

NO. 35132-3-II

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

STATE OF WASHINGTON, RESPONDENT

v.

OLIVIA LEANORA LAUIFI, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Frederick W. Fleming, Judge

No. 05-1-03148-6

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DIVISION II  
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STATE OF WASHINGTON  
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**BRIEF OF RESPONDENT**

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

1. Did the jury have sufficient evidence to conclude that defendant committed first degree assault when defendant chose a deadly weapon and aimed to inflict a life-threatening wound, A.S. was not a threat to defendant at the time she stabbed A.S., and defendant appeared either pleased or apathetic that she had stabbed defendant in the middle of the chest with a knife?
2. Did the court properly provide a first aggressor instruction when defendant claimed self-defense and there was conflicting evidence as to whether defendant attacked A.S. first?
3. Was defense counsel effective when he allowed the court to offer the first aggressor instruction when the first aggressor instruction was appropriate in this case?

B. STATEMENT OF THE CASE.

1. Procedure

On June 27, 2005, the Pierce County Prosecutor's Office filed an information charging OLIVIA LEANORA LAUIFI with one count of first degree assault with a deadly weapon enhancement. CP 1-2. The court held a CrR 3.5 hearing and found that statements defendant made to police

officers were admissible. RP 54<sup>1</sup>; CP 31-34. The matter proceeded to a jury trial on May 31, 2006. RP 74. The jury found defendant guilty of first degree assault and found that the knife she used in committing the assault was a deadly weapon. CP 38, 65-76. The court sentenced defendant to the low end of the standard range sentence, ordering her to serve 102 months for first degree assault, and 24 months for the deadly weapon enhancement, giving her credit for 391 days served in custody. RP(2) 13-14; CP 65-76. The court also ordered defendant to pay monetary penalties and specified community custody conditions. RP 14-16; CP 65-76.

From entry of this judgment and sentence, defendant has filed a timely notice of appeal. CP 45-55.

## 2. Facts

On June 25, 2005, two groups of children and adults were attending the Taste of Tacoma event at Point Defiance Park in Pierce County, Washington. RP 83, 84, 130, 152, 153, 162-163, 195, 211-260, 285-321, 337, 365, 381. One group was composed primarily of minors and included the following people: A.S., Darius W., Arrogance W., Bryan Thomas, and Laquan M. RP 130, 143, 162-163, 211-260, 285-321,

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<sup>1</sup> The Verbatim Report of Proceedings is contained in nine transcripts, eight of which are paginated consecutively. References to the first eight transcripts will be preceded by "RP," references to the ninth transcript will be preceded by "RP(2)."

337. The other group included defendant and a boy named Quinton C. RP 498. In the afternoon of June 25, 2005, the two groups were near the entrance to Point Defiance Park when fifteen-year old Quinton and fifteen-year-old Darius, who knew each other from previous interactions, began to argue. RP 166-167, 211, 213, 249-250, 338-339. During this argument, witnesses testified that Quinton wanted to fight physically with Darius. RP 166-167, 213, 249-250. Darius, who was smaller than Quinton, did not want to fight, but continued to argue with Quinton. RP 147, 166-167, 213, 249-250. Fifteen-year-old A.S. intervened in hopes of preventing the fight, telling Darius he did not have to fight Quinton because Quinton was weak. RP 162, 167, 250-251.

When A.S. said that Quinton was weak, defendant heard this comment and said to A.S., “he’s weak?” to which A.S. responded, “yeah.” RP 168-169, 250-251; CP 130-137 (attached hereto as “Appendix A”).<sup>2</sup> Defendant then ensured that Quinton would hear this comment, saying to Quinton, “oh, he said your weak.” RP 168-169. She also said that A.S. should tell Quinton that A.S. thought Quinton was weak. RP 501. By this time, a group of onlookers had gathered and began to encourage Quinton and A.S. to fight each other. RP 169. The two boys “posted up,” which means that they raised their hands as if ready to fight one another. RP

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<sup>2</sup> When police officers interviewed defendant, they taped the interview and the interview was transcribed and played for the jury. RP 450; CP 130-137. The jury was allowed to read the transcript as the tape played. RP 450; CP 130-137.

149, 167, 169, 170, 199, 217, 351, 366, 374-375, 383, 389-390, 502-503, 513, 516-517, 520. For a moment, it appeared that the boys were going to attack each other, but they eventually lowered their hands without attacking. RP 149, 167, 169, 170, 199, 217, 351, 366, 374-375, 383, 389-390, 502-503, 513, 516-517, 520. The boys were at least ten feet apart during this interaction. RP 181, 396.

Defendant had brought a knife with a folding blade to the park because one of the friends with whom she had arrived was a gang member and was often arguing and fighting with other gang members. CP 130-137. During the argument between A.S. and Quinton, defendant took the knife out of her pocket and unfolded the blade. RP 511-513; CP 130-137. Some witnesses testified that defendant waved the knife in front of the faces of a group of girls that were at the park with A.S. RP 396, 502, 511-513; CP 130-137. After Quinton and A.S. had backed away from each other, defendant wrapped a sweater around the hand that was holding the knife and approached A.S. RP 150, 355, 383, 503, 386, 396-397, 415. When defendant reached A.S., she moved her hand outward and stabbed defendant in the chest with the knife. RP 93, 171-172, 212, 223, 252, 257, 341, 353, 355, 365, 383, 384, 388, 503.

At first, A.S. did not realize he had been stabbed in the chest. RP 72. He then felt something strange and lifted his shirt to see blood spilling down his stomach from an inch-long wound that was in the middle of the left side of his chest. RP 172, 174, 272. A.S. said that one of the people in the other group had just stabbed him, and some of A.S.'s friends began to follow defendant and her friends. RP 135, 144. Defendant walked away with her friends, and they began to run as A.S.'s friends chased after them. RP 135, 172; CP 130-137.

As defendant was running, she passed Matthew Short, an Emergency Medical Technician who was providing first aid at the Taste of Tacoma. RP 153. Mr. Short heard one of defendant's friends ask, "did you really stab him?" RP 153. Defendant then replied, "Hell yeah, I stabbed him." RP 153. At this point, Mr. Short sought out A.S., found him, and provided first aid until A.S. could be transported to the hospital. RP 153-154

Police officers were notified of the attack and began to pursue both A.S.'s friends, defendant, and defendant's friends. RP 156, 326-327, 412. Defendant fled to an alley, where officers detained and arrested her. RP 327-330, 422-425; CP130-137. Before the officers could detain her, she tried to throw the knife into a trash can in the alley. CP 130-137. Officers searching the alley, eventually recovered the knife and a blood-soaked sweatshirt with a hole in it. RP 94-96, 102-103, 332, 415. Police brought

defendant to the police station, read her her Miranda rights, and interviewed her. CP 130-137.

A.S. was taken to the hospital, where doctors discovered that defendant had punctured the pericardial sac that surrounds his heart. RP 274-275. The sac was filling with blood, putting pressure on A.S.'s heart and preventing it from beating. RP 273-275. The doctors removed the blood from the pericardial sac and placed defendant in the Intensive Care Unit of the Hospital. RP 275. A.S. spent four days in the hospital recovering form his wounds. RP 175, 275. Without medical assistance, A.S. would have died from the stab wound that defendant inflicted. RP 278.

Defendant testified that she believed that A.S. and his friends were circling Quinton in order to attack him. RP 500-501; CP 130-137. She said that A.S. threatened hurt her and Quinton. RP 504; CP 130-137. She testified that during the fight between A.S. and Quinton, she was confronted by five girls from defendant's group and displayed her knife in order to prevent them from attacking her. RP 502; CP 130-137. After displaying this knife to the girls, defendant claimed she continued to hold the knife in her extended hand while she and A.S. walked toward each other. RP 502-503; CP 130-137. She testified that defendant did not stop walking and thus impaled himself on her knife. RP 503, 514; CP 130-137.

C. ARGUMENT.

1. THERE WAS SUFFICIENT EVIDENCE TO PROVE DEFENDANT COMMITTED FIRST DEGREE ASSAULT WHEN SHE STABBED A.S. IN THE CHEST WITH A CONCEALED KNIFE, CAUSING LIFE-THREATENING INJURIES, AND THEN BRAGGED ABOUT IT AFTERWARDS TO A FRIEND.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. State v. McCullum, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); see also Seattle v. Gellein, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); State v. Mabry, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). Challenging the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. State v. Barrington, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), review denied, 111 Wn.2d 1033 (1988) (citing State v. Holbrook, 66 Wn.2d 278, 401 P.2d 971 (1965)); State v. Turner, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981). All reasonable inferences from the

evidence must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. State v. Salinas, 119 Wn.2d 192; State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing State v. Casbeer, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987)).

The written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. Credibility determinations are necessary because witness testimony can conflict; these determinations should be made by the trier of fact, who is best able to observe the witnesses and evaluate their testimony as it is given. On this issue, the Supreme Court of Washington said:

[G]reat deference . . . is to be given the trial court's factual findings. It, alone, has had the opportunity to view the witness' demeanor and to judge his veracity.

State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (citations omitted). Therefore, when the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

“A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm... [a]ssaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death.” RCW 9A.36.011(1)(a). The term “assault” is not statutorily defined, so Washington courts apply the common law definition to the crime. State v. Aumick, 126 Wn.2d 422, 426 n.12, 894 P.2d 1325 (1995). An assault is an attempt, with unlawful force, to inflict bodily injury upon another, whether or not the victim is actually harmed. State v. Aumick, 126 Wn.2d 422. Therefore, to convict defendant of first degree assault, the court had to have sufficient evidence that (1) defendant intentionally assaulted A.S., (2) defendant used a deadly weapon, (3) defendant intended to inflict great bodily harm on defendant, and (4) the assault occurred in Washington. See CP 82-115 (Instruction 8).

Defendant does not dispute that she intentionally stabbed defendant, that the jury properly found the knife to be a deadly weapon, or that the crime occurred in Pierce County, Washington. Moreover, such facts are clear from the evidence adduced at trial. Thus, the only issue on appeal is whether there was sufficient evidence from which a reasonable jury could conclude that defendant acted with intent to inflict great bodily harm when she stabbed A.S. in the chest with the knife.

In this case, defendant intended to inflict great bodily harm on A.S. because (1) defendant chose a deadly weapon and aimed to inflict a life-threatening wound, (2) A.S. was not a threat to defendant at the time she

stabbed A.S., and (3) defendant appeared at times pleased and at other times apathetic that she had stabbed defendant in the middle of the chest with a knife. First, defendant chose a deadly weapon and aimed to inflict a life-threatening wound on A.S. Defendant chose to use a knife with two blades to stab A.S. RP 93, 171-172, 212, 223, 252, 257, 341, 353, 355, 365, 383, 384, 388, 503. She concealed this knife in a sweatshirt wrapped around her arm, apparently so that she could move in close to A.S. without alarming him. RP 150, 355, 383, 503, 386, 396-397, 415. Defendant stabbed A.S. near the middle of his chest, near his heart. RP 272, 341; CP 130-137. She aimed well enough to cut into the pericardial sac that surrounds A.S.'s heart and inflict a wound that, left untreated, would have killed A.S. RP 154, 273-275, 278, 341. After this stabbing, A.S. had to be treated in the intensive care unit and spent four days in the hospital. RP 174, 275.

Second, A.S. was not a threat to defendant when defendant chose to stab A.S. A.S. attempted to diffuse an argument between Darius and Quinton; A.S. was not arguing with defendant. RP 134, 149, 166, 213. Defendant tried to create an argument between Quinton and A.S. by telling Quinton that A.S. thought Quinton was “weak” and called Quinton a “bitch.” RP 166-169, 250-251, 256, 385, 501, 259; CP 130-137. Defendant took out the knife before she was anywhere near A.S., so she could not have been threatened by A.S. when she chose to arm herself.

RP 223-224, 250-251, 350, 356; CP 130-137. A.S. was only 15 years old when defendant attacked A.S.; defendant was 24 years old. RP 162, 490. By defendant's own description, A.S. had a small build and did not wear any colors that would suggest to her that he was a threatening gang member. CP 130-137. In spite of defendant's goading, A.S. and Quinton decided not to fight each other and the situation calmed down. RP 149, 167, 169, 170, 199, 217, 351, 366, 374-375, 383, 389-390, 502-503, 513, 516-517, 520. Even after the situation calmed down, defendant approached A.S. and stabbed him. RP 260, 342, 353, 355.

Third, after defendant stabbed A.S., defendant reacted in a way that suggested she was at first pleased and later apathetic that she had stabbed A.S. in the chest. Matthew Short, an EMT at the Taste of Tacoma, saw two "teens" run past him shortly before attending to A.S. RP 153. One asked the other, "did you really stab him?" to which the other bragged, "Hell yeah I stabbed him." RP 153. The person who bragged about stabbing someone was most likely defendant because Mr. Short soon discovered that the person who had been stabbed was A.S., and defendant admitted to stabbing A.S. that day. RP 153, 385-388, 399, 503; CP 130-137. Defendant certainly did not express any concern that she had stabbed defendant in the chest near his heart: In spite of the blood that defendant saw after stabbing A.S., she fled the scene without any apparent concern for him. RP 135, 136, 141-142, 153, 173, 199, 219-220, 251,

329, 342, 344, 356, 386, 390, 424. When she wasn't bragging about the stabbing, she seemed apathetic or concerned about being caught by the police. RP 258, 385-388, 390, 399; CP 130-137.

2. THE COURT PROPERLY OFFERED A FIRST AGGRESSOR INSTRUCTION.

The law concerning the giving of jury instructions may be summarized as:

We review the trial court's jury instructions under the abuse of discretion standard. A trial court does not abuse its discretion in instructing the jury, if the instructions: (1) permit each party to argue its theory of the case; (2) are not misleading; and, (3) when read as a whole, properly inform the trier of fact of the applicable law.

State v. Fernandez-Medina, 94 Wn. App. 263, 266, 971 P.2d 521, review granted, 137 Wn.2d 1032, 980 P.2d 1285 (1999), citing Herring v. Department of Social and Health Servs., 81 Wn. App. 1, 22-23, 914 P.2d 67 (1996). A criminal defendant is entitled to jury instructions that accurately state the law, permit him to argue his theory of the case, and are supported by the evidence. State v. Staley, 123 Wn.2d 794, 803, 872 P.2d 502 (1994).

CrR 6.15 requires a party objecting to the giving or refusal of an instruction to state the reason for the objection. The purpose of this rule is

to afford the trial court an opportunity to correct any error. State v. Colwash, 88 Wn.2d 468, 470, 564 P.2d 781 (1977). Consequently, it is the duty of trial counsel to alert the court to his position and obtain a ruling before the matter will be considered on appeal. State v. Rahier, 37 Wn. App. 571, 575, 681 P.2d 1299 (1984), citing State v. Jackson, 70 Wn.2d 498, 424 P.2d 313 (1967). Only those exceptions to instructions that are sufficiently particular to call the court's attention to the claimed error will be considered on appeal. State v. Harris, 62 Wn.2d 858, 385 P.2d 18 (1963); State v. Jackson, 70 Wn.2d 498, 424 P.2d 313 (1967). A mere exception to the refusal to give requested instructions, without more, does not constitute a sufficient statement of the grounds for objection. State v. Robinson, 92 Wn.2d 357, 361, 597 P.2d 892 (1979); State v. Myers, 6 Wn. App. 557, 494 P.2d 1015, cert. denied, 409 U.S. 1061, 93 S. Ct. 562, 34 L.Ed.2d 513 (1972). A challenge to a jury instruction may not be raised for the first time on appeal unless the instructional error is of constitutional magnitude. State v. Dent, 123 Wn.2d 467, 478, 869 P.2d 392 (1994).

In determining whether the evidence adduced at trial sufficiently supports the court's decision to give a particular instruction, the appellate court "must view the supporting evidence in the light most favorable to the party that requested the instruction." State v. Wingate, 155 Wn.2d 817, 823 n. 1, 122 P.3d 908 (2005).

Here, the court provided the jury with the following first aggressor instruction:

No person may, by any intentional act reasonably likely to provoke a belligerent response, create a necessity for acting in self defense or defense of another and thereupon use force upon another person. Therefore, if you find beyond a reasonable doubt that the defendant was the aggressor, and that defendant's acts and conduct provoked or commenced the fight, then self-defense or defense of another is not available as a defense.

CP 82-115 (Instruction 15). This instruction was proposed by the state.

RP 557.

Defendant objected to the use of the first aggressor instruction. RP 557. Defendant seems to argue that this instruction violates her constitutional due process right to present her theory of the case and that the instruction was not appropriate in this case.

- a. The first aggressor instruction did not deny defendant the right to present her theory of the case.

Due process requires that a defendant be able to present her theory of the case. State v. Scott, 110 Wn.2d 682, 690-691, 757 P. 2d 492 (1988); see also State v. Amezola, 49 Wn. App. 78, 87, 741 P.2d 1024 (1987). This requirement is met when each side has the opportunity to have the jury instructed on its theory of the case and there is evidence to support that theory. State v. Riley, 137 Wn.2d 904, n. 1. First aggressor

instructions deprive a defendant of the opportunity to present her theory of the case when, for example, “it is vague and does not tell the jury which specific act constitutes the provoking incident.” State v. Arthur, 42 Wn. App. 120, 124-125, 708 P.2d 1230 (1985). First aggressor instructions instruct the jury that the jury should not consider a claim of self-defense if it finds that the defendant was the first aggressor; this instruction does not per se deprive a defendant of her right to present her theory of self-defense. See, e.g., State v. Wingate, 155 Wn.2d 817; State v. Riley, 137 Wn.2d 904, 976 P.2d 624 (1999).

Defendant was provided the opportunity to present her theory of the case. The jury here was instructed on defendant’s theory of the case: self-defense and mistake. CP 82-115 (Instructions 13 and 14). In fact, the court used the very self-defense instructions that defendant proposed. CP 116-129 (Defendant’s Proposed Instructions 5 and 6). The jury also heard evidence that would support this theory. It heard defendant’s interview with police, in which she expressed her fear that A.S. and his group were going to harm her and Quinton, and defendant’s reasons for this fear. RP 500-517; CP 130-137. In closing, defense counsel argued both mistake and self-defense to the jury. RP 569.

This case is similar to other cases in which a court found that a defendant was allowed to present her defense even when a first aggressor instruction was used. In State v. Riley, 137 Wn.2d 904, 908, Riley claimed he shot the victim in self-defense. Id. at 906. Conflicting

evidence on self-defense and first aggression was presented at trial, and the court gave both a self-defense and a first aggressor jury instruction.<sup>3</sup> Id. at 908-909. Riley was provided the opportunity to argue self-defense in his closing argument, and the jury was instructed on self-defense. Id. at 904. Here, as in Riley, conflicting evidence about self-defense and first aggression was presented a trial. RP 161-192, 500-517. The jury was instructed on self-defense, mistake, and first aggression, and defendant argued self-defense and mistake during the closing argument. RP 568-578; CP 82-115.

Defendant seems to suggest that a first aggressor instruction is per se unconstitutional. Defendant argues that she could not argue her theory of self-defense in this case because “[u]nder the first aggressor instruction given, the jury was told that if Olivia’s waiving the knife ‘provoked’ the incident leading to the stabbing, they would be precluded from considering her claim of self-defense.” Br. of Appellant at 14, 17. First aggressor instructions, however, always preclude a claim of self-defense if the jury believes that the defendant was the first aggressor. They do not

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<sup>3</sup> The Riley instruction reads, No person may, by any intentional act reasonably likely to provoke a belligerent response, create a necessity for acting in **self defense** and thereupon use, offer or attempt to use force upon or toward another person. Therefore, if you find beyond a reasonable doubt that the defendant was the aggressor, and that defendant’s acts and conduct provoked or commenced the fight, then self-defense is not available as a defense. Riley, 137 Wn.2d at 908 (emphasis added). Instruction 15 is identical to the Riley instruction except that Instruction 15 adds the phrase “or defense of another” after the text that has been bolded in the Riley instruction herein. See CP 82-115 (Instruction 15).

thereby preclude the defendant from offering evidence or arguing that she was not the first aggressor. In fact, the two cases that defendant cites to support this argument (State v. Arthur, 42 Wn. App. pp. 120, and State v. Wingate, 155 Wn.2d 817) stand for the proposition that a first aggressor instruction is not per se unconstitutional. In Arthur, the instruction was only unconstitutional because it was overly vague, Arthur, 42 Wn. App, 124-125; Wingate, 155 Wn.2d 822; in Wingate, the Washington Supreme Court upheld the use of a first aggressor instruction which was nearly identical to the one used in this case, Wingate, 155 Wn.2d 821.<sup>4</sup>

Defendant does not argue that Instruction 15 was overly vague and cannot point to any evidence that it prevented her from arguing self-defense to the jury.

The first aggressor instruction did not deny defendant the opportunity to argue her theory of the case at trial. There was evidence adduced at trial that defendant was the first aggressor, so the court properly gave the first aggressor instruction. There was no error.

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<sup>4</sup> The Wingate instruction reads, No person may, by any intentional act reasonably likely to provoke a belligerent response, create a necessity for acting in self defense or defense of [f] another and thereupon **use, offer or attempt to use force upon or toward** another person. Therefore, if you find beyond a reasonable doubt that the defendant was the aggressor, and that defendant's acts and conduct provoked or commenced the fight, then self-defense or defense of another is not available as a defense. Wingate, 155 Wn.2d at 821 (emphasis added). Except for the omission of the bolded language, Instruction 15 is identical to the Wingate instruction. See CP 82-115 (Instruction 15).

b. The court properly gave a first aggressor instruction in this case.

A person who provokes an altercation cannot successfully invoke self-defense. Riley, 137 Wn.2d at 909; State v. Craig, 82 Wn.2d 777, 783, 514 P.2d 151 (1973). “[C]ourts should use care in giving an aggressor instruction.” Riley, 137 Wn.2d at 910 n.2 (citations omitted) (quoting State v. Arthur, 42 Wn. App. 120, 125 n.1, 708 P.2d 1230 (1985)). An aggressor instruction is appropriate where there is “conflicting evidence from which a jury can reasonably determine that the defendant provoked the need to act in self-defense, an aggressor instruction is appropriate.” Riley, 137 Wn.2d at 909-910; State v. Davis, 119 Wn.2d 657, 666, 835 P.2d 1039 (1992).

There was conflicting evidence as to whether defendant provoked a need for self-defense in this case. The State called several witnesses who told one story. They testified that the initial fight was not between defendant and A.S. RP 134, 149, 166, 213. The witnesses said that defendant tried to promote that fight by ensuring that Quinton heard A.S.’s insults. RP 166-169, 250-251, 256, 385, 501, 259. When the fight between A.S. and Quinton ended, the witnesses testified the defendant walked up to A.S. and stabbed him in the chest with a concealed knife before running away. RP 150, 355, 383, 503, 386, 396-397, 415.

Defendant told a different story. She said that she only got involved in the dispute between A.S. and Quinton when she believed A.S. and others were circling Quinton and trying to hurt him. RP 500-502. She said her concern was protecting Quinton, not provoking a fight. RP 500-502. She said that she took a knife out and waived it in front of some girls before walking toward A.S., that A.S. continued to walk as defendant held her hand outstretched, and that A.S. then walked into her knife. RP 502-503, 513.

The evidence conflicted on many points: whether defendant tried to encourage A.S. and Quinton to fight, whether defendant showed the knife to anyone before walking up to A.S., whether A.S. was standing still or moving toward defendant when A.S. was stabbed, and whether defendant's hand was outstretched when she stabbed A.S.

Thus, the first aggressor instruction in this case was appropriate because defendant claimed self-defense and there was conflicting testimony as to whether defendant provoked the need for self defense. See Riley, 137 Wn.2d at 909-910.

3. DEFENSE COUNSEL WAS NOT DEFICIENT WHEN HE OBJECTED TO THE FIRST AGGRESSOR INSTRUCTION PROPOSED BY THE STATE.

The right to effective assistance of counsel is the right "to require the prosecution's case to survive the crucible of meaningful adversarial

testing." United States v. Cronin, 466 U.S. 648, 656, 104 S. Ct. 2045, 80 L.Ed.2d 657 (1984). When such a true adversarial proceedings has been conducted, even if defense counsel made demonstrable errors in judgment or tactics, the testing envisioned by the Sixth Amendment has occurred. Id. "The essence of an ineffective-assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect." Kimmelman v. Morrison, 477 U.S. 365, 374, 106 S.Ct. 2574, 2582, 91 L.Ed.2d 305 (1986).

A defendant who raises a claim of ineffective assistance of counsel must show: (1) that his or her attorney's performance was deficient, and (2) that he or she was prejudiced by the deficiency. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). Under the first prong, deficient performance is not shown by matters that go to trial strategy or tactics. State v. Garrett, 124 Wn.2d 504, 520, 881 P.2d 185 (1994). Under the second prong, the defendant must show that there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987).

Judicial scrutiny of a defense attorney's performance must be "highly deferential in order to eliminate the distorting effects of hindsight." Strickland, 466 U.S. at 689. The reviewing court must judge

the reasonableness of counsel's actions "on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; State v. Benn, 120 Wn.2d 631, 633, 845 P.2d 289 (1993).

What decision [defense counsel] may have made if he had more information at the time is exactly the sort of Monday-morning quarterbacking the contemporary assessment rule forbids. It is meaningless...for [defense counsel] now to claim that he would have done things differently if only he had more information. With more information, Benjamin Franklin might have invented television.

Hendricks v. Calderon, 70 F.3d 1032, 1040 (C.A. 9, 1995).

An attorney is not required to argue a meritless claim. Cuffle v. Goldsmith, 906 F.2d 385, 388 (9th Cir.1990). The standard of review for effective assistance of counsel is whether, after examining the whole record, the court can conclude that defendant received effective representation and a fair trial. State v. Ciskie, 110 Wn.2d 263, 751 P.2d 1165 (1988). A presumption of counsel's competence can be overcome by showing counsel failed to conduct appropriate investigations, adequately prepare for trial, or subpoena necessary witnesses. Id. An appellate court is unlikely to find ineffective assistance on the basis of one alleged mistake. State v. Carpenter, 52 Wn. App. 680, 684-685, 763 P.2d 455 (1988).

Defense Counsel Mr. Whitehead was effective in this case. Defendant claims defense counsel was deficient because he "fail[ed] to

object to the first aggressor instruction.” Br. of Appellant at 19. As noted in the previous argument, however, Mr. Whitehead did object to the use of the first aggressor instruction. RP 557. Defendant mischaracterizes the record. Because defense counsel made the objection that defendant says he should have made, defense counsel was not deficient. Defendant’s claim of ineffective assistance of counsel is without merit.

D. CONCLUSION.

For the foregoing reasons, the State requests that this Court affirm defendant’s convictions.

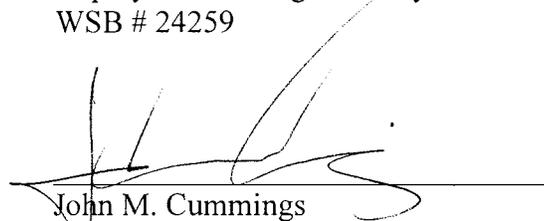
DATED: May 21, 2007.

GERALD A. HORNE  
Pierce County  
Prosecuting Attorney

*WSBA # 30724*



KAREN WATSON  
Deputy Prosecuting Attorney  
WSB # 24259



John M. Cummings  
Rule 9 Legal Intern

Certificate of Service:

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

5-21-07 Went  
Date Signature

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DIVISION II  
07 MAY 21 PM 4:08  
STATE OF WASHINGTON  
BY [Signature] DEPUTY

## **APPENDIX “A”**

*Transcript of Defendant’s Police Interview on 6/26/05 (CP 103-137)*

Model:  
Vehicle Style:  
Primary Vehicle Color:  
Secondary Vehicle Color:  
VIN:  
Special Features:

Estimated Damage:  
Damage:  
Damaged Area:  
Tow Company:  
Tow Consent:  
Hold Requested By:

**Drug Information:**

Drug Type:  
Drug Quantity:

Drug Measure:  
Drug Measure Type:

**Jewelry Information:**

Metal Color:  
Metal Type:  
Stone Color:

Total # of Stones:  
Inscription:  
Generally Worn By:

**Firearm Information:**

Caliber:  
Gauge:  
Action:  
Importer:

Length:  
Finish:  
Grips:  
Stock:

Property Notes:

Enter	Date	Time	WACIC	LESA	Initial	Release Info.	Date	Time	Release No.	Release Authority
Clear						Owner Notified			Operators Name	

**Investigative Information**

Means: \_\_\_\_\_ Motive: \_\_\_\_\_  
Vehicle Activity: \_\_\_\_\_ Direction Vehicle Traveling: \_\_\_\_\_

Synopsis:  
The listed statement is a transcript of a taped interview with suspect Olivia L. Lauifi regarding assault that occurred at Point Defiance Park, during the Taste of Tacoma Celebration. Olivia L. Lauifi was formally advised of her Miranda Rights and stated she understood same. A pre-interview was also conducted prior to the actual formal taped statement. Detective K. Filbert assisted R/D during the interview. Olivia L. Lauifi was subsequently booked into the Pierce County Jail for Assault in the First Degree.

Narrative:  
Lewis: This is Detective Lewis of the Tacoma Police Department. Today's date is 6/26/05. The time now is 12:07 a.m. I'm currently in the CID Interview Room, located on the Fourth Floor of the County-City Room, County-City Building, the Persons' Side. With me is Detective Kerry Filbert, Badge Number 067. My badge number is Number 317. And with me in the interview room is Lauifi Olivia Lenoria. Is that correct?  
Lauifi: Lenora.  
Lewis: Lenora. Date of birth of 9/8 of 81. Is that correct?  
Lauifi: Yes.  
Lewis: Are you aware this conversation is being recorded?  
Lauifi: Yes.  
Lewis: And do I have your permission to record this conversation?  
Lauifi: Yes.  
Lewis: And at approximately 10:30 this evening, you were advised of your Miranda Rights, is that correct?  
Lauifi: Yes.  
Lewis: And I spoke to you about re-advising you once we go on tape, is that correct?  
Lauifi: Yes.  
Lewis: And the now is 12:08. I will re-advise you a second time regarding your Miranda Rights. Before

(M)

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questioning and the making of any statement, I am going to advise you of your rights. Number 1) you have the right to remain silent. Do you understand that?  
 Lauifi: Yes.  
 Lewis: Number 2) any statement that you do make, can be used as evidence against you in a court of law. Do you understand that?  
 Lauifi: Yes.  
 Lewis: You have the right at this time to talk to an attorney of your choice and to have the attorney present before and during questioning and the making of any statement. Do you understand that?  
 Lauifi: Yes.  
 Lewis: If you cannot afford an attorney, you are entitled to have one appointed for you without cost to you and to have the attorney present at any time during questioning and the making of any statement. Did you understand that?  
 Lauifi: Yes.  
 Lewis: You may stop answering questions or ask for an attorney at any time during questioning and the making of the statement. Do you understand that?  
 Lauifi: Yes.  
 Lewis: And my final two questions, do you understand each of these rights which I've explained to you?  
 Lauifi: Yes.  
 Lewis: And behind that statement, I'm showing you on this Tacoma Police Department Rights Form, you had the word "Yes" and your initials. Is that correct?  
 Lauifi: Yes.  
 Lewis: The second question, having been made fully aware of these rights, do you voluntarily wish to answer questions now?  
 Lauifi: Yes.  
 Lewis: And again, you have written in your handwriting, the words "Yes" and your initials, correct?  
 Lauifi: Yes.  
 Lewis: And is this your signature here indicating that you have been advised of your rights and you understand your rights?  
 Lauifi: Yes.  
 Lewis: Thank you. And again, we used just one rights form for two different Miranda Warning readings. This is in reference to TPD Case Number 05-176-1312, regarding an incident that occurred at the Point Defiance, Point Defiance Park during the ---  
 Filbert: Taste of Tacoma.  
 Lewis: --- Taste of Tacoma. Again, you've, previously, you've been advised of your rights and you gave us a, a statement earlier. Is that correct?  
 Lauifi: Yes.  
 Lewis: And now I had requested that we go on tape to do the same thing in terms of getting the information that you can provide us regarding the events that occurred during this situation. Is that ---  
 Lauifi: Yes.  
 Lewis: --- correct? Could you tell us what time did you arrive at Point Defiance Park today?  
 Lauifi: I'm not sure, but I would guess after three.  
 Lewis: Three p.m., this afternoon?  
 Lauifi: Yes.  
 Lewis: And did you arrive with anyone?  
 Lauifi: Yes.  
 Lewis: And who would that be?  
 Lauifi: Sneaky.  
 Lewis: Do you know Sneaky's true name?  
 Lauifi: No.  
 Lewis: How long have you known Sneaky?  
 Lauifi: Uhm, about five months.  
 Lewis: Can you describe him? Is he a Black-Male?  
 Lauifi: Yes.  
 Lewis: Approximately how old?  
 Lauifi: 28.  
 Lewis: And his height, please?  
 Lauifi: About 5-9.  
 Lewis: And approximately weight?  
 Lauifi: 220.

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Lewis: And you've indicated you've known him for approximately five months?  
Lauifi: Yes.  
Lewis: And how would you describe your relationship with Sneaky?  
Lauifi: A friend I see once in a while.  
Lewis: How did you arrive at Point Defiance Park? What vehicle did you arrive in, if any?  
Lauifi: A dark green Honda Civic.  
Lewis: And whose vehicle is that?  
Lauifi: My friend, Sneaky's.  
Lewis: And what was your purpose of going to the Point Defiance, Point Defiance Park?  
Lauifi: To have fun and eat food.  
Lewis: So, you were aware that the Taste of Tacoma was going on?  
Lauifi: Yes.  
Lewis: And that a, a festival type situation involving lots of foods and, and entertainment and games, etc?  
Lauifi: Yes.  
Lewis: Getting back to Sneaky, during the pre-interview, you indicated that you believe he's a Crip gang member?  
Lauifi: Yes.  
Lewis: And how do you know that?  
Lauifi: I've heard him use phrases that Crip's use.  
Lewis: And do you have personally have any either current gang affiliations or prior gang affiliations?  
Lauifi: Prior.  
Lewis: And what would they be?  
Lauifi: Uh, the Mexican gang in California.  
Lewis: Any particular name or moniker they go by?  
Lauifi: No.  
Lewis: You mentioned earlier in the interview that you were involved with Serrenos?  
Lauifi: Yes.  
Lewis: And that the number 13 is prominent with that particular affiliation.  
Lauifi: Yes.  
Lewis: Thank you. Did you encounter anyone, uh, once you arrived at the park with Sneaky, did you guys meet up with any other friends?  
Lauifi: Uhm, at the same time I seen Quinton. He was talking to his friends and we decided to split up.  
Lewis: Okay. Quinton, is he a Black-Male?  
Lauifi: Yes.  
Lewis: Approximately how old?  
Lauifi: Fourteen.  
Lewis: And how long have you known him?  
Lauifi: More than a year.  
Lewis: And how would you describe your relationship with him?  
Lauifi: A friend I see once in a while.  
Lewis: And is he involved in any gang activity?  
Lauifi: I know he's a Blood, that's about it.  
Lewis: And how do you know he's a Blood?  
Lauifi: Uhm, from the way he dresses and, uh, how he talks.  
Lewis: Okay. How does he dress?  
Lauifi: Uh, in red.  
Lewis: And how does he speak? What type of, give me some examples of some of the language or terms he uses quite frequently.  
Lauifi: \_\_\_\_\_ Blood.  
Lewis: Do you know if he has any tattoos that indicate that he may be involved in gang activity, particularly being a Blood?  
Lauifi: No.  
Lewis: Do you know if Sneaky has any gang tattoos?  
Lauifi: No.  
Lewis: No, you don't know or no, he does not have any?  
Lauifi: I don't think so.  
Lewis: Do you have a phone number or a cell number for Sneaky?  
Lauifi: No.  
Lewis: And do you have a phone number or a cell phone for Quinton?

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Lauifi: No.  
Lewis: Who else did you encounter at the park?  
Lauifi: Uh, I met up with a friend, Brenda, uh, ---  
Lewis: Is Brenda a White or Black Female?  
Lauifi: Neither.  
Lewis: What is she?  
Lauifi: Korean.  
Lewis: Korean. And how old is she?  
Lauifi: 32.  
Lewis: Do you know her last name?  
Lauifi: Miller.  
Lewis: Brenda Miller?  
Lauifi: Yes.  
Lewis: And what is your relationship with her?  
Lauifi: Uh, she's a really good friend.  
Lewis: What did you and Sneaky do once you arrived at the park?  
Lauifi: Uh, walked around. He bought some stuff. Uhm, mostly looking at all of the different booths and food.  
Lewis: When you say he bought some stuff, was it food items or were they items that ----  
Lauifi: No. Food and jewelry. I think a ring.  
Lewis: And what else did the two of you do?  
Lauifi: Walked around.  
Lewis: At any time did you encounter a problem or a situation?  
Lauifi: While I was with Sneaky?  
Lewis: Yes.  
Lauifi: No.  
Lewis: Did you encounter a problem with anyone?  
Lauifi: Uh, ---  
Lewis: Whether it would be with Quinton or anyone else?  
Lauifi: Just the situation where, uh, I stabbed him.  
Lewis: Okay. Let's back up. Okay. You were with Sneaky at some point in the park, correct?  
Lauifi: Yes.  
Lewis: And the two of you were close to each other in terms of he was right next to you basically, correct?  
Lauifi: I, uhm, yes.  
Lewis: And there was a, a small crowd or a few people that were kinda being confrontational with you?  
Saying things?  
Lauifi: When I was with Sneaky?  
Lewis: Right.  
Lauifi: No.  
Lewis: Okay. When did that event occur when someone was being confrontational with you? Making comments towards you?  
Lauifi: When I met up with Quinton and well, it wasn't even right away. They, Quinton, I met up with Quinton. He seen other friends, uh, was planning with facing me off, facing Quinton, uh, light skinned male was walking in back of him. It looked like he was gonna do something to him. He walked off to the side. Quinton noticed it. The guy went and talked to the other guy. Uh, ---  
Lewis: This light skinned Black-Male that you're referring to, approximately how old is he? Roughly?  
Lauifi: I guess 18.  
Lewis: And can you give me a clothing description of what he was wearing?  
Lauifi: I only remember a white T-shirt.  
Lewis: And what makes you think that he was going to do something?  
Lauifi: The way he was, uhm, looking directly at Quinton and walking towards him.  
Lewis: Why do you think that that action alone would indicated that he was going to do something to him?  
Lauifi: Uhm, the look on his face while he was looking at Quinton.  
Lewis: So, would you consider this to be some of quote "gang posturing" that you've seen people do in the past?  
Lauifi: Uhm, no. I don't, I'm not, your question is not clear to me.  
Lewis: This look that you said he gave, you interpret that as how?  
Lauifi: As he wanted to do something to Quinton.  
Lewis: Was it just the look or did he actually do any movement towards Quinton?

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Lauifi: He was walking towards Quinton and then cut off to the side. Like when he was getting a little bit closer, he ended up walking away, talking to other friends.

Lewis: Did you hear any of the conversation that he had with his, his friends?

Lauifi: Uhm, nothing clear, mostly, uh, what caught my eye was the looks that they were giving him.

Lewis: Did, did he or any, anybody in his group use any terms or gang terms that would indicate that, uh, they may be possibly rival gangs?

Lauifi: Uh, nothing specific, but the comment that, the comment that the guy made by saying he was weak, I interpreted as, uh, he's a rival gang member and that he's weak, not rival but, uh, that he's from another set. He, the guys were Crips and Quinton's a Blood.

Lewis: Was there anything that Quinton was wearing that would indicate that he was a Blood?

Lauifi: A red shirt.

Lewis: Did his shirt say anything on it? It was just a plain red shirt?

Lauifi: Plain red shirt.

Lewis: Did he have like white shoe with red stripes on it or red shoe strings? Anything like that?

Lauifi: No.

Lewis: Did you make, uhm, your opinion known to Quinton that this guy was staring at him?

Lauifi: Uh, after the guy was telling the other guy, uh, the guy in the white shirt that Quinton was weak, Quinton turned and noticed it and I repeated the guy I heard was asking, he's weak. And the guy started saying yeah, he's weak. Uhm, getting mad basically that I guess that I was getting in his business, said, uh, you're, I think he said, you're weak, too. I'll fuck it, I'll fuck you up, too, both of you.

Lewis: Are you familiar with the term "mad dogging"?

Lauifi: Yes.

Lewis: Was any of that going on?

Lauifi: Uh, the guys that I'm talking about were looking at Quinton and, uh, I don't know about mad dogging, just, uhm, I mean, mad dogging to me is like when you directly give someone a look. They were looking at him and talking about him.

Lewis: Okay. This group that you're referring to, about how many people were in this group?

Lauifi: Uh, I just know there were more than ten people.

Lewis: Were they all male or a combination of male and female?

Lauifi: Females also.

Lewis: What was Quinton wearing in terms of clothing?

Lauifi: A red shirt, black and white hat, uh, gray pants. I don't remember what his shoes were. I think gray.

Lewis: What about a jacket?

Lauifi: Uhm, he had my jacket on. It's blue and gray and sometimes took it off, on and off.

Lewis: When this person in this group used the term, "I'll fuck you up, too", when he's referring to you, is that correct?

Lauifi: Yes.

Lewis: What did you do?

Lauifi: Uhm, like repeat it to him, but say it in a question like, oh, you'll fuck me up, too?

Lewis: Did you take that as a threat?

Lauifi: Yes.

Lewis: And did you have any type of weapon on your person at that time?

Lauifi: I had a knife.

Lewis: Can you describe the type of knife that you had?

Lauifi: It's blue, one side is a razor for dry wall and the other is a little blade, about two inches.

Lewis: Now, do you normally carry that, that knife with you?

Lauifi: No. I brought it because I was with Sneaky and he gets into stuff.

Lewis: Gang-related stuff, you mean?

Lauifi: Yes.

Lewis: So, you basically took it as protection:

Lauifi: Yes.

Lewis: Is this the first time you had that knife with you when you were with Sneaky?

Lauifi: Yes.

Lewis: What occurred after you repeated this phrase, "You're gonna fuck me up"? in a questioning-type fashion, what took place after that?

Lauifi: Uh, then Quinton was starting to get closer. The guy was moving sideways with his group, towards the right. Uhm, then we went to the right and they were coming forward, walking towards me.

Lewis: And what action did you take?

Lauifi: I was walking forward also and moved my blade across, uh, not across her face, like in front of the

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girls and, uhm, kept it extended.  
Lewis: So, you took the, the knife out of your pocket. Correct?  
Lauifi: Yes.  
Lewis: And you mentioned earlier that that was a, a folding type blade?  
Lauifi: Yes.  
Lewis: So you had to open the blade up. Correct?  
Lauifi: Yes.  
Lewis: You extended your arm out, the full extension of your arm?  
Lauifi: Uh, first I moved my arm, like, uh, in a sideways motion and then kept it extended.  
Lewis: When you first waved your arm with the knife in your hand, what was the distance between, distance between you and the, the girls?  
Lauifi: About three and a half feet.  
Lewis: And were there any words exchanged between you and them?  
Lauifi: Uh, just, I don't remember anything specific. I just remember they were referring to me and, uh, just backing up their friend, I guess.  
Lewis: Okay. Do you recall specifically what any of the girls said?  
Lauifi: Uhm ---  
Lewis: You mentioned earlier in the pre-interview that they were quote "talking trash". Do you recall any of the phrases or sayings they were using?  
Lauifi: Something about bitch or look at this bitch. Uh, I don't remember anything specific.  
Lewis: And you also mentioned there were three girls that were kind of in the lead of this group.  
Lauifi: Yes.  
Lewis: And eventually there was a male that came to the front as well.  
Lauifi: Yes.  
Lewis: And you were walking towards this group?  
Lauifi: Yes.  
Lewis: What occurred then?  
Lauifi: Uh, after I moved my blade across the girls, I kept it extended and walked into the victim, the, him, don't know his name.  
Lewis: It was a male?  
Lauifi: Yes.  
Lewis: Could you describe him? Was he a Black-Male?  
Lauifi: Yes.  
Lewis: About how tall?  
Lauifi: 5-8.  
Lewis: Do you recall his weight or body build? Medium? Stocky?  
Lauifi: Small.  
Lewis: Small frame?  
Lauifi: Uhm, well, after he lifted up his shirt, I could tell he was small.  
Lewis: Do you recall what he was wearing?  
Lauifi: Dark gray shirt, some kind of hat, I don't remember.  
Lewis: Was he wearing any clothing that would indicate that he was a, a gang member?  
Lauifi: No.  
Lewis: Did he say anything to you?  
Lauifi: Besides that he was gonna fuck me up, too?  
Lewis: Correct.  
Lauifi: Uhm, I remember him calling me a bitch. I don't, uhm, besides that, no.  
Lewis: So, you said you continued walking. At some point, you passed the blade in front of the three girls and at some point, you and this male, the victim, uhm, you had some kind of a conflict with him, or, how did that exchange ---  
Lauifi: With the guy?  
Lewis: Yes.  
Lauifi: Uh, he just walked up to me, with the girls. I don't, I don't remember what he was saying. I thought him and Quinton were gonna get into it. Uhm, and I was just trying to back, uh, keep the girls away and he ended up walking right in front of me.  
Lewis: And what occurred when he walked in front of you?  
Lauifi: My arm was extended with the blade out.  
Lewis: So, the two of you ---  
Lauifi: I punctured him.

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Lewis: You punctured his chest area?  
Lauifi: Yes.  
Lewis: With the knife?  
Lauifi: Yes.  
Lewis: Do you recall exactly where on the chest area?  
Lauifi: Uhm, kinda in the middle towards the left. His left.  
Lewis: Okay. And what was his response once he realized he was stabbed? What did he do?  
Lauifi: Shock for a couple seconds and then he ended up lifting up his shirt.  
Lewis: And did he collapse at some point or what happened?  
Lauifi: He lifted up his shirt and was quiet at first and then they started saying stuff, like oh, no, this bitch didn't. Uh, I turned around and I, I could hear them. I didn't know how close they were behind me.  
Lewis: So, after he was stabbed, you left the park area?  
Lauifi: Yes.  
Lewis: Were you running?  
Lauifi: Not at first. I walked out of the park, crossed the street, uhm, and then started running.  
Lewis: Were you being chased, pursued by anybody to your knowledge?  
Lauifi: Yes. Their whole group was chasing me.  
Lewis: Were they yelling anything at you or towards you?  
Lauifi: Uh, let's get this bitch. Uhm, a lot of mumbling, 'cause they were mostly talking to themselves. I know, one guy when, while I was in the bushes, crossing the house, one guy said, uhm, that was my brother or something like that. Uh, ---  
Lewis: At some point were you apprehended by the police?  
Lauifi: Yes. In the alley.  
Lewis: From the time the stabbing occurred and you ran out of the park, and you were apprehended by the police, how much time elapsed? Two, three, four, five minutes? How much time?  
Lauifi: I would guess three.  
Lewis: Three minutes?  
Lauifi: Yes.  
Lewis: Had you had anything to drink, uhm, that day?  
Lauifi: Uh, earlier today. Or yesterday.  
Lewis: What did you have to drink and about what time of the day?  
Lauifi: Uh, about 12 o'clock, a 20 ounce of Old English.  
Lewis: And where was that at? Where were you drinking that at?  
Lauifi: Uhm, in front of my house. In my house and in front of my house, or my ---  
Lewis: Okay.  
Lauifi: --- apartment.  
Lewis: I asked you, well, I'll ask you again, do you always carry the knife or just occasionally?  
Lauifi: Just occasionally.  
Lewis: And which occasions do you decide when to carry the knife?  
Lauifi: Uh, if, just whenever.  
Lewis: Okay. In our ---  
Lauifi: There is no specific ---  
Lewis: In our pre-interview during your conversation, you said that you knew you were going to be with Sneaky and you decided to carry the knife for protection. Is that correct?  
Lauifi: Yes.  
Lewis: And again, why would you need to carry a knife for protection when you're with Sneaky? Specifically?  
Lauifi: Because he's a gang member and I know that.  
Lewis: Does that come from your experience in California with the gangs?  
Lauifi: Uh, no. How, how do I know that?  
Lewis: Right.  
Lauifi: He's in a, a gang member?  
Lewis: No. Why do you think that ---  
(Lauifi coughing over Lewis)  
Lewis: --- need to carry your weapon or something to protect yourself?  
Lauifi: Uh, because I know he has, uh, rivals and he gets into it.  
Lewis: Have you ever discussed any confrontations he's had with anybody in the past? Rival gang members at all?  
Lauifi: Has he what?  
Lewis: Ever discussed any prior confrontation with rival gang members?

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Lauifi: Sneaky?  
Lewis: Yes.  
Lauifi: No.  
Lewis: I talked to you earlier about some of the tattoos. We discussed your tattoos, is that correct?  
Lauifi: Yes.  
Lewis: And you have the number 13 on your abdomen, right?  
Lauifi: Yes.  
Lewis: Uhm, which represents Serrenos, is that correct?  
Lauifi: Yes.  
Lewis: And you also have the three dots rep---, representing a crazy life style?  
Lauifi: Yes.  
Lewis: And the name Spanky is on your right lower leg area?  
Lauifi: Yes.  
Lewis: And that's a former friend of yours that's a gang member in California.  
Lauifi: Yes.  
Lewis: Who's now deceased?  
Lauifi: Yes.  
Lewis: So, you're familiar with gang culture, correct?  
Lauifi: Yes.  
Lewis: Okay. Do you have any questions at all?  
(No audible response).  
Lewis: Okay. Is there anything you'd like to add regarding this investigation as far as a statement you'd like to make on your behalf?  
Lauifi: No.  
Lewis: I wanna just clarify a couple things. This stabbing situation, you indicated that he was walking towards you, the victim, and you were walking towards him. Did you, uhm, move your hand forward in any attempt to stab him or your, the way you describe it indicates that you just both walked into each other. Is that correct?  
Lauifi: I kept my hand extended while we were walking towards each other.  
Lewis: So, you didn't have any type of a stabbing motion whatsoever?  
Lauifi: No.  
Lewis: And how long is the blade on that knife?  
Lauifi: About two inches.  
Lewis: And when you fled the park after this incident occurred, and you were being chased by possibly some of his friends or, or associates, what happened to the knife once you were apprehended by the police?  
Lauifi: Well, before all the, in the alley while the police was walking towards me, uh, just saying to get my hands up and my, well, put my hands up, I dropped it at the trash can.  
Lewis: And you were subsequently arrested by the Tacoma Police?  
Lauifi: Yes.  
Lewis: And you were brought down to the Tacoma Police Department station?  
Lauifi: Yes.  
Lewis: And this statement that you're giving to us now, this is being done with your own free will and there hasn't been any promises or threats?  
Lauifi: No.  
Lewis: Do you have any additional statement you'd like to give at this time?  
Lauifi: No.  
Lewis: Detective, do you have any questions at all?  
Filbert: Just one, Olivia. Uh, once again, the person that you stabbed, you said was, what, what race was he?  
Lauifi: Black.  
Filbert: That was the only question.  
Lewis: If you don't have anything further, I'll go ahead and conclude the interview. The time now is 12:35 a.m. Again, thank you for your candor and your statement. This will conclude this interview.  
  
End of Interview/bb

Reviewed By:

Reviewed Date:

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