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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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NO. 34533-1-II
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

Respondent,

v.

CALEB JOEL TUCKER

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THURSTON COUNTY

Before the Honorable Richard Strophy, Judge

OPENING BRIEF OF APPELLANT

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Of Attorneys for Appellant

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PM 8/21/06

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| A. ASSIGNMENTS OF ERROR | 1 |
| B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR | 3 |
| C. STATEMENT OF THE CASE..... | 4 |
| 1. Procedural History: | 4 |
| 2. Trial testimony: | 5 |
| 3. Findings and Conclusions: | 8 |
| 4. Sentencing hearing: | 11 |
| D. ARGUMENT | |
| I. <u>THERE WAS INSUFFICIENT EVIDENCE TO PROVE THAT TUCKER COMMITTED PERJURY</u> | 12 |
| a. Entry of the judgment and sentence against him therefore denied Tucker his state and federal rights to due process | 12 |
| b. Tucker’s testimony at Knoblock’s suppression hearing was not material in that Knoblock’s statements were not inculpatory. Therefore, the court erred in convicting Tucker of perjury | 14 |
| E. CONCLUSION..... | 14 |
| F. APPENDIX..... | A-1 |

TABLE OF AUTHORITIES

| <u>WASHINGTON CASES</u> | <u>Page</u> |
|--|------------------------|
| <i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980) | 13 |
| <i>Recall of Peasall-Stipek</i> , 141 Wn.2d 756, 10 P.3d 1034 (2000). | 13 |
| <i>State v. Olson</i> , 92 Wn.2d 134, 594 P.2d 1337 (1979)..... | 13 |
| <i>State v. Stump</i> , 73 Wn. App. 625, 870 P.2d 333 (1994) | 13 |
| | |
| <u>UNITED STATES CASES</u> | <u>Page</u> |
| <i>In re Winship</i> , 397 U.S. 358, 25 L.Ed 2d 368, 90 S.Ct. 1068 (1970) | 12 |
| <i>Jackson v. Virginia</i> , 443 U.S. 307, 61 L.Ed. 2d 560, 99 S.Ct. 2781 (1979)..... | 13 |
| <i>Miranda v. Arizona</i> , 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966) | 2, 6, 7, 9, 10, 12, 13 |
| | |
| <u>REVISED CODE OF WASHINGTON</u> | <u>Page</u> |
| RCW 9A.72.010(1)..... | 15 |
| RCW 9A.72.020 | 5 |
| RCW 9A.72.020(1)..... | 5, 13 |
| | |
| <u>COURT RULES</u> | <u>Page</u> |
| CtR 3.5 | 4, 8, 12, 13, 14 |

A. ASSIGNMENTS OF ERROR

1. There was insufficient evidence to convict Appellant Caleb Tucker of first degree perjury, and entry of the Judgment and Sentence for the conviction denied Tucker his state and federal constitutional rights to due process of law.

2. The trial court erred in entering Finding of Fact No. 5:

5. Detective Haller testified that during that interview, Defendant Tucker was not present and that Defendant Knoblock had admitted being in possession of a firearm and discharging that firearm at the victim, Travis McEntire.

3. The trial court erred in entering Finding of Fact No. 7:

7. When Defendant Tucker testified, he also told the Court that he had been locked up with Defendant Knoblock on the evening of July 3, 2005 at the Lacey Police Department, that when Detective Haller and Detective Kolb entered the room, Defendant Knoblock immediately requested a lawyer, and that Defendant Knoblock made no statement to Detective Haller and Detective Kolb.

4. The trial court erred in entering Finding of Fact No. 13:

13. Defendant Knoblock was then placed in the Lacey Police Department holding room and Defendant Tucker was separated and sat in the report writing room.

5. The trial court erred in entering Finding of Fact No. 14:

14. At 11:40 pm on July 3, 2005, Detective Haller and Detective Kolb entered the Lacey Police Department holding room where they spoke with Defendant Knoblock. Defendant Tucker was not in the room when the two detectives interviewed Defendant Knoblock.
6. The trial court erred in entering Finding of Fact No. 15:
 15. In speaking with Defendant Knoblock, Detective Haller read Defendant Knoblock his *Miranda* rights, Defendant Knoblock agreed to speak with the detectives and Defendant Knoblock admitted possessing a firearm and discharging that firearm at Travis McEntire on June 30, 2005.
7. The trial court erred in entering Finding of Fact No. 16:
 16. When Detective Haller started asking the Defendant about the details of the underlying marijuana transaction, Defendant Knoblock stopped answering questions.
8. The trial court erred in entering Finding of Fact No. 17:
 17. At 12:19 am on July 4, 2005, Defendant Knoblock was taken to the Thurston County Jail.
9. The trial court erred in entering Finding of Fact No. 18:
 18. At no time between Defendant Knoblock's arrest on July 3, 2005 at 10:47 pm and his transport to the Thurston County Jail on July 4, 2005 at 12:19 am, were Defendant Knoblock and Defendant Tucker interviewed together nor placed in the holding room together.
10. The trial court erred in entering Finding of Fact No. 19:

19. The testimony of Detective Haller, Detective Miller, Detective Kolb, Officer Ed McClanahan, CSO Carrie Nastansky and COS Emily Logsdon was credible.
11. The trial court erred in entering Finding of Fact No. 21:
 21. The testimony of Defendant Knoblock and Defendant Tucker on December 19, 2005 was perjurious.
12. The trial court erred in entering Conclusion of Law No. 2:
 2. The above findings of fact are incorporated herein as conclusions of law.
13. The trial court erred in entering Conclusion of Law No. 3:
 3. The State has proven beyond a reasonable doubt that the Defendant Knoblock and Defendant Tucker, on December 19, 2005, each made false statements, that they knew were false, that were material, that were made in an official proceeding, that were made under oath as required by law, and were made in the State of Washington.
14. The trial court erred in entering Conclusion of Law No. 4:
 4. Defendant Knoblock and Defendant Tucker are guilty beyond a reasonable doubt of the crime of Perjury in the First Degree.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was the evidence insufficient to convict Tucker of first degree perjury where in order for a statement to be perjurious, it must be material, and where the statements that Chris Knoblock wanted to suppress were

exculpatory and pertained to self-defense rather than constituting an incriminating statement? Assignments of Error No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

2. Was there insufficient evidence to convict Tucker of first degree perjury where his testimony did not affect the outcome of Knoblock's suppression hearing and therefore was not material false testimony? Assignments of Error No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

3. Was there insufficient evidence to convict Tucker of perjury where he did not categorically state that Knoblock was not read his rights, but that he did not "hear" Knoblock being read his rights?. Assignments of Error No. 1, 7, and 15.

C. STATEMENT OF THE CASE

1. Procedural history:

Chris Knoblock was charged with several offenses in Thurston Cause No. 05-1-01204-1. Defense counsel moved pursuant to Criminal Rule 3.5 to suppress statements allegedly made by Knoblock to Det. David Haller of the Thurston County Sheriff's Office. The defense motion to suppress was heard by the Honorable Paula Casey on December 19, 2005. Both Knoblock and Appellant Caleb Tucker testified at the suppression hearing. After hearing testimony and argument, Judge Casey denied the motion, finding that the statements were voluntarily made by Knoblock after he received his

Tucker was arrested as part of an investigation involving Knoblock. RP at 21. He was transported to the Lacey Police Department. RP at 24. Det. Miller briefed Det. David Haller and Det. Eric Kolb regarding the case after they arrived. RP at 24. Tucker used his cell phone to locate Knoblock. RP at 24. After Tucker learned that Knoblock was at a motel in Lakewood, Haller and Kolb went to arrest him. RP at 25. After they left, Knoblock called Tucker's cell phone and Tucker handed the phone to Det. Miller. RP at 25. Det. Miller testified that Knoblock agreed over the telephone to turn himself in and to meet the police at a local McDonalds. RP at 26. Det. Miller and another officer went to the McDonalds and placed Knoblock under arrest. RP at 27.

After returning to the police station, Det. Miller testified that he let Tucker and Knoblock hug each other and then "Mr. Tucker was separated in a different room on a chair." RP at 27. He stated that Knoblock "was handcuffed to the bench of the holding cell." RP at 28. Tucker was released from custody later that night. RP at 46.

Detectives Haller and Kolb returned from Lakewood and interviewed Knoblock. RP at 28.

Det. Haller testified that he administered Knoblock his *Miranda*² rights. RP at 12-16, 109. He stated that Knoblock admitted to being armed

² *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966).

with a firearm and to shooting at the individual who was the victim. RP at 15. He stated that Knoblock did not ask for an attorney. RP at 15-16. He stated that Knoblock was not in the presence of Tucker when he was interviewed at the jail. RP at 16. He stated that Tucker, on the other hand, testified at the suppression hearing that he was in the room when Det. Haller and Det. Kolb arrived, that he was present when Knoblock refused to talk to him, that Knoblock was not given his warnings, and that Knoblock wanted an attorney. RP at 16-18.

Det. Kolb testified that Det. Haller and he walked in the interview room at the station with Knoblock, and Det. Haller gave him his *Miranda* warnings. RP at 96, 101. He stated that Knoblock waived his rights and stated that he wanted to talk to them. RP at 96. They questioned him about the shooting and then discussed “the issue about the marijuana involved in the case, and, at that point Christopher did not want to talk to us anymore.” RP at 96. He testified that Knoblock stated that he was in possession of firearm and admitted that he fired the weapon. RP at 96. He stated no one else was in the room other than Knoblock and Det. Haller. RP at 97.

Det. Haller stated that he met Knoblock told him that he met the individual who had been shot at a Jack-In-The-Box, and that the individual tried to rob him, and that he shot at the person and then fled. RP at 109. He

then asked about a marijuana deal, and stated Knoblock did not want to talk any more. RP at 109. Det. Haller stated that Tucker did not come into the room where Knoblock was being interviewed. RP at 110. He stated that Knoblock did not request an attorney. RP at 110.

3. Findings and Conclusions:

In his oral ruling, Judge Strophy stated that he found beyond a reasonable doubt that both of the defendants testified falsely. RP at 174.

The lower court entered the following findings of fact and conclusions of law on March 9, 2006:

II. FINDINGS OF FACT

1. On December 19, 2005 in Thurston County Superior Court in a CrR 3.5 Hearing in the prosecution of Defendant Christopher Knoblock, Defendant Knoblock and Defendant Tucker each provided testimony under oath.
2. The testimony of Defendant Knoblock was set forth in Trial Exhibit 2 and the testimony of Defendant Tucker is set forth in Trial Exhibit 1, both of which are incorporated herein by reference.
3. In that same hearing, prior to the testimony of Defendants Knoblock and Tucker, Detective Dave Haller testified regarding statements Defendant Knoblock had made on July 3, 2005. Detective Haller's testimony is set forth in Trial Exhibit 6, which is incorporated herein by reference.
4. Detective Haller testified that he had interviewed Defendant Knoblock on the evening of July 3, 2005 at the Lacey Police Department, that he was accompanied by Detective Eric Kolb, that

Defendant Knoblock had been given his *Miranda* rights and then been interviewed about the robbery and assault with a firearm of Travis McEntire on June 30, 2005 at the residence of Defendant Knoblock's father.

5. Detective Haller testified that during that interview, Defendant Tucker was not present and that Defendant Knoblock had admitted being in possession of a firearm and discharging that firearm at the victim, Travis McEntire.
6. When Defendant Knoblock testified at the hearing, he told the Court that he had been locked up with Caleb Tucker on the evening of July 3, 2005, at the Lacey Police Department, that when Detective Haller and Detective Kolb entered the room, Defendant Knoblock immediately requested a lawyer, and that Defendant Knoblock had not made the incriminating statements set forth by Detective Haller's testimony.
7. When Defendant Tucker testified, he also told the Court that he had been locked up with Defendant Knoblock on the evening of July 3, 2005 at the Lacey Police Department, that when Detective Haller and Detective Kolb entered the room, Defendant Knoblock immediately requested a lawyer, and that Defendant Knoblock made no statement to Detective Haller and Detective Kolb.
8. On July 3, 2005, Defendant Tucker was questioned at the Lacey Police Department about the location of Defendant Knoblock, who was a fugitive at that time.
9. At about 10:15 p.m. on July 3, 2005, Defendant Tucker told Detective Haller and Detective Kolb that Defendant Knoblock was in a motel in Lakewood. The two detectives then went to Lakewood to investigate.
10. At about 10:30 pm on July 3, 2005, Defendant Knoblock spoke with Lacey Detective Dave Miller and made arrangements to turn himself in at a nearby McDonalds.
11. At 10:47 pm on July 3, 2005, Defendant Knoblock was placed under

arrest, after which time he was allowed to smoke a cigarette and say goodbye to his family members.

12. At about 11:00 pm on July 3, 2005, the Defendant was allowed to hug Defendant Tucker at Lacey Police Department for several minutes.
13. Defendant Knoblock was then placed in the Lacey Police Department holding room and Defendant Tucker was separated and sat in the report writing room.
14. At 11:40 pm on July 3, 2005, Detective Haller and Detective Kolb entered the Lacey Police Department holding room where they spoke with Defendant Knoblock. Defendant Tucker was not in the room when the two detectives interviewed Defendant Knoblock.
16. In speaking with Defendant Knoblock, Detective Haller read Defendant Knoblock his *Miranda* rights, Defendant Knoblock agreed to speak with the detectives and Defendant Knoblock admitted possessing a firearm and discharging that firearm at Travis McEntire on June 30, 2005.
16. When Detective Haller started asking the Defendant about the details of the underlying marijuana transaction, Defendant Knoblock stopped answering questions.
17. At 12:19 am on July 4, 2005, Defendant Knoblock was taken to the Thurston County Jail.
18. At no time between Defendant Knoblock's arrest on July 3, 2005 at 10:47 pm and his transport to the Thurston County Jail on July 4, 2005 at 12:19 am, were Defendant Knoblock and Defendant Tucker interviewed together nor placed in the holding room together.
19. The testimony of Detective Haller, Detective Miller, Detective Kolb, Officer Ed McClanahan, CSO Carrie Nastansky and COS Emily Logsdon was credible.
20. The testimony of Defendant Knoblock was not credible.

21. The testimony of Defendant Knoblock and Defendant Tucker on December 19, 2005 was perjurious.

Having made the above findings of fact, the Court now makes the following:

III. CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter.
2. The above findings of fact are incorporated herein as conclusions of law.
3. The State has proven beyond a reasonable doubt that the Defendant Knoblock and Defendant Tucker, on December 19, 2005, each made false statements, that they knew were false, that were material, that were made in an official proceeding, that were made under oath as required by law, and were made in the State of Washington.
4. Defendant Knoblock and Defendant Tucker are guilty beyond a reasonable doubt of the crime of Perjury in the First Degree.

Clerk's Papers [CP] at 15-18. Appendix A.

4. Sentencing hearing:

The matter came on for sentencing on March 3, 2006. Tucker had an offender score of 3 and faced a standard range of 15 to 20 months. The State recommended 20 months in prison. RP (3.3.06) at 4. The defense asked for a 15 month sentence. RP (3.3.06) at 5. Tucker was given an opportunity for allocution. RP (3.3.06) at 6-7. Judge Strophy sentenced Tucker to 16 months in the Department of Corrections. RP (3.3.06) at 10. CP at 25.

Timely notice of appeal was filed on March 9, 2006. CP at 22-30.

This appeal follows.

D. ARGUMENT

I. THERE WAS INSUFFICIENT EVIDENCE TO PROVE THAT TUCKER COMMITTED PERJURY

a. Entry of the Judgment and Sentence Against him therefore denied Tucker his State and Federal Rights to Due Process

Caleb Tucker was charged with one count of first degree perjury for allegedly making materially false statements at the CrR 3.5 hearing to suppress statements allegedly made by Chris Knoblock to law enforcement. The State alleged that Tucker committed perjury when he testified that (1) he was with Knoblock at the Lacey Police Department on July 3, 2005, (2) that Knoblock was not administered his *Miranda* warnings, and (3) that Knoblock invoked his constitutional right to request counsel. Supplemental Clerk's Paper at 1.

Due process, under the state and federal constitution, requires the State to prove beyond a reasonable doubt every fact necessary to establish the essential elements of the crime charged. *In re Winship*, 397 U.S. 358, 364, 25 L.Ed 2d 368, 90 S.Ct. 1068 (1970). Therefore, as a matter of state and federal constitutional law, a conviction cannot be affirmed unless "a rational trier of fact taking the evidence in the light most favorable to the State could

find, beyond a reasonable doubt, the facts needed to support the conviction.”
Jackson v. Virginia, 443 U.S. 307, 61 L.Ed. 2d 560, 99 S.Ct. 2781 (1979);
State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980).

In order to prove first degree perjury, the State must show:

- (1) the Defendant made a materially false statement,
- (2) in any official proceeding,
- (3) that the Defendant knows to be false, and
- (4) The statement is made under an oath.

RCW 9A.72.020(1).

The burden the State must prove to support a conviction for perjury is more stringent than that in any other area of law except treason. *State v. Olson*, 92 Wn.2d 134, 136, 594 P.2d 1337 (1979). See also *State v. Stump*, 73 Wn. App. 625, 627, 870 P.2d 333 (1994)

In the case at bar, the State alleged that Tucker committed first degree perjury when he testified at the CrR 3.5 hearing that he was with Knoblock when Detectives Haller and Kolb arrived at the Lacey Police Department, that he was not given his warnings, and that Knoblock requested an attorney. RP at 142-43.

The record, however, does not support beyond a reasonable doubt that Tucker committed perjury. Tucker did not testify that Knoblock was not read his Miranda warnings; instead he stated that he did not **hear** rights being

read to Knoblock. When asked if police read Knoblocks's rights to him, Tucker testified that "I heard no rights being read to Chris, no I didn't." Exhibit 1, at 51.

In addition, during the CrR 3.5 suppression hearing, Tucker testified that after Knoblock was brought to the Lacey Police Department, they were put in a holding cell for 10 to 15 minutes. Exhibit 1, at 49-50. He also testified that Detective Haller tried to question Knoblock while they were in the holding cell together. Exhibit at 1, at 50. He testified:

They asked Chris what happened, why—they asked him specifically why did he shoot that guy. He said, I want my lawyer, I didn't do anything. I told, Chris, no, be quiet, you don't have to say anything. They again asked him again, what happened, why don't you explain to us what happened. Chris says, I need my lawyer, and all that. When I looked at the cop and said, look, he doesn't want to say anything, he's asking for his lawyer, and they kept doing that for a little bit, when I intervened, they uncuffed me and took me out of the room.

Exhibit 1, at 50.

The record supports the contention that Tucker and Knoblock initially did see one another at the Lacey Police Department after Knoblock surrendered at McDonalds.

The record does not support a finding that Tucker committed perjury, and reversal and dismissal is mandated.

b. Tucker's Testimony at Knoblock's Suppression Hearing Was Not Material in That Knoblock's Statements Were Not Inculpatory. Therefore, the Court Erred in Convicting Tucker of Perjury

There was also insufficient evidence that Tucker gave materially false testimony. A statement is material only if it “could have affected the course or outcome of the proceeding.” RCW 9A.72.010(1). *Recall of Peasall-Stipek*, 141 Wn.2d 756, 772, 10 P.3d 1034 (2000). Tucker testified that he was present with Knoblock in the holding cell on July 3, and that Knoblock was not given his constitutional warnings. The interview was not taped and Knoblock did not sign a written waiver. The statement that Knoblock sought to suppress was not inculpatory, and in fact tended to support the affirmative defense of self-defense. Knoblock’s alleged statement was that he had shot at the victim in order to defend himself. Exhibit 6, at 37. The statement showed only that Knoblock was present at the scene and that he used the weapon for self-defense.

E. CONCLUSION

For the foregoing reasons, the Appellant respectfully requests that this Court reverse and dismiss his conviction for first degree perjury.

DATED: August 21, 2006.

Respectfully submitted,

THE TILLER LAW FIRM



PETER B. TILLER-WSBA 20835
Of Attorneys for Caleb Tucker

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**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

STATE OF WASHINGTON,

vs.

CALEB JOEL TUCKER,

Plaintiff,

Defendant.

NO 05-1-02457-1

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOR TRIAL
WITHOUT A JURY**

I. INTRODUCTION

THIS MATTER came on regularly for trial in open court on February 27, 2006. Defendant Christopher Knoblock and defendant Caleb Tucker each represented by counsel and each waiving their right to a jury trial. Thereafter, a trial to the bench proceeded pursuant to CrR 6.1(d) and each defendant was found guilty beyond a reasonable doubt of Perjury in the First Degree, as charged. In so finding, the Court also made the following:

II. FINDINGS OF FACT

1. On December 19, 2005 in Thurston County Superior Court in a CrR 3.5 Hearing in the prosecution of defendant Christopher Knoblock, defendant Knoblock and defendant Tucker each provided testimony under oath.
2. The testimony of defendant Knoblock was set forth in Trial Exhibit 2 and the testimony of defendant Tucker is set forth in Trial Exhibit 1, both of which are incorporated herein by reference.
3. In that same hearing, prior to the testimony of defendants Knoblock and Tucker, Detective Dave Haller testified regarding statements defendant Knoblock had made on July 3, 2005. Detective Haller's testimony is set forth in Trial Exhibit 6, which is incorporated herein by reference.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 1

SCANNED

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- 1 4. Detective Haller testified that he had interviewed defendant Knoblock on the evening of
2 July 3, 2005 at the Lacey Police Department, that he was accompanied by Detective Eric
3 Kolb, that defendant Knoblock had been given his Miranda rights and then been
4 interviewed about the robbery and assault with a firearm of Travis McEntire on June 30,
5 2005 at the residence of defendant Knoblock's father.
- 6 5. Detective Haller testified that during that interview, defendant Tucker was not present
7 and that defendant Knoblock had admitted being in possession of a firearm and
8 discharging that firearm at the victim, Travis McEntire.
- 9 6. When defendant Knoblock testified at the hearing, he told the Court that he had been
10 locked up with Caleb Tucker on the evening of July 3, 2005, at the Lacey Police
11 Department, that when Detective Haller and Detective Kolb entered the room, defendant
12 Knoblock immediately requested a lawyer, and that defendant Knoblock had not made
13 the incriminating statements set forth by Detective Haller in Detective Haller's testimony.
- 14 7. When defendant Tucker testified, he also told the Court that he had been locked up with
15 defendant Knoblock on the evening of July 3, 2005 at the Lacey Police Department, that
16 when Detective Haller and Detective Kolb entered the room, defendant Knoblock
17 immediately requested a lawyer, and that defendant Knoblock made no statement to
18 Detective Haller and Detective Kolb.
- 19 8. On July 3, 2005, defendant Tucker was questioned at the Lacey Police Department about
20 the location of defendant Knoblock, who was a fugitive at that time.
- 21 9. At about 10:15 p.m. on July 3, 2005, defendant Tucker told Detective Haller and
22 Detective Kolb that defendant Knoblock was at a motel in Lakewood. The two
23 detectives then went to Lakewood to investigate.
- 24 10. At about 10:30 pm on July 3, 2005, defendant Knoblock spoke with Lacey Detective
25 Dave Miller and made arrangements to turn himself in at a nearby McDonalds.
- 26 11. At 10:47pm on July 3, 2005, defendant Knoblock was placed under arrest, after which
time he was allowed to smoke a cigarette and say goodbye to his family members.
12. At about 11:10 pm on July 3, 2005, the defendant was allowed to hug defendant Tucker
at Lacey Police Department for several minutes.

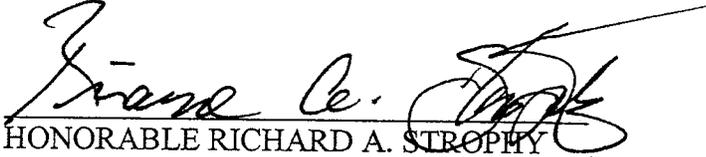
- 1 13. Defendant Knoblock was then placed in the Lacey Police Department holding room and
2 defendant Tucker was separated and sat in the report writing room.
- 3 14. At 11:40 pm on July 3, 2005, Detective Haller and Detective Kolb entered the Lacey
4 Police Department holding room where they spoke with defendant Knoblock. Defendant
5 Tucker was not in the room when the two detectives interviewed defendant Knoblock.
- 6 15. In speaking with defendant Knoblock, Detective Haller read defendant Knoblock his
7 Miranda rights, defendant Knoblock agreed to speak with the detectives and defendant
8 Knoblock admitted possessing a firearm and discharging that firearm at Travis McEntire
9 on June 30, 2005.
- 10 16. When Detective Haller started asking the defendant about the details of the underlying
11 marijuana transaction, defendant Knoblock stopped answering questions.
- 12 17. At 12:19 am on July 4, 2005, defendant Knoblock was taken to the Thurston County Jail.
- 13 18. At no time between defendant Knoblock's arrest on July 3, 2005 at 10:47 pm and his
14 transport to the Thurston County Jail on July 4, 2005 at 12:19 am, were defendant
15 Knoblock and defendant Tucker interviewed together nor placed in the holding room
16 together.
- 17 19. The testimony of Detective Haller, Detective Miller, Detective Kolb, Officer Ed
18 McClanahan, CSO Carrie Nastansky and CSO Emily Logsdon was credible.
- 19 20. The testimony of defendant Knoblock was not credible.
- 20 21. The testimony of defendant Knoblock and defendant Tucker on December 19, 2005 was
21 perjurious
- 22 Having made the above findings of fact, the Court now makes the following:

22 **III. CONCLUSIONS OF LAW**

- 23 1. This Court has jurisdiction over the parties and the subject matter.
- 24 2. The above findings of fact are incorporated herein as conclusions of law.
- 25 3. The State has proven beyond a reasonable double that the defendant Knoblock and
26 defendant Tucker, on December 19, 2005, each made false statements, that they knew

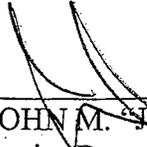
1 were false, that were material, that were made in an official proceeding, that were made
2 under oath as authorized or required by law, and were made in the State of Washington.
3 4. Defendant Knoblock and defendant Tucker are each guilty beyond a reasonable doubt of
4 the crime of Perjury in the First Degree.

5 Dated this 09 day of March, 2006.

6
7
8 
9 HONORABLE RICHARD A. STROPHY

10 Presented by:

Copy received; Approved for entry:

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12 
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Senior Deputy Prosecuting Attorney

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18 ROBERT JIMERON, #26363
19 Attorney for Defendant
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STATE OF WASHINGTON

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IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

CALEB JOEL TUCKER,

Appellant.

COURT OF APPEALS NO.
34533-1-II

CERTIFICATE OF MAILING

The undersigned attorney for the Appellant hereby certifies that one original Opening Brief of Appellant was by first class mail to the Court of Appeals, Division 2, and copies were mail to Caleb Joel Tucker, Appellant, and James C. Powers, by first class mail, postage pre-paid on August 21, 2006, at the Centralia, Washington post office addressed as follows:

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Mr. David Ponzoha
Clerk of the Court
Court of Appeals
950 Broadway, Ste. 300
Tacoma, WA 98402-4454

CERTIFICATE OF
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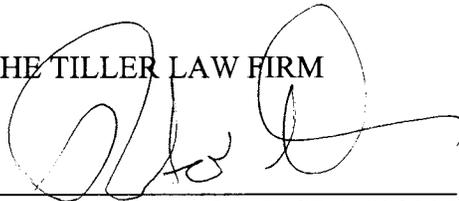
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Dated: August 21, 2006.

THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read 'Peter B. Tiller', written over a horizontal line.

PETER B. TILLER – WSBA #20835
Of Attorneys for Appellant

CERTIFICATE OF
MAILING

2

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