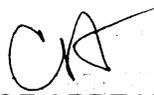


No. 35055-6-II


IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

IN RE THE PERSONAL RESTRAINT PETITION OF:

JUSTIN MICHAEL SHEA

THURSTON COUNTY SUPERIOR COURT

The Honorable Christine A. Pomeroy, Judge
Cause No. 00-1-00109-0

BRIEF OF RESPONDENT

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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

IN RE THE PERSONAL)	NO. 35055-6-II
RESTRAINT PETITION OF)	SUPPLEMENTAL
)	RESPONSE TO
)	PERSONAL RESTRAINT
JUSTIN SHEA)	PETITION

Comes now Edward G. Holm, Prosecuting Attorney in and for Thurston County, State of Washington, by and through Carol La Verne, Deputy Prosecuting Attorney, and files its response to petitioner's personal restraint petition pursuant to RAP 16.9.

I. BASIS OF CURRENT RESTRICTIONS ON LIBERTY

The petitioner is currently serving a sentence of 168 months, which includes a 60-month firearm enhancement, in the custody of the Washington Department of Corrections. Shea entered guilty pleas to five charges, detailed below, and was sentenced on March 21, 2000, in Thurston County Superior Court.

II. STATEMENT OF PROCEEDINGS

(The following is a summary of the facts set forth in the police reports which are attached as Appendix F).

On November 16, 1999, victim Louise Rowan was closing the Blockbuster Video store, where she worked, in Tumwater,

Washington. It was just at midnight. As Ms. Rowan was pulling the door mat into the store, she heard the back doors open and saw a man with a gun. She dropped to the floor and shouted to a second employee, Stephanie McElhiney, to get down. The gunman yelled at Rowan, demanding she give him the videotape from the security camera in the store. He grabbed her by the back of the pants, pulled her to her feet, and shoved the gun into the small of her back. She took him to the surveillance camera, but he could not open the camera to retrieve the film cassette without a key. His response was to kick Ms. Rowan, call her a bitch, and demand the key. She told him it was in a time-delay safe; holding the gun to her head, he demanded that she enter the code that would open it, but told her that if she entered the code that summoned the police, she would be dead. He pulled back the slide on the gun he held, and then hit her in the back.

As they waited for the safe to open, the robber demanded to know Ms. Rowan's name. When she failed to respond, he put the gun under her chin and asked again, whereupon she answered. While still waiting for the safe to open, the gunman made Rowan empty the tills, then, when the safe opened, he forced her to empty

the safe. He also obtained the key to the surveillance equipment and took the videotape.

While this was going on Stephanie McElhiney, according to her account to the police, heard Ms. Rowan yell and dropped to the floor. A black male placed a gun in her face and told her not to move or he would seriously “fuck her up.” She was left lying on the floor while the intruders ran around the store, and then a white male took her to the men’s restroom and stood guard over her. She was told that she and Ms. Rowan would not be hurt as long as they didn’t do anything stupid, like call the police.

After a time Ms. Rowan was brought to the restroom and the two women were told not to move for five minutes or they would be killed. The robbers turned off the lights and left, but were unable to get out the locked back door and upon their demand, Ms. Rowan gave them the key to the door and returned to the restroom. The two women remained in the restroom for a few moments, and then Ms. Rowan went out into the store, discovered the phone lines had been cut, and, returning once again to the restroom with her cell phone, called the police.

The police arrived but were able to gather very little physical evidence. Later in the morning the manager of the video store

discovered that the words "fuck you" had been scratched into the end of a display case.

The following day two separate tips, at least one of which was anonymous, were received on the Crime Stoppers line; further information was received on December 4th and December 8th, 1999, and using this information the police located witnesses and identified the four men involved in the robbery. The suspects were individually arrested.

On January 25, 2000, Justin Shea was charged in Thurston County Superior Court with the following charges and weapon enhancement allegations:

Count I—Burglary in the First Degree While Armed with a Deadly Weapon—Firearm, RCW 9A.52.020(1), RCW 9.94A.125, and RCW 9.94A.310;

Count II—Assault in the Second Degree While Armed with a Deadly Weapon—Firearm, RCW 9A.36.021(1)(c), RCW 9.94A.125, and RCW 9.94A.310;

Count III—Assault in the Second Degree While Armed with a Deadly Weapon—Firearm, RCW 9A.36.021(1)(c), RCW 9.94A.125, and RCW 9.94A.310;

Count IV—Robbery in the First Degree While Armed with a Deadly Weapon—Firearm, RCW 9A.56.200(1), RCW 9.94A.125, and RCW 9.94A.310;

Count V—Kidnapping in the First Degree While Armed with a Deadly Weapon—Firearm, RCW 9A.40.020(1)(b), RCW 9.94A.124, and RCW 9.94A.310;

Count VI—Kidnapping in the First Degree While Armed with a Deadly Weapon—Firearm, RCW 9A.40.020(1)(b), RCW 9.94A.124, and RCW 9.94A.310;

Count VII—Intimidating a Witness While Armed with a Deadly Weapon—Firearm, RCW 9A.72.110(1), RCW 9.94A.125, and RCW 9.94A.310; and

Count VII—Malicious Mischief in the Second Degree While Armed with a Deadly Weapon—Firearm, RCW 9A.48.080(1)(a), RCW 9.94A.125, and RCW 9.94A.310

See Appendix A.

On March 21, 2000, a First Amended Information was filed, reducing the total number of charges to five and removing the firearm enhancements on all but one charge.

Count I—Burglary in the First Degree, RCW 9A.52.020(1);

Count II—Assault in the Second Degree, RCW 9A.36.021(1)(c) (naming both Louise Rowan and Stephanie McElhiney as victims);

Count III—Robbery in the First Degree While Armed with a Deadly Weapon—Firearm, RCW 9A.56.200(1), RCW 9.94A.125, and RCW 9.94A.310;

Count IV—Kidnapping in the Second Degree, RCW 9A.40.030(1) (naming both Louise Rowan and Stephanie McElhiney as victims); and

Count V—Malicious Mischief in the Second Degree, RCW 9A.48.080(1)(a).

See Appendix B.

Justin Shea entered guilty pleas to all five of the above charges. See Appendix C, the Statement of Defendant on Plea of Guilty, which was also entered with the court on March 21, 2000. The plea agreement (Appendix D) was incorporated into the change of plea statement (Appendix C, page 2, Section 6(f)). Shea agreed to cooperate with the prosecution by providing truthful

information, testimony against co-defendants if needed, and to an exceptional period of five years of community custody following his commitment. He also agreed to join the State's recommendation of a 168-month sentence.

At the sentencing hearing, Mr. Shea's counsel acknowledged that the State had an extremely strong case against Shea. "[Q]uite frankly, . . . Mr. Shea didn't have much wiggle room. It was a very, very strong case for the state and it included two statements from two respective codefendants fully implicating Mr. Shea." See Appendix G, transcript of change of plea and sentencing hearing, page 9.

It was also brought to the attention of the judge that one of the victims, Louise Rowan, had taken her own life before the date of sentencing. Appendix G, page 13.

The sentencing judge imposed the agreed-upon 168 months confinement, as well as the five-year period of community custody, specifically finding that "[b]ut for the plea agreement in this case, defendant would be facing greater charges and lengthier sentences." Appendix E, Appendix 2.4 to Judgment and Sentence.

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Mr. Shea did not appeal. This Personal Restraint Petition, filed June 27, 2006, followed the imposition of sentence by slightly more than six years.

III. ISSUES RAISED

This court, in the Order Referring Petition to Panel, Appointing Counsel, and Setting Briefing Schedule, has identified four issues it wishes the parties to address.

1. Whether the petitioner's claim is barred by his guilty plea.
2. Whether the petitioner's double jeopardy claim is barred because he received the benefit of his bargain.
3. Whether State v. Ermels, 156 Wn.2d 528, 131 P.3d 299 (2006), bars the petitioner's claim.
4. Whether, if the claim is not barred, the challenged convictions violate double jeopardy.

IV. RESPONSE TO ISSUES RAISED

1. The Petitioner's double jeopardy claim should be barred by his guilty plea.

The court reviews double jeopardy claims de novo. State v. Freeman, 153 Wn.2d 765,770, 108 P.3d 753 (2005).

Mr. Shea cites to In re Butler, 24 Wn. App. 175, 599 P.2d 1311 (1979) and State v. Cox, 109 Wn. App. 779, 37 P.3d 1240, review denied, 147 Wn.2d 1003 (2002), for the proposition that a guilty plea does not waive a claim that a charge, judged on its face,

is one that the State may not constitutionally prosecute. Both of those cases rest largely on Menna v. New York, 423 U.S. 61, 96 S.Ct. 241, 46 L. Ed. 2d 195 (1975). Menna did not preclude the possibility that a double jeopardy claim can be waived.

We do not hold that a double jeopardy claim may never be waived. We simply hold that a plea of guilty to a charge does not waive a claim that—judged on its face—the charge is one which the State may not constitutionally prosecute.

Menna, 423 U.S. at 62-63.

It is important to note that Menna used the language, “judged on its face.” Mr. Shea maintains in his brief (pg. 8) that the judgment and sentence on its face shows a double jeopardy violation, but he does not explain. On the contrary, there is nothing on the face of the judgment and sentence, attached as Appendix E, which shows any indication of a double jeopardy violation, nor in the Statement on Plea of Guilty (Appendix C) or the plea agreement (Appendix D), which were filed with the court moments before the judgment and sentence was entered. The judgment and sentence lists current crimes, two of which, under some circumstances which will be discussed below, could possibly merge, does not make any violation apparent on the face of the document. There is no authority for the assertion that double

jeopardy is apparent on the face of the judgment and sentence, nor is there, in fact, double jeopardy.

2. The fact that the petitioner received the benefit of his bargain does not necessarily bar his double jeopardy claim.

The mere fact that a defendant received what he bargained for does not in itself bar him or her from collaterally attacking the conviction. While the Washington Supreme Court has held that a defendant who agreed to accept habitual offender status in exchange for a favorable sentence is held to his bargain, State v. Majors, 94 Wn.2d 354, 616 P.2d 1237 (1980), it has also held that if the defendant did not understand what he was giving up, e.g., the sentence was not authorized by statute, he is not barred from collateral attack. In re Thompson, 141 Wn.2d 712, 10 P.3d 380 (2000). Therefore, the fact the Justin Shea received the benefit of his bargain does not end the inquiry.

3. State v. Ermels does bar the petitioner's claim.

In Ermels, Joshua Ermels pled guilty to second degree manslaughter and stipulated to an exceptional sentence, including stipulating that there was a legal basis for that exceptional sentence. He waived the right to appeal the sentence. However, he did challenge his sentence following the decision in Blakely v.

Washington, 542 U. S. 296, 124 S. Ct. 2531, 159 L. Ed 2d 403 (2004), arguing that he had not knowingly, intelligently, and voluntarily waived his right to appeal or to have a jury find facts supporting an exceptional sentence. Ermels did not ask to withdraw his plea—he asked only that his sentence be reversed and his case remanded for sentencing within the standard range.

The court in Ermels found there was no Blakely violation, but went further to find that Ermels could not challenge only one part of a plea agreement.

We have recognized that plea agreements often involve one bargain, or a “package deal.” . . . Even where the plea agreement involves multiple counts or charges, the agreement is indivisible where the charges were made at the same time, described in one document, and accepted in a single proceeding.

.....

Ermels has specifically stated that he has not challenged his entire plea, and we will not reframe his argument to do so.

Ermels, *supra*, at 541-543.

In the Ermels decision, the court cited to State v. Turley, 149 Wn.2d 507, 60 P.3d 338 (2003). Turley had pled guilty to first degree escape and conspiracy to manufacture methamphetamine, with all parties believing that no community custody would follow.

When the State discovered almost three years later that community custody was mandatory for the drug charge and moved to amend the judgment and sentence, Turley moved to withdraw his guilty plea to only that charge. The trial court allowed him to do that, the Court of Appeals affirmed, and the Supreme Court reversed. In doing so, the Supreme Court held:

We hold that a trial court must treat a plea agreement as indivisible when pleas to multiple counts or charges were made at the same time, described in one document, and accepted in a single proceeding. Absent objective indications to the contrary in the agreement itself, we will not look behind the agreement to attempt to determine divisibility. Such a determination, after the fact, would not serve the plea negotiation proceeding. When the defendant can show manifest injustice as to one count or charge in an indivisible agreement, the defendant may move to withdraw the plea agreement or have specific performance of the agreement.

Turley, *supra*, at 400.

The presumption going into an analysis of a plea bargain should be in favor of upholding the agreement. "Plea agreements are favored by the courts." State v. Armstrong, 109 Wn. App. 458, 461, 35 P.3d 397 (2001).

The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called "plea bargaining," is an essential component the administration of justice. Properly administered, it is to be encouraged.

State v. Tourtellotte, 88 Wn.2d 579, 582, 564 P.2d 799 (1977)

The Turley decision gives the court a great deal of discretion when a plea agreement is determined to be invalid. The defendant can choose between specific performance of the agreement or withdrawal of the entire plea. However, the trial court is not necessarily bound by that choice. Once the defendant chooses, then the State

“bears the burden of demonstrating that the defendant’s choice of remedy is unjust.’ . . . The State’s burden requires a showing that compelling reasons exist not to allow the defendant’s choice. We hold that when the plea agreement includes multiple counts or charges, the State need not make a showing of compelling reasons on each count or charge. Instead, the showing may be based on any one or all of the counts or charges. The trial court then determines whether those reasons are compelling and the defendant’s choice of withdrawal or specific performance is unjust.

Turley, *supra*, at 401.

On the same day that the Supreme Court decided Ermels, it also decided State v. Bisson, 156 Wn.2d 507, 130 P.3d 820 (2006). In that opinion, it cited to the “bright-line rule stated in Turley” in holding that if Bisson chose to withdraw his guilty plea, he was required to withdraw the plea in its entirety. Bisson, *supra*, at 519. See also, State v. Steele, 134 Wn. App. 844, 846, 142 P.3d 649

(2006)—“Because Steele, like Ermels, did not challenge the validity of the entire plea agreement, but instead sought the remedy of a sentence within his standard range, Steele cannot challenge his stipulations.”

Justin Shea is not seeking to withdraw his guilty plea, nor asking for specific performance. He explicitly does not want specific performance. He wants to make the second degree kidnapping and second degree assault charges “dissolve”, lowering his offender score and thus his standard sentencing range. That is not an option available to him.

In his supplemental brief, Shea argues that because he is not challenging his stipulated exceptional community custody sentence, nor did he waive the right to appeal a double jeopardy violation, the Ermels holding does not apply. However, nowhere in Ermels or any of the other cited cases is any indication that a plea agreement is an indivisible “package deal” only when an exceptional sentence is being challenged. Here Shea, like Ermels, has not challenged his entire plea, and, like Ermels, this court should not “reframe his argument to do so.” Ermels, supra, at 543.

Even if the plea agreement were invalid, and he were asking to withdraw it, there are compelling reasons why he should not be

allowed to. A review of the transcript of the sentencing hearing (Appendix G), shows that the plea agreement was very favorable to Mr. Shea. He was in a position with no "wobble room." If he were convicted at trial of all the charges originally filed against him in the first information, his sentencing range would have been 308-350 months. One hundred and eighty of those months would have resulted from consecutively imposed firearm enhancements, and would have meant no good time. Instead, he faced a range of 168-204 months, total, with only one firearm enhancement of 60 months. A review of the transcript of the sentencing hearing (Appendix G) shows that there was an extensive colloquy between the judge, the defendant, the defense counsel, and the prosecutor. It is clear Mr. Shea had ample opportunity to consult with his attorney, and that the negotiations resulting in this plea agreement were extensive.

The State, on the other hand, gave up the possibility of obtaining a much higher sentence after trial. In exchange, the victims were spared the ordeal of a trial, and, the State believed, they were also being spared the possibility of an appeal and perhaps a retrial. It is manifestly unfair to allow the petitioner, after six years, to challenge the plea agreement. One victim had taken

her own life even before the plea was entered. By this time it can safely be assumed that witnesses have scattered or disappeared, memories have faded, physical evidence has been destroyed, and the possibility of obtaining justice for the victims, as well as the people of the State of Washington, gone.

“ . . . [T]he choice of plea withdrawal [rescission] may be unfair if the prosecutor has detrimentally relied on the bargain and has lost essential witnesses or evidence.” . . . ([W]hen determining whether to permit a defendant to withdraw his guilty plea, the trial court should give consideration to whether the government “will suffer undue prejudice as a result of the withdrawal.”)

Armstrong, supra, at 462.

When bringing a personal restraint petition, the petitioner raising a constitutional error, “must satisfy a threshold burden of demonstrating actual and substantial prejudice.” State v. Cook, 114 Wn.2d 802, 810, 792 P.2d 506 (1990). Mr. Shea is in a much better position than he would have been after trial. He was not prejudiced.

4. The challenged convictions do not violate double jeopardy.

An enormous body of law has resulted from a clause in the Fifth Amendment to the United States Constitution. Washington’s

double jeopardy prohibition in article I, section 9, of the Washington Constitution, is coextensive with the federal guarantee. Cox, *supra*, at 782. That is: that no person shall “be subject for the same offense to be twice put in jeopardy of life or limb.” In other words, while the State may charge multiple offenses arising from the same criminal acts, the courts may not impose multiple convictions for the same offense. However, it is up to the legislature to determine if an act or series of acts constitutes the same crime. The courts, then, must determine legislative intent in deciding if double jeopardy exists. If this is not apparent from the language of the statute, the courts must look to the “same evidence test”, the legislative history, the merger doctrine, and an analysis of whether there is an independent purpose or effect to each crime. Freeman, *supra*, at 770-73.

a. Same Evidence Test.

The basic framework of the analysis is as follows:

Initially, we look to the language of the two pertinent statutes to determine if they expressly authorize multiple punishments for conduct that violates more than one statute. Where, as here, the language of the statutes are silent on this point, we apply a rule of statutory construction known as the “same evidence” test. . . Under the same evidence test, double jeopardy is deemed violated if a defendant is “convicted of offenses that are identical

both in fact and in law.” . . . If each offense requires proof of an element not required in the other, where proof of one does not necessarily prove the other, the offenses are not the same and multiple convictions are permitted. Our “same evidence” test mirrors its federal counterpart, the “same elements” test or *Blockburger* test, as adopted in *Blockburger v. United States*, 284 U. S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932) and *State v. Gocken*, 127 Wn.2d 95, 101-02, 896 P.2d 1267 (1995).

State v. Louis, 155 Wn.2d 563, 569, 120 P.3d 936 (2005).

The fact that the challenged crimes are placed in different chapters of the criminal code also indicates a legislative intent that they be punished separately. State v. Cole, 117 Wn. App. 870, 875, 73 P.3d 411 (2003). Robbery is codified in RCW 9A.56 while assault is placed in RCW 9A.36, and kidnapping is in RCW 9A.40.

The issue in Louis was whether first degree robbery and first degree kidnapping constituted double jeopardy. The court concluded that they did not. “[I]n order to prove robbery, the State [is required to] prove a taking of [personal] property, which is not an element of kidnapping,” while kidnapping requires the State to prove “the use or threatened use of ‘deadly force,’” which is not an element of robbery.” Louis, supra, at 569, citing to State v. Vladovic, 99 Wn.2d 413, 423-24, 662 P.2d 853 (1983), as well as other cases. See text of applicable statutes, Appendix I. In

Vladovic the challenge was also to convictions for first degree robbery and first degree kidnapping.

In this case, Shea has convictions for first degree robbery and second degree kidnapping. The statutes require different elements. (See Appendix I). See also In re Fletcher, 113 Wn.2d 42, 776 P.2d 114 (1989). “If each crime contains an element that the other does not, we presume that the crimes are not the same offense for double jeopardy purposes.” However, the elements of the crime are not considered on an abstract level, but “whether each provision requires *proof of a fact* which the other does not.” Freeman, *supra*, at 772, emphasis in original. The State would have to prove the kidnapping as part of the robbery, and under this test, the two crimes would require the same evidence. However, this is not the sole test, as discussed below.

When first degree robbery and second degree assault are both charged, resulting from the same facts and where the assault facilitates the robbery, the courts have found that the same evidence test has been met. Freeman, *supra*, at 776. However, as discussed below, in this case there was an assault that did not facilitate the robbery, and thus the two can be punished separately.

b. Robbery in the first degree does not merge with either second degree assault or second degree kidnapping as charged in this case.

Merger is a tool for determining legislative intent. It applies only in specific instances.

We reaffirm our holdings that the merger doctrine is a rule of statutory construction which only applies where the Legislature has clearly indicated that in order to prove a particular degree of crime (e.g., first degree rape) the State must prove not only that a defendant committed that crime (e.g., rape) but that the crime was accompanied by an act which is defined as a crime elsewhere in the criminal statutes (e.g., assault or kidnapping). Pursuant to this rule, kidnapping does not merge into first degree robbery.

Vladovic, supra, at 420-21.

Proof of kidnapping is therefore not necessary to prove robbery, and there is no merger. Specifically, in Shea's case, the robbery could have been proved without proving the kidnapping. The second degree assault, on the other hand, would have to be proven as an element of first degree robbery, and would, except for the exception to the merger doctrine, merge.

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c. Exception to Merger.

In Freeman, *supra*, the court found that first degree robbery and second degree assault merged in the case it was considering.

However, the opinion also discusses a

...well established exception that may operate to allow two convictions even when they formally appear to be the same crime under other tests. These offenses may in fact be separate when there is a separate injury to "the person or property of the victim or others, which is separate and distinct from and not merely incidental to the crime of which it forms an element." . . . This exception is less focused on abstract legislative intent and more focused on the facts of the individual case. For example, when the defendant struck a victim *after* completing a robbery, there was a separate injury and intent justifying a separate assault conviction, especially since the assault did not forward the robbery. . . The test is whether the unnecessary force had a purpose or effect independent of the crime. (Emphasis in original)

Freeman, *supra*, at 778-79.

The facts in this case show a clear gratuitous assault. While the gunman was holding Louise Rowan, waiting for the safe to open, he asked her name. When she failed to answer, he stuck the gun under her head and demanded her name again. The gunman did not need to know her name in order to rob Blockbuster Video, or to be able to control her. The obvious inference is that he inflicted humiliation and terror for the sheer enjoyment of it. It had a

purpose and effect apart from the robbery, and can be (and should be) punished as a separate crime.

Vladovic holds that kidnapping and first degree robbery do not merge, and although second degree assault and first degree robbery may merge, there is a clear exception to the merger doctrine, permitting Mr. Shea to be punished for both crimes.

d. The Effect of the Defendant's Guilty Plea.

As noted by several of the previously cited cases, the legislature may impose multiple punishments for the same conduct; it becomes double jeopardy only if the legislature has not either done so explicitly or by implication. The constitutional concern is that a defendant be punished more severely than the legislature intended. That concern is not present when a defendant negotiates a plea agreement. Here Mr. Shea was represented by counsel, was faced with a potential of up to 350 months in prison, and voluntarily chose to plead guilty to this assortment of crimes. It is a fair inference that if he, or his attorney, believed he could not be convicted of those offenses at trial, he would not have entered into this agreement. A represented defendant who pleads guilty is simply not in the same position as a defendant convicted at trial of, and sentenced for, crimes that constitute double jeopardy. The

safeguards put in place by the doctrine are not necessary to protect him.

The State has conceded above that the fact that he received the benefit of his bargain does not in itself, bar his challenge. However, the principle of fundamental fairness should. He bargained for the result he received, which was, compared to the possible outcomes, very favorable to him, and six years later discovers that there is an argument he can use to seek an even better result than he got. The State would not be permitted to challenge this agreement after any length of time, not to mention six years, no matter what new theories occurred to it.

V. CONCLUSION

The plea agreement that Justin Shea entered into with the State is a contract. He may not challenge parts of the contract, but only the entirety, by seeking to withdraw his guilty pleas. He has not done so, and the State respectfully asks this court not to reframe his PRP to constitute such a request.

Although the fact of the guilty plea alone does not bar a double jeopardy challenge, Shea must establish that the violation is apparent on the face of the judgment and sentence, and he has not done so.

The fact that Shea received the benefit of his bargain does not bar a challenge, provided that he was unaware he was giving up a right. In this instance, principles of fairness weigh against his being allowed to do so.

The challenged charges of second degree assault and second degree kidnapping do not constitute double jeopardy in relation to first degree robbery, nor do they merge.

For all of the above reasons, the State respectfully asks this court to deny Mr. Shea's personal restraint petition.

Respectfully submitted this 27th of July, 2007.



Carol La Verne, WSBA# 19229
Attorney for Respondent

APPENDIX "A"

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

00 JAN 25 PM 3: 19

BETTY J. GOULD, CLERK

BY _____
DEPUTY

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

STATE OF WASHINGTON,

vs.

JUSTIN MICHAEL SHEA
W,M,5'9,140,BRN,BRN
DOB: 12-08-80
SID: WA15677354
FBI: 63219MB1
PCN: 005832365
c/o Thurston County Jail
BOOKING NO. C91611

Plaintiff,

Defendant.

NO. 00-1-109-0

INFORMATION

JOHN M. "JACK" JONES
Senior Deputy Prosecuting Attorney

CO-DEFENDANT:
JASON ALLEN GOUDY
NO. 00-1-105-7
DOMINIC LAPRAIM
NO. 00-1-111-1
KAHLIL RANELL EDWARDS
NO. 00-1-112-0

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crime:

COUNT I: BURGLARY IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON, RCW 9A.52.020(1), RCW 9.94A.125 and RCW 9.94A.310:

That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of November, 1999, as principal or accomplice, with intent to commit a crime against a person or property therein, did enter or remain unlawfully in a building and while in such building or in immediate flight therefrom, the defendant or another participant in the crime was armed with a deadly weapon or assaulted a person therein. It is further alleged that during the commission of this offense, the defendant or accomplice was armed with a deadly weapon, to-wit: a firearm.

COUNT II: ASSAULT IN THE SECOND DEGREE WHILE ARMED WITH A DEADLY WEAPON-FIREARM, RCW 9A.36.021(1)(c), RCW 9.94A.125 and RCW 9.94A.310:

That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of November, 1999, as principal or accomplice, did assault another, to-wit: Louise Rowan, with a deadly weapon, to-wit: a firearm. It is further alleged that during the commission of this offense, the defendant or an accomplice was armed with a deadly weapon, to wit: a firearm.



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3 COUNT III: ASSAULT IN THE SECOND DEGREE WHILE ARMED WITH A DEADLY WEAPON -
4 FIREARM, RCW 9A.36.021(1)(c), RCW 9.94A.125 and RCW 9.94A.310:

5 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
6 November, 1999, as principal or accomplice, did assault another, to-wit: Stephanie McElhiney, with a deadly
7 weapon, to-wit: a firearm. It is further alleged that during the commission of this offense, the defendant or
8 an accomplice was armed with a deadly weapon, to wit: a firearm.

9
10 COUNT IV: ROBBERY IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON -
11 FIREARM, RCW 9A.56.200(1), RCW 9.94A.125, RCW 9.94A.310:

12 In that the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
13 November, 1999, as principal or accomplice, did unlawfully take personal property of Blockbuster Video
14 from a person, to-wit: Louise Rowan or their presence, against such person's will, by use or threatened use
15 of immediate force, violence, or fear of injury to such person or his property, with the intent to commit theft
16 of the property, and in the commission of or immediate flight therefrom, the accused was armed with a deadly
17 weapon or displayed what appeared to be a firearm. It is further alleged that during the commission of this
18 offense, the defendant or an accomplice was armed with a deadly weapon, to-wit: a firearm.

19
20 COUNT V: KIDNAPING IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON -
21 FIREARM, RCW 9A.40.020(1)(b), RCW 9.94A.125 and RCW 9.94A.310:

22 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
23 November, 1999, as principal or accomplice, did intentionally abduct another person, to-wit: Louise Rowan,
24 with intent to facilitate the commission of any felony. It is further alleged that during the commission of this
25 offense, the defendant or an accomplice was armed with a deadly weapon, to-wit: a firearm.

26
27 COUNT VI: KIDNAPING IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON -
28 FIREARM, RCW 9A.40.020(1)(b), RCW 9.94A.125 and RCW 9.94A.310:

29 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
30 November, 1999, as principal or accomplice, did intentionally abduct another person, to-wit: Stephanie
31 McElhiney, with intent to facilitate the commission of any felony. It is further alleged that during the
32 commission of this offense, the defendant or an accomplice was armed with a deadly weapon, to-wit: a
33 firearm.

34
35 COUNT VII: INTIMIDATING A WITNESS WHILE ARMED WITH A DEADLY WEAPON -
36 FIREARM, RCW 9A.72.110(1), RCW 9.94A.125 and RCW 9.94A.310:

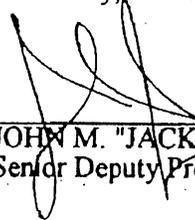
37 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
38 November, 1999, as principal or accomplice, by use of a threat directed to a current or prospective witness,
39 to-wit: Louise Rowan, did attempt to influence the testimony of such person, or induce that person to elude
40 legal process summoning him or her to testify or induce that person to absent him or her self from such
41 proceedings, or induce that person not to report the information relevant to a criminal investigation or not
42 give truthful or complete information relevant to a criminal investigation. It is further alleged that during the
43 commission of this offense, the defendant or an accomplice was armed with a deadly weapon, to-wit: a
44 firearm.

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COUNT VIII: MALICIOUS MISCHIEF IN THE SECOND DEGREE, WHILE ARMED WITH A DEADLY WEAPON-FIREARM. RCW 9A.48.080(1)(a), 9.94A.125, 9.94A.310:

That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of November, 1999, as principal or accomplice, did knowingly and maliciously cause physical damage to the property of another, in excess of \$250. It is further alleged that during the commission of this offense the defendant or accomplice was armed with a deadly weapon.

DATED this 25th day of January, 2000.

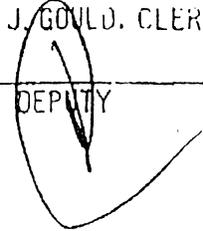


JOHN M. "JACK" JONES, WSBA#16786
Senior Deputy Prosecuting Attorney

APPENDIX “B”

2000 MAR 21 PM 2: 53

BETTY J. GOULD, CLERK

BY  DEPUTY

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

5 STATE OF WASHINGTON,

6 Plaintiff,

7 vs.

8 JUSTIN MICHAEL SHEA
9 W,M,5'9,140,BRN,BRN
10 DOB: 12-08-80
11 SID: WA15677354
12 FBI: 63219MB1
13 PCN: 005832365
14 c/o Thurston County Jail
15 BOOKING NO. C91611

16 Defendant.

NO. 00-1-109-0

FIRST AMENDED
INFORMATION

JOHN M. "JACK" JONES
Senior Deputy Prosecuting Attorney

CO-DEFENDANT:
JASON ALLEN GOUDY

NO. 00-1-105-7

DOMINIC LAPRAIM

NO. 00-1-111-1

KAHLIL RANELL EDWARDS

NO. 00-1-112-0

17 Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the
18 defendant with the following crime:

19 COUNT I: BURGLARY IN THE FIRST DEGREE, RCW 9A.52.020(1):

20 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
21 November, 1999, as principal or accomplice, with intent to commit a crime against a person or property
22 therein, did enter or remain unlawfully in a building and while in such building or in immediate flight
23 therefrom, the defendant or another participant in the crime was armed with a deadly weapon or assaulted
24 a person therein.

25 COUNT II: ASSAULT IN THE SECOND DEGREE, RCW 9A.36.021(1)(c):

26 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
November, 1999, as principal or accomplice, did assault another, to-wit: Louise Rowan and Stephanie
McElhiney, with a deadly weapon, to-wit: a firearm.

COUNT III: ROBBERY IN THE FIRST DEGREE WHILE ARMED WITH A DEADLY WEAPON -
FIREARM, RCW 9A.56.200(1), RCW 9.94A.125, RCW 9.94A.310:

In that the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
November, 1999, as principal or accomplice, did unlawfully take personal property of Blockbuster Video
from a person, to-wit: Louise Rowan or their presence, against such person's will, by use or threatened use
of immediate force, violence, or fear of injury to such person or his property, with the intent to commit theft

W.S.P. IDENT.



006832365

INFORMATION - 1

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

1 of the property, and in the commission of or immediate flight therefrom, the accused was armed with a
2 deadly weapon or displayed what appeared to be a firearm. It is further alleged that during the commission
of this offense, the defendant or an accomplice was armed with a deadly weapon, to-wit: a firearm.

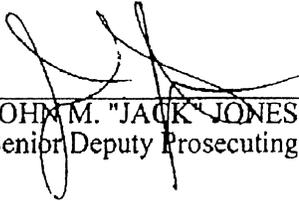
3 COUNT IV: KIDNAPING IN THE SECOND DEGREE, RCW 9A.40.030(1):

4 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
5 November, 1999, as principal or accomplice, did intentionally abduct another person, to-wit: Louise Rowan
and Stephanie McElhiney, with intent to facilitate the commission of any felony.

6 COUNT V: MALICIOUS MISCHIEF IN THE SECOND DEGREE, RCW 9A.48.080(1)(a):

7 That the defendant, JUSTIN MICHAEL SHEA, in the State of Washington, on or about the 16th day of
8 November, 1999, as principal or accomplice, did knowingly and maliciously cause physical damage to the
property of another, in excess of \$250.

9 DATED this 20th day of March, 2000.

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12 _____
13 JOHN M. "JACK" JONES, WSBA#16786
14 Senior Deputy Prosecuting Attorney
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APPENDIX “C”

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

FILED
SUPERIOR COURT
THURSTON COUNTY WA

2000 MAR 21 PM 2:53

BETTY J. GOULD, CLERK

BY _____
DEPUTY

THE STATE OF WASHINGTON,)

No. 00-1-109-0

Plaintiff,)

v.)

Justin Michael SHEA,)

Defendant.)

STATEMENT OF
DEFENDANT ON
PLEA OF GUILTY

1. My true name is Justin Michael SHEA

2. My age is 19

3. I went through the 12 grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is James Dixon

(b) I am charged with the crime(s) of: Burglary 1^o; Assault 2^o; Robbery 1^o with a Deadly Weapon - Firearm; Kidnapping 2^o; Malignant Mischief 2^o

The elements of the crime(s) are: - see First Amended Information filed herein -

_____, as set forth in the State's information, which is incorporated herein by this reference.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during the trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to have witnesses testify for me and made to appear at no expense to me;
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) The crime(s) with which I am charged carries the maximum sentence LIFE years imprisonment and a \$ 50,000 fine. The standard sentence range is from 108-144 months confinement, based on the prosecuting attorney's understanding of my criminal history.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes my prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase, and community placement may be required if a department of corrections, prison sentence results and I am convicted of a community placement offence, as explained in the SRA score sheet which is incorporated herein by this reference (see paragraph "k" below). Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase, and even though a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 500 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, and attorney fees. Furthermore, the judge may place me on community supervision, community placement, impose restrictions on my activities, and order me to perform community service, and impose crime related prohibitions.

(f) The prosecuting attorney will make the following recommendation to the judge:

168 MONTHS, 60 MOS. COMM. CUSTODY, COSTS, CVR, STIP. EXCEPTIONAL SENTENCE, COMM. ALFA AGREEMENT IS INCORPORATED HEREIN BY THIS REFERENCE.

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(h) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(i) The crime(s) of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(a)(ii). *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

MM (j) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise. *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(k) A term or terms of confinement totaling more than one year shall be served in the department of corrections, in addition to confinement in prison (the department of corrections) or in the county jail:

MM (1) **Prison:** The judge will sentence me to community placement as follows: When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When a court sentences a person to a term of total confinement to the custody of the department of correction for an offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

MM (2) **Jail:** On all sentences of confinement for one year or less, the court may impose up to one year of community supervision. An offender shall be on community supervision as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community supervision shall toll. *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(3) The judge may sentence me as a first time offender, instead of giving a sentence within the standard range, if I qualify under RCW 9.94A.030(20). This sentence could include as much as 90 days' confinement, twenty-four months

of community supervision, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(m) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(n) If the crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(p) Because this crime involves kidnaping of a minor child that is not a relative, or a sex offense, I will be required to register with the sheriff of the county of the state of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff at least 14 days before moving and must register again with the sheriff within 24 hours of moving. If I change my residence to a new county within this state, I must send written notice of my change of residence to the sheriff of my new county at least 14 days before moving, register with that sheriff within 24 hours of moving and I must give written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must also send written notice within 10 days of moving to the county sheriff with whom I last registered in Washington State. (If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge.)

(q) This offense is a most serious offense as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses (or at least one prior conviction for a most serious offense in the case of a current conviction for certain sex offenders), whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(r) I understand that I may not possess, own or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. (PURSUANT TO RCW 9.41.047(1), THE JUDGE SHALL READ THIS SECTION TO THE DEFENDANT IN OPEN COURT IF THE DEFENDANT IS PLEADING GUILTY TO A FELONY OR ANY OF THE FOLLOWING CRIMES WHEN COMMITTED BY ONE FAMILY OR HOUSEHOLD MEMBER AGAINST ANOTHER: ASSAULT IN THE FOURTH DEGREE, COERCION, STALKING, RECKLESS ENDANGERMENT, CRIMINAL TRESPASS IN THE FIRST DEGREE, OR VIOLATION OF THE PROVISIONS OF A PROTECTION ORDER OR NO-CONTACT ORDER RESTRAINING THE PERSON OR EXCLUDING THE PERSON FROM A RESIDENCE (RCW 25.50.060, 26.50.070, 26.50.130, OR 10.99.040)). THE CLERK SHALL FORWARD A COPY OF THE DEFENDANTS DRIVER'S LICENSE, IDENTIFICATION, OR COMPARABLE IDENTIFICATION TO THE DEPARTMENT OF LICENSING ALONG WITH THE DATE OF CONVICTION.)

7. I plead GUILTY to the crime(s) of: Burglary 1^o, Robbery 1^o White Armed with Firearm, Assault 2^o, Kidnapping 2^o and Malicious Mischief 2^o

as charged in the 1st Armed information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me, or to any other person, to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth on this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement: On November 16, 1999, in Thurston County, 3 co-defendants and I unlawfully entered Blockbuster Video. One of my co-defendants assaulted Louise Polwan by spitting a gun at her. We then unlawfully took money from Blockbuster by threatened use of immediate force and one of the co-defendants was armed with a gun. We abducted one of the employees

by forcing her into the restroom in order to facilitate the robbery. I also knowingly and maliciously damaged property belonging to Blockbuster, in an amount greater than \$250.

12. My lawyer has explained to me, and we fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

DEFENDANT'S ADDRESS:

Justin Alan
Defendant

I have read and discussed this statement with the defendant and I believe that the defendant is competent and fully understands this statement, and makes this plea freely, knowingly, and voluntarily.

[Signature]
Deputy Prosecuting Attorney, WSBA# 16786

Am. M. 20257
Defendant's Lawyer, WSBA#

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check the appropriate item):

- (a) the defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- * (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.**

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 21 day of March, 2000

[Signature]
CHRISTINE A. POMEROY
JUDGE

* I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language which the defendant understands, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this _____ day of _____.

Interpreter

****Verification by Interpreter.** If a defendant is not fluent in the English language, a person the court has determined has fluency in the defendant's language shall certify that the above written statement of defendant upon plea of guilty has been translated orally or in writing and that the defendant has acknowledged that he or she understands the translation.

APPENDIX “D”

FILED
SUPERIOR COURT
THURSTON COUNTY

2000 MAR 21 PM 2:

BETTY J. GOULD, CLE

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

STATE OF WASHINGTON
Plaintiff,
vs.
JUSTIN MICHAEL SHEA,
Defendant.

NO. 00-1-109-0

PLEA AGREEMENT

The State will allow the defendant to plead guilty to, *Burglary in the First Degree, Robbery in the First Degree Wile Armed with a Deadly weapon-Firearm, Assault in the Second Degree, Kidnaping in the Second Degree, and Malicious Mischief in the Second*), under the following conditions:

1. The defendant shall plead guilty to these charges and shall accept responsibility for defendant's part in having committed these offenses Defendant shall agree with, do nothing to undermine, and shall join the State in its sentencing recommendation, and agree to a stipulated exceptional sentence as to the period of community custody.
2. The defendant's plea will be guilty to the charges listed above. The defendant's total standard range for these charges, is 168-204 months. The State will recommend a 168 month sentence and a 60 month period of community custody, if the below conditions are met. Defendant hereby acknowledges the right to be sentenced within 40 court days of defendant's guilty plea, and hereby irrevocably, knowingly, intelligently and voluntarily waives immediate sentencing and agrees to not be sentenced until after completion of the trial of any and all other participants in this crime who may be charged, tried or plead guilty.
3. The defendant shall attend all court and/or other proceedings, voluntarily participate in any additional truthful, complete, and comprehensive interviews, along with any necessary follow-up interviews requested by the

1 State, and provide every detail of defendant's own participation in these
2 offenses, as well as that of every other person's participation, actions, or
3 inactions, in Tumwater Police case #99-3219.

- 4 4. In the event that the defendant is deceptive, untruthful, incomplete, or if
5 defendant in any way fails in any of defendant's obligations under this
6 agreement or attempts to evade any of defendant's responsibilities under this
7 agreement, the State and the defendant hereby stipulate and agree to the
8 withdrawal of the defendant's guilty plea, judgement and sentence, upon
9 notice by the State, after which time defendant shall be subject to
10 prosecution for all appropriate charges originally available out of these
11 incidents. The defendant hereby irrevocably, knowingly, intelligently and
12 voluntarily waives any and all objections to withdrawal of his guilty plea
13 pursuant to this agreement, and his subsequent bench trial on the charges
14 that will be brought against him, and he acknowledges and hereby
15 irrevocably, knowingly, intelligently and voluntarily waives his right to a
16 speedy trial within 60 days of his original arraignment and/or arraignment
17 on an amended information. Defendant acknowledges his right to a jury
18 trial, and hereby irrevocably makes this knowing, intelligent and voluntary
19 waiver of that right.
- 20 5. Defendant must willingly testify completely and truthfully on behalf of the
21 State in the trial of any and all individuals charged in connection with the
22 crimes described above.
- 23 6. If the State finds, in good faith, that the defendant has failed under any of
24 defendant's obligations under this agreement, then the defendant stipulates
25 and agrees that the State is released from its sentencing recommendation
26 obligation; that defendant's guilty plea, and judgement and sentence, will be
withdrawn, and the State will be free to file all appropriate charges
originally available from the cases referenced above, and related incidents.
Defendant shall be entitled to a hearing by this court in the event defendant
alleges the State has acted in bad faith in finding that the defendant has

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failed under any of defendant's obligations under this agreement. Defendant shall have the burden of proof, by a preponderance of the evidence, at such hearing. Defendant further irrevocably voluntarily, knowingly, and intelligently waives defendant's right to a jury trial and stipulates to the admission at defendant's bench trial, without objection, of all reports and statements regarding the cases referenced in paragraph three, and all related incidents, as supplemented by any further investigation, and including the defendant's own custodial statements, if any, and the statements of all other victims, witnesses and/or participants.

I have read the above agreement and have had the agreement explained to me by my attorney. I fully understand this agreement and knowingly, voluntarily, and intelligently, agree to be bound by its terms.

Dated this 21st day of March, 2000.

Justin Shea
JUSTIN MICHAEL SHEA

AGREED TO ON BEHALF OF THE PLAINTIFF:

[Signature]
JOHN M. "JACK" JONES, WSBA #16786
SENIOR DEPUTY PROSECUTING ATTORNEY

REVIEWED AND APPROVED:

[Signature] 20257
WBSA #
ATTORNEY FOR DEFENDANT

APPENDIX “E”

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

No.00-1-109-0

v.

JUSTIN MICHAEL SHEA,
Defendant.

PCN: 005832365
SID:WA19722388
If no SID, use DOB: 12-08-80

FILED
SUPERIOR COURT
THURSTON COUNTY WA

2000 MAR 21 PM 2:51

BETTY J. GOULD, CLERK
BY _____
DEPUTY

JUDGMENT AND SENTENCE (JS)
 Prison
 Jail One Year or Less
 First Time Offender
 Special Sexual Offender Sentencing Alternative
 Special Drug Offender Sentencing Alternative

I. HEARING

1.1 A sentencing hearing was held on March 21, 2000 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:

W.S.P. IDENT.



005832365

2.1 CURRENT OFFENSE(S): The defendant was found guilty on March 21, 2000 by plea jury verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I	BURGLARY IN THE FIRST DEGREE	9A.52.020(1)	November 16, 1999
II	ASSAULT IN THE SECOND DEGREE	9A.36.021(1)(c)	November 16, 1999
III	ROBBERY IN THE SECOND DEGREE WHILE ARMED WITH A DEADLY WEAPON - FIREARM	9A.56.200(1) 9.94A.125 9.94a.310	November 16, 1999
IV	KIDNAPING IN THE SECOND DEGREE	9A.40.030(1)	November 16, 1999
V	MALICIOUS MISCHIEF IN THE SECOND DEGREE	9A.48.080(1)(a)	November 16, 1999

as charged in the (FIRST AMENDED) Information

- Additional current offenses are attached in Appendix 2.1
- A special verdict/finding for use of a firearm was returned on Count(s) III RCW 9.94A.125, .310
- A special verdict/finding for use of a deadly weapon other than a firearm was returned on Count(s) _____ RCW 9.94A.125, .310
- A special verdict/finding of sexual motivation was returned on Count(s) _____ RCW 9.94A.127
- A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or in a public stop shelter.
- The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
- Other current conviction listed under different cause numbers used in calculating the offender score are (list offense and cause number):

00-9-10360-6

JUDGMENT AND SENTENCE (Felony- Prison, More than one Year
(RCW 9.94A.110, .120)(WPF CR 84.0400 (7/95)) Cause No. 00-1-109-0

JASS

Page 1 of 8

#0-10
EXB

2.2 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360)

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult or Juv.	TYPE OF CRIME
THEFT IN THE FIRST DEGREE	02-15-00	THURSTON COUNTY 99-1-144]-7	09-07-99	A	NV

- Additional criminal history is attached in Appendix 2.2
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

2.3 **SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	Plus enhancement for Firearm (F), other deadly weapon finding (D), or VUCSA (V) in a protected zone	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	8	VIII	77-102 mos.	N/A	77-102 mos.	LIFE
II	8	IV	53-70 mos.	N/A	53-70 mos.	10 YRS
III	8	IX	108-144 mos.	60 mos.	168-204 mos.	LIFE
IV	8	V	62-82 mos.	N/A	62-82 mos.	10 YRS.
V	5	I	4-12 mos.	N/A	4-12 mos.	5 YRS.

- Additional current offense sentencing data in Appendix 2.3

2.4 **EXCEPTIONAL SENTENCE:** Substantial and compelling reasons exist which justify an exceptional sentence above within below the standard range for

Count(s) I-IV. 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 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142): _____

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 and Appendix 2.1

3.2 The Court **DISMISSES** Counts _____

3.3 The defendant is found **NOT GUILTY** of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of the Court

\$ 3932.79 Restitution to: BLOCK BUSTED VIDEO, LOSS APPRENTION MGR, 1011 SOUTHWEST KETCHIKAY WAY BLDG. C - UNIT #107, SEATTLE WA 98134

CLASS CODE \$ 665.53 Restitution to: L.I.E., P.O. BOX 44288, OLYMPIA, WA 98504-4288 (CASE # A276395)

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

PCV \$ 500 Victim Assessment RCW 7.68.035

CRC \$ 110 Court costs, including: RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190
 Criminal Filing fee \$ _____ FRC
 Witness costs \$ _____ WFR
 Sheriff service fees \$ _____ SFR/SFS/SFW/SRF
 Jury demand fee \$ _____ JFR
 Other \$ _____

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.030

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.030

FCM \$ _____ Fine RCW 9A.20.021; VUSCA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/PCD/NTF/SAD/SDI \$ _____ Drug enforcement fund of _____ RCW 9.94A.030

CLF \$ _____ Crime lab fee deferred due to indigency RCW 43.43.690

EXT \$ _____ Extradition costs RCW 9.94A.120

\$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1,000 maximum) RCW 38.52.430

\$ _____ Other costs for: _____

\$ 5208.34 TOTAL RCW 9.94A.145

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing:
 shall be set by the prosecutor
 is scheduled for _____

RESTITUTION. Schedule attached, Appendix 4.1

Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant	CAUSE NUMBER	(Victim Name)	(Amount\$)
JASON GOUAY	00-1-105-7	LOTH	ALL
DOMINIC LARSON	00-1-111-1	"	"
KAFILIL EDWARDS	00-1-112-0	"	"

The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____ . RCW 9.94A.145

In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

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

4.2 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

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

4.3 The defendant shall not use, own, or possess firearms or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120

4.4 The Defendant shall not have contact with STEPHANIE MCELGINAY BLOCK BUSTAR VASRO, YUMWATER (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE years (not to exceed the maximum statutory sentence.).

Domestic Violence Protection Order or Anti-Harassment Order is attached as Appendix 4.4.

4.5 OTHER: _____

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

(a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

102 months on Count I 82 months on Count IV
70 months on Count II 12 months on Count IV
168 months on Count III _____ months on Count _____
INCLUDS 60 MOS
REHABILITATION

Actual number of months of total confinement ordered is: 168 MO.
(Add mandatory firearm or deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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 the following which shall be served consecutively: _____

The sentence herein shall run concurrently with the sentence in cause number(s) _____
but consecutively to any other felony cause not referred to in this Judgment. RCW 9.94A.400

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.120. 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: _____

4.7 COMMUNITY PLACEMENT is ordered on Counts _____ for _____ months

COMMUNITY CUSTODY is ordered on Counts I-III for 60 months or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.120(9) 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.120(10). Use paragraph 4.8 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 Department of Corrections-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 the Department of Corrections; (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections. The residence location and living arrangements are subject to the prior approval of the Department of Corrections 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: STEPHANIA M'FELHINAY OR BLOCKBUSTER VIDEO

Defendant shall remain within outside of a specified geographical boundary, to-wit: _____

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

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

Other conditions may be imposed by the court or Department during community custody, or are set forth here: _____

STRUCTURED EXCEPTIONAL SERVICES

4.8 WORK ETHIC CAMP. RCW 9.94A.137, RCW 72.09.410. The court finds that 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. If the defendant successfully completes work ethic camp, the department shall convert the period of work ethic camp confinement at the rate of one day of work ethic camp to three days of total standard confinement. 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 of community custody. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.7.

4.9 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. The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or releasee from confinement, whichever is longer, to assure payment of all legal financial obligations. RCW 9.94A.145.

5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in paragraph 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.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030

5.4 RESTITUTION HEARING.

Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200

Cross off if not applicable:

5.6 FIREARMS. 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, identicaid, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

5.8 OTHER: ~~BAIL, IF ANY, IS HEREBY EXONERATED AND SHALL BE RETURNED TO THE POSTING PARTY~~

Done in Open Court in the presence of the defendant this date: 3/21/00

Christine Pomeroy
JUDGE Print name: CHRISTINE A. POMEROY

James Dixon
Attorney for Defendant Defendant
WSBA#20257
Print name: JAMES DIXON

Senior Deputy Prosecuting Attorney
WSBA#16786
Print name: JOHN M. "JACK" JONES

Translator signature/Print name: _____
I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.
CAUSE NUMBER of this case: 00-1-109-0

I, Betty J. Gould, 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

IDENTIFICATION OF DEFENDANT

SID No. WA19722388
(If no SID take fingerprint card for State Patrol)

Date of Birth 12-08-80

FBI No. UNKNOWN

Local ID No. C91611

PCN No. 005832365

Other _____

Alias name, SSN, DOB: 532-11-7325 12-08-80

Race:

Ethnicity:

Sex:

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

FINGERPRINTS 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: K. Woods, Deputy Clerk. Dated: 3/21/08

DEFENDANT'S SIGNATURE:

Justice Michael Sheu

Left 4 fingers taken simultaneously	Left Thumb	Right Thumb	Right 4 fingers taken simultaneously
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON

NO. 00-1-109-0

Plaintiff,

WARRANT OF COMMITMENT ATTACHMENT
TO JUDGMENT AND SENTENCE (PRISON)

vs.

JUSTIN MICHAEL SHEA,

Defendant.

DOB: 12-08-80
SID: WA19722388 FBI: UNKNOWN
PCN: 005832365
RACE: W
SEX: M
BOOKING NO: C91611

THE STATE OF WASHINGTON TO:

The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

The defendant JUSTIN MICHAEL SHEA has been convicted in the Superior Court of the State of Washington for the crime(s) of: BURGLARY IN THE FIRST DEGREE, ASSAULT IN THE SECOND DEGREE, ROBBERY IN THE SECOND DEGREE, WHILE ARMED WITH A DEADLY WEAPON - FIREARM, KIDNAPING IN THE SECOND DEGREE, AND MALICIOUS MISCHIEF IN THE SECOND DEGREE

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By direction of the Honorable:

CHRISTINE A. POMEROY

BETTY L. GOULD

CLERK

By: K. Woods

DEPUTY CLERK

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

STATE OF WASHINGTON,
Plaintiff,
vs.
JUSTIN MICHAEL SHEA,
Defendant.

NO. 00-1-109-0

FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE:
EXCEPTIONAL SENTENCE -
APPENDIX 2.4 TO JUDGMENT
AND SENTENCE

I. FINDINGS OF FACT

The Court finds the following aggravating factors:

1. The parties stipulate and agree that there are substantial and compelling reasons justifying an exceptional sentence allowing for a five year period of community custody.
2. But for the plea agreement in this case, defendant would be facing greater charges and lengthier sentences.

Based upon the above stipulation and findings of fact, the Court finds the presence of aggravating circumstances, as to the length of the period of community custody, to the extent stipulated by the parties.

II. CONCLUSIONS OF LAW

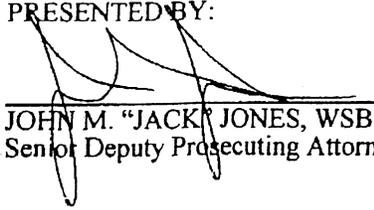
The court concludes that, based upon the above stipulation and findings, there are substantial and compelling reasons justifying an exceptional sentence outside of the standard range, to the limit of the parties stipulation, justifying a five year period of community custody.

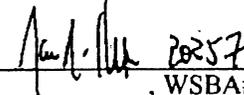
DATED this 21 day of March 2000.


JUDGE CHRISTINE A. POMEROY

PRESENTED BY:

AGREED TO AND APPROVED BY:


JOHN M. "JACK" JONES, WSBA # 16786
Senior Deputy Prosecuting Attorney


_____, WSBA#
Attorney for Defendant


JUSTIN MICHAEL SHEA, Defendant

APPENDIX “F”

Tumwater Police Department

Case Number: 99-3219-11

November 24, 1999

Officer Loren Summers

On 111699 at 0018 hours, Tumwater units were dispatched to a robbery call at Blockbuster Video. I arrived on scene after checking the area and contacted V2 Louise L. Rowan and V3 Stephanie A. McElhiney. Both victims are employees at the video store. Rowan was extremely flustered. She was crying and breathing heavily. McElhiney was very calm and quiet. It appeared she was trying to console Rowan.

Rowan stated she had finished shaking out the carpets, and securing the front entrance doors. She had walked back inside and was standing over her till when she heard the exit door open. She looked up, thinking it was another employee. Rowan said the next thing she saw was a man with a gun. Rowan hit the floor and started screaming for McElhiney to get down. Rowan said the man with the gun started yelling, "where is the tape?" Rowan heard one of the other suspects say that the tape was up in the office. The gunman then grabbed her by the back of the pants and pushed the gun in her back. Rowan was forced into the back office. The gunman demanded the key to unlock the casing around the VCR. Rowan told him it was in the safe. The gunman told Rowan to open the safe. Rowan explained that the safe was on a ten-minute time delay and she could not just open it. The gunman demanded the key to unlock the casing around the VCR. Rowan told him it was in the safe. The gunman told Rowan to open the safe. Rowan explained that the safe was on a ten-minute time delay and she could not just open it. The gunman kicked Rowan in the backside and said, "Bullshit Bitch." Rowan told him to read the warning on the front of the safe. The gunman told her to enter the code, and if she put in a code to call the police she was dead. The gunman then racked a round into the chamber. Rowan entered the code. The gunman then told her to get up. He took her back to the front of the store and made her empty out the tills into a plastic Safeway bag.

The gunman then took Rowan back to the office where they waited for the time delay on the safe. When the safe beeped, Rowan entered a second code. When the safe opened, she emptied all of the money from it and gave it to the gunman. She also gave him the key to the VCR case. The gunman handed the key to another suspect who opened the case and removed the videocassette from the recorder. The gunman then told Rowan to get up again. He escorted her to the bathroom where she met McElhiney. The suspects told them to stay in the bathroom for 5 minutes or they would die. Rowan recalls hearing them banging on the back door. The suspects started screaming for McElhiney to come out to unlock the door. Rowan told them she had the key. Rowan gave them the key and returned to the bathroom. Rowan said she heard them running southbound behind the building. Rowan and

McElhiney stayed in the bathroom for a few minutes. Rowan crawled out and called 911 from her cell phone, as she discovered all of the phone lines had been pulled from the wall.

Rowan said she was sure they knew the store. The suspects knew how to access the front door by using a small dent in the rubber molding, as the front exit doors do not have handles on the doors. Their immediate concern was the security camera. Rowan said the voice of the gunman sounded familiar, possibly a regular customer. Rowan described the gunman as a white male, 510-600, wearing a ski mask, light blue jeans, black sneakers with white toes. She described the gun to be a chrome small caliber handgun.

Rowan described the second suspect as a male, 507, wearing a dark blue hooded sweatshirt, ski mask; green and white quilted flannel and dingy white pants. Rowan described the third suspect as wearing a ski mask and a blue sweat jacket with a hood. Rowan said she did not see the fourth subject.

I contacted McElhiney.

McElhiney stated she was standing at the counter preparing to buy the new Austin Powers movie from Rowan. McElhiney said Rowan was turning to lock the door when they came running in. McElhiney said she did not know how many came running in. McElhiney said she thought it was a joke. She heard Rowan screaming for her to get down. McElhiney dropped to the floor. McElhiney said one of the suspects came over to her and put a gun in her face. He told her not to move or he would seriously "fuck her up." McElhiney complied. McElhiney said the suspect that put a gun in her face was a black male, with a small silver gun.

McElhiney said the black male left her there. She said she kept watching them run back and forth through the store, saying, "where's the other bitch?" McElhiney was taken into the mens bathroom and told to stay there. McElhiney said one suspect stayed in the doorway watching her. The suspect kept telling McElhiney that she would not be hurt.

McElhiney heard the suspect in the doorway tell the other suspects to grab a Sony Playstation and some games for him. McElhiney heard another voice say something about the safe delay.

A short time later, McElhiney reported Rowan was put in the bathroom with her. They were told to stay put for 5 minutes, turned out the lights and disappeared. McElhiney heard the suspects banging on the back door. Rowan left to get the door open then came back. They heard the suspects running southbound behind the building. McElhiney said they waited for a few minutes, then Rowan snuck out to get to a phone. Rowan returned with a cell phone and called the police.

McElhiney reported that all of the suspects were wearing plaid coats. She said the suspect that was guarding her was a white male, 600, and he was wearing knit gloves and dark pants.

McElhiney mentioned that one of the suspects was short.

.....
Lt. Mize photographed the scene and contacted Detective Davenport, who responded to the scene and conducted the investigation.

I observed debris in the store that ran from the front entry, all the way to the back of the store. It appeared to be beauty bark particles. On the front door, I observed a red/orange powdery substance in the area of the depressed rubber molding, on both the doors. Inside the store, I observed several movies had been knocked of the shelf and onto the floor. I confirmed with the employees that the store had been straightened prior to the robbery.

I asked Rowan who would know how to get in the doors after hours. She said only the employees.

FV Summers 5004

111999 / 0710

Tumwater Police Department

Case Number: 99-3219-11
SUPPLEMENTAL REPORT
January 20, 2000
Lieutenant Terry Davenport

Report: At approximately 0100 hours 11-16-99, I responded to 855 Trosper Road, the Blockbuster Video Store, for a reported armed robbery.

Upon arrival, Lieutenant Mize contacted me and briefed me on the robbery. At approximately 0005 hours, four subjects wearing ski type masks and gloves entered the video store. One of the subjects had a gun, and forced the assistant manager to the office area. Once in the office, the assistant manager was forced to open the safe and empty the contents into a plastic type bag. The assistant manager was then forced to open the video surveillance container. The surveillance tape was removed and later taken by the gunman. During this time, the other employee was being guarded by another subject and eventually taken to a bathroom located in the back of the store. Lieutenant Mize advised that some time during the robbery, the other subjects had cut all of the telephone lines. All of the cash registers had also been emptied. Lieutenant Mize said that prior to fleeing out a rear door, the subjects took numerous games/videos and a Sony brand play station. Lacey's K-9 had been requested and a track was followed from the rear door of Blockbuster Video to the south. I was advised that the K-9 lost the track after a short distance. See Lieutenant Mize's supplemental which is attached.

The video store is a single story cinder block type structure. It is connected to numerous other businesses in a strip mall type complex and is located at the north end of the complex. The front of the building faces to the east and has several large plate glass type windows that display various movie posters. The front doors face to the east and empty into a large parking lot. On the north side of the building are several more large plate glass windows that also display large movie type posters. The rear or West Side of the building is a solid wall with one emergency steel type door that can only be accessed from inside the business. There is a sidewalk to the west of the building and extends from the north to the south of the complex. On the west of the sidewalk, is an approximate eight foot wooden type fence that also extends from the north to the south of the complex.

I conducted an initial check of the exterior of the business and complex. I was unable to locate anything of evidentiary value.

I then contacted Officer Summers, who taped the interviews of the assistant manager, Louise Rowan and employee Stephanie McElhiney. Officer Summers had also photographed the crime scene. See Officer Summers report which is attached.

According to Ms. Rowan, she had taken the carpets from within the store outside to clean. Ms. Rowan advised she reentered the store, securing the doors behind her. Ms. Rowan returned to the cash register and was in the process of closing out the till. Ms. Rowan heard the door open and believed it was a co-worker or the boss. Ms. Rowan said she was on the employee side of the register and McElhiney was on the customer side of the counter. Ms. Rowan said she did not see anyone and then all of a sudden she saw a man standing there with a gun. Ms. Rowan said she immediately dropped to the floor and yelled to McElhiney to get down. Ms. Rowan stated the man with the gun yelled numerous times "where is the tape, you got to get the tape, shut off the tape". Ms. Rowan stated that someone yelled, "it's in the office". Ms. Rowan said the man with the gun yelled for her to get up. The subject grabbed Ms. Rowan by the back of the pants, pushed the gun into her back, and then forced her into the office. Ms. Rowan advised the subject then attempted to open the box that the video surveillance equipment is in. The subject then began demanding Ms. Rowan give him the key to open the surveillance box. Ms. Rowan advised she did not have the key, as it was in the safe. The subject then demanded Ms. Rowan open the safe. Ms. Rowan said she pushed the buttons for the safe to open however, the safe is on a ten-minute time delay. Ms. Rowan said she explained the time delay to the subject however he apparently did not believe her. The subject kicked Ms. Rowan in the buttocks and stated "bull shit bitch". Ms. Rowan again explained the safe procedures to the subject. The subject then stated "if you put in the code to call the cops, you're dead". Ms. Rowan said the subject pulled the slide back on the gun he had and then hit her in the back. Ms. Rowan said the subject told her to get up and walked her back to the area of the cash registers. Once at the cash registers, Ms. Rowan was told to empty the cash registers, which she complied. Ms. Rowan advised she then observed three other subjects in the store wearing ski-type masks and gloves. Ms. Rowan advised that after emptying out the cash registers, the subject with the gun directed her back to the office area. While enroute to the office area, Mr. Rowan yelled to McElhiney asking if she was okay. The subject with the gun again forced Ms. Rowan towards the office. Once inside the office, Ms. Rowan was forced to sit on the steps while the subject with the gun sat in a chair. Ms. Rowan stated that while the subject waited for the safe to open, he asked Ms. Rowan her name. When Ms. Rowan did not respond, the gunman placed the gun under her head and demanded to know her name. After telling the subject her name, the subject stated "I'm not going to hurt you as long as you do what I tell you to do". Ms. Rowan asked if McElhiney was okay. The subject with the gun stated she was okay and that nobody is hurting her. Ms. Rowan stated the safe then beeped indicating the second code could now be entered. Ms. Rowan entered the code and the safe was opened. Ms. Rowan advised she emptied the safe and put the money into the bag provided by the gunman. Ms. Rowan stated later that the gunman had taken two plastic bags with the Blockbuster logo on the outside of the bags as all of the money would not fit into the Safeway bag the gunman had brought. The subject then demanded the key to the video surveillance box. The key was handed to another subject at which time the subject with the gun grabbed Ms. Rowan's arm and directed her towards the bathroom. Ms. Rowan stated McElhiney was already in the bathroom and was being guarded by another subject. Ms. Rowan and McElhiney

...

were told to stay in the bathroom for five minutes and not come out or else they would be killed. Ms. Rowan said she heard the subjects banging on the back emergency exit door. Ms. Rowan said they subjects began yelling for McElhiney to come out and help with the door. Ms. Rowan advised she went to the backdoor as she had the key. After unlocking the rear door, Ms. Rowan was directed back into the bathroom. Ms. Rowan heard the subjects exit the store and it sounded if they had ran south behind the building. Ms. Rowan advised that a few minutes later she left the bathroom and went to the front of the office to use the telephone. Ms. Rowan stated that all of the telephone lines had been cut. Ms. Rowan also advised that the gunman had torn the telephone line from the wall outlet in the office area. Ms. Rowan remembered she had a cell telephone and called 911. See Ms. Rowan's statement, which is attached.

According to Ms. McElhiney, she confirmed the initial sequence of events that Ms. Rowan had relayed. Ms. McElhiney said she did not see the subjects enter the store initially. Ms. McElhiney said she looked up and saw "these people" running in and heard Ms. Rowan yelling for her to get down. Ms. McElhiney said one of the subjects who she recognized as a black male, came up to her, put a silver in color gun in her face and said "don't move or I'll seriously fuck you up". Ms. McElhiney stated the black gunman then went to Ms. Rowan and took her towards the office. Ms. McElhiney said she was taken to the men's bathroom by one of the subjects and held there until after the robbery. Ms. McElhiney did say she heard one of the subjects say "take some play stations and take some more games and grab some more playstations for me". See Ms. McElhiney's statement, which is attached.

I then checked the office area. I observed what appeared to be small pieces of wood bits scattered around the floor of the office and on the chair. Upon checking it closer, it appeared to dry beauty bark. I also located a steel type plate on the floor with what appeared to be a muddy footprint on it. The plate was taken as evidence and later logged into the evidence room. I then checked the north side of the building where I had observed beauty bark earlier. The area is located on the north end of the building. It is approximately three feet wide and extends from the northeast corner of the building to the northwest corner. Upon checking this area, I observed an area at the northwest corner, and up against the building to have been disturbed. It appeared as though someone or something large had been lying down in the area. I also observed what appeared to be several footprints in the area. Due to the texture of the beauty bark, I was unable to make any positive identification of prints. The material in this area appeared to match the same type wood materials I found in the office area.

The scene was cleared and turned over to Ms. Rowan.

During the early morning of 11-16-99, Lieutenant Mize was requested to contact Charlotte Peaslee, the manager of the Tumwater Blockbuster Video store. When Ms. Peaslee came into work this morning she discovered the words "Fuck you" had been scratched into one of the end display cases within the store. Ms. Peaslee believes it was done last night during the robbery. Lieutenant Mize photographed the damage. See Lieutenant Mize's supplemental which is attached.

On 11-17-99 at approximately 1219 hours, I received a telephone call from a subject that wanted to remain anonymous. The subject stated Dominic Lapraim and Kahlil Edwards had robbed Blockbuster Video last night. The subject stated that Dominic had been bragging how they robbed the store, cut the telephone lines, and took the surveillance tape. I knew the information was accurate as I had not released any information nor was there a press release. The subject refused to provide his name for fear of retaliation from Edwards or Lapraim.

On 11-17-99 at approximately 1353 hours, I received a Crime Stoppers tip again, naming Lapraim and Edwards as the subjects that robbed Blockbuster Video. The caller stated Edwards and Lapraim had been planning to rob a Blockbuster Video store, but they did not know which one they were going to rob. The caller also stated Edwards and Lapraim had been bragging about the robbery and they got away with \$1,000.00.

On 11-19-99, I received a fax from Blockbuster Video Loss Prevention Officer. The fax listed the loss that the video store experienced. See fax attached.

On 11-19-99, Detective Glen Quantz of the Thurston County Sheriff's Department contacted me. Detective Quantz stated he had conducted an interview with Jarod Sims earlier in the day. According to Detective Quantz, Sims stated he was at Edwards's house on Trails End Drive. According to Sims, he overheard Edwards telling another subject how he (Edwards), had hit Blockbuster and "copped a video tape". Sims said that Edwards was bragging about how he went in Blockbuster with some guy that he knew that had worked there before, knew where everything was, knew what to do, and where the cameras were. Sims said that Edwards said something about throwing the gun into Offut Lake, but did not know where in the lake. Sims told Detective Quantz that he, Edwards, and another individual were on their way to Tacoma one-day after the robbery. Sims said that he saw a black in color ski type mask in the car. According to Sims, Edwards said that it was the ski mask he wore during the Blockbuster robbery. See Sims statement, which is attached.

On 12-04-99 at approximately 1342 hours, another Crime Stoppers tip was received concerning the Blockbuster robbery. The caller stated Jason Goudy was involved in the Tumwater Blockbuster Video robbery two to three weeks ago. I received this information on 12-30-99.

On 12-08-99, I received information from a confidential informant that Kahlil Edwards, Dominic Lapraim, Jason Goudy, and Justin Shea had committed the robbery at Blockbuster Video. The informant stated Edwards' girlfriend, Cassandra Bobier, had information about the robbery.

In late December 1999, I contacted Detective Keith Mercer of the Lacey Police Department. I knew that Detective Mercer was currently working a case involving Edwards, Lapraim, and Bobier. I made arrangements with Detective Mercer to assist with the interview of Bobier.

On 01-03-00 at approximately 1320 hours, Detective Mercer and I conducted an interview of Bobier at the Thurston County Sheriff's Department. I advised Bobier of her Miranda Warnings, which she stated she understood and waived.

Bobier gave a full confession as to her involvement and knowledge of the robbery. Bobier was present when Shea talked to Edwards about robbing the Blockbuster Video store. Bobier admitted to receiving a large amount of coins in a double Blockbuster Video bag, from Jason Goudy and then throwing the Blockbuster bags away in Edwards trash can on Trails End Drive. Bobier admitted to seeing two guns in Edwards's possession before the robbery. Bobier said Edwards admitted to robbing the video store along with Goudy, Shea, and Lapraim. Bobier said that Shea talked to her about his part in the robbery. Bobier also gave a detailed account of how Edwards threatened her if she ever revealed that he was involved in the robbery. See Bobier's statement attached.

On 01-04-00 at approximately 1735 hours, I along with Detective Mercer conducted another interview with Bobier at the Tumwater Police Department. I advised Bobier of her Miranda Warnings, which she stated she understood and waived.

Bobier detailed the involvement of Edwards, Lapraim, Goudy, and Shea in the Blockbuster Video robbery. Bobier also indicated that Edwards roommate; Shayla Archibeque had knowledge of the robbery. Bobier also provided the name of Donnie Walker. Walker is a friend of Edwards and may have information about the robbery.

On 01-06-00 I was contacted by Detective Glen Quantz of the Thurston County Sheriff's Office. Detective Quantz advised he had received information that Dominic Lapraim wanted to speak with me. Lapraim is currently confined at the Thurston County Jail awaiting trial on another matter.

On 01-06-00 at approximately 1515 hours, I conducted a taped interview with Donnie Walker. Donnie was advised of his Miranda warnings, which he stated he understood and waived. Walker stated that Edwards told him that he (Edwards) and Lapraim had robbed the video store. Walker also advised he was with Bobier when she had the money received from Goudy. See Walker's statement attached.

On 01-07-00 at approximately 1055 hours, Detective Quantz and I met with Lapraim. I advised Lapraim of his Miranda Warnings, which he stated he understood and waived. Lapraim stated on tape that he wanted to meet with me and he did not want his attorney present.

Lapraim confessed that he, Edwards, Goudy, and Shea had robbed the Tumwater Blockbuster Video Store. Lapraim stated he drove his car, parked it behind the business, and left it running while the four of them robbed the video store. Lapraim also stated that Edwards had the only gun and it was a silver automatic. Lapraim further stated that all of the participants knew Edwards had the gun with him. Lapraim also advised that Goudy and Shea, stole a bunch of video games. Lapraim also stated the video surveillance tape that had been taken during the robbery was burned at Edwards's residence, which he shared with Archibeque. Lapraim stated he had heard the masks and gun were thrown into Hewitt Lake, but was not positive of the information. Lapraim stated he had heard Goudy threw the items into the lake. See Lapraim's statement, which is attached.

On 01-10-00 at approximately 1655 hours and 1805 hours, I conducted two taped interviews with Shayla Archibeque. Shayla was advised of her Miranda warnings, which she stated she understood and waived.

During the initial interview, Archibeque minimized her knowledge and involvement in the robbery. Archibeque indicated that Bobier, Donnie Walker, and an Airelle Hughes had knowledge of the robbery. Archibeque initially stated that she learned of the robbery several days later after several people had been talking about the robbery. Later Archibeque confessed her knowledge of the robbery and receiving some of the money from the robbery, which she placed into her bank account. Archibeque also stated that Edwards confessed to her that he, Lapraim, Goudy, and Shea had robbed the Blockbuster Video Store. See Archibeque's statement attached.

On 01-11-00 at approximately 1335 hours, I conducted a taped interview with Dawn MacKenzie. She was advised of her rights, which she stated she understood and waived.

MacKenzie was present when Edwards, Lapraim, Goudy, and Shea returned to Edwards's residence the night of the robbery. According to MacKenzie, the four subjects entered the apartment looking very stressed. MacKenzie stated they were carrying a black case similar to a camcorder case and carrying a plastic bag. MacKenzie stated she later saw the bag to contain a large amount of loose and rolled coins. MacKenzie said that Edwards had given the bag to Archibeque and told her it was payment for getting Edwards out of jail on a previous charge. MacKenzie stated that Hughes was also present while the money was being counted. MacKenzie stated she heard Edwards ask for a metal pan from the kitchen. MacKenzie said that the pan was used to burn videotape. See MacKenzie's statement attached.

On 01-12-00 at approximately 1510 hours, Michael Hancock contacted me. Mr. Hancock stated he was at Edwards's residence the night of the robbery. Hancock stated he was there when Edwards, Lapraim, Goudy, and Shea came in. Hancock stated all four subjects came in and Goudy was carrying the black plastic type brief case. According to Hancock, Edwards was carrying a bag that he later saw contain a large amount of coins. Hancock also stated he saw Edwards pull a small chrome automatic gun from his waistband and place the gun into a cupboard in the kitchen. Hancock advised that Archibeque was there when Edwards pulled the gun out. Hancock stated he was in the kitchen later when Edwards, Lapraim, Goudy, and Shea were outside having a cigarette. Hancock overheard one of them say something about Blockbuster and then heard another one say something about a combination or that someone knew the combination. See Hancock's statement attached.

On 01-12-00 at approximately 1555 hours, I conducted a taped interview with Airelle Hughes. Ms. Hughes was advised of her Miranda warnings, which she stated she understood and waived.

Hughes denied any knowledge of the robbery other than hearing people talking about it. Hughes denied seeing any money or observing anyone counting money. Hughes did say that she saw a black in color gun in Edwards and Archibeque's

apartment, however that was a long time ago. Hughes denied having any other knowledge about the robbery. See Hughes statement attached.

On 01-13-00 at approximately 1155 hours, Hughes came into the police department and advised she wanted to provide another statement to me. Hughes stated she had not been totally truthful about her knowledge of the robbery. I advised Hughes of her Miranda warnings, which she stated she understood and waived.

Hughes stated that she left Edwards's apartment before Edwards, Goudy, Lapraim, and Shea returned there after midnight, which was the night of the robbery. Hughes stated she had spoken to Edwards on the telephone last night, and Edwards had confirmed this. According to Hughes, she stayed home from school on 11-17-99, the day after the robbery. Hughes went to Edwards and Archibeque's apartment and observed a large amount of loose change and bills on a counter. Hughes did say the money was in a brown paper bag. Hughes advised Edwards was not there, however Archibeque was. According To Hughes, she made a comment to Archibeque about now having the rent money and Archibeque replying that yes, she did.

Hughes stated she knew that Edwards, Lapraim, Goudy, and Shea had gotten some money, but according to Hughes, she did not know how or from where. Hughes advised that evening, Edwards, Lapraim, Goudy, and Shea were at Edwards and Archibeque's apartment pacing back and forth, acting very nervous. Hughes said that someone, who she does not remember, say they are nervous because they robbed Blockbuster Video. Hughes said that Edwards never told her that he robbed the video store, however Edwards did tell her that he did something really, really bad. Hughes continued to deny any other knowledge of the robbery or being involved in counting any of the money. See Hughes statement attached.

On 01-13-00 at approximately 1526 hours, I conducted a taped interview with Kelly Plamondon. Ms. Plamondon was Edwards's parole/probation officer when Edwards was a juvenile. Ms. Plamondon has left the corrections fields, however she continued to maintain a relationship with Edwards. Because of this relationship, Plamondon is also an acquaintance of Hughes. Plamondon relayed her information as to her knowledge of the robbery and talking with Edwards on the telephone. Plamondon also advised of her conversation with Hughes in which Hughes admitted her suspicions that Edwards was involved in the robbery of the video store. Plamondon also stated that Hughes had said she helped Archibeque count the money at Archibeque and Edwards' apartment on November 17, 1999. See Plamondon's statement attached.

On 01-18-00, I was contacted by Detective Quantz and advised Lapraim wanted to speak with me. At approximately 1027 hours, I conducted a taped interview with Lapraim. Lapraim was advised of his Miranda warnings, which he stated he understood and waived. Lapraim stated that he and Goudy had taken the playstation and threw it into Pattison Lake. Lapraim advised that before throwing the case into the lake, several masks and gloves that were used in the robbery had been placed into the case. Lapraim also advised that Goudy had said he (Goudy) had thrown the gun that was used in the robbery into Munn Lake. Lapraim advised he believed the gun had been thrown into the lake at the public access. See Lapraim's statement

attached. Laprain voluntarily went with TCSO Detectives Quantz, Dunn, and myself to Pattison Lake. Laprain showed us the areas in which he and Goudy had thrown the case containing the play station, game cartridge, masks, and gloves.

Detective Dunn advised he would conduct a search of the area on Thursday with the assistance of his dive team.

On 01-20-00, Goudy and Shea appeared in Tumwater Municipal Court on unrelated charges.

Shea and Goudy were placed under arrest, advised of their Miranda warnings on tape, and invoked. Shea and Goudy were transported to the TCSO jail and booked.

I also had the charges placed on Edwards and Laprain, who are currently in custody at the TCSO jail on unrelated charges.

APPENDIX “G”

1 March 21, 2000

Olympia, Washington

2

AFTERNOON SESSION

3

Department 6

Hon. Christine Pomeroy, Presiding

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(Appearances as heretofore noted.)

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Monica Jean Mestas, Official Reporter

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MR. JONES: Your Honor, if we could next do

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Item No. 6, State vs. Shea. It might be add-on 6.

10

THE CLERK: Add-on 6.

11

MR. DIXON: Good afternoon, your Honor.

12

THE COURT: Good afternoon, Counsel.

13

MR. JONES: Your Honor, this is on for

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arraignment on an amended information. I'll hand up the

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first amended information and I'll also serve a copy,

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having previously furnished a copy of that first amended

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information to the defendant and Mr. Dixon.

18

MR. DIXON: Mr. Shea acknowledges receipt of a

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copy of the first amended information, waives its

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reading, also waives advisement of rights. Mr. Shea's

21

intention is to enter pleas of guilty to all counts in

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that first amended information, and I'm asking Mr. Jones

23

to hand up the plea statement. Mr. Shea and I have gone

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over that statement in its entirety half an hour ago.

25

MR. JONES: I'm also handing up the statement of

1 this defendant's criminal history, the SRA score sheets,
2 a comprehensive plea agreement and a stipulation as to
3 an exceptional sentence, if the court so permits.

4 THE COURT: Mr. Shea, you're 19 years old.

5 THE DEFENDANT: That's correct.

6 THE COURT: You went through the 12th grade.
7 You're pleading guilty to burglary in the first degree,
8 assault in the second degree, robbery in the first
9 degree, while armed with a deadly weapon, to wit, a
10 firearm; kidnapping in the second degree and malicious
11 mischief in the second degree. Let's go over the rights
12 you're giving up.

13 You're giving up your right to a speedy trial. Do
14 you understand that?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: You're giving up your right to hear
17 and question witnesses and to call witnesses in your own
18 defense. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: The presumption of innocence is lost
21 once you plead guilty. Do you understand?

22 THE DEFENDANT: Yup.

23 THE COURT: And the right to appeal the
24 determination of guilt is lost once you plead guilty.

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Now, the maximum sentence for
2 burglary in the first degree, robbery in the first
3 degree is a life sentence. Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: The others, assault in the second
6 degree, kidnapping in the second degree, is ten years.
7 Malicious mischief in the second degree is five years.
8 That's the worst that can happen to you.

9 There are high fines for these. Although I have
10 never given those, I must tell you those on the record.
11 That is \$50,000 for a Class A felony, which burglary in
12 the first degree and robbery in the first degree are.
13 You understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: You understand the assault in the
16 second degree and kidnapping in the second degree are
17 both Class B felonies, and the fine is \$20,000. A
18 Class C felony, which is malicious mischief in the
19 second degree, that's \$10,000. That's the worst that
20 can happen to you.

21 Now, the standard range for this is 168 to
22 204 months.

23 I ask this of both of you. The 168 through 204,
24 does that include the enhancement for a firearm?

25 MR. JONES: Yes, your Honor, it does.

1 THE COURT: Do you understand that?
2 THE DEFENDANT: Yes, I do.
3 THE COURT: Do you understand that it must be
4 enhanced because of a deadly weapon, a firearm?
5 THE DEFENDANT: Yup.
6 THE COURT: And that's 36 months?
7 MR. JONES: Sixty months, your Honor. Sixty
8 months for a Class A felony, 36 months for a B felony.
9 THE COURT: Now, their recommendation is for the
10 low end, 168; 60 months of community custody, which
11 means probation or parole afterwards; court costs; crime
12 victim's compensation; stipulate to an exceptional
13 sentence.
14 MR. JONES: As to the --
15 THE COURT: Complete plea agreement is
16 incorporated herein by this reference. And 60 months'
17 period of community custody, is that 168 plus 60?
18 MR. JONES: Correct, your Honor.
19 THE COURT: For 218?
20 MR. JONES: Well, the first part will be in
21 prison; the last 60 months is served in community
22 custody at community placement outside of the prison.
23 THE COURT: Is that parole?
24 MR. JONES: Yeah. It's like parole, your Honor.
25 THE COURT: I just want to make sure that we're

1 not talking 218. It's parole.

2 And you understand that, sir, Mr. Shea.

3 THE DEFENDANT: Yes, I do.

4 MR. JONES: The standard period would only be
5 12 years -- 12 months, rather.

6 MR. DIXON: Twenty-four.

7 THE COURT: You have to participate and answer
8 truthfully anything that they want you to. Truthfully.

9 What this says to me is "On November 16th, 1999, in
10 Thurston County, three codefendants and I entered
11 Blockbuster Video. One of my codefendants assaulted
12 Louise Rowan (phonetic spelling) by pointing a gun at
13 her. We unlawfully took money from Blockbuster by
14 threatening use of immediate force. And one of the
15 codefendants was armed with a gun. We abducted one of
16 the employees by forcing her into the restroom in order
17 to facilitate the robbery. I also knowingly and
18 maliciously damaged the property to an amount greater
19 than \$250."

20 Is that what happened?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Have you read all four pages of this
23 statement?

24 THE DEFENDANT: (Nods head.)

25 THE COURT: Counsel, you have gone over it, you

1 told me, right before. Is that correct?

2 MR. DIXON: Yes, your Honor, I did.

3 THE COURT: Do you believe this is a knowingly
4 made plea?

5 MR. DIXON: Yes, your Honor.

6 THE COURT: And you believe that he understands
7 the charge and the consequences?

8 MR. DIXON: I do, your Honor.

9 THE COURT: Is this what you want to do? Is
10 this what you want to do? Is this what you -- do you
11 want to plead guilty?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: I accept this, then. After
14 questioning the defendant and counsel, there is a
15 factual basis that supports this. I will now accept it.
16 Now, with this, do you wish to set sentencing?

17 MR. DIXON: We're prepared to proceed to
18 sentencing today, your Honor.

19 MR. JONES: Yes, your Honor. The comprehensive
20 plea agreement is such that if necessary the plea can be
21 withdrawn, although we do not contemplate that.

22 I would also indicate that I believe some people are
23 here that were a victim or associated with the victim of
24 this crime and may wish to address the court.

25 THE COURT: Okay. Tell me about it.

1 MR. JONES: Yes, your Honor. This occurred last
2 year. It was the Blockbuster Video in Tumwater on
3 Troster Road. Folks were closing up the shop. It was
4 closed, not open for business.

5 The four entered the premises. One of them was
6 armed with a firearm. They were aware of where things
7 were on the premises, I believe because this defendant
8 was a former employee there.

9 They went to the camera that took recordings of
10 everything that was going on in the store and pulled the
11 tape so that they would not leave pictures of themselves
12 behind.

13 They threatened the employee with a firearm. They
14 took all the money from the safe after waiting for some
15 time. They threatened the folks that were there. There
16 was both an employee and another person that was there.
17 Louise Rowan and Stephanie McElhiney (phonetic
18 spelling). And they were also taken to the bathroom and
19 told to stay there when the employees left -- I mean,
20 when the robbers left.

21 This defendant and three other defendants, two of
22 whom have pled guilty previously but have not been
23 sentenced yet and one of whom has yet to plead guilty
24 and be sentenced here this afternoon, Mr. Edwards, are
25 all before the court.

1 THE COURT: Okay. Anything you want to say?

2 MR. DIXON: There's a lot I'd like to say, your
3 Honor. But in the interest of time -- and I understand
4 it's a pretty busy calendar -- I'll try to keep it brief
5 despite the fact I have a very strong obligation to
6 Justin and his family.

7 This is a case, your Honor, quite frankly, that
8 Mr. Shea didn't have much wiggle room. It was a very,
9 very strong case for the state and it included two
10 statements from two respective codefendants fully
11 implicating Mr. Shea. And quite frankly, all of the
12 pieces fit.

13 When Mr. Shea was arrested, he didn't provide any
14 statement. And when the -- one of the other
15 codefendants was arrested, he didn't provide a
16 statement, either.

17 However, the other two codefendants have cooperated
18 with the state and have given full disclosures to the
19 state, and all of the facts fit. It was a very
20 straightforward case for the state to prove.

21 That being said, it was -- with that in mind, it was
22 difficult, if not virtually impossible, for me to
23 continue to bang on Mr. Jones' door and beg, plead,
24 cajole him for some sort of a deal, if you will, that I
25 thought Mr. Shea could live with.

1 Mr. Jones, to his credit, as he always is, was
2 willing to discuss with me -- or was willing to listen
3 to me, to what I had to say. But he didn't have to
4 give. And he gave a little bit toward the very end, but
5 it was a very, very strong case for the state.

6 Mr. Shea is a life-long member of this community.
7 He has very strong family support. His grandfather is
8 here in court this afternoon. His other family members
9 would have been here had they had a little bit more
10 notice but they all work and couldn't get away.

11 This is a young man, your Honor, who until literally
12 months ago had never been in trouble, ever, about
13 anything. And now he's looking at going to prison for
14 168 months. That is an incredible amount of time.

15 THE COURT: That's over ten years. I don't know
16 how much.

17 MR. DIXON: It's 11 and some odd years of real
18 time, bearing in mind that the 60-month sentencing
19 enhancement includes no good time and must be served
20 consecutive to the standard range for the underlying
21 offenses. So by my calculation, he's looking at real
22 time of 11 years, a little over 11 years. And for a
23 young man in his situation --

24 THE COURT: He'll be 30 years old.

25 MR. DIXON: Thirty years old. And what I told

1 him today and what I've been telling him during the
2 pendency of this case, is You have a chance to get out
3 when you're 30; that's better than not getting out at
4 all.

5 Because had he gone to trial and been convicted of
6 all of the underlying offenses, with all of the firearm
7 enhancements and under the provisions of the law as they
8 currently are, meaning consecutive sentences for the
9 firearm enhancements, no good time, the sentencing
10 enhancements alone, just alone, would have been 40 years
11 mandatory. But 11 years is a very, very long time for a
12 young man in this situation to go to prison.

13 He did a very stupid thing, a very criminal thing.
14 He robbed Blockbuster Video with three other people, and
15 he's going to prison for 11 years.

16 I would like to be able to ask the court to give him
17 some -- something less than the sentence that is
18 recommended, but I can't. There is no basis for an
19 exceptional sentence, either in fact or in law. This is
20 an agreement that, as I mentioned earlier, Mr. Jones and
21 I have had a lot of discussions about, albeit, kind of
22 one-way discussions on my part.

23 But finally, we've come to an agreement on
24 something that Mr. Shea can literally -- I don't mean
25 figuratively; I mean literally -- live with. We're

1 asking the court to impose the sentence that's jointly
2 recommended, your Honor. Thank you.

3 THE COURT: Mr. Shea, is there anything you want
4 to tell us?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Anything else?

7 MS. JENSEN: Your Honor, my name is
8 Kristen Jensen (phonetic spelling) and I represent
9 Blockbuster Video. I just would like the court to know
10 the impact that this crime has had not only on the
11 company but, more importantly, on the staff of the
12 store.

13 THE COURT: Are you the manager at the store?

14 MS. JENSEN: No. I'm in the loss prevention
15 department. That evening it was -- excuse me -- it was
16 very stressful for the entire crew and it has continued
17 to be throughout this whole process. We just want the
18 court to know what impact he's had and that we -- we can
19 only ask for the maximum amount of sentencing you can
20 give.

21 THE COURT: Thank you. Mr. Shea, you're
22 19 years old. That's young, by my book. Even the loss
23 prevention people, it really actually -- your emotions
24 and her emotions -- this is an emotional time. Your
25 grandpa is here, heart sick.

1 I agree with counsel; there is no reason to go down
2 from this sentence.

3 MR. JONES: Your Honor, I would -- I forgot to
4 mention to you that one of the victims, Louise Rowan,
5 would not be here because she has died since these
6 events took place, having taken her own life.

7 THE COURT: Whoa. That is even -- you know, I
8 guess you have to live with that.

9 But firearms -- I bet you never realized what the
10 impact was on you as you planned this out. I think you
11 planned a robbery but I don't think you planned the
12 results, if that makes any sense to somebody.

13 The legislature has said you will pay. And pay
14 dearly you will for such a thing. I am only thankful
15 that you have a very good defense attorney and a
16 reasonable prosecutor, because 40 years is too long to
17 sit for a mistake.

18 Now, you're going for 11 years, 11 and a half years,
19 and then you're going for 60 plus months community
20 placement as I give you the 168 months plus (sic)
21 60 months of community custody.

22 The costs of \$500 crime victim's compensation and
23 \$110 costs. You are stipulating to an exceptional
24 sentence; and pursuant to the plea agreement, it will be
25 incorporated herein.

1 Mr. Shea, 11 and a half years. You can do one of
2 two things: You can learn a trade, you can get an
3 education, you can work your way up to Cedar Creek or
4 one of the work camps. I don't know if you can. But
5 I'm saying there are systems within the prison system to
6 help you.

7 So when you get out and you're 30 years old, you can
8 be a welder, you can be a computer programmer. I want
9 you to do something for yourself but also for the young
10 lady who took her own life. I'm not saying that you
11 were the cause of it. But it may have had an impact.

12 You can do something for society if you use it well.
13 You can either learn to be a better criminal -- and if
14 you come back on even a Class C felony with this
15 history, you'll go away for life --

16 This is a strike, is it not, Counsel?

17 MR. JONES: Yes, your Honor. These will all
18 count together as one strike.

19 THE COURT: As one strike, yes. Which means
20 three strikes law, you're out.

21 But when you see your grandpa -- he's going to come
22 and visit you -- when you see your friends and family
23 and when you see anyone else after you're 30 years old,
24 you say, "I made a mistake, I did my time but I will not
25 make a second mistake. I will do something for myself."

APPENDIX “H”

Shea's potential sentence ranges, based upon minimum convictions for Burglary in the First Degree, and two counts of Kidnapping in the First Degree, combined with Deadly Weapon – Firearm Enhancement findings/verdicts:

Burglary in the First Degree:	41 – 54 months	(served <i>concurrent</i> w/ other two kidnapping charges)
Kidnapping in the First Degree (1 count):	77 – 102 months	(served <i>concurrent</i> w/ burglary offenses but <i>consecutively</i> to other kidnapping charge)
Kidnapping in the First Degree (2nd count):	51 - 68 months	(served <i>concurrent</i> w/ burglary offenses but <i>consecutively</i> to other kidnapping charge)
Plus: 5-yr. firearm enhancement on Burg. 1	+ 60 months	(served <i>consecutively</i> to all other sentences and enhancements)
Plus: 5-yr. firearm enhancement on Kidnap. 1	+ 60 months	(served <i>consecutively</i> to all other sentences and enhancements)
Plus: 5-yr. firearm enhancement on Kidnap. 1	+ 60 months	(served <i>consecutively</i> to all other sentences and enhancements)

Total sentence range pursuant to convictions for Burglary in the First Degree, and two counts of Kidnapping in the First Degree, combined with Deadly Weapon – Firearm Enhancement findings/verdicts: 308 – 350 months

Calculation notes/considerations:

Pursuant to former RCW 9.94A.400(1)(b) [now recodified in RCW 9.94A.589(2) pursuant to Laws of Washington 2001, Ch. 10, § 6],

(b) Whenever a person is convicted of two or more serious violent offenses, as defined in RCW 9.94A.030, arising from separate and distinct criminal conduct, the sentence range for the offense with the highest seriousness level under RCW 9.94A.320 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the sentence range for other serious violent offenses shall be determined by using an offender score of zero. The sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. ***All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.***

* * * * *

Potential minimum
 sentence based on prior
 criminal history (theft 1°)
 and other current offenses -
 of 1 count of burglary 1°
 and 1 count of ~~kidnapping~~
 kidnapping 1° (for different
 victim)

KIDNAPPING, FIRST DEGREE

(RCW 9A.40.020)

CLASS A FELONY

SERIOUS VIOLENT

(If sexual motivation finding/verdict, use form on page III-35)

I. OFFENDER SCORING (RCW 9.94A.360 (9))

In the case of multiple prior convictions for offenses committed before July 1, 1986, for purposes of computing the offender score, count all adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.360).

ADULT HISTORY:

Enter number of serious violent felony convictions x 3 = _____
 Enter number of violent felony convictions x 2 = _____
 Enter number of nonviolent felony convictions (Theft 1°) x 1 = 1

JUVENILE HISTORY:

Enter number of serious violent felony dispositions x 3 = _____
 Enter number of violent felony dispositions x 2 = _____
 Enter number of nonviolent felony dispositions x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of violent felony convictions Burglary 1° + Kidnapping 1° x 2 = 4
 Enter number of nonviolent felony convictions x 1 = _____

STATUS: Was the offender on community placement on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the Offender Score
 (Round down to the nearest whole number)

5

II. SENTENCE RANGE

A. OFFENDER SCORE:

STANDARD RANGE
 (LEVEL X)

0	1	2	3	4	5	6	7	8	9 or more
51 - 68 months	57 - 75 months	62 - 82 months	67 - 89 months	72 - 96 months	77 - 102 months	98 - 130 months	108 - 144 months	129 - 171 months	149 - 198 months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-18 or III-19 to calculate the enhanced sentence.
- D. Following release from state prison, the offender must serve community placement of 24 months, or up to the period of earned early release awarded, whichever is longer (RCW 9.94A.120).

Potential minimum
 sentence based on
 prior criminal history
 (Theft 1^o) and "other
 current offenses" of
 2 counts of
 kidnapping 1st Degree

BURGLARY, FIRST DEGREE

(RCW 9A.52.020)

CLASS A FELONY

BURGLARY 1 (VIOLENT)

(If sexual motivation finding/verdict, use form on page III-22)

I. OFFENDER SCORING (RCW 9.94A.360 (10))

In the case of multiple prior convictions for offenses committed before July 1, 1986, for purposes of computing the offender score, count all adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.360).

ADULT HISTORY:

Enter number of serious violent and violent felony convictions x 2 = _____
 Enter number of Burglary 2 or Residential Burglary convictions x 2 = _____
 Enter number of other nonviolent felony convictions (Theft 1^o) x 1 = 1

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions x 2 = _____
 Enter number of Burglary 2 or Residential Burglary dispositions x 1 = _____
 Enter number of other nonviolent felony dispositions x 1/2 = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other serious violent and violent felony convictions kidnapping 1^o (x2) x 2 = 4
 Enter number of Burglary 2 or Residential Burglary convictions x 2 = _____
 Enter number of other nonviolent felony convictions x 1 = _____

STATUS: Was the offender on community placement on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
 (Round down to the nearest whole number)

5

II. SENTENCE RANGE

A. OFFENDER SCORE:

STANDARD RANGE
 (LEVEL VII)

0	1	2	3	4	5	6	7	8	9 or more
15 - 20 months	21 - 27 months	26 - 34 months	31 - 41 months	36 - 48 months	41 - 54 months	57 - 75 months	67 - 89 months	77 - 102 months	87 - 116 months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-18 or III-19 to calculate the enhanced sentence.
- D. One year of community placement must be served following release from state prison (RCW 9.94A.120).

GENERAL DEADLY WEAPON ENHANCEMENT - FORM A

Firearm or Other Deadly Weapon Enhancements¹

For offenses committed after July 23, 1995

Use of this form: Only for offenses committed after July 23, 1995 that have a firearm or other deadly weapon finding.

CLASS A FELONY DEADLY WEAPON ENHANCEMENTS: — *i.e., kidnapping^{1°} & burglary^{1°}*

First Deadly Weapon/Firearm Offense ^{**} :		Subsequent ^{***} Deadly Weapon Offense:	
Firearm	5 years	Firearm	10 years
Other Deadly Weapon	2 years	Other Deadly Weapon	4 years

CLASS B FELONY DEADLY WEAPON ENHANCEMENTS:

First Deadly Weapon/Firearm Offense ^{**} :		Subsequent ^{***} Deadly Weapon Offense:	
Firearm	3 years	Firearm	6 years
Other Deadly Weapon	1 year	Other Deadly Weapon	2 years

CLASS C FELONY DEADLY WEAPON ENHANCEMENTS:

First Deadly Weapon/Firearm Offense ^{**} :		Subsequent ^{***} Deadly Weapon Offense:	
Firearm	18 months	Firearm	3 years
Other Deadly Weapon	6 months	Other Deadly Weapon	1 year

* Excluded offenses: Possession of a Machine Gun, Possessing a Stolen Firearm, Drive-by Shooting, Theft of a Firearm, Unlawful Possession of a Firearm 1 and 2, Use of a Machine Gun in a felony, or any offense committed on or before July 23, 1995 with a deadly weapon finding.

** This enhancement is limited to offenses committed after July 23, 1995.

*** To be sentenced as a subsequent deadly weapon finding, the offense in history with a deadly weapon finding must also have been committed after July 23, 1995.

STANDARD RANGE CALCULATION

CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	BASE STANDARD SENTENCE RANGE	
<i>Burglary 1st</i>	<i>VII</i>	<i>5</i>	<i>41</i>	<i>54</i>
			LOW	HIGH
DEADLY WEAPON ENHANCEMENT			<i>60</i>	<i>60</i>
NOTE: The "base standard sentence range" is the appropriate standard sentence without the deadly weapon enhancement.	STANDARD RANGE		<i>101</i>	<i>104</i>
			LOW	HIGH

¹For anticipatory offenses with a deadly weapon finding, add the enhancement after reducing the standard sentence range by 25%.

Kidnapping 1st

GENERAL DEADLY WEAPON ENHANCEMENT - FORM A

Firearm or Other Deadly Weapon Enhancements¹

For offenses committed after July 23, 1995

Use of this form: Only for offenses committed after July 23, 1995 that have a firearm or other deadly weapon finding.

CLASS A FELONY DEADLY WEAPON ENHANCEMENTS: — *i.e., kidnapping 1^o & burglary 1^e*

First Deadly Weapon/Firearm Offense**:	
Firearm	5 years
Other Deadly Weapon	2 years

Subsequent*** Deadly Weapon Offense:	
Firearm	10 years
Other Deadly Weapon	4 years

CLASS B FELONY DEADLY WEAPON ENHANCEMENTS:

First Deadly Weapon/Firearm Offense**:	
Firearm	3 years
Other Deadly Weapon	1 year

Subsequent*** Deadly Weapon Offense:	
Firearm	6 years
Other Deadly Weapon	2 years

CLASS C FELONY DEADLY WEAPON ENHANCEMENTS:

First Deadly Weapon/Firearm Offense**:	
Firearm	18 months
Other Deadly Weapon	6 months

Subsequent*** Deadly Weapon Offense:	
Firearm	3 years
Other Deadly Weapon	1 year

* Excluded offenses: Possession of a Machine Gun, Possessing a Stolen Firearm, Drive-by Shooting, Theft of a Firearm, Unlawful Possession of a Firearm 1 and 2, Use of a Machine Gun in a felony, or any offense committed on or before July 23, 1995 with a deadly weapon finding.

** This enhancement is limited to offenses committed after July 23, 1995.

*** To be sentenced as a subsequent deadly weapon finding, the offense in history with a deadly weapon finding must also have been committed after July 23, 1995.

STANDARD RANGE CALCULATION

CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	BASE STANDARD SENTENCE RANGE	
<i>Kidnapping 1st</i>	<i>X</i>	<i>5</i>	<i>77</i>	TO <i>102</i>
			LOW	HIGH
			<i>60</i>	<i>60</i>
			<i>133</i>	TO <i>162</i>
			LOW	HIGH

NOTE: The "base standard sentence range" is the appropriate standard sentence without the deadly weapon enhancement.

¹For anticipatory offenses with a deadly weapon finding, add the enhancement after reducing the standard sentence range by 25%.

APPENDIX “I”

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TOC: [Annotated Revised Code of Washington](#) > / . . . / > [CHAPTER 9A.56. THEFT AND ROBBERY](#) >
§ 9A.56.200. Robbery in the first degree

Citation: **Rev. Code Wash. (ARCW) § 9A.56.200**

Rev. Code Wash. (ARCW) § 9A.56.200

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TITLE 9A. WASHINGTON CRIMINAL CODE
CHAPTER 9A.56. THEFT AND ROBBERY

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 9A.56.200 (2007)

§ 9A.56.200. Robbery in the first degree

(1) A person is guilty of robbery in the first degree if:

(a) In the commission of a robbery or of immediate flight therefrom, he or she:

(i) Is armed with a deadly weapon; or

(ii) Displays what appears to be a firearm or other deadly weapon; or

(iii) Inflicts bodily injury; or

(b) He or she commits a robbery within and against a financial institution as defined in [RCW 7.88.010](#) or [35.38.060](#).

(2) Robbery in the first degree is a class A felony.

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§ 9A.56.200. Robbery in the first degree

Citation: **Rev. Code Wash. (ARCW) § 9A.56.200**

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TOC: [Annotated Revised Code of Washington](#) > / . . . / > [CHAPTER 9A.56. THEFT AND ROBBERY](#) >
§ 9A.56.190. Robbery -- Definition

Citation: **Rev. Code Wash. (ARCW) § 9A.56.190**

Rev. Code Wash. (ARCW) § 9A.56.190

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TITLE 9A. WASHINGTON CRIMINAL CODE
CHAPTER 9A.56. THEFT AND ROBBERY

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 9A.56.190 (2007)

§ 9A.56.190. Robbery -- Definition

A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome 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.

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§ 9A.56.190. Robbery -- Definition

Citation: **Rev. Code Wash. (ARCW) § 9A.56.190**

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§ 9A.36.021. Assault in the second degree.

Citation: **Rev. Code Wash. (ARCW) § 9A.36.021**

Rev. Code Wash. (ARCW) § 9A.36.021

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TITLE 9A. WASHINGTON CRIMINAL CODE
CHAPTER 9A.36. ASSAULT -- PHYSICAL HARM

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 9A.36.021 (2007)

Legislative Alert:

LEXSEE 2007 Wa. SB 5953 -- See section 2.

§ 9A.36.021. Assault in the second degree.

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

- (a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or
- (b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or
- (c) Assaults another with a deadly weapon; or
- (d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or
- (e) With intent to commit a felony, assaults another; or
- (f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture.

(2) (a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

(b) Assault in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

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TOC: [Annotated Revised Code of Washington > / . . . / > CHAPTER 9A.40. KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL INTERFERENCE > § 9A.40.030. Kidnapping in the second degree.](#)

Citation: **RCW 9A.40.030**

Rev. Code Wash. (ARCW) § 9A.40.030

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TITLE 9A. WASHINGTON CRIMINAL CODE
CHAPTER 9A.40. KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL
INTERFERENCE

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 9A.40.030 (2007)

§ 9A.40.030. Kidnapping in the second degree.

(1) A person is guilty of kidnapping in the second degree if he or she intentionally abducts another person under circumstances not amounting to kidnapping in the first degree.

(2) In any prosecution for kidnapping in the second degree, it is a defense if established by the defendant by a preponderance of the evidence that (a) the abduction does not include the use of or intent to use or threat to use deadly force, and (b) the actor is a relative of the person abducted, and (c) the actor's sole intent is to assume custody of that person. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, any other crime.

(3) (a) Except as provided in (b) of this subsection, kidnapping in the second degree is a class B felony.

(b) Kidnapping in the second degree with a finding of sexual motivation under [RCW 9.94A.835](#) or [13.40.135](#) is a class A felony.

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Citation: **RCW 9A.40.030**

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Citation: **Rev. Code Wash. (ARCW) § 9A.40.010**

Rev. Code Wash. (ARCW) § 9A.40.010

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TITLE 9A. WASHINGTON CRIMINAL CODE
CHAPTER 9A.40. KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL
INTERFERENCE

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 9A.40.010 (2007)

§ 9A.40.010. Definitions

The following definitions apply in this chapter:

(1) "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his liberty. Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him has not acquiesced.

(2) "Abduct" means to restrain a person by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly force;

(3) "Relative" means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption, or a spouse.

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OF THE STATE OF WASHINGTON
NO. 35055-6-II

CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

vs.

JUSTIN MICHAEL SHEA,
Appellant.

CERTIFICATE OF MAILING

STATE OF WASHINGTON)

) ss.

COUNTY OF THURSTON)

I, Jamie Keserich, hereby state under penalty of perjury, that I am over the age of 18 years and competent to be a witness in the above-entitled cause, that on the 27th day of July, 2007, I caused to be mailed to the Appellant's Attorney Eric J. Nielson, a copy of Respondent's Brief, by depositing same in the United States mail at Olympia, Washington, addressed as follows:

Eric J. Nielsen
Nielsen Broman & Koch PLLC
1908 E Madison St
Seattle WA 98122-2842

I hereby swear under penalty of perjury under the laws of the State of Washington, that the above is true and correct.

Signed this 27 day of July, 2007, at Olympia, Washington.



Jamie Keserich
Legal Assistant

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON
NO. 35055-6-II

FILED BY 

STATE OF WASHINGTON,
Respondent,
vs.
JUSTIN MICHAEL SHEA,
Appellant.

CERTIFICATE OF MAILING

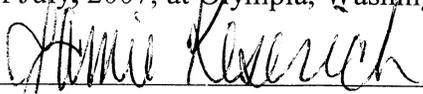
STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, Jamie Keserich, hereby state under penalty of perjury, that I am over the age of 18 years and competent to be a witness in the above-entitled cause, that on the 27th day of July, 2007, I caused to be mailed to the Appellant's Attorney Eric J. Nielsen, a copy of Respondent's Brief, by depositing same in the United States mail at Olympia, Washington, addressed as follows:

Eric J. Nielsen
Nielsen Broman & Koch PLLC
1908 E Madison St
Seattle WA 98122-2842

I hereby swear under penalty of perjury under the laws of the State of Washington, that the above is true and correct.

Signed this 27 day of July, 2007, at Olympia, Washington.



Jamie Keserich
Legal Assistant