

No. 34686-9

Pierce County Superior Court No. 00-1-04425-1



IN THE COURT OF APPEALS  
DIVISION II

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In re the Personal Restraint of:

JOSHUA DEAN SCOTT,

Petitioner.

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PERSONAL RESTRAINT PETITION

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By:

**Suzanne Lee Elliott**  
Attorney for Petitioner  
1300 Hoge Building  
705 Second Avenue  
Seattle, WA 98104  
(206) 623-0291

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A. STATUS OF PETITIONER

Mr. Joshua Dean Scott applies for relief from confinement. He is presently in custody pursuant to a judgment and sentence in *State v. Scott*, Pierce County Superior Court No. 00-1-04425-1. On September 18, 2000, the Pierce County Prosecutor's Office charged Scott, together with codefendant Douglas James-Anderson, with two counts of first degree robbery, one count of unlawful possession of a firearm, and first degree possession of stolen property. Subsequently, the State amended the information to include two additional counts of possession of a stolen firearm and two additional counts of theft of a firearm. Counts 1, 2 and 5 included special weapons allegations. See Appendix 1, Amended Information.

Scott was convicted of two counts of first degree robbery, one count of unlawful possession of a firearm, one count of possession of stolen property after a joint trial before the Honorable Marywave Van Deren. Appendix 2, Verdict Forms. His trial attorney was Ann Ferrel Steinberg.

Judge Van Deren entered an amended judgment on April 9, 2004. Appendix 3, Judgment and Sentence. In that judgment, she applied

firearms enhancements of 60 months for the robbery count and a firearms enhancement of 36 months for the possession of stolen property count.

B. STATEMENT OF THE CASE

The Amended Information alleged, as to each count, that Scott or his accomplice was armed with a “deadly weapon.” At the close of testimony the judge instructed the jury that the term deadly weapon included any firearm, whether loaded or not. See Appendix 4, Jury Instruction 22. The jury later found that, as to Counts 1, 2 and 5, Scott was “armed with a deadly weapon at the time of the commission” of the offense, without specifying that the weapon was a firearm. Appendix 3, Verdict Forms.

At sentencing, however, the trial judge imposed the longer firearm enhancement, rather than the shorter deadly weapon enhancement, for each count. Appendix 2, Judgment and Sentence.

C. GROUNDS FOR RELIEF

1. *State v. Recuenco*, 154 Wn.2d 156, 110 P.3d 188 (2005) requires that the firearm enhancements imposed in this case be reversed.

In *Recuenco*, the Washington State Supreme Court held that where a jury has not specifically found the defendant was armed with a firearm, the trial judge may not impose the lengthier enhancement. This is true

even when, as here, the jury did find that the defendant was armed with a deadly weapon.

2. *Scott's Petition is timely.*

RCW 10.73.090 and .100 set forth the statutory time limits for the filing of a personal restraint petition. Generally speaking, a personal restraint petition must be filed no later than one year after the underlying convictions are final. RCW 10.73.100(6) allows collateral relief from judgment even after the normal time bar has lapsed based on a "material" change in the law when the court or the legislature finds "sufficient reasons" for retroactive application.

At the time that Scott was sentenced, trial judges were permitted to impose the lengthier firearm enhancements even when juries found only the presence of deadly weapons. *See, e.g., State v. Meggyesy*, 90 Wn. App. 693, 958 P.2d 319, *review denied*, 136 Wn.2d 1028, 972 P.2d 465 (1998); *State v. Rai*, 97 Wn. App. 307, 983 P.2d 712 (1999); *State v. Olney*, 97 Wn. App. 913, 987 P.2d 662 (1999). In *Recuenco*, the Supreme Court stated that those cases were no longer good law. Thus, *Recuenco* is a material change in the law.

Moreover, there is sufficient reason for this Court to hold that the decision in *Recuenco* is retroactive. Although *Recuenco* is based upon the

holdings in *Blakely* and *Apprendi*<sup>1</sup>, the facts of this case make the decision in *Recuenco* “substantive” rather than procedural. This makes a difference because in *State v. Evans*, 154 Wn.2d 438, 446-47, 114 P.3d 627 (2005), the Washington State Supreme Court held that the decision in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) was one of criminal “procedure,” not of “substance.”

In *Evans*, the petitioners were sentenced based upon factors never submitted to the trial judge for consideration. In *Evans*, the Petitioners argued that the *Blakely* decision was substantive because it changed the notion of what factors must be treated as elements of the crime in Washington. Prior to *Blakely*, the State was required to plead and prove to a jury beyond a reasonable doubt only those factors listed under the statutory definition of the crime charged. Petitioners argued that *Blakely* had elevated exceptional sentencing factors to elements of the crime. The Supreme Court rejected that argument but stated:

We find petitioner’s arguments unavailing at this time. We do not, of course, reach whether sentencing factors may be elements in other contexts.

*Evans*, 154 Wn.2d at 447 n. 2.

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<sup>1</sup> *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).

Weapons enhancements are precisely the “context” where the concepts in *Blakely* and *Recuenco* are “substantive” rather than “procedural” and must be applied retroactively. RCW 9.94A.125, the enhancement statute at issue, provides that:

In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a \*708 deadly weapon at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find[s] the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime.

Unlike other sentencing enhancements, the Washington statutes have always required a jury determination of fact. Thus, this particular enhancement has always been more akin to an element of the offense than the exceptional sentence factors at issue in *Evans*. Questions relating to “elements” are substantive, not procedural issues.

D. REQUEST FOR RELIEF

For the reasons stated above, Scott asks this Court to grant his petition and remand for resentencing on the proper enhancements.

E. OATH OF COUNSEL

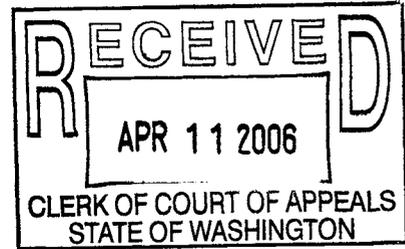
After being first duly sworn, on oath, undersigned counsel states that I have read the record in this case, drafted the Petition and believe its contents to be true.

Suzanne Lee Elliott  
Suzanne Lee Elliott  
WSBA 12634

Subscribed to and Sworn before me this 10<sup>TH</sup> day of APRIL,  
2006.



Christina Alburas  
Notary Public in and for the State of  
Washington residing at SEATTLE,  
KING, WA.



CERTIFICATE OF SERVICE

I hereby certify that on the dated listed below, I served by United States Mail one copy of the foregoing personal restraint petition and accompanying appendix on the following:

Mr. Joshua Dean Scott #788119  
Stafford Creek Correction Center  
191 Constantine Way  
Aberdeen, Washington 98520

Pierce County Prosecutor's Office  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402

APRIL 10, 2006  
Date

Christina Alburas  
Christina Alburas

## **APPENDIX 1**

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF PIERCE

3  
4 STATE OF WASHINGTON,

5 Plaintiff,

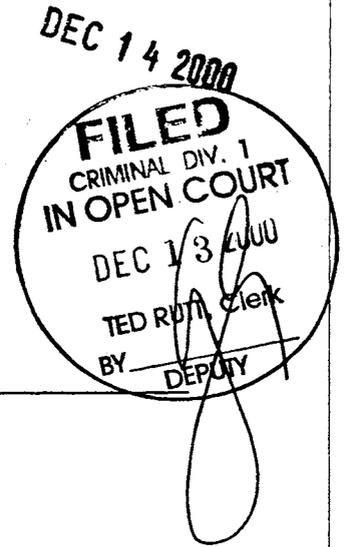
CAUSE NO. 00-1-04425-1

6 vs.

AMENDED INFORMATION

7 JOSHUA DEAN SCOTT,

8 Defendant.



9  
10 DOB: 05/24/1979  
SS#: 535-84-9277

SEX: MALE  
SID#: WA18835544

RACE: WHITE  
DOL#: UNKNOWN

11 CO-DEF: DOUGLAS SEAN JAMES-ANDERSON

12 I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in the name and by the  
13 authority of the State of Washington, do accuse DOUGLAS SEAN JAMES-ANDERSON and JOSHUA  
14 DEAN SCOTT of the crime of ROBBERY IN THE FIRST DEGREE, committed as follows:

15 That DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices,  
16 in Pierce County, on or about the 16th day of September, 2000, did unlawfully and feloniously take personal  
17 property (other than a firearm) belonging to another with intent to steal from the person or in the presence of  
18 Peter Filipiuk and Barrett Thompson of Cascade Custom Jewelers, the owner thereof or a person having  
19 dominion and control over said property, against such person's will by use or threatened use of immediate  
20 force, violence, or fear of injury to Peter Filipiuk and Barrett Thompson, said force or fear being used to  
21 obtain or retain possession of the property or to overcome resistance to the taking, and in the commission  
22 thereof, or in immediate flight therefrom, the defendant or an accomplice was armed with a deadly weapon  
23 or displayed what appeared to be a firearm or other deadly weapon, to-wit: a rifle, that being a firearm as  
24 defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310 and adding additional time to the  
25 presumptive sentence as provided in RCW 9.94A.370, contrary to RCW 9A.56.190 and RCW  
9A.56.200(1)(a)(b) and 9A.08.020, and against the peace and dignity of the State of Washington.

26 COUNT II

27 And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN  
28 JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of ROBBERY IN THE FIRST DEGREE,

AMENDED INFORMATION - 1

**ORIGINAL**

Office of Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
Main Office: (253) 798-7400

1  
2 a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts  
3 connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to  
4 time, place and occasion that it would be difficult to separate proof of one charge from proof of the others,  
5 committed as follows:

6 That DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices,  
7 in Pierce County, on or about the 16th day of September, 2000, did unlawfully and feloniously take personal  
8 property (other than a firearm) belonging to another with intent to steal from the person or in the presence of  
9 Peter Filipiuk, the owner thereof or a person having dominion and control over said property, against such  
10 person's will by use or threatened use of immediate force, violence, or fear of injury to Peter Filipiuk, said  
11 force or fear being used to obtain or retain possession of the property or to overcome resistance to the taking,  
12 and in the commission thereof, or in immediate flight therefrom, the defendant or an accomplice was armed  
13 with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon, to-wit: a rifle, that  
14 being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310 and adding  
15 additional time to the presumptive sentence as provided in RCW 9.94A.370, contrary to RCW 9A.56.190  
16 and RCW 9A.56.200(1)(a)(b) and 9A.08.020, and against the peace and dignity of the State of Washington.

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COUNT III

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN  
JAMES-ANDERSON of the crime of UNLAWFUL POSSESSION OF A FIREARM 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 DOUGLAS SEAN JAMES-ANDERSON, in Pierce County, on or about the 16th day of  
September, 2000, did unlawfully, feloniously, and knowingly own, have in his possession, or under his  
control a firearm, he having been previously convicted in the State of Washington or elsewhere of a serious  
offense, to wit: burglary in the second degree, contrary to RCW 9.41.040(1)(a), and against the peace and  
dignity of the State of Washington.

COUNT IV

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse JOSHUA DEAN  
SCOTT of the crime of UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, a crime of

AMENDED INFORMATION - 2

Office of Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
Main Office: (253) 798-7400

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2 the same or similar character, and/or a crime based on the same conduct or on a series of acts connected  
3 together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place  
4 and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as  
5 follows:

6 That JOSHUA DEAN SCOTT, in Pierce County, on or about on or about the 16th day of September,  
7 2000, did unlawfully, feloniously, and knowingly own, have in his possession, or under his control a firearm,  
8 he having been previously convicted in the State of Washington or elsewhere of a serious offense, to wit:  
9 residential burglary, contrary to RCW 9.41.040(1)(a), and against the peace and dignity of the State of  
10 Washington.

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COUNT V

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN  
JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of POSSESSING STOLEN PROPERTY  
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 DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices,  
in Pierce County, on or about on or about the 16th day of September, 2000, did unlawfully, feloniously, and  
knowingly receive, retain, possess, conceal, or dispose of stolen property other than a firearm, to-wit: a 1990  
Chevrolet Blazer, of a value in excess of \$1,500.00, belonging to Esperanza Mattos, with intent to  
appropriate said property to the use of any person other than the true owner or person entitled thereto, that  
being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310 and adding  
additional time to the presumptive sentence as provided in RCW 9.94A.370, contrary to RCW 9A.56.140(1)  
and RCW 9A.56.150(1) and 9A.08.020, and against the peace and dignity of the State of Washington.

COUNT VI

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN  
JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of POSSESSION OF A STOLEN  
FIREARM, 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

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2 respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of  
3 the others, committed as follows:

4 That DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices,  
5 in Pierce County, on or about on or about the 16th day of September, 2000, did unlawfully, feloniously, and  
6 knowingly receive, retain, possess, conceal, or dispose of a stolen firearm, to-wit: a Colt AR-15 rifle,  
7 belonging to Jeff King, with intent to appropriate to the use of any person other than the true owner or  
8 person entitled thereto, contrary to RCW 9A.56.140(1) and RCW 9A.56.310(1) and 9A.08.020, and against  
the peace and dignity of the State of Washington.

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COUNT VII

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN  
JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of POSSESSION OF A STOLEN  
FIREARM, 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 DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices,  
in Pierce County, on or about on or about the 16th day of September, 2000, did unlawfully, feloniously, and  
knowingly receive, retain, possess, conceal, or dispose of a stolen firearm, to-wit: a Ruger mini 14 rifle,  
belonging to Jeff King, with intent to appropriate to the use of any person other than the true owner or  
person entitled thereto, contrary to RCW 9A.56.140(1) and RCW 9A.56.310(1) and 9A.08.020, and against  
the peace and dignity of the State of Washington.

COUNT VIII

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN  
JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of THEFT OF A FIREARM, 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 DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices,  
in Pierce County, on or about on or about the 16th day of September, 2000, did unlawfully, feloniously, and

1  
2 wrongfully obtain or exert unauthorized control over a firearm, to-wit: a Colt .45 pistol, belonging to  
3 George Bastich, with intent to deprive said owner of such property, contrary to RCW 9A.56.020 and RCW  
4 9A.56.300(1)(a) and 9A.08.020, and against the peace and dignity of the State of Washington.

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COUNT IX

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of THEFT OF A FIREARM, 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:

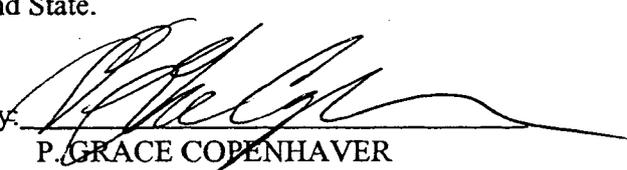
That DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices, in Pierce County, on or about on or about the 16th day of September, 2000, did unlawfully, feloniously, and wrongfully obtain or exert unauthorized control over a firearm, to-wit: a Smith & Wesson .22 pistol, belonging to George Bastich, with intent to deprive said owner of such property, contrary to RCW 9A.56.020 and RCW 9A.56.300(1)(a) and 9A.08.020, and against the peace and dignity of the State of Washington.

DATED this 16th day of November, 2000.

PIERCE CTY SHERIFF CASE  
WA02700

JOHN W. LADENBURG  
Prosecuting Attorney in and for said County  
and State.

pgc

By:   
P. GRACE COPENHAVER  
Deputy Prosecuting Attorney  
WSB#: 16717

AMENDED INFORMATION - 5

Office of Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
Main Office: (253) 798-7400

## **APPENDIX 2**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

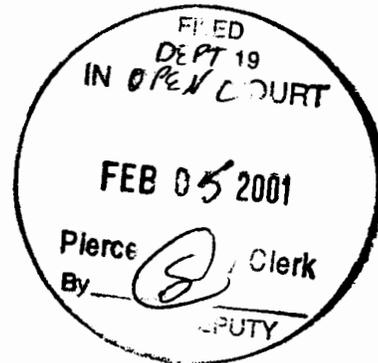
NO. 00-1-04425-1

VERDICT FORM A  
Count I

FEB 05 2001

We, the jury, find the defendant, Joshua Dean Scott, Guilty (Not Guilty or Guilty) of the crime of Robbery in the First Degree as charged in Count I.

Norman Frink  
PRESIDING JUROR



**ORIGINAL**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

CAUSE NO. 00-1-04425-1

SPECIAL VERDICT FORM

FEB 05 2001

We, the jury, return a special verdict by answering as follows:

Was the defendant, Joshua Dean Scott, armed with a deadly weapon at the time of the commission of the crime in Count I?

ANSWER: Yes (Yes or No)

Norman Frink  
PRESIDING JUROR



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

NO. 00-1-04425-1

VERDICT FORM A

Count II

FEB 05 2001

We, the jury, find the defendant, Joshua Dean Scott, Guilty (Not Guilty or Guilty) of the crime of Robbery in the First Degree as charged in Count II.

Noeman Frink  
PRESIDING JUROR



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

CAUSE NO. 00-1-04425-1

SPECIAL VERDICT FORM

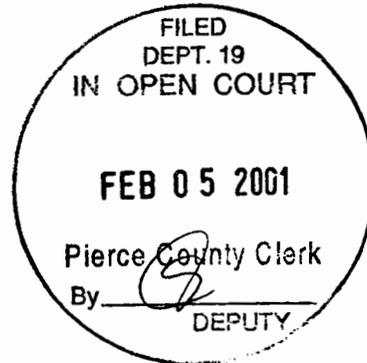
FEB 05 2001

We, the jury, return a special verdict by answering as follows:

Was the defendant, Joshua Dean Scott, armed with a deadly weapon at the time of the commission of the crime in Count II?

ANSWER: Yes (Yes or No)

Norman Frink  
PRESIDING JUROR



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

NO. 00-1-04425-1

**VERDICT FORM A**

Count V

We, the jury, find the defendant, Joshua Dean Scott, Guilty (Not Guilty or Guilty) of the crime of Possession of Stolen Property in the First Degree as charged in Count V.

Norman Feink  
PRESIDING JUROR



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

CAUSE NO. 00-1-04425-1

SPECIAL VERDICT FORM

We, the jury, return a special verdict by answering as follows:

Was the defendant, Joshua Dean Scott, armed with a deadly weapon at the time of the commission of the crime in Count V?

ANSWER: yes (Yes or No)

Norman Frink  
PRESIDING JUROR



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

NO. 00-1-04425-1

**VERDICT FORM A**

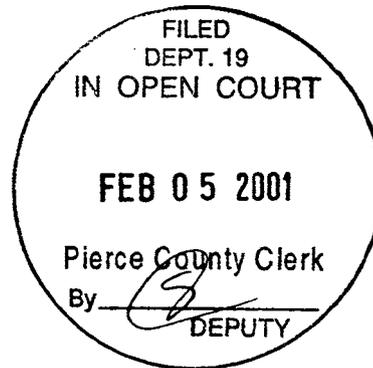
Count IV

FILED

We, the jury, find the defendant, Joshua Dean Scott, Guilty (Not

Guilty or Guilty) of the crime of Unlawful Possession of a Firearm in the First Degree as charged in  
Count IV.

Norman Frink  
PRESIDING JUROR



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

NO. 00-1-04425-1

**VERDICT FORM A**  
Count VI

We, the jury, find the defendant, Joshua Dean Scott, Guilty (Not Guilty or Guilty) of the crime of Possession of a Stolen Firearm as charged in Count VI.

Norman Frink  
PRESIDING JUROR



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

NO. 00-1-04425-1

VERDICT FORM A

Count VII

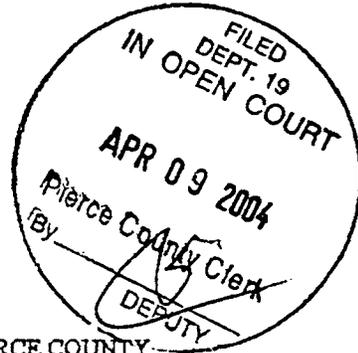
We, the jury, find the defendant, Joshua Dean Scott, Guilty (Not

Guilty or Guilty) of the crime of Possession of a Stolen Firearm as charged in Count VII.

Norman Firink  
PRESIDING JUROR



## APPENDIX 3



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 00-1-04425-1

vs.

JUDGMENT AND SENTENCE (JS)

JOSHUA DEAN SCOTT

Defendant.

NUNC PRO TUNC

- Prison
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)

APR 12 2004

SID: WA18835544  
DOB: 05/24/1979

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 02/05/01 by  plea  jury-verdict  bench trial of:

| COUNT | CRIME                              | RCW   | ENHANCEMENT TYPE* | DATE OF CRIME | INCIDENT NO.    |
|-------|------------------------------------|---|-------------------|---------------|-----------------|
| I     | ROBBERY IN THE FIRST DEGREE (AAA3) | 9.41.00<br>9.94A.310<br>9.94A.370<br>9A.56.190<br>9A.56.200(1)(a)(b)<br>9A.08.020 | FASE              | 09/16/00      | PCSD 00-20-0368 |
| II    | ROBBERY IN THE FIRST DEGREE (AAA3) | 9.41.00<br>9.94A.310<br>9.94A.370<br>9A.56.190<br>9A.56.200(1)(a)(b)<br>9A.08.020 | FASE              | 09/16/00      | PCSD 00-20-0368 |

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00-1-04425-1

| COUNT | CRIME  | RCW   | ENHANCEMENT TYPE* | DATE OF CRIME | INCIDENT NO     |
|-------|--|---|-------------------|---------------|-----------------|
| IV    | UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66) | 9.41.040(1)(a)  |                   | 09/16/00      | PCSD 00-20-0368 |
| V     | POSSESSING STOLEN PROPERTY IN THE FIRST DEGREE (BBB1)        | 9.41.010<br>9.94A.310<br>9.94A.370<br>9A.56.140(1)<br>9A.56.150(1)<br>9A.08.020 | FASE              | 09/16/00      | PCSD 00-20-0368 |

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

as charged in the Amended Information

- A special verdict/finding for use of firearm was returned on Count(s) I, II, V RCW 9.94A.602, .510.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

|   | CRIME    | DATE OF SENTENCE | SENTENCING COURT (County & State) | DATE OF CRIME | A or J ADULT JUV | TYPE OF CRIME |
|---|----------|------------------|-----------------------------------|---------------|------------------|---------------|
| 1 | RES BURG | 1/25/98          | Pierce Cty/WA                     | 08/13/98      | A                | NV            |

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

| COUNT NO. | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancements) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancements) | MAXIMUM TERM |
|-----------|----------------|-------------------|---|-------------------|---|--------------|
| I         | 5              | IX                | 57-75 MOS.                                  | (F)60 MOS.        | 117-135 MOS.                                  | LIFE         |
| II        | 5              | IX                | 57-75 MOS.                                  | (F)60 MOS.        | 117-135 MOS.                                  | LIFE         |
| IV        | 64             | VII               | <del>51-41</del> MOS. 36-48                 | NONE              | <del>31-41</del> MOS. 36-48                   | 10 YRS       |
| V         | 4              | II                | 12+-14 MOS.                                 | (F)36 MOS.        | 48-50 MOS.                                    | 10 YRS.      |

2.4  EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence  above  below the standard range for Count(s) \_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney  did  did not recommend a similar sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

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[ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [X] The court DISMISSES Counts VI & VII. [X] The defendant is found NOT GUILTY of Counts VI & VII.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN \$ Restitution to:

\$ Restitution to: (Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 400.00 DNA Database Fee

PUB \$ 2000.00 Court-Appointed Attorney Fees and Defense Costs

FRC \$ 110.00 Criminal Filing Fee

FCM \$ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ Other Costs for:

\$ Other Costs for:

\$ 2010.00 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein. Not less than \$ per month commencing. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

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[ ] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[ ] shall be set by the prosecutor.

[ ] is scheduled for \_\_\_\_\_

[ ] defendant waives any right to be present at any restitution hearing (defendant's initials): \_\_\_\_\_

[ ] RESTITUTION. Order Attached

4.3 COSTS OF INCARCERATION

[ ] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

4.7 [ ] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with witnesses herein (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

*(except Melissa Scott)*

[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

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4.11 BOND IS HEREBY EXONERATED

4.12 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

|                           |           |                            |           |
|---------------------------|-----------|----------------------------|-----------|
| <u>57</u> months on Count | <u>I</u>  | <u>12+</u> months on Count | <u>IV</u> |
| <u>57</u> months on Count | <u>II</u> | _____ months on Count      | _____     |
| <u>36</u> months on Count | <u>IV</u> | _____ months on Count      | _____     |

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

|                              |           |                              |          |
|------------------------------|-----------|------------------------------|----------|
| <u>60</u> months on Count No | <u>I</u>  | <u>36</u> months on Count No | <u>V</u> |
| <u>60</u> months on Count No | <u>II</u> | _____ months on Count No     | _____    |
| _____ months on Count No     | _____     | _____ months on Count No     | _____    |

Sentence enhancements in Counts I, II & V shall run  
 concurrent  consecutive to each other.  
 Sentence enhancements in Counts I, II & V shall be served  
 flat time  subject to earned good time credit

Actual number of months of total confinement ordered is: 213 months  
 (Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced. \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: since 9/16/00

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4.13 [ ] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 18 to 36 Months;

Count II for a range from: 18 to 36 Months;

Count \_\_\_\_\_ for a range from: \_\_\_\_\_ to \_\_\_\_\_ Months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: Witnesses herein (except Melissa Scott)

Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit: Per CCO

The defendant shall participate in the following crime-related treatment or counseling services: Per CCO

The defendant shall undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse

mental health [ ] anger management and fully comply with all recommended treatment. Per CCO

The defendant shall comply with the following crime-related prohibitions: Per CCO

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: \_\_\_\_\_

4.14 [ ] WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the

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defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.15 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020 The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

V. NOTICES AND SIGNATURES

5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.

5.4 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.5 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. N/A

5.7 OTHER:

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DONE in Open Court and in the presence of the defendant this date: 4/9/04 NUNC PRO TUNC.

JUDGE

Print name

Marguare Andersen  
Marguare Andersen

30332 FOR

Deputy Prosecuting Attorney

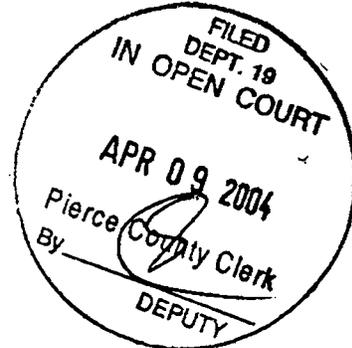
Attorney for Defendant

Print name: P. Grace Kingman  
WSB # 10717

Print name: Ann Stenberg  
WSB # 22596

Defendant

Print name: Joshua D. Scott



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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 00-1-04425-1

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

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ACKNOWLEDGMENT

Regarding the foregoing advice of my "Right to Appeal":

- 1. I understand these rights, and
- 2. I waive formal reading of these rights, and
- 3. I acknowledge receipt of a true copy of these rights.

DATE: 4/9/04

DEFENDANT: *[Signature]*

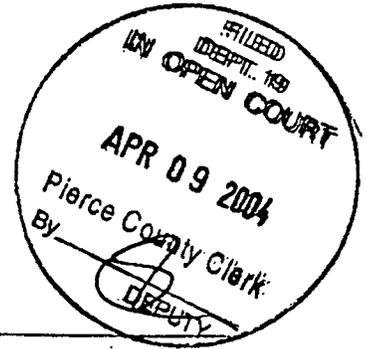
DEFENDANT'S ATTORNEY: *[Signature]*

DATE: 4/9/04

JUDGE: *[Signature]*

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IDENTIFICATION OF DEFENDANT



SID No. WA18835544  
(If no SID take fingerprint card for State Patrol)

Date of Birth 05/24/1979

FBI No. 664588FB5

Local ID No. UNKNOWN

PCN No. UNKNOWN

Other

Alias name, SSN, DOB:

|              |   |   |   |  |                                   |                                 |  |
|--------------|---|---|---|--|-----------------------------------|---------------------------------|--|
| <b>Race:</b> | <input type="checkbox"/> Asian/Pacific Islander | <input type="checkbox"/> Black/African-American | <input checked="" type="checkbox"/> Caucasian | <b>Ethnicity:</b>                                | <input type="checkbox"/> Hispanic | <b>Sex:</b>                     | <input checked="" type="checkbox"/> Male |
|              | <input type="checkbox"/> Native American        | <input type="checkbox"/> Other: :               |   | <input checked="" type="checkbox"/> Non-Hispanic |                                   | <input type="checkbox"/> Female |  |

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb



Right Thumb

Right four fingers taken simultaneously



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, [Signature] Dated: 4-9-04

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: 2017 S. 300TH ST. FEDERALWAY, WA. 98023