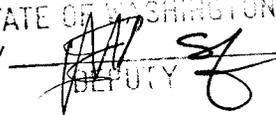


38707-7-11

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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State of Washington
Court of Appeals Division 11

State of Washington

vs

Colleen Mulvihill Edwards

The Honorable Anna Laurie
Superior Court of Kitsap County

APPELLANT'S OPENING BRIEF

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I. Introduction

This case began on April 24, 2006. The original charge is assault with a deadly weapon was arraigned on April 25, 2006. The defendant was represented by counsel. The defendant's first counsel had a conflict of interest as their firm was representing a prosecution witness. Second counsel for the defendant was assigned. An omnibus hearing was held in June 2006. The defendant waived speedy trial.

GR 33 accommodations for the defendant were granted and ordered in July 2008. Pre-trial orders of an evaluation of competency were ordered by the assigned trial Judge Anna Laurie in 2007. Competency evaluation was completed in July 2008. A third change in defense counsel occurred in 2008. The court released assigned counsel in July 2008 and the defendant waived counsel and proceeded pro se in July 2008.

Discovery was exchanged by the state and the defense. The state amended charges to add a firearm enhancement charge in September 2008. The state amended its witness list. Motions in limine were proposed, ruled upon and ordered. Expert opinions, subpoenas and costs for witnesses, experts were ruled upon and ordered. Proposed jury instructions were defined. GR 33 accommodations were implemented. The case went to a jury trial in October 2008. The state and defense presented evidence, exhibits, witnesses and experts. The defendant was convicted of assault with a deadly weapon with a firearm enhancement verdict on November 13, 2008. The state moved and was granted that the defendant be taken into custody on November 13, 2008. The court sentenced on November 17, 2008. A hearing regarding Indigency was held in February 2009. This direct appeal now timely follows.

II. Assignments of Error

CHARGING ERRORS

1. Was the crime charged correctly?
Was there probable cause to charge a crime?
Is intent an element of the crime charged?

DISCOVERY ERRORS

2. Did the prosecutor do enough to provide the discovery regarding its witnesses? The interview of Michael Montfort.
3. Did the prosecutor fail to disclose the original (non-edited) 911 call?
4. Did the trial court fail to order the original 911 call?

EVIDENCE, EXHIBIT AND WITNESS ERRORS

Evidence

5. Did the trial court error in allowing reference to the edited 911 call by the witnesses and the prosecutor?
6. Did The Trial Court Error In Allowing Testimony On Evidence That Was Not Been Admitted? (Handcuffs and DVD)
Did The Trial Court Error In Allowing Testimony on Evidence That Was Not Been Admitted?(Bullets and Magazine)
7. Did the trial court error in not admitting evidence of a citizen's arrest and defense under 9A.16.020?

Witnesses & Experts

8. Did the trial court error in not allowing self defense testimony from expert, Mr. Hayes?
9. Did the trial court error in denying the testimony of the use of lethal force, reasonable force, deadly force, deadly weapon and appropriate reactions by expert Mr. Hayes which related to a defense theory?
10. Did the trial error in not allowing defendant's theories regarding testimony regarding human remains?
11. Did the trial court error on denying a witness to testify on defendant's intent?

12. Did the court fail to allow testimony a nexus testimony on the probable cause for a citizen's arrests.
13. Was the state's defense of property motion too far a restriction of probable cause to arrest and RCW 9.16A?
14. Did the court fail to allow testimony on a citizen's right to keep and bear arms?
15. Did the court error in limiting self defense testimony by Colleen Edwards?
16. Did the trial court error in denying defense witness Stephanie Kramer?
Did the prosecutor interfere with the witness Stephanie Kramer?

Exhibits

17. Did the trial court error in not admitted Exhibit 20 and 21? (NRA Certificates)
18. Did the trial court error in not admitting the evidence of the Exhibit 22? (CPL)
19. Did the trial court error on not striking physical evidence, exhibit 1 not used in a crime? (Kevlar Vest)
20. Did the trial court error in not striking physical evidence of Exhibit 2? (SAR pack/pouch)
21. Did the trial court error in the connection of Exhibit 3 to a crime? (Firearm)
22. Did the trial court error on not admitting the Exhibit 18? (Washington State Criminal Justice Training Commission Handbook)

JURY INSTRUCTION ERRORS

23. Did the Trial court error in not admitting the self defense, RCW 9A.16 and RCW 27.44 defenses on the jury instructions?
24. Did the trial court fail to instruct the jury on self defense and citizen's arrest?

COUNSEL AND PROCEEDURAL ERRORS

25. Did the trial court error on pacing, GR 33, continuances, questioning witnesses, forcing the defendant to continue when ill?
26. Were the errors of the trial court cumulative and prejudicial to the defendant?

JUDGMENT AND SENTENCING AND RESTITUTION ERRORS

27. Was the judgment and sentencing, restitution excessive for the convicted crime?
 - a. Did the trial court error in allowing a continuance for defendant's counsel to appear? Did the trial court allow the defendant to prepare for judgment and sentencing? Was there an error in calculating the offense?

- b. Was the post jury order restrictive on defendant's ability to prepare for judgment and sentencing?
- c. Was the no-contract order excessive, especially against alleged victim Patrick Hall? Was the no-contact order excessive, especially against alleged victim Paul Miller?
- d. Was the trial court excessive in requiring the mental health evaluation when there was no evidence of mental illness?
- e. Did the restitution match the actual damages of victim Paul Miller? Did the restitution match the actual damage to victim Patrick Hall?

III. Statement of the Case

/		
April 24, 2006	Defendant was arrested	CP 623-627,
April 24, 2006	Information: Police Report	CP 623-627
April 25, 2006	Defendant was charged and arraigned	CP 1, 623-627, RP /25/06
May 8, 2006	Victim Impact Statement	CP 2-5
May 17, 2006	Change in Counsel due to conflict Of interest	RP 5/17/2006, CP 6
June 1, 2006	Omnibus Hearing	RP 6/1/2006, CP 9-10
August 9, 2006	3.5 hearing	RP 8/9/2006, CP 11
April 27, 2007	Hearing GR 33 Accommodations	RP 4/27/2010, CP
May 14, 2007	Order Evaluation Competency	CP 57-63, RP 5/14/2007
May 9, 2007	First Amended Information	CP 44-4
May 11, 2007	State's Amended List of Witnesses	CP 53-54
March 4, 2008	Police Report Submitted by Defendant	CP 164-173
March 14, 2008	Order Appointing Attorney & Setting Trial Date	CP 175, RP 3/14/2008
July 7 2008	Order GR 33 Accommodations	CP 182
July 11, 2008	Order Finding Competency	CP 184, RP 7/11/2008
July 11, 2008	Waiver of Right to Counsel & Order Granting Motion to Proceed Pro Se	CP 187-190, RP 7/11/2008
August 21, 2008	Defendant's List of Witnesses	CP 196-206
August 22, 2008	State's Second Amended List of Witnesses	CP 207-208
September 2, 2008	Request for Discovery: Witness	CP 282-284
September 8, 2008	'Request for Discovery: Witness	CP 290
September 8, 2008	Order: Release of Evidence	CP 291, RP 9/8/2008
September 8, 2008	Order: Expenditure of Public Funds	CP 295-96, RP 9/8/08
September 8, 2008	Order Regarding Confidentiality of Defendant's Information	CP 289, RP 9/8/08
September 8, 2008	Order: Appearance by telephone	CP 319, RP 9/8/08
September 8, 2008	Order Expert Testimony – Hayes	CP 297, RP 9/8/08
September 12, 2008	Second Amended Information	CP 316-318
September 12, 2008	Order Setting Trial Date	CP 328, RP 9/12/08
October 3, 2008	Omnibus Application	CP 355-359, RP 10/10/08
October 3, 2008	Demand for Disclosure	CP 360-361, RP 10/10/08
October 10, 2008	Order Regarding 911 Call	CP 362-3, RP 10/10/08
October 10, 2008	Order Setting Trial	CP 364, RP 10/10/08
October 17, 2008	Witness Fees & Costs	RP 10/17/2008
October 24, 2008	Order Denying Motion Regarding	CP 382-85, RP

	Fees	
October 27, 2008	Continuance Request	RP 10/27/2008
October 28, 2008	Continuance, Subpoenas, trial	RP 10/28/2008
October 28, 2008	Prosecutor's Proposed Jury Instructions	CP 397-417
October 28, 2008	Prosecutor's Motion in Liminee Instructions	CP 388-396, RP 10/29/2008
October 29, 2008	Subpoenas signed – Defense	RP 10/29/2008
October 29, 2008	Defendant's Proposed Jury	CP 423-431
October 29, 2008	Defense Theory for Trial	RP 10/29/2008
October 30, 200	Jury Selection	RP 10/30/2008
November 3, 2008	Opening Statements	RP 11/3/2008
November 3, 2008	State's Testimony Miller, Hall	RP 11/3/2008
November 4, 2008	State's Testimony John Stacy, Michael Montfort Ken Smith, Bradford Walthall	RP 11/4/2008
November 5, 2008	State's Testimony Mark Malloque, Troy Graunke	RP 11/5/2008
November 6, 2008	State Testimony Michael Montfort	RP 11/6/2008
November 6, 2008	State Rests	RP 11/6/2008
November 3, 2008	State's Exhibits Admitted	EX 1, 2, 3, RP 11/3/2008
November 2008	State's Exhibits Denied	None
November 5, 2008	Defendant's Testimony Sharon Hagerty, Alva Irish	RP 11/5/2008
November 10, 2008	Defendant's Testimony Marty Hayes, Sandy Francis, Colleen Edwards	RP 11/10/2008
November 12, 2008	Colleen Edwards continued	RP 11/12/2008
November 6 2008	Def. Exhibits Admitted	EX 16
November 10, 2008	Def. Exhibits Admitted	EX 17, RP 11/10/08
		EX 23, RP 11/10/08
November 10, 2008	Def. Exhibits Denied Certification Study Guide	EX 18, RP 11/10/2008
November 10, 2008	Def. Exhibits Denied CV for Mary Hayes Def Exhibits Refused Def Exhibits Refused Def Exhibits neither admitted or Denied	EX 19, RP 11/10/2008, CP EX 5, EX 6 EX 15 EX 7, 8, 9, 10, 11, 12, 13, 14, EX 20, 21, 22, 24, 25
November 13, 2008	Court's Instructions to the Jury	RP 11/13/2008
November 13, 2008	State's Closing Statement	RP 11/13/2008
November 13, 2008	Defense's Closing Argument	RP 11/13/2008
November 13, 2008	State's Rebuttal	RP 11/13/2008
November 13, 2008	Verdict	RP 11/13/2008

November 6, 2008	Defendant's Proposed Amended Jury Instructions	CP 440-461, RP 11/6/2008
November 7, 2008	Defendant's Proposed Additional Jury Instructions	CP 462-468, RP 11/7/2008
November 12, 2008	Court's Proposed Instructions to the Jury	CP 469-503, RP 11/12/2008
November 13, 2008	Court's Jury Instructions to the Jury	CP 504-528, RP 11/12/2008
November 13, 2008	Court's Jury Instructions to the Jury Supplemental	CP 529-30, RP 11/12/08
November 13, 2008	Jury Verdict	CP 531, RP 11/13/2008
November 13, 2008	Jury Verdict – Special	CP 532 , RP 11/13/2008
November 13, 2008	Order Detaining Defendant After Conviction	CP 535, RP 11/13/2008
November 13, 2008	Exhibit List	CP 569-70, RP 11/13/2008
November 13, 2008	Order Setting Sentencing	CP 536, RP 11/13/2008
November 17, 2008	Judgment and Sentence	CP 574-583, RP 11/17/2008
November 17, 2008	Order Setting Restitution	CP 587, RP 11/17/2008
December 16, 2008	Notice of Appeal	CP 599, RP 2/13/2009
February 13, 2009	Indigency Hearing	RP 2/13/2009

IV. Summary of Argument

This is a over-length brief approved by the Court of Appeal, Division 11 in August of 2009.

The arguments presented are:

- CHARGING ERRORS
- DISCOVERY ERRORS
- EVIDENCE, EXHIBIT AND WITNESS ERRORS
- JURY INSTRUCTION ERRORS
- COUNSEL AND PROCEDUAL ERRORS
- JUDGEMENT AND SENTENCING ERRORS

A few of the arguments overlap and I have tried to group the case law according to the subjects in the assignment of error and the supporting citation to the record. In these instances, a case may also be relevant to several topics. For example a trial error in regard to a witness or exhibit might also be relevant later to an error in jury instruction.

V. Argument

Was the crime charged correctly?

The trial court failed to charge the crime correctly. The crime charged on April 25, 2006 is an assault charge with a weapon. The prosecutor office waited more than two years to correct the defect with a second amended information in September 12, 2008, less than 15 days before trial was to begin. The original charging document states:

On or between April 24, 2006 and April 26, 2006, in the County of Kitsap, State of Washington, the above-named Defendant did assault another, to wit: PAUL WILLIAM MILLER, with a deadly weapon; contrary to the Revised Code of Washington 9A.36.021(l)(c) CP 623-827

The second amended charging document states:

“On or between April 24, 2006 and April 26, 2006, in the County of Kitsap, State of Washington, the above-named Defendant did assault another, to wit: PAUL WILLIAM MILLER, with a deadly weapon; contrary to the Revised Code of Washington 9A.36.021(l)(c). to RCW 9.94A.030(32) and 9.94A.570)

Count I

Special Allegation-Armed With Firearm

AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602. CP 316-318

There is no identification of any accomplice in the original or first amended charging documents. The identification of the accomplice is unknown and unspecified.

The topic of informants was denied at pre-trial hearings. RP 9/12/2008-10/17/2008.

Article 1 § 25 Prosecution by Information

Offenses hereto required to be prosecuted by indictment, may be prescuted by information,, or by indictment, as shall be prescribed by law.

Amendment of information one day before trial to add counts and victims was untimely, a violation of speedy trial and forced defendant to choose between speedy trial and effective assistance of counsel, and was improper. WAPRAC 12 page 238

State v Corrado, 78 Wash App 612, 858 P 2d 680 (1995)**Error! Bookmark not defined.**
If superior court acts without jurisdiction, its acts are void.

“Preliminary, subject matter jurisdiction cannot be conferred “by consent, waiver or estoppel on the part of the accused. . .” 42 C.J.S. *Indictment and Information* § 2 (1991). Thus, Carroado can now attack subject matter jurisdiction, even though he failed to do so in the trial court. *See First Union Management, Inc. v Slack*, 36 Wn App 849, 854, 679 P 2d 936 (1984) (jurisdiction can be challenged at any time).”
Page 615 *State v Corrado*

State v. McKenzie, 31 Wn App 450, 642 P 2d 760 (1981)
“Prosecutorial vindictiveness is intentional filing of a more serious crime in retaliation for a defendant’s lawful exercise of a procedural right. In *Blackridge v Perry*, 417 U.S. 21, 40 L Ed. 2d 628, 94 S Ct. 2098 (1974), the defendant was convicted of a misdemeanor and appealed, the prosecutor then substituted a felony charge based on the same conduct. The court decided in the State’s action in “upping the ante” violated the defendant’s right to due process of law, because the defendant was being purposefully punished the appealing the judgment in the misdemeanor case. *Blackridge v Perry*, supra at 28.
Page 42 *State v. McKenzie*

Was there probable cause to charge a crime?

It is the prosecutor’s office decision to charge a crime, however this decision to take charge should not be made lightly as it affects a citizen’s basic rights. When charging a crime it is the duty of the prosecutor to properly investigate all facts and circumstances.

Charging and jury instructions

“When a statute provides that a crime may be committed in alternative ways, the information may charge all or one of the alternatives, provided the alternatives are not repugnant to one another. When the information charges only one of the alternatives, however it is error to instruct the jury that they may consider other ways or means by which the crime could have been committed, regardless of the range of evidence admitted at trial. The manner of committing a crime is an element of and the defendant must be informed in the information in order to prepare a proper defense.”
WAPRAC 12, information and arraignment Page 223

“The indictment or information must state for each count the official or customary citation of the statute, rule, regulation or other provision of the law which the defendant is alleged to have violated. Error in the citation or its omission is not a ground for dismissal or for reversal of a conviction, if the error or its omission did not mislead the defendant to his prejudice.”

State v Kjorsvik, 117 Wn 2d 93, 812 P 2d 86 (1991) the felony charging document must include the essential common law elements, as well as the statutory elements of the crime, in order to appraise the defendant of the crime charged so he can prepare an adequate defense.

WAPRAC 12 page 224

“All necessary elements of a crime charged must be included in an information such that the accused understands the charges against him and can adequately prepare a defense. The manner in which an information is reviewed to determine sufficiency of evidence depends upon when the matter is brought up before the court.”

WAPRAC 12 page 225

State v Simon, 64 Wn App 948, 840 P 2d 172 (1992)

“A charging document is constitutionally adequate only if the essential elements of a crime, statutory and non-statutory, are included in the document, so as to appraise the defendant of the charges against him and to allow him to prepare his defense. *State v Hopper*, 118 Wn 2d 151, 155, 822 P 2d 775 (1992); *State v Kjorsvik*, 117 Wn 2d 93, 97, 812 P 2d 86 (1991). Page 198 *State v Simon*

State v Gee, 52 Wn App 357, 760 P 2d 361 (1988)

“Delay between an actual criminal occurrence and the filing of charges does not violate a defendant’s right to a speedy trial. Rather preaccusatorial delay in bringing charges may violate due process. *United State v Lovasco*, 431 US 783, 52 L Ed. 2d 752, 97 S Ct. 2044 (1977). To establish that such delay violates due process, the defendant must show that the delay caused prejudice. *State v Calderon*, 102 Wn 2d 348, 352, 684 P 2d 1293 (1984). However, a mere allegation that witnesses are unavailable or the memories have dimmed is insufficient. The defendant must “specify demonstrate that the delay caused actual prejudice to his defense. *State v Bernson*, 40 Wn App 729, 729, 734, 700 P 2d 758, review denied, 104 Wn 2d 1016 (1985. Once a defendant has established “the minimal prerequisite of prejudice”, *State v Calderon*, supra at 353, the court must consider the State’s reasons for the delay to find a due process violation. The State must show that the delay was neither intentional or negligent. If the State is able to justify the delay, the court must then balance the State’s interests against the prejudice to the accused in determining if the whether a due process violation has occurred. *State v Calderon*, supra at 353.” Page 367, *State v Gee*

State v Calderon, 102 Wn 2d 348, 352, 684 P 2d 1293 (1984).

“Preaccusatorial delay in bringing charges may violate due process. *United State v Lovasco*, 431 US 783, 52 L Ed. 2d 752, 97 S Ct. 2044 (1977). The defendant must show that he was prejudiced by the delay and, in making its due process inquiry, the court must consider the reasons for the delay and the prejudice to the accuse. *Lovasco* at 790. *State v Platz*, 33 Wn App 345, 655 P 2d 1025 (1988). Page 352 *State v Calderon*

“Additionally it is possible for a charging document to inadvertently charge one or more elements of the crime sought to be charged, and succeed in charging no crime at all. In that case, under existing law, the defendant could be recharged with the crime

originally sought to be charged. *State v Ralph Vernon G*, 90 Wn App 16, 960 P 2d 971 (1998)

“When the State, without excuse, delays filing an amended information until a point when this action will compel the defendant to seek a continuance, then the resulting period of delay is not excluded in calculating the time elapsed before trial under CrR 3.3, *State v Price*, 94 Wn 2d 810, 814, 620 P 2d 994 (1980). This rule is recognizes that the State may not, without excuse, compel defendants to choose between their right to assist by an attorney who has had an opportunity to adequately prepare for trial, and their right to a speedy trial. *Price*, 94 Wn 2d at 814. The Supreme Court recently condemned similar prosecutorial delay that forced a defendant to waiver his speedy trial right in order to prepare a defense.”

“The State expressly admits that it had all of the information and evidence necessary to file all of the charges in July 1993. Despite this, the State delayed bringing the most serious of those charges for months, and did so only five days (three business days) before the scheduled trial. Even though the resulting prejudice to the Defendant’s speedy trial rights may not have been extreme, the State’s dealing with Defendant would appear unfair to any reasonable person.”

“The felony charging document must include the essential common law elements, as well as the statutory elements, of the crime in order to appraise the defendant of the crime charged so he can prepare an adequate defense.”WAPRAC 12 page 224

State v Kjorsvik, 117 Wn 2d 93, 97, 812 P 2d 86 (1991) “All essential elements of a crime, statutory or otherwise. must be included in a charging document to include order to afford notice to the an accused notice of the nature and cause of the charge against him.

This conclusion is based upon a constutional law and court rule. Const. art 1, § 22 (amend 10) provides in part:

In criminal prosecutions the accused shall have the right todemand the nature and cause of the accusation against him.....

U.S. Constitution, amend 6, provides in part:

In all criminal prosecutions, the accused shall....be informed of the nature and cause of the accusation;

CrR 2.1(b) provides in part that:

the information shall be plain, concise and definite written statement of the essential facts constituting the offense charged

State v Kjorsvik 117 Wn 2d at 97

“In the case of *State v Leach*, 113 Wn 2d 679, 689, 782 P 2d 552 (1989), we recently stated that “the essential elements rule requires that a charging document *allege facts supporting every element of the offense*, in addition to adequately identifying the crime charged”. This core holding in *Leach* requires that the defendant be appraised of the elements of the crime charged and the conduct of the defendant which is alledged to have constituted that crime. *Leach* explains that merely reciting the statutory elements of the crime charged may not be sufficient.

Because statutory language may not necessarily define a charge sufficiently to appraise an accused with reasonable certainty of the nature of the accusation against that person, to the end hat the accused may prepare a defense and plead the judgment as a bar to any subsequent

prosecution for the same offense, mere recitation of the statutory language in the charging document may be inadequate.

Leach, 113 Wn 2d at 688.

State v Kjorisik 117 Wn 2d at 98-99

Is intent an element of the crime charged?

Intent is an element of a crime charged and the intent was never charged. Self

Defense, defense of other and citizen's arrest negate the element of the crime.

A criminal assault requires intent, which is defined as acting with the objective or purpose to accomplish a result which constitutes a crime, and accordingly requires that defendant act unlawfully.

State v. Brown, 94 Wash.App. 327, 972 P.2d 112 (1999)**Error! Bookmark not defined.** review granted 138 Wash.2d 1008, 989 P.2d 1141, (1999)affirmed *State v Brown*, 140 Wash.2d 456, 998 P.2d 321 (2000) From RCWA West's 9A.08.010

State v. Brown, 94 Wash.App. 327, 972 P.2d 112 (1999) "In some instances, legislature intent with respect to the type of mental capability that must accompany a particular mental element of a given degree of a crime is clear from the wording from the wording of the statue. In defining the various degrees of assaalut, the Legislature, has provided, for example, that a person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm, assaults another and inflicts great bodily harm. RCW 9A.36.011 (1)(c). If the person intentionally assaults another and thereby recklessly inflicts substantial bodily harm, he or she is guilty of second degree assault. RCW 9A.36.021(1)(a). If the person with criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering, he or she is guilty of third degree assault. RCW 9.36.031(1)(f). And if the person merely assaults another, without intending to inflict great bodily harm, without recklessly inflicting substantial bodily harm, accompanied by substantial pain that extends for a period sufficient to cause considerable suffering, he or she is guilty of fourth degree assault. RCW 9A.36.041(1)."

State v. Brown, 94 Wash.App. 327, 972 P.2d 112 (1999) Page 338

"In addition to examining the common law, we must also consider the guidelines our Legislature has provided for interpreting criminal statues:

- (1) The general purposes of the provisions of the governing the definition of offenses are:
 - (a) To forbid and prevent conduct that inflicts or threatens substantial harm to individuals or public interests;
 - (b) To safeguard conduct that is without culpability from condemnation as a criminal;
 - (c) To give fair warning of the nature of the conduct declared to constitute an offense;
 - (e) To defineretiate on reasonable grounds between serious and minor offenses, and to prescribe propionate penalties for each.

(2) The provisions of this title shall be constructed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further general purposes stated in this title.”

State v. Brown, 94 Wash.App. 327, 972 P.2d 112 (1999) Page 342

“The same reasoning applies under Washington criminal law. A criminal assault requires intent, which is defined as acting “with the objective or purpose to accomplish a result which constitutes a crime.” RCW 9A.08.010(1)(a). Thus, the defendant must act unlawfully. A person acting in self defense is acting lawfully—self defense negates criminal intent. *See e.g. State v Acosta*, 101 Wn 2d 612, 617-618, 683 P 2d 1069 (1984). Thus, to conclude that some material elements of the statute does not turn *legitimate* conduct unlawfully merely because of the identity of the individual affected. *State v. Brown*, 94 Wash.App. 327, 972 P.2d 112 (1999).” Page 344

In conclusion the defects, the delay and the failure to include elements of a crime to include intent make the charging document defect and affect constitutional rights of the defendant to defend against the crime charged.

***EVIDENCE, EXHIBIT AND WITNESS ERRORS
DISCOVERY ERRORS***

***Did the prosecutor do enough to provide the discovery regarding
its witnesses? The interview of Michael Montfort.***

The trial court was made aware of the missing portions of the report of the interview of Michael Montfort, a prosecution witness. The importance of such a report is a required under discovery rules. The prosecutor’s office and the court did not make any substantial efforts to acquire the report for the defense.

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16 The next listed item. And the item says, "Subpoena
17 of Michael Montfort interview."

18 What does that mean, Ms. Edwards?

19 MS. EDWARDS: That's the missing, um, report
20 from Ms. Francis. Half the report the prosecution has
21 and I have, um, and the other half is still missing. I
22 hope to acquire that by a court order or some means from
23 Ms. Francis, or the parties and I will certainly have a
24 proposed motion on Monday for you on your desk.

25 THE COURT: No. The -- there are no motions

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1 that I'm going to hear outside the presence of

2 Mr. Enright, other than funding-type issues. This is --
3 MS. EDWARDS: Well, I believe that's all that
4 would be required from Ms. Francis -- I'm sorry, Your
5 Honor.

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10 THE COURT: Ms. Edwards, I can't answer that for
11 you. Mr. Enright seems to have something to add.

12 Mr. Enright.

13 MR. ENRIGHT: And, Your Honor, I just want to
14 make sure that the record is clear here that Ms. Francis
15 has provided Ms. Edwards a report of that interview. Um,
16 and Ms. Edwards provided me a copy of that.

17 MS. EDWARDS: No, if you look at that --

18 THE COURT: Don't interrupt him either, please,
19 Ms. Edwards.

20 MR. ENRIGHT: It sounds as if Ms. Edwards thinks
21 that there's something more to this -- this interview,
22 um, Your Honor, I would be more than happy if the Court
23 wanted at some point to take a brief recess, and I will
24 call Ms. Francis to see if I can't find out exactly
25 what's going on.

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1 THE COURT: Do you have any objection to that,
2 Ms. Edwards?

3 MS. EDWARDS: No, I think it might really clear
4 things up. And that may be the problem, because
5 Mr. Montfort originally was testifying for the defense.
6 He is now testifying for the prosecution, so this might
7 be the problem and it might clear it up.

8 THE COURT: Then I'm going take Mr. Enright up
9 on his gracious offer and ask for you to do that.

10 MS. EDWARDS: Thank you.

The prosecutor did call Ms. Francis but he did not speak with her. It is the duty of a prosecutor to do more than make a phone call that was not answered or responded to. It is also the duty of the court to ensure that discovery is complete for both parties.

***Did the prosecutor fail to disclose the original (non-edited) 911 call?
Did the trial court fail to order the original 911 call?***

The trial court was made aware that the original 911 call was not in evidence. The original call was needed to be ordered by the court, due to its location at 911 Cen Com. Neither the trial court nor the prosecutors office made any attempt to acquire this original call and provide it through discovery.

911 Call Trial
RT page 9/8/08

Page 24 911 Trial court ruling

12 THE COURT: My ruling is that Ms. Edwards is
13 permitted to listen to the original tape in the
14 possession of 911.

The prosecutor did not provide the original 911 call. The trial court did not make arrangements for the original 911 call to be provided either. This situation forced the defendant to not have obtained discovery of evidence and witnesses.

CrR 4.7 states:

CrR 4.7

- (2) The prosecuting attorney shall disclose to the defendant
- (3) The prosecuting attorney

State v Bryd, 24 Wash App 584, 629 P 2d 930 (1961) Tape of defendant erased denied defendant due process. Specific request made for tape.

State v. Molica, 18 Wash App 467, 569 P 2d 1161 (1977)

Placing the burden of proving self defense upon the defendant violates his due process rights while the defendant has his obligation to produce some evidence tending to establish the defense the state has the burden of proving the absence of self-defense. Beyond a reasonable doubt and a jury should be so instructed.

CrR 4.7

PROSECUTOR'S DUTY TO DISCLOSE

WAPRAC 12, page 287

"The prosecuting attorney must disclose, upon motion by the defendant, any revelant unprivileged material and information regarding (1) specified searches and seizures; (2) the acquisition of specific statements from the defendant; and (3) the relationship, if any, of specified persons to the prosecuting attorney.⁵"

⁵ CrR 4.7 (c)

State v Mathiesen, 27 Wn App 257, 616 P 2d 1255 (1980)

“A defendant is entitled to challenge the probable cause determination and the affidavit at a suppression hearing. We are unable to perceive how a defendant can challenge whether or not a search warrant is issued on “probable cause, supported by oath or affidavit” as required by the Fourth Amendment if he is denied the opportunity to examine the affidavit. Thus, the trial court erred in by denying the defendant any access to the affidavit supporting the search warrant.”

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WAPRAC 12 page 287

“In response to a written request from the defendant for discovery, the prosecutor should send the defendant a photocopy of the (1) affidavit for search warrant, (2) transcript of any oral testimony or summary of any oral testimony given in support of the application for the search warrant, (3) search warrant, (4) receipt of property taken; and (5) return on search warrant.”⁶

⁶ CrR 4.7 (c)(1)

State v Mathiesen, 27 Wn App 257, 616 P 2d 1255 (1980)

“The appropriate means of balancing the rights of the defendant and the State is for the trial court, in the manner provided in CrR 4.7(h)(5) and (6) to make an in camera examination of the affidavit for the search warrant and to excise the portions of the affidavit to protect the informant’s confidentiality.”

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WAPRAC 12, page 288

“The prosecuting attorney must also disclose to the defendant any material or information within his knowledge which tends to negate his guilt.”⁷

⁷ CrR 4.7 (a)(3)

State v Coe, 101 Wn 2d 772, 684 P 2d 668 (1984)

State v Coe, 101 Wn 2d 772, 684 P 2d 668 (1984) page 784

“The prosecutor’s failure to inform appellant that the witnesses had made statements while under hypnosis violated CrR 4.7 (a)(1)(i),(iv). The prosecutors belated claim that he failed to disclose this information because he did not know of the hypnotic session is unacceptable. See *State v Vaster*, 99 Wn 2d 44, 659 P 2d 528 (1983). *Seattle v Fettig*, 10 Wn App 773, 519 P 2d 1002 (1974). Coe was entitled to be informed by the State that the witness had been hypnotized and to receive the tapes of those hypnotic sessions no later than the omnibus hearing.”

WAPRAC 12, page 288

“This information must be disclosed immediately at the moment of discovery, or confirmation, even when that occurs during trial.”⁸

⁸ *State v Oughton*, 26 Wn App 74, 612 P 2d 812 (1980)

“The prosecutor made no effort to preserve evidence directly connecting the slashed clothing either to the defendant or with the death of the victim or to explain why the police had not uncovered this evidence in their through search for the murder weapon. The prosecutor did, however rely on this testimony in closing argument with three suggestive references. “ page 78-79

State v Oughton, 26 Wn App 74, 612 P 2d 812 (1980)

“The State argues that no error occurred. We disagree. This court has declared that “promptly” in CrR 4.7(h)(2) means at the moment of discovery or confirmation, even when that occurs during trial. *State v Falk*, 17 Wn App 905, 908, 567 P 2d 235 (1977); *State v Harris*, 14 Wn App 414, 420, 542 P 2d 122 (1975). The prosecuting attorney elected to keep this information from the counsel and from the trial judge until Terry Johnson revealed it on the stand. This tactic not only falls within the conduct barred by CrR 4.7(h)(2) it also runs contrary to the principles behind broad criminal discovery accepted in this state. *See State v. Nelson*, 14 Wn App 658, 662-663, 545 P 2d 36 (1975). The United States Supreme Court expressed the philosophy behind rules such as 4.7 (h)(2) in language particularly appropriate in this case.

The adversary system of trial is hardly an end in itself; *it is not yet a poker game in which players enjoy an absolute right always to conceal their cards until played.* (*Williams v. Florida*, 399 U.S. 78, 82, 26 L Ed. 2d 446, S. Ct. 1893 (1970).

Quoted with italics, *State v Nelson*, *supra* at 663.

The State would have us make a distinction between inculpatory and exculpatory evidence and find no duty to produce the former. CrR 4.7(a)(i) makes no distinction and neither do we.”

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“CrR 4.7(a) requires the prosecutor to provide “no later than the omnibus hearing”

(i) the names and addresses of whom the prosecutor intends to call as witnesses at the hearing or trial, together with any written or recorded statement *and the substance of any oral statements of such witnesses*,” Italics ours.

CrR 4.7(h)(2) further provides:

“*Continuing to disclose duty.* If, after compliance with these standards, or orders pursuant therein, a party discovers additional material or information which is subjective to disclosure, he shall *promptly* notify the other party, or his counsel of existence of additional material, and if the additional material is discovered *during trial*, the court shall be notified. Italics ours.”

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Court of Appeals case reversed

WAPRAC 12, page 288

“The prosecutor’s duty to disclose all matters within the control of his staff is all-inclusive without regard to “relevance” or “connection” to the case at hand.”⁹”

⁹ State v DeWilde, 12 Wn App 255, 529 P 2d 878, (1974)

Prosecution is under an affirmative duty to disclose statements made by witness in regard to “unrelated” cases.

“It is clear that the prosecuting attorney’s obligation imder CrR 4.7(a)(4) extends to material and information within the knowledge, possession and control of members of his staff. ² The prosecutor must therefore, ensure that the flow of information with the prosecutors attorney’s office is sufficient so that the required disclosures may be made of any written or recorded statements of a person to be called as a witness.”

Evidence

The trial court committed numerous errors in evidence, exhibit and witnesses testimony. Each type of error is identified and argued here in this section.

Did the trial court error in allowing reference to the edited 911 call by the witnesses and the prosecutor?

The defense motioned for an order, limiting the 911 call made by Mr. Patrick Hall, due to two factors, first of all the fact that Mr. Hall was not present at the scene and two that the call had been edited by the prosecutor. It was ordered by the court in October 10, 2008 that the 911 call would be referred to in the testimony.

Motion in Limine appropriate

1 I'm not asking you to redact discovery -- excuse my
2 terminology, um, I'm asking to, uh -- limit -- limit the
3 evidence or what would be heard by the jury.
4 THE COURT: All right. So similar to a motions
5 in limine?
6 MS. EDWARDS: Yes.
7 THE COURT: All right. That is something that
8 is an appropriate motion in limine.

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Prosecutor’s response

11 MR. ENRIGHT: Your Honor, and as I think I
12 addressed at a previous hearing with the Court, I've
13 listened to the 911 call, and, quite frankly, in terms of
14 assisting the State's case, it has precious little value.

15 Mr. Hall -- Mr. Hall wasn't even at the scene.
RP 10/10/2008 Page 21

Court signs order CP 362-363

4 MR. ENRIGHT: Here, Your Honor, this reads that
5 it is ordered that the 911 call of Patrick Hall should be
6 excluded from evidence.

7 THE COURT: All right. And I see that
8 Ms. Edwards has signed this. I also have signed the
9 order regarding the 911 call.”

RP 10/10/2008 page 41

However the prosecutor began the trial by referring to the 911 call in his opening Statement, when the prosecutor and the witness testified he was not at the scene and the 911 call was to be limited. .

(During Opening Statement, By Prosecutor)

22 They immediately stopped what they were doing,
23 complied with everything that they wanted, what she
24 wanted; they called Pat Hall and said: Pat, Colleen
25 Edwards just pulled a gun on us.

1 And Pat said: Get out of there. Do whatever she
2 does. Tell her you are going out to lunch, whatever, get
3 out of there. So that's what they did.

RP 11/3/2008 Page 396-397

This might be bad enough for the jury to hear, but the prosecutor continued allowing his witnesses to refer to the 911 call and referred to the call in his closing statement.

(During his opening statement)

22 They immediately stopped what they were doing,
23 complied with everything that they wanted, what she
24 wanted; they called Pat Hall and said: Pat, Colleen
25 Edwards just pulled a gun on us.

1 And Pat said: Get out of there. Do whatever she
2 does. Tell her you are going out to lunch, whatever, get
3 out of there. So that's what they did.

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(During the testimony of prosecution witness Paul Miller)

19 And I called Pat on the phone, on Nextel, and I
20 beeped him. I'm like, Pat, she's got a gun and she has
21 it pointed right at me. He --

22 MS. EDWARDS: Objection.

23 THE COURT: Your basis?

24 MS. EDWARDS: That phone call is not in
25 evidence.

MILLER - Direct

2 Q. [By Mr. Enright] So you called Pat. And what did you
3 tell Pat?

4 A. I told Pat that -- Pat, she's got a gun and is pointing
5 directly at me.

6 Q. Okay.

7 A. And that's when he told me --

8 Q. And I don't want you to tell us what Pat told you. But
9 what did you do after Pat talked to you?

RP 11/3/2008 Page 412

(During Patrick Hall's Testimony)

10 Q. You rushed back?

11 A. Uh -- well, I did. I immediately left The Float
12 restaurant, but in the process I was calling 911. And --
13 in --

14 MS. EDWARDS: Motion to strike.

15 THE COURT: Overruled.

16 A. In the process I was instructed not to go to the site,
17 after I told the operator what was happening, and to stay
18 back.

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(During prosecution witness Officer Stacy)

STACY - Cross

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13 THE WITNESS: May I ask a question? I was
14 instructed not to talk about a particular thing. Do you
15 want me to answer that now?

16 THE COURT: No. If you could avoid answering
17 that; otherwise give an answer.

18 A. I talked to Mr. Hall. Um, basically he's -- he's the one
19 that called -- initially called 911 --

20 MS. EDWARDS: Motion to strike.

RP 11/4/2008 Page 565

This behavior by the prosecutor might be corrected, however it was not corrected
to the jury. Nor was it corrected by the court, as noted in the following sidebar.

24 Let me put on the record the sidebar that we had. It
25 was during the direct examination of Deputy Walthall.
1 And Mr. Enright had asked something that elicited from
2 the witness that he was dispatched or got a call.
3 Ms. Edwards asked for a sidebar. Her concern was
4 that the details of the call from Mr. Hall not come into
5 evidence.
6 Mr. Enright assured that that would not happen.
7 And I confirmed that no detail should be elicited,
8 just the dispatch contact.
RP 11/4/2008 Page 674

But trial errors continued into the prosecutions closing statement.

17 Every single one of the State's witnesses, all of
18 them, every one of them, was there that day. They were
19 there at different times, but they were all there, except
20 for Ken Smith. . .
21 ... The rest of them were all there.
RP 11/13/2008 Page 1147

Not only does the prosecutor mischaracterized Mr. Hall's testimony in regards to
him being present at the scene. Mr. Hall testified as follows:

16 Q. [By Ms. Edwards] Mr. Hall, on the day of the alleged
17 crime that we're here in court today for, April 24, 2006,
18 were you -- can you describe after you testified that you
19 went to lunch -- you were on the property in the morning
20 and you went to lunch early, and then after that, can you
21 describe what happened after that? That you came back on
22 the property. Is that clear?
23 A. I came back from lunch. Um, while I was on the phone
24 with the police, and I stopped approximately 500 feet
25 short of Nelson and Anatevka Road -- of Peacock Road and
1 Anatevka on Nelson, and I waited there, uh, for the
2 police to arrive.
RP 11/3/2008 page 507-508

So Mr. Hall was not a witness to the alleged crime, nor was his call to law
enforcement to be referred to. However, the trial court allowed testimony as to the 911
call in violation of the motion in limine.

“The purpose of a motion in limine is to dispose of legal matters so counsel will not be forced to make comments in the presence of the jury which might prejudice his presentation. Unless the trial court indicates further objections, are required when making its ruling, its decision is final and the party losing the motion in liminee has a standing objection.”

“Such motions might include requests that reference certain inadmissible or prejudicial evidence be prohibited throughout voir dire, opening statements, and closing arguments, thus setting the basis for a mistrial should a violation occur at any time in the proceedings. Additionally a request may be made to prohibit introduction of relevant but prejudicial evidence³ to prohibit any reference to polygraph examinations or to exclude inflammatory photographs”.

.² State v Perez-Arellano, 60 Wn App 781, 807 P 2d 898 (1991)
(no objection to trial testimony is necessary to preserve right to have ruling denying motion in liminee reviewed, so long as ruling was final and definitive and thus on parties could rely.

State v Sullivan, 69 Wn App 169, 847 P 2d 953 (1993)
Police officer mentioned prohibited subject,

***Did The Trial Court Error In Allowing Testimony
On Evidence That Was Not Been Admitted? (Handcuffs and DVD)***

The trial court allowed reference to evidence and exhibits that were not admitted at trial. Specifically the DVD played in front of the jury was not admitted as an exhibit in any of the testimony, nor was it listed on the Exhibit List. The jury did hear and see DVD during the testimony of Mr. Ken Smith. Mr. Smith was not present during or after the alleged crime.

Proposed Exhibits Needed

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19

17 THE COURT: Mr. Enright, do you have any
18 objection to going over your proposed exhibits with
19 Ms. Edwards prior to trial?
20 MR. ENRIGHT: I don't have any objection to
21 that, Your Honor. I -- I can't think of any exhibits
22 that I have that would need to be redacted.

23 The only things that have addresses or discuss
24 property issues are some police reports, which are
25 hearsay and would not be admitted as evidence to begin
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1 with.

2 In terms of tangible evidence that would be given to
3 the jury, I'd have to go back through my notes, and I
4 don't know if there even is any that the jury will have.

5 THE COURT: All right. If there is any evidence
6 that you are going to put in front of the jury as an
7 exhibit, then? Obviously, it would be appreciated if you
8 could go over that with Ms. Edwards prior to trial.

9 MR. ENRIGHT: Understood, Your Honor.

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Ruling on Motion to Strike Range Test

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12 ...A motion to strike range test.

13 MS. EDWARDS: That's the firearms DVD range
14 test. It is on DVD.

15 THE COURT: Right. And that's a new issue,
16 Mr. Enright?

17 MR. ENRIGHT: Yes, Your Honor, the firearm was
18 tested by a deputy. He recorded that testing. I guess a
19 new thing they had begun doing. I guess I hadn't seen it
20 before. And this was the DVD.

21 The Court may recall when we were in court last time
22 Ms. Edwards had trouble viewing it and I stayed after
23 court to allow her to watch it. I don't believe that
24 that DVD mentions anything about the property or
25 Ms. Edwards' address or anything like that. I'm not sure

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1 what needs to be redacted from that.

2 THE COURT: What's the basis for the motion to
3 strike the range test, then, Ms. Edwards?

4 MS. EDWARDS: The -- um, there might be motions
5 in limine that I would be presenting, but basically
6 there's no experts on this DVD that the State has said
7 that they were going to call on it. Um, the range test
8 itself has some particularities.

9 Also, Mr. Hayes has asked to -- he has seen it, but
10 he would like to evaluate it. If -- what he wants to
11 know is, are they going to call any experts? Are they
12 going to use it? Because you did address that he was to
13 address the -- the weapon and the training and the whole

14 bit. So he's getting -- he's looking for clarification
15 as an expert.

16 THE COURT: My ruling --

17 MS. EDWARDS: And somewhat.

18 THE COURT: Okay. My ruling is he could talk
19 about your training and the like. I don't remember
20 saying that he could talk about the firing of the weapon.

21 MS. EDWARDS: Well, certainly, it is a
22 critical -- if it is being used -- if the DVD is going to
23 be used in front of the jury, I certainly have concerns
24 about that, as a defense, um, defendant. And, um, I
25 would say that it might even be prejudicial, because if

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1 they are not calling any experts on it, and we could
2 stipulate that the weapon does work without letting the
3 jury see this firing of the weapon. Because I would
4 agree to stipulate the weapon does function, and I think
5 that's all the test really shows.

6 THE COURT: As you know, I can't force the
7 parties into a stipulation, that by definition is not a
8 stipulation.

9 Mr. Enright, what's the State's position, then?

10 MR. ENRIGHT: Your Honor, I would gladly prepare
11 a stipulation indicating that the firearm -- that the
12 weapon used is, in fact, a firearm. I guess I would also
13 remind Ms. Edwards that that's essentially an element of
14 the offense. If she really wants to stipulate to that,
15 I'll be happy to prepare a stipulation and present it to
16 the Court the morning of trial.

17 THE COURT: Ms. Edwards, is that your agreement?

18 MS. EDWARDS: Excuse me, I was finishing
19 writing.

20 THE COURT: Sure.

21 MS. EDWARDS: Um, no. No. Um, I'm looking to
22 see -- and I asked for a demand for discovery, and, um,
23 because I'm looking to see what exactly is a defense --
24 what is the prosecution going to rely on this DVD tape
25 for since they have no experts, and they are not calling

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1 the person's who developed that tape -- who produced it.
2 So I'm looking to see -- not tape but DVD -- I'm looking
3 to see why presenting something, and it is, certainly,
4 critical piece of information, because this is an assault
5 two charge, so I'm looking to see why not to strike it,
6 because if it's not that useful to the State, and I don't
7 think it's useful to the defense, really.

8 THE COURT: Well, there's either a stipulation
9 or there's not. It sounds like there's not.

10 So Mr. Enright, presuming there is no stipulation
11 that the firearm -- or the weapon was a firearm that
12 works, what is your plan for the range test?

13 MR. ENRIGHT: Your Honor, you range test shows
14 Deputy Ken Smith firing the weapon showing that the
15 firearm works. Deputy Smith is on our witness list.
16 Deputy Smith will testify. This video is essentially
17 showing what he is going to testify to. He's going to
18 say, members of the jury, I took this weapon out to the
19 range, I looked at it, I placed a bullet in it, and I
20 fired it. And here is the DVD of me actually firing this
21 weapon. It does fire a bullet, and is therefore a
22 firearm. So who -- I don't know that who produced it is
23 necessary to make it admissible. Deputy Smith, I
24 anticipate, will testify that is him in the video. It is
25 a fair and accurate representation of what he did that

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1 day.

2 MS. EDWARDS: I'm sorry, Your Honor, but
3 Deputy Smith was not on the witness list, so that is
4 where the confusion comes in. These certainly --

5 THE COURT: Well, let's check that out.
6 Mr. Enright, do you have a witness list with Deputy Smith
7 on it?

8 MR. ENRIGHT: I do, Your Honor.

9 THE COURT: When was it filed?

10 MR. ENRIGHT: I don't have the filing date. I
11 did this witness list August 20th.

12 THE COURT: So presumably sometime after that?

13 MR. ENRIGHT: It appears, according to my -- my
14 witness list, it was e-mailed to Ms. Edwards that date.

15 MS. EDWARDS: Is that your amended witness list?

16 MR. ENRIGHT: This is the second amended witness
17 list.

18 MS. EDWARDS: Second amended.

19 MR. ENRIGHT: For trial set on September 15,
20 2008.

21 THE COURT: I have a copy of it in the court
22 file. It is document 184. It shows it was filed
23 August 2nd. It shows it was e-mailed to Ms. Edwards with
24 a declaration of e-mailing and Deputy Smith is listed.

25 MS. EDWARDS: And I apologize to the Court,

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1 then. You are correct. Um, unfortunately, when I asked

2 Mr. Enright in an e-mail who he was adding to the witness
3 list. Um, he did add it, but he said in the e-mail he
4 was only adding Mr. Montfort, so --
5 THE COURT: Nonetheless --
6 MS. EDWARDS: -- nonetheless, we have resolved
7 it, that witness is added.
8 THE COURT: All right. And the defense's motion
9 to strike the range test is denied at this point.

The trial court and the prosecutor erred in allowing testimony, evidence and exhibits that were not admitted to be allowed to be heard and seen by the jury. There is no reference to the DVD being admitted, nor is there any reference to it on the Exhibit List.

10 MS. EDWARDS: Yes, Your Honor. Um, the
11 magazines are in evidence. The gun is in evidence. The
12 DVD tape of the range firing is in evidence and to be
13 reviewed by the jury. It is important to identify for
14 the jury any possible -- any problems with, um -- or any
15 objections I see, and I saw major problems with this tape
16 and the procedures used, um -- and, um -- so I believe
17 that these are important things.
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After this the exchange the DVD was played.

SMITH - Direct

22 Q. Detective, I'm going to start this DVD, and I don't know,
23 can you see it at all?

24 A. I can see the side of it.

25 Q. I want to verify that this is, in fact, you. Does that
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1 look like you?

2 A. That's me.

3 Q. Does this look like what you remember from testing the
4 firearm?

5 A. Yes.

6 Q. Okay. I'm going to go ahead and play this for the jury.

7 MR. ENRIGHT: Ms. Edwards, can you see it okay?

8 MS. EDWARDS: Yes. Thank you.

9 [Whereupon, the DVD was played for
the jury.]

The second item referred to was Colleen Edward's handcuffs; they were not listed as an exhibit nor were they entered as evidence.

***Did The Trial Court Error In Allowing Testimony
On Evidence That Was Not Been Admitted? (Bullets and Magazine)***

The trial court allowed the jury to see and hear the evidence of the destruction of the bullets on the DVD that was played for the jury. The DVD clearly showed the evidence being soiled and destroyed by the action of the firearm, and directly caused by the actions of the expert witness.

(During Cross Examination of Mr. Ken Smith, Expert Witness)

1 Q. Do you recall if there were bullets available to you?

2 A. Yes. I had to get a second evidence item. It was
3 JRS 1-02, and it was a bag that contained, uh, two black
4 semiautomatic magazines and a variety of .40 caliber
5 ammunition.

6 Q. Now, what did you do with -- with the guns and the
7 ammunition?

8 A. I took the weapon and I did some minor function tests.
9 Through my training, I'm an instructor which means I
10 instruct deputies how to handle weapons, how to field
11 strip weapons, and how to do firing procedures.

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(Continuing on with Expert Mr. Smith)

13 BY MS. EDWARDS:

14 Q. Deputy Smith, can you explain what happened to the rest
15 of the ammunition that was not used in this test?

16 A. I replaced it back into the original evidence package and
17 turned it into property.

18 Q. Can you tell me how many rounds were in each magazine?

19 A. I don't have that in my report. It was on the -- on the
20 videotape. There was approximately nine to -- eight to
21 nine in each magazine.

22 Q. Was it eight or was it nine?

23 A. Again, it's on the videotape. I did not put that in my
24 report. There was eight in one and nine in the other.

25 Which one is which, I don't recall off the top of my
SMITH - Cross
November 4, 2008 658

1 head.

2 Q. And you did not test the second magazine, correct? The
3 first one you handled had ten rounds, correct?

4 A. Again, I don't remember the exact number.

5 Q. You don't remember?

6 A. It's on video.

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7 Q. Certainly. When you handled -- when you -- when you
8 first acquired both magazines, there were ten rounds in
9 each magazine, correct?

10 MR. ENRIGHT: Objection. It's been asked and
11 answered.

12 THE COURT: Overruled. You can answer.

13 A. Again, there was nine or ten in one magazine and eight or
14 nine in the other magazine. I don't recall exactly. I
15 didn't write that in my report because it is in the
16 videotape. The magazine, the rounds were in each
17 magazine when I took them out of the evidence item.

18 Q. [By Ms. Edwards] I understand that. My question is, we
19 seem to be missing some -- some numbers don't seem to add
20 up on your -- on the first magazine you counted to ten
21 rounds of magazine. I heard you count to ten. On the
22 second magazine I heard you count to nine, and, um -- so
23 that would leave one piece of evidence missing.

24 A. All I can tell you is what I got from the property room
25 and what was sealed in the property.

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Bullets and magazine -- Evidence Not Admitted

22 THE COURT: Ms. Edwards, the magazines aren't in
23 evidence.

24 MS. EDWARDS: They are on the evidence report.

25 If --

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1 THE COURT: Ms. Edwards, they may be on an
2 evidence report, but they are not in evidence before this
3 jury.

4 MS. EDWARDS: Does Mr. Enright wish to strike
5 them?

6 THE COURT: They have never been admitted. They
7 have never been offered.

COURT RULING ON EVIDENCE OF BULLETS / MAGAZINE
(Relevance)

12 THE COURT: First, in terms of how many bullets
13 are in the gun. It seems to me that that is a relevant
14 inquiry here. The testimony so far is that Ms. Edwards
15 went to the site and the gun was loaded with one bullet
16 chambered; that certainly goes to her lawfulness of
17 purpose. And it seems to me that she is correct in her
18 assertion that this is an issue that should be explored.

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Not only was the DVD and the bullets and magazine not admitted into evidence and the jury saw and hear them being destroyed by the action of Exhibit 3, but the range test itself is faulty by standard range protocol.

Ken Smith

RP 11/4/2008

16 Q. Normally, in civilian ranges -- in my experience you
17 never leave your weapon hot, unattended -- am I -- am I
18 mistaken? Does your range give you special procedures as
19 a law enforcement officer to leave a weapon hot?

20 A. Typically, you don't leave a weapon hot alone. Again,
21 that weapon, the battery -- the slide was open, the round
22 was not in battery. I was the firearms instructor. I
23 chose to set the weapon down and walk away for that few
24 seconds. I had a brain malfunction and didn't bring my
25 earplugs to the line and myself and one other detective

SMITH - Cross

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1 were the only two there, so there was no jeopardy of
2 anybody else.

State v. Jones, 26 Wash App 531, 614 P 2d 207, (1980)**Error! Bookmark not defined.**

Law enforcement agencies have duty to preserve material not only for the benefit of the state but the defendant also.

Need not search for evidence, but preserve, tangible object, sense impression

***Did the trial court error in not admitting evidence
of a citizen's arrest and defense under 9A.16.020?***

The trial court did not allow evidence of a citizen's arrest and defense under

9A.16.020.

(During Cross Examination of Paul Miller)

12 A. Yes, that's when I proceeded to go back to work, and 10
13 seconds, 15 seconds later she goes, okay, I'm making a
14 citizen's arrest.

10 Q. Okay. So, let me get back to where you were. You had
11 your back turned to Ms. Edwards. What happened?

12 A. Yes, that's when I proceeded to go back to work, and 10
13 seconds, 15 seconds later she goes, okay, I'm making a
14 citizen's arrest.

RP 11/3/2008 Page 412

(During Cross-Examaintaon of Montfort

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12 Q. [By Ms. Edwards] Mr. Montfort, did I place any of the --
13 either Mr. Miller or Mr. Arthur under citizen's arrest?

14 MR. ENRIGHT: Objection.

15 THE COURT: Sustained.

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MONTFORT - Cross

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12 Q. [By Ms. Edwards] Did you use the words "citizen's
13 arrest" at any time to the law enforcement officer you --

14 MR. ENRIGHT: Objection.

15 THE COURT: Sustained.

16 Q. [By Ms. Edwards] Can you tell me anything -- did you
17 tell them anything at all or were you silent?

18 A. I gave them a verbal statement of what had happened that
19 morning.

20 Q. Can you -- can you, uh, to the best of your recollection
21 tell us what you told them?

22 A. Um, I told them that you -- um, you and I had gone over
23 there to, um, expedite the removal of the individuals
24 until something could be worked out. And I -- we
25 discussed the placement of people and the construction

MONTFORT - Cross

November 6, 2008 839

1 equipment and level of threat.

RP 11/6/2008 Page 838-839

(During Cross Examination of Colleen Edwards by Mr. Hayes)
17 Q. [By Mr. Hayes] Did you place Mr. Arthur under citizen's
18 arrest for assault of a person?
19 MR. ENRIGHT: Objection.
20 THE COURT: Sustained.
21 MS. EDWARDS: Objection for the record.
22 Q. [By Mr. Hayes] Did you place Mr. Arthur under citizen's
23 arrest for assault of Mr. Montfort?
24 MR. ENRIGHT: Objection.
25 THE COURT: Sustained.
EDWARDS - Redirect
November 12, 2008 1080
1 MS. EDWARDS: Objection for the record
RP 11/12/2008 Page 1079-1980

The police reports of Officer Stacy CP 2-5 refer Miller and Arthur telling Officer Stacy they were under arrest. Officer Stacy's report states that Miller and Arthur told him the following:

They told me the female, Colleen Edwards, walked over to them and told them to stop working. Miller called Hall and told him what Edwards told him. Hall told him to continue to work. Miller said they continued to work and Edwards again approached them and told them to call 911. Miller told her to call 911 if she wanted some assistance and continued to work. Edwards then pulled a handgun on Miller and told him and Arthur that they were under arrest for trespassing. Miller told her to calm down. He called Hall on his cell phone and Hall told Miller to do whatever she said. Hall then called 911. Miller said he walked away from the property and waited for law enforcement on Nelson RD. CP 2-5

Procedure for admitting evidence
Courthandbook on Evidence. Page 221

"The procedure for offering exhibits. The typical practice for offering real and demonstrative evidence is to offer the evidence as an exhibit during the testimony of the witness who will be authenticating it.

- (a) at the appropriate time during the witness testimony, the evidence should be handed to the clerk. The clerk should be asked to mark the exhibit as an exhibit for identification.
- (b) The exhibit is then handled to opposing counsel for inspection.
- (c) After the exhibit has been inspected, it should be handed to the witness.
- (d) The witness is then asked questions designed to elicit testimony to authenticate the exhibit, to establish chain of custody, if necessary, and to satisfy any special foundation

requirements for that particular exhibit, (e.g. to show that it qualifies as a business record).

(e) If the exhibit is a writing, recording or photograph, the witness gives testimony demonstrating compliance with any special rules concerning authentication (e.g. to show it is a certified copy) and the best evidence rule. (e.g. to show it is an original or duplicate).

(f) Upon completion of the foundation testimony, counsel offers the exhibit into evidence.”

In criminal cases, CrR 6.15(e) says that all exhibits received in evidence go to the jury room, despite the plain language of the rules, case law suggeststrial court discretion.

Case Law on Objections

State v Braham, 67 Wn App 930, 841 P 2d 785 (1992)**Error! Bookmark not defined.**

As a threshold matter, we must decide whether Braham has properly preserved this argument for appeal. The State insists that Braham failed to object to Berlinger’s testimony on this ground below. We disagree. The propriety of an evidence ruling will be examined on appeal if the specific basis for the objection is “apparent from the context.” *State v Pittman*, 54 Wn App 58, 66, 772 P 2d 516, (1989) quoting 5 K Tegland, Wash. Prac. Evidence § 10, at 33-34 (3d ed. 1989).

Here the specific objection argued at appeal can be inferred from the context of the objection made below. At trial Braham’s counsel objected to the relevance of Ms. Berlinger’s testimony and specifically declared that if Berlinger’s testimony were admitted, “the jury could be seriously misled and Given false impressions. Braham argues on appeal that the probative value of expert “profile” evidence is outweighed by the testimony’s unfairly prejudicial impact on the jury.

Although trial counsel did not cite a particular rule of evidence, as to the basis for his objections, such precision is not necessarily required. *See State v Guloy*, 104 Wn 2d 412, 422-423, 705 P 2d 1182 (1985), cert denied 475 US 1020 (1986). Objecting that “the jury could be seriously misled” invokes Rule 403, which provides that relevant evidence “may be excluded” if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or *misleading the jury*.” (Italics ours). ER 403. Moreover, Washington’s general prohibition on expert “profile” testimony is premised precisely on this element of unfair prejudice and the ensuing false impression the jury might derive about that value of the expert’s ostensible inference. *See State v Maude*, 35 Wn App 287, 293, 667 P 2d 96 (1983).

We conclude, therefore, that trial counsel’s objection, although not ideal was specific enough to allow Braham the opportunity for appellate review. The reason for advanced for excluding Berlinger’s testimony – lack of probative value as compared to potential prejudicial effect is apparent from the context and sufficed to appraise the trial judge of the nature of Braham’s objection.

Page 934-935 *State v Braham*, 67 Wn App 930, 841 P 2d 785 (1992)

State v Guloy, 104 Wn 2d 412, 422-423, 705 P 2d 1182 (1985)

“This objection, although not ideal, is sufficiently specific so as to allow the defendants the opportunity to have this court review this issue.”

Page 423

State v Barefield, 47 Wn App 444, 735 P 2d 1339 (1987) Page 460

“Prosecutors are not given a carte blanche to introduce every piece of admissible evidence if the cumulative effect of such evidence is inflammatory and unnecessary.”

“In other words, in such situations where proof of the criminal act may be amply proven through testimony and non-inflammatory evidence, we caution prosecutors to use restraint on their reliance on gruesome photographs.”

Taken word for word for

State v Crenshaw, 98 Wn 2d 789, 659 P 2d 488 (1983) page 807

Unpreserved but addresses apparent.

State v Pittman, 54 Wn App 58, 66, 772 P 2d 516, (1989) As a general rule, an objection does not specify the particular ground upon which it is made is does not preserve the question for appellate review. *State v Guloy*, 104 Wn 2d 412, 422-423, 705 P 2d 1182 (1985)”The only exception to this rule is that the propriety of the ruling will be examined on appeal if the specific basis is for the exception was ‘apparent from the context.’” 5 K Tegland,, *Wash Prac Evidence*, § 10 at 33, (3d ed. 1989); c.f. *State v Barefield*, 47 Wn App 444, 460, 735 P 2d 1339 (1987) .”

Page 66 *State v Pittman*,

Witnesses & Experts

Did the trial court error in not allowing self defense testimony from expert, Mr. Hayes?

The trial court allowed Mr. Marty Hayes, a law enforcement officer and a firearms instructor for the State of Washington to testify for the defense, however the trial court limited his testimony greatly. He was not allowed to testify on self defense issues.

Purpose of Mr. Hayes testimony

19 THE COURT: Let's turn now to the request of
20 Mr. Hayes, and his résumé was attached to the request;
21 obviously, firearms-related use.

22 Ms. Edwards, what's the purpose of Mr. Hayes'
23 testimony?

24 MS. EDWARDS: Mr. Hayes is able to assist in the
25 concept of self-defense, use of force, reasonable force,

RP 9/08/2008 Page 26

Not permitting to testify as to the law of self defense.

November 10, 2008 892

1 MR. ENRIGHT: Your Honor, I just want to make it
2 clear that it's the State's position that Mr. Hayes is
3 not permitted to testify as to what he believes the law
4 of self-defense is; what he or others instruct on what
5 the law of self-defense is; or go through scenarios and
6 have him explain whether or not this is an appropriate
7 scenario in which to use self-defense.

RP 11/10/2008

Court ruling on self defense.

November 10, 2008 892

1 MR. ENRIGHT: Your Honor, I just want to make it
2 clear that it's the State's position that Mr. Hayes is
3 not permitted to testify as to what he believes the law
4 of self-defense is; what he or others instruct on what
5 the law of self-defense is; or go through scenarios and
6 have him explain whether or not this is an appropriate
7 scenario in which to use self-defense.

8 The State will be objecting to any questions or
9 answers of that matter. And if Mr. Hayes does answer a
10 question in that matter, the State will be asking the
11 Court to instruct the jury to disregard that particular
12 answer.

13 THE COURT: Any comments, Ms. Edwards?

14 MS. EDWARDS: Yes. I certainly would probably
15 object to that.

16 Um, I believe Mr. Hayes has defined his testimony
17 quite well. But on a general basis, I certainly believe
18 the defendant should be allowed to instruct the jury and
19 educate the jury as she needs to.

RP 11/10/2008

Nor Permitting Mr. Hayes to Testify on Display of Weapon as Self Defense

RP 11/10/2008 page 993

24 Q. And when -- when the student draws their weapon, um,
25 what -- what do you discuss with them, then? What kind

HAYES - Direct

November 10, 2008 993

1 of instruction do they learn about, then?

2 A. Well, if there is any questioning at all, basically
3 questioning them what gave them the right to draw the
4 weapon.

- 6 whereas, they needed to have their weapon out, basically,
7 as a display of force.
8 Q. And is a display of force -- and we mean just a display
9 of a weapon. Is that an option for a citizen?
10 MR. ENRIGHT: Objection.
11 THE COURT: Sustained.
12 Q. [By Ms. Edwards] When we say -- when you have a student
13 display a weapon and they are under attack, is that -- or
14 possibly a simulated self-defense exercise?
15 A. Yes.

9A. 16.020. Use of force—When lawful

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

- (1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction;
- (2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody;
- (3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;
- (4) Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such person, so long as such detention

Criminal Trespass

The crime that the defendant intends to commit within the building can be only incidental to some other crime, intended for commission outside the building. In one case, for example, the defendant entered a gas station, intending to turn on the outside pumps so that he could steal gasoline. Turning on the pumps involved a theft of electricity. Since this was a crime committed inside the building, the defendant was guilty of burglary.⁴

The definition of a "building" is an expansive one. A detachable semitrailer, used for holding cargo, is a "building" and also not a "vehicle."⁵ On the other hand, an unenclosed railroad flat car is not a "building."⁶ An enclosed sub-floor area is part of the "building."⁷ A cigar stand that was enclosed in canvas was held a "building" under the criminal code.⁸ The same would apparently be true under present law for purposes of residential burglary, an attached garage is considered a "dwelling."¹⁰ A structure too small for a human being to do business in does not constitute a "building."¹¹

A fenced area is a "building" only if its main purpose is the in of property and goods therein.¹² An animal constitutes ' so a fenced area constitutes a "building" if it is intended to i animal confined within it.¹³ State v. Gans, 76 Wn.App. 445, 886 518 H994).

WAPRAC 13 Criminal Trespass

Did the trial court error in denying the testimony of the use of lethal force, reasonable force, deadly force, deadly weapon and appropriate reactions by expert Mr. Hayes which related to a defense theory?

The trial court did not allow testimony in regard to the legal and lawful use of lethal force, reasonable force, deadly force, deadly weapon and appropriate reactions by the defendant.

Court ruling on deadly force, lethal force, or what is an appropriate reaction in this case.

November 10, 2008 916

20 THE COURT: Ms. Edwards, I want to reiterate the
21 limiting rulings on Mr. Hayes' testimony. He is to
22 testify as to your training, and I think so far we've
23 gotten a bit of that from him.

24 He is not to testify as to what is lethal force,
25 deadly force, or what is an appropriate reaction in this

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1 situation.

2 This Court instructs the jury on the law, and it is
3 your job to make those proposals to me in the form of
4 jury instructions. It is not something that comes
5 through the mouth of witnesses. And so any attempts by
6 you to continue to elicit that from Mr. Hayes are
7 improper.

RP 11/10/2008

Court ruling on testimony

3 This witness shall not and will not testify as to
4 what he believes is self-defense or qualifies as
5 self-defense.

6 I have limited his testimony to his understanding of
7 your training, and an elaboration of that training to
8 educate the jury in it, and nothing else.

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The Criminal Code defines essentially three circumstances under which the use of force is lawful: self-defense, restraint of a child or incompetent person, and law enforcement. The basic provision on self-defense is West's RCWA 9A.16.020(3). It provides that force is lawful when used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against the person, a malicious trespass, or some other malicious interference with real or personal property lawfully in the person's possession. The use of force under such circumstances must not be more than is necessary.

WAPRAC 13

In general, a person can use force to defend a third party to the same extent that the person could defend himself or herself. The necessity for the use of force is judged from the viewpoint of the defendant, not that of the third party. In other words, a person is acting lawfully if he or she reasonably believes that the third party has a right to act in self-defense. It does not matter if the third party later turns out to have been the aggressor.¹ State v. Penn, 89 Wn.2d 63, 568 P.2d 797 (1977).

WAPRAC 13 Ch 33 Use of Force

The statutes define several different circumstances under which force can be used in aid of law enforcement. Force is lawful when necessarily used by a person arresting one who has committed a felony and delivering the felon to a public officer.⁵

9A.16.020 WAPRAC 13 Ch 33 Use of Force

Did the trial error in not allowing defendant's theories regarding testimony regarding human remains?

RP 11/4/2008 EXAMINATION OF MONTFORT
PROPERTY BURIAL GROUNDS
PAGE 580

6 Q. Okay. Um, during the time that you were friends with
7 her, uh, were you aware of this -- this piece of property
8 on Anatevka Lane?

9 A. She made me aware of it.

10 Q. Okay. Did she describe this to you as an Indian burial
11 ground at all?

12 A. Yes, sir.

RP 11/3/2008 Hall

November 3, 2008

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2 Q. [By Ms. Edwards] Mr. Hall, were you aware that an
3 archeology permit was necessary?

4 A. It wasn't necessary.

5 Q. It is not what I asked.

6 A. No, I wasn't aware.

RP 11/3/2008 Hall

HALL - Cross

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5 Q. [By Ms. Edwards] Mr. Hall, did -- did you contact the
6 State Department of Archeology?

7 A. No, I did not.

8 Q. Mr. Hall, did you contact their new name, the State
9 Department of Historic Preservation of Archeology and
10 Historic Preservation?

11 A. No, I did not.

RP 11/4/2008 Montfort

- 1 MS. EDWARDS: Thank you.
- 2 Q. Mr. Montfort, on the afternoon -- approximately,
3 afternoon, after I talked to the archeologist and/or law
4 enforcement, whichever one came first, what occurred
5 next?
- 6 A. The, um -- we discussed what would go on next, and you
7 said we need to go to the property and -- and, um -- um,
8 remove those construction workers from their -- from
9 their duties -- from what they were doing.
- 10 Q. Mr. Montfort, did I ask you questions while talking to
11 the state archeologist about the condition of the
12 property?
- 13 A. Yes, ma'am.
- 14 Q. And do you recall what your general answers were?
- 15 A. Uh, the property had been cleared, um, of growth if -- if
16 the ground -- there was ground disturbance or -- um, any
17 shaving away of the ground surface due to bulldozer
18 activity to level the property, things like that.
- 19 Q. Mr. Montfort, can you tell the jury what kind of damage a
20 bulldozer and an extractor [phonetic] could do to a
21 buried human remain?
- 22 MR. ENRIGHT: Objection.
- 23 THE COURT: Sustained. Ms. Edwards, it's 11:30,
24 your time is running short.
- RP 11/10/2008

- 3 Q. [By Ms. Edwards] Okay. Mr. Montfort, did I say anything
4 about photographing the scene that you describe -- you
5 relayed --.....
- 6 You testified that I asked you questions while on the
7 phone with the archeologist. Did I place a disposable
8 camera in -- on my person?
- 9 A. Yes, ma'am, I believe so.
- 10 Q. Mr. Montfort, did I or you take any photographs of that
11 scene, persons, and equipment that day?
- 12 A. I do not recall seeing a camera out and in use while
13 protecting you on that day.
- 14 Q. Do you recall me passing the camera to you occasionally?
- 15 A. Yes, ma'am.
- 16 Q. So some of these photographs might have been taken by you
17 and me?
- 18 A. Possibly, yes, ma'am.

The Color Photographs referred to in this transcript are exhibit 16. EX 16. They were admitted into evidence by court order CP 291. The evidence was the disposal camera with the film undeveloped prior to 2008. It is interesting to note that the prosecutor did not develop photographs taken during April 24, 2006. It is possible that this would also be a failure to disclose evidence used in a crime, possibly even a crime committed by prosecution witnesses.

November 5, 2008

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22 THE COURT: Will Ms. Kramer testify that the
23 property on Anatevka Lane is an Indian burial ground or
24 the site which is protected under RCW 27.44? Will she
25 testify to that fact?

November 5, 2008

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1 MS. EDWARDS: She will testify that it is a
2 recorded insutro site, and excuse me, the definitions are
3 different.

4 THE COURT: I know what insutro means.

5 MS. EDWARDS: Insutro means underground.

6 THE COURT: I know what it means.

7 MS. EDWARDS: I'm sorry, Your Honor.

8 THE COURT: It's not pertinent to this unless it
9 is a protected site under RCW 27.44.

10 MS. EDWARDS: It is. Insutro sites are
11 protected as well as --

12 THE COURT: Is that what Ms. Kramer will
13 testify?

14 MS. EDWARDS: Ms. Kramer, she has -- she has not
15 seen the color photographs we admitted yesterday. I did
16 send them to her but --

17 THE COURT: Ms. Edwards, please answer my
18 questions.

19 MS. EDWARDS: I can't say exactly what a witness
20 is and isn't going to say. I can tell you the site --
21 here's what I can tell, Your Honor --

22 THE COURT: Ms. Edwards, I want to interrupt
23 you, because we're focusing on Ms. Kramer at this point.

24 MS. EDWARDS: Yes. Right.

25 THE COURT: And you should know what her

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1 testimony is going to be if you had me subpoena her under
2 the representations of what her testimony would be.
3 MS. EDWARDS: Yes.
4 THE COURT: So I'm asking you today to tell me,
5 will she be testifying that that site is entitled to the
6 protections of statute?
7 MS. EDWARDS: I believe she will be testifying
8 to that fact.
9 THE COURT: When is she scheduled to testify?
10 MS. EDWARDS: She is scheduled to testify today,
11 actually, and she is not here. So I will do what I
12 need --
13 THE COURT: Have you contacted them other than
14 through the subpoena process?
15 MS. EDWARDS: Yes, I have.
16 THE COURT: When?
17 MS. EDWARDS: At lunch.
18 THE COURT: Ms. Edwards --
19 MS. EDWARDS: I contacted her yesterday as well.
20 I contacted her also last week.
21 THE COURT: -- when is she scheduled to testify?
22 MS. EDWARDS: According to her subpoena?
23 THE COURT: No. According to the arrangements
24 you've made. The subpoena says nine o'clock Wednesday or
25 as otherwise directed by Colleen Edwards. You are
November 5, 2008 797
1 Colleen Edwards. When did you direct her to be here?
2 MS. EDWARDS: I directed her to be here at
3 nine o'clock.
4 THE COURT: When?
5 MS. EDWARDS: Today. I directed all my
6 witnesses, except for Mr. Hayes, to be here. I directed
7 every single witness to be here at nine o'clock in case
8 somebody didn't show up or something. I directed them
9 to -- and then I told them -- I told some of them -- I
10 told Ms. Hagerty -- I talked to Ms. Hagerty last night.
11 THE COURT: I want to talk about Ms. Kramer.
12 Did you physically speak to her?
13 MS. EDWARDS: Yes, I did.
14 THE COURT: How?
15 MS. EDWARDS: By telephone.
16 THE COURT: All right. When?
17 MS. EDWARDS: I talked to her yesterday at noon
18 from the law library, and I also left her a message, and
19 a fax last night just to follow up.
20 THE COURT: Now, she's not here.

21 MS. EDWARDS: That's correct.
22 THE COURT: So when have you scheduled her to
23 appear next?
24 MS. EDWARDS: I would schedule her to appear
25 next, would be if -- I could try to schedule her tomorrow
November 5, 2008 798
1 if she could -- I'm not going to guarantee a witness that
2 doesn't show up. I -- and, um -- but I would expect her
3 to be here tomorrow. If she does not show up, then I
4 would take what steps I need to take to advise the Court
5 and take whatever steps the Court wants to make. But,
6 yes, I would expect that she would be here. Same as
7 Ms. Francis has now agreed to be here 10:30 Monday.

. RP 11/3/2008

HALL - Cross
November 3, 2008 512
4 Q. [By Ms. Edwards] Mr. Hall, did you research, or any
5 person you hired to research, including an attorney or a
6 title company back to the statutory warranty deed on that
7 property?
8 MR. ENRIGHT: Objection: Relevance.
9 THE COURT: Sustained.
10 Q. [By Ms. Edwards] Mr. Hall, did you contact anyone from
11 the Suquamish Tribe?
12 MR. ENRIGHT: Objection: Relevance.
13 THE COURT: Overruled.
14 A. No, I did not.
15 Q. [By Ms. Edwards] Mr. Hall, is there any -- I know you
16 did not contact the Department -- then called the Office
17 of Archeology and Historic Preservation; it is now called
18 Department of --
19 A. Because I felt that everything was hearsay, and I checked
20 all those answers out at the county level under the
21 permitting process. And they assured me that I had a
22 clear green light to proceed with the work that I
23 intended to do.
24 Q. Mr. Hall, did you contact the Suquamish Tribe and ask
25 them?

State v Eller, 84 Wn 2d 90, 95 524 P 2d 242 (1974)

“The Court of Appeals, in reversing the instant judgment and sentence relied upon *State v Edwards*, 68 Wn 2d 246, 412 P 2d 747 (1966). In that case, a motion for a continuance over the noon recess to permit defense counsel to ascertain why three defense witnesses

had failed to respond to subpoenas was denied. We held this to be an error of a constitutional magnitude.”

Page 99 *State v Eller*, 84 Wn 2d 90, 95 524 P 2d 242 (1974)

“No rule of criminal procedure can or ought to be construed or applied so as to abridge a fundamental constitutional right. The unexpected refusal of the three subpoenaed witnesses to honor the subpoenas give defendant reasonable grounds to claim surprise at their failure to attend. Colluqoy between court and counsel considered in connection with the testimony showing that the absent witnesses possessed testimony and material knowledge of the facts in issue supplied an adequate predicate for granting the short recess and the issuance of process.”

Page 258 *State v Edwards*, 68 Wn 2d 246, 412 P 2d 747 (1966)

However the prosecutor ignored the physical evidence in his opening remarks,

RP 11/3/2008 page 398

Prosecutor’s Opening Remarks

- 2 First, the evidence will show
- 3 you that it is not an Indian burial ground, and these two
- 4 men were not knowingly destroying an Indian burial
- 5 ground.

68.56.010. Unlawful damage to graves, markers, shrubs, etc. Interfering with funeral

Every person is guilty of a gross misdemeanor who unlawful) or without right wilfully does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tea down or removes, any tomb, plot, monument, memorial or marke in a cemetery, or any gate, door, fence, wall, post or railing, or an; enclosure for the protection of a cemetery or any property in a cemetery.

(2) Destroys, cuts, breaks, removes or injures any building, statuary, ornamentation, tree, shrub, flower or plant within the limits of a cemetery.

(3) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment.

27.44.030. Intent

The legislature hereby declares that:

(1) Native Indian burial grounds and historic graves are knowledged to be a finite, irreplaceable, and nonrenewable cult al resource, and are an intrinsic part of the cultural heritage ofi people of Washington. The legislature recognizes the value a importance of respecting all graves, and the spiritual significai of such sites to the people of this state;

(2) There have been reports and incidents of deliberate interference with native Indian and historic graves for profit-making motives;

(3) There has been careless indifference in cases of accidental disturbance of sites, graves, and burial grounds;

(4) Indian burial sites, cairns, glyptic markings, and historic graves located on public and private land are to be protected as it is therefore the legislature's intent to encourage voluntary reporting and respectful handling in cases of accidental disturbance and provide enhanced penalties for deliberate desecration. [

27.44.040. Protection of Indian graves—Penalty

(1) Any person who knowingly removes, mutilates, defaces, injures, or destroys any cairn or grave of any native Indian, or any glyptic or painted record of any tribe or peoples is guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturb native Indian graves through inadvertence, including

A citizen complained that two individuals, later identified as Leona Lightle and John Horner, had been digging for arrowheads on Plymouth Island for three years. An archeologist has since identified the area as an Indian Burial site... The briefs appear to imply that a person may be charged under this law with the felony of disturbing an Indian gravesite. That crime is properly covered under RCW 27.44.040. Violation of RCW 27.53.060(1) is a misdemeanor. 27.53.090(1). *State v Lightle*, 88 Wn. App. 470, 944 P.2d 1114

27.34.415. Cemeteries—Burial sites—Centralized database

The department of archaeology and historic preservation shall develop and maintain a centralized database and geographic information systems spatial layer of all known cemeteries and known sites of burials of human remains in Washington state. The information in the database is subject to public disclosure, except as provided in RCW 42.56.300; exempt information is available by confidentiality agreement to federal, state, and local agencies for purposes of environmental review, and to tribes in order to participate in environmental review, protect their ancestors, and perpetuate their cultures.

See Appendix for Department of Archaeology letter.

***Did the trial court error in denying defense witness Stephanie Kramer?
Did the prosecutor interfere with the witness Stephanie Kramer?***

During prosecutor's opening remarks
RP 11/3/2008 page 397

12 You will hear no one from the State Department of
13 Archeology and historic preservation who claims that it
14 is. Despite what Ms. Edwards may tell you in a moment,
15 you will not hear any archeologists from the Suquamish
16 Tribe who claim that this is an ancient Indian burial
17 ground.

During Defense Presentation

November 5, 2008 798

11 THE COURT: I want to talk about Ms. Kramer.
12 Did you physically speak to her?
13 MS. EDWARDS: Yes, I did.
14 THE COURT: How?

15 MS. EDWARDS: By telephone.
16 THE COURT: All right. When?
17 MS. EDWARDS: I talked to her yesterday at noon
18 from the law library, and I also left her a message, and
19 a fax last night just to follow up.
20 THE COURT: Now, she's not here.
21 MS. EDWARDS: That's correct.
22 THE COURT: So when have you scheduled her to
23 appear next?
24 MS. EDWARDS: I would schedule her to appear
25 next, would be if -- I could try to schedule her tomorrow
November 5, 2008 798
1 if she could -- I'm not going to guarantee a witness that
2 doesn't show up. I -- and, um -- but I would expect her
3 to be here tomorrow. If she does not show up, then I
4 would take what steps I need to take to advise the Court
5 and take whatever steps the Court wants to make. But,
6 yes, I would expect that she would be here.
RP 11/5/2008

(During Presentation of Defense)
RP 11/6/2008

November 6, 2008 830
10 THE COURT: All right. Ms. Edwards, let me ask
11 you, before we bring in the jury, what the situation is
12 with Ms. Kramer.
13 MS. EDWARDS: I sent Ms. Kramer an e-mail last
14 night and early this morning. I did check my e-mail this
15 morning and faxes, no response yet. Same with Mr. Sigo.
16 I sent them both e-mail and faxes last night and left
17 them messages and e-mails. If you would like me -- I
18 have my e-mails printed out.
19 THE COURT: All right. I take it you've not
20 spoken personally with Ms. Kramer.
21 MS. EDWARDS: I got home after five last night,
22 so I didn't get home until 6:30. So her answering -- I
23 don't have her home phone number, but I left her a
24 message on the state's, um -- her regular work number.
25 Same with Mr. Sigo. And I did leave a message with
November 6, 2008 831
1 the tribal attorney and will do my best. Of course, we
2 adjourn at noon, but I will keep trying to contact both
3 of them.
4 MR. ENRIGHT: I did speak with Ms. Kramer, Your
5 Honor.
6 THE COURT: And what do you have to report,

7 Mr. Enright?
8 MR. ENRIGHT: Ms. Kramer indicated that counsel
9 with the Department of Archeology, I assume the Attorney
10 General's Office, has advised she's not been properly
11 served in this matter, therefore, she is under no
12 obligation to testify. So she -- her intention is not to
13 be here this afternoon, or this morning.
14 THE COURT: Did she give you any idea of what
15 they felt was the problem?
16 MR. ENRIGHT: That she was not personally served
17 with a subpoena.
18 THE COURT: Oh, all right. She hasn't been
19 personally served with a subpoena?
20 MR. ENRIGHT: Correct.
21 THE COURT: At least that's the information you
22 have?
23 MR. ENRIGHT: That's what she told me.
24 MS. EDWARDS: And my process server says she
25 has, but -- so we'll have -- I'll have to -- I will do my
November 6, 2008

The trial court signed three subpoenas for three witnesses who did not appear. The persons are Stephanie Kramer, Charlie Sigo and Dr. Richard Waltman, M.D. They are all defense witnesses and experts. The trial court did not require Mr. Charlie Sigo to testify either. A copy of the subpoenas are in the appendix to this brief. Mr. Sigo is the former tribal custom specialist from the Suquamish Tribe. He is a member of the Suquamish Tribe. He was invited to come and served with a subpoena, just as Ms. Stephanie Kramer was served.

However Ms. Kramer is a State of Washington official. She is an archeologist for the State of Washington, Department of Historic Preservation and Archaeology. The trial court depending upon the prosecutor to know what a defense witness instead of defense counsel's documentation and requests. The prosecutor produced no evidence from the Attorney General and there is no evidence from that office presented to the court. The defense counsel stated that the witness had been serviced and witness fees paid.

State v. DeWilde, 12 Wash App 255 (1974)

Statements on grounds that statement are either irrelevant or in opinion of prosecution “unrelated” to case in a which witness will be called.

CrR 4.7

ER 702 FOUNDATION FOR TESTIMONY page 518 Court rules

When an expert desires to apply scientific knowledge to the facts of the particular case, his or her opinion must also rest on the appropriate case related facts. *State v Kunze*, 97 Wash App 832, 988 P 2d 877 (1999) (also evidentiary hearing must be held)

ER in general page 518 court rules

A witness without personal knowledge who fails to satisfy the requirements of an expert witness is merely speculating; such witness has no relevant admissible evidence and must be excluded. *State v Phillips*, 123 Wash App 761, 98 P 3d 838 (2004)

Cite only for prosecution witnesses, Hall and the range test.

Expert testimony is admissible when the witness qualifies as an expert, the opinion is based upon an explanatory theory generally recognized in the scientific community and the testimony would help the trier of fact. *State v Phillips*, 123 Wash App 761, 98 P 3d 838 (2004)

ER 702 REVIW n.16 page 529-530 court rules

The Court of Appeals reviews a trial court’s decision to admit or exclude expert testimony for an abuse of discretion and a court that admits expert testimony unsupported by adequate foundation abuses its discretion. *State v Phillips*, 123 Wash App 761, 98 P 3d 838 (2004)

When considering the the admissibility of expert witness testimony, the reviewing court engages in a two part inquiry (1) does the witness qualify as an expert; and (2) would the witnesses testimony be helpful to the trier of fact. *State v McPherson*, 111 Wash App 747, 46 P 3d 284 (2002).

702 KNOWLEDGE OPINION page 521

The “knowledge” requirement of an opinion may be personal, or it may be scientific, technical or specialized. *State v Kunze*, 97 Wash App 832, 988 P 2d 877 (1999)

702 TESTIMONY HELPFUL TO THE TRIER OF FACT page 521

Expert testimony is helpful if it concerns matter beyond the common law knowledge of the average person and does not mislead the jury. *State v Thomas*, 123 Wash App 771, 98 P 3d 1258 (2004)

Expert testimony is helpful to the trier of fact, as required to be admissible if it concerns matters beyond the common knowledge of the average layperson, and does not mislead

the jury to the prejudice of the opposing party. State v Gilliot, 106 Wash App 355, 22 P 3d 1266 (2001)

In conclusion the trial court erred in restricting the testimony of the experts to the jury. This restricted the jury's ability to hear the testimony of the defense. The testimony restricted would have educated the jury and helps them understand the matters before them. Thus the restriction prejudiced the defendant to present her case.

Did the trial court error on denying a witness to testify on defendant's intent?

The testimony of witnesses and experts regarding the intent of a crime is a critical element to be examined and heard by the jury. If there is no intent, there is a lack of an element of a crime. The jury needs to be allowed to hear the elements of a crime and the intent known by prosecution and defense witnesses.

RP 11/6/2008

MONTFORT - Recross
November 6, 2008

869

4 Mr. Montfort, were you worried when I drew my weapon?
5 Were you worried that I would harm you?
6 A. No, ma'am.
7 Q. Were you worried that I would harm someone else without
8 cause?
9 A. No, ma'am.
10 Q. So you trusted me that if -- if I saw something or heard
11 something, that I would handle my weapon correctly?
12 MR. ENRIGHT: Objection. It is outside the
13 scope.
14 THE COURT: Sustained.

RP 11/6/2008

MONTFORT - Recross
November 6, 2008

869

23 Q. [By Ms. Edwards] Mr. Montfort -- Mr. Montfort, when I
24 did draw my weapon at a 45-degree angle, were you worried
25 that I would harm anyone?

MONTFORT - Recross

November 6, 2008

870

1 MR. ENRIGHT: Objection: Asked and answered;
2 outside the scope.

Miller

RP 11/3/2008

DO I TERRIFY HIM

PAGE 482

24 Q. [By Ms. Edwards] Mr. Miller, do I threaten you today in
25 the courtroom?

MILLER - Cross

November 3, 2008

482

1 A. Do you threaten me? It is kind of terrifying to have the
2 person asking, it kind of bothers me a little bit. I
3 wouldn't say terrifying. I'm kind of in a secured
4 building, so -- and I know weapons aren't allowed. I'm
5 not, like, really terrified, but it is kind of bothering
6 me that you are asking me questions, yes.

7 Q. You don't like me asking questions, but you are not
8 afraid of me, correct?

9 A. I'm not afraid of you, no. Why would I be afraid of you?

10 Q. You just don't -- I don't want to put words in your
11 mouth. You are not afraid of me, correct?

12 A. Yeah, I'm not afraid of you.

11 A. Yes, ma'am.

RE DIRECT OF COLLEEN EDWARDS

RP 11/12/2008

18 Q. Did you ever physically touch Mr. Arthur?

19 A. Never.

20 Q. Did you follow law enforcement directions to stay on the
21 property?

22 A. Yes, I did.

RP 11/3/2008

Miller

WHY DID HE NOT CALL 911

PAGE 478

18 Q. I would like you very carefully to answer my question.

19 My question is: Why did you not -- if you felt

20 threatened for your life, why did you not call 911

21 instead of Mr. Hall?

22 A. I just told you that. When -- when I seen you with the
23 handgun, I called the next quick person that I could talk
24 to in just a second, because it would take me a lot
25 longer to call 911 than it would to call Pat. I already

MILLER - Cross

November 3, 2008

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1 had him on the Direct Connect, and all I had to do was
2 hit a button and be talking to him.

The testimony here shows one a lack of intent by Colleen Edwards and a lack of threat by the witness Paul Miller. It is obvious from the testimony here that there was no physical harm or assault, so the nature of the crime goes to apprehension and fear. The exact amount of apprehension and fear to convict of a crime is an element of the crime.

Additionally prosecution witness Michael Montfort (a trained protection specialist) did not seem afraid of Colleen Edwards or her actions. This is certainly an area of the crime that is relevant to the court's inquiry and the jury being allowed to hear the evidence against the defendant. Given that the prosecution witnesses testified that they did not feel threatened, where is the nexus between the crime and the intent? Does a person who feels threatened call their employer or do most people who feel threatened call 911?

Another factor regarding intent is the existence of color photographs EX 16. What is important in the color photographs is the probable cause for the citizens arrest as well as the documentation that the photographs were the intent of Colleen Edwards. It would also seem difficult for a person to photograph and use a firearm at the same time. Although the jury saw the photographs they did receive the testimony they needed to assess the credibility of prosecution witnesses.

"It is not enough to instruct a jury that an assault requires an intentional unlawful act, because given the circumstances, Bryd's act of drawing the gun could be found to be an unlawful intention act. Even where an act is done unlawfully, and the result is

reasonable apprehension in another, it still is not sufficient to convict because the act must be accompanied by an actual intent to cause that apprehension. This is the required element about which the jury was never told.

Instructions should tell the jury in clear terms what the law is. Jurors should not have to speculate about it, nor should counsel have to engage in legalistic analysis or argument in order to persuade the jury as to what the instructions mean or what the law is. *State v Davis*, 27 Wn App 498, 506, 618 P 2d 1034 (1980).

“There is a clear deference between an intentional act which results in creating in another a reasonable apprehension and fear of bodily injury and an intentional act which is done for the purposes and with the intent of creating in another a reasonable apprehension and fear of bodily injury. Because an essential requirement was not clearly stated in the instructions given in this case, we are compelled to conclude that Byrd did not receive a fair trial.”

“Neither the “to convict” instruction nor the assault definition notified the jury that the defendant must intend to cause apprehension in the victim. Byrd has raised this issue for the first time on appeal.”

Page 782

Did the court fail to allow testimony a nexus testimony on the probable cause for a citizen's arrests.

Testimony for Probable Cause for A Citizen's Arrest

RP 11/3/2008

CRIMINAL TRESPASS

Page 410

10 And, uh, everything is fine, and I guess it was about
11 close to lunch, that's when Ms. Colleen Edwards came on
12 the site and proceeded to tell me that, um, I was
13 trespassing, you know. And I was like, uh –

RP 11/3/2008

DIGGING PERMITS

PAGE 455

5 A. What kind of permits did I have? You don't need a permit
6 to operate heavy equipment. So I don't have any of the
7 permits. That's the owner of a company's responsibility
8 to get permits, digging permits, all that kind of stuff.
9 It is not the employee's responsibility, so –

RP 11/3/2008

HAZARDOUS MATERIALS

PERMITS

NO TRESPASSING SIGN

PAGE 471

12 Q. So did you have a hazardous permit for the --
13 A. I don't know if any of the contaminants was actually
14 hazardous, other than oil being in the water that was

15 contaminated. Whoever owned it left it there. So other
16 than if insulation, or if there's asbestos or whatever in
17 the building, I couldn't tell you.
18 Q. And can you tell me which -- what notices were posted on
19 that property on -- I'm sorry, April 24, 2006, what
20 notices were posted?
21 A. Was that when we moved the equipment in, or was it after
22 we already started work? 'Cuz the process of we moving
23 equipment in and actually starting to work, somebody did
24 go in there and post the no trespassing sign. I don't
25 know who that was. It was in between when we started

MILLER - Cross

RP 11/3/2008

Miller

November 3, 2008

410

1 A. No, sir.
2 Q. Okay. So tell me what happened that day?
3 A. Um, well, we just showed up to do our regular job site.
4 He's actually trying to get the -- all the underbrush and
5 stuff cleared up and getting it stockpiled, all the
6 debris, the garbage and stuff that was left there,
7 putting in a pile so we could get it all hauled off. We
8 were getting to the finishing part of it is what we were
9 doing.
10 And, uh, everything is fine, and I guess it was about
11 close to lunch, that's when Ms. Colleen Edwards came on
12 the site and proceeded to tell me that, um, I was
13 trespassing, you know. And I was like, uh --
14 Q. Let me interrupt you for a second. Do you recognize
15 Ms. Edwards in the courtroom today?
16 A. Yes, she's sitting right there.
17 MR. ENRIGHT: And the record should show that
18 the witness has identified the defendant, Ms. Edwards.
19 Q. [By Mr. Enright] So, what happened next?
20 A. Anyway, she proceeded to come on site, you know, and
21 generally, on -- you kind of be aware because of heavy
22 equipment you don't -- kind of be aware of the people
23 coming around, like kids or whatever. So it is kind of a
24 hazard; you don't want to hurt anybody, because the
25 equipment, and you kind of obstruct your view and stuff.

MILLER - Direct

November 3, 2008

411

1 So I seen Ms. Colleen Edwards come on site, and then
2 I proceeded to go up to her, and she told me that I was
3 trespassing and I needed to get off the property.
4 And I was like, uh, okay. I was like, uh, Pat -- I

5 can call Pat Hall and -- or you can -- I can give you his
6 business card, whichever is easier to try to do.
7 She said she talked to Pat and has his card. There
8 is nothing to do.
9 My employer told me to do this job I'm here to do.
10 If you have a problem, I suggest you call Pat or call the
11 police or whatever. And, um, that's when I pretty much
12 proceeded to walk away to do my job. And that's whenever
13 I had my back to her, um, two seconds later -- go ahead.
14 Q. Was she -- was she with anybody else?
15 A. Yes, she was with a gentleman.
16 Q. Okay.
17 A. It was just her and this gentleman that she -- she was
18 with.
19 Q. Okay. And -- and besides you there, do you recall if
20 there was another person working for Pat that day?
21 A. Yes, it was another gentleman that just started working
22 for Pat, and he was there on site.
23 MS. EDWARDS: Objection.
24 THE COURT: Your basis?
25 MS. EDWARDS: Hearsay.

MILLER - Direct

November 3, 2008

412

1 THE COURT: Overruled. Go ahead.
2 Q. [By Mr. Enright] Had -- so was this a person you hadn't
3 worked with before, if you can recall?
4 A. Just -- just that week. He just started that week is the
5 only -- that's the only -- first time I met him.
6 Q. Do you remember working with him since then?
7 A. No. No, I haven't seen him since.
8 Q. Okay. So do you know where he is now?
9 A. No. I do not know, sir.
10 Q. Okay. So, let me get back to where you were. You had
11 your back turned to Ms. Edwards. What happened?
12 A. Yes, that's when I proceeded to go back to work, and 10
13 seconds, 15 seconds later she goes, okay, I'm making a
14 citizen's arrest.
15 And then that's when I turned around to face her and
16 that's when she had a handgun pointed directly at me.
17 And at that time, I was -- I was like, whoa, whoa, settle
18 down here.
19 And I called Pat on the phone, on Nextel, and I
20 beeped him. I'm like, Pat, she's got a gun and she has
21 it pointed right at me. He --
22 MS. EDWARDS: Objection.
23 THE COURT: Your basis?

24 MS. EDWARDS: That phone call is not in
25 evidence.

MILLER - Direct
November 3, 2008 413

1 THE COURT: Overruled. Go ahead.
2 Q. [By Mr. Enright] So you called Pat. And what did you
3 tell Pat?
4 A. I told Pat that -- Pat, she's got a gun and is pointing
5 directly at me.
6 Q. Okay.
7 A. And that's when he told me --
8 Q. And I don't want you to tell us what Pat told you. But
9 what did you do after Pat talked to you?
10 A. Um, basically we shut off the machines and, uh, locked
11 everything up and, uh, got off the site.
12 Q. Now, did she let you go?
13 A. Yes, she let us go.
14 Q. So she didn't keep you pinned against the wall or
15 anything like that?
16 A. No, no.

RP 11/4/2008

MONTFORT - Cross
November 4, 2008 612

13 Q. [By Ms. Edwards] Mr. Montfort, did you go to the
14 Anatevka property or go by the Anatevka property on the
15 morning of April 24th, 2006?
16 MR. ENRIGHT: Objection. That's been asked and
17 answered.
18 THE COURT: Overruled.
19 A. Yes, I did.
20 Q. [By Ms. Edwards] And can you tell the Court what you
21 observed?
22 A. Have you -- heavy machinery. Two pieces of heavy
23 machinery, an excavator, and a bulldozer, um, clearing
24 ground, digging trenches, that sort of thing.
25 Q. Digging trenches?

MONTFORT - Cross
November 4, 2008 613

1 A. Uh-huh.
2 Q. Can you define -- were you on the road still?
3 A. Yes, ma'am.
4 Q. Can you -- could you see how deep?
5 A. Approximately, 12 inches.
6 Q. Was there soil disturbed?
7 A. Dig a trench, it usually is.

8 Q. Usually.
9 Was there buildings there?
10 A. There's the, um, garage -- the garage was still standing
11 at that time as well as a small, um, utility building to
12 the southwest of the garage.
13 Q. Was the mobile home there on that day?
14 A. No, ma'am.
15 Q. Was the mobile home there on your previous visit?
16 A. Yes, ma'am.
17 Q. Was the trenches there on your previous visit?
18 A. No, ma'am.
19 Q. Was -- were there any other, to your recollection, things
20 not there or disturbed? That's vague, isn't it?
21 A. Um, I noticed they had cleared an additional 150 to 200
22 feet of old growth and brush with the bulldozer. And
23 that had been several weeks prior during -- during the
24 absence that they had cleared that property, and the
25 trenches were, um, put in there for -- I suppose to put
MONTFORT - Cross

November 4, 2008

614

1 in there for electrical power.
2 Q. And did you see any permits posted on that property in
3 those, say, from March 2006 to April 24 -- well, we'll
4 get to that one, say, April 23, 2006?
5 A. No, ma'am.
6 Q. Mr. Montfort, you have some experience in construction,
7 do you normally see a permit posted?
8 A. Yes, ma'am.
9 Q. And you saw no permits, correct?
10 A. Correct, no permits.

DEFENSE OF PROPERTY

RP 10/28/08

Page 63

18 Coming down to No. 14, which appears to be a lengthy
19 motion and particularized to this matter. The request
20 from the State is there be no argument regarding the
21 defense of property that the real self-defense argument
22 in this case was a defense of self, according to the
23 statements that have been made thus far.
24 Mr. Enright, do you want to elaborate on that
25 argument?

October 28, 2008

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1 MR. ENRIGHT: Yes, Your Honor. And Ms. Edwards
2 and I discussed this previously. In one of the, I guess

3 prior stipulations to the parties, we had both agreed
4 that we were not going to bring up who owned the
5 property. Uh, and my -- and the State -- I think both
6 parties still have some witnesses on our witness list
7 that we're holding there in case either one of us fails
8 to uphold either end of the stipulation.

9 In essence, if -- in order for Ms. Edwards to argue
10 defense of property, by statute, she needs to be in
11 possession or ownership of that property. And the
12 State's position is that if she were to argue defense of
13 property, then it becomes our burden to prove that it is
14 not her property, and we then have to bring in this
15 evidence that we have previously stipulated we would not
16 bring in.

17 So because of that, and -- and I think -- I think
18 Ms. Edwards and I, we're still in agreement that we're
19 not going to bring in property issues. But if that
20 does -- if defense of property is offered, then I think
21 the State has to then respond, uh, with witnesses, or if
22 the Court is willing to just take judicial notice based
23 on the Court of Appeals opinions that Ms. Edwards was not
24 in possession or ownership of that property. So
25 that's -- that's the essence of the State's -- the

10.31.100. Arrest without warrant

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence

Citizen's arrest

Under the common law, an individual can make a citizen arrest when a felony or a misdemeanor that constitutes a *breach of the peace* is committed in that individual's presence.¹ Citizens effecting a warrantless arrest are held to the same probable cause standard(s) as police officers, requiring that "the facts and circumstances within the [citizen's] knowledge and of which he for [he] has reasonably trustworthy information sufficient to warrant a man for woman] of reasonable caution in a belief that an offense has been or is being committed."²

¹State v. Miller, 103 Wash. 2d 792, 698 P.2d 554 (1985); State v. Gonzales, 24 Wash. App. 437, 604 P.2d 168 (Div. 1 1979); Guijosa v. Wal-Mart Stores, Inc., 101 Wash. App. 777, 791, 6 P.3d 583 (Div. 2 2000), off d. 144 Wash. 2d 907, 32 P.3d 250 (2001) ("[Generally at common law a private citizen may arrest an individual for a misdemeanor only when the crime constitutes a breach of the peace."); State v. Hendrickson, 98 Wash. App. 238, 244, 989 P.2d 1210 (Div. 2 1999), as amended, (Dec. 17, 1999), citing State v. Gonzales, 24 Wash. App. 437, 439, 604 P.2d 168 (Div. 1 1979); see also State v. Malone, 106 Wash. 2d 607, 610, 724 P.2d 364 (1986). State v. Bonds, 98 Wash. 2d 1, 9, 653 P.2d 1024 (1982).

²State v. Williams, 27 Wash. App. 848, 852-3, 621 P.2d 176, 178 (Div. 1 1980), citing State v. Gluck, 83 Wash. 2d

424, 426, 518 P.2d 703 (1974), State v. Darst, 65 Wash. 2d 808, 811-12, 399 P.2d 618 (1965), and State v. Jack, 63 Wash. 2d 632, 637, 388 P.2d 566 (1964). WAPRAC 1

Arrest by Private Person

The authority of a private person to arrest without warrant is- more limited than that of a police officer. A person may make warrantless citizen's arrest, at common law, for felonies¹ and breaches of the peace committed in his or her presence.² A police officer, who at the time of the arrest is not acting in his official capacity as a police officer, has all the powers of arrest of a private citizen.³

The probable cause standard applicable to police officers has been applied when the arrest is made by a citizen.⁴ A private citizen has probable cause to make an arrest when the citizen has trustworthy information which would justify a person of reasonable caution in believing that an offense has been or is being committed and that a particular person committed it.⁵

A private citizen has the right to make an arrest without warrant of a person who is committing or has committed a felony in or out of the citizen's presence.⁶ The felony must have actually been committed and the private person must have probable cause to believe that the person arrested committed the felony.⁷

Washington recognizes the common law rule that a private person may arrest for a misdemeanor only if it constitutes a breach of the peace and is committed in that person's presence.

1. Washington Court of Appeals

State v. Williams, 27 Wn.App. 848, 621 P.2d 176 (1980).

Washington Supreme Court

State v. Jack, 63 Wn.2d 632, 388 P.2d 566 (1964).

2. State v. Gonzales, 24 Wn.App. 437, 604 P.2d 168 (1979).

State v. Hendrickson, 98 Wn.App. 238, 989 P.2d 1210 (1999) (a citizen's arrest is unlawful unless the misdemeanor constitutes a breach of peace or was committed in the citizen's presence).

WAPRAC 13 Arrest by Private Person

27.44.040. Protection of Indian graves—Penalty

(1) Any person who knowingly removes, mutilates, defaces, jures, or destroys any cairn or grave of any native Indian, or a glyphic or painted record of any tribe or peoples is guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturb native Indian graves through inadvertence, including disturba

Was the state's defense of property motion too far a restriction of probable cause to arrest and RCW 9.16A?

The trial court ruled three days before trial to limit testimony on defense of property. Although the true ownership of the property was disputed. The fact of the property itself had several owners with various persons, agencies claiming their interests. See charts in appendix. But the most telling aspect to the prosecutions testimony is that law enforcement officers on the scene were told by Paul Miller and Peter Authur that

they had been placed under arrest for criminal trespass. Additionally Michael Montfort was not charged with a crime, and Colleen Edwards was not charged with any other crimes than the ones in this trial.

RP 10/28/2008

October 28, 2008

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1 State's position.

2 Additionally, Ms. Edwards has filed some paperwork
3 with the court, or what she declares in her police
4 report, in which she does not address defense of property
5 in which that factual scenario clearly appears to be a
6 defense of self or defense of others defense, and there
7 may be some dispute about whether that factual scenario
8 is, in fact, a defense of self or defense of others. We
9 can deal with that one when we get to it.

10 But it clearly is not a defense of property factual
11 scenario, so I don't believe that that type of argument
12 should be made to the jury.

13 THE COURT: Are you suggesting that the defense
14 of property defense is not available to Ms. Edwards as a
15 matter of law because she was not the owner or possessor
16 of the property?

17 MR. ENRIGHT: That's correct.

18 THE COURT: All right. Ms. Edwards.

19 MS. EDWARDS: Well, that -- Your Honor, I hope
20 to keep it simple and factual and clear and concise for
21 the jury. I -- I do not wish to get into all the civil
22 matters that have occurred prior to and still continue
23 with this case. I mean with this -- associated with
24 this, you know, the post divorce and all the rest of it.
25 But I do not negate that I do not have interest and/or

October 28, 2008

66

1 ownership, nor do other parties have interest or
2 ownership in that property. Yes, the property was sold.
3 No one really contested that. But the hows and whys of
4 that event and the long-term effects of that are
5 definitely disputed. So I'm not negating -- I am trying
6 to compromise, if that's the right word, and keep this to
7 only a criminal hearing and not go into the civil
8 matters, um, that may have been concluded or may still be
9 pending, because there are some. And so my goal is to
10 keep the facts straight about that time period only, and,
11 um -- and about the time period, perhaps, maybe a little
12 history might be involved, but up until April 24, 2006.

13 So I would object to this because some of these
14 defendants are going to -- have been involved with this
15 property. Some of them may have ownership or claim on --
16 on various aspects, interests, or rights in this
17 property, um, but -- and they so may need to, if asked,
18 but I will try to keep them focused on the events of the
19 day and events leading up to the day and not things
20 afterward.

21 THE COURT: As I read the motion by the State,
22 it appears to me to be pretty straightforward. Citing
23 authority that there is no defense of property defense
24 available to Ms. Edwards under the current record and I
25 agree. This will be simple for the jury. I am ruling

October 28, 2008 67

1 that Ms. Edwards is not entitled to a defense of property
2 defense. As I understand it, she didn't own the property
3 at the time of the event; someone else owned it, but that
4 someone else does not provide her with an affirmative
5 defense.

6 Ms. Edwards, if you have some proof, and by proof, I
7 mean real documentation, not something you've created;
8 that you had a viable, legitimate, recognizable at law
9 ownership interest in that property, you need to get that
10 to us before the beginning of the opening statements.

11 But what I've reviewed so far does not prove that.
12 I'm granting that motion with leave to the defense to
13 show that they are entitled to the giving of a defense of
14 property defense, but at this point on this record the
15 answer is no.

During Mr. Hall Testimony he relates that he did not research the deed, title.
RP 11/3/2008

Page 512

4 Q. [By Ms. Edwards] Mr. Hall, did you research, or any
5 person you hired to research, including an attorney or a
6 title company back to the statutory warranty deed on that
7 property?

8 MR. ENRIGHT: Objection: Relevance.

9 THE COURT: Sustained.

10 Q. [By Ms. Edwards] Mr. Hall, did you contact anyone from
11 the Suquamish Tribe?

12 MR. ENRIGHT: Objection: Relevance.

13 THE COURT: Overruled.

14 A. No, I did not.

CONTACT THE TRIBE
PAGE 512

- 10 Q. [By Ms. Edwards] Mr. Hall, did you contact anyone from
11 the Suquamish Tribe?
12 MR. ENRIGHT: Objection: Relevance.
13 THE COURT: Overruled.
14 A. No, I did not.

FIRST CAME ON THE PROPERTY, TRUSTEE
PAGE 517

- 7 Q. Mr. Hall, when was the first time you ever came on that
8 property?
9 A. I would -- to the best of my recollection, it was two to
10 four months before that when, uh, the negotiations with
11 the trustee were, uh, going on. When the first -- when I
12 first learned that the property was -- actually, I'm
13 sorry. Let me back up.
14 I first went out to that property to give -- uh --
15 uh, Ken Lamay a bid to clean it up so they could make it
16 a salable piece of property. And I forget the name of
17 the real estate company he works for, but he was also the
18 trustee -- court-appointed trustee. And this was
19 approximately four months before that incident.

NON EXPERIENCE WORKING AT A INDIAN BURIAL SITE
PAGE 521

- 12 Q. [By Ms. Edwards] Mr. Hall, have you ever worked on an
13 Indian burial site before?
14 A. No, I have not.
15 Q. Mr. Hall, have you ever talked to anybody at The
16 Flotation Device that has told you anything about working
17 on an Indian burial site?
18 A. Not at The Flotation, no.
19 Q. Has anyone told you about -- anyone else told you about
20 procedures about working an Indian burial site in our
21 state?
22 A. Uh, just you.
23 Q. I didn't tell you any procedures.

State v Rupe, 101 Wn.2d 664, 683 P.2d 571 (1981) **Error! Bookmark not defined.**

Here, the challenged evidence directly implicates defendant's right to bear arms. Const. art. 1, § 24 provides:

The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men. This constitutional provision is facially broader than the Second Amendment, which restricts its reference to "a

well

Although we do not decide the parameters of this right, here, defendant's behavior— possession of legal weapons— falls squarely within the confines of the right guaranteed by

Const, art. 1, § 24.⁹ Defendant was thus entitled under our constitution to possess weapons, without incurring the risk that the State would subsequently use the mere fact of possession against him in a criminal trial unrelated to their use. Our conclusion follows from the clear language of Washington's constitution. In addition, it coincides with the interpretation placed on a similar provision contained in the Oregon constitution. Oregon Const, art. 1, § 27 states:

The people shall have the right to bear arms for the defence (sic) of themselves, and the State, but the Military shall be kept in strict subordination to the civil powerf.]

In *State v. Kessler*, 289 Or. 359, 614 P.2d 94 (1980), the Oregon Supreme Court held that this language protects the right of an individual to possess weapons. This ruling was reaffirmed in *State v. Blocker*, 291 Or. 255, 630 P.2d 824 (1981). In *Blocker*, the court noted that their constitution also protects the citizen's right to possess weapons outside the home. *See also* Comment, *The Impact of State Constitutional Right To Bear Arms Provisions of State Gun Control Legislation*, 38 U. Chi. L. Rev. 185 (1970).

Did the court fail to allow testimony on a citizen's right to keep and bear arms?
CONSTITUTIONAL RIGHT TO BEAR ARMS

The trial court restricted the defendant's right to educate the jury through its witnesses and experts about the right to keep and bear arms, as well as the difference between a legally armed citizen and a citizen who is not legally armed.

RP 11/10/2008

Page 1004

HAYES - Direct
November 10, 2008 1004

21 Mr. Hayes, are there constitutional rights to carry a
22 weapon?

23 MR. ENRIGHT: Objection.

24 THE COURT: Sustained.

25 MS. EDWARDS: Objection.

HAYES - Direct
November 10, 2008 1005

1 Q. [By Ms. Edwards] Mr. Hayes, are there constitutional
2 rights in our state to carry weapons?

3 MR. ENRIGHT: Objection.

4 THE COURT: Sustained.

5 MS. EDWARDS: Sidebar?

RP 11/10/2008

Sidebar

November 10, 2008

1015

9 THE COURT: The second sidebar was also during
10 the direct examination of Mr. Hayes, and the questions
11 were being asked about the constitutional right to bear
12 arms. I sustained on an objection. Ms. Edwards asked
13 for a sidebar. I indicated that instructions of law come
14 through the judge, not through the witnesses, and
15 Ms. Edwards has the opportunity to propose those
16 instructions of the law and that's the proper forum for
17 that kind of education.

18 Anything to supplement that record, Mr. Enright?

19 MR. ENRIGHT: No, Your Honor.

20 THE COURT: Ms. Edwards.

21 MS. EDWARDS: Not at this time.

UNITED STATES CONSTITUTION

AMENDMENT 11

RIGHT TO KEEP AND BEAR ARMS

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

STATE OF WASHINGTON CONSTITUTION

Article 1, § 24 Right to Bear Arms

“The right of the individual citizen to bears arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall constructed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men.

RCWA West Arms

Under the broadest possible construction of the term “arms” is state constitutional provisions governing right to bear arms, extends only to weapons designed as such, and not to every utensil, instrument, or thing which might be used to strike or injury another person. *City of Seattle v Montana*, 129 Wash 2d 583, 919 P 2d 1218 (1996)

Evidence.

Evidence that defendant was familiar with firearms and had shot bird on hunting triip, deer from front door of home, and cat that was preying on quail in front yard was relevant to whether defendant was had shot and killed her husband, and could be admitted in murder prosecution. Despite defendant’s claim that admission of evidence violated this section. *State v Neslund*, 50 Wash App 531, 749 P 2d 725 (1988)

City of Seattle v Montana, 129 Wash 2d 583, 919 P 2d 1218 (1996)

“Only instruments *made on purpose* to fight with are called arms. *State v Nelson*, 38 La. Ann. 942, 946, 58 Am Rep. 202 (1886).

Page 591. *City of Seattle v Montana*,

We stress again, as we have stressed before, that this decision does not mean that individuals have an unfettered right to possess or use constitutionally protected arms in any way they please. The legislature may, if it chooses to do so, regulate possession and use. This court recognizes the seriousness with which the legislature views the possession of certain weapons, especially switch-blades. The problem here is that ORS 166.510(1) absolutely proscribes the mere possession or carrying of such arms. This the constitution does not permit.

Page 594 City of Seattle v Montana,

“While we have not yet decided the parameters of an individual’s right to bear arms, *Rupe*, 101 Wn 2d at 706, 707, n. 9 we have stated to pass “constitutional muster, an arms regulation must be a reasonable limitation. *Morris*, 118 Wn 2d at 175.”

Page 594 City of Seattle v Montana City of Seattle v Montana

“In my judgment, there is much merit to the argument that drafters of the state constitution intended by those plain words, absolutely to protect a person’s right to carry arms for personal defense.”

Page 600 City of Seattle v Montana City of Seattle v Montana

The trial court erred in its ruling as to only allow instruction on the law at the time of jury instruction and not allowed the defendant to educate the jury about what is allowed for a legally armed citizen, forcing the jury to believe that Colleen Edwards was illegally armed and committing a crime.

Did the court error in limiting self defense testimony by Colleen Edwards?

RT 11/12/2008

Cross Examination of Colleen Edwards

Page 1057

22 BY MR. ENRIGHT:

23 Q. Ms. Edwards, I guess take us back to Monday in some of
24 your testimony. You testified on Monday that Peter
25 Arthur threatened you with a piece of metal; is that

EDWARDS - Cross

November 12, 2008

1058

1 correct?

2 A. Yes, I did.

3 Q. You did not testify that Paul Miller threatened you with
4 a piece of metal; is that correct?

5 A. That's correct.

- 6 Q. You've never testified that Paul Miller made any verbal
7 threats to you; is that correct?
- 8 A. To my recollection, that's correct.
- 9 Q. So given that Mr. Miller did not do anything violent
10 towards you, didn't threaten you at all, is it fair to
11 say you weren't defending yourself against anything that
12 he did?
- 13 A. That's not quite correct. Um, you asked me if he made
14 any verbal threats. I do consider a, uh, piece
15 of hazard equipment aimed at you a physical threat, but
16 not the same kind of threat that, say, a piece of metal
17 would be, or a direct hit or a direct -- but I do
18 consider a vehicle -- heavy duty piece of machinery a --
19 very capable of -- of being a threat and used as a
20 threat.
- 21 Q. And he did not drive this vehicle towards you in a
22 threatening manner or attempt to run you over or
23 anything like that; is that correct?
- 24 A. Yes, he did.

RP 11/12/2008

November 12, 2008

1060

- 4 Q. Ms. Edwards, you testified on Monday that Michael
5 Montfort must not have been able to see Mr. Arthur
6 threatening you with a piece of metal; that was your
7 testimony, correct?
- 8 A. That is correct.
- 9 Q. So Mr. Montfort was quite a distance from you when this
10 occurred; is that correct?
- 11 A. Yes, he was. I -- I -- my -- my previous spouse built
12 that garage, so I know exactly the measurements of that
13 garage and everything that was on that piece of
14 property.
- 15 Q. Mr. Montfort was approximately how many feet away from
16 you?
- 17 A. 50.
- 18 Q. 50 feet away from you.
- 19 A. Around a corner.

Continuing
RP 11/12/2008

November 12, 2008

1063

16 Ms. Edwards, you also wrote in there that you were in
17 fear for your life and the life of Mr. Monfort, correct?
18 A. Yes, I was.
19 Q. Even though Mr. Montfort was apparently 50 feet away.
20 A. The -- Mr. Montfort was 50 feet away when the attack
21 first began. As I backed up and went around the side of
22 the garage, or the back of the garage or whatever --
23 whichever way you want to describe the garage facing, as
24 I became closer and closer to Mr. Montfort. And his
25 attention was on the older contractor identified as
EDWARDS - Cross
November 12, 2008 1064
1 Mr. Paul Miller. He was not watching Mr. Arthur, I was.

Continuing

EDWARDS - Cross
November 12, 2008 1064
7 Q. So Mr. Montfort, whose job it is to protect you, who is
8 somewhere between 50 feet and right next to you, who is
9 there and close enough that he can hear you yell, must
10 not have seen anything?
11 A. I can't -- I know what Mr. Montfort testified in this
12 courtroom. But his attention -- his visual attention
13 was on Mr. Miller who was near the road. My attention
14 split when Mr. Arthur said he wanted to go behind the
15 garage and get his lunch and coffee cup and some
16 equipment. My attention split to the second party.
17 Mr. Montfort's attention stayed on Mr. Miller and where
18 he was with the heavy-duty equipment. So our attentions
19 were visually split.

Continuing

November 12, 2008 1066
25 Q. Ms. Edwards, when Mr. Arthur threatened you with this
EDWARDS - Cross
November 12, 2008 1067
1 piece of metal, you drew your gun and pointed it -- I
2 think your testimony was -- at the low-ready position,
3 correct?
4 A. Yes.
5 Q. You did not take your gun and point it at Mr. Miller; is
6 that your testimony?
7 A. I do not recall doing it with Mr. Miller.
8 Q. Okay. So your testimony is that you only drew your
9 weapon towards Mr. Arthur, not Mr. Miller?

10 A. Correct.

After Miller and Arthur left

November 12, 2008

1065

23 Q. [By Mr. Enright] I'm asking how you felt at that time.
24 You felt secure enough that you were willing to remain
25 on the property and not keep your eyes on somebody who
EDWARDS - Cross

November 12, 2008

1066

1 had apparently attacked you and you were afraid was
2 going to kill you.
3 A. I doubt Mr. -- I watched him for as far as I could
4 visually watch him with my vision as he left the
5 property. I did continue to listen for his return. My
6 hearing is probably much better than my vision.
7 Q. And you and Mr. Montfort were not the ones who went down
8 to the road to contact law enforcement, correct?
9 A. No. We stayed where we were.
10 Q. In fact, you made no attempts to contact law enforcement
11 that day after this incident had happened?
12 A. I did not have a cell phone, nor did Mr. Montfort.
13 Q. And the two of you did not return to your car, correct?
14 A. The car was not mine.
15 Q. And you did not return to Mr. Montfort's car, and you
16 did not leave the scene, and you did not go to a police
17 station and report this?
18 A. I had already called law enforcement. They had already
19 responded to me when I left my home that they were
20 sending a deputy and that I should stay at the property
21 and wait for the deputy. The state archeologist had
22 also instructed me to stay at the property until she
23 arrived. So I was following both law enforcement's and
24 the state archeologist's directions.

The problem here is not with the questions, but the defendant when testifying without counsel has no way to have counsel make motions to object or strike. The defendant is left without counsel when testifying as a pro se. In this case, the defendant cannot propose questions in advance or during the prosecutors examination and cross.

DEFENDANT CROSS EXAM OF SELF

(a) General Provisions. The requirements of authentication or identification as a condition precedent to admissibility is satisfied by the evidence sufficient to support a finding that the matter is question is what its proponent claims.

(b) By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule.

(1) *Testimony of Witness with Knowledge.* Testimony of witness with knowledge that a matter is what it is claimed to be.

(4) *Distinctive Characteristics and the Like.* Appearance, contents, substance, internal patterns, or distinctive characteristics taken into conjunction with circumstances.

(9) *Process of system.* Evidence or Evidence describing a process or system describing a result and showing that the process or system produced an accurate result.

Authentication is a threshold designated to ensure that evidence is what it purports to be State v Payne, 117 Wash App 99, 69 P 2d 889 (2003)

Authentication may be satisfied when the party challenging the document originally provided it through discovery. International Ultimate, Inc. v St. Paul Fire & Marine Insurance Co., 122 Wash App 736, 87 P 3d 109 (2004)

Just as proponent can authenticate a photo by “eyewitnesses comparison” a proponent can authenticate a tape recording by “earwitness comparison” such as, by calling a foundation witness to testify (1) that the witness has personal knowledge of the events recorded on the tape, (2) that the witness has listened to the tape and compared it with those events and (3)

Washington Court Rules Annotated, Second Edition, 2006-2007

Exhibits

Did the trial court error in not admitted Exhibit 20 and 21? (NRA Certificates)

Exhibit 20 Certificate from NRA 1992

Exhibit 21 Certificate from NRA 1993

RP 11/10/2008

EDWARDS - Direct

November 10, 2008

987

11 Q. Do you or did you hold any certificates for National

12 Rifle Instructor?

13 A. Yes, I do. I hold a certificate -- or held a certificate

14 for 1993 and 1994 as an NRA instructor.

RP 11/10/2008

HAYES - Direct
November 10, 2008 906

21 Q. Okay. Mr. Hayes, you -- and I cannot give you this
22 exhibit because it's not admitted.

23 MS. EDWARDS: If that's correct, Your Honor,
24 none of those exhibits to the right are admitted,
25 correct?

HAYES - Direct
November 10, 2008 907

1 THE COURT: That's correct.

2 Q. [By Ms. Edwards] Mr. Hayes, are you aware of any of my
3 credentials as a Washington state armed security guard,
4 armed investigator?

5 A. Yes, I am.

6 Q. And to your recollection, was my certification in the
7 years that you were teaching that course?

8 A. Yes, I believe it was.

9 Q. And, Mr. Hayes, are you aware of my certification as a
10 National Rifle Association instructor?

11 A. Uh, not -- not as far as having seen the documentation
12 that I can recall. I can, you know -- I can't say for
13 certain.

The certification of training is relevant to both the expert's testimony both the expert and the defendant testified that they were certified by the National Rifle Association.

***Did the trial court error in not admitting the evidence of the Exhibit 22?
(CPL)***

Exhibit 22 License #400624

RP 11/4/2008

STACY - Cross
November 4, 2008 577

1 Q. Okay. Did you handle the purse while in evidence?

2 A. Purse? What purse?

3 Q. Black fanny pack.

4 A. Yes. As I testified, I put all these items in evidence.

5 Q. Did you go through the wallet when you put it into
6 evidence?

7 A. That's standard procedure, yes.
8 Q. What did you find in the wallet?
9 A. It contained the suspects ID, wallet, money, and
10 et cetera.
11 Q. Could you define "et cetera"?
12 A. No.
13 MR. ENRIGHT: Objection: Relevance.
14 THE COURT: It's --
15 Q. [By Ms. Edwards] Deputy Stacy, when you -- is it
16 customary in this county when arrests occur to look for
17 concealed weapons permit?
18 A. If someone has a weapon on them, yes.
19 Q. Did you -- did you check my record for a weapons permit?
20 A. I believe one of the officers probably checked that
21 in during -- I didn't run your name. I think one of the
22 officers ran it through --
23 Q. So it might be one of the other officers?
24 A. Could have been, yes.

RP 11/10/2008

November 10, 2008

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14 Q. And, Mr. Hayes, are you aware if I hold a concealed
15 weapons permit?
16 A. That is my understanding, yes.

RP 11/10/2008

3 Q. [By Mr. Hayes] Did you on April 24, 2006, hold a valid
4 CPL?
5 A. Yes, I did.
6 THE COURT: All right. And the next question,
7 as well.
8 Q. [By Mr. Hayes] How many years have you held a valid CPL?
9 A. Twenty years.
10 THE COURT: All right. That, I believe
11 concludes that part of what you wanted, Ms. Edwards.
12 MS. EDWARDS: Yes.
13 THE COURT: Mr. Hayes, you can step back.
14 Ms. Edwards, you can step down.

RP 11/4/2008

CPL Purse, Officer Stacy

STACY - Cross

- 1 Q. Okay. Did you handle the purse while in evidence?
- 2 A. Purse? What purse?
- 3 Q. Black fanny pack.
- 4 A. Yes. As I testified, I put all these items in evidence.
- 5 Q. Did you go through the wallet when you put it into
- 6 evidence?
- 7 A. That's standard procedure, yes.
- 8 Q. What did you find in the wallet?
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- 10 et cetera.
- 11 Q. Could you define "et cetera"?
- 12 A. No.
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- 17 concealed weapons permit?
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- 19 Q. Did you -- did you check my record for a weapons permit?
- 20 A. I believe one of the officers probably checked that
- 21 in during -- I didn't run your name. I think one of the
- 22 officers ran it through --
- 23 Q. So it might be one of the other officers?
- 24 A. Could have been, yes.
- 25 Q. Could have been, but you didn't know?

STACY - Cross

- 1 A. I didn't -- okay. Let me rephrase.
- 2 Q. You didn't do it?
- 3 A. I did not run your name to check to see if you had a CPL,
- 4 that I recall.
- 5 Q. That you recall?
- 6 A. That I recall. I do not recall.

- 14 THE COURT: All right. Mr. Enright, are you
- 15 going to raise any issue about the ownership of the
- 16 firearm?
- 17 MR. ENRIGHT: No, Your Honor, the only issue we
- 18 were going to raise is it was in the defendant's
- 19 possession?
- 20 THE COURT: Ms. Edwards, then Mr. Schmadeka

21 doesn't have anything to add and I'm not going to issue a
22 subpoena for him. You certainly can testify how you came
23 into possession of it if you think that is relevant. But
24 it doesn't appear that the State has any quarrel with the
25 ownership.

The relevance of a license to carry a concealed weapon is critical. The jury needs to understand the difference between a citizen carrying a concealed weapon legally or illegally. The license also requires the weapon to be concealed except when used in s (self-defense, defense of other, citizen's arrest situations (9A.16 defenses). The license for a concealed weapon is an important document to determine the right to own and carry a concealed weapon. It is also an element of the arrest which was not checked by law enforcement. Because the license was valid on April 24, 2006 it is a critical piece of evidence to be understood by the jury.

RCWA 9.41 states:

RCWA 9.41.050 Carrying Firearms

(1)(a) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed pistol.

(b) Every licensee shall have his or her concealed pistol license in his or her immediate possession at all times that he or she is required by this section to have a concealed pistol license and shall display the same upon demand to any police officer and to any other person when and if required by law to do so."

9.41.050. Carrying firearms

(1)(a) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed pistol.

(b) Every licensee shall have his or her concealed pistol license in his or her immediate possession at all times that he or she is required by this section to have a concealed pistol license and shall display the same upon demand to any police officer or to any other person when and if required by law to do so. Any violation of this subsection (1)(b) shall be a class 1 civil infraction under chapter 7.80 RCW and shall be punished accordingly pursuant to chapter 7.80 RCW and the infraction rules for courts of limited jurisdiction.

(2) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed pistol and: (a) The pistol is on the licensee's person, (b) the licensee is within the vehicle at all times that the pistol is there, or (c) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle,

Did the trial court error on not striking physical evidence, Exhibit 1 not used in a crime? (Kevlar Vest)

October 10, 2008 29

11 THE COURT: The next request is a motion to
12 strike Kevlar vest.

13 Ms. Edwards, if you could elaborate a bit on what you
14 are suggesting is wrong with the Kevlar vest as evidence.

15 MS. EDWARDS: One, I don't own it. And one of
16 the prosecution's witnesses does own it.

17 THE COURT: Ownership of an item of evidence
18 isn't a grounds for striking it. What else?

19 MS. EDWARDS: No, it's not. Two, I don't -- I
20 have not seen any -- any -- any discovery that would
21 really implicate its use. It is an article of clothing
22 or wearability or professionalism. But I don't see any
23 relationship or any evidence to that fact, in as far as
24 the crime goes.

25 THE COURT: So you are suggesting it has no
October 10, 2008 30

1 relevance?

2 MS. EDWARDS: Yes.

3 THE COURT: Mr. Enright.

4 MR. ENRIGHT: Thank you, Your Honor. The
5 discovery provided to Ms. Edwards indicates that
6 Deputy Malloque found the defendant was wearing body
7 armor underneath her shirt. The State believes this is
8 relevant toward the intent of the defendant at the time.
9 The State essentially argued that Ms. Edwards was -- when
10 she arrived on this property, she was prepared for a
11 confrontation and that piece of evidence is relevant
12 toward that.

13 THE COURT: Any response, Ms. Edwards?

14 MS. EDWARDS: Yes. Um, I routinely used to wear
15 Kevlar a lot in both professionally and personally.

16 Um, it is not intent. It is a piece of equipment
17 like I might wear a brace or, a -- or a bag, or anything.
18 Um, many -- many professionals wear Kevlar, and I don't
19 know that we need to drag the jury down that road. But
20 certainly I have to respond to that, um, then I am forced
21 to respond to it as a defendant. Um, but I don't see it
22 as a piece of equipment like that as intent. It has no
23 basis -- it was not used in a crime. It was just on me.

24 THE COURT: The defense objections go to the
25 weight to be given the piece of evidence, not its

October 10, 2008 31

1 admissibility, so the motion to strike is denied.

But the Kevlar vest and SAR pouch are not connected with the alledged crime.

Deputy Malloque states as follows in his testimony of his investigation.

RP 11/5/20078

MALLOQUE - Direct

November 5, 2008

690

1 Q. Okay. Um, so what -- I guess, can you kind of describe
2 the nature of the contact that you had with her? Did you
3 detain her?

4 A. I did.

5 Q. What did you do?

6 A. I placed her in handcuffs, searched her incident to the
7 detention, and then after that I escorted her up to my
8 patrol car.

9 Q. What -- did you find anything when you searched her?

10 A. I did.

11 Q. What did you find?

12 A. I found that Ms. Edwards was wearing -- what we consider
13 a shoulder holster underneath here shirt, and then she
14 was also wearing body armor.

15 Q. Did you have a firearm on her?

16 A. Not when I contacted her. She had already been -- she
17 had already dropped the firearm.

But Mr. Hayes, a well respected law enforcement officer and instructor states no connection to the Kevlar vest and intent.

RP 11/10/2008

November 10, 2008

1007

4 Q. [By Ms. Edwards] Mr. Hayes, is wearing a Kevlar vest an
5 indication of any action of mind?

6 A. Not that I'm aware of.

7 Q. Is carrying handcuffs any indication of an action of
8 mind?

9 MR. ENRIGHT: Objection, Your Honor. These
10 questions are outside the scope.

11 THE COURT: They are outside the scope of the
12 hypothetical. Sustained.

The court erroed in ruling that testimony from a defense witness was outside the scoe of hypothetical because the Kevlar vest and handcuffs were discussed as an intent to commit a crime.

***Did the trial court error in not striking physical evidence of Exhibit 2?
(SAR pack/pouch)***

The SAR pouch (Exhibit 2) was used as evidence of a crime. However there was conflicting testimony as to its use and contents. The main prosecution witness Mr. Montfort testified that it was used to carry medications, not a firearm. The law enforcement officers testified there was a shoulder holster, but could not describe what a shoulder holster looks like. Testimony was conflicting about where the firearm was kept—but the most critical idea conveyed was that the firearm was concealed until needed. The issue is that a concealed firearm is not a crime unless the person fails to have a concealed weapons permit, unless they are on their own business or home property.

The prosecutor formed opinions contrary to the evidence presented here by his own witnesses. The SAR pouch was not used in a crime, in fact its existence with the CPL forms a nexus for a lawful carrying of a firearm.

The trial court's error is in not striking it as an exhibit for the prosecution.

Motion to Strike SAR Front Pack
RP 10/10./2010

October 10, 2008

31

2 The next request is to strike the SAR front pack. Is
3 that the same issue, then?

4 MS. EDWARDS: And on a very lesser, uh -- yes,
5 on a -- it's probably a less controversial issue, unless
6 the prosecution has something that they believe that's
7 intent. If so -- if we're looking at intent, and we

8 certainly would be looking -- or discussing intent in
9 front of this jury, um, then those -- those things, um,
10 pieces of clothing are things you wear, things you use.
11 People wear equipment. It's not unusual. So same
12 reasoning.

13 THE COURT: Based on the same reasoning, then,
14 I'm going deny the defense's request to strike the
15 evidence of the SAR front pack, and it is admissible.

RP 11/6/2008

November 6, 2008 862

2 Q. [By Ms. Edwards] Mr. Montfort, this is Exhibit 2. Is
3 this the vest I was wearing? Not the vest, the search
4 and rescue.

5 A. It appears to be, yes, ma'am.

RP 11/6/2008

MONTFORT - Cross
November 6, 2008 858

13 Q. Was I wearing a Kevlar vest?

14 A. Yes, ma'am.

15 Q. And was I wearing a -- and I want to be specific about
16 this. Was I wearing what civilians call a cross-body
17 shoulder holster?

18 A. I do not believe so.

RP 11/6/2008

MONTFORT - Cross
November 6, 2008 859

17 But was I also wearing a black holder -- what I call
18 a search and rescue vest holder that you can put numerous
19 things in almost like an EMT holder?

20 A. Yes, ma'am.

21 Q. Could you define for the jury that the use of -- the
22 often multiple use of any -- an EMT or search and rescue
23 holder like that that I was wearing?

24 A. A search and rescue vest consists of two straps that go
25 around the shoulders and usually either a belly strap

MONTFORT - Cross
November 6, 2008 860

1 that attaches in the rear, but in the front it is
2 approximately 18-inches tall, approximately 12-inches
3 wide; it has pockets for radios, um, some, say, survival

4 equipment in the case of search and rescue. Um -- uh,
5 things you might find in a search and rescue pack for
6 finding a survivor, things like that, but it is made to
7 keep the hands free so you are free to grab and move and
8 do things like that.
9 Q. And -- and when you -- that kind of pack, is it designed
10 to carry a weapon?
11 A. No, ma'am.

RP 11/6/2008

MONTFORT - Cross
November 6, 2008 861

4 Did I often wear or carry medication on me?
5 MR. ENRIGHT: Objection.
6 THE COURT: Overruled.
7 A. Yes, ma'am.
8 Q. [By Ms. Edwards] And does that medication look like
9 this? You can open it.
10 A. Yes, ma'am. It can be broken down into smaller packages
11 for ease of carrying, but essentially that is the same
12 medication that you used, to the best of my knowledge.
13 Q. So you were familiar that I carried this for medical
14 reasons?
15 MR. ENRIGHT: Objection: Asked and answered.
16 THE COURT: Sustained.
17 MS. EDWARDS: Okay. Sorry.
18 Q. [By Ms. Edwards] Mr. Montfort, did you ever, in the time
19 that you cared for me under emergency or personal care
20 situations assist me to use this medication?
21 A. Yes, ma'am.

RP 11/6/2008

MONTFORT - Cross
November 6, 2008 862

10 Q. [By Ms. Edwards] And Mr. Montfort, could my medication
11 fit in this vest?
12 A. Yes, ma'am.
13 Q. And what would be the advantage of me acquiring my
14 medication quickly?
15 MR. ENRIGHT: Objection.
16 THE COURT: Overruled.
17 A. As a former paramedic, the speed of essence when you are
18 dealing with an epileptic person, even though they are
19 protected by helmet and things like that, they could have
20 further injury if they were to have a seizure, so

21 administration of medication is critical in the first few
22 minutes.

“Merely carrying an item, does not usually involve identifiable conduct: it is not an overt movement. Thus, “furtively carry” is an awkward term, difficult to visualize as a movement. The following phrase, “with intent to conceal”, helps to a degree. The drafters of the statute must have had in mind a movement to conceal a weapon, done furtively, in a way meant to escape notice. Otherwise there are all too many easily imagined instances of innocent conduct involving the carrying of pocket knives, kitchen knives, letter openers, pepper sprays, scissors, common tools and other dangerous objects with intent to conceal them in, for example, a pocket, handbag, shopping bag or boot.”

Page 647 *State v Myles*, 75 Wn App 643, 879 P 2d 968 (1984)

“*State v Johnson*, 31 Wn App 889, 645 P 2d 63 (1982)

(a woman has a reasonable expectation of privacy in the contents of her purse and it may not be searched without first obtaining a warrant).”

WAPRAC 12, Page 539

State v Johnson, 31 Wn App 889, 645 P 2d 63 (1982)

“Moreover we have interpreted our own constitution as affording greater protection than the Fourth Amendment ...Accordingly there is ample basis for interpreting Const. art 1 § 7 as protective than the federal constitution. In *State v Michaels*, 60 Wn 2d 638, 644-647, 374 P 2d 989 (1962) we held that the state constitution confers automatic standing on defendants who have been charged with an offense that has possession as an element.”

Page 179 *State v Johnson*, 31 Wn App 889, 645 P 2d 63 (1982)

“In our view, our constitution’s privacy clause, with its specific affirmation of the privacy interests of all citizens, encompassing the right to assert a violation of privacy as a result of impermissible police conduct in at least, in cases where, as here, a defendant is charged with possession of the very item which was seized.”

Page 180 *State v Johnson*, 31 Wn App 889, 645 P 2d 63 (1982)

(sentence above and below follow each other)

“Any other conclusions allows invasion of a constitutionally protected interest to be insulted from judicial scrutiny by a technical rule of “standing”. The inability to assert such an interest threatens all of Washington’s citizens, since no other means of deterring illegal searches and seizures is readily available.

Page 180 *State v Johnson*, 31 Wn App 889, 645 P 2d 63 (1982)

Found also in *State v Simpson*, 95 Wn 2d 170, 622 P 2d 1199 (1980) direct quote.

“The question then becomes whether the respondent in this case can claim the protection of the automatic standing rule. As we explained in *Michaels*, at pages 646-647, a defendant has automatic standing if (1) the offense with which he is charged involves possession as an “essential” element of the offense: and (2) the defendant was in possession of the contraband at the time of the contested search and seizure. *See also Brown v. United States*, 411 US 223, 228-229, 36 L Ed. 2d 208, 93 S Ct 1565 (1973)”

Page 181. State v Johnson, 31 Wn App 889, 645 P 2d 63 (1982)
Found also in State v Simpson, 95 Wn 2d 170, 622 P 2d 1199 (1980) direct quote.

“It would be difficult to define an object more inherently private than the contents of a woman’s purse. Most certainly there was an reasonable expectation of privacy in the contents of Mrs. Johnston’s purse. There were no extingent circumstances warranting an immediate investigatory search.”

Page 192 State v Johnson, 31 Wn App 889, 645 P 2d 63 (1982)

Did the trial court error in the connection of Exhibit 3 to a crime? (Firearm)

There is no connection of the firearm to a crime. A crime is an unlawful action. The actions of Colleen Edwards were lawful. The actions of lawful self defense, defense of other and citizen’s arrest are for emergency situations when and where law enforcement is not present or not yet present. The constitutional rights to bear arms are for defense and for use of force in arrest. Even police powers originally come from the constitutional rights to bear arms guaranteed by our United States and State of Washington Constitution.

The trial court erred assuming exhibit 3 as an element of an alleged crime. .

“Merely carrying an item, does not usually involve identifiable conduct: it is not an overt movement. Thus, “furtively carry” is an awkward term, difficult to visualize as a movement. The following phase, “with intent to conceal”, helps to a degree. The drafters of the statue must have had in mind a movement to conceal a weapon, done furtively, in a way meant to escape notice. Otherwise there are all too many easily imagined instances of innocent conduct involving the carrying of pocket knives, kitchen knives, letter openers, pepper sprays, scissors, common tools and other dangerous objects with intent to conceal them in, for example, a pocket, handbag, shopping bag or boot.”

State v Myles, 75 Wn App 643, 879 P 2d 968 (1984) Page 647

Did the trial court error on not admitting the Exhibit 18? (Washington State Criminal Justice Training Commission Handbook)

The trial court erred on not admitting the Exhibit 18 (the Washington State Criminal Justice Training Commission Handbook because both the defendant and the defense expert witness Mr. Hayes were trained and certified under these standards. Also these standards are similar for law enforcement officers. The manual gives explanations and discusses use of force when performing arrests by both armed private investigators and armed security guards. Similar standards apply to law enforcement officers.

The jury was not allowed to hear the training manual that the defendant was trained and certified under. They were also not allowed to have Mr. Hayes read the training manual. This is a critical piece of evidence and one of standard for training citizens in our state.

During Testimony from defense expert witness, Mr. Hayes
RP 11/10/2008

November 10, 2008 910

21 THE COURT: Ms. Edwards, he has to use the
22 exhibit that's in evidence. Is it different from what
23 you've got?

24 MS. EDWARDS: No. It's just a little bit out of
25 order, the one I scanned, because it's -- it's done on

HAYES - Direct

November 10, 2008 911

1 both sides of the pages. The one I scanned is done with
2 nothing on the back.

3 THE COURT: Well, this is the one that's
4 identified. I think it is best that the witness uses
5 that one he has in his hands and you can use the one you
6 have in your hands.

7 THE WITNESS: If it pleases you, Your Honor, I'm
8 actually getting it in order.

9 THE COURT: All right. Ms. Edwards, why don't
10 you ask your question.

11 Q. [By Ms. Edwards] Okay. Mr. Hayes, to your recollection,
12 in the -- in the Washington State Criminal Justice Study
13 Guide Handguns/Firearms Certification, is there a section
14 on use of less than deadly force by a security guard or

15 detective?
16 A. Yes, there is.
17 Q. Can you describe to the jury what that is about?
18 A. Yes. It goes through the -- the, uh -- the Revised Code
19 of Washington and explains for the security officer when
20 they can and cannot use any type of force up to but not
21 including the use of deadly force.
22 Q. Okay. And does it give a description of deadly force?
23 A. Not -- not specifically, the point that you referred
24 to -- the less than deadly force section.
25 Q. And can you describe in simple terms, layman's term, what

HAYES - Direct

November 10, 2008

912

1 is deadly force?
2 MR. ENRIGHT: Objection.
3 THE COURT: Sustained.
4 Q. [By Ms. Edwards] Can you describe what is in the manual
5 or the best -- how would you -- how would you explain the
6 word "deadly force" to a brand new student?
7 MR. ENRIGHT: Objection.
8 THE COURT: Sustained.
9 Q. [By Ms. Edwards] Mr. Hayes, we all watch lots of TV, or
10 most of us have by now.
11 Is murder deadly force?
12 MR. ENRIGHT: Objection.
13 THE COURT: Sustained.
14 MS. EDWARDS: Okay.
15 Q. [By Ms. Edwards] Mr. Hayes, is -- in the Washington --
16 in the training manual we're looking at, is "escalation
17 of force continuum" described?
18 A. Yes, it is.
19 Q. And what does "escalation of force continuum" mean?
20 A. As it was written back in 1992, and it -- it means
21 basically that a security officer would be faced with a
22 specific incidence or circumstance, and it kind of
23 roughly correlates what that individual might want to do
24 as far as the amount of force to -- they would use to --
25 to meet that particular situation.

HAYES - Direct

November 10, 2008

913

1 And so the use of force continuum could be anywhere
2 from just simply a security officer's presence, up to
3 including hands-on baton techniques or including up to or
4 including deadly force, depending on what the individual
5 they are encountering was -- was doing at the time.
6 Q. And would that -- would that continuum include verbal

- 7 warnings?
8 A. Yes, it would.
9 Q. Would that continuum include handcuffing?
10 A. Yes, it would.
11 Q. Would that continuum include what we might call
12 surrounding a suspect, or I might call that?
13 A. Yes, it would.
14 Q. Would -- could you explain what that might mean to a
15 jury?
16 A. Yes. Basically, it would be a **show of force** whereas an
17 individual who may have been thinking about taking some
18 type of an aggressive action under the circumstances may
19 decide that it might not be their best option because
20 there's one or more people in their presence. And,
21 specifically, as far as surrounding them once a person
22 gets out of a person's peripheral vision, then they
23 become somewhat uneasy and perhaps might be more inclined
24 to just simply not do anything aggressive.
25 Q. Okay. And I'm going to have to go back and forth here a

HAYES - Direct

November 10, 2008

914

- 1 little bit.
2 But, Mr. Hayes, is -- in the -- in this manual, does
3 it describe the response -- sorry, I've lost my place.
4 Does it describe the duty to act or not act in a
5 situation where you might use a force continuum, and that
6 might be no action up to severe action?
7 A. Uh, yes, it does.
8 Q. And can you give a couple of examples?
9 MR. ENRIGHT: Objection, Your Honor.
10 THE COURT: Sustained.
11 Q. [By Ms. Edwards] Could you give an idea to the jury of a
12 range of possibilities you might instruct a student on?
13 MR. ENRIGHT: Objection.
14 THE COURT: Sustained.
15 MS. EDWARDS: Objection. Objection for the
16 record.
17 Q. [By Ms. Edwards] Can you describe the
18 responsibilities -- can you describe what it means by
19 "duty to act"?
20 MR. ENRIGHT: Objection.
21 THE COURT: Sustained.
22 Q. [By Ms. Edwards] Mr. Hayes, does a security guard or
23 private investigator have to act in a situation?
24 MR. ENRIGHT: Objection.
25 THE COURT: Sustained.

- 1 MS. EDWARDS: Objection for the record.
2 Q. [By Ms. Edwards] Mr. Hayes, can you describe the
3 responsibilities a private security guard or -- or
4 private investigator's responsibilities after using
5 force?
6 MR. ENRIGHT: Objection.
7 THE COURT: Sustained.
8 MS. EDWARDS: Objection for the record.
9 Q. [By Ms. Edwards] Mr. Hayes, can you describe what is in
10 the manual for shooting decisions?
11 MR. ENRIGHT: Objection.
12 THE COURT: Sustained.
13 Q. [By Ms. Edwards] Mr. Hayes, can you give an example of
14 what is in the manual or taught for verbal identification
15 and commands?
16 A. Yes, I can. Would you like me to?
17 Q. Yes. Yes, I would. Thank you.
18 A. Okay. In regards to a security officer or a private
19 investigator, it would be typical that they would first
20 identify themselves as such, and then give -- you know,
21 assuming that they had a lawful right to give a command,
22 then they would -- they would simply give that command
23 based on, you know, their showing of -- of a force and
24 being in charge of the situation.
25 Q. And could you give an example what showing of force might

- 1 be?
2 MR. ENRIGHT: Objection.
3 THE COURT: Sustained.
4 MS. EDWARDS: Sidebar?

- 11 [Exhibit No. 17 admitted.]
12 MR. ENRIGHT: No. 18 is a firearm certification
13 manual, uh, from -- I think Ms. Edwards said it was from
14 1992. I actually was sent a copy of that manual. The
15 manual, itself, is hearsay. It includes multiple pages
16 which explain what the law is, cites specifics RCWs, and
17 this particular author's interpretation of what those
18 statutes mean. No. 18 should not be admitted.
-

19 THE COURT: Ms. Edwards, let's talk about that,
20 then. What's your position?

21 MS. EDWARDS: My position is this is the state
22 training manual. If you wished, I would certainly
23 object, but if the Court ruled that Mr. Hayes were not to
24 cite -- say the exact law -- say, RCW X-Y-Z right,
25 perhaps that would be more acceptable.

1 THE COURT: The manual itself is hearsay. And,
2 certainly, its contents and the RCWs are something I
3 don't want the jury to get their hands on.

4 But it sounds like the rest of it is a hearsay
5 document, and I don't know how you are going -- we're

6 talking about your testimony at this point, right?

7 MS. EDWARDS: Correct.

8 THE COURT: Okay. Do you have anything else on
9 18?

10 MS. EDWARDS: Um, 18. I would say that there
11 are pages within here that are not going to be
12 controversial, as far as your legal ruling, as far as
13 your non-wish to cite the law, and I believe they could
14 be easily answered.

15 THE COURT: Then please answer them.

16 MS. EDWARDS: Okay.

17 THE COURT: I don't mean go bit by bit. But
18 tell me why you think it's all right.

19 MS. EDWARDS: The -- the problem would be, Your
20 Honor, and we -- you know, um -- that there is a self
21 arrest in this case. This book does allude to citizen's
22 arrest -- not self arrest, I'm sorry, citizen's arrest.
23 And there are certainly some very general, uh, type
24 information for civilians, security guards, that address
25 what are the -- these are the procedures. These are what

1 you should follow, and -- and those are standard
2 procedures for security guards and armed investigators,
3 and most armed people with a concealed weapons permit.

4 So I -- I would say with some modification that we
5 could avoid the direct references to the RCWs and include
6 the description or -- or the content and give the jury
7 the feeling of what kind of training does a person
8 receive. It is not contested I have passed this
9 training. The certificate indicates I have. So I'm
10 willing to, of course, object on the record. But -- but

11 I'm willing to abide by the Court's rulings.
12 I would rather see whatever I can go into the
13 document -- from the document as possible than not.
14 THE COURT: Ms. Edwards, as the proposed exhibit
15 is currently constituted, I am not going to admit it into
16 evidence.
17 MS. EDWARDS: Okay. Your Honor, I will object
18 for the record. And I understand your ruling.

REFERENCE TO THE TRAINING MANUAL AFTER IT WAS NOT ADMITTED
THE TRAINING MANUAL Exhibit 18
RP/11/10/2008

November 10, 2008 895

23 MS. EDWARDS: Thank you.
24 And the second one is the -- Exhibit No. 18, the
25 firearm certification study guide and hand guide for
November 10, 2008 896
1 security guards and private investigators from the
2 Washington State Criminal Justice Training Commission,
3 date on it is June 1992.

RP 11/12/2008

By Prosecutor, Mr. Enright

EDWARDS - Cross

November 12, 2008 1067

15 Q. And, Ms. Edwards, we talked a little bit about your
16 training with firearms. You are, in fact, trained --
17 you had your manual here. You're, in fact, taught that
18 you don't draw your weapon unless you are prepared to
19 kill someone?
20 A. That is not what the manual says. Would you like to
21 enter the manual into evidence?
22 Q. I am not offering the manual into evidence.
23 A. That is not what the manual says.
24 Q. You do not point your gun at someone unless you are
25 prepared to kill them?

EDWARDS - Cross

November 12, 2008 1068

1 A. No, that is not -- I think we have a definition of
2 "point." "Point" in my definition is raised at a
3 90-degree angle. A 45-degree angle is not pointing a
4 weapon at a person.

State v Theroff, 95 Wn 2d 385, 622 P 2d 1240 (1990)

“A persons right to use force is dependant upon what a reasonably cautious and prudent person in similar circumstances would have done and whether he reasonably believed that he was in danger of great body harm. Actual danger need not be present. *State v Ladiges*, 66 Wn 2d 273, 401 P 2d 977 (1965) *State v Miller*, 141 Wash. 104, 105, 250 P 2d 645 (1926). Consequently an instruction which fails to incorporate “the essential element that the person using the force need only reasonably believe, in light of all the facts and circumstances known to him, that he....is in danger” is erroneous. *State v Fesser*, 23 Wn App 422, 423, 595 P 2d 955, *review denied*, 92 Wn 2d 1030 (1979). Page 390 *State v Theroff*, 95 Wn 2d 385, 622 P 2d 1240 (1990)

JURY INSTRUCTION ERRORS

The trial court proposed jury instructions, formed from the testimony at jury, the state’s presentations and the defense’s presentations. The proposed instructions included self defense and RCW 27.44.040 instructions. CP 469-503, RP 11/12/2008. The court then removed them under objection from the defense. The court’s final instructions lack these instructions. CP 504-528, RP 11/12/2008. Both the proposed and the court instructions to the jury are found in the Appendix.

Did the Trial court error on the jury instructions? Did the trial court fail to instruct the jury on self defense and citizen’s arrest?

The court did not include the instructions on self defense to the jury. The self defense instruction was included in the proposed jury instruction.

State v. Redwine, 72 Wash App 625, 865 P 2d 552, (1984)

Property owner pointed shotgun at process server who refused to leave.

“To be entitled to an instruction on self-defense, the defendant need only prove “any evidence” of self defense. *Gogolin* at 643. When some evidence of self defense is presented, the jury should be instructed that the State bears the burden of proving the absence of self-defense beyond a reasonable doubt. *McCullum* at 500. the jury must be informed in an unambiguous way that the State must prove the absence of self defense beyond a reasonable doubt. *Acosta* at 621.

In this case, the trial court concluded that the testimony of the presented by Mr. Redwine did not was sufficient to support a self-defense instruction, instruction 7. As to the fourth degree assault, Mr. Redwine produced evidence Mr. Hines remained on the property, refusing to leave after service of the papers. As to the second degree assault, Mr. Redwine presented evidence that he believed that Mr. Hines was reaching for a pistol. We agree this evidence is sufficient to require an instruction on lawful use of force on both charges.”

Page 630-631 *State v. Redwine*

“Mr. Redwine presented sufficient evidence to present the issue of self defense to the jury, A reasonable juror could have mistakenly imputed upon Mr. Redwine the burden of proving self defense. Because the jury instructions in the present case may well have affected the final outcome of the case, the error is not harmless beyond a reasonable doubt. *McCullen* at 498.”

Page 631 *State v. Redwine*

“A jury instruction which improperly shifts the burden of proof to the defendant violates due process and is a constitutional question which may be raised for the first time on appeal. *State v McCullum*, 98 Wn 2d 484, 488, 656 P 2d 1064 (1964).”

Page 629 *State v. Redwine*

“The due process clause of the fourteenth amendment to the United States Constitution requires the state to prove beyond a reasonable doubt all facts necessary to constitute the crime charged. *Sandstom v Montana*, 442 US 510, 520, 61 L. Ed. 2d 39, 99 S. Ct. 2450 (1979); *In Re Winship*, 387 U S 358, 364, 25 L Ed. 2d 368, 90 S. Ct. 1068 (1970),

Page 629 *State v. Redwine*

“The trial judge attempted to instruct on the use of force by the appellant, but did not include the essential elements of reasonable belief of danger. The Appellants excepted to this to this omission.

We are of the opinion that the trial court’s instruction was incomplete and that the failure to instruct as urged by appellant constitutes reversible error.

In *State v Miller*, 141 Wash. 104, 105, 250 Pac. 645 this court said:

“This instruction left it for the jury whether it was necessary for the appellants to use force in defending themselves, and as to the amount of force necessary for that purpose. This is not a correct statement of the law, for the jury might well have believed that the appellants were not justified in fact in using any force, or that they used more force than actually necessary. The true test, was what was the condition at the time of the assault was made; and the appellant right to resist force with force is dependable upon what a reasonably cautious and prudent man, situated as the appellants, would have done under the condition then existing. If the appellants at the time of the alledged assault upon them, as reasonably and ordinary cautious and prudent men, honestly believed they were in danger of great bodily harm, they would have the right to resort to self defense, and their conduct is to be judged by their condition appearing to them at the time, not by the condition as it might appear to the jury in the light of of testimony before it.”

“The appellants need not have been in actual danger of great bodily harm, but they were entitled to act on appearances; and if they believed in good faith and on reasonable grounds that they were in actual danger of great bodily harm, although it afterwards might develop that they were mistaken as to the extent of the danger, if they acted as reasonably and ordinary cautious and prudent men would have done under the circumstances as they appeared to them, they were justified in defending themselves.”

State v Fesser, 23 Wn App 422, 423, 595 P 2d 955, review denied, 92 Wn 2d 1030 (1979). Page 277

COUNSEL AND PROCEDURAL ERRORS

28. Did the trial court error on pacing, GR 33, continuances, questioning witnesses, forcing the defendant to continue when ill?

The trial court did not allow a continuance to allow the defendant / pro se to obtain medical care. The court did not follow GR 33 accommodations for seizures and failed to respect the needs of the defendant and the orders of the physician. The defendant asked for a one week continuance. RP 10/28/2008 and RP 10/29/2008.

State v Guajarido, 50 Wn App 16, 746 P 2d 1231 (1987) 30 days suspension from the practice of law is unavoidable or unforeseen circumstances, and also necessitates a postponement of trial in administration of justice.

29. Were the errors of the trial court cumulative and prejudicial to the defendant?

The trial court committed numerous errors. These errors were prejudicial to the defendant and cumulative. Errors that are cumulative are more serious than an isolated error or errors that are easily ignored.

State v Oughton, 26 Wn App 74, 612 P 2d 812 (1980)

“The combined effect of an accumulation of errors, no one of which, perhaps, standing alone, might be of sufficient gravity to constitute grounds for reversal, may well require a new trial. *State v Badda*, 63 Wn 2d 176, 183, 385 P 2d 859 (1963). This court has applied the doctrine even where, as here, valid grounds exist for reversal, in the hope that such other errors will not be repeated on remand. See e.g. *State v Whalon*, supra at 804.”

Page 85 *State v Oughton*, 26 Wn App 74, 612 P 2d 812 (1980)

State v Badda, 63 Wn 2d 176, 183, 385 P 2d 859 (1963)

“The combined effect of an accumulation of errors, no one of which, perhaps standing alone might be of sufficient gravity to constitute grounds for reversal, may well require a new trial.” *State v Simmons*, 59 Wn (2d) 381, 369 P (2d) 378; *State v Swenson*, 62 Wn 2d 259, 382 P 2d 614.

Page 183 *State v Badda*, 63 Wn 2d 176, 183, 385 P 2d 859 (1963)

State v Whalon, 1 Wn App 785, 464 P 2d 750 (1970).

“Even though we do not think that there was reversible error in the playing of the tape, this occurrence along with the rebuke to counsel and the refusal of the testimony of the defendant’s wife, are breaches of reasonable trial procedure and. When considered together, the three events have cumulative effect of depriving the defendant of a fair trial.

State v Simmons, 59 Wn 2d 381, 369 P 2d 378 (1962). Consequently, we believe the defendant that defendant should have a new trial, under the cumulative error rule, as well as for the other grounds stated herein.”

Page 804 *State v Whalon*, 1 Wn App 785, 464 P 2d 750 (1970).

State v Simmons, 59 Wn 2d 381, 369 P 2d 378 (1962)

“The issue here is whether a defendant convicted of assault with intent to commit rape received a fair trial. Our conclusion is that he did not. The accumulation of prejudicial incidents and misconduct in a case where the factual issue was a very close one, tipped the scale so heavily against the defendant that any semblance of a fair trial was lost.”

Page 382-383 *State v Simmons*, 59 Wn 2d 381, 369 P 2d 378 (1962)

State v Swenson, 62 Wn 2d 259, 382 P 2d 614. (1963)

“The total of all events as revealed in the record of trial here—irregular in nature, prejudicial in character—together with the very force of circumstances arising from the obvious pregnancy and the emotional collapses of this vital and telling witness on cross-examination, makes mandatory an evaluation of the effect of the same. In addition to the possibilities of sympathy, on the one hand and a corresponding prejudice on the other, we have the likelihood of a marked impairment of the right to cross-examine. Though in its rulings, the court did not in any way curtail or hinder the appellant’s right to cross-examination and allowed wide latitude and abundant time, the physical and emotional condition of this crucial witness compelled appellant to proceed with extreme caution. Appellant was obligated to exercise restraint not necessarily because the answers might on cross-examination might prove damaging or even emphasize the telling evidence on direct—these are the expected and normal risks—but she was forced to circumscribe her cross-examination for fear of being held blameworthy by the jury in goading a pregnant woman, who had demonstrated on cross-examination her inability emotionally and physically to undergo to undergo the very type of searching cross-examination that the situation demanded.

Page 278 *State v Swenson*, 62 Wn 2d 259, 382 P 2d 614. (1963)

“Cross-examination of a witness is a matter of right. . . . “Counsel cannot know in advance what pertinent facts may be elicited upon cross-examination. For that reason it is necessary to be exploratory. . . . It is the essence of a fair trial that reasonable latitude be given the cross-examination, even though he is unable to state to the court what facts a reasonable cross-examination might develop. . . .” *Alford v United States*, *supra*.

Where the supreme court held it in error in the refusal of the trial court to allow what seems to us to be a rather minor question, the far greater degree of impairment of the right to cross-examine is quite obvious in the case at bar. We think all of the circumstances of the trial court combine to materially embarrass the appellant in the exercise of her right to cross-examination.”

Page 279 *State v Swenson*, 62 Wn 2d 259, 382 P 2d 614. (1963)

“Throughout the centuries, it has been the goal of the courts, law teachers, and lawyers to create and maintain forums where only the truth will emerge. That this goal from time to time has not been reached goes without saying. Being institutions’ created by people and conducted by people, the courts are subject to the same imperfections which people are heir to. Final achievement of this goal and fulfillment of these aspirations could be reached only under what might be called laboratory conditions where the courtrooms are as free of extraneous influences as the surgery of a modern hospital is free from contamination. Because witnesses, jurors, lawyers and even judges bring with them into the courtroom, all of the physical, emotional and intellectual qualities—differing one from another in thousand ways—which go to make up the total human personality, it is likely that reactions to the same situation will vary in different individuals. Thus, that which will excite sympathy or arouses prejudice in one juror will possibly be shrugged off phlegmatically by another. Where one juror might see a simple routine statement of explanation in the court’s references to the witness’s physical condition, another might would treat the same statements of as expressions of sympathy toward the witnesses in her ordeal and transform these sentiments against the defendant. The same analysis could be performed of all the interruptions and emotional collapses engendering by the cross-examination. While so-called laboratory conditions can never be realized, it is, nevertheless, the burden of the courts to strive for them and to try all cases in

atmospheres of complete impartiality, not only without any reservation whatever but devoid of appearance of any such reservation. If the trial has been shorn of any of the ingredients from which substantial due process is made, it is of small moment that the mechanism which does this falls within the recognition classifications of judicial error, or, on the contrary, arises from a combination of circumstances events either partially or wholly beyond the court's control. In either case, the decision must be the same. Any rule to the contrary will sacrifice our bill of rights and our concept of substantive due process upon the altar of expediency.

It is our view, then, that the events of the cross-examination of Virginia Ferguson, coming as they did against the backdrop of the vital importance as a witness against the appellant, considering in their entirety, combine to deprive the the appellant of these essentials of substantive due process, which are requisite under our system."

Page 280-281 *State v Swenson*, 62 Wn 2d 259, 382 P 2d 614. (1963)

JUDGMENT AND SENTENCING AND RESTITUTION ERRORS

Was the judgment and sentencing, restitution excessive for the convicted crime?

- a. Did the trial court error in allowing a continuance for defendant's counsel to appear? Did the trial court allow the defendant to prepare for judgment and sentencing? Was there an error in calculating the offense?***
- b. Was the post jury order restrictive on defendant's ability to prepare for judgment and sentencing?***
- c. Was the no-contact order excessive, especially against alleged victim Patrick Hall? Was the no-contact order excessive, especially against alleged victim Paul Miller?***
- d. Was the trial court excessive in requiring the mental health evaluation when there was no evidence of mental illness?***
- e. Did the restitution match the actual damages of victim Paul Miller? Did the restitution match the actual damage to victim Patrick Hall?***

Defense counsel asked for a continuance at the sentencing hearing on November 17, 2008 to allow new counsel to appear and represent Colleen Edwards. The defendant was incinerated and had no opportunity to prepare for sentencing. CP 536, RP 11/13/2008.

The judgment and sentence alleges that Patrick Hall is a victim and is entitled to restitution, Mr. Hall was never present at the scene.(see page in this brief, RAP 11/3/2008). He is not a victim. CP 574-583,

The count indicated on the judgment and sentence is in error, it states two counts, there is only one count.

Restitution is excessive because the alleged victim testified that he did not incur any expenses nor was he injured by the defendant. He testified that he lost half hour of sleep due to oversleeping, which even if not in error due to his testimony it is a total of \$27.00. The restitution amount on the judgment and sentence is \$500. CP 574-583, RAP 11/17/2008/

A copy of the judgment and sentence is in the Appendix.
“Restitution must be based upon a causal connection between the crime and the victim’s damages. A casual connection is not established simply because a victim or insurer submits proof of expenditures for replacing property stolen or damages by the person convicted.” WAPRAC 13, page 381

State v Dedonado, 99 Wn App 251, 991 P 2d 1216 (2000) victim sought damages for a new generator.

State v Pockert, 53 Wn App 491, 768 P 2d 504 (1989) unless a defendant admits or acknowledges the amount of a victim’s loss, he is entitled to an evidentiary hearing to determine the amount of restitution.
WAPRAC 13 page 282

State v Christensen, 100 Wn App 534, 997 P 2d 1010 (2000) restitution properly required defendant to pay difference between actual loss and amount recovered in civil suit, together with attorney’s fees.

State v Eltis, 94 Wn 2d 489, 617 P 2d 993 (1980) superseded by statute 99 Wn 2d 75, 658 P 2d 1247 (1983) holding that for purposes of RCWA 9.95.210 the “crime in question” only involves the victims named in the information when the conviction could be based solely on acts against such persons, even through evidence of a scheme injurious to the general public is presented.
WAPRAC 13 page 282-283

State v Kisor, 68 Wn App 610, 619, 844 P 2d 1038 (1993)
citing *State v Mark*, 36 Wn App 428, 433, 675 P 2d 1250 (1984)
“The exercise of such authority is reversible only where it is manifestly unreasonable, or exercised on untenable grounds or for untenable reasons.”

State v Kisor, 68 Wn App at 619
“In determining any sentence, including restitution, the sentencing court may rely on no more information than it admitted by the plea agreement, or admitted acknowledged, or proved in a trial, or at the time of sentencing.”

State v Woods, 90 Wn App 904, 907, 953 P 2d 834 (1998)

“Where a defendant disputes material facts for purposes of restitution, the sentencing court must either not consider those facts or grant any evidentiary hearing, where the State must prove the restitution amount by a preponderance of the evidence.”

State v Woods, RCWA 9.94A.370(2)

“Restitution does not need to be proven with specific accuracy. Evidence is sufficient if it affords a reasonable basis for estimating loss.” However restitution must be based on a causal connection between the crime and the victim’s damages.

State v Bunner, 86 Wn App 158, 160, 936 P 2d 419 (1997)

Citing State v Vinyard

“The causation connection between Dedonaldo’s actions and the damages was an issue of material fact and was disputed. Thus an evidentiary hearing was required to determine whether the Adret Signal Generator was properly replaced with with the HP ESP 3000A and whether the such as the dome lamp bulbs, fluids, and front suspension alignment were were properly attributed to Dedonaldson’s actions.”

State v Mark

“A causal connection is not established simply because a victim or insurer submits proof of expenditures for replacement property stolen or damaged by the person convicted.”

Page 257 State v Dedonaldo

“Restitution is an intergral part of sentencing, and it is the state’s obligation to establish the amount of restitution.”

“RCW 9.94A.142. Similarly RCW 9.94A.142 does not explicitly require that the State summon witnesses or gain additional documentation to address a defendant’s challenges. Simply put the evidence presented by the State must afford a reasonable bais for estimating loss. Kisor 68 Wn App at 619 (citing Mark 36 Wn App at 434).”

“The sentencing court improperly imposed that requirement upon Dedonado and and ordered restitution based upon evidence that did not establish a causal connection between Dedonado ‘s actions and the damages. Entry of the order was an abuse of discretion.”Page 257. State v Dedonaldo

State v Davidson,

“RCW 9.94A.142 provides in part that “restitution ...shall be based upon easily a16 Wn 2d 917, 809 P 2d 1374 (1991) scertainable damages for (a) injury to or loss of property, (b) actual expenses incurred for treatment for injury to persons, and (c) loss wages resulting from injury.” Page 921. State v Davidson, 116 Wn 2d 917, 809 P 2d 1374 (1991)

Since the victim actual cost of damages was \$27.00, the amount of \$500 is excessive. No evidentiary hearing was for the restitution hearing, nor was any restitution hearing held within six months after the judgment and sentence.

VI. Conclusion

In conclusion there are numerous errors in the pre-trial, trial and sentencing.

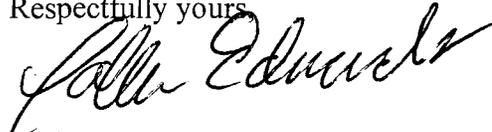
There are errors in evidence and exhibit handling, errors in charging and discovery, errors in not admitting evidence, exhibits, witnesses and experts that should have been admitted and there are errors in admitting evidence, exhibits, witnesses that should have been denied. There are errors in the jury instructions. There is error in the judgement and sentence and restitution.

The case should be remanded for a new trial, if not dismissed for failure to charge a crime.

Colleen Edwards asks for costs and expenses under RAP 18.1. due to the length of the brief, the amount of time and effort to prepare and research it.

Thank you for your time and consideration.

Respectfully yours



Colleen Edwards

Appendix

Judgment and Sentence

Jury Instructions, Court

Jury Instructions, Proposed

Subpoenas for Denied Defense Witnesses

Exhibit List

Department of Archaeology

Charts

Appendix

Incident / Investigation Report

Kitsap County Sheriffs Office

PROSECUTOR

OCA: K06-005045

CODES: DE-Deceased, DR-Driver, MN-Mentioned, MP-Missing Person, OT-Other, OW-Owner, PA-Passenger, PT-Parent/Guardian, RA-Runaway, RO-Registered Owner, RP-Reporting Party, VI-Victim							
O T H E R S I N V O L V E D	Code	Name (Last, First, Middle)	Type: <i>Individual</i>	Victim of Crime #	Age / DOB	Race	Sex
	VI2	Arthur, Peter C		I	30 3/11/1976	W	M
	Home Address				Home Phone		
	Employer Name/Address				Business Phone		
	3918 129th St, Glg Harbor, WA 98332						
	Pdh Construction, Inc				(253) 851-2999		
N A R R T I V E	Code	Name (Last, First, Middle)		Victim of Crime #	Age / DOB	Race	Sex
	RP1	Hall, Patrick Dean			40 5/23/1965	W	M
	Home Address				Home Phone		
	Employer Name/Address				Business Phone		
	8801 Banner Rd Se, Ollala, WA 98335				(253) 857-8684		
	Self				(000) 000-0000		

04-24-2006 1400

I was dispatched to 14231 Anatevka Lane SE for an assault with a gun. CenCom advised the caller, Patrick Hall, was the owner of PDH Contstruction, Inc and owner of the property. Hall reported that his employees called him from the above address where they are working and told him a female was pointing a gun at them.

I arrived at approximately 1410 and contacted victims Paul Miller and Peter Arthur, who were standing on the shoulder of Nelson Road approximately .200 yards from the intersection of Anatevka Lane. They told me the female, Colleen Edwards, walked over to them and told them to stop working. Miller caller Hall and told him what Edwards told him. Hall told him to continue to work. Miller said they continued to work and Edwards again approached them and told them to call 911. Miller told her to call 911 if she wanted some assistance and continued to work. Edwards then pulled a handgun on Miller and told him and Arthur that they were under arrest for trespassing. Miller told her to calm down. He called Hall on his cell phone and Hall told Miller to do whatever she said. Hall then called 911. Miller said he walked away from the property and waited for law enforcement on Nelson RD.

Arthur said he was also on the property working with Miller. He heard Edwards talking to Miller. He heard Edwards say that they were under arrest and turned around to see Edwards holding a pistol pointed towards him and Miller.

Miller said Edwards was still on the property with the gun. They also said there was an unidentified male with her who was taking pictures with a disposable camera. Miler said Edwards had a Taurus handgun and was wearing some type of vest across her chest with ammunition stored in it.

Deputy Walthall, Deputy Graunke, and Deputy Malloque arrived. We were all armed with our patrol rifles. We walked up to the intersection of Nelson and Anatevka Lane and saw Edwards about 150 feet down the road. I couldn't see her gun from my position. After we took up positions of cover, I called out to Edwards in a loud voice to drop her weapon. She did as I requested. I also saw a male, later identified as Michael Montfort, standing near her. I couldn't see if he was armed, but one of the other deputies told me the male was armed. I told him to drop his weapon. He took a pistol from his waist area and dropped it on the ground. I instructed him to walk backwards to my voice, which he did. Deputy Walthall handcuffed Montfort and escorted him to his patrol car. I then instructed Edwards to walk backwards to my voice. She did as requested and Deputy

Appendix
Judgment and Sentence

RECEIVED AND FILED
 IN OPEN COURT
 NOV 17 2008
 DAVID W. PETERSON
 KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)
) No. 06-1-00616-8
 Plaintiff,)
) JUDGMENT AND SENTENCE
 v.)
)
 COLLEEN MULVIHILL EDWARDS,)
 Age: 51; DOB: 03/21/1957,)
 Defendant.)

A sentencing hearing was held in which the Defendant, the Defendant's attorney, and the Deputy Prosecuting Attorney were present. The Court now makes the following findings, judgment and sentence.

The Defendant was found guilty, by plea jury verdict bench trial trial upon stipulated facts, of the following-

2.1 CURRENT OFFENSE(S) <i>Asterisk (*) denotes same criminal conduct (RCW 9.94A.525).</i>		RCW	Date(s) of Crime from to		Special Allegations*
I	Assault in the Second Degree	9A.36.021	04/24/2006	04/26/2006	
I	Armed With Firearm	9.94A.533	04/24/2006	04/24/2006	

2.2 CRIMINAL HISTORY (RCW 9.94A.525) <i>Asterisk (*) denotes prior convictions that were same criminal conduct.</i>	Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
No known criminal history				

2.3 SENTENCING DATA									
Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type*	Mo.	Total Standard Range (Mo.)	Maximum Term
I.	0	IV	3 to 9	-	X				10 years

Defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

*SPECIAL ALLEGATION KEY (RCWs)- F=Firearm (9.94A.533), DW=Deadly Weapon (9.94A.602,533); DV=Domestic Violence (10.99.020); SZ=School Zone (69.50.435,533); SM=Sexual Motivation (9.94A.835 and/or



9.94A.533); **VH**=Vehicular Homicide Prior DUI (46.61.520,5055); **CF**=drug crime at Corrections Facility (9.94A.533); **JP**=Juvenile Present at manufacture (9.94A.533,605); **P**=Predatory (Laws of 2006, ch. 122, §1); **<15**=Victim Under 15 (Laws of 2006, ch. 122§2); **DD**=Victim is developmentally disabled, mentally disordered, or a frail elder or vulnerable adult (Laws of 2006 ch 122 §3).

CONFINEMENT/STATUS

- 4.5-FIRST-TIME OFFENDER. RCW 9.94A.030, 9.94A.650. The Defendant is a First Offender. The Court waives the standard range and sentences the Defendant within a range of 0-90 days.
- CHEMICAL DEPENDENCY-The Court finds the Defendant has a chemical dependency that contributed to the offense(s). RCW 9.94A.030(9).
- 4.5-DOSA-SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A.660. The standard range is waived and the Court imposes a sentence of one-half the midpoint of the standard range, or 12 months, whichever is greater.
- 4.7-WORK ETHIC CAMP. RCW 9.94A.690, 72.09.410. The Court finds that the Defendant is eligible and is likely to qualify for work ethic camp and the Court recommends that Defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, Defendant shall be released on community custody for any remaining time of total confinement, subject to conditions. Violation of the conditions of community custody may result in a return to total confinement for the balance of Defendant's remaining time of total confinement.
- 2.4-EXCEPTIONAL SENTENCE-Substantial and compelling reasons exist justifying a sentence above below the standard range, or warranting exceptional conditions of supervision for count(s) _____. The Prosecutor did did not recommend a similar sentence. The exceptional sentence was stipulated by the Prosecutor and the Defendant. Findings of Fact and Conclusions of Law entered in support of the exceptional sentence are incorporated by reference.
- 4.5-PERSISTENT OFFENDER-The Defendant is a Persistent Offender as defined by RCW 9.94A.030(32) and 9.94A.570 and is sentenced to life without the possibility of early release.

COURT'S SENTENCE:			<i>Sentences over 12 months will be served with the Department of Corrections. Sentences 12 months or less will be served in the Kitsap County Jail, unless otherwise indicated.</i>		
COUNT I - Assault in the 2 nd Degree <u>3</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT I - Special Allegation Armed with a Firearm Sentence Enhancement <u>36</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT ____ <input type="checkbox"/> Days <input type="checkbox"/> Mo.			
COUNT ____ <input type="checkbox"/> Days <input type="checkbox"/> Mo.	COUNT ____ Days with ____ Days Suspended for ____ Years				
COUNT ____ <input type="checkbox"/> Days <input type="checkbox"/> Mo.	COUNT ____ Days with ____ Days Suspended for ____ Years				
COUNT__ 12 months + 1 day	COUNT__ 12 months + 1 day	COUNT__ 12 months + 1 day			
DOSA SENTENCE- COUNT ____ Months		Actual Time to be served- ____ Months			
DOSA SENTENCE- COUNT ____ Months		Actual Time to be served- ____ Months			
DOSA SENTENCE- COUNT ____ Months		Actual Time to be served- ____ Months			
IF MULTIPLE COUNTS-Total confinement ordered: <u>39</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Months. (<input type="checkbox"/> per DOSA sentence) COUNTS SERVED- <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive <input checked="" type="checkbox"/> Firearm and Deadly Weapon enhancements served consecutive; the remainder concurrent. <input type="checkbox"/> Sexual Motivation enhancements served consecutive; the remainder concurrent. <input type="checkbox"/> VUCSA enhancements served <input type="checkbox"/> consecutive <input type="checkbox"/> concurrent; the remainder consecutive.					

4.4-CONFINEMENT ONE YEAR OR LESS-Defendant shall serve a term of confinement as follows:
 JAIL ALTERNATIVES/PARTIAL CONFINEMENT. RCW 9.94A.030(31). If the defendant is found eligible, the confinement ordered may be converted to-Work Release, RCW 9.94A.731 (*Note: the*



SUPERVISION SCHEDULE: The Defendant Shall-

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STANDARD

- Obey all laws and obey instructions, affirmative conditions, and rules of the court, DOC and CCO.
- Report to and be available for contact with assigned CCO as directed.
- Obey all no-contact orders including any in this judgment.
- Remain within prescribed geographical boundaries and notify the court and CCO in advance of any change in address or employment.
- Notify CCO within 48 hours of any new arrests or criminal convictions.
- Pay DOC monthly supervision assessment.
- Comply with crime-related prohibitions.

SERIOUS VIOLENT / VIOLENT OFFENSE, CRIME AGAINST A PERSON AND/OR DRUG OFFENSE (non-DOSA)

- Work only at DOC-approved education, employment and/or community service.
- Possess or consume no controlled substances without legal prescription.
- Reside only at DOC-approved location and arrangement.
- Consume no alcohol, if so directed by the CCO.

FIRST OFFENDER

- Obey all laws.
- Devote time to specific employment or occupation.
- Pursue a prescribed secular course of study or vocational training.
- Participate in DOC programs and classes, as directed.

Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed standard sentence range.

FINANCIAL GAIN

- Commit no thefts.
- Possess no stolen property.
- Have no checking account or possess any blank or partially blank checks.
- Seek or maintain no employment or in a volunteer organization where Defendant has access to cash, checks, accounts receivable or payable, or books without the prior written permission of the CCO after notifying employer in writing of this conviction.
- Use no names of persons other than the Defendant's true name on any document, written instrument, check, refund slip or similar written instrument.
- Possess no identification in any other name other than Defendant's true name.
- Possess no credit cards or access devices belonging to others or with false names.
- Cause no articles to be refunded except with the written permission of CCO.
- Take a polygraph test as requested by CCO to monitor compliance with supervision.

PSI CONDITIONS-All conditions recommended in the Pre-Sentence Investigation are incorporated herein as conditions of community custody, in addition to any conditions listed in this judgment and sentence.

ALCOHOL/DRUGS

- Possess or consume no alcohol.
- Enter no bar or place where alcohol is the chief item of sale.
- Possess and use no illegal drugs and drug paraphernalia.
- Submit to UA and breath tests at own expense at CCO request.
- Submit to searches of person, residence or vehicles at CCO request.
- Have no contact with any persons who use, possess, manufacture, sell or buy illegal controlled substances or drugs.
- Install ignition interlock device as directed by CCO. RCW 46.20.710-.750.

EVALUATIONS- Complete an evaluation for:

- substance abuse
- anger management
- mental health, and fully comply with all treatment recommended by CCO and/or treatment provider.

DOSA

- Successfully complete drug treatment program specified by DOC, and comply with all drug-related conditions ordered.
- Devote time to a specific employment or training.
- Perform community service work.

4.8-OFF-LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following "protected against drug trafficking areas" are off-limits to the Defendant while under county jail or DOC supervision:

PROGRAMS / ASSAULT

- Have no assaultive behavior.
- Successfully complete a certified DV perpetrators program.
- Successfully complete an anger management class.
- Successfully complete a victim's awareness program.

TRAFFIC

- Commit no traffic offenses
- Do not drive until your privilege to do so is restored by DOL.

HAVE NO CONTACT WITH: Paul William Miller,
DOB 8-5-64
Patrick Dean Hall.

OTHER:



Kitsap County Jail has the discretion to have the Defendant complete work release at the Kitsap County Jail or Peninsula Work Release), Home Detention, RCW 9.94A.731, .190, or Supervised Community Service or Work Crew, RCW 9.94A.725 at the discretion of the Kitsap County Jail.

STRAIGHT TIME. The confinement ordered shall be served in the Kitsap County Jail, or if applicable under RCW 9.94A.190(3) in the Department of Corrections.

4.5-CONFINEMENT OVER ONE YEAR-Defendant is sentenced to the above term of total confinement in the custody of the Department of Corrections.

OTHER SENTENCES -This sentence shall be served consecutive concurrent to sentence(s) ordered in cause number(s) _____

CREDIT FOR TIME SERVED. RCW 9.94A.505. Defendant shall receive credit for time served prior to sentencing solely for this cause number as computed by the jail unless specifically set forth-____ days.

4.3-NO CONTACT ORDER-Defendant shall abide by the terms of any no contact order issued as part of this Judgment and Sentence.

SUPERVISION

4.6-COMMUNITY CUSTODY - SENTENCES OTHER THAN DOSA, SSOSA AND WORK ETHIC CAMP. RCW 9.94A.505, .545 and WAC 437-20-010. Defendant shall be supervised for the longest time period checked in the table below. Defendant shall report to DOC in person no later than 72 hours after release from custody and shall comply with all conditions stated in this Judgment and Sentence, including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody (and supervised probation if ordered). *First Offenders-RCW 9.94A.650.* If Defendant is sentenced as First Offender, the Defendant may be supervised for up to 12 months; and if treatment is ordered, community supervision may include up to the period of treatment but not exceed 2 years.

Community Custody Is Ordered for the Following Terms or Ranges (non-RCW 9.94A.712):

- COUNT(S) _____ 12 months 24 months _____ months
 COUNT(S) _____ 24 to 48 months for Serious Violent Offense
 COUNT(S) I 18 ~~to 36~~ months for Violent Offense
 COUNT(S) _____ 9 to 18 months for Crimes Against Persons
 COUNT(S) _____ 9 to 12 months for Drug Offense (non-DOSA)

Supervised Probation is Ordered for Gross Misdemeanor and Misdemeanor convictions in this Judgment and Sentence, to be administered by the DOC, for:

- COUNT(S) _____ 12 months 24 months _____ months

• If community custody is ordered for a sentence of more than one year, the Defendant shall be on community custody for the above range or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered.

4.6-WORK ETHIC CAMP-COMMUNITY CUSTODY. RCW 9.94A.690, 72.09.410. Upon completion of the work ethic camp, the Defendant shall be on community custody for any remaining time of total confinement. Defendant shall comply with all conditions stated in this Judgment and Sentence, including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody. Violation of the conditions may result in a return to total confinement for the balance of the Defendant's remaining time of confinement.

4.6-DOSA-COMMUNITY CUSTODY. RCW 9.94A.660. Defendant shall serve the remainder of the midpoint of the standard range in community custody. Defendant shall undergo and successfully complete a substance abuse treatment program approved by the division of alcohol and substance



1 abuse of the Dept. of Social and Health Services. Defendant shall report to the DOC in person not later
2 than 72 hours after release from custody and shall comply with all conditions stated in this Judgment
3 and Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by
4 the court or DOC during community custody.

5 **4.7-ADDITIONAL CONFINEMENT UPON VIOLATION OF DOSA SENTENCE CONDITIONS**-If the
6 Defendant violates any of the sentence conditions under this alternative or is found by the United
7 States attorney general to be subject to a deportation order, a violation hearing shall be held by the
8 DOC, unless waived by the Defendant. If the DOC finds that the conditions have been willfully
9 violated, the Defendant may be reclassified to serve the remaining balance of the original sentence. If
10 the DOC finds that the Defendant is subject to a valid deportation order, the DOC may
11 administratively terminate the Defendant from the program and reclassify the Defendant to serve the
12 remaining balance of the original sentence. A Defendant who fails to complete the special drug
13 offender sentencing alternative program or who is administratively terminated from the program shall
14 be reclassified to serve the unexpired term of the sentence as ordered by the sentencing judge and shall
15 be subject to all rules relating to community custody and earned release time. A Defendant who
16 violates any conditions of supervision as defined by the DOC shall be sanctioned. Sanctions may
17 include, but are not limited to, reclassifying the Defendant to serve the unexpired term of sentence as
18 ordered by the sentencing judge. RCW 9.94A.660.

19 **4.7-ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION**
20 **FROM THE DOSA PROGRAM**-For persons convicted of a drug offense or of a crime against a person,
21 the following term of community custody is ordered and shall be imposed upon the Defendant's failure
22 to complete or the Defendant's administrative termination from the special drug offender sentencing
23 alternative program: Upon release from custody, Defendant shall serve a range of _____ to _____
24 months in community custody, and shall comply with all conditions stated in this Judgment and
25 Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed
26 by the court or DOC.
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FINANCIAL OBLIGATIONS

4.1-**LEGAL FINANCIAL OBLIGATIONS-RCW 9.94A.760.** The Court finds that the Defendant has the ability or likely future ability to pay legal financial obligations. The Defendant shall pay by cash, money order, or certified check to the Kitsap County Superior Court Clerk at 614 Division Street, MS-34, Port Orchard, WA 98366, as indicated-

<input checked="" type="checkbox"/> X	\$500 Victim Assessment, RCW 7.68.035 [PCV]	\$ _____ Sheriff service/sub. fees [SFR/SFS/SFW/SRF]
	\$1100 Court-appointed attorney fees [PUB]	\$ _____ Witness Costs [WFR]
<input checked="" type="checkbox"/> X	\$200 Filing Fee; \$110 if filed before 7/24/2005 [FRC]	\$ _____ Jury Demand fee [JFR]
<input checked="" type="checkbox"/> X	\$100 DNA / Biological Sample Fee, RCW 43.43.7541	\$ _____ Court-appointed defense fees/other defense costs
	<input type="checkbox"/> \$1,000 <input type="checkbox"/> \$2,000 Contribution to SIU-Kitsap County Sheriff's Office	<input checked="" type="checkbox"/> X \$100 Contribution-Kitsap County Expert Witness Fund [Kitsap County Ordinance 139.1991]
	\$100 Crime Lab fee, RCW 43.43.690(1)	\$500 Contribution-Kitsap Co. Special Assault Unit
	\$3,000 Methamphetamine / amphetamine Cleanup Fine, RCW 69.50.440 or 69.50.401(2)(b)	\$100 Contribution-Anti-Profitteering Fund of Kitsap Co. Prosecuting Attorney's Office, RCW 9A.82 .110
	Emergency Response Costs - DUI, Veh. Homicide or Veh. Assault, RCW 38.52.430, per separate order.	\$100 Domestic Violence Assessment, RCW 10.99.080 <input type="checkbox"/> Kitsap Co. YWCA <input type="checkbox"/> Kitsap Sexual Assault Ctr.

RESTITUTION-To be determined at a future date by separate order(s).

REMAINING LEGAL FINANCIAL OBLIGATIONS AND RESTITUTION-The legal financial obligations and/or any restitution noted above may not be complete and are subject to future order by the Court.

PAYMENT SCHEDULE - All payments shall commence immediately within 60 days from today's date, and be made in accordance with policies of the Clerk or DOC and on a schedule as follows: pay \$100 \$50 \$25 _____ per month, unless otherwise noted-_____ RCW 9.94A.760.

12% INTEREST FOR LEGAL FINANCIAL OBLIGATIONS/ADDITIONAL COSTS-Financial obligations in this judgment shall bear interest from date of the judgment until paid in full at the rate applicable to civil judgments. An award of costs of appeal may be added to the total legal financial obligations. RCW 10.82.090, RCW 10.73.160.

INTEREST WAIVED FOR TIMELY PAYMENTS-The Superior Court Clerk has the authority to waive the 12% interest if the Defendant makes timely payments under this payment schedule.

50% PENALTY FOR FAILURE TO PAY LEGAL FINANCIAL OBLIGATIONS- Defendant shall pay the costs of services to collect unpaid legal financial obligations. Failure to make timely payments will result in assessment of additional penalties, including an additional 50% penalty if this case is sent to a collections agency due to non-payment. RCW 36.18.190.

OTHER

4.2-**HIV TESTING**-The Defendant shall submit to HIV testing. RCW 70.24.340.

4.2-**DNA TESTING**-The Defendant shall have a biological sample collected for DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency or DOC shall obtain the sample prior to the defendant's release from confinement. RCW 43.43.754. If the defendant is out of custody, he or she must report directly to the Kitsap County Jail to arrange for DNA sampling.

FORFEITURE-Forfeit all seized property referenced in the discovery to the originating law enforcement agency unless otherwise stated.

4.10-**COMPLIANCE WITH SENTENCE**-Defendant shall perform all affirmative acts necessary for DOC to monitor compliance with all of the terms of this Judgment and Sentence.

JOINT AGREEMENTS IN THE PLEA AGREEMENT-Are in full force and effect unless otherwise stated in this judgment and sentence.

EXONERATION-The Court hereby exonerates any bail, bond, and/or personal recognizance conditions.



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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 court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5).

5.3-**NOTICE OF INCOME-WITHHOLDING ACTION**-If the Court has not ordered an immediate notice of payroll deduction, you are notified that the DOC may issue a notice of a payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.5-**ANY VIOLATION OF JUDGMENT AND SENTENCE**-Is punishable by up to 60 days of confinement per violation. RCW 9.94A.634. The court may also impose any of the penalties or conditions outlined in RCW 9.94A.634.

5.6-**FIREARMS-You must immediately surrender any concealed pistol license and you may not own, use, or possess any firearm unless your right to do so is restored by a court of record.**

Clerk's Action Required-The court clerk shall forward a copy of the Defendant's driver's license, identicard, or comparable identification, to the DOL along with the date of conviction or commitment. RCW 9.41.040, 9.41.047.

Cross off if not applicable-

~~5.7-SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.~~

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1. General Applicability and Requirements:

Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

2. Offenders Who Leave the State and Return:

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

3. Change of Residence Within State and Leaving State:

If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, and register with that sheriff within 24 hours of moving. You must give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

4. Additional Requirements Upon Moving to Another State:

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.



1 **5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12):**

2 If you are a resident of Washington and you are admitted to a public or private institution of higher education, you
3 are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of
4 enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a
5 public or private institution of higher education, you are required to notify the sheriff for the county of your residence
6 of your employment by the institution within 10 days of accepting employment or by the first business day after
7 beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private
8 institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of
9 your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006) If
10 you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are
11 required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the
12 sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If
13 you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the
14 principal of the school.

15 **6. Registration by a Person Who Does Not Have a Fixed Residence:**

16 Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of
17 release in the county where you are being supervised if you do not have a residence at the time of your release from
18 custody. Within 48 hours excluding weekends and holidays after losing your fixed residence, you must send signed
19 written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for
20 more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the
21 sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's
22 office, and shall occur during normal business hours. You may be required to provide a list the locations where you
23 have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining
24 an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant
25 to RCW 4.24.550.

26 **7. Reporting Requirements for Persons Who Are Risk Level II or III:**

27 If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90
28 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's
29 office, and shall occur during normal business hours. If you comply with the 90 day reporting requirement with no
30 violations for at least five years in the community, you may petition the superior court to be relieved of the duty to
31 report every 90 days.

8. Application for a Name Change:

If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of
your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If
you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of
your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

5.8-PERSISTENT OFFENDER-

"Three Strike" Warning-You have been convicted of an offense that is classified as a "most serious offense"
under RCW 9.94A.030. A third conviction in Washington State of a most serious offense, regardless of whether the
first two convictions occurred in a federal or non-Washington state court, will render you a "persistent offender."

"Two Strike" Warning-In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree,
rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child
molestation in the first degree; or (2) any of the following offenses with a finding of sexual motivation: murder in the
first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second
degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in
the second degree, or a burglary in the first degree; or (3) any attempt to commit any of the crimes listed in RCW
9.94A.030(32), and you have at least one prior conviction for a crime listed in RCW 9.94A.030(32) in this state,
federal court, or elsewhere, this will render you a "persistent offender." RCW 9.94A.030(32).

Persistent Offender Sentence-A persistent offender shall be sentenced to a term of total confinement for life
without the possibility of early release, or, when authorized by RCW 10.95.030 for the crime of aggravated murder in
the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. RCW 9.94A.570.

5.8-DEPARTMENT OF LICENSING NOTICE-The court finds that Count _____ is a felony in the
commission of which a motor vehicle was used. **Clerk's Action**-The clerk shall forward an Abstract
of Court Record to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285.



1 5.8-TREATMENT RECORDS-If the Defendant is or becomes subject to court-ordered mental health or
2 chemical dependency treatment, the Defendant must notify DOC and must share the Defendant's treatment
3 information with DOC for the duration of the Defendant's incarceration and supervision. RCW 9.94A.562.

4 **Voting Rights Statement:**

5 I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my
6 voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge
7 issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring
8 the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board,
9 RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the
10 right is restored is a class C felony, RCW 92A.84.660.

11 Defendant's Signature: *Colleen Edwards*

12 **SO ORDERED IN OPEN COURT.**

13 DATED- 11/17/08

Anthony
14 JUDGE

15 *C. Wright*
16 Wright, WSBA NO. 34271
17 Deputy Prosecuting Attorney

Colleen Edwards
18 Edwards, WSBA NO. _____
19 Attorney for Defendant

Colleen Edwards
20 COLLEEN MULVIHILL EDWARDS

21 Defendant

22 If I have not previously done so, I hereby agree to waive my
23 right to be present at any restitution proceedings:
24 _____ (initials)



Appendix
Jury Instructions, Court

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)
) No. 06-1-00616-8
 Plaintiff,)
)
 v.)
)
 COLLEEN MULVIHILL EDWARDS,)
)
 Defendant.)

COURT'S INSTRUCTIONS TO THE JURY

DATED November 13, 2008

Anna M. Laurie, JUDGE
ANNA M. LAURIE

COPY

Colleen Edwards

Instruction No. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed

in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

Instruction No. 2

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

Instruction No. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State of Washington is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

Instruction No. 4

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common practice. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 5

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.

INSTRUCTION NO. 6

A person commits the crime of assault in the second degree when he or she assaults another with a deadly weapon.

Instruction No. 1

A firearm, whether loaded or unloaded, is a deadly weapon.

Instruction No. 8

A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

Instruction No. 9

An assault is an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

Instruction No. 10

To convict the defendant of the crime of assault in the second degree, as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about April 24, 2006, the defendant assaulted Paul Miller with a deadly weapon;
and
- (2) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

Instruction No. 11

It is not a defense to a criminal charge that the defendant believed his or her conduct was lawful. Ignorance of the law is no excuse for criminal conduct.

INSTRUCTION NO. 12

It is a defense to a charge of assault in the 2nd degree as charged in count one that the force used, attempted, or offered to be used was lawful as defined in this instruction.

The use of, attempt to use, or offer to use force upon or toward the person of another is lawful when used, attempted, or offered by a person who reasonably believes that he or she is about to be injured, or by someone lawfully aiding a person who he or she reasonably believes is about to be injured, and when the force is not more than is necessary.

The person using or offering to use the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of and prior to the incident.

The State has the burden of proving beyond a reasonable doubt that the force used, attempted, or offered to be used by the defendant was not lawful. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 13

Necessary means that, under the circumstances as they reasonably appeared to the actor at the time, (1) no reasonably effective alternative to the use of force appeared to exist and (2) the amount of force used was reasonable to effect the lawful purpose intended.

INSTRUCTION NO. 14

It is lawful for a person who is in a place where that person has a right to be and who has reasonable grounds for believing that he or she is being attacked to stand his or her ground and defend against such attack by the use of lawful force. The law does not impose a duty to retreat.

INSTRUCTION NO. 15

A person is entitled to act on appearances in defending herself or another, if that person believes in good faith and on reasonable grounds that she or another is in actual danger of great bodily harm, although it afterwards might develop that the person was mistaken as to the extent of the danger. Actual danger is not necessary for the use of force to be lawful.

INSTRUCTION NO. 14

Great bodily harm means bodily injury that creates a probability of death, or that causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

INSTRUCTION NO. 17

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 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.

INSTRUCTION NO. 18

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

Instruction No. 19

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given any exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)
) No. 06-1-00616-8
)
 Plaintiff,)
) VERDICT FORM
)
 v.)
)
)
 COLEEN MULVIHILL EDWARDS,)
)
)
 Defendant.)

1. We, the jury, find the defendant Colleen Mulvihill Edwards—
- Not Guilty** of the crime of Assault in the Second Degree as charged in count I.
 - Guilty** of the crime of Assault in the Second Degree as charged in count I.

DATE: _____

Presiding Juror's Signature

Instruction No. 20

You will also be given a special verdict form for the crime of Assault in the Second Degree, as charged in count I. If you find the defendant not guilty of this crime, do not use the special verdict form. If you find the defendant guilty of this crime, you will then use the special verdict form and fill in the blank with the answer “yes” or “no” according to the decision you reach. In order to answer the special verdict form “yes”, you must unanimously be satisfied beyond a reasonable doubt that “yes” is the correct answer. If any one of you has a reasonable doubt as to the question, you must answer “no”.

Instruction No. 21

For purposes of a special verdict, the State must prove beyond a reasonable doubt that the defendant was armed with a firearm at the time of the commission of the crime.

A person is armed with a firearm if, at the time of the commission of the crime, the firearm is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the firearm and the defendant. The State must also prove beyond a reasonable doubt that there was a connection between the firearm and the crime. In determining whether this connection existed, you should consider the nature of the crime, the type of firearm, and the circumstances under which the firearm was found.

If one participant in a crime is armed with a firearm, all accomplices to that participant are deemed to be so armed, even if only one firearm is involved.

A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)
)
 Plaintiff,) No. 06-1-00616-8
)
 v.) SPECIAL VERDICT FORM
)
 COLLEEN MULVIHILL EDWARDS,)
)
 Defendant.)

We, the jury, return a special verdict by answering the following question as follows—

1. Was the defendant, Colleen Edwards, armed with a firearm at the time of the commission of the crime?

Yes

No

Date: _____

Presiding Juror

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)	
	)	No.06-1-00616-8
Plaintiff,)	
	)	QUESTION FROM DELIBERATING JURY
v.)	
)	
COLLEEN MULVIHILL EDWARDS,)	
)	
Defendant.)	

Jurors: If, after carefully reviewing the evidence and instructions, you need to ask the court a procedural or legal question that you have been unable to answer, then write down your question on this form. Please print legibly. Do not state how the jury has voted.

JURY'S QUESTION: _____

DATE AND TIME: _____
Presiding Juror's Signature

COURT'S ANSWER (after consulting with attorneys): _____

DATE AND TIME: _____
Judge's Signature

INSTRUCTION NO. 22

The law provides that no person shall be placed in legal jeopardy for protecting, by any reasonable means necessary, herself, or for coming to the aid of another who is in imminent danger of assault, robbery, kidnapping, arson, burglary, rape, murder or other heinous crime.

Under this law, if a defendant's use of force was lawful as defined elsewhere in these instructions, the defendant has the right to be reimbursed by the State of Washington for the reasonable cost of all loss of time, legal fees, or other expenses involved in her defense.

INSTRUCTION NO. 23

In order for the court to award the defendant reasonable costs for the expenses incurred in defending this action, you must find that the defendant has proved the claim of lawful force by a preponderance of the evidence.

When it is said that a claim must be proved by a preponderance of the evidence, it means that you must be persuaded, considering all the evidence in the case, that the claim is more probably true than not true. Since this is a civil question, only ten of you must agree.

SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO. 06-1-00616-8

v.

VERDICT FORM

COLLEEN MULVIHILL EDWARDS,

Defendant.

We, the jury, return a special verdict by answering the following question:

QUESTION NO. 1: Did the Defendant, Colleen Mulvihill Edwards prove by a preponderance of the evidence that the use of force was lawful?

Answer: "Yes" or "No"

ANSWER: _____

If you answered "No" to Question 1, sign this verdict. If you answered "Yes" to Question 1, answer Question 2.

QUESTION NO. 2: Was the Defendant engaged in criminal conduct substantially related to the events giving rise to the crime with which the Defendant was charged?

Answer: "Yes" or "No"

ANSWER: _____

Sign and return this verdict.

DATED THIS _____ day of November, 2008.

Presiding Juror

Appendix
Jury Instructions, Proposed

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

COLLEEN MULVIHILL EDWARDS,

Defendant.

)
) No.06-1-00616-8
)
)
)
)
)
)
)

COURT'S INSTRUCTIONS TO THE JURY

DATED _____, JUDGE _____

Proposed
COPY

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed

in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.¹

¹ WPIC 1.02 (2nd ed. supp. 2005)

INSTRUCTION NO. 2

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.¹

¹ WPIC 1.04 (2nd ed. supp. 2005)

INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State of Washington is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.¹

¹ WPIC 4.01 (2nd ed. supp. 2005)

INSTRUCTION NO. 4

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common practice. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.¹

¹ WPIC 5.01 (2nd ed. 1994)

INSTRUCTION NO. 5

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.

INSTRUCTION NO. ~~13~~ 6

A person commits the crime of assault in the second degree when he or she assaults another with a deadly weapon.¹

¹ WPIC 35.10 (2nd ed. supp. 2005)

INSTRUCTION NO. 7

A firearm, whether loaded or unloaded, is a deadly weapon.¹

¹ WPIC 2.06 (2nd ed. Supp. 2005)

INSTRUCTION NO. 68

A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.¹

¹ WPIC 2.10 (2nd ed. supp. 2005)

INSTRUCTION NO. 89

An assault is an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.¹

¹ WPIC 35.50 (2nd ed. supp. 2005)

INSTRUCTION NO. 10

To convict the defendant of the crime of assault in the second degree, as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about April 24, 2006, the defendant assaulted Paul Miller with a deadly weapon;
and
- (2) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.¹

¹ WPIC 35.19 (2nd ed. supp. 2005)

INSTRUCTION NO. 5 11

It is not a defense to a criminal charge that the defendant believed his or her conduct was lawful. Ignorance of the law is no excuse for criminal conduct.¹

¹ *State v. Warfield*, 103 Wn.App. 152, 159, 5 P.3d 1280 (Div. 2 2000) (ignorance of the law is no excuse unless a statutory element of the crime requires proof a defendant knew he or she was violating the law)
State v. Reed, 84 Wn.App. 379, 384, 928 P.2d 469 (Div. 2 1997) (ignorance of the law is no excuse)
State v. Patterson, 37 Wn.App. 275, 282, 679 P.2d 416, *review denied*, 103 Wn.2d 1005 (Div. 1 1984) (a mistake of law is not a defense)
State v. Krzeszowski, 106 Wn.App. 638, 643, 24 P.3d 485 (Div. 1 2001) (“Ignorance of the law is no defense to a criminal prosecution.”)
See WPIC 19.04 (2nd ed. 1994) (Rape of a Child Defense) for a sample “It is not a defense” instruction.

INSTRUCTION NO. 12

It is a defense to a charge of Assault in the Second Degree that the force used was lawful as defined in this instruction.

The use of force upon or toward the person of another is lawful when used by a person who reasonably believes that she is about to be injured and when the force is not more than is necessary.

The person using the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of the incident.

The State has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 13

Necessary means that, under the circumstances as they reasonably appeared to the actor at the time, (1) no reasonably effective alternative to the use of force appeared to exist and (2) the amount of force used was reasonable to effect the lawful purpose intended.

INSTRUCTION NO. 14

It is lawful for a person who is in a place where that person has a right to be and who has reasonable grounds for believing that she is being attacked to stand her ground and defend against such attack by the use of lawful force. The law does not impose a duty to retreat.

INSTRUCTION NO. 15

A person is entitled to act on appearances in defending herself, if that person believes in good faith and on reasonable grounds that she is in actual danger of great bodily harm, although it afterwards might develop that the person was mistaken as to the extent of the danger. Actual danger is not necessary for the use of force to be lawful.

INSTRUCTION NO. 14

Great bodily harm means bodily injury that creates a probability of death, or that causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

INSTRUCTION NO. _____

It is a defense to a charge of Assault in the Second Degree that the force used was lawful as defined in this instruction.

The use of force by a person arresting one who has committed a felony and delivering the person arrested to a public officer competent to receive the person into custody is lawful.

The State has the burden of proving beyond a reasonable doubt that the use of force was not lawful. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. _____

It is a felony to knowingly remove, mutilate, deface, injure or destroy any cairn or grave of any native Indian. Disturbing native Indian graves through inadvertence, including disturbance through construction, mining, logging, agricultural activity, or any other activity is not a felony.

INSTRUCTION NO. 19

A person knows or acts knowingly or with knowledge when she is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that she acted with knowledge.

Acting knowingly or with knowledge also is established if a person acts intentionally.

INSTRUCTION NO. 20

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 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.

INSTRUCTION NO. 21

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

INSTRUCTION NO. 922

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given any exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.¹

¹ WPIC 151.00 (2nd ed. supp. 2005)

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)
) No.06-1-00616-8
 Plaintiff,)
) VERDICT FORM
 v.)
)
 COLEEN MULVIHILL EDWARDS,)
)
 Defendant.)

1. We, the jury, find the defendant Colleen Mulvihill Edwards—
- Not Guilty** of the crime of Assault in the Second Degree as charged in count I.
 - Guilty** of the crime of Assault in the Second Degree as charged in count I.

DATE: _____

Presiding Juror's Signature¹

¹ WPIC 180.01 (2nd ed. supp. 2005)

INSTRUCTION NO. 11 73

You will also be given a special verdict form for the crime of Assault in the Second Degree, as charged in count I. If you find the defendant not guilty of this crime, do not use the special verdict form. If you find the defendant guilty of this crime, you will then use the special verdict form and fill in the blank with the answer “yes” or “no” according to the decision you reach. In order to answer the special verdict form “yes”, you must unanimously be satisfied beyond a reasonable doubt that “yes” is the correct answer. If any one of you has a reasonable doubt as to the question, you must answer “no”.¹

¹ WPIC 160.00 (2nd ed. supp. 2005)

INSTRUCTION NO. 12 24

For purposes of a special verdict, the State must prove beyond a reasonable doubt that the defendant was armed with a firearm at the time of the commission of the crime.

A person is armed with a firearm if, at the time of the commission of the crime, the firearm is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the firearm and the defendant. The State must also prove beyond a reasonable doubt that there was a connection between the firearm and the crime. In determining whether this connection existed, you should consider the nature of the crime, the type of firearm, and the circumstances under which the firearm was found.

If one participant in a crime is armed with a firearm, all accomplices to that participant are deemed to be so armed, even if only one firearm is involved.

A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.¹

¹ WPIC 2.10.01 (2nd ed. supp. 2005)

INSTRUCTION NO. 25

The law provides that no person shall be placed in legal jeopardy for protecting, by any reasonable means necessary, herself, or for coming to the aid of another who is in imminent danger of assault, robbery, kidnapping, arson, burglary, rape, murder or other heinous crime.

Under this law, if a defendant's use of force was lawful as defined elsewhere in these instructions, the defendant has the right to be reimbursed by the State of Washington for the reasonable cost of all loss of time, legal fees, or other expenses involved in her defense.

INSTRUCTION NO. 26

In order for the court to award the defendant reasonable costs for the expenses incurred in defending this action, you must find that the defendant has proved the claim of lawful force by a preponderance of the evidence.

When it is said that a claim must be proved by a preponderance of the evidence, it means that you must be persuaded, considering all the evidence in the case, that the claim is more probably true than not true. Since this is a civil question, only ten of you must agree.

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)
)
 Plaintiff,) No.06-1-00616-8
)
 v.) SPECIAL VERDICT FORM
)
 COLLEEN MULVIHILL EDWARDS,)
)
 Defendant.)
 _____)

We, the jury, return a special verdict by answering the following question as follows—

1. Was the defendant, Colleen Edwards, armed with a firearm at the time of the commission of the crime?

Yes

No

Date: _____

Presiding Juror¹

¹ WPIC 190.02 (2nd ed. supp. 2005)

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)	
	)	No. 06-1-00616-8
Plaintiff,)	
	)	QUESTION FROM DELIBERATING JURY
v.)	
)	
COLLEEN MULVIHILL EDWARDS,)	
)	
Defendant.)	

Jurors: If, after carefully reviewing the evidence and instructions, you need to ask the court a procedural or legal question that you have been unable to answer, then write down your question on this form. Please print legibly. Do not state how the jury has voted.

JURY'S QUESTION: _____

DATE AND TIME: _____
_____ Presiding Juror's Signature

COURT'S ANSWER (after consulting with attorneys): _____

DATE AND TIME: _____
_____ Judge's Signature¹

¹ WPIC Appendix G, Volume 11A at 331-32 (2nd ed. supp. 2005)

SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO. 06-1-00616-8

v.

VERDICT FORM

COLLEEN MULVIHILL EDWARDS,

Defendant.

We, the jury, return a special verdict by answering the following question:

QUESTION NO. 1: Did the Defendant, Colleen Mulvihill Edwards prove by a preponderance of the evidence that the use of force was lawful?

Answer: "Yes" or "No"

ANSWER: _____

If you answered "No" to Question 1, sign this verdict. If you answered "Yes" to Question 1, answer Question 2.

QUESTION NO. 2: Was the Defendant engaged in criminal conduct substantially related to the events giving rise to the crime with which the Defendant was charged?

Answer: "Yes" or "No"

ANSWER: _____

Sign and return this verdict.

DATED THIS _____ day of November, 2008.

Presiding Juror

**Appendix
Exhibit List**

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

EXHIBIT LIST (EXLST)

No: 06-1-00616-8

Type of Hearing: Jury Trial

State of Washington vs. Colleen Edwards

Offered by	No. of Exhibit		Ruling	Title/Description of Exhibit	Date of Ruling
State	1		Admitted	Kevlar vest	11/03/08
State	2		Admitted	pouch type bag	11/03/08
State	3		Admitted	Gun	11/03/08
Defense	4		Refused	Transcribed interview of Paul Miller	11/3/08
Defense	5		Refused	Victim impact statements	11/3/08
Defense	6		Refused	Written statement of Paul Miller	11/3/08
Defense	7			Photos of property	
	8			Photos of property	
Defense	9			Photos of property	
Defense	10			Document titled notice *to the deed (recorded)*	
Defense	11			Document titled *complaint*	
Defense	12			Document titled *stop work order*	
Defense	13			Document titled *sent by certified mail and first class mail*	
Defense	14			Unofficial copy bargain and sale deed	
Defense	15		Refused	Declaration of service	11/4/08
Defense	16		Admitted	Color photos	11/04/08
Defense	17		Admitted	Certificate for colleen Edwards 12/5/1996	11/10/08
Defense	18		Denied	Certification study guide	11/10/08
Defense	19		Denied	Curriculum Vitae for Marty Hayes	11/10/08
Defense	20			Certificate from NRA 7/01/1992	
Defense	21			Certificate from NRA 12/01/1993?	
Defense	22			License #400624 for Colleen Edwards	

Exhibit(s) Location

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

EXHIBIT LIST (EXLST)

No: 06-1-00616-8

Type of Hearing: Jury Trial

State of Washington vs. Colleen Edwards

Defense	23		Admitted	Photo of Ms. Edwards	11/10/08
Defense	24			Copy of Order auth investigator funds 8/29/06	
Defense	25			Interview by Sandy Francis of Michael Monfort	

Exhibit(s) Location

Appendix
Subpoenas for Denied Defense Witnesses

SUPERIOR COURT OF WASHINGTON
FOR KITSAP COUNTY

STATE OF WASHINGTON,)
 Plaintiff,) No. 06 1 00616 8
 vs.)
Colleen Mulvihill Edwards,)
 Defendant.)

THE STATE OF WASHINGTON TO: *charlie Sigo*

YOU ARE HEREBY COMMANDED to be and appear before the Honorable Anna Laurie, Department 3, Superior Court for the State of Washington, Kitsap County Courthouse, 614 Division Street, Port Orchard, Washington, on the 5th day of November at 9:00 o'clock am., or as otherwise directed by Colleen Edwards, then and there to testify as a witness on behalf of defendant, Colleen Edwards in a certain cause herein pending, and to remain in attendance on said Court until discharged and HEREIN FAIL NOT AT YOUR PERIL.

DATED at Port Orchard, Washington, this 29 day of October, 2008.



Judge Anna Laurie

Presented by
Pro Se for Defendant
Colleen Edwards
3377 Bethel Road SE, Suite 107, PMB 334
Port Orchard WA 98366
253 857 7943

SUPERIOR COURT OF WASHINGTON
FOR KITSAP COUNTY

STATE OF WASHINGTON,)	
Plaintiff,	)	No. 06 1 00616 8
vs.)	
Colleen Mulvihill Edwards,	)	Subpoena
Defendant.)	

THE STATE OF WASHINGTON TO: Dr. Richard Waltman, M.D.

YOU ARE HEREBY COMMANDED to be and appear telephonically before the Honorable Anna Laurie, Department 3, Superior Court for the State of Washington, Kitsap County Courthouse, 614 Division Street, Port Orchard, Washington, on the 5th day of November at 9:00 o'clock am., or as otherwise directed by Colleen Edwards, then and there to testify as a witness on behalf of defendant, Colleen Edwards in a certain cause herein pending, and to remain in attendance on said Court until discharged and HEREIN FAIL NOT AT YOUR PERIL.

DATED at Port Orchard, Washington, this 29 day of October, 2008.



Judge Anna Laurie

Presented by
Pro Se for Defendant
Colleen Edwards
3377 Bethel Road SE, Suite 107, PMB 334
Port Orchard WA 98366
253 857 7943

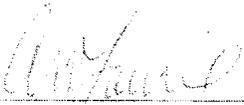
SUPERIOR COURT OF WASHINGTON
FOR KITSAP COUNTY

STATE OF WASHINGTON,)
 Plaintiff,) No. 06 1 00616 8
 vs.)
Colleen Mulvihill Edwards,) Subpoena
 Defendant.)

THE STATE OF WASHINGTON TO: Stephanie Kramer

YOU ARE HEREBY COMMANDED to be and appear before the Honorable Anna Laurie, Department 3, Superior Court for the State of Washington, Kitsap County Courthouse, 614 Division Street, Port Orchard, Washington, on the 5th day of November at 9:00 o'clock am., or as otherwise directed by Colleen Edwards, then and there to testify as a witness on behalf of defendant, Colleen Edwards in a certain cause herein pending, and to remain in attendance on said Court until discharged and **HEREIN FAIL NOT AT YOUR PERIL.**

DATED at Port Orchard, Washington, this 29 day of October, 2008.



Judge Anna Laurie

Presented by
Pro Se for Defendant
Colleen Edwards
3377 Bethel Road SE, Suite 107, PMB 334
Port Orchard WA 98366
253 857 7943

Appendix
Department of Archaeology



STATE OF WASHINGTON

DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

1063 S. Capitol Way, Suite 106 • Olympia, Washington 98501
Mailing address: PO Box 48343 • Olympia, Washington 98504-8343
(360) 586-3065 • Fax Number (360) 586-3067 • Website: www.dahp.wa.gov

December 6, 2010

Ms. Colleen Edwards
325035
Washington Corrections Center for Women
9601 Baijaich Rd NW
Gig Harbor, WA 98332-8300

Ms. Edwards,

Your records request stated "Please send me copies of any communications, documents, filings regarding two properties in Olalla, addresses 5007 Nelson Road and 14231 Anatevka, please also send me copies of Archeology Excavation Permit Application Form, Archeology Site Form, Abandoned Cemeteries (sic) Program Certification Application."

We have determined that we have relevant records in various forms:

- 48 pages of emails
- 38 pages of attachments to the emails
- 47 pages of various records from our administrative database
- 9 pages of blank forms

This brings the total number of pages to 142. We currently charge a \$0.15 per page copy fee for paper records. Please provide cash, check or money order totaling \$21.30, as we can not accept credit or debit cards at this time. We will require payment in advance of releasing the records.

If you have any further questions please let us know.

Regards,

Rick Anderson
Records Manager



STATE OF WASHINGTON

DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

1063 S. Capitol Way, Suite 106 • Olympia, Washington 98501
Mailing address: PO Box 48343 • Olympia, Washington 98504-8343
(360) 586-3065 • Fax Number (360) 586-3067 • Website: www.dahp.wa.gov

November 16, 2010

Ms. Colleen Edwards
325035
Washington Corrections Center for Women
9601 Baijaich Rd NW
Gig Harbor, WA 98332-8300

Ms. Edwards,

Our agency is in receipt of your public record request dated November 3, 2010 which this office received on November 15, 2010. This letter serves as your 5-day initial response.

Your request stated "Please send me copies of any communications, documents, filings regarding two properties in Olalla, addresses 5007 Nelson Road and 14231 Anatevka, please also send me copies of Archeology Excavation Permit Application Form, Archeology Site Form, Abandoned Cemeteries (sic) Program Certification Application."

We have determined that we may have relevant records in various forms: the blank forms which you outlined above, an undetermined number of emails, and an undetermined number of pages of correspondence which are stored in the State of Washington's Record Center.

We will gather up these various documents in the next three weeks, get a page count, and relay in a subsequent letter the amount of money we will need in advance to produce copies for you. We charge \$0.15 per page for copies.

Regards,

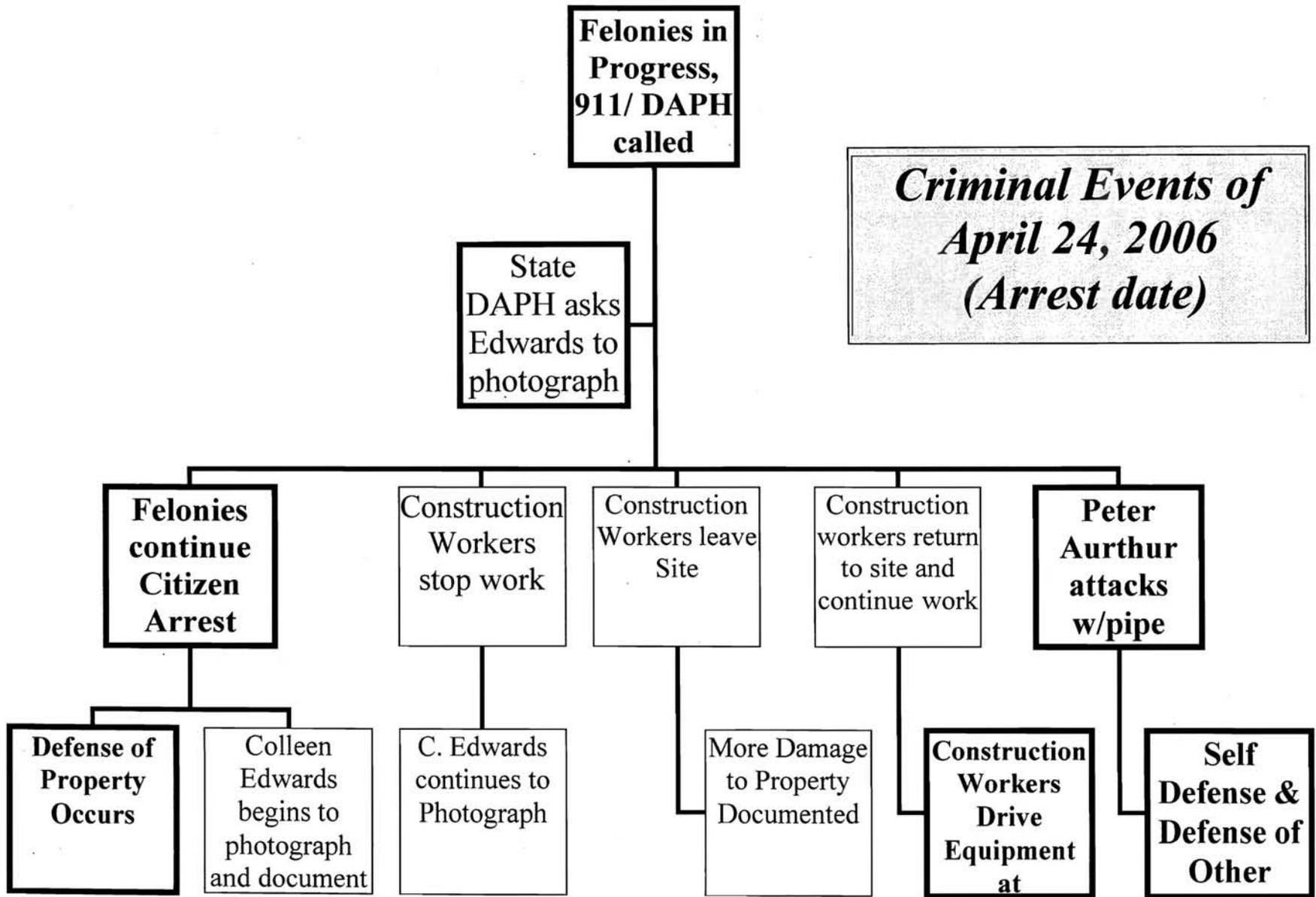
Rick Anderson
Records Manager

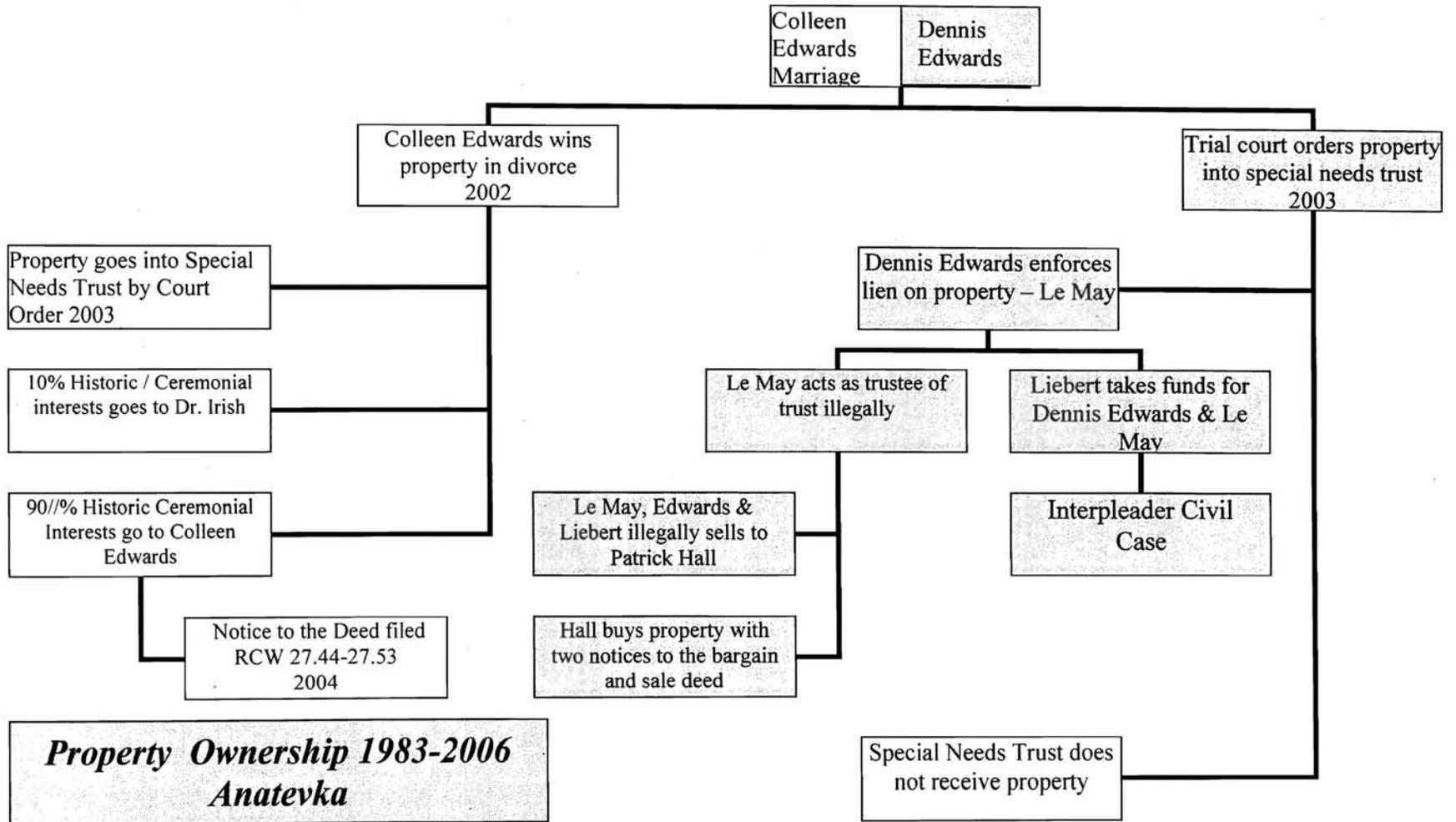


DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

Protect the Past, Shape the Future

Appendix Charts





Colleen Dennis
Edward Edwards
Marriage

Colleen Edwards wins property
in divorce
2002

Contractors come on
Property, Criminal Trespass
occurs 2006

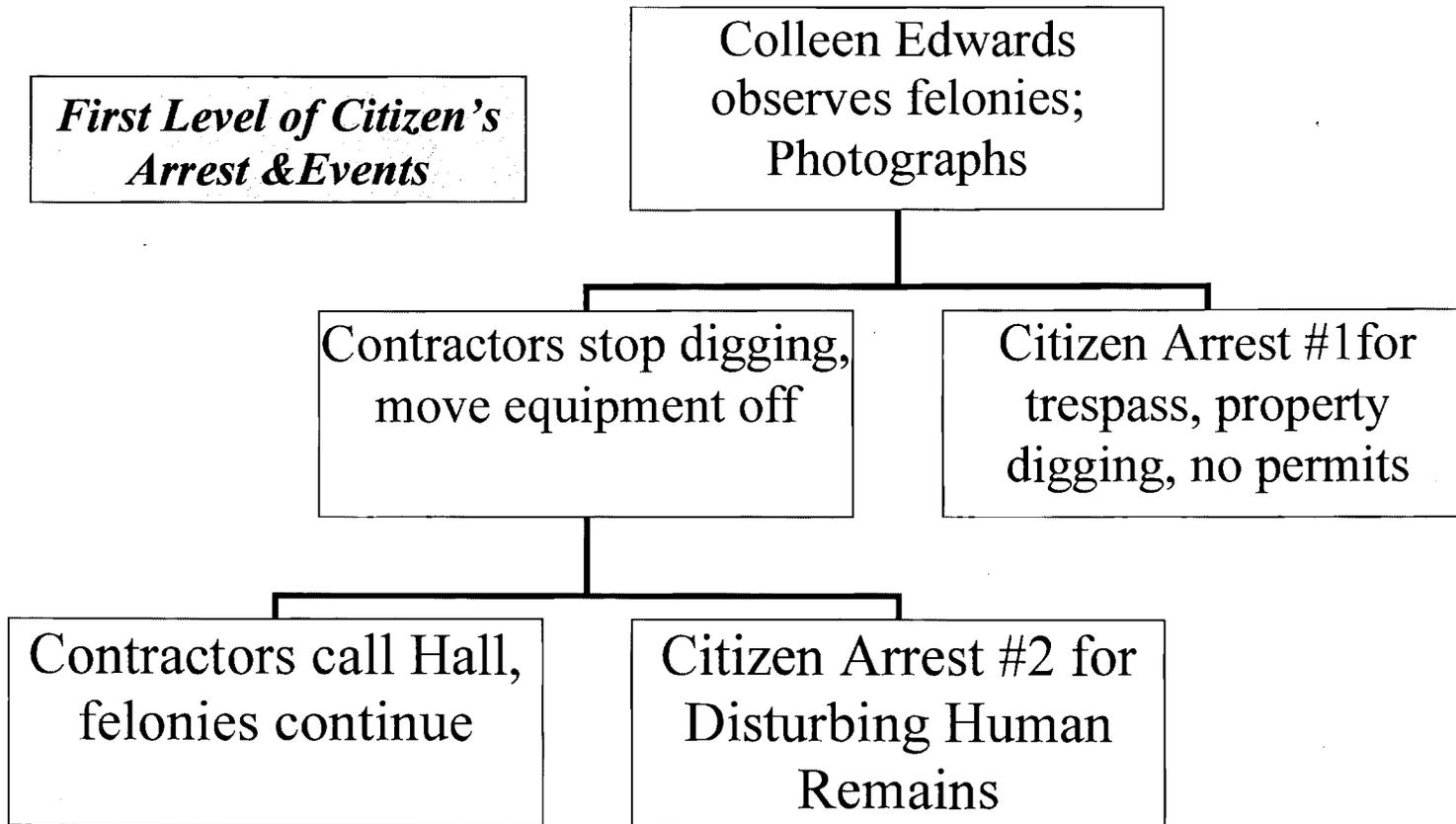
10% Historic / Ceremonial
interests goes to Dr. Irish

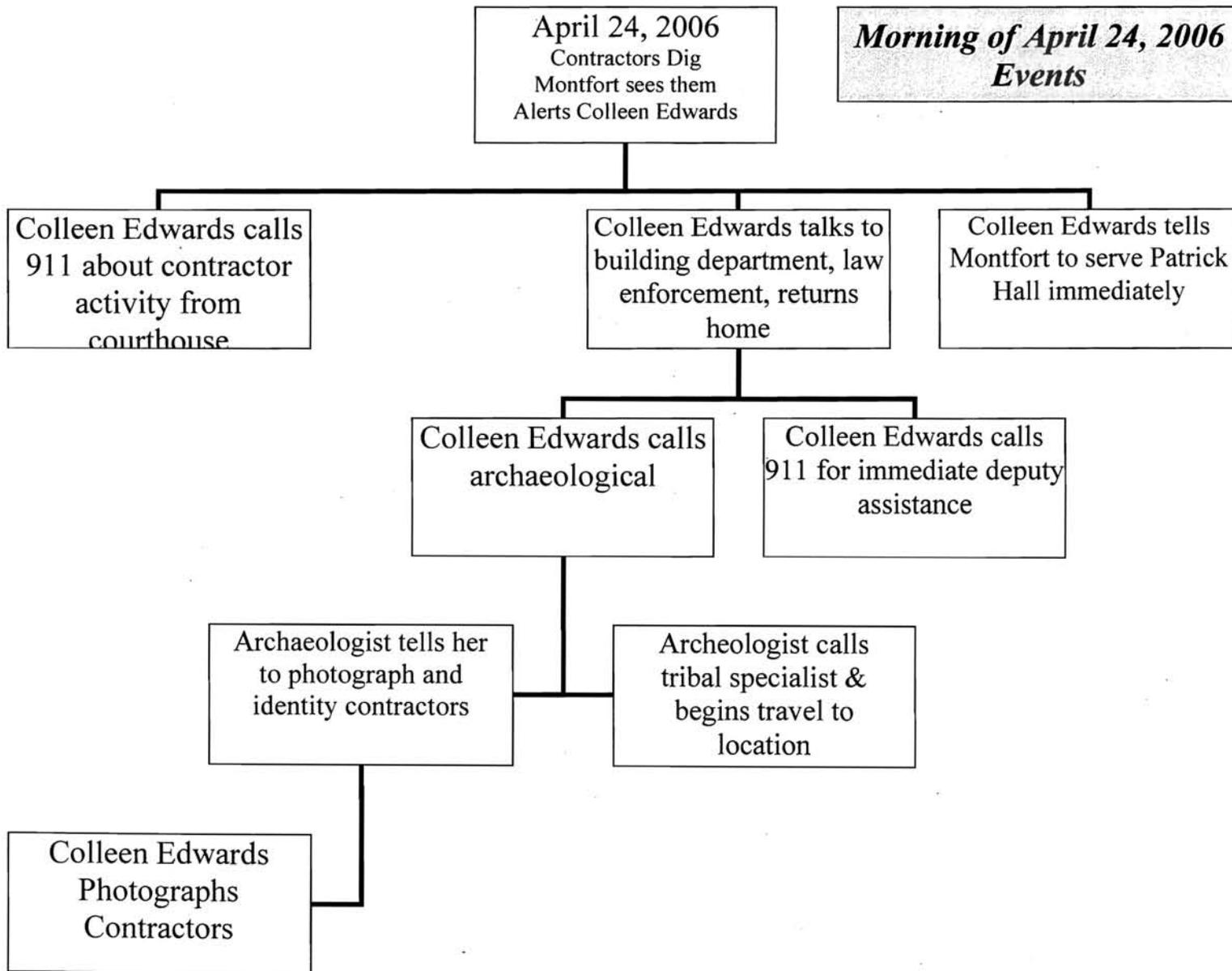
90//% Historic Ceremonial
Interests go to Colleen Edwards

Property Damage occurs to
timber, utilities, human remains,
fences, etc. 2006

Notice to the Deed filed
RCW 27.44-27.53
2004

***Property B - Ownership
1983-2006***





Dennis Edwards and Colleen Edwards own property 1983-2000

Property & Tribal History
1982-2006

Colleen Edwards becomes member of Cherokee clan tribe

Colleen Edwards wins property in divorce decree

Colleen Edwards begins performing sacred ceremonies on property for clan members 2002

Colleen Edwards begins communication with Dr. Irish & Cherokee clan tribe 2002

Colleen Edwards & Dr Irish share rights to historic ceremonies property 2002

Colleen Edwards begins communication w STATE DAPH Historic Preservation 2002

Colleen Edwards begins communication with Suquananish Tribe 2003

Colleen Edwards becomes full member of Cherokee clan tribe. Tribal name given.

Colleen Edwards register site with State of Washington DAPH - 2003

Colleen Edwards continues sacred ceremonies on property 2002-2006

STATE OF WASHINGTON
COURT OF APPEALS, DIVISION 11

STATE OF WASHINGTON	)	NO. 38707-7-11
Respondent)	
	)	DECLARATION OF
Vs.	)	MAILING
COLLEEN EDWARDS)	
Appellant	)	APPELLANT'S OPRENING
	)	BRIEF

I, Colleen Edwards have served the following documents

DECLARATION

I, Colleen Edwards, declare that on May 12, 2010, I deposited the foregoing **APPELLANT'S OPENING BRIEF** or a copy thereof, into the internal mail system of Washington Correction Center Women and made arrangements for postage addressed to:

TO: The Court of Appeals, Division 11
TO: Kitsap County Prosecutor Office

I, declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: 16 December 2010 at Gig Harbor, Washington

Respectfully Yours,



Colleen Edwards
325035
WCCW
9601 Baijaich Road NW
Gig Harbor, WA 98332-8300

STATE OF WASHINGTON
BY  DEPUTY
10 DEC 21 AM 11:44
COURT OF APPEALS
DIVISION 11