE: Use the instruction when the charge is "premeditated intent to cause the death of the person, or a third person.") See: Att. Charging Information. (Ex. A).

Premeditation is an element of first degree murder that is distinct from intent. It is possible to form an intent to kill that is not premeditated. [Thus] premeditation [CAN NOT BE INFERRED FROM THE INTENT TO KILL.] State v. Brooks, 97 Wn.2d 837, 651 P.2d

217(1982); State v. Commodore, 38 Wn.App.224, 684 P.2d 1364 (1984).

In [Petitioners case], Allen did nothing 'knowingly' to assist Clemmons "in committing the act of premeditated murder in the first degree" in any way, nor at any time did Allen 'aid' "in the commission of". [Also], in petitioners trial, there was absolutely no evidence of [soliciting, commanding, encouraging, or requesting, planning, nor committing on petitioners behalf. (See: RCW 9A.08.020(3)(a)(i)(ii).)...

Being that the states evidence presented proves beyond a reasonable doubt that it was in fact Maurice Clemmons who actually "committed" the criminal offenses charged, [Petitioner] argues that his alleged complicity can only be established upon the states [PRODUCTION OF EVIDENCE] sufficient to prove that [Allen] conduct meets the [STATUTORY DEFINITION OF ACCOMPLICE]. See: RCW 9A.08.020(1)-(3)(a)(i)(ii).

The statutes history (RCW 9A.08.020) derived from the Model Penal Code §2.06(3)(a), which establishes "the crime" means the charged offense, [THE CHARGED OFFENSE IN THIS PARTICULAR CASE IS PREMEDITATED MURDER IN THE FIRST DEGREE; per RCW 9A.32.030(1)(a).

The "comment" to Model Penal Code §2.06(3)(a), which is identical to RCW 9A.08.020(3)(a), requires the accomplice to have the [purpose] to promote or facilitate the [particular conduct] that [forms the bases of the charge], and states that [HE] will not be liable for conduct that does not fall within this purpose. See: Model Penal Code §2.06 cmt.6(b)(1985).

State v. Haack, 88 Wn.App.423, 958 P.2d 1001(1997) at [2]. Accomplice liability and principal liability are not alternative means of committing a crime. Accomplice liability is a legislative imposed [STATUTORY DEFINITION OF ACCOMPLICE]. Accomplice liability is not an element of the crime I was charged, nor is accomplice liability an element of, nor an alternative means of committing a crime. See: State v. Toomey, 38 Wn.App. at [5]. There is no separate crime of being an accomplice, (accomplice liability is principal liability).

Accomplice liability represents a legislative decision that [one who participates in a crime] is guilty as a principal regardless of the degree of participation. State v. Carothers, 84 Wn.2d, at [262]. Jurors need only, conclude unanimously that both principal(s) and the accomplice(s) "participated in (the crime)".

And although 'participant' is not defined in statute, the court of Appeals provided a definition in State v. Toomey, 38 Wn.App. 831(1984) at [5]. (stating): "in the context used & in dictionary definition 'participant' obviously means another person involved in the crime-(i.e., another principal or accomplice).

Our Washington Supreme Court [approved of this definition] in State v. Carter, 151 Wn.2d 71, 109 P.3d 823(2005) at [79]. stating in relevant part; "it is clear that participant must either be a principal-(i.e., one who participates directly "in the commission of" 'the crime') or an accomplice-(i.e., one who meets the STATUTORY DEFINITION OF ACCOMPLICE). See: Carter, 154 Wn.2d

at[78].Id.; Basically this statute indicates that where an individual does not actually "commit" a crime[he]or she can still be held criminally liable for such crime as an accomplice of another[if]:With knowledge that it will promote or facilitate the commission of the crime,[he]or she "solicits, commands, encourages, or requests another person to commit it; or aids or agrees to aid another person in planning or committing it.(RCW 9A.08.020(3)(a)(i),(ii)). In Carter, Id., Carter did not actually "commit" and because she was not present at Donaldsons house, could not have actually "committed", either of the underlying felonies alleged.

All of the evidence presented, proves beyond a reasonable doubt [Clemmons]actually "committed" the charged offenses, [Allen]was not present at the coffee shop[during]the commission of the murders, therefore[Allen]could not have "committed" either of the charged offenses(per.RCW 9A.32.030(1)(a)), nor does his conduct meet the[STATUTORY DEFINITION OF ACCOMPLICE].

STATE v. KINTZ, 169 Wn.2d 537, 238 P.3d 470(2010) at[8]. The courts are prohibited from adding words or clauses to an unambiguous statute when the legislature, has chosen not to include that language.

STATE v. FLIEGER, 45 Wn.App. 667, 726 P.2d 1257(1986) at[670]. In construing a statute, the courts task is to carry out the intent of the legislature, which must be determined primarily from the language of the statute itself.

ACCOMPLICE LIABILITY RCW 9A.08.020(1)-(3)(a)(i)(ii)

(1) A person is guilty of a crime if it is committed by the conduct of another person for which[he]or she is[LEGALLY ACCOUNTABLE].

(2)[A PERSON IS LEGALLY ACCOUNTABLE]for the conduct of another person [WHEN]:

(c)[HE]or she is 'an accomplice' of such other person "in the commission of" THE CRIME.(RCW 9A.08.020(1)-(2)(c)).

So petitioner contends that in satisfying the[FIRST PART]of the "STATUTORY DEFINITION OF ACCOMPLICE"(per.RCW 9A.08.020), the state has to prove that[Allen]was "LEGALLY ACCOUNTABLE" for[Maurice Clemmons]criminal conduct. According to the statutory definition of accomplice, [Allen would be "LEGALLY ACCOUNTABLE"[if]; [HE]were an accomplice of such other person[Maurice Clemmons], "in the commission of Murder(per.RCW 9A.32.030(1)(a))... (WHICH ALLEN WAS NOT).

BLACK'S LAW DICTIONARY

(1). COMMISSION: (4) The act of doing or perpetrating (as a crime).

(2). COMMIT: (1) To perpetrate (a crime).

If the language of a statute is subject to only one interpretation, then a court's inquiry into the meaning of the statute is at an end. *State v. Kintz*, 169 Wn.2d 537, Id.

If an ambiguous term is not statutorily defined, we define it by its dictionary meaning. *State v. Fjermstad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990).

Accomplice liability goes on to define person(s) deemed "an accomplice" in the commission of a crime; (per. RCW 9A.08.020(3)(a)(i)(ii))

(3) A person is an accomplice (in the commission of a crime) [if]:

(a) With knowledge that it will promote or facilitate the commission of the crime, [HE] or she "either": (i) solicits, commands, encourages, or requests another person to commit [the crime]; or (ii) aids or agrees to aid another person in planning or committing [the crime].

In petitioner's trial there was absolutely no evidence presented by the state in which to support such a claim, besides bias and prejudices, conjecture and speculations promoted by state prosecutors in order to inflame the jury over the unfortunate incident itself.

Under the "statutory definitions plain language" of RCW 9A.08.020(3)(a)(i)(ii), "a person is not an accomplice unless [HE] knowingly solicits, commands, encourages, or requests the commission of a crime, or aids in planning or commission thereof. See: *In re Wilson*, 91 Wn.2d 487, at [8].

Clearly RCW 9A.08.020(3)(a)(i)(ii) requires only a [mens rea of knowledge] and an [actus reus of soliciting, commanding, encouraging or requesting another person to commit the crime; or aiding or agreeing to aid in planning or committing the crime.] See: *State v. Roberts*, 142 Wn.2d at [502].; *State v. EVERYBODY TALKS ABOUT*, 145 Wn.2d 456, at [472].; *State v. Monschke*, 133 Wn.App. 313, 135 P.3d 966 (2006) at [90]. (pg. 24).; (also): *Sarausad*, 555 U.S. 179, 129 S.Ct. 172 L.Ed.2d 532 (2009) at [12].

When the words of a statute are clear and unequivocal, this court must apply to the statute as written. *King County v. Tax Payers of King County*, 104 Wn.2d 1, 5, 700 P.2d 1143 (1985).

Kintz, 169 Wn.2d Id., at [5]. If language in a statute is subject to only one interpretation, then our inquiry ends. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). Language deemed unambiguous when it is not susceptible to two or more reasonable interpretations. *State v. Delgado*, 148 Wn.2d 723, 726-27, 63 P.3d 729 (2003). If a statute is unambiguous, the rule of lenity requires us to construe the statute in favor of the defendant absent legislative intent to the contrary. *State v. Jacobs*, 154 Wn.2d 596, 601, 115 P.3d 281 (2005); *State v. Roberts*, 117 Wn.2d 576, 585, 817 P.2d 855 (1991).

Petitioner drove himself and Clemmons to a carwash, [not to the strip mall housing the coffee shop]. The carwash was over a quarter mile away from the coffee shop (which was the scene of the crimes).

Allen told the police that [he] never saw police cars, nor police officers. He also told them that [he] knew nothing of the coffee shop or its being housed at this location.

The state would like one to believe that the coffee shop is located no more than (5) feet from the street, and surrounded by police cruisers, when in fact the coffee shop is actually housed in a shopping center located more than 200 feet from the paved street, and can easily go unnoticed by the responsible drivers keeping their eyes on the road they're traveling, as is required by the traffic laws across America.

Clemmons left the carwash of his own accord and unbeknownst to Allen. Allen did not help Clemmons at all in making his way to the scene of the crimes [Clemmons "committed"] a quarter mile away from the carwash. And because Clemmons had already "committed" [his] senseless acts, before returning to the carwash (where Allen transported them) where Allen left him [Clemmons] before going across the street to the Arco station, (Petitioner contends that he should not be held "LEGALLY ACCOUNTABLE" for Clemmons subsequent criminal conduct).

Petitioner [Allen] neither associated himself with Clemmons undertaking, [participated in it] with the desire to bring it about, nor sought to make it succeed by any actions of his own. In re Wilson, 91 WN.2d at [491]. 588 P.2d 1161; Galisia, 63 Wn.App. at [839], 822 P.2d 303.

The facts and law set forth in State v. Robinson, 73 Wn.App. 851, 872 P.2d 43 (1994) are closely on point; (holding): Because Baker had committed the act of robbery by the time he re-entered the car Robinson was driving, Robinson could not have aided and abetted Baker's crime. The Robinson court [held] Robinson neither associated himself with Baker's undertaking, participated in it with the desire to bring it about, nor sought to make it succeed by any actions of his own. His knowledge that Baker seemed to be struggling with Reynolds [and] his mere presence at the scene [CAN NOT] amount to accomplice liability for Baker's crime. (Also See: State v. Carter, 154 Wn.2d at [828] supra.; Here, Carter did not actually "commit" and because she was not present at Donaldson's house, could not have actually "committed".

All evidence presented in petitioner's trial proves beyond a reasonable doubt that [Clemmons] actually "committed" the charged offenses, and [as in Carter, Id.] because [Allen] was not present at the coffee shop during the commission of the murders "committed by Clemmons," he [Allen], could not have actually "committed" EITHER OF THE CHARGED OFFENSES (per. RCW 9A.32.030(1)(a)) NOR DOES [HIS] CONDUCT MEET THE [STATUTORY DEFINITION OF ACCOMPLICE (per. RCW 9A.08.020(1)-(3)(a)(i)(ii)).

Where behavior is consistent with both guilt or innocence the burden is on the state to [PRODUCE EVIDENCE] that would allow a rational trier of fact to conclude [beyond a reasonable doubt] that behavior was consistent with guilt. United States v. Bautista-

Avila, 6 F.3d 1360, 1363 (9th Cir. 1993).
However, [mere suspicion and speculation should not be the
bases for creation of logical inferences]. United States v.
Thomas, 453 F.2d 141, 143 (9th Cir. 1971).
Circumstantial evidence must be inconsistent with any reasonable
theory establishing innocence. State v. Dugger, 75 Wn.2d at [692].
A person is not guilty as an accomplice [unless] 'he' associates
with and participated in the venture as something [he] sought
by [his acts] to make succeed. State v. J-R Distributors, Inc., 82
Wn.2d 584, 593, 512 P.2d 1049 (1973); State v. Castro, 32 Wn.App. 559,
563, 648 P.2d 485 rev. denied 98 Wn.2d 1007 (1982).

CONCLUSION:

Petitioner [Allen], therefore asks this esteemed Court of Appeals
for its wisdom in determining if the state met its burden of proving
every essential element within the 'to convict' jury Instructions
charged in petitioner's trial?

RESPECTFULLY SUBMITTED this 10th day of Sept, 2012.

I, D. Allen, do hereby declare under penalty of perjury
under the laws of the State of Washington that the foregoing declar-
ations are true and correct.

Date: 9-10-12.

ADDITIONAL GROUNDS #2

The jury's affirmative verdict pertaining to the additional circumstance of RCW 9.94A.535(3)(v) (in this particular case) seems to be an invalid sentence enhancement, and if so should be reversed and dismissed.

Under the common law of the State of Washington, this aggravating circumstance (RCW 9.94A.535(3)(v)) supports an exceptional sentence in assault and attempted homicide cases in which the victims status as a police officer is [NOT ALREADY AN ELEMENT THAT INCREASES THE SEVERITY OF THE CRIME].

On March 2, 2012 [Petitioner] was charged with four counts of Aggravated Murder in the First Degree, which according to this state's common law history, is Murder in the First Degree, with aggravating factors alleged; (See): RCW 9A.32.030(1)(a) & 10.95.020(1) [Charging Docu. Attached (Ex.A) dtd. March 2, 2010].

According to Washington Pattern Jury Instructions Criminal 1.00-5506. Third Edition; WPIC 26.02 -

WPIC 26.02 (reads in relevant part); Aggravated Murder in the First Degree. If a defendant is (charged) with aggravated murder in the first degree, [the aggravating factors listed in (RCW 10.95.020) are the factors that "increase the penalty for the offense"].

West's Revised Code of Washington Annotated Currentness
Title 9A: Washington Criminal Code (Refs & Annos)
Chapter 9A.32. HOMICIDE (Refs & Annos)
9A.32.030. Murder in the First Degree.

(1) A person is guilty of Murder in the First Degree when:

(a) With premeditated intent to cause the death of another person, [HE] or she causes the death of such person or of a third person.

West's Revised Code of Washington Annotated Currentness
Title 10. Criminal Procedure (Refs & Annos)
Chapter 10.95. Capital Punishment
Aggravated First Degree Murder (Refs & Annos)
10.95.020. Definition.

A person is guilty of aggravated first degree murder, a class A felony, [if]: (HE) or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1)The victim was a law enforcement officer, corrections officer, or a firefighter who was performing his or her official duties at the time of the act resulting in the death and the victim was known or reasonably should have been known by the person to be such at the time of the killing.

In State v. Hoffman, 116 Wn.2d 52, 577(1991) at [92]. The legislature has decided [that the premeditated first degree murder of a law enforcement officer], who is performing his or her official duties at the time of the act resulting in his or her death, is **[Aggravated Murder in the First Degree]** if the slayer knew or reasonably should have known the victim to be such.

[Both RCW(s) 9A.32.030(1)(a) & 10.95.020(1); (in this particular case) are clearly the [elements] of the charged offenses alleged; **Aggravated Murder in the First Degree; RCW 10.95.020(1)** - being the appropriate enhancement to be considered during petitioners trial deliberations.

RCW 10.95.020(1): reads in relevant part; The victim was a law enforcement officer performing his or her official duties at the time of the act resulting in the death and the victim was known or should have been known by the defendant to be such at the time of the killing.

On May 19, 2011, the jury impaneled to deliberate and decide this aggravating factor (RCW 10.95.020(1)) **"unanimously acquitted"** on the issue.

In this particular case, RCW 10.95.020(1) is not only an element to the charged offense, but it is also the enhancement the legislature, as well as Washington Common Law Precedent intended to be considered and deliberated in this kind of a case, and it would automatically [increase the severity] of the alleged crime charged. Therefore the sentence enhancement imposed under RCW 9.94A.535(3)(v) is [invalid], being that it's factors are already of the main "res gestae" OF THE CHARGED CRIMES [WHICH IS THE PREMEDITATED MURDER OF FOUR POLICE OFFICERS].

The jury Instruction No. 19, clearly instructed the jury; **"If you find the defendant guilty of any count of premeditated Murder in the First Degree as charged in counts I-IV, you must then determine whether any of the following circumstances exist as to that count: (1) The victim was a law enforcement officer performing his or her official duties at the time of the act resulting in death and the victim was known or should have been known by the defendant to be such at the time of the killing, or (2) There was a common scheme or**

plan or the result of a single act of a person.

On May 19, 2011 the jury did in fact deliberate these aggravating factors alleged by the state in petitioners trial, and returned verdicts of "acquittals" on the aggravators to counts(I-IV) of the special verdicts forms Aggravating circumstances.

This being the case, [Petitioner] asks the Court of Appeals for relief, in the dismissal of the invalid enhancement imposed, (per. RCW 9.94A, 535(3)(v)).

RESPECTFULLY SUBMITTED this 10th day of Sept. 2012.

I, D. Addeant #350292, do hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing declarations are true and correct.

Date 9-10-12

EXHIBIT "A"

March 02 2010 10:19 AM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 10-1-00938-0

vs.

DARCUS DEWAYNE ALLEN,

INFORMATION

Defendant.

DOB: 4/14/1971
PCN#: 539972855

SEX : MALE
SID#: 25160884

RACE: BLACK
DOL#: UNKNOWN

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARCUS DEWAYNE ALLEN of the crime of AGGRAVATED MURDER IN THE FIRST DEGREE, committed as follows:

That DARCUS DEWAYNE ALLEN, in the State of Washington, on or about the 29th day of November, 2009, did unlawfully and feloniously, with premeditated intent to cause the death of another person, cause the death of Tina Griswold, a human being, and that further aggravated circumstances exist, under RCW 10.95: (1) that the victim was a law enforcement officer who was performing her official duties at the time of the act resulting in death, and the victim was known or reasonably should have been known by the defendant to be such at the time of the killing; and/or (2) that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the defendant; contrary to RCW 10.95.020(1) and 10.95.020(10) and 9A.32.030(1)(a),

And in the commission thereof the defendant, or an accomplice, was armed with a firearm, as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530,

And further the crime was aggravated by the following: pursuant to RCW 9.94A.535(3)(v), the offense was committed against a law enforcement officer who was performing her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's

INFORMATION- 1

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930 Tacoma Avenue South, Room 946
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Main Office (253) 798-7400

1 status as a law enforcement officer is not an element of the offense, and/or pursuant to RCW
2 9.94A.535(3)(r), the offense involved a destructive and foreseeable impact on persons other than the
3 victim, and against the peace and dignity of the State of Washington.

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COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARCUS DEWAYNE ALLEN of the crime of AGGRAVATED MURDER IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That DARCUS DEWAYNE ALLEN, in the State of Washington, on or about the 29th day of November, 2009, did unlawfully and feloniously, with premeditated intent to cause the death of another person, cause the death of Ronald Owens, a human being, and that further aggravated circumstances exist, under RCW 10.95: (1) that the victim was a law enforcement officer who was performing his official duties at the time of the act resulting in death, and the victim was known or reasonably should have been known by the defendant to be such at the time of the killing; and/or (2) that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the defendant; contrary to RCW 10.95.020(1) and 10.95.020(10) and 9A.32.030(1)(a),

And in the commission thereof the defendant, or an accomplice, was armed with a firearm, as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530,

And further the crime was aggravated by the following: pursuant to RCW 9.94A.535(3)(v), the offense was committed against a law enforcement officer who was performing his official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense, and/or pursuant to RCW 9.94A.535(3)(r), the offense involved a destructive and foreseeable impact on persons other than the victim, and against the peace and dignity of the State of Washington.

COUNT III

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARCUS DEWAYNE ALLEN of the crime of AGGRAVATED MURDER IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

1 That DARCUS DEWAYNE ALLEN, in the State of Washington, on or about the 29th day of
2 November, 2009, did unlawfully and feloniously, with premeditated intent to cause the death of another
3 person, cause the death of Mark Renninger, a human being, and that further aggravated circumstances
4 exist, under RCW 10.95: (1) that the victim was a law enforcement officer who was performing his
5 official duties at the time of the act resulting in death, and the victim was known or reasonably should
6 have been known by the defendant to be such at the time of the killing; and/or (2) that there was more
7 than one victim and the murders were part of a common scheme or plan or the result of a single act of the
8 defendant; contrary to RCW 10.95.020(1) and 10.95.020(10) and 9A.32.030(1)(a),

9 And in the commission thereof the defendant, or an accomplice, was armed with a firearm, as
10 defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding
11 additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530,

12 And further the crime was aggravated by the following: pursuant to RCW 9.94A.535(3)(v), the
13 offense was committed against a law enforcement officer who was performing his official duties at the
14 time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's
15 status as a law enforcement officer is not an element of the offense, and/or pursuant to RCW
16 9.94A.535(3)(r), the offense involved a destructive and foreseeable impact on persons other than the
17 victim, and against the peace and dignity of the State of Washington.

18 COUNT IV

19 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
20 authority of the State of Washington, do accuse DARCUS DEWAYNE ALLEN of the crime of
21 AGGRAVATED MURDER IN THE FIRST DEGREE, a crime of the same or similar character, and/or a
22 crime based on the same conduct or on a series of acts connected together or constituting parts of a single
23 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be
24 difficult to separate proof of one charge from proof of the others, committed as follows:

That DARCUS DEWAYNE ALLEN, in the State of Washington, on or about the 29th day of
November, 2009, did unlawfully and feloniously, with premeditated intent to cause the death of another
person, cause the death of Gregory Richards, a human being, and that further aggravated circumstances
exist, under RCW 10.95: (1) that the victim was a law enforcement officer who was performing his
official duties at the time of the act resulting in death, and the victim was known or reasonably should
have been known by the defendant to be such at the time of the killing; and/or (2) that there was more
than one victim and the murders were part of a common scheme or plan or the result of a single act of the
defendant; contrary to RCW 10.95.020(1) and 10.95.020(10) and 9A.32.030(1)(a),

And in the commission thereof the defendant, or an accomplice, was armed with a firearm, as
defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding
additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530,

INFORMATION- 3

1 And further the crime was aggravated by the following: pursuant to RCW 9.94A.535(3)(v), the
2 offense was committed against a law enforcement officer who was performing his official duties at the
3 time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's
4 status as a law enforcement officer is not an element of the offense, and/or pursuant to RCW
5 9.94A.535(3)(r), the offense involved a destructive and foreseeable impact on persons other than the
6 victim, and against the peace and dignity of the State of Washington.

7 DATED this 2nd day of March, 2010.

8 PIERCE COUNTY SHERIFF
9 WA02700

 MARK LINDQUIST
 Pierce County Prosecuting Attorney

10 sp

 By: /s/ MARK LINDQUIST
 MARK LINDQUIST
 Deputy Prosecuting Attorney
 WSB#: 25076

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DIVISION II

2012 SEP 13 PM 1:04

STATE OF WASHINGTON

BY _____
DEPUTY

State of Washington

Dorcus D. Allen

NO. #42257-3-II

AFFIDAVIT OF SERVICE
BY MAILING

I, Dorcus D. Allen #350292, being first sworn upon oath, do hereby certify that I have served the following documents: Statement of Additional grounds dated & submitted Sept. 10th 2012.

Upon: The Washington Court of Appeal Div. 2
Pierce County Prosecutors office

By placing same in the United States mail at:

WASHINGTON STATE PENITENTIARY
1313 NORTH 13TH AVENUE
WALLA WALLA, WA. 99362

On this 10th day of Sept., 2012.

Dorcus D. Allen #350292
Name & Number

Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright 626 F.2d 1184 (1980); Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.

1 of 3
cc: Pierce County Prosecutors office