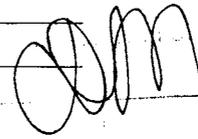


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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

RANDY ROLLER, APPELLANT

---

Appeal from the Superior Court of Pierce County  
The Honorable Katherine M. Stolz

No. 05-1-06405-8

---

**BRIEF OF RESPONDENT**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did Defendant plead guilty knowingly, intelligently, and voluntarily to second degree assault with a deadly weapon and first degree robbery?

B. STATEMENT OF THE CASE.

1. Procedure

On December 28, 2005, the Pierce County Prosecutor's Office filed an information in Cause No. 05-1-06405-8, charging appellant, RANDY ROLLER, hereinafter "defendant," with one count of assault in the first degree with a deadly weapon enhancement and one count of robbery in the first degree. CP 1-3. The State amended this information on April 5, 2006, changing the first count to assault in the second degree with a deadly weapon enhancement. CP 4-5.

Defendant initially pleaded not-guilty to the crimes, but changed his plea to guilty. CP 6-9; RP<sup>1</sup> 1-9. Defendant signed a Defendant's Statement on Plea of Guilty ("guilty plea") on April 5, 2006. CP 6-9. Defendant maintained that he did not commit the crime with which he was

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<sup>1</sup> The transcripts for the plea hearing and sentencing hearing are not paginated consecutively. Citations to the plea hearing will appear as "RP" plus the page number of the transcript in which the citation appears (e.g. "RP 9"). Citations to the Sentencing hearing will appear as "RP (4/13)" plus the page number of the transcript in which the citation appears (e.g. "RP (4/13) 9").

charged, but that he wanted to take advantage of the State's offer in accordance with North Carolina v. Alford, 400 U.S. 25; 91 S. Ct. 160, 27 L.Ed.2d 162 (1970). CP 6-9. He appeared at a plea change hearing before the Honorable Katherine M. Stolz on April 6, 2006. CP 6-9; RP 1. The court held a colloquy with defense attorney G. Helen Whitener, establishing that Ms. Whitener felt defendant was pleading guilty knowingly, intelligently, and voluntarily and that he understood what he was "proceeding with in this case." RP 1-5.

The court then reviewed the guilty plea with defendant. RP 6-9. The court determined that defendant was 20 years old, had a high school education, and understood the nature of crimes to which he was pleading guilty. RP 5, 7-9. The court explained the sentence range of the crimes, the maximum penalties, and the State's recommendation. RP 5, 6. The court told defendant that it did not have to accept the State's recommendation, and that defendant was waiving constitutional rights by pleading guilty, including the rights listed on page four of the guilty plea. RP 6, 7. The judge then specifically found that defendant's plea was knowing, intelligent, and voluntary. CP 6-9; RP 9.

On April 13, 2006, defendant was sentenced by the Honorable Linda CJ Lee. RP (4/13) 1. The Court sentenced defendant to 48 months of confinement and 18-36 months of community custody, with 107 days of credit for time served. CP 12-24; RP 12, 13. The court also ordered monetary penalties, including restitution. CP 12-24; RP 12, 13. From this

judgment and sentence, defendant filed timely notice of appeal. CP 25, 26.

2. Facts

In paragraph 11 of his guilty plea, defendant agreed that the court could find a factual basis for his charges in the Declaration for Determination of Probable Cause that was filed with the initial Information. CP 6-9. The following facts come from that declaration:

[I]n Pierce County, Washington, on or about the 26th day of December, 2005, the co-defendants, RANDY ROLLER and DAVID MICHAEL ROLLER, were at Pioneer Park drinking beer, Victim David St. Clair happened to be walking by on his [way] from the national Guard Armory. The co-defendants called him over, and they engaged him in small-talk. At some point, an argument ensued, and the co-defendants began hitting Mr. St. Clair with beer bottles. One of the co-defendants then stabbed him with a knife, and both co-defendants then stomped on him and kicked him in the ribs while he was on the ground.

Two witnesses were walking by and saw the beating. One of the witnesses recognized the co-defendants and yelled at them by name. The co-defendants ran off. The witnesses flagged down police and gave them descriptions of the co-defendant.

The police went over to the victim and saw that a folding knife was stuck in his shoulder, and he was bleeding profusely from at least one laceration on his head. Due to the large amount of blood loss and obvious trauma, paramedics took over and attended to Mr. St. Clair's injuries. Mr. St. Clair pointed the officers to the location of the beating. In that area, the police found a pool of blood and several broken beer bottles. Also found there was a

partially empty case of beer sitting on a park bench. After the co-defendants fled, Mr. St. Clair noticed that his wallet and cellular phone were gone.

Police later located the co-defendants exiting an apartment building, and the police contacted them. The police observed that RANDY had blood on his hands.

CP 1-3.

C. ARGUMENT.

1. DEFENDANT PLEADED GUILTY KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY TO SECOND DEGREE ASSAULT WITH A DEADLY WEAPON AND TO ROBBERY IN THE FIRST DEGREE.

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. U.S. Const. amend. XIV; Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969); In re Pers. Restraint of Stoudmire, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001); Wood v. Morris, 87 Wn.2d 501, 505, 554 P.2d 1032 (1976). Whether a plea is knowing, voluntary, and intelligent is determined from a totality of the circumstances. Wood, 87 Wn.2d at 506; State v. Branch, 129 Wn.2d 635, 919 P.2d 1228, (1996). If a defendant has received the information and pleads guilty pursuant to a plea agreement, there is a presumption that the plea is knowing, voluntary, and intelligent. In re Personal Restraint of Ness, 70 Wn. App. 817, 821, 855 P.2d 1191, review denied, 123 Wn.2d

1009, 869 P.2d 1085 (1994). “A defendant's signature on the plea form is strong evidence of a plea's voluntariness.” State v. Branch, 129 Wn.2d at 642; State v. Stephan, 35 Wn. App. 889, 893, 671 P.2d 780 (1983) (quoting State v. Perez, 33 Wn. App. 258, 261-262, 654 P.2d 708 (1982) (citing In re Keene, 95 Wn.2d 203, 206-207, 622 P.2d 13 (1981))). If the trial court orally inquires into a matter that is on that plea form, the presumption that the defendant understands this matter becomes “well nigh irrefutable.” Branch, 129 Wn.2d at 642 n.2; State v. Stephan, 35 Wn. App. at 893. After a defendant has orally confirmed statements in this written plea form, that defendant “will not now be heard to deny these facts.” In re Keene, 95 Wn.2d 203, 207, 622 P.2d 13 (1981).

For a court to conclude that a guilty plea is made knowingly, voluntarily, and intelligently, it must have facts sufficient to satisfy three tests. First, the defendant must understand “the direct consequences of [the] guilty plea,” and the record of the plea hearing “must show on its face that the plea was entered voluntarily and intelligently.” Wood v. Morris, 87 Wn.2d 501; State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996) (citing State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980)). The defendant must “understand the sentencing consequences” of his plea. State v. Miller, 110 Wn.2d 528, 531, 756 P.2d 122 (1988); State v. Turley, 149 Wn.2d 395, 398-99, 69 P.3d 338 (2003). He must also understand that he is waiving certain constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury, and the

right to confront one's accusers. Boykin v. Alabama, 395 U.S. at 243.

Second, a defendant must “be informed of the requisite elements of the crime charged, [and]... understand that his conduct satisfies those elements.” In re Pers. Restraint of Hews, 99 Wn.2d 80, 87, 88, 660 P.2d 263 (1983); McCarthy v. United States, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L.Ed.2d 418 (1969); See also United States v. Johnson, 612 F.2d 305, 309 (7th Cir. 1980). Third, the court must be “satisfied that there is a factual basis for the plea.” CrR 4.2(d).

Thus, the trial court properly accepted defendant’s guilty plea because (1) defendant understood the direct consequences of his plea, (2) defendant understood the requisite elements of assault in the second degree and robbery, and (3) the court had a factual basis on which to find defendant guilty of assault in the second degree and robbery.

a. Defendant was aware of the direct consequences of his plea

Defendant was informed of the direct consequences of his plea by counsel and the court. He was aware of the rights he was waiving by pleading guilty. Defendant signed the plea agreement, which indicated that he was waiving constitutional rights, including the right to confront witnesses against him, the right to summon witnesses at no expense to him, the presumption of innocence, the right to appeal his guilt, and the right to remain silent. RP 6-8; CP 6-9. Defendant was present in court

when his attorney said that he had reviewed his rights with his attorney, that he understood those rights, and that he was giving up those rights, “all his trial rights.” RP 3. Defense Counsel also signed the following statement on the guilty plea: “I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.” CP 6-9.

The court also held a colloquy to determine that defendant understood which rights he was waiving. RP 5-9. The court ascertained that defendant was 20 years old and had a high school education at the time of his plea. RP 5. He said he was pleading guilty with the advice of counsel. RP 5, 7. The court specifically established that defendant had read page four of the guilty plea, which lists the constitutional rights he was giving up by pleading guilty. RP 7. Defendant also signed the guilty plea, including a statement that read “[x] **My attorney read this plea statement to me.** Also, my lawyer has explained to me, and we have fully discussed, all of the above paragraphs. **If I have any more questions about it, I understand I can and need to ask the judge when I enter my plea of guilty.**” CP 6-9 (emphasis in original).

Defendant was aware of the procedures and logistics surrounding his guilty plea. He knew that his Newton/Alfred plea was viewed as a guilty plea by the law. RP 3, 8. He knew what sentence the state was recommending and that the court was not bound by that recommendation. RP 6, CP 6-9. He knew that he could not withdraw his guilty plea. RP 9.

Defendant was aware of the punishment he would receive for pleading guilty. He understood his offender score and the sentence range he was facing by pleading guilty. RP 3, 5, 6; CP 6-9. He understood that his deadly weapon sentencing enhancement would add 18 months to his sentence and would run consecutively to Count I. RP 3, 7; CP 6-9. He knew that he would be on community custody. RP 5, 6; CP 6-9. He knew that his offenses were strikeable and that he would face life in prison if he committed three strikeable offenses. RP 8. He knew he would have to pay a victim's compensation fee for his crime. CP 6-9.

Defendant was well aware of the consequences of his plea because defendant was informed of the constitutional rights he was waiving and the sentencing consequences of pleading guilty.

b. Defendant knew the elements of the crimes with which he was charged.

“A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree... Assaults another with a deadly weapon” RCW 9A.36.021(1)(c). The term “assault” is not statutorily defined, so Washington courts apply the common law definition to the crime. State v. Aumick, 126 Wn.2d 422, 426 n.12, 894 P.2d 1325 (1995). An assault is an attempt, with unlawful force, to inflict bodily injury upon another, whether or not the victim is actually harmed. Id., 126 Wn.2d 422.

“A person is guilty of robbery in the first degree if [i]n the commission of a robbery or of immediate flight therefrom, he or she... [i]nflicts bodily injury.” RCW 9A.56.200(1)(iii).

A person commits robbery when he unlawfully takes personal property from the person of another... against his will by the use ... of immediate force, violence, or fear of injury to that person .... Such force or fear must be used to obtain ... possession of the property, or to prevent ... resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

RCW 9A.56.190.

Defendant knew the crimes to which he was pleading guilty and the elements of those crimes. Defendant stated twice in court that he was pleading guilty to assault in the second degree with a deadly weapon enhancement and to robbery in the first degree. RP 5, 9. He stated in his guilty plea that he received a copy of the amended information, which contained these charges and the elements of the crimes. CP 4-5, 6-9. He also wrote out the charges and elements on the spaces provided on the Statement. CP 6-9.

- c. The court had a factual basis for finding that defendant committed the crimes with which he was charged.

The judge had a factual basis for concluding that defendant had committed the elements of the crimes to which he pleaded guilty. On the guilty plea, defendant did not fill out a factual basis for the crimes, but did initial the following statement: **“If my statement is a Newton or Alfred [sic] plea, I agree** that the court may review... a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.” CP 6-9 (emphasis in original). Defendant’s initials appear to the left of this statement. CP 6-9. Above his initials are handwritten the words “Alfred [sic] Newton Plea.” CP 6-9. By initialing this statement and signing the guilty plea, defendant adopted the State’s Declaration for Determination of Probable Cause as the factual basis for his plea. CP 1-3, 6-9. The Declaration provided a factual basis for the court to find that defendant committed assault in the second degree, that defendant used a deadly weapon in that assault, and that defendant committed robbery in the first degree. CP 1-3.

First, the State’s Declaration of Probable Cause provides a factual basis to find that defendant satisfied the elements of the crime of assault in the second degree. CP 1-3. Defendant “began hitting Mr. St. Clair with beer bottles..., and...then stomped on him and kicked him in the ribs while he was on the ground.” CP 1-3. The Declaration also provides a

factual basis to conclude that defendant “stabbed [Mr. St. Clair] with a knife.” CP 1-3. After his attack, Mr. St. Clair had “a folding knife...stuck in his shoulder” and “at least one laceration on his head.” CP 1-3. This attack certainly provided the court a factual basis to find that defendant attempted with unlawful force to inflict bodily harm on another.

Second, the Declaration satisfies the elements of the deadly weapon sentencing enhancement. CP 1-3. A knife is a deadly weapon if it “has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death.” RCW 9.94A.602. Relevant factors in proving this capacity and use include the defendant's intent and present ability, the degree of force used, the part of the body to which the weapon was applied, and the injuries inflicted. State v. Winings, 126 Wn. App. 75, 88, 107 P.3d 141 (2005).

Defendant’s attack with the knife provides a factual basis for the court to conclude the defendant intended to stab Mr. St. Clair deeply enough that the knife would remain in Mr. St. Clair’s body. CP 1-3. The Declaration states that defendant had the present ability to overwhelm Mr. St. Clair and knock him to the ground. CP 1-3. Defendant stabbed Mr. St. Clair in the shoulder, which is near the torso and the neck, which are parts of the body that contain vital organs. CP 1-3. Mr. St. Clair had a deep knife wound to the shoulder after the attack. CP 1-3. There was thus a factual basis to conclude that defendant used a knife in a way that was likely to produce death based on the defendant's intent and present ability,

the degree of force used, the part of the body to which the weapon was applied, and the injuries inflicted. See Winings 126 Wn. App. at 88.

Third, the Declaration provided a factual basis for the court to find defendant guilty of robbery in the first degree. CP 1-3. Mr. St. Clair did not have his cell phone or wallet on his person after defendant beat him with a beer bottle and kicked him in the ribs. CP 1-3. He did not notice that these items were missing until after the attack. CP 1-3. The court thus had a factual basis for the conclusion that defendant used the unlawful force of beating and kicking Mr. St. Clair to take Mr. St. Clair's wallet and cell phone, or to overcome Mr. St. Clair's resistance to the taking. Moreover, Mr. St. Clair seems to have realized that he was missing these items only after defendant beat and kicked him, which provides a factual basis for the court to conclude that defendant prevented knowledge of the taking by beating and kicking Mr. St. Clair. CP 1-3.

Defendant thus pleaded guilty to second degree assault and first degree robbery knowingly, intelligently, and voluntarily because he understood the consequences of his plea, he knew the elements of the crime with which he was charged, and the court had a factual basis to find that defendant committed the crimes.

- d. All parties agreed that defendant's plea was knowing, voluntary, and intelligent.

The actions of all the parties in court reflected that defendant was pleading guilty knowingly, intelligently, and voluntarily. Defendant was present in court, was 20 years old, and had a high school education on the day of his plea, yet he made no objection to the plea. RP 4. During the plea hearing, defendant's attorney said that defendant "understands what he's proceeding with in this case." RP 3, 4. She specifically said his decision was knowing, intelligent, and voluntary. RP 4. She later said that defendant made his decision freely and voluntarily. RP 8. The court then specifically found that defendant was making his plea knowingly, voluntarily, and intelligently. RP 9.

The guilty plea likewise reflected that defendant pleaded guilty knowingly, intelligently, and voluntarily. CP 6-9. The statement said that defendant pleaded guilty "freely and voluntarily," that he was not threatened into pleading guilty, and that he had read and discussed the statement with his attorney. CP 6-9. His attorney signed a statement that said, "I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement." CP 6-9. Finally, the court found "defendant's plea of guilty to be knowingly, intelligently, and voluntarily made." CP 6-9. She also said that defendant understood "the charges and the consequences of the plea." CP 6-9.

Thus, the entire record establishes that defendant knowingly, intelligently, and voluntarily pleaded guilty to his crimes.

- e. Defendant's plea was more obviously knowing, voluntary, and intelligent than other pleas that the Washington Supreme Court has ruled acceptable.

The Washington Supreme Court upheld the guilty plea in State v. Perez, 33 Wn. App. 258. Perez read and signed a statement on plea of guilty and accepted the prosecutor's version of the facts. Id. The court explained to Perez that she was waiving constitutional rights, assured itself that she was pleading voluntarily, and explained the maximum sentence to Perez. Id.

In the present case, defendant read and signed the guilty plea. CP 6-9; RP 5-9. His attorney reviewed the plea with him, and the court discussed it with him. CP 6-9; RP 5-9. The guilty plea and the judge's colloquy established that the defendant knew (1) the standard range of the sentence for that crime given his offender score, (2) the Prosecutor's recommended sentence, (3) the fact that the judge did not have to follow the prosecutor's recommendation, (4) that he was waiving the constitutional rights listed on page four of the guilty plea, and (5) that he could not withdraw his plea. CP 6-9; RP 5-9. Moreover, defendant signed the plea statement and orally agreed to it in court. CP 6-9; RP 8, 9. This statement fully sets forth the rights defendant gave up by pleading guilty.

CP 6-9. Thus, the trial court in this case thus had even more reason to accept defendant's guilty plea than the trial court in Perez, in which there is no suggestion that Perez's attorney even read the statement to her.

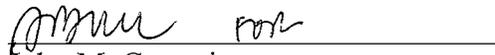
D. CONCLUSION.

For the foregoing reasons, the State respectfully requests that this Court affirm defendant's sentence

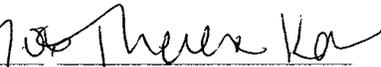
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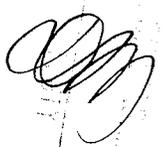
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Certificate of Service:  
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

11-7-06   
Date Signature

  
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