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STATE OF WASHINGTON  
BY [Signature]  
DEPUTY

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

IN RE THE PERSONAL RESTRAINT  
PETITION OF:

GEORGE WILSON

Petitioner.

NO. 39115-5-II

CA# 97-1-00433-2

STATE'S RESPONSE TO PERSONAL  
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Whether the defendant waived or abandoned his 2001 CrR 7.8 motion/Personal Restraint Petition?
2. Whether the defendant may not now add additional claims to that raised in his 2001 CrR 7.8 motion?
3. Whether the defendant's claims are time barred?
4. Whether some of the claims are barred as successive or because they could have been raised in the original appeal or petition?
5. Whether the defendant's challenge to the sufficiency of the evidence fails on the merits where the claim is correctly one of a lack of unanimity as to alternative means and not sufficiency of the evidence?

1           6.       Whether trial counsel was effective notwithstanding that he did not object to  
2 the accomplice liability instruction?

3           7.       Whether the defense failed to establish a claim of prosecutorial misconduct?

4           8.       Whether there was no cumulative error?

5  
6 B.       STATUS OF PETITIONER

7           As of March 7, 2011, the petitioner is apparently currently incarcerated at an out of  
8 state facility. It is unclear if that is pursuant to a contract the Department of Corrections  
9 has with some other state to house their inmates, or whether the defendant is currently  
10 being held out of state as a result of charges in another jurisdiction while he continues to be  
11 held pursuant to this case.

12 C.       PROCEDURAL POSTURE

13           1.       Filing of Charges to Sentencing

14           On February 3, 1997, based on an incident that occurred on January 25, 1997,  
15 George Wilson was charged with Murder in the First Degree. Appendix A (Information).  
16 Wilson also had a co-defendant charged in the crime, Cecil Davis. Appendix A. The  
17 information alleged that Wilson and Davis, acting as accomplices of each other, while  
18 committing or attempting to commit the crime of Robbery in the first or second degree  
19 and/or Rape in the first or second degree, and/or burglary in the first degree did enter the  
20 home of the victim and choked or suffocated her, thereby causing her death. Appendix A.

21           The case proceeded to trial before the Honorable Judge Frederick Fleming.  
22 Appendix B (Memorandum of Journal Entry, filed 02-06-98). Both the Defense and the  
23 State proposed an identical accomplice liability instruction, which the court adopted.  
24  
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1 Appendix C (Defendant's Proposed Instructions To the Jury); Appendix D (Plaintiff's  
2 Proposed Instructions to the Jury); Appendix E (Court Instructions to the Jury).

3 The jury returned a verdict that Wilson was guilty of murder in the first degree.  
4 Appendix F (Verdict Form).

5 On March 30, 1998, the court sentenced the defendant to 304 months in custody.  
6 Appendix G (Warrant of Commitment and Judgment and Sentence).

7  
8 2. Direct Appeal, COA# 23203-1-II

9 On April 2, 1998, the defendant timely filed a notice of appeal. Appendix H  
10 (Notice of Appeal).

11 The Court of Appeals affirmed the conviction in an unpublished opinion under  
12 COA# 23203-1-II. Appendix I (Mandate). The mandate was entered on January 9, 2001.

13 3. CrR 7.8 Motion (which the defendant now seeks to revive under this case,  
14 COA# 39115-5-II).

15 On December 26, 2001, the defendant filed a motion under CrR 7.8 seeking relief  
16 from the judgment and sentence. Appendix J ([uncaptioned] Motion for Order for Relief  
17 from Judgment under CrR 7.8, filed 07- On December 28, 2001 the defendant filed a  
18 duplicate copy of the motion under CrR 7.8 seeking relief from the judgment and sentence,  
19 except that this copy had a the jury instructions attached as an appendix. Appendix K  
20 ([uncaptioned] Motion for Order for Relief from Judgment under CrR 7.8, filed 12-28-01).

21 On February 4, 2002, the trial court filed an order directing that the matter be transferred to  
22 the Court of Appeals to be considered as a personal restraint petition. Appendix L (Order  
23 Transferring Motion to Court of Appeals). However, a review of ACCORDS under the  
24 trial case number reveals that the next matter filed after the defendant's direct appeal was  
25 the superior court's transfer of a motion or sentence reduction transferred from the superior

1 court. That matter was filed on October 2, 2006, under COA# 35685-6-II, and is discussed  
2 further below as it was a different motion. Thus, it appears that notwithstanding the trial  
3 court's order of February 4, 2002, the matter was never actually transferred to the Court of  
4 Appeals.

5 On March 28, 2006, the State filed a response in superior court to the defendant's  
6 2001 CrR 7.8 motion in which it acknowledged that the Court of Appeals had never  
7 directed the State to respond to the petition. Appendix M (State's Response to Motion to  
8 Reduce or Modify Sentence). In its response, the State asked the trial court to deny  
9 defendant's request as without substantive legal merit. Appendix M (State's Response to  
10 Motion to Reduce or Modify Sentence). On March 28, 2006, the trial court entered an  
11 order denying the defendant's motion without a hearing because the facts alleged do not  
12 establish grounds for relief and the statute cited by the defendant did apply to him.  
13 Appendix N (Order on Defendant's Motion to Reduce or Modify Sentence).

15 4. Motions for sentence reduction or modification and PRP under COA#  
16 35685-6-II

17 On April 4 and 5, 2006, the defendant filed two apparently identical copies of a  
18 Defendant's Motion For Sentence Reduction Or Modification Pursuant To [RCW]  
19 9.95.045, both of which were dated as signed on March 23, 2006. Appendix O (Motion for  
20 Sentence Reduction, filed 04-04-06); Appendix P (Motion for Sentence Reduction, filed  
21 04-05-06).

22 On September 1, 2006, the defendant filed a motion for sentence reduction or  
23 modification pursuant to [RCW] 9.94A.710; 9.94A.905; 9.94A.599; 9.95.070. Appendix  
24 Q (Motion for Sentence Reduction, filed 09-01-06). That motion was dated as signed by  
25 the defendant on August 27, 2006. On September 20, 2006, the trial court sent the

1 defendant a letter indicating that it was in receipt of a letter and pleadings he filed in the  
2 case, but that any request for a modification of a sentence must be presented pursuant to  
3 proper procedure either by filing a motion with the superior court under CrR 7.8, or by  
4 filing a personal restraint petition in the court of appeals. Appendix R (letter to defendant,  
5 filed 09-20-06). Attached to that letter was a copy of the September 1, 2006, motion.

6 ACCORDS reflects that on October 2, 2006, a Motion for Sentence Reduction was  
7 transferred from Pierce County Superior Court to the Court of Appeals, which treated the  
8 motion as a personal restraint petition under COA# 35685-6-II. A copy of that motion  
9 from the Court of Appeals file shows that it was captioned for Pierce County Superior  
10 Court, however it had no file stamp showing that it had been filed in superior court.

11 Appendix S (Defendant's Motion for Sentence Reduction or Modification, signed  
12 September 27, 2006). Additionally, the motion is dated as having been signed by the  
13 defendant on September 27, 2006. Interestingly, the superior court file contains no filings  
14 between September 20, 2006, and March 2, 2007. The superior court file contains no copy  
15 of a motion for sentence reduction signed by the defendant on September 27, 2006, nor  
16 does it contain an order transferring the motion from the superior court to the court of  
17 appeals.  
18

19 It therefore appears that the ACCORDS entry is in error and that the motion filed in  
20 the Court of Appeals on October 2, 2006, was not a transfer from the superior court at all,  
21 but rather a direct filing by the defendant of the motion in the Court of Appeals, with an  
22 incorrect caption for the superior court. The Attorney General rather than Pierce County  
23 was the respondent on that petition. On October 19, 2007, the Court of Appeals ultimately  
24  
25

1 dismissed the petition in an order terminating review. Appendix T (Order Dismissing  
2 Petition).

3 5. Motion for Relief From Judgment under CrR 7.8.

4 Meanwhile, back on March 2, 2007, the defendant filed in the superior court a  
5 motion for relief from judgment pursuant to CrR 7.8. Appendix U (Motion for Relief  
6 From Judgment [per CrR 7.8]). That same day the defendant also filed what was also  
7 captioned "Motion for Relief from Judgment." challenging the claimed denial of his due  
8 process and equal protection rights. Appendix V (Motion for Relief From Judgment).

9 With regard to the latter motion, on August 14, 2007, the court sent the defendant a letter  
10 advising him that any motion for a modification of sentence must be presented pursuant to  
11 proper procedure, either as a motion under CrR 7.8, or as a personal restraint petition filed  
12 in the Court of Appeals. Appendix W (Letter from the Court, filed 08-14-2007).

13 6. Personal Restraint Petition, COA # 37226-6-II

14 On December 3, 2007, the defendant filed a personal restraint petition directly with  
15 the Court of Appeals. On May 5, 2008, the court of appeals entered an order dismissing  
16 the defendant's personal restraint petition under COA# 37226-6-II. Appendix X (Order  
17 Dismissing Petition).

18 7. Personal Restraint Petition Under COA# 39115-5-II [This Case]

19 According to ACCORDS, on March 27, 2009, the defendant filed in the Court of  
20 Appeals a "Motion for Reinstatement of Original Personal Restraint Petition," which  
21 motion related to his claimed personal restraint petition transferred by Pierce County on  
22 February 4, 2002, but never received by the Court of Appeals. On August 27, 2009, the  
23  
24  
25

1 Court of Appeals entered an order denying the defendant's motion to reinstate his petition,  
2 etc. under COA# 39115-5-II. Appendix Y (Order Denying Motion to Reinstate, etc.).

3 On September 8, 2009, the defendant filed a motion for discretionary review to the  
4 Supreme Court. Per ACCORDS, on February 9, 2010, the Supreme Court granted review,  
5 and remanded the matter back to the Court of Appeals to determine whether the defendant  
6 abandoned his petition and to address the merits of the petition if it is determined he did  
7 not abandon it. Per ACCORDS, following on that order, on April 5, 2010, the Court of  
8 Appeals Commissioner directed the Superior Court to transfer the 2001 CrR 7.8 motion to  
9 the Court of Appeals. In compliance with that order, on April 9, 2010, the superior court  
10 ordered the 2001 CrR 7.8 motion to be transferred to the Court of Appeals. On June 2,  
11 2010, the Court of Appeals issued an order referring the petition to a panel and setting up a  
12 briefing schedule for the parties. Appendix Z (Order Referring Petition to Panel). This is  
13 the State's response to the petitioner's brief in this matter.

14  
15 The court should also be aware that back on September 24, 2009, while his motion  
16 for discretionary review was pending before the Supreme Court, the defendant also filed in  
17 the superior court an identical copy of the motion for reinstatement and transfer to the  
18 Court of Appeals. Appendix AA (Motion for Reinstatement and transfer to the Court of  
19 Appeals).

20  
21 D. FACTS AT TRIAL

22 On January 24, 1997, Keith Burks was at a party at the house of family members of  
23 Cecil Davis. 14 RP 1500. Present were Cecil Davis, and Anthony Wilson (a.k.a George  
24 Anthony Wilson) among others. 14 RP 1501, ln. 1-6. They were just hanging out and  
25 enjoying themselves. 14 RP 1501, ln. 15-18. Some people were drinking beer, Old

1 English, whatever. 14 RP 1501, ln. 19-25. Wilson and Davis were among the people  
2 drinking. 14 RP 1501, ln. 1-6.

3 After the party, toward the end of the evening pretty much everyone had left. 14  
4 RP 1502, ln. 11-15. At about 2:30 or quarter to 3:00 in the morning Keith Burks was  
5 outside on the porch with Davis and Wilson, smoking cigarettes and talking. 14 RP 1502,  
6 ln. 11-24.

7 At one point Davis said he needed to rob somebody. 14 RP 1504, ln. 18 to p. 1505,  
8 ln. 2. As he said it, he was looking across the street kitty corner toward a blue house. 14  
9 RP 1507, ln. 12-20. Wilson was about five feet away and could hear what Davis said. 14  
10 RP 1505, ln. 3-25. Davis started walking down the street toward the corner of Swan Creek  
11 and 57<sup>th</sup>. 14 RP 1506, ln. 6-12. Wilson and Keith Burks stayed on the porch a couple of  
12 seconds and started walking down that way after Davis. 14 RP 1506, ln. 15-20. They met  
13 up with Davis about halfway to the corner. 14 RP 1506, ln. 21-23.

14 They just went down there and looked around when Davis's sister came to the door  
15 and started yelling at them so they walked back up toward the house. 14 RP 1501, ln. 7-  
16 14; p. 1507, ln. 1-8. As they were doing so, they were all close together when Davis said  
17 he needed to kill a motherfucker. 14 RP 1507, ln. 21 to p. 1508, ln. 8. Wilson was able to  
18 hear Davis say this as well. 14 RP 1508, ln. 9-11.

19 Davis's sister told them to come into the house a second time. 14 RP 1508, ln.  
20 Keith Burks returned into the house. 14 RP 1508, ln. 15-21. Wilson did not follow him.  
21 14 RP 1508, ln. 22 to p. 1509, ln. 16. Five or six minutes later, Keith Burks saw Wilson at  
22 the back door and unlocked it so Wilson could get in. 14 RP 1509, ln. 17 to p. 1510, ln. 1.

23 Wilson looked confused and scared, with his eyes big and a scared look in his face.  
24 14 RP 1510, ln. 3-9. Wilson said that Davis was going crazy, that they went over across  
25 the street to rip an old lady off, but Cecil just kicked in the door. 14 RP 1510, ln. 17-25

1 The woman was coming down the stairs and Davis started beating on her and rubbing all  
2 over, rubbing on her breasts attempting to sexually harass, rape her. 14 RP 1510, ln. 17-  
3 25; p. 1514, ln. 11-16.

4 In his own words, Wilson told Burks he knew Davis was going to rape the old  
5 woman. 14 RP 1514, ln. 17-19. Wilson told Burks that Wilson intended to help Davis rob  
6 that house. 14 RP 1534, ln. 5-7; 14 RP 15383, ln. 5-20 Wilson told Burks that Wilson  
7 needed money, indicating to Burks that he intended to go inside the house. 14 RP 1534, ln.  
8 16-23; 14 RP 15383, ln. 5-23.

9 The following day, on January 25, 1997, Jack Schauf and his wife went to the  
10 Couch residence to pick up Yoshiko Couch and take her to a dance recital at the Tacoma  
11 Music Commission downtown. 11 RP 1262, ln. 19-24. Usually Mrs. Couch would be  
12 ready and waiting outside to meet them, however, on this day thing seemed unusual  
13 because her car was in the driveway, the newspaper was still in the box and Mrs. Couch  
14 was not outside to meet them. 11 RP 1263, ln. 6-11. So Schauf's wife went to ring the  
15 doorbell, got no answer, knocked on the door which swung open a little bit. 11 RP 1263,  
16 ln. 14-19. That worried Mr. Schauf a little bit, so he went to the house and entered. 11 RP  
17 1263, ln. 21-24.

18 One of the first things he noticed was wood chips on the floor inside the door and  
19 the foyer and the striker plate from the door sill was laying on the floor by the front of the  
20 stairs. 11 RP 1263, ln. 25 to p. 1264, ln. 5. So first they went upstairs for a cursory look to  
21 see where she was, but went back downstairs and found Richard Couch, Yoshiko Couch's  
22 husband. 11 RP 1264,ln. 6-11. After talking to Richard Couch, Mr. Schauf went back up  
23 stairs to try to locate Mrs. Couch. 11 RP 1264, ln. 19-23. There was some kind of white  
24 powder, like bath powder, all over everything, on the coffee table in the living room, on  
25

1 the couch. 11 RP 1264, ln. 21 to p. 2. After looking in several rooms, Mr. Schauf found  
2 Mrs. Couch in a small bath right adjacent to the kitchen. 11 RP 1265, ln. 4-6.

3 Mrs. Couch was in the bathtub with five to six inches of water with wet clothing  
4 piled on top of her from about mid-chest, over her face and head there was blood water and  
5 fecal matter in the bath. 11 RP 1265, ln. 7-12. The blood appeared to be coming from her  
6 vaginal area. 11 RP 1265, ln. 13-16. She was awfully red and raw. 11 RP 1265, ln. 15-  
7 16. He tried to see if she might be alive and touched her on her stomach, but it was solid  
8 and ungiving. 11 RP 1265, ln. 17-24. Mr. Schauf had no question whether she was alive  
9 or dead. 11 RP 1265, ln. 25 to p. 1266, ln. 2.

10 Mr. Schauf went back down stairs and told his wife that Mrs. Couch was there, but  
11 that Mrs. Schauf didn't want to see her. 11 RP 1266, ln. 19-22. He then went to Mr.  
12 Couch's bedroom and called 911 from the phone. 11 RP 1266, ln. 23-25.

13 The fire department arrived and confirmed that Mrs. Couch was dead. 11 RP 1270,  
14 ln. 13-16.

15 Mrs. Yoshiko Couch died of asphyxia by suffocation and neck compression and  
16 also saline toxicity.<sup>1</sup> 19 RP 2052, ln. 2-3. As her body was found in the bathtub a number  
17 of articles of clothing were over Yoshiko Couch's face and they had a strong odor of  
18 solvents, xylene. 19 RP 2054, ln. 6-21.

19 When officers served a search warrant on Cecil Davis's residence, they found  
20 packages of Kool cigarettes, a package for meat from the Ft. Lewis Commissary, and a  
21 Bud Light can. 18 RP 1971, ln. 11 to p. 1973, ln. 16; p. 2018, ln. 4 to p. 2024, ln. 11.  
22 Yoshiko Couch bought meat from either the Ft. Lewis or McChord commissary. 12 RP  
23 1316, ln. 3-7; p. 1317, ln. 6-14. The fingerprint from the Kool carton was from the left  
24

25 <sup>1</sup> The transcript has the medical examiner saying "saline" toxicity as part of the cause of death. However, the subsequent discussion makes it clear that the medical examiner actually said "xylene" toxicity and that "saline" is a typographical error by the reporter. 19 RP 2052, ln. 2-3, 19-25.

1 thumb of Yoshiko Couch. Mr. Couch smoked Kool milds cigarettes. 12 RP 1315, ln. 20-  
2 22. Expecting the family to be over for Christmas, Yoshiko Couch had purchased Bud  
3 Light for her sons. 12 RP 1317, ln. 22-25

4 Yoshiko Couch wore a simple plain gold wedding band without a stone. 12 RP  
5 1319, ln. 13-17. A photo of Mrs. Couch's body in the bathtub showed that there was no  
6 wedding ring on her finger. 18 RP 1775, ln. 24 to p. 1976, ln. 7. On the day of the 25<sup>th</sup>  
7 Davis asked his mother if she wanted to buy a ring and she told him no, but he could give  
8 it to her. 17 RP 1791, ln. 17-22. She only saw it briefly, but it was a gold band. 17 RP  
9 1791, ln. 23 to p. 1792, ln. 1.

10 In late January and the first weekend of February, Cecil Davis was in the Pierce  
11 County Jail when another inmate had a copy of the newspaper. 18 RP 2000, ln. 19 to p.  
12 2002, ln. 6. Davis wanted to read the newspaper and said that he heard the newspaper was  
13 saying that he raped the old bitch, that he may have killed her but he didn't rape her. 18  
14 RP 2002, ln. 8-10. Davis went on to say that he would file a lawsuit against the newspaper  
15 if it said he had raped her. 18 RP 2002, ln. 11-13.

16 E. ARGUMENT

17 The defendant's petition seeks to do two different things. First, by making a claim  
18 that the defendant never abandoned his 2001 petition it seeks to preserve and have the  
19 court consider on the merits issues that were raised in that petition. Second, the petition  
20 seeks to raise a number of new issues that were not contained in the 2001 petition. In  
21 addressing the defendant's petition, it is important to differentiate between these two  
22 different types of issues.  
23  
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1           1.       THE DEFENDANT IS NOT ENTITLED TO REINSTATE HIS 2001 CrR  
2                   7.8 MOTION WHERE HE ABANDONED IT.

3                   Pursuant to RCW 10.73.090(1), petitioner could have filed a first-time personal  
4           restraint petition within one year of January 9, 2001, the date the Mandate was entered on  
5           the defendant's appeal. *See* Appendix I. Any petition filed after January 9, 2002, would  
6           be filed more than one year after the judgment and sentence became final, and therefore  
7           have to satisfy the exceptions to the one-year time bar established in RCW 10.73.090, .100.

8                   On December 26 and 28, 2001, the defendant filed in superior court what appear to  
9           be identical copies of the same motion. Because it was filed 12 days before January 9,  
10          2002, that motion was filed within the one-year time limit. In that motion the defendant  
11          relied upon *State v. Roberts* and *State v. Cronin* for authority that the accomplice liability  
12          instruction in his case was erroneous because it permitted the jury to find the defendant  
13          was an accomplice to any crime, not a particular crime. *See* Appendix J, K (uncaptioned  
14          memorandum in support of motion, p. 2 (citing *State v. Roberts*, 142 Wn.2d 471, 14 P.3d  
15          713 (2000); *State v. Cronin*, 142 Wn.2d 568, 14 P.3d 752 (2000)). The language in the  
16          instruction in this case appears to be identical to the instruction in *Cronin*. *Compare*  
17          Appendix E (Instruction 15) to *Cronin*, 142 Wn.2d at 576-77.

18                   The courts treat the one-year collateral attack time limit as a statute of limitation  
19          and have, in limited circumstances, applied equitable tolling to it. *See In re Bonds*, 165  
20          Wn.2d 135, 141ff, 196 P.3d 672 (2008). However, equitable tolling as an exception to the  
21          statute of limitations should be used sparingly and does not extend broadly to allow claims  
22          to be raised except under narrow circumstances. *Bonds*, 165 Wn.2d at 141. The test for  
23          whether equitable tolling should be applied in civil cases is where there was bad faith,  
24          deception, or false assurances by the defendant, and the exercise of diligence by the  
25

1 plaintiff. *Bonds*, 165 Wn.2d at 141. The same standards apply to the criminal context.  
2 *Bonds*, 165 Wn.2d at 141. Here, there was no bad faith on the part of the state, so that  
3 equitable tolling does not apply to this case. *See Bonds*, 165 Wn.2d at 141-42.

4 The State has been unable to locate any other authority that sheds further light on  
5 whether the personal restraint petition has been abandoned under the facts of this case.

6 On February 4, 2002, the trial court entered an order transferring the motion to the  
7 Court of Appeals to be considered as a personal restraint petition. Appendix L. However,  
8 it nonetheless appears that the motion was never actually transferred to the Court of  
9 Appeals. On March 28, 2006, the State filed a response to another motion the defendant  
10 had filed in which he sought relief from his judgment and sentence under RCW 9.95.045.<sup>2</sup>  
11 Appendix M (State's Response). In its response the State reviewed the procedural and  
12 factual history of the case to that date. That review ended with the following paragraph:  
13

14 Late in 2001 or early in 2002, the defendant filed a motion for  
15 relief from judgment that was transferred to the Court of Appeals as a  
16 personal restraint petition. This court's order entered on February 4, 2002.  
The State reviewed its records and found the appellate court never ordered  
the State to respond to that motion/petition.

17 Appendix M, p. 2. This response was served on the defendant. *See* declaration of service,  
18 Appendix M, p. 4.

19 Although it refers to the defendant's 2001 filing, and the fact that the Court of  
20 Appeals failed to act on it, the State's response itself appears to be directed to a different  
21 motion filed by the defendant, specifically, a motion signed by the defendant on March 23,  
22 2006, but not filed until April 4, 2006. The substance of the state's response, including the  
23 legal authority it addresses, is the same as that raised by the defendant in the April 4  
24

25 \_\_\_\_\_  
<sup>2</sup> Presumably this was the defendant's motion filed on April 4,

1 motion. Appendix O. Additionally, the State's Response included a proposed order for the  
2 court which specifically referred to:

3 "Defendant's Motion for Sentence Reduction or Modification" dated  
4 March 23, 2006.

5 Appendix M. It was this order that was adopted by the court. *See* Appendix N.

6 The significance of the State's response is that it gave the defendant actual notice  
7 that the Court of Appeals had taken no notice of, or action on, his 2001 motion. Said  
8 otherwise, the defendant had actual notice in March of 2006 that the court took no action  
9 on his 2001 motion, and yet he took no further action on it until March 7, 2009, nearly  
10 three years later.

11 If the defendant remained interested in pursuing his claim under the motion, he  
12 should have contacted either the superior or trial court when no further action was taken on  
13 it. The fact that he took no action by March of 2006, some five and a half years later,  
14 should in and of itself constitute abandonment of the claim. However, even if the court  
15 were to hold that he did not abandon his claim during that period and it was somehow  
16 tolled, he certainly had actual notice that the court was not acting on it at that point.  
17 Whether the court were to have tolled his expiration date so that he had 12 days remaining,  
18 or even if the court were to completely restart the clock on his one-year collateral attack  
19 time period, in either case he failed to take any action whatsoever with regard to the  
20 motion in the allotted time. Instead, he allowed his claim to languish for nearly three more  
21 years after he received notice that the court had not acted on it. Given this procedural  
22 history and the long periods of inaction by the defendant, including after actual notice, the  
23 only reasonable interpretation is that the defendant indeed abandoned this claim.  
24  
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1           2.       THE DEFENDANT MAY NOT NOW ADD ADDITIONAL CLAIMS  
2                   TO THAT RAISED IN THE 2001 MOTION.

3           The claim that the defendant raised in 2001 was that the accomplice liability  
4 instruction in his case was unlawful in light of the subsequent opinions in *State v. Roberts*  
5 and *State v. Cronin*. In his supplemental opening brief filed November 30, 2010, the  
6 defense raises a number of additional new issues, e.g. sufficiency of the evidence,  
7 ineffective assistance of counsel, that the prosecutor allegedly shifted the burden of proof  
8 in closing, as well as a claim of prejudice and cumulative error based on those claims.  
9

10           However, other than the particular claim that was filed in 2001, which the  
11 defendant seeks to revive, none of the defendant's additional claims may be added to the  
12 2001 claim now. See *In re Pers. Restraint of Benn*, 134 Wn.2d 868, 952 P.2d 116 (1998);  
13 *In re Bonds*, 165 Wn.2d 135, 196 P.3d 672 (2008) (plurality opinion). Accordingly, they  
14 are time barred unless they fall under an exception to the one-year time limit. As none of  
15 them do for the reasons stated in section 3 below, in addition to dismissing the 2001 claim  
16 as abandoned and now also time barred, the court should also deny the other claims the  
17 defense raises as time barred as well.

18           3.       THE CLAIMS IN THE DEFENDANT'S PETITION ARE TIME  
19                   BARRED.

20           Personal restraint procedure came from the State's habeas corpus remedy, which is  
21 guaranteed by article 4, § 4 of the State Constitution. *In re Hagler*, 97 Wn.2d 818, 823,  
22 650 P.2d 1103 (1982). Collateral attack by personal restraint petition is not, however, a  
23 substitute for direct appeal. *Hagler*, 97 Wn.2d. at 824. "Collateral relief undermines the  
24 principles of finality of litigation, degrades the prominence of the trial, and sometimes  
25 costs society the right to punish admitted offenders." *Hagler*, 97 Wn.2d at 824 (citing

1 *Engle v. Issac*, 456 U.S. 107, 102 S. Ct. 1558, 71 L.Ed.2d 783 (1982)). These costs are  
2 significant and require that collateral relief be limited in state as well as federal courts.

3 *Hagler*, 97 Wn.2d at 824.

4 Because of the costs and risks involved, there is a time limit in which to file a  
5 collateral attack.

6 Personal restraint petitions are also governed by the rules of appellate procedure,  
7 which work in conjunction with the statutes. Under RAP 16.4, the court will grant  
8 appropriate relief under a personal restraint petition where a petitioner is under restraint,  
9 and that restraint is unlawful for one of seven specified reasons. RAP 16.4(a)-(c).

10 However, even where a valid ground exists, the court will only grant relief if such relief  
11 can be granted under RCW 10.73.090, .100 and .130. RAP 16.4(d). Additionally, no more  
12 than one petition for similar relief on behalf of the same petitioner will be entertained  
13 without good cause shown. RAP 16.4(d).

14 The statute that sets out the time limit provides:

15 No petition or motion for collateral attack on a judgment and sentence in a  
16 criminal case may be filed more than one year after the judgment becomes  
17 final if the judgment and sentence is valid on its face and was rendered by a  
18 court of competent jurisdiction.

19 RCW 10.73.090(1). In addition to the exceptions listed to the time limit within RCW  
20 10.73.090, there are other specific exceptions to the one-year time limit for collateral  
21 attack:

22 The time limit specified in RCW 10.73.090 does not apply to a  
23 petition or motion that is based solely on one or more of the following  
24 grounds:

25 (1) Newly discovered evidence, if the defendant acted with  
reasonable diligence in discovering the evidence and filing the petition or  
motion;

1 (2) The statute that the defendant was convicted of violating was  
unconstitutional on its face or as applied to the defendant's conduct;

2 (3) The conviction was barred by double jeopardy under  
3 Amendment V of the United States Constitution or Article I, section 9 of  
the State Constitution;

4 (4) The defendant pled not guilty and the evidence introduced at  
trial was insufficient to support the conviction;

5 (5) The sentence imposed was in excess of the court's jurisdiction;  
or

6 (6) There has been a significant change in the law, whether  
7 substantive or procedural, which is material to the conviction, sentence, or  
8 other order entered in a criminal or civil proceeding instituted by the state  
9 or local government, and either the legislature has expressly provided that  
10 the change in the law is to be applied retroactively, or a court, in  
interpreting a change in the law that lacks express legislative intent  
regarding retroactive application, determines that sufficient reasons exist  
to require retroactive application of the changed legal standard.

11 RCW 10.73.100.

12 RCW 10.73.140 limits the filing of subsequent collateral attack petitions.

13 If a person has previously filed a petition for personal restraint, the Court  
14 of Appeals will not consider the petition unless the person certifies that he  
or she has not filed a previous petition on similar grounds, and shows  
15 good cause why the petitioner did not raise the new grounds in the  
previous petition. Upon receipt of a personal restraint petition, the court of  
16 appeals shall review the petition and determine whether the person has  
previously filed a petition or petitions and if so, compare them. If upon  
17 review, the Court of Appeals finds that the petitioner has previously raised  
the same grounds for review, or that the petitioner has failed to show good  
18 cause why the ground was not raised earlier, the Court of Appeals shall  
dismiss the petition on its own motion without requiring the state to  
19 respond to the petition. Upon receipt of a first or subsequent petition, the  
Court of Appeals shall, whenever possible, review the petition and  
20 determine if the petition is based on frivolous grounds. If frivolous, the  
Court of Appeals shall dismiss the petition on its own motion without first  
21 requiring the state to respond to the petition.

22  
23 No cases citing to RAP 16.4(c)(4) define or interpret "significant change in the  
24 law." Fortunately, the language of RAP 16.4(c)(4) mirrors the language of RCW  
25 10.73.100(6). Cases interpreting RCW 10.73.100(6) interpret "significant change in the

1 law” as a change that effectively overturns prior material law so that the arguments  
2 currently at issue were previously unavailable to the litigants. *In re Personal Restraint of*  
3 *Rowland*, 149 Wn. App. 496, 503, 204 P.3d 953 (2009); *In re Stoudmire*, 145 Wn.2d 258,  
4 264, 36 P.3d 1005 (2001); *In re Greening*, 141 Wn.2d 687, 697, 9 P.3d 206 (2000). *See*  
5 *also State v. Vandervlugt*, 120 Wn.2d 427, 432, 842 P.2d 950 (1992) (citing *In re Taylor*,  
6 105 Wn.2d 683, 688, 717 P.2d 755 (1986)).

7  
8 The defendant claims that the issues he raises are constitutional and that therefore  
9 the court must grant him relief if he shows actual prejudice stemming from the errors. Pet.,  
10 p. 6 (citing RAP 16.4(c)(2); and *In re Personal Restraint of Hews*, 99 Wn.2d 80, 87, 660  
11 P.2d 263 (1983)). However, RAP 16.4 operates in conjunction with RCW 10.73.090, .100,  
12 and .130. *See* RAP 16.4(d). Accordingly, this Court does not reach those issues if they are  
13 time barred unless they fall under an exception to the time bar. *See* RCW 10.73.090, .100.  
14 There is no general exception to the time bar simply because issues are constitutional in  
15 nature. Additionally, other bars to consider may preclude this Court from reaching the  
16 merits of some issues, *e.g.* successive claims.

17 The defendant’s petition potentially implicates a claim that the sentence was  
18 entered in violation of the laws of the State of Washington pursuant to RAP 16.4(c)(2).  
19 *See* Pet., p. 6ff. Second, that there has been a significant change in the law under RAP  
20 16.4(c)(4). *See* Petition, p. 14.

21  
22 It is also worth noting that the court has applied equitable tolling of the one-year  
23 time limit on the basis of the defendant’s due diligence where the court failed to address a  
24 claim the defendant raised in his first appeal, and the defendant continued to assert that  
25 claim without it being considered by the court. *In re Hoisington*, 99 Wn. App. 423, 431-

1 32, 993 P.2d 296 (2000). However, that application appears to have been rejected by a  
2 plurality of the Supreme Court in *Bonds* when it limited the application of equitable tolling  
3 to circumstances where there was bad faith on the part of a state actor. *Bonds*, 165 Wn.2d  
4 at 142-44.

5 Finally, where only some of the issues raised in a petition filed after the one-year  
6 deadline fall within an exception in RCW 10.73.100, the court may not consider the  
7 petition. *In re Carter*, 154 Wn. App. 907, 917, 230 P.3d 181 (2010); *In re Hankerson*,  
8 149 Wn.2d 695, 702, 72 P.3d 703 (2003). The court may, however, consider remaining  
9 issues that rest on a different exception. *Carter*, 154 Wn. App. at 917 (citing *In re Pers.*  
10 *Restraint of Stoudmire*, 141 Wn.2d 342, 350-51, 5 P.3d 1240 (2000) (holding that the  
11 court can decide facial invalidity claims after dismissing untimely claims)). If the court  
12 were to hold that any of the claims are not time barred, but others are, this is a mixed  
13 petition and the court cannot consider it.

14  
15 a Sufficiency Of The Evidence

16 What the defense attempts to frame as a sufficiency of the evidence argument is in  
17 fact not that at all, but rather a challenge to the lack of a unanimity instruction and/or  
18 special verdict.

19 The jury instruction provided,

20 To convict defendant George Wilson of the charged crime of  
21 Felony Murder in the First Degree, each of the following elements must be  
proved beyond a reasonable doubt;

22 ...  
23 (2) That defendant George Wilson or an accomplice was  
24 committing or attempting to commit Robbery in the First or Second  
Degree, Rape in the First or Second Degree, or Burglary in the First  
25 Degree;

1 (3) That defendant George Wilson or an accomplice caused the  
2 death of Yoshiko Couch in the course and furtherance of such crime or in  
immediate flight from such crime;

3 ...

4 Appendix E, Instruction 21. The defense goes on to argue that there was not sufficient  
5 evidence that Wilson was an accomplice to any rape committed by Davis, and as a result  
6 that the conviction should be reversed. Pet., p. 8ff.

7 Presumably the defense has attempted to frame this issue as one of insufficient  
8 evidence in order to circumvent the time bar because a claim of insufficient evidence is  
9 one exception to the time bar under RCW 10.73.100(4).

10 The court has divided cases involving jury unanimity issues into two types: cases  
11 involving multiple acts and cases involving alternative means. See *State v. Kitchen*, 110  
12 Wn.2d 403, 409-410, 756 P.2d 105 (1988). Multiple acts cases are where the State  
13 presents evidence of several acts that could form the basis of one count charged. See  
14 *Kitchen*, 110 Wn.2d at 409. In multiple acts cases, the State must either tell the jury which  
15 acts to rely upon, or the court must instruct the jury that they must unanimously agree as to  
16 which act has been proved. *Kitchen*, 110 Wn.2d at 409 (citing *Petrich*, 101 Wn.2d at  
17 570). See also WPIC 4.25; 4.26; and *State v. Moultrie*, 143 Wn. App. 387, 392-94, 177  
18 P.3d 776 (2008) (approving the current version of WPIC 4.25).

19 In alternative means cases, a single offense may be committed in more than one  
20 way. *Kitchen*, 110 Wn.2d at 410. There must be jury unanimity as to guilt, but the jury  
21 need not be unanimous as to the means by which the crime was committed so long as  
22 substantial evidence supports each alternative means. *Kitchen*, 110 Wn.2d at 410. Said  
23 otherwise,

24 In this state, if sufficient evidence supports each alternative means of a  
25 charged crime, jurors can give a general verdict on that crime without  
giving express unanimity on which of the alternatives means was

1 employed by the defendant. 'If the evidence is sufficient to support each  
2 of the alternative means submitted to the jury, a particularized expression  
3 of unanimity as to the means by which the defendant committed the crime  
is unnecessary to affirm a conviction...'

4 *State v. Fortune*, 128 Wn.2d 464, 467, 909 P.2d 930 (1996) (quoting *State v. Ortega-*  
5 *Martinez* 124 Wn.2d 702, 707-08, 881 P.2d 231 (1994)).

6 Therefore, the legal error in alternative means cases where a general verdict is  
7 rendered is not with the sufficiency of the evidence, or the lack thereof. Rather, where  
8 there is not sufficient evidence to support each alternative means, the error is with the  
9 failure to give a unanimity instruction and/or special verdict, because the verdict would  
10 still have been lawful if it was based on any of the other alternative means for which  
11 sufficient evidence existed. As such, alternative means cases only truly involve issues  
12 regarding the sufficiency of the evidence where there is not sufficient evidence to support  
13 any one of the alternative means. Otherwise it is a unanimity issue, although that issue is  
14 moot where there is sufficient evidence to support all the alternative means.

16 Thus, in *State v. Randhawa*, the court did consider the issue in terms of sufficiency  
17 of the evidence rather than as one of a deficient jury instruction. *State v. Randhawa*, 133  
18 Wn.2d 67, 72-73, 941 P.2d 61 (1997). However, in that case there was sufficient evidence  
19 to support each alternative means, so that a determination as to the sufficiency of the  
20 evidence meant that the court did not need to reach the issue of whether the jury instruction  
21 was erroneous. See *Rahdhawa*, 133 Wn.2d at 73.

23 The lack of a unanimity instruction and/or special verdict does not fall under an  
24 exception to the time bar.

1 The underlying substantive argument is addressed in greater detail in section 5.  
2 below. The point here is that this claim is time barred because it is not properly a claim of  
3 insufficient evidence.

4 Moreover, even if the court were to construe it as a claim of insufficient evidence,  
5 the court may not reach consideration of the issue on the merits because it is a successive  
6 claim. The defendant previously raised a challenge to sufficiency of the evidence in his  
7 direct appeal. See Appendix I. This argument is addressed more fully in section 4 below.

8 b. Accomplice Liability

9 The Washington Supreme Court has previously held that challenges to the  
10 constitutionality of an accomplice liability instruction based on *State v. Roberts and State*  
11 *v. Cronin* may not be brought in a personal restraint petition more than one year after the  
12 judgment and sentence becomes final. *In re Domingo*, 155 Wn.2d 356, 119 P.3d 816  
13 (2005) (citing *State v. Roberts*, 142 Wn.2d 471, 14 P.3d 713 (2000); *State v. Cronin*, 142  
14 Wn.2d 568, 14 P.3d 752 (2000)). Here the defendant's argument is based on *State v.*  
15 *Roberts* and *State v. Cronin*. See Pet., p. 16ff.

16 The court in *Domingo* specifically held that challenges in reliance upon *Roberts*  
17 and *Cronin* were time barred after one year because Roberts and Cronin did not constitute  
18 a significant change in the law. *Domingo*, 155 Wn.2d at 369.

19 The defense attempts to overcome the time bar established in *Domingo* by pointing  
20 out that the defendant raised the issue in a prior personal restraint petition filed in 2001 that  
21 the court never considered, and the defendant further claims that he is entitled to rely on  
22 that petition, which he had not in fact abandoned through non-prosecution. That argument  
23 is addressed in section 1 above. However, assuming that the court agrees that the  
24 defendant abandoned his petition, the issue of the accomplice liability instruction is now  
25

1 time barred. Because the issue does not fall under an exception to the time bar, it is not an  
2 issue that can now be raised independent of the court holding that it was not abandoned.

3 c. Ineffective Assistance

4 A claim of ineffective assistance of counsel does not fall under an exception to the  
5 one-year collateral attack time limit. *In re Stoudmire*, 141 Wn.2d 342, 349, 5 P.3d 1240  
6 (2000) (disagreed with on other grounds by *In re Turay*, 153 Wn.2d 44, 53-54, 101 P.3d  
7 854 (2004)).

8 d. Burden Shifting In Closing

9 The defense claims that he can raise this issue for the first time in a personal  
10 restraint petition because of an intervening change in the law. The purported change he  
11 relies upon is *State v. Johnson*, *State v. Anderson*, and *State v. Venegas*. Pet., p. 23-24  
12 (citing *State v. Johnson*, 158 Wn. App. 677, 243 P.3d 936 (2010); *State v. Venegas*, 155  
13 Wn. App. 507, 523-24, 228 P.3d 813 (2010); *State v. Anderson*, 153 Wn. App. 417, 431,  
14 220 P.3d 1273 (2009)). However, those cases represent the further elaboration of the law  
15 and do not constitute a change in the law that was unavailable to him prior to the expiration  
16 of the one-year time limit.

17 No cases citing to RAP 16.4.(c)(4) define or interpret “significant change in  
18 the law.” Fortunately, RCW 10.73.100(6) mirrors the language of RAP 16.4(c)(4).  
19 Cases interpreting RCW 10.73.100(6) interpret “significant change in the law” as a  
20 change that effectively overturns prior material law so that the arguments currently  
21 at issue were previously unavailable to the litigants. *In re Personal Restraint of*  
22 *Rowland*, 149 Wn. App. 496, 503, 204 P.3d 953 (2009); *In re Stoudmire*, 145  
23 Wn.2d 258, 264, 36 P.3d 1005 (2001); *In re Greening*, 141 Wn.2d 687, 697, 9 P.3d  
24 206 (2000).  
25

1 None of the cases relied upon by the defendant overturned prior material law in  
2 effect prior to the expiration of the one-year time limit. Accordingly, this argument does  
3 not fall under an exception to the one-year time limit on collateral attack.

4 e. Cumulative Error

5 In arguing prejudice, the defense claims that the claimed errors "exacerbated" and  
6 "compounded" each other. Pet., p. 24, 25. This amounts to a claim of cumulative error. A  
7 claim of cumulative error does not fall under any of the exceptions to the time limit  
8 enumerated under RCW 10.73.100.

9 4. SOME OF THE ISSUES RAISED IN THE PETITION ARE  
10 PROHIBITED AS SUCCESSIVE AND NEW ISSUES CANNOT NOW  
11 BE RAISED WHERE THEY COULD HAVE BEEN RAISED  
12 PREVIOUSLY.

12 Personal restraint petitions must raise new points of fact and law that were not  
13 raised or could not have been raised in the principal action. *In re Becker*, 143 Wn.2d 491,  
14 496, 20 P.3d 409 (2001).

15 Both RAP 16.4(d) and RCW 10.73.140 limit successive personal restraint petitions.  
16 RAP 16.4(d) puts limits on successive petitions. It provides: "No more than one petition  
17 for similar relief on behalf of the same petitioner will be entertained without good cause  
18 shown." The Washington Supreme Court adopted the United States Supreme Court's  
19 definition of "similar relief" found in a statute containing language very similar to RAP  
20 16.4(d). *In re Personal Restraint of Haverty*, 101 Wn.2d 498, 503, 681 P.2d 835 (1984),  
21 citing *Sanders v. United States*, 373 U.S. 1, 15, 17, 83 S. Ct. 1068, 1077, 1078, 10 L.Ed.2d  
22 148 (1963). The phrase "similar relief" relates to the grounds for the relief, rather than the  
23 type of relief sought. *In re PRP of Johnson*, 131 Wn.2d 558, 564, 933 P.2d 1019 (1997);  
24 *see also In re Personal Restraint of Jeffries*, 114 Wn.2d 485, 488-89, 789 P.2d 731  
25 (1990).

1 RCW 10.73.140 divests the Court of Appeals of jurisdiction to decide successive  
2 petitions that raise the same grounds for review, but does not divest the Supreme Court of  
3 such jurisdiction. See *In re Personal Restraint of Perkins*, 143 Wn.2d 261, 19 P.3d 1027  
4 (2001). The only limit to the Supreme Court's reconsideration of a previously raised issue  
5 is the "good cause" requirement of RAP 16.4(d) which will ordinarily bar a petitioner from  
6 filing successive petitions seeking relief on the same grounds, in the absence of a showing  
7 of good cause.

8 The courts have defined "ground" for purposes of a PRP:  
9 By 'ground' we mean simply a distinct legal basis for granting relief .... the prior  
10 denial must have rested on an adjudication of the merits of the ground presented in  
the subsequent application.

11 *In re Personal Restraint of Taylor*, 105 Wn.2d 683, 688, 717 P.2d 755 (1986).

12 The Supreme Court has held that a petitioner demonstrates good cause for  
13 advancing the same grounds for relief under the rule when there has been a "significant,  
14 intervening change in the law [which] may occur as a result of a decision by this court."  
15 *Johnson*, 131 Wn.2d at 567; see also *Jeffries*, 114 Wn. 2d at 488; *Taylor*, 105 Wn. 2d at  
16 688. See also *In Re Vasquez*, 108 Wn. App. 307, 31 P.3d 16 (2001) (holding that where a  
17 CrR 7.8 motion is transferred to the Court of Appeals for consideration as a personal  
18 restraint petition, the defendant is barred by RCW 10.73.140 from filing successive  
19 petitions without good cause).

21 Finally, "a petitioner's second or subsequent personal restraint petition that raises a  
22 new issue for the first time will not be considered if raising that issue constitutes an abuse  
23 of the writ." *In re Turay*, 153 Wn.2d 44, 48-49, 11 P.3d 854 (2004).

24 "[I]f the [defendant] was represented by counsel throughout  
25 postconviction proceedings, it is an abuse of the writ for him or her to rise  
... a new issue that was 'unavailable but not relied upon in a prior  
petition.'"

1 *Turay*, 153 Wn.2d at 48 (citing *In re Pers. Restraint of Jeffries*, 114 Wn.2d 485, 487-88,  
2 789 P.2d 731 (1990)).

3  
4 In his direct appeal the defendant raised claims that there was insufficient evidence,  
5 and that his trial counsel was ineffective. *See* Appendix I. More specifically as to the  
6 ineffective assistance of counsel claim, he argued his attorney was ineffective for failing to  
7 object to a voir dire instruction that Wilson was not facing the death penalty. Appendix I,  
8 p. 7

9 Where the defendant previously raised these issues in his direct appeal, and the  
10 court considered them, they are now successive and therefore barred.

11 5. THE DEFENDANT'S CHALLENGE TO THE SUFFICIENCY OF THE  
12 EVIDENCE FAILS ON THE MERITS WHERE HIS CLAIM IS  
13 PROPERLY FRAMED AS A LACK OF A UNANIMITY  
14 INSTRUCTION, NOT SUFFICIENCY OF THE EVIDENCE

15 Due process requires that the State bear the burden of proving each and every  
16 element of the crime charged beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d  
17 484, 488, 656 P.2d 1064 (1983); *see also Seattle v. Gellein*, 112 Wn.2d 58, 61, 768 P.2d  
18 470 (1989); *State v. Mabry*, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable  
19 standard of review is whether, after viewing the evidence in the light most favorable to the  
20 prosecution, any rational trier of fact could have found the essential elements of the crime  
21 beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). Also,  
22 a challenge to the sufficiency of the evidence admits the truth of the State's evidence and  
23 any reasonable inferences from it. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d  
24 632 (1987), *review denied*, 111 Wn.2d 1033 (1988) (citing *State v. Holbrook*, 66 Wn.2d  
25 278, 401 P.2d 971 (1965)); *State v. Turner*, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981).

All reasonable inferences from the evidence must be drawn in favor of the State and

1 interpreted most strongly against the appellant. *State v. Salinas*, 119 Wn.2d 192, 201, 829  
2 P.2d 1068 (1992).

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

8 The written record of a proceeding is an inadequate basis on which to decide issues  
9 based on witness credibility. The differences in the testimony of witnesses create the need  
10 for such credibility determinations; these should be made by the trier of fact, who is best  
11 able to observe the witnesses and evaluate their testimony as it is given. On this issue, the  
12 Supreme Court of Washington said:

13  
14 [...]great deference [. . .] is to be given the trial court’s factual findings.  
15 It, alone, has had the opportunity to view the witness’ demeanor and to  
16 judge his veracity.

17 *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (citations omitted).

18 However, as argued above, what the defendant argues as a challenge to the sufficiency of  
19 the evidence is in fact a claim that the trial was defective because the jury was not given a  
20 unanimity instruction.

21 The legal standards regarding unanimity, as well as argument as to why this issue is  
22 properly one of the lack of a unanimity instruction and/or special verdict is addressed in  
23 detail in section 3.a above. Therefore it is not repeated again here.

1 The lack of a unanimity instruction and/or special verdict would have been error  
2 had it not been for the prosecutor's statements in closing argument. Any prejudice from  
3 the lack of a unanimity instruction was effectively removed by the prosecutor's statement,

4 ... no one has told you, nor will the State suggest that Anthony Wilson  
5 was in for a rape because we don't think he knew, and the evidence  
6 doesn't suggest he knew. Also we won't tell you that he planned, he was  
7 involved in a premeditated intentional killing, and that's why he isn't  
charged that way. He's charged with being an accomplice to a burglary in  
the first degree or robbery in the first or second degree.

8 20 RP 2295, ln. 24 to p. 2295, ln. 6. The prosecutor gave his own limiting argument by  
9 acknowledging that the rape hadn't been proved and that the means the jury were to  
10 consider consisted only of robbery and burglary. In light of this argument, any error is  
11 particularly harmless and the defendant cannot show prejudice.

12 6. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO  
13 CHALLENGE THE ACCOMPLICE LIABILITY INSTRUCTION.

14 The defense claims that trial counsel was ineffective where he "agreed to the  
15 defective accomplice liability instruction." Pet., p. 18.

16 To demonstrate ineffective assistance of counsel, an appellant must make two  
17 showings: (1) defense counsel's representation was deficient, i.e., it fell below an objective  
18 standard of reasonableness based on consideration of all the circumstances; and (2) defense  
19 counsel's deficient representation actually and substantially prejudiced the appellant, i.e.,  
20 there is a reasonable probability that, except for counsel's unprofessional errors, the result  
21 of the proceeding would have been different. See *In re Davis*, 151 Wn. App. 331, 211  
22 P.3d 1055 (2009); *State v. McFarland*, 127 Wn.2d 322, 377, 899 P.2d 1251 (1995).

24 Moreover, to raise a claim of ineffective assistance of counsel for the first time on  
25 appeal, the defendant is required to establish from the trial record: 1) the facts necessary to

1 adjudicate the claimed error; 2) the trial court would likely have granted the motion if it  
2 was made; and 3) the defense counsel had no legitimate tactical basis for not raising the  
3 motion in the trial court. *McFarland*, 127 Wn.2d at 333-34; *Riley*, 121 Wn.2d 22.

4 To prevail on this issue, the appellant must also rebut the presumption that the trial  
5 counsel's failure to object "can be characterized as legitimate trial strategy or tactics." *In*  
6 *re Pers. Restraint of Davis*, 152 Wn.2d at 714 (quoting *State v. McNeal*, 145 Wn.2d 352,  
7 362, 37 P.3d 280 (2002) (emphasis added in original)). Deliberate tactical choices may  
8 only constitute ineffective assistance if they fall outside the wide range of professionally  
9 competent assistance, so that "exceptional deference must be given when evaluating  
10 counsel's strategic decisions." *In re Pers. Restraint of Davis*, 152 Wn.2d at 714 (quoting  
11 *McNeal*, 145 Wn.2d at 362).

12 Courts engage in a strong presumption that counsel's representation was effective.  
13 Where, as here, the claim is brought on direct appeal, the reviewing court will not consider  
14 matters outside the trial record. The burden is on an appellant alleging ineffective  
15 assistance of counsel to show deficient representation based on the record established in  
16 the proceedings below. *McFarland*, 127 Wn.2d at 334.

17 Here, trial counsel was not ineffective. Not only did defense counsel not object to  
18 the accomplice liability instruction, he actually proposed it - indeed it was the only  
19 instruction defense counsel did propose. See Appendix C. That action was not ineffective.  
20 This trial occurred prior to the court's rulings that the instruction proposed in this case was  
21 defective. That defect was not obvious prior to the issuance of the cases rejecting the  
22 language of the instruction. Indeed, the instruction followed the WPIC at the time, and  
23 there was no other authority calling it into question. Under those facts, defense counsel's  
24 proposal of the instruction was not ineffective.  
25

1           7.       THE DEFENSE HAS FAILED TO ESTABLISH A CLAIM OF  
2                    PROSECUTORIAL MISCONDUCT.

3           The defense argues that the prosecutor engaged in misconduct in his closing  
4 argument because he shifted the burden of proof. Pet., p. 21ff. Specifically, the defense  
5 challenges the prosecutor's use of the "fill in the blank" argument as to reasonable doubt.  
6 Pet., p. 21 (citing 20 RP 2291).

7           The State agrees that the prosecutor's argument was erroneous in light of recent  
8 case law. See *State v. Johnson*, 158 Wn. App. 677, 243 P.3d 936 (2010); *State v.*  
9 *Venegas*, 155 Wn. App. 507, 523-24, 228 P.3d 813 (2010); *State v. Anderson*, 153 Wn.  
10 App. 417, 431, 220 P.3d 1273 (2009). These cases all hold that the "fill in the blank"  
11 argument is error. However, the defendant is not entitled to relief where the argument was  
12 not flagrant and ill intentioned, and where any error could have been corrected by a  
13 limiting instruction had defense counsel objected.

14           On a claim of prosecutorial misconduct, the defendant bears the burden of  
15 establishing both the impropriety of the prosecutor's remarks and their prejudicial effect.  
16 *State v. Finch*, 137 Wn.2d 792, 839, 975 P.2d 967 (1999). To prove that a prosecutor's  
17 actions constitute misconduct, the defendant must show that the prosecutor did not act in  
18 good faith and the prosecutor's actions were improper. *State v. Manthie*, 39 Wn. App.  
19 815, 820, 696 P.2d 33 (1985)(citing *State v. Weekly*, 41 Wn.2d 727, 252 P.2d 246 (1952)).  
20 Before an appellate court should review a claim based on prosecutorial misconduct, it  
21 should require "that [the] burden of showing essential unfairness be sustained by him who  
22 claims such injustice." *Beck v. Washington*, 369 U.S. 541, 557, 82 S. Ct. 955, 8 L. Ed. 2d  
23 834 (1962).

24           Allegedly improper comments are reviewed in the context of the entire argument,  
25 the issues in the case, the evidence addressed in the argument and the instructions given.

1 *State v. Bryant*, 89 Wn. App. 857, 873, 950 P.2d 1004 (1998) “remarks must be read in  
2 context.” *State v. Pastrana*, 94 Wn. App. 463, 479, 972 P.2d 557 (1999).

3 Improper remarks do not constitute prejudicial error unless the appellate court  
4 determines there is a substantial likelihood that the misconduct affected the jury’s verdict.  
5 *Finch*, 137 Wn.2d 792 at 839. The trial court is best suited to evaluate the prejudice of the  
6 statement. *State v. Weber*, 99 Wn.2d 158, 166, 659 P.2d 1102 (1983).

7 “It is not misconduct... for a prosecutor to argue that the evidence does not support  
8 the defense theory. Moreover, the prosecutor, as an advocate, is entitled to make a fair  
9 response to the arguments of defense counsel.” *State v. Russell*, 125 Wn.2d 24, 87, 882  
10 P.2d 747 (1994).

11 A defendant claiming prosecutorial misconduct bears the burden of demonstrating  
12 that the remarks were improper and that they prejudiced the defense. *State v. Mak*, 105  
13 Wn.2d 692, 726, 718 P.2d 407, *cert. denied*, 479 U.S. 995, 107 S. Ct. 599, 93 L. Ed. 2d  
14 599 (1986); *State v. Binkin*, 79 Wn. App. 284, 902 P.2d 673 (1995), *review denied*, 128  
15 Wn.2d 1015 (1996). If a curative instruction could have cured the error, and the defense  
16 failed to request one, then reversal is not required. *Binkin*, at 293-294.

17 To prove that a prosecutor’s actions constitute misconduct, the defendant must  
18 show that the prosecutor did not act in good faith and the prosecutor’s actions were  
19 improper. *State v. Manthie*, 39 Wn. App. 815, 820, 696 P.2d 33 (1985)(citing *State v.*  
20 *Weekly*, 41 Wn.2d 727, 252 P.2d 246 (1952)).

21 Absent a proper objection, a defendant cannot raise the issue of prosecutorial  
22 misconduct on appeal unless the misconduct was so “flagrant and ill intentioned” that no  
23 curative instruction would have obviated the prejudice it engendered. *State v. Hoffman*,  
24 116 Wn.2d 51, 93, 804 P.2d 577 (1991); *State v. Ziegler*, 114 Wn.2d 533, 540, 789 P.2d  
25 79 (1990), *State v. Belgarde*, 110 Wn.2d 504, 507, 755 P.2d 174 (1988).

1 The defendant bears the burden of establishing both the impropriety of the  
2 prosecutor's remarks and their prejudicial effect. *State v. Finch*, 137 Wn.2d 792, 839, 975  
3 P.2d 967 (1999). To prove that a prosecutor's actions constitute misconduct, the defendant  
4 must show that the prosecutor did not act in good faith and the prosecutor's actions were  
5 improper. *State v. Manthie*, 39 Wn. App. 815, 820, 696 P.2d 33 (1985) (citing *State v.*  
6 *Weekly*, 41 Wn.2d 727, 252 P.2d 246 (1952)). Before an appellate court should review a  
7 claim based on prosecutorial misconduct, it should require "that [the] burden of showing  
8 essential unfairness be sustained by him who claims such injustice." *Beck v. Washington*,  
9 369 U.S. 541, 557, 82 S. Ct. 955, 8 L. Ed. 2d 834 (1962).

10 The court in *Anderson* held that the erroneous statement, along with others made in  
11 closing argument, did not arise to the level of being so flagrant and ill intentioned that it  
12 could not be cured by a limiting instruction. *Anderson*, 153 Wn. App. at 432. The court in  
13 *Venegas* held that the argument was flagrant and ill intentioned so that there was a  
14 substantial likelihood that the argument affected the jury. *Venegas*, 155 Wn. App. at 523.  
15 However, *Venegas* was a direct appeal, not a personal restraint petition. And it was issued  
16 after the opinion in *Anderson*, not a decade before it. Even so, the court in *Venegas*  
17 completely failed to articulate what about the statement was not curable by a jury  
18 instruction, seeming instead to simply assume that such was the case. *See Venegas*, 155  
19 Wn. App. 523. In *Johnson*, the court followed *Venegas* and also held that the argument in  
20 and of itself was so flagrant and ill intentioned that no instruction could have cured it.  
21 *Johnson*, 158 Wn. App. at 685-686. In doing so it recognized a split with Division I, in  
22 which that division held in *State v. Fleming* that it was necessary for there to be a  
23 published opinion holding certain prosecutorial conduct improper before such conduct  
24 warrants a reversal. *Johnson*, 158 Wn. App. at 685 (citing *State v. Fleming*, 83 Wn. App.  
25 209, 214, 921 P.2d 1076 (1996)). Not only do *Venegas* and *Johnson* conflict with

1 *Fleming*, they also conflict with Division II's own opinion in *Anderson*. Additionally, all  
2 those cases involved a situation where the challenge was raised on direct appeal rather than  
3 in a personal restraint petition.

4 The court's opinions in *Anderson*, *Venegas* and *Johnson* misconstrue the "fill in  
5 the blank" argument. The reasonable doubt instruction tells the jury that "a reasonable  
6 doubt is a doubt for which a reason exists, and may arise from the evidence or the lack of  
7 evidence." Appendix E, Instruction 2. For a reason to exist, the juror should be able to  
8 identify or articulate for himself what that reason is. The "fill in a blank" argument tries to  
9 explain the definition of reasonable doubt to jurors in a way that is consistent with the  
10 definition of reasonable doubt in the instruction, but does attempt to supply a particular  
11 reason for them, because doing so could be construed by the courts as telling the jury they  
12 are limited to a particular reason or reasons for having a reasonable doubt. The "fill in the  
13 blank" argument does not shift the State's burden on reasonable doubt, it merely argues to  
14 the jury that they should have an identifiable reason for their doubt.  
15

16 Here, the prosecutor's argument did not shift the burden. Rather, he correctly  
17 stated and identified that burden. Before making the "fill in the blank" argument, he  
18 argued to the jury that a doubt arising from the lack of evidence is [a doubt that arises from  
19 the evidence]. And he acknowledges that the defense had suggested such an argument to  
20 the jury.

21 Notwithstanding *Venegas* and *Johnson*, the defense has failed to show that the  
22 prosecutor's argument was flagrant and ill intentioned because it pre-dated by a decade the  
23 cases the defense relied upon that hold such statements to be error. Indeed,  
24 notwithstanding the strong dislike of the argument by various panels at Division II, there  
25 now showing of any bad intent at all on the part of the prosecutor. At most the prosecutor

1 was a zealous advocate who simply failed to recognize that the argument misstated the  
2 State's burden of proof as to reasonable doubt.

3 Where such argument had not yet been held to be error, it can hardly be held to be  
4 flagrant and ill intentioned. Nor does the defense make any showing that where the  
5 statement was not objected to, that a limiting instruction would have been insufficient to  
6 correct any error. Nor could the defense make any such showing because, indeed, a  
7 limiting instruction would have cured the error.

8  
9 8. THERE WAS NO CUMULATIVE ERROR

10 The doctrine of cumulative error is the counter balance to the doctrine of harmless  
11 error. Harmless error is based on the premise that "an otherwise valid conviction should  
12 not be set aside if the reviewing court may confidently say, on the whole record, that the  
13 constitutional error was harmless beyond a reasonable doubt." *Rose v. Clark*, 478 U.S.  
14 570, 577, 106 S. Ct. 3101, 92 L. Ed. 2d 460 (1986). The central purpose of a criminal trial  
15 is to determine guilt or innocence. *Rose*, 478 U.S. at 577. "Reversal for error, regardless  
16 of its effect on the judgment, encourages litigants to abuse the judicial process and bestirs  
17 the public to ridicule it." *Neder v. United States*, 119 S. Ct. 1827, 1838, 144 L. Ed. 2d 35  
18 (1999)(internal quotation omitted). "[A] defendant is entitled to a fair trial but not a  
19 perfect one, for there are no perfect trials." *Brown v. United States*, 411 U.S. 223, 232  
20 (1973)(internal quotation omitted). Allowing for harmless error promotes public respect  
21 for the law and the criminal process by ensuring a defendant gets a fair trial, but not  
22 requiring or highlighting the fact that all trials inevitably contain errors. *Rose*, 478 U.S. at  
23 577. Thus, the harmless error doctrine allows the court to affirm a conviction when the  
24 court can determine that the error did not contribute to the verdict that was obtained. *Rose*,

1 478 U.S. at 578; *see also State v. Kitchen*, 110 Wn.2d 403, 409, 756 P.2d 105 (1988)(“The  
2 harmless error rule preserves an accused’s right to a fair trial without sacrificing judicial  
3 economy in the inevitable presence of immaterial error.”).

4         The doctrine of cumulative error, however, recognizes the reality that sometime  
5 numerous errors, each of which standing alone might have been harmless error, can  
6 combine to deny a defendant not only a perfect trial, but also a fair trial. *In re Lord*, 123  
7 Wn.2d 296, 332, 868 P.2d 835 (1994); *State v. Coe*, 101 Wn.2d 772, 789, 681 P.2d 1281  
8 (1984); *see also, State v. Johnson*, 90 Wn. App. 54, 74, 950 P.2d 981, 991 (1998)  
9 (“although none of the errors discussed above alone mandate reversal....”). The analysis is  
10 intertwined with the harmless error doctrine in that the type of error will affect the court’s  
11 weighing those errors. *State v. Russell*, 125 Wn.2d 24, 93 94, 882 P.2d 747 (1994) *cert.*  
12 *denied*, 574 U.S. 1129, 115 S. Ct. 2004, 131 L. Ed. 2d 1005 (1995). There are two  
13 dichotomies of harmless errors that are relevant to the cumulative error doctrine. First,  
14 there are constitutional and nonconstitutional errors. Constitutional errors have a more  
15 stringent harmless error test and therefore they will weigh more on the scale when  
16 accumulated. *See, Russell*, 125 Wn.2d at 93, 94. Conversely, nonconstitutional errors  
17 have a lower harmless error test and weigh less on the scale. *See, Russell*, 125 Wn.2d at  
18 93, 94. Second, there are errors that are harmless because of the strength of the untainted  
19 evidence, and there are errors that are harmless because they were not prejudicial. Errors  
20 that are harmless because of the weight of the untainted evidence can add up to cumulative  
21 error. *See e.g., Johnson*, 90 Wn. App. at 74. Conversely, errors that individually are not  
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1 prejudicial can never add up to cumulative error that mandates reversal because when the  
2 individual error is not prejudicial, there can be no accumulation of prejudice. *See e.g.*,  
3 *State v. Stevens*, 58 Wn. App. 478, 498, 795 P.2d 38, *rev. denied*, 115 Wn.2d 1025, 802  
4 P.2d 38 (1990) (“Stevens argues that cumulative error deprived him of a fair trial. We  
5 disagree, since we find that no prejudicial error occurred.”)(emphasis added).

6 As these two dichotomies imply, cumulative error does not turn on whether a  
7 certain number of errors occurred. Compare *State v. Whalon*, 1 Wn. App. 785, 804, 464  
8 P.2d 730 (1970)(holding that three errors amounted to cumulative error and required  
9 reversal), with *State v. Wall*, 52 Wn. App. 665, 679, 763 P.2d 462 (1988)(holding that  
10 three errors did not amount to cumulative error), and *State v. Kinard*, 21 Wn. App. 587,  
11 592 93, 585 P.2d 836 (1979)(holding that three errors did not amount to cumulative error).  
12 Rather, reversals for cumulative error are reserved for truly egregious circumstances when  
13 defendant is truly denied a fair trial, either because of the enormity of the errors, *see e.g.*,  
14 *State v. Badda*, 63 Wn.2d 176, 385 P.2d 859 (1963)(holding that failure to instruct the jury  
15 (1) not to use codefendant’s confession against Badda, (2) to disregard the prosecutor’s  
16 statement that the state was forced to file charges against defendant because it believed  
17 defendant had committed a felony, (3) to weigh testimony of accomplice who was State’s  
18 sole, uncorroborated witness with caution, and (4) to be unanimous in their verdicts was to  
19 cumulative error), or because the errors centered around a key issue, *see e.g.*, *State v. Coe*,  
20 101 Wn.2d 772, 684 P.2d 668 (1984)(holding that four errors relating to defendant’s  
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1 credibility, combined with two errors relating to credibility of state witnesses, amounted to  
2 cumulative error because credibility was central to the State's and defendant's case); *State*  
3 *v. Alexander*, 64 Wn. App. 147, 822 P.2d 1250 (1992)(holding that repeated improper  
4 bolstering of child rape victim's testimony was cumulative error because child's credibility  
5 was a crucial issue), or because the same conduct was repeated so many times that a  
6 curative instruction lost all effect, *see, e.g., State v. Torres*, 16 Wn. App. 254, 554 P.2d  
7 1069 (1976) (holding that seven separate incidents of prosecutorial misconduct was  
8 cumulative error and could not have been cured by curative instructions). Finally, as  
9 noted, the accumulation of just any error will not amount to cumulative error—the errors  
10 must be prejudicial errors. *See, Stevens*, 58 Wn. App. at 498.

11  
12  
13 F. CONCLUSION

14 The defendant should not be allowed to reinstate his claim that the accomplice  
15 liability instruction was defective when neither court acted upon the transfer to the Court of  
16 Appeals, he took no action to pursue his claim for nearly 8 years, nor did he act for nearly  
17 three years after he had actual notice that the court was not acting. The only reasonable  
18 interpretation was that he abandoned the claim.

19 Even if the court were to allow the defendant to reinstate his 2001 claim, it should  
20 not allow him to nearly eight years after the one-year collateral attack time limit has  
21 expired, to raise additional claims by adding them into the brief on the 2001 claim. Where  
22 his new claims do not fall under the exceptions to the time bar, the court should not  
23 consider them. The court should also decline to consider his argument regarding what he  
24 claims is the sufficiency of the evidence where it is successive because a sufficiency of the  
25 evidence claim was previously raised.

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Finally, for the reasons explained above, most of the issues raised lack substantive merit as well, and even where they don't, the defendant has not shown any prejudice.

For all these reasons, the petition should be denied and dismissed.

DATED: March 7, 2011.

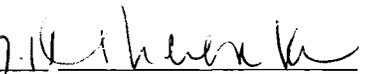
MARK LINDQUIST  
Pierce County  
Prosecuting Attorney



STEPHEN TRINEN  
Deputy Prosecuting Attorney  
WSB # 30925

Certificate of Service:

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

3-7-11   
Date Signature

DEPT OF PROBATION  
11 MAR -7 PM 4:22  
STATE OF WASHINGTON  
BY DEPUTY

Appendix A  
Information

CERTIFIED COPY

FILED  
IN COUNTY CLERK'S OFFICE  
A.M. FEB 03 1997 P.M.  
PIERCE COUNTY, WASHINGTON  
TED RUTT, COUNTY CLERK  
BY \_\_\_\_\_ DEPUTY

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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
GEORGE ANTHONY WILSON,  
  
Defendant.

CAUSE NO. 97 1 00433 2  
INFORMATION

DOB: 021079 B/M  
SS#: UNK SID#: UNK DOL#:

97 1 00432 4

DEFENDANT CECIL EMILE DAVIS

I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in the name and by the name of the State of Washington, do accuse GEORGE ANTHONY WILSON of the crime of MURDER IN THE FIRST DEGREE, committed as follows:

That CECIL EMILE DAVIS and GEORGE ANTHONY WILSON, in Pierce County, Washington, on or about the 25th day of January, 1997, did unlawfully and feloniously, acting as accomplices of each other, as defined in RCW 9A.08.020, while committing or attempting to commit the crime of Robbery in the first or second degree and/or Rape in the first or second degree, and/or burglary in the first degree, did enter the home of Yoshiko Couch, and in the course of and furtherance of said crime or in immediate flight therefrom, Yoshiko Couch, a human being, not a participant in such crime, was choked and/or suffocated,

INFORMATION - 1

ORIGINAL

Office of Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
Main Office: (206) 591-7400

1  
2 thereby causing the death of Yoshiko Couch, on or about the 25th day  
3 of January, 1997, contrary to RCW 9A.32.030(1)(c), and against the  
4 peace and dignity of the State of Washington.

5 DATED this 3rd day of February, 1997.

6  
7 City Case  
8 WA02703

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

9 wils.mrj

By: Michael R. Johnson  
MICHAEL R. JOHNSON  
Deputy Prosecuting Attorney  
WSB #2985

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21 STATE OF WASHINGTON, County of Pierce  
22 ss: I, Kevin Stock, Clerk of the above  
23 entitled Court, do hereby certify that this  
24 foregoing instrument is a true and correct  
25 copy of the original now on file in my office.  
26 IN WITNESS WHEREOF, I hereunto set my  
27 hand and the Seal of said Court this  
28 day of MAR 07, 2011  
Kevin Stock, Clerk

Appendix B  
Memorandum of Journal Entry, filed 02-06-98

CERTIFIED COPY

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 97-1-00432-4

vs.

DAVIS, CECIL EMILE

GEORGE WILSON

FILED  
DEPT 7  
IN OPEN COURT  
FEB - 6 1998  
Pierce County Clerk  
By \_\_\_\_\_  
DEPUTY

MEMORANDUM OF JOURNAL ENTRY

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Judge: FREDERICK W. FLEMING

Court Reporter: KIM DOOR

Judicial Assistant: LOUANNE MARTIN

JOHN M. NEEB

Prosecutor

LLOYDE L. ALTON, JR.

Defense Attorney

Proceeding Set: JURY TRIAL

Proceeding Date: 01/05/98 9:00

Proceeding Outcome:

Resolution:

Clerk's Code:  
Proceeding Outcome code:  
Resolution Outcome code:

FEB 18 1998

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 97-1-00432-4  
MEMORANDUM OF JOURNAL ENTRY

vs.

DAVIS, CECIL EMILE

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Judge: FREDERICK W. FLEMING

MINUTES OF PROCEEDING

Judicial Assistant: LOUANNE MARTIN  
Start Date/Time: 01/05/98 9:59 AM

Court Reporter:KIM DOOR

**January 05, 1998 09:59 AM** Court convened. Both counsel for the State present. Deft Atty McFie and Atty Alton present. Julia Lindstrom not present. Questionnaire addressed at this time. A discussion is had regarding reading of the questionnaire instruction at this time.

**10:04 AM** Deft Atty Lindstrom present. **10:06 AM** The Court will recess to continue in Room 100 . **10:37 AM** Court reconvened outside the presence of prospective jurors. All counsel and Defts present. Jury questionnaire discussed at this time. **11:03 AM** Court reconvened in the presence of prospective jurors. The Court introduces the case and counsel to prospective jurors. **11:05 AM**

The Court gives the panel preliminary instructions at this time. **11:15am** Jury excused for lunch to return at 12:45pm to begin filling out questionnaires. .

End Date/Time: 01/05/98 10:14 AM

Judicial Assistant: LOUANNE MARTIN  
Start Date/Time: 01/07/98 10:48 AM

Court Reporter:KIM DOOR

**January 07, 1998 10:48 AM** Court convened in the presence of counsel and Defts, who are in custody. The Court advises counsel of # 64 excused for cause. No one objected. Court and counsel discuss the excusal of jurors for cause. The following jurors are excused from this case for cause

2,3,10,11,12,14,19,23,24,27,32,39,44,46,48,53,55,56,63,64,67,69,71,72,73,80,86,88,92,97,98,100,103,109,117. Voir dire of Jurors 1,4,5,6,7,8. Juror # 7 excused till called. **05:13**

**PM** Atty Neeb questions further. Juror excused . Court instructs the juror. **05:14 PM** Recess.

End Date/Time: 01/08/98 9:32 AM

Judicial Assistant: LOUANNE MARTIN  
Start Date/Time: 01/08/98 9:32 AM

Court Reporter:KIM DOOR

**January 08, 1998 09:31 AM** Court convened. All parties present and represented by counsel. The accomplish liability is discussed. **09:38 AM** Juror #9 questioned by counsel. **10:02 AM** Juror #9 excused till called. Juror #13 questioned. **10:08 AM Juror # 13** excused for cause. Juror #15 questioned. **10:29 AM** Juror # 15 excused till called. Pltfs Atty Costello addresses issues regarding the death penalty. **10:35 AM Juror #16** questioned. **11:02 AM Juror #16** excused till called. Recess. **11:21 AM** Court reconvened. **Juror # 16** questioned. **11:42 AM** Juror excused till called. **Juror # 18**

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 97-1-00432-4  
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**MINUTES OF PROCEEDING**

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questioned. **12:03 PM Juror #18** excused till called. Recess. **01:35 PM** Court reconvened. **Juror # 20** questioned. **02:02 PM Juror # 20** excused till called. **Juror #21** questioned. **02:25 PM Juror # 21** excused till called. **Juror # 26** questioned. **02:47 PM Juror #26** excused till called. **02:51 PM Juror # 28** questioned. **03:12 PM** Recess. **03:37 PM** Court reconvened. **Juror #29** questioned. **03:56 PM Juror # 29** excused for cause. **03:57 PM** Recess.

**End Date/Time: 01/08/98 11:09 AM**

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Judicial Assistant: LOUANNE MARTIN  
**Start Date/Time: 01/09/98 11:09 AM**

Court Reporter:KIM DOOR

**January 09, 1998 11:09 AM** Court convened. All parties present and represented by counsel. **Juror # 22** questioned. **11:21 AM** Juror excused and Pltfs Atty Neeb addresses accomplice liability. **11:25 AM** Juror reseated in the Court room. **11:35 AM Juror #22** excused till called. **Juror # 25** questioned. **11:58 AM Juror # 25** excused for cause. **11:59 AM** Recessed until 2:30pm. **02:43 PM** Court reconvened. **Juror # 30** questioned. **02:54 PM** Juror excused. Residence discussed. **02:55 PM** Juror reseated. **03:00pm** Juror excused till called. **03:02 PM Juror # 33** questioned. **03:24 PM Juror #33** excused till later called. **03:26 PM Juror # 35** questioned. **03:34 PM** Juror excused. Excusing this juror for cause is discussed. **03:35 PM Juror # 35 excused for cause. 03:37 PM** Recess.

**End Date/Time: 01/09/98 2:42 PM**

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Judicial Assistant: LOUANNE MARTIN  
**Start Date/Time: 01/12/98 11:04 AM**

Court Reporter:KIM DOOR

**January 12, 1998 11:04 AM** Court convened. All parties present and represented by

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 97-1-00432-4

**MEMORANDUM OF JOURNAL ENTRY**

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DAVIS, CECIL EMILE

Judge: FREDERICK W. FLEMING

**MINUTES OF PROCEEDING**

counsel. **Juror # 31** questioned. **11:24 AM Juror #31** excused till called. **Juror # 36** questioned at this time. **Juror # 36** excused till later called. **01:37 PM** Court convened. **Juror # 37** questioned. **01:56 PM Juror # 37** excused till later called. **01:57 PM Juror # 38** questioned. **Juror #38** excused till called. Recess.

**End Date/Time: 01/12/98 2:32 PM**

Judicial Assistant: LOUANNE MARTIN

Court Reporter: KIM DOOR

**Start Date/Time: 01/13/98 9:27 AM**

**January 13, 1998 09:26 AM** Court convened. All parties present and represented by counsel. **Juror #41** questioned. **09:41 AM Juror #41** excused till later call. **Juror # 42** questioned. **09:59 AM Juror #42** excused till later called. **Juror # 47** questioned. **10:15 AM** **Juror** excused. Pltfs Atty Neeb moves to excuse for cause. **10:23 AM** **Juror** reseated. **10:25 AM Juror # 47** excused till later called. **Juror # 50** questioned. **10:44 AM** Court inquires of the juror. **Juror # 50** excused for cause. **10:45am** Recess. **11:07 AM** Court reconvened. **Juror #57** questioned. **11:36 AM Juror # 57** excused. Deft Atty Alton moves to exclude. Pltfs Atty Costello argues to the Court. Deft Atty Alton argues further. **11:41 AM** **Juror** reseated. Court inquires further. **11:50 AM Juror # 57** excused to jury room. Deft Atty Alton renews motion to excuse for cause. Court denies request. Deft Atty Alton argues further. **11:54 AM Juror # 57** excused till later called. **12:00 pm** Recess. Court reconvened. **Juror # 34** questioned. **02:08 PM** **Juror** excused. Pltfs Atty Neeb moves to excuse **juror #34** for cause. Deft Atty Lindstrom responds. **02:12 PM Juror # 34** excused for cause. **02:14 PM Juror # 45** is questioned. **02:31 PM Juror # 45** excused till later called. **02:34 PM Juror # 49** questioned. **02:57 PM Juror # 49** excused till called. **03:02 PM** Recess. **03:18 PM** Court reconvened. The Court reads a recent ruling. **03:20 PM Juror # 51** questioned. **Juror # 51** excused for cause. **03:26 PM Juror # 54** questioned. **03:41 PM Juror # 54** excused till later called. **03:44 PM Juror # 60** questioned. **03:45 PM Juror # 60** excused for cause. **03:45 PM Juror # 65** questioned. **Juror # 65** excused till later called. **04:08 PM** Recess.

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 97-1-00432-4

vs.

**MEMORANDUM OF JOURNAL ENTRY**

DAVIS, CECIL EMILE

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Judge: FREDERICK W. FLEMING

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MINUTES OF PROCEEDING

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**End Date/Time: 01/14/98 9:13 AM**

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Judicial Assistant: LOUANNE MARTIN

Court Reporter: KIM DOOR

**Start Date/Time: 01/14/98 9:13 AM**

**January 14, 1998 09:12 AM** Court convened. All parties present and represented by counsel. **Juror # 40** questioned. **09:34 AM Juror #40** excused till later called. **09:36 AM Juror # 70** questioned. **09:58 AM** Juror excused till later called. **10:08 AM** Recess. **10:18 AM** Court reconvened. **Juror # 68** questioned. **10:38 AM** Juror # 68 excused till later called. **10:39 AM Juror # 61** questioned. **11:03 AM Juror # 61** excused till later called. **11:05 AM Juror # 62** questioned. **11:09 AM Juror # 62** excused for cause. **11:10 AM Juror # 66** questioned. **11:27 AM** Juror # 66 excused till later called. **11:27 AM Juror # 74** questioned. **11:51 AM Juror # 74** excused till later time. **01:37 PM** Court reconvened. The issue of juror # 38's criminal record. Colloquy. Pltfs Atty Neeb moves to excuse for cause. All counsel address the Court. The Court after listening to argument of counsel excuses juror # 38 for cause. Police report is filed in open court. **01:48 PM Juror # 43** questioned. **02:05 PM Juror # 43** excused till later called. **02:07 PM Juror # 59** questioned. **02:16 PM Juror # 59** excused for cause. **02:19 PM Juror # 75** questioned. **02:45 PM Juror # 75** excused till later called. **02:46 PM Juror # 76** questioned. **03:12 PM Juror # 76** excused till later called. **3:15pm** Recess. **03:36 PM** Court reconvened. **Juror # 77** questioned. **03:49 PM Juror #77** excused till later called. **03:52 PM Juror # 81** questioned. **03:54 PM Juror # 81** excused for cause. **4:00pm**. Recess.

**End Date/Time: 01/14/98 4:00 AM**

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Judicial Assistant: LOUANNE MARTIN

Court Reporter: KIM DOOR

JUDGE FREDERICK W. FLEMING Year 1998

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# IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 97-1-00432-4

MEMORANDUM OF JOURNAL ENTRY

vs.

DAVIS, CECIL EMILE

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Judge: FREDERICK W. FLEMING

## MINUTES OF PROCEEDING

Start Date/Time: 01/15/98 9:00 AM

**January 15, 1998 09:00am** Court convened. All parties present and represented by counsel. **Juror # 58** questioned. **9:35am Juror # 58** excused till later called. **Juror # 78** questioned. **10:00am Juror # 78** excused till later called. **Juror # 82** questioned. **10:30am Juror # 82** excused till later called. **Juror # 83** questioned. **10:35am Juror # 83 excused for cause.** **Juror # 84** questioned. **11:14 AM Juror # 84** excused till later called. **11:16 AM Juror # 79** questioned. **11:23 AM Juror # 79 excused for cause.** Scheduling of remaining jurors is discussed at this time. **12:02 PM Recess.** **01:36 PM** Court reconvened. **Juror # 85** question **01:50 PM Juror # 85 excused for cause.** **01:52 PM Juror # 87** questioned. **02:14 PM Juror # 87** excused till later called. **02:16 PM Juror # 89** questioned. **02:29 PM Juror # 89** excused till later called. **Juror # 90** questioned. **Juror # 90** excused for cause. **3:00pm Recess.** **3:15pm** Court reconvened. **Juror # 91** questioned. **Juror # 91** excused till later called.. **03:45 PM Juror # 93** questioned. **03:46 PM Juror # 93 excused for cause.** **03:51 PM** Scheduling of jurors addressed. **03:57 PM Recess.**

End Date/Time: 01/20/98 9:40 AM

Judicial Assistant: LOUANNE MARTIN

Court Reporter:KIM DOOR

Start Date/Time: 01/20/98 9:40 AM

**January 20, 1998 09:39 AM** Court convened. All parties present and represented by counsel. Voir dire continues. **Juror # 52** questioned. **10:07 AM Juror # 52** excused till later called. **10:08 AM Juror # 99** questioned. **10:30 AM Juror # 99** excused till later called. **10:45am Recess.** **10:57 AM Juror # 94** questioned. **11:18 AM Juror # 94** excused till later called. **11:21 AM Juror # 95** questioned. **11:53 AM Juror # 95** excused till later called. **Juror # 101** questioned and excused till later called. **11:54 AM** Jury selection is addressed. **12:04 PM** Cameras in the Court room is discussed at this time. Defts make objections to cameras , video taping in the Court room. The Court rules no cameras in the Court room, only in the halls. Reporters are allowed in the Court room. Deft Atty McFie advises the Court they need a court order to get a hair cut. The Court asks that the State call and assure the jail that a hair cut is ok. **12:13 PM Recess.** **01:54 PM** Court reconvened. A discussion is had regarding jury selection and what jurors are available at this time. The Court is advised by the State of information they have come upon by criminal searches of the jurors they have questioned. Colloquy. Pltfs Atty Neeb suggest we recess for the day and return tomorrow to continue questioning the remaining jurors. Court agrees. Recess.

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**End Date/Time: 01/21/98 2:41 PM**

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Judicial Assistant: LOUANNE MARTIN  
**Start Date/Time: 01/21/98 2:41 PM**

Court Reporter: KIM DOOR

**January 21, 1998 9:00am** Court convened. All parties present and represented by counsel. **Juror # 96 questioned. Jurors # 84 118, 119 excused for cause.** A discussion is had regarding criminal information on several jurors.

**January 21, 1998 02:41 PM** Court reconvened. **Juror # 4 & 26 excused 02:41 PM Pre-Emptory challenges are exercised at this time. 04:01 PM** Side bar. **04:03 PM** Jury panel is seated and duly sworn to try this case. **04:12 PM** Court gives preliminary instruction at this time. **04:17 PM** Recess till 10:00am

**End Date/Time: 01/22/98 9:51 AM**

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Judicial Assistant: LINDA SHIPMAN  
**Start Date/Time: 01/22/98 10:12 AM**

Court Reporter: KIM DOOR

**January 22, 1998** 10:12 AM Court re-convened without the presence of the jury. 10:15 AM Colloquy re: Order Allowing Jury to Separate. Order Allowing Jury to Separate signed. 10:16 AM **PEXHIBIT #1** marked, offered and **admitted**. 10:19 AM State's motions in limine: argument by counsel/court's rulings given. 10:45 AM Defense (Davis) motions in limine: argument by counsel/court's rulings given. 10:52 AM Defense (Wilson) motions in limine: argument by counsel/court's rulings given. 10:53 AM State's motions re: photographs/video tape: argument by counsel/court's rulings given. 11:07 AM **PEXHIBIT #2** marked, offered, argument by counsel. 11:12 AM Court at recess. 11:26 AM Court re-convened. Court views video tape (**PEXHIBIT #2**). 11:48 AM Court rules that **PEXHIBIT #2 is admissable**. 11:50 AM Colloquy. 11:53 AM Court

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denies note taking by the jury. 12:03 PM Court at recess. **01:45 PM** Court reconvened outside the presence of the jury. The Court addresses the issue of statements made by Deft Wilson. Deft Atty McFie provided the Court with the transcript of an earlier hearing in front of Judge Sebring. Deft Atty Mc Fie argues against using the statements at issue. Pltfs Atty Neeb argues to the Court. Colloquy. **02:28 PM** Court allows questions by the State regarding these statements. **02:32 PM** Deft Atty Alton indicates based on the Courts ruling he moves for mistrial. **02:35 PM** Jury seated in the Court room. The Court gives the panel preliminary instructions. **02:38 PM** Pltfs Atty Neeb gives opening statement. **03:11 PM** Deft Attys Lindstrom and McFie reserve opening statement. **03:13 PM** Recess. **03:34 PM** Court reconvened in the presence of the jury. Pltfs Atty Costello called **Asako Schauf**, who was duly sworn to testify on direct. **03:46 PM** Witness excused. Pltfs Atty Costello calls **Jolene Davis**, who is duly sworn to testify on direct. **03:50 PM** Witness excused. Pltfs Atty Costello calls **Toni Wentland** who is duly sworn to testify on direct. **04:01 PM** Recess.

**End Date/Time: 01/22/98 12:03 PM**

Judicial Assistant: LOUANNE MARTIN

Court Reporter: KIM DOOR

**Start Date/Time: 01/23/98 1:38 PM**

**January 23, 1998 01:39 PM** Court convened outside the presence of the jury. All parties present and represented by counsel. Deft Atty Lindstrom re visits the issue of Hubley's testimony. **01:41 PM** The Court responds. **01:45 PM** Court orders a clean copy of trascript be filed and made a part of the record. Deft Atty Lindstrom will provide on Monday. **01:51 PM** Jurors seated in the Court room. Pltfs Atty Costello calls **Terry Munson**, who is duly sworn to testify on direct. **01:57 PM** Witness excused. Pltfs Atty Costello calls

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**Maureen Boyd**, who is sworn to testify on direct. **PEXHIBIT # 1-120 MARKED FOR ID. PEXHIBIT # 70 OFFERED, ADMITTED. PEXHIBIT # 77 OFFERED, ADMITTED. PEXHIBIT #79 & 76 OFFERED, ADMITTED. PEXHIBIT # 74 OFFERED, ADMITTED. PEXHIBIT # 80 & 73 OFFERED, VOIR DIRE , ADMITTED. EXHIBIT # 78 OFFERED, ADMITTED. PEXHIBIT # 75 OFFERED, ADMITTED. PEXHIBIT #71 OFFERED, ADMITTED. 02:25 PM** Witness excused. Pltfs Atty Costello calls **Diana Rodriguez** , who is duly sworn to testify on direct. **02:53 PM** Cross exam Deft Atty Lindstrom. **02:56 PM** Witness excused. Recess.

**End Date/Time: 01/26/98 10:19 AM**

Judicial Assistant: LOUANNE MARTIN  
**Start Date/Time: 01/26/98 10:19 AM**

Court Reporter: KIM DOOR

**January 26, 1998 10:19 AM PEXHIBIT # 41-A & 47-A MARKED FOR ID. DEXHIBIT # 152 & 153 MARKED FOR ID. 10:46 AM** Court reconvened outside the presence of the jury. Pltfs Atty Costello present. Deft Atty McFie present. Deft Atty Lindstrom present. **DEXHIBIT'S # 154-165 MARKED FOR ID .** The Court advises counsel of juror # 12 illness and phone message. All counsel agree this juror should not be excused but we should recess the Court for one day to give juror # 12 time to get better. **10:54 AM** JA calls juror and inquires of her condition. She is better but still has a fever. **10:55 AM** Jury seated . Court excuses the panel till tomorrow. This matter is at recess till 1:30pm to give Atty Alton time to complete his sentencing in Judge Van Deren's Court. Court advises counsel he will reconsider the Hubley testimony. Pltfs Atty Neeb responds. **11:30am Recess. 1:36pm** Court reconvened outside the presence of the jury. The Court reads the expected testimony of Hubley. Pltfs Atty Neeb responds. Colloquy. The redaction issue is discussed further. **02:50 PM Recess. 03:20 PM** Court

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reconvened. Deft Atty Alton reads a portion of the law ( Cotton). A discussion is had regarding a proposed redaction list. Colloquy. Objections are made by Deft Attys and the Court rules all parties will receive a copy of the proposed questions. Deft Atty Lindstrom inquires of the State as to having anyone else who will testify. Pltfs Atty Neeb responds. **03:36 PM** Court discusses scheduling. **03:41 PM** Recess.

**End Date/Time: 01/26/98 3:30 AM**

Judicial Assistant: LOUANNE MARTIN  
**Start Date/Time: 01/27/98 9:45 AM**

Court Reporter:KIM DOOR

**January 27, 1998 09:45 AM** Court convened outside the presence of the jury. Pltfs Atty Neeb advises the Court of the orders presented on motions in limine. Court signs agreed order. Deft Atty McFie makes objections to the order excluding statements made to Lisa Hubley or Jessica Cunningham. Court signs the order. **09:57 AM** Jury seated in the Court room. Witness Mr Burg resumes the stand previously sworn continues to testify on direct by Atty Costello. **PEXHIBIT # 95 OFFERED, ADMITTED, PEXHIBIT # 88 OFFERED, ADMITTED. PEXHIBIT # 83 OFFERED, ADMITTED. PEXHIBIT # 84 & 85 OFFERED, OBJECTED BY ATTY LINDSTROM. 10:13 AM** Jury excused. Deft Atty Lindstrom argues her objections. **10:13 AM** Pltfs Atty Costello responds. Colloquy. **10:19 AM** Court views the exhibits in question. **Court admits PEXHIBIT # 84 & 85 . 10:21 AM** Jury seated in the Court room. **PEXHIBIT # 92 OFFERED, ADMITTED. PEXHIBIT # 97 OFFERED, ADMITTED. PEXHIBIT # 89 OFFERED, ADMITTED. PEXHIBIT # 96 OFFERED, ADMITTED. PEXHIBIT #81 OFFERED, ADMITTED. PEXHIBIT # 87 OFFERED, ADMITTED. PEXHIBIT # 86 OFFERED, ADMITTED. 11:00AM** Recess. **11:15am** Court reconvened in the presence of the jury. Direct continues. **PEXHIBIT # 93 & 94 OFFERED, ADMITTED. PEXHIBIT # 91 OFFERED, ADMITTED. PEXHIBIT # 90 OFFERED, ADMITTED. PEXHIBIT # 98 OFFERED, ADMITTED. 11:39 AM** Cross exam

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by Atty Lindstrom. **DEXHIBIT # 152 & 153 OFFERED, ADMITTED. 11:57 AM** Cross exam by Deft Atty McFie. **11:59 AM** Pltfs Atty Costello reidirects. **12:00 PM** Recess. **01:39 PM** Court reconvened in the presence of the jury. **PEXHIBIT # 168 & 169 MARKED FOR ID. 2:00pm** Cross exam Deft Atty Lindstrom. **2:08pm** Cross exam by Deft Atty McFie. Pltfs Atty calls **Keith Burks** , who is duly sworn to testify on direct. **02:20 PM** Jury excused. Deft Atty McFie makes objections. Pltfs Atty Neeb responds. **02:23 PM** Jury reseated. Redirect continues. **02:30 PM** Re-cross by Deft Atty Mcfie. **02:43 PM PEXHIBIT # 168 OFFERED, ADMITTED. 03:02 PM** Recess. **03:20 PM** Court reconvened in the presence of the jury. Direct exam continued by Atty Neeb. **03:24 PM** Witness excused. Pltfs Atty Costello calls **Mary Morgan**, who is duly sworn to testify on direct. **PEXHIBIT # 105 OFFERED, ADMITTED. 03:32 PM** Cross exam by Deft Atty Lindstrom. **03:37 PM** Witness excused. Pltfs Atty Costello calls **Delores Fitch**, who is duly sworn to testify on direct. **03:46 PM** Witness excused. **03:46 PM** Judge advises the jurors of Fridays schedule. **03:47 PM** Recess.

**End Date/Time: 01/28/98 9:26 AM**

Judicial Assistant: LOUANNE MARTIN  
**Start Date/Time: 01/28/98 9:26 AM**

Court Reporter:KIM DOOR

**January 28, 1998 09:50 AM** Court convened outside the presence of the jury. All parties present and represented by counsel. The parties are advised regarding juror #3 's illness. It is agreed by all to recess for the day to give the juror time to get well. **10:00 AM** Jury seated in the Court room. Court advises the jury they are excused for the day. **10:02 AM** Pltfs Atty Neeb request a delay to advise witnesses. **DEXHIBIT # 57-A MARKED FOR ID.**

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**10:00AM Recess. DEXHIBIT #170 MARKED FOR ID.**

**10:28 AM** Court reconvened outside the presence of the jury. Pltfs Atty Neeb moves to exclude criminal history of several of the States witnesses. Deft Atty Lindstrom responds. Deft Atty McFie addresses Jessica Cunninghams statement. Pltfs Atty Neeb responds. Court rules. Pltfs Atty Neeb addresses **PEXHIBIT 57 & DEXHIBIT #57-A. 11:14 AM** Redacted statement addressed at this time. Deft Atty Alt on will provide a brief on the Hubley matter. **11:17 AM Recess. 01:57 PM** Court reconvened outside the presence of the jury.

The Court is provided a copy of Deft Atty Alton's brief. Deft Atty Alt on addresses the Court. Pltfs Atty Neeb responds. **02:03 PM** Deft Atty Alt on moves for mistrial or in the alternative sever the charges. Pltfs Atty files a brief on the redacting of Asil Hubleys statement. Court signs the order redacting Aisla Hubley's statement. Orders on criminal history signed in open court. Orders in limine signed in open court. Order on gruesome photos signed in open court. Deft Atty McFie addresses the issue of excited utterance as to Anthony Wilson's statement. Pltfs Atty Neeb responds. **02:43 PM** The Court rules an offer of proof will be done outside the presence of the jury in regard to the statements of family members. **02:56 PM** Deft Atty Alt on addresses the Jessica Taylor testimony. Court rules. **02:58 PM** Pltf Atty Neeb addresses the statement of Anthony Wilson as unlawful acts. An agreement is reached . Court makes the corrections to the transcript. **03:08 PM Recess.**

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**End Date/Time: 01/28/98 10:22 AM**

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Judicial Assistant: LOUANNE MARTIN  
**Start Date/Time: 01/29/98 10:23 AM**

Court Reporter: KIM DOOR

**January 29, 1998 10:23 AM** Court convened in the presence of the jury. All parties present and represented by counsel. Pltfs Atty Neeb calls **Frank Broshears**, who is duly sworn to testify on direct. **PEXHIBIT # 106 & 107 OFFERED, ADMITTED. PEXHIBIT # 171 - 175 MARKED FOR ID. 10:46 AM** Cross exam by Atty Lindstrom. **10:51 AM** Witness excused. Pltfs Atty Neeb calls **Christopher Sewell**, who is duly sworn to testify on direct. **PEXHIBIT 176 & 177 MARKED , OFFERED, ADMITTED. 11:19 AM** Cross exam by Atty Lindstrom. **11:20 AM** Witness excused. Pltfs Atty Neeb recalls **Frank Broshears** previously sworn testifies on direct. **11:21 AM** Witness excused. Recess. **11:41 AM** Court reconvened in the presence of the jury. Pltfs Atty calls **William Webb**, who is duly sworn to testify on direct. **11:56 AM** Cross exam by Atty Lindstrom. Witness excused. **12:00pm** Recess. **PEXHIBIT # 178-180 A-L MARKED FOR ID. 01:48 PM** Court reconvened in the presence of the jury. Pltfs Atty Neeb calls **Charles Vaughn**, who is duly sworn to testify on direct. **02:25 PM** Cross exam by Atty Lindstrom. **02:28 PM** Witness excused. Pltfs Atty Neeb call **George Johnston**, who is duly sworn to testify on direct. **PEXHIBIT # 181 MARKED FOR ID. 03:08 PM Recess. 03:31 PM** Court reconvened in the presence of the jury. Cross exam of witness Johnston by Atty Lindstrom. **03:43 PM** Redirect. **03:44 PM** Witness excused. Recess.

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**End Date/Time: 02/02/98 10:48 AM**

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Judicial Assistant: LOUANNE MARTIN

Court Reporter: KIM DOOR

**Start Date/Time: 02/02/98 10:48 AM**

**February 02, 1998 10:15 AM** Court convened outside the presence of the jury. All parties present and represented by counsel. Deft Atty Mc Fie makes a record of Friday afternoon when Court was at recess and Pltfs Atty Costello was in the Court room going over exhibits. Pltfs Atty Costello responds. **10:25am** Pltfs Atty Neeb addresses the excited utterance issue. Deft Atty McFie responds. **10:26am** Jury seated. Pltfs Atty Neeb calls **Cozetta Taylor**, who is duly sworn to testify on direct. 10:35am Cross exam by Deft Atty Lindstrom. 10:40am Cross exam by Deft Atty McFie. 10:40am Witness excused. Pltfs Atty Neeb calls **Audie Taylor**, who is duly sworn to testify on direct. **10:56 AM** Cross exam by Deft Atty McFie. **10:57 AM** Redirect Pltfs Atty Neeb. **10:57 AM** Witness excused. Pltfs Atty calls **Jessica Cunningham**, who is duly sworn to testify on direct. **10:58 AM** Jury excused. Deft Atty McFie makes offer of proof. **11:07 AM** Cross exam by Deft Atty Neeb. **11:12 AM** Witness excused. Deft Atty McFie argues the excited utterance to the Court. **11:15 AM** Pltfs Atty Neeb responds. **11:20 AM** Deft Atty McFie argues further. **11:23 AM** Pltfs Atty Neeb responds further. The Court rules statement of this witness is allowed. Deft Atty McFie argues further. **11:29 AM** Witness reseated in the Court room outside the presence fo the jury. Deft Atty McFie questions the witness further. **11:31 AM** Pltfs Atty Neeb inquires further of this witness. **11:33 AM** Recess. **11:47 AM** Court reconvened in the presence of the jury. Witness Jessica Cunningham previously sworn testifies on direct. **11:51 AM** Cross exam by Deft Atty Lindstrom. **11:59 AM** Redirect. **12:00 PM** Recross Atty Lindstrom. Recross Atty McFie. **12:01 PM** Witness excused. Recess. **01:39 PM** Court reconvened outside the presence of the jury. Pltfs Atty Neeb addresses the Court regarding the relationships of witnesses to the Deft . **01:42 PM** Jury seated in the Court room. Pltfs Atty calls **Lisa Hubley**, who is duly sworn to testify on direct. **01:54 PM** Cross exam by Deft Atty Lindstrom. **02:00 PM** Witness excused. Pltfs Atty calls **Kyllo Cunningham**, who is duly sworn to testify on direct. **02:05 PM** Witness excused. Pltfs Atty Neeb calls **Asil Hubley**, who is duly sworn to testify on direct. **02:08 PM** Cross exam by Deft Atty McFie. **02:11 PM** Witness excused. Pltfs Atty calls **Lisa Taylor**, who is duly sworn to testify on direct. **PEXHIBIT'S # 122,125,126,130,&131 OFFERED, ADMITTED.** **02:45 PM** Cross exam by Deft Atty Lindstrom **02:49 PM** Cross exam by Deft Atty McFie. **02:55 PM** Redirect. **02:57 PM** Jury excused. Deft Atty Lindstrom addresses

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prior ruling on witness Taylors prior criminal record. **03:02 PM** Jury reseated. Cross continued by Deft Atty Lindstrom. **03:13 PM** Witness excused. Jury excused. Recess.

**End Date/Time: 02/03/98 9:58 AM**

Judicial Assistant: LOUANNE MARTIN  
**Start Date/Time: 02/03/98 9:58 AM**

Court Reporter: KIM DOOR

**February 03, 1998 09:57 AM** Court convened in the presence of the jury. All parties present and represented by counsel. Pltfs Atty Neeb calls Tom Davidson, who is duly sworn to testify on direct. **10:02 AM** Cross exam by Deft Atty Lindstrom. **DEXHIBIT # 182 MARKED FOR ID. 10:08 AM** Witness excused. Pltfs Atty Neeb calls **John Pike**, who is duly sworn to testify on direct. **PEXHIBIT'S # 3-13 OFFERED, ADMITTED. PEXHIBIT 'S # 14-17 OFFERED, ADMITTED. PEXHIBIT'S # 18-27 OFFERED, ADMITTED. PEXHIBIT'S # 28-38 OFFERED, ADMITTED. PEXHIBIT'S # 39- 46 & 42-A. PEXHIBIT'S # 47-50 & 47-A. 11:03 AM** Recess. **11:24 AM** Court reconvened in the presence of the jury. **PEXHIBIT # 101-A MARKED FOR ID. PEXHIBIT # 101 OFFERED, ADMITTED. PEXHIBIT # 101-A**

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**OFFERED, ADMITTED. PEXHIBIT'S # 122-151 OFFERED, ADMITTED. 12:00pm**  
Recess. **01:36 PM** Court reconvened outside the presence of the jury. Pltfs Atty Neeb moves to withdraw **PEXHIBIT # 57** and replace it with **57-A**. So granted. **01:38 PM** Jury seated in the Court room. Witness John Pike resumes the stand on direct. **01:51 PM** Cross exam by Deft Atty Lindstrom. **01:57 PM** Jury excused. Pltfs Atty Neeb makes objections as to the line of questioning in regards to victims ring. **02:06 PM** Jury seated in the Court room. Witness excused. **02:09 PM** Recess. **02:21 PM** Court reconvened outside the presence of the jury. Pltfs Atty stipulates to the obstruction charge for next witness. **02:23 PM** Jury seated in the Court room. Pltfs Atty calls **Shelby Johnson**, who is duly sworn to testify on direct. **02:33 PM** Cross exam by Deft Atty Lindstrom. **02:35 PM** Witness excused. **02:36 PM** Recess. **02:57 PM** Court reconvened in the presence of the jury. Pltfs Atty Costello calls **Robert Creek**, who is duly sworn to testify on direct. **PEXHIBIT #108-A MARKED, OFFERED, ADMITTED. PEXHIBIT #108 & 118,119 ,111, 109, 117,113,116, 110,112,115, OFFERED, ADMITTED. PEXHIBIT'S # 183-186 MARKED FOR ID. OFFERED, VOIR DIRE BY ATTY LINDSTROM. PEXHIBIT'S # 184, 185, 186, ADMITTED. 03:40 PM** Cross exam by Deft Atty Lindstrom. **03:45 PM** Witness excused. Recess.

**End Date/Time: 02/03/98 4:11 PM**

Judicial Assistant: LOUANNE MARTIN

Court Reporter:KIM DOOR

**Start Date/Time: 02/04/98 9:11 AM**

**February 04, 1998 09:11 AM** Court convened in the presence of the jury. All parties present and represented by counsel. Pltfs Atty Costello calls **Roberto Ramoso**, who is duly sworn to testify on direct. **PEXHIBIT'S # 187-190 MARKED FOR ID. PEXHIBIT 'S # 62-68 OFFERED, ADMITTED. PEXHIBIT'S # 51-57-A & 53-A. PEXHIBIT # 58 & 59**

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Judge: FREDERICK W. FLEMING

MINUTES OF PROCEEDING

**OFFERED, ADMITTED. PEXHIBIT # 61 OFFERED, ADMITTED. PEXHIBIT # 60 OFFERED, ADMITTED. 10:14 AM** Cross exam by Deft Atty Lindstrom. **10:20 AM** Witness excused. Recess. **10:43 AM** Court reconvened in the presence of the jury. Pltfs Atty Neeb calls **Vanora Kean**, who is duly sworn to testify on direct. **PEXHIBIT # 120 OFFERED, ADMITTED. 12:00PM** Recess. **01:41 PM** Court reconvened in the presence of the jury. **PEXHIBIT # 191 MARKED FOR ID, OFFERED, ADMITTED. PEXHIBIT # 187-190 OFFERED, OBJ. 02:24 PM** Jury excused. **PEXHIBIT'S #187-190** addressed. Court denies offer. Pltfs Atty Neeb offers **PEXHIBIT # 187 ONLY**. Deft Atty Lindstrom makes further objections..Court sustains objection. **02:32 PM** Jury reseated. Direct exam continues. **02:39 PM** Cross exam Deft Atty Lindstrom. **02:42 PM** Witness excused. The State rest. **02:43 PM** Jury excused. Deft Atty Alton moves for severance and mistrial and dismissal. Pltfs Atty Neeb responds. **02:45 PM** Court denies motions. **02:45 PM** Colloquy. **02:47 PM** Court inquires of Deft Attys as to opening statement. All Deft counsel waive. **DEXHIBIT # 192 MARKED, OFFERED, OBJ.** Court denies admission. **03:05 PM** Jury seated in the Court room. Deft Atty Lindstrom rest and reoffers **DEXHIBIT #192**. Court advises the jury of scheduling. **03:08 PM** Recess. **03:34 PM** Court reconvened outside the presence of the jury. All exhibits are discussed at this time. Court will convene tomorrow at 9:00am outside the presence of the jury.

**End Date/Time: 02/04/98 9:30 AM**

Judicial Assistant: LOUANNE MARTIN  
**Start Date/Time: 02/05/98 9:30 AM**

Court Reporter:KIM DOOR

**February 05, 1998 09:30 AM** All parties present and represented by counsel. Jury instructions are discussd by all attorneys off the record. **10:16 AM** Court talks to Attys off the record. **11:44 AM** Court convened outside the presence of the jury. Exceptions to instructions taken at this time. **12:05 PM** Recess. **01:19 PM** Court reconvened in the

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 97-1-00432-4

**MEMORANDUM OF JOURNAL ENTRY**

vs.

Page: 18 of 18

DAVIS, CECIL EMILE

Judge: FREDERICK W. FLEMING

**MINUTES OF PROCEEDING**

presence of the jury. Court instructs the jury regarding the law. **01:46 PM** Pltfs Atty Costello gives closing argument. **02:45 PM** Recess. **03:02 PM** Court reconvened in the presence of the jury. Deft Atty Lindstrom gives closing argument. **03:43 PM** Deft Atty McFie gives closing argument. **04:25 PM** Recess. **04:38 PM** Court reconvened in the presence of the jury. Pltfs Atty Neeb gives rebuttal argument. **04:58 PM** Alternates are selected at this time. Jurors 2,9,14 are excused. Court instructs the panel with the seperation instruction. **05:01 PM** Recess.

**End Date/Time: 02/05/98 4:56 PM**

Judicial Assistant: LOUANNE MARTIN

Court Reporter:KIM DOOR

**Start Date/Time: 02/06/98 1:43 PM**

**February 06, 1998 09:00am** Jury present and begin deliberations. 12:30pm Jury has reached a verdict **01:51 PM** Court convened. The Court inquires of the Attys. **01:54 PM** Jury seated in the Court room. Court reads the verdict form. The jury found Deft Cecil Davis quilty as charged. They found aggravated circumstances. Jury polled. The jury found Anthony Wilson quilty. Jury was polled. **01:58 PM** Jury excused. Sentencing discussed. Sentencing for Anthony Wilson is set for March 30, 1998. Order establishing conditions signed in open court. A discussion is had regarding the penalty phase. Deft Atty Alton request starting on Tuesday. Court orders Monday morning at 9:30am to meet to discuss scheduling and motions. **02:06 PM** Jury seated in the Court room. Court advises the jury they are excused until Tuesday morning at 9:30am. **02:10 PM** Recess. **02:25 PM** Court reconvened outside the presence of the jury. Order establishing condition of no bail signed in open court. Deft Atty McFie addresses the Court regarding King 5 News filming the proceedings. Court advises the camera man who filmed through the door that he was in violation of the Courts order and the film will not be used and no cameras until further order of the Court. Recess.

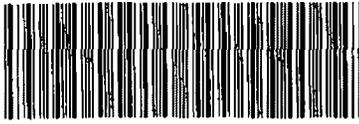
**End Date/Time:**

STATE OF WASHINGTON, County of Pierce  
ss: I, Kevin Stock, Clerk of the above  
entitled Court, do hereby certify that this  
foregoing instrument is a true and correct  
copy of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of said Court this  
day of **MAR 07 2011**  
Kevin Stock, Clerk



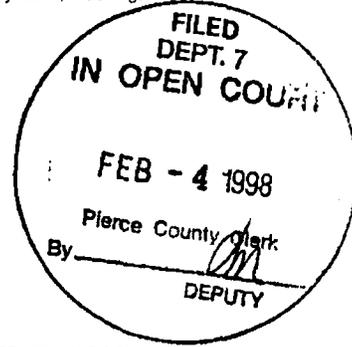
Appendix C  
Defendant's Proposed Instructions To the Jury

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 927B791B-F20D-AA3E-58C0703812F7E9B8  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



97-1-00433-2 4977136 DFPIN 11-19-10

26



SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 GEORGE ANTHONY WILSON, )  
 )  
 Defendant. )

97-1-00433-2  
NO. 97 1 00432 4

2 FEB 18 1998

DEFENDANT'S PROPOSED INSTRUCTIONS

The Honorable Frederick W. Flemming  
Superior Court Judge

-----  
John Neeb  
Deputy Prosecuting Attorney

Jerry Costello  
Deputy Prosecuting Attorney

-----  
Keith A. MacFie  
Appointed Counsel for  
George Anthony Wilson

February 4, 1997

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 927B791B-F20D-AA3E-58C0703812F7E9B8  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

### INSTRUCTION NO. 1

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of a crime, he or she either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing a crime.

The work "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

**INSTRUCTION NO. 2**

It is a defense to a charge of Murder in the First Degree based upon committing or attempting to commit Burglary, Robbery, or Rape that the defendant:

(1) did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(2) was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury; and

(3) had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(4) had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

This defense must be established by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 927B791B-F20D-AA3E-58C0703812F7E9B8** containing 3 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

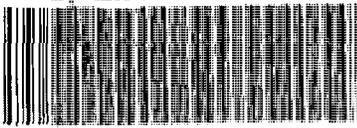
Dated: Mar 7, 2011 2:41 PM



**Instructions to recipient:** If you wish to verify the authenticity of the certified  
document that was transmitted electronically by the Court, sign on to: [https://  
www.co.pierce.wa.us/cfapps/secure/linx/courtfilling/certifieddocumentview.cfm](https://www.co.pierce.wa.us/cfapps/secure/linx/courtfilling/certifieddocumentview.cfm),  
enter **SerialID: 927B791B-F20D-AA3E-58C0703812F7E9B8**.  
The copy associated with this number will be displayed by the Court.

Appendix D  
Plaintiff's Proposed Instructions to the Jury

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



97-1-00433-2 4977137 PLPIN 11-19-10

...IOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff, **FILED** DEPT. 7 NO. 97-1-00432-4  
**IN OPEN COURT** NO. 97-1-00433-2

vs.

CECIL EMILE DAVIS,  
GEORGE ANTHONY WILSON,

**FEB - 4 1998**  
Pierce County Clerk  
Deputy *[Signature]*  
DEPUTY

PLAINTIFF'S PROPOSED INSTRUCTIONS

TO THE JURY

Before the Honorable Frederick W. Fleming  
Judge of the Superior Court  
Department No. 7

John M. Neeb  
Gerald Costello  
Deputy Prosecuting Attorneys  
Attorneys for Plaintiff

Julia Lindstrom  
Lloyde Alton  
Attorneys for Defendant Davis

Keith A. MacFie  
Attorney for Defendant Wilson

2 FEB 18 1998

**ORIGINAL**



**INSTRUCTION NO. \_\_\_\_\_**

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

Charges have been made by the prosecuting attorney by filing a document, called an information, informing the defendants of the charges. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence which either was not admitted or which was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorney's remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the

weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed upon defendant George Wilson. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful. The punishment to be imposed upon defendant Cecil Davis will be considered by you in a separate penalty phase only if you unanimously find him guilty of the crime of Premeditated Murder in the First Degree and unanimously find the existence of an Aggravating Circumstance.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdicts.

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

**INSTRUCTION NO. \_\_\_\_\_**

The defendants have each entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff, and has the burden of proving each element of the crime beyond a reasonable doubt.

Each 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, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

INSTRUCTION NO.                      Winlock Pierce County Clerk, Washington

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 experience. 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.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

Printed/Certified By:                      Pierce County Clerk, Washington**INSTRUCTION NO. \_\_\_\_\_**

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.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

**INSTRUCTION NO. \_\_\_\_\_**

Evidence that a witness has been convicted of a crime may be considered by you in deciding what weight or credibility should be given to the testimony of the witness and for no other purpose.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

INSTRUCTION NO.                      Pierce County Clerk, Washington

Evidence that one of the defendants has previously been convicted of a crime is not evidence of that defendant's guilt. Such evidence may be considered by you in deciding what weight or credibility should be given to the testimony of that defendant and for no other purpose.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

Digitally Certified By: Kevin Cook Pierce County Clerk, Washington

**INSTRUCTION NO.**

Defendant Cecil Davis is not compelled to testify, and the fact that he has not testified cannot be used to infer guilt or prejudice him in any way.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

~~INSTRUCTION 910~~ Pierce County Clerk, Washington

Defendant George Wilson is not compelled to testify, and the fact that he has not testified cannot be used to infer guilt or prejudice him in any way.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

**INSTRUCTION NO.**                       
Digitally signed by                      Pierce County Clerk, Washington

Homicide is the killing of a human being by the voluntary act of another and is either murder, homicide by abuse, manslaughter, excusable homicide, or justifiable homicide.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

~~INSTRUCTION NO.~~ Pierce County Clerk, Washington

A person commits the crime of Premeditated Murder in the First Degree when, with a premeditated intent to cause the death of another person, he causes the death of such person.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

~~DISRUPTION NO.~~ DISRUPTION NO. Pierce County Clerk, Washington

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

INSTRUCTION NO.                       
Digitally Certified by Kevin Stock Pierce County Clerk, Washington

Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

Digitally Certified By: Kerin Stuck Pierce County Clerk, Washington

**INSTRUCTION NO.**

To convict defendant Cecil Davis of the charged crime of Premeditated Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25th day of January, 1997, defendant Cecil Davis suffocated or asphyxiated Yoshiko Couch;
- (2) That defendant Cecil Davis acted with intent to cause the death of Yoshiko Couch;
- (3) That the intent to cause the death was premeditated;
- (4) That Yoshiko Couch died as a result of defendant Cecil Davis's acts; and
- (5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has 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 of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

Digitally Certified By: Karin Stok, Pierce County Clerk, Washington

**INSTRUCTION NO. \_\_\_\_\_**

If you find defendant Cecil Davis guilty of Premeditated Murder in the First Degree as defined in Instruction \_\_\_\_, you must then determine whether the following aggravating circumstance exists:

The murder was committed in the course of, in furtherance of, or in immediate flight from a Robbery in the First or Second Degree, a Rape in the First or Second Degree, or a Burglary in the First or Second Degree.

The State has the burden of proving the existence of an aggravating circumstance beyond a reasonable doubt. In order for you to find that there is an aggravating circumstance in this case, you must unanimously agree that the aggravating circumstance has been proved beyond a reasonable doubt. However, you need not be unanimous as to any one of the crimes listed within the aggravating circumstance.

WPIC 30.03 (Modified)

Petition of Jeffries, 110 Wn.2d 326, 339, 752 P.2d 1338, cert. denied, 488 U.S. 948, 109 S.Ct. 379, 102 L.Ed.2d 368 (1988)  
(when State alleges alternative means of committing a single aggravating circumstance, jury need not be unanimous as to any one of the alternatives)

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

INSTRUCTION NO.                       
Pierce County Clerk, Washington

A person commits the crime of Felony Murder in the First Degree when he or an accomplice commits or attempts to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree, and in the course of or in furtherance of such crime or in immediate flight from such crime, he or an accomplice causes the death of a person other than one of the participants.

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of a crime, he either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing a crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

**INSTRUCTION NO.**

A person attempts to commit a crime when, with intent to commit that crime, he does any act which is a substantial step toward the commission of that crime.

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

A "substantial step" is conduct which strongly indicates a criminal purpose and which is more than mere preparation.

WPIC 100.01 (Modified)  
WPIC 10.01 (Modified)  
WPIC 100.05 (Modified)

INSTRUCTION No.

A person commits the crime of Robbery in the First Degree when he inflicts bodily injury during the commission of a robbery or in immediate flight therefrom.

A person commits the crime of Robbery in the Second Degree when he commits robbery.

"Bodily injury" means physical pain or injury, illness, or an impairment of physical condition.

"Robbery" is the unlawful taking of personal property, with intent to commit theft thereof, from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial. The taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom it was taken, such knowledge was prevented by the use of force or fear.

Cigarettes, packaged food items, canned soda pop, canned beer, and jewelry are all "property".

WPIC 37.01 (Modified)  
WPIC 37.03 (Modified)  
WPIC 2.03 (Modified)  
WPIC 37.50 (Modified)  
WPIC 2.21 (Modified)  
WPIC 10.01 (Modified)  
WPIC 79.01 (Modified)  
WPIC 79.02 (Modified)

A person acts with ~~intent~~ or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

"Theft" means to wrongfully obtain the property of another, with intent to deprive that person of such property.

"Wrongfully obtains" means to take wrongfully the property of another.

WPIC 37.01 (Modified)  
WPIC 37.03 (Modified)  
WPIC 2.03 (Modified)  
WPIC 37.50 (Modified)  
WPIC 2.21 (Modified)  
WPIC 10.01 (Modified)  
WPIC 79.01 (Modified)  
WPIC 79.02 (Modified)

**INSTRUCTION NO.**

A person commits the crime of Rape in the First Degree when he engages in sexual intercourse with another person by forcible compulsion, when the perpetrator inflicts serious physical injury or feloniously enters into the building where the victim is situated.

A person commits the crime of Rape in the Second Degree when he engages in sexual intercourse with another person by forcible compulsion or when the victim is incapable of consent by reason of being physically helpless.

"Sexual intercourse" means any penetration of the vagina, however slight, by a penis or by an object, when committed on one person by another.

"Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to oneself.

"Physical injury" means physical pain or injury, illness, or an impairment of physical condition.

A person "feloniously enters a building" if that person enters into a building with the intent to commit a crime against a person or property therein and the person entering is not then licensed, invited or otherwise privileged to enter that building.

WPIC 40.01 (Modified)  
WPIC 41.01 (Modified)  
WPIC 45.01 (Modified)  
WPIC 45.03 (Modified)  
WPIC 2.03 (Modified)  
WPIC 40.03 (Modified)  
WPIC 2.05 (Modified); WPIC 2.08 (Modified)  
WPIC 45.05 (Modified)

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

"Building" includes any dwelling; "dwelling" means any structure that is ordinarily used by a person for lodging.

"Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

WPIC 40.01 (Modified)  
WPIC 41.01 (Modified)  
WPIC 45.01 (Modified)  
WPIC 45.03 (Modified)  
WPIC 2.03 (Modified)  
WPIC 40.03 (Modified)  
WPIC 2.05 (Modified); WPIC 2.08 (Modified)  
WPIC 45.05 (Modified)

**INSTRUCTION No. \_\_\_\_\_**

A person commits the crime of Burglary in the First Degree when, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a dwelling, and in entering, while in the dwelling, or in immediate flight from the dwelling he or an accomplice in the crime assaults any person.

A person commits the crime of Burglary in the Second Degree when, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building.

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

A person "enters or remains unlawfully" in a building or dwelling when he is not then licensed, invited, or otherwise privileged to so enter or remain.

"Building" includes any dwelling; "dwelling" means any structure that is ordinarily used by a person for lodging.

An "assault" is an intentional touching or striking of another person that is harmful or offensive, regardless of whether any physical injury is done to the person. A touching or striking is offensive if it would offend an ordinary person who is not unduly sensitive.

WPIC 60.01 (Modified)  
WPIC 60.03 (Modified)  
WPIC 10.01 (Modified)  
WPIC 65.02 (Modified); WPIC 65.01 (Modified)  
WPIC 2.05 (Modified); WPIC 2.08 (Modified)  
WPIC 35.50 (Modified)

**INSTRUCTION NO. \_\_\_\_\_**

To convict defendant Cecil Davis of the alternative crime of Felony Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 25th day of January, 1997, Yoshiko Couch was killed;

(2) That defendant Cecil Davis was committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree;

(3) That defendant Cecil Davis caused the death of Yoshiko Couch in the course of and in furtherance of such crime or in immediate flight from such crime;

(4) That Yoshiko Couch was not a participant in the crime;  
and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

The crimes listed in Element Number (2) are alternatives. You must unanimously agree that defendant Cecil Davis was committing or attempting to commit one of those crimes, but you need not be unanimous as to any particular one of those crimes.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

To convict defendant George Wilson of the charged crime of Felony Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 25th day of January, 1997, Yoshiko Couch was killed;

(2) That defendant George Wilson or an accomplice was committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree;

(3) That defendant George Wilson or an accomplice caused the death of Yoshiko Couch in the course of and in furtherance of such crime or in immediate flight from such crime;

(4) That Yoshiko Couch was not a participant in the crime;  
and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

The crimes listed in Element Number (2) are alternatives. You must unanimously agree that defendant George Wilson or an accomplice was committing or attempting to commit one of those crimes, but you need not be unanimous as to any particular one of those crimes.

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On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1

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**INSTRUCTION NO.** \_\_\_\_\_

A separate crime is charged against each defendant. The charges have been joined for trial. You must consider and decide the case of each defendant separately. Your verdict as to one defendant should not control your verdict as to the other defendant.

All of these instructions apply to each defendant, unless a specific instruction states that it applies only to a specific defendant.

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INSTRUCTION NO. 101 in Book 1, Pierce County Clerk, Washington

If you are not satisfied beyond a reasonable doubt that defendant Cecil Davis is guilty of the crime of Premeditated Murder in the First Degree, he may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish the defendant's guilt of such lesser crime beyond a reasonable doubt.

The crime of Premeditated Murder in the First Degree necessarily includes the lesser crime of Murder in the Second Degree. However, Murder in the Second Degree is not a lesser crime of Felony Murder in the First Degree. Therefore, you should only consider the crime of Murder in the Second Degree if you have unanimously agreed that defendant Cecil Davis is not guilty of the felony murder alternative defined above. In other words, if any one of you believes beyond a reasonable doubt that defendant Cecil Davis committed Felony Murder in the First Degree, you shall not consider Murder in the Second Degree.

When a crime has been proved against a person and there exists a reasonable doubt as to which of two degrees that person is guilty, he shall be convicted only of the lowest degree.

WPIC 4.11 (Modified)

State v. Berlin, 133 Wn.2d 541, \_\_\_ P.2d \_\_\_ (1997) (murder 2 charged by intentional and felony alternatives; held that manslaughter may be lesser offense of intentional murder)

State v. Warden, 133 Wn.2d 559, \_\_\_ P.2d \_\_\_ (1997) (murder 1 charged by premeditated and felony alternatives; held that manslaughter may be a lesser offense of premeditated murder)

State v. Dennison, 115 Wn.2d 609, 627, 801 P.2d 193 (1990)  
(Murder 2 is not a lesser degree of Felony Murder 1)

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Printed On: 03/07/2011 10:00 AM in Court Pierce County Clerk, Washington

**INSTRUCTION NO.** \_\_\_\_\_

A person commits the crime of Murder in the Second Degree when, with intent to cause the death of another person but without premeditation, he causes the death of such person.

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Pierce County Clerk, Washington  
**INSTRUCTION NO.**

To convict defendant Cecil Davis of the lesser degree crime of Murder in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25th day of January, 1997, defendant Cecil Davis suffocated or asphyxiated Yoshiko Couch;
- (2) That defendant Cecil Davis acted with intent to cause the death of Yoshiko Couch;
- (3) That Yoshiko Couch died as a result of defendant Cecil Davis' acts; and
- (4) That the acts occurred in State of Washington.

If you find from the evidence that each of these elements has 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 of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

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~~INSTRUCTION NO.~~ Pierce County Clerk, Washington

As jurors, you have a duty to discuss with one another the case against each defendant and to deliberate in an effort to reach unanimous verdicts. Each of you must decide each 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 change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room for your deliberation of these cases, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence and these instructions. You will be furnished with Verdict Form A, an Interrogatories form, a Special Verdict Form, and Verdict Form B for defendant Cecil Davis. You will be furnished with Verdict Form A for defendant George Wilson. You may consider the case against each defendant in the order you choose.

When you are deliberating the case against defendant Cecil Davis, you will first consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty" according to the decision you reach. If you cannot unanimously agree on a verdict as to that charge, do not fill in the blank provided in Verdict Form A.

If you find defendant Cecil Davis guilty on Verdict Form A, complete the form titled "Interrogatories" by answering the two questions either "Yes" or "No". If you answer the first question "Yes", you will then complete the Special Verdict Form. If you

answer the first question "No", do not complete the Special Verdict Form. In order to answer either question "Yes", you must unanimously be satisfied beyond a reasonable doubt that "Yes" is the correct answer to that question. Otherwise, you must answer "No" to that question. If you find defendant Cecil Davis guilty on Verdict Form A, do not use Verdict Form B.

If you unanimously find defendant Cecil Davis not guilty of the crime of Murder in the First Degree, or if, after full and careful consideration of the evidence, you unanimously find him not guilty of Felony Murder in the First Degree and you cannot agree as to Premeditated Murder in the First Degree, you will then consider the lesser crime of Murder in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form B the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot unanimously agree on a verdict, do not fill in the blank provided in Verdict Form B.

When you are deliberating the case against defendant George Wilson, you will only consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty" according to the decision you reach. If you cannot unanimously agree on a verdict as to that charge, do not fill in the blank provided on Verdict Form A.

Since these are criminal cases, each of you must agree for you to return a verdict. When all of you have so agreed, fill in

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the proper verdict form or forms to express your decision. The  
presiding juror will sign it and notify the judicial assistant,  
who will conduct you into court to declare your verdicts.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 97-1-00432-4
	)	
vs.	)	
	)	VERDICT FORM A
CECIL EMILE DAVIS,	)	(FIRST DEGREE MURDER)
	)	
Defendant.	)	
_____	)	

We, the jury, find defendant CECIL EMILE DAVIS  
\_\_\_\_\_ (Not Guilty or Guilty) of the crime of  
Murder in the First Degree as charged.

\_\_\_\_\_  
PRESIDING JUROR

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
CECIL EMILE DAVIS,  
  
Defendant.

CAUSE NO. 97-1-00432-4

INTERROGATORIES

We, the jury, having found defendant CECIL EMILE DAVIS guilty of Murder in the First Degree as charged, answer the following questions submitted by the court:

FIRST QUESTION: Did you unanimously agree that defendant Cecil Davis committed Premeditated Murder in the First Degree as defined in Instruction No. \_\_\_\_\_ ?

ANSWER: \_\_\_\_\_  
(Yes/No)

SECOND QUESTION: Did you unanimously agree that defendant Cecil Davis committed Felony Murder in the First Degree as defined in Instruction No. \_\_\_\_\_ ?

ANSWER: \_\_\_\_\_  
(Yes/No)

\_\_\_\_\_  
PRESIDING JUROR

Case Number: 97-1-00433-2 Date: March 7, 2011  
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Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
CECIL EMILE DAVIS,  
  
Defendant.

CAUSE NO. 97-1-00432-4  
  
SPECIAL VERDICT  
AGGRAVATING CIRCUMSTANCES

We, the jury, having unanimously found defendant CECIL EMILE DAVIS guilty of Premeditated Murder in the First Degree as defined in Instruction \_\_\_\_\_, answer the following question submitted by the court:

**QUESTION:** Has the State proved the existence of the following aggravating circumstance beyond a reasonable doubt?

The murder was committed in the course of, in furtherance of, or in immediate flight from a Robbery in the First or Second Degree, a Rape in the First or Second Degree, or a Burglary in the First or Second Degree.

ANSWER: \_\_\_\_\_  
(Yes/No)

\_\_\_\_\_  
PRESIDING JUROR

Case Number: 97-1-00433-2 Date: March 7, 2011  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 97-1-00432-4
	)	
vs.	)	
	)	VERDICT FORM B
CECIL EMILE DAVIS,	)	(SECOND DEGREE MURDER)
	)	
Defendant.	)	

---

We, the jury, having unanimously found defendant CECIL EMILE DAVIS not guilty of the crime of Murder in the First Degree as charged, or having unanimously found him not guilty of Felony Murder in the First Degree and being unable to unanimously agree as to Premeditated Murder in the First Degree, find defendant CECIL EMILE DAVIS \_\_\_\_\_ (Not Guilty or Guilty) of the lesser included crime of Murder in the Second Degree.

\_\_\_\_\_  
PRESIDING JUROR

Case Number: 97-1-00433-2 Date: March 7, 2011  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 97-1-00433-2
	)	
vs.	)	
	)	VERDICT FORM A
GEORGE ANTHONY WILSON,	)	
	)	
	)	
Defendant.	)	

---

We, the jury, find defendant GEORGE ANTHONY WILSON  
\_\_\_\_\_ (Not Guilty or Guilty) of the crime of  
Murder in the First Degree as charged.

\_\_\_\_\_  
PRESIDING JUROR

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1** containing 43 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

Dated: Mar 7, 2011 2:41 PM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm>, enter **SerialID: 927B67F4-F20D-AA3E-538A90D7DBA356E1**. The copy associated with this number will be displayed by the Court.

Appendix E  
Court Instructions to the Jury

CERTIFIED COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

CECIL EMILE DAVIS,  
GEORGE ANTHONY WILSON,

Defendants.

FILED  
DEPT. 7  
IN OPEN COURT

NO. 97-1-00432-4  
FEB 6 1998. 97-1-00433-2

Pierce County

By \_\_\_\_\_  
DEPUTY

COURT'S INSTRUCTIONS TO THE JURY

DATED this 5<sup>TH</sup> day of February, 1998.

*Frederick W. Fleming*  
FREDERICK W. FLEMING, JUDGE

2 FEB 18 1998

ORIGINAL

INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

Charges have been made by the prosecuting attorney by filing a document, called an information, informing the defendants of the charges. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence which either was not admitted or which was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorney's remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the

weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed upon defendant George Wilson. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful. The punishment to be imposed upon defendant Cecil Davis will be considered by you in a separate penalty phase only if you unanimously find him guilty of the crime of Premeditated Murder in the First Degree and unanimously find the existence of an Aggravating Circumstance.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdicts.

INSTRUCTION NO. 2

The defendants have each entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff, and has the burden of proving each element of the crime beyond a reasonable doubt.

Each 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, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. 3

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 experience. 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. 4

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. 5

Evidence that a witness has been convicted of a crime may be considered by you in deciding what weight or credibility should be given to the testimony of the witness and for no other purpose.

INSTRUCTION NO. 6

Defendant Cecil Davis is not compelled to testify, and the fact that he has not testified cannot be used to infer guilt or prejudice him in any way.

INSTRUCTION NO. 7

Defendant George Wilson is not compelled to testify, and the fact that he has not testified cannot be used to infer guilt or prejudice him in any way.

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INSTRUCTION NO. 8

Homicide is the killing of a human being by the voluntary act of another and is either murder, homicide by abuse, manslaughter, excusable homicide, or justifiable homicide.

INSTRUCTION NO. 9

A person commits the crime of Premeditated Murder in the First Degree when, with a premeditated intent to cause the death of another person, he causes the death of such person.

INSTRUCTION NO. 10

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

INSTRUCTION NO. 11

Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

INSTRUCTION NO. 12

To convict defendant Cecil Davis of the charged crime of Premeditated Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25th day of January, 1997, defendant Cecil Davis suffocated or asphyxiated Yoshiko Couch;
- (2) That defendant Cecil Davis acted with intent to cause the death of Yoshiko Couch;
- (3) That the intent to cause the death was premeditated;
- (4) That Yoshiko Couch died as a result of defendant Cecil Davis' acts; and
- (5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has 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 of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 13

If you find defendant Cecil Davis guilty of Premeditated Murder in the First Degree as defined in Instruction 9, you must then determine whether the following aggravating circumstance exists:

The murder was committed in the course of, in furtherance of, or in immediate flight from a Robbery in the First or Second Degree, a Rape in the First or Second Degree, or a Burglary in the First or Second Degree.

The State has the burden of proving the existence of an aggravating circumstance beyond a reasonable doubt. In order for you to find that there is an aggravating circumstance in this case, you must unanimously agree that the aggravating circumstance has been proved beyond a reasonable doubt. You need not be unanimous as to any one of the crimes listed within the aggravating circumstance.

INSTRUCTION NO. 14

A person commits the crime of Felony Murder in the First Degree when he or an accomplice commits or attempts to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree, and in the course of or in furtherance of such crime or in immediate flight from such crime, he or the other participant causes the death of a person other than one of the participants.

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of a crime, he either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing a crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

INSTRUCTION NO. 16

A person attempts to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree, when, with intent to commit that crime, he does any act which is a substantial step toward the commission of that crime.

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

A "substantial step" is conduct which strongly indicates a criminal purpose and which is more than mere preparation.

INSTRUCTION NO. 17

A person commits the crime of Robbery in the First Degree when, in the commission of a robbery or in immediate flight therefrom, he inflicts bodily injury.

A person commits the crime of Robbery in the Second Degree when he commits robbery.

"Bodily injury" means physical pain or injury, illness, or an impairment of physical condition.

A person commits "robbery" when he unlawfully and with intent to commit theft thereof, takes personal property from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial. The taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom it was taken, such knowledge was prevented by the use of force or fear.

Cigarettes, packaged food items, canned soda pop, canned beer, and jewelry are all "property".

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

"Theft" means to wrongfully obtain the property of another, with intent to deprive that person of such property.

"Wrongfully obtains" means to take wrongfully the property of another.

INSTRUCTION NO. 18

A person commits the crime of Rape in the First Degree when he engages in sexual intercourse with another person by forcible compulsion, when the perpetrator inflicts serious physical injury or feloniously enters into the building where the victim is situated.

A person commits the crime of Rape in the Second Degree when he engages in sexual intercourse with another person by forcible compulsion or when the victim is incapable of consent by reason of being physically helpless.

"Sexual intercourse" means any penetration of the vagina, however slight, by a penis or by an object, when committed on one person by another.

"Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to oneself.

"Physical injury" means physical pain or injury, illness, or an impairment of physical condition.

A person "feloniously enters a building" if that person enters into a building with the intent to commit a crime against a person or property therein and the person entering is not then licensed, invited or otherwise privileged to enter that building.

"Building" includes any dwelling; "dwelling" means any structure that is ordinarily used by a person for lodging.

"Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

INSTRUCTION NO. 19

A person commits the crime of Burglary in the First Degree when, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a dwelling, and in entering, while in the dwelling, or in immediate flight from the dwelling he or an accomplice in the crime assaults any person.

A person commits the crime of Burglary in the Second Degree when, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building.

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

A person "enters or remains unlawfully" in a building or dwelling when he is not then licensed, invited, or otherwise privileged to so enter or remain.

"Building" includes any dwelling; "dwelling" means any structure that is ordinarily used by a person for lodging.

An "assault" is an intentional touching or striking of another person that is harmful or offensive, regardless of whether any physical injury is done to the person. A touching or striking is offensive if it would offend an ordinary person who is not unduly sensitive.

INSTRUCTION NO. 20

To convict defendant Cecil Davis of the alternative crime of Felony Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 25th day of January, 1997, Yoshiko Couch was killed;

(2) That defendant Cecil Davis was committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree;

(3) That defendant Cecil Davis caused the death of Yoshiko Couch in the course of and in furtherance of such crime or in immediate flight from such crime;

(4) That Yoshiko Couch was not a participant in the crime;  
and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

The crimes listed in Element Number (2) are alternatives. You must unanimously agree that defendant Cecil Davis was committing or attempting to commit one of those crimes, but you need not be unanimous as to any particular one of those crimes.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 21

To convict defendant George Wilson of the charged crime of Felony Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 25th day of January, 1997, Yoshiko Couch was killed;

(2) That defendant George Wilson or an accomplice was committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree;

(3) That defendant George Wilson or an accomplice caused the death of Yoshiko Couch in the course of and in furtherance of such crime or in immediate flight from such crime;

(4) That Yoshiko Couch was not a participant in the crime;  
and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

The crimes listed in Element Number (2) are alternatives. You must unanimously agree that defendant George Wilson or an accomplice was committing or attempting to commit one of those crimes, but you need not be unanimous as to any particular one of those crimes.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 22

A separate crime is charged against each defendant. The charges have been joined for trial. You must consider and decide the case of each defendant separately. Your verdict as to one defendant should not control your verdict as to the other defendant.

All of these instructions apply to each defendant, unless a specific instruction states that it applies only to a specific defendant.

If you are not satisfied beyond a reasonable doubt that defendant Cecil Davis is guilty of the crime of Premeditated Murder in the First Degree, he may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish the defendant's guilt of such lesser crime beyond a reasonable doubt.

The crime of Premeditated Murder in the First Degree necessarily includes the lesser crime of Murder in the Second Degree. However, Murder in the Second Degree is not a lesser crime of Felony Murder in the First Degree. You should only consider the crime of Murder in the Second Degree if you have unanimously agreed that defendant Cecil Davis is not guilty of the felony murder alternative defined above.

When a crime has been proved against a person and there exists a reasonable doubt as to which of two degrees that person is guilty, he shall be convicted only of the lowest degree.

INSTRUCTION NO. 25

A person commits the crime of Murder in the Second Degree when, with intent to cause the death of another person but without premeditation, he causes the death of such person.

INSTRUCTION NO. 26

To convict defendant Cecil Davis of the lesser degree crime of Murder in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25th day of January, 1997, defendant Cecil Davis suffocated or asphyxiated Yoshiko Couch;
- (2) That defendant Cecil Davis acted with intent to cause the death of Yoshiko Couch;
- (3) That Yoshiko Couch died as a result of defendant Cecil Davis' acts; and
- (4) That the acts occurred in State of Washington.

If you find from the evidence that each of these elements has 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 of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 27

As jurors, you have a duty to discuss with one another the case against each defendant and to deliberate in an effort to reach unanimous verdicts. Each of you must decide each 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 change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. 28

Upon retiring to the jury room for your deliberation of these cases, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence and these instructions. You will be furnished with Verdict Form A, an Interrogatories form, a Special Verdict Form, and Verdict Form B for defendant Cecil Davis. You will be furnished with Verdict Form A for defendant George Wilson. You may consider the case against each defendant in the order you choose.

When you are deliberating the case against defendant Cecil Davis, you will first consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty" according to the decision you reach. If you cannot unanimously agree on a verdict as to that charge, do not fill in the blank provided in Verdict Form A.

If you find defendant Cecil Davis guilty on Verdict Form A, complete the form titled "Interrogatories" by answering the two questions either "Yes" or "No". If you answer the first question "Yes", you will then complete the Special Verdict Form. If you

answer the first question "No", do not complete the Special Verdict Form. In order to answer either question "Yes", you must unanimously be satisfied beyond a reasonable doubt that "Yes" is the correct answer to that question. Otherwise, you must answer "No" to that question. If you find defendant Cecil Davis guilty on Verdict Form A, do not use Verdict Form B.

If you unanimously find defendant Cecil Davis not guilty of the crime of Murder in the First Degree, or if, after full and careful consideration of the evidence, you unanimously find him not guilty of Felony Murder in the First Degree and you cannot agree as to Premeditated Murder in the First Degree, you will then consider the lesser crime of Murder in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form B the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot unanimously agree on a verdict, do not fill in the blank provided in Verdict Form B.

When you are deliberating the case against defendant George Wilson, you will only consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty" according to the decision you reach. If you cannot unanimously agree on a verdict as to that charge, do not fill in the blank provided on Verdict Form A.

Since these are criminal cases, each of you must agree for you to return a verdict. When all of you have so agreed, fill in

the proper verdict form or forms to express your decision. The presiding juror will sign it and notify the judicial assistant, who will conduct you into court to declare your verdicts.

STATE OF WASHINGTON, County of Pierce  
I, Kevin Stock, Clerk of the above  
entitled Court, do hereby certify that this  
foregoing instrument is a true and correct  
copy of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of said Court this  
day of **MAR 07**, 20**11**

Kevin Stock, Clerk

By

Deputy

Appendix F  
Verdict Form

**CERTIFIED COPY**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

30

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GEORGE ANTHONY WILSON, )  
 )  
 )  
 Defendant. )

NO. 97-1-00433-2

VERDICT FORM A

FEB 18 1998

We, the jury, find defendant GEORGE ANTHONY WILSON

GUILTY (Not Guilty or Guilty) of the crime of Murder in the First Degree as charged.

  
 \_\_\_\_\_  
 PRESIDING JUROR

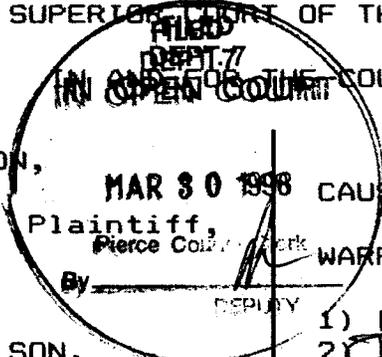
FILED  
 DEPT. 7  
 IN OPEN COURT  
 FEB - 6 1998  
 Pierce County Clerk  
 By   
 DEPUTY

STATE OF WASHINGTON, County of Pierce  
 ss: I, Kevin Stock, Clerk of the above  
 entitled Court, do hereby certify that this  
 foregoing instrument is a true and correct  
 copy of the original now on file in my office.  
 IN WITNESS WHEREOF, I hereunto set my  
 hand and the seal of said court this  
 day of MAR 07 2001  
 Kevin Stock, Clerk

Appendix G  
Warrant of Commitment and Judgment and Sentence

CERTIFIED COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN THE COUNTY OF PIERCE



STATE OF WASHINGTON, CAUSE NO. 97-1-00433-2

Plaintiff, WARRANT OF COMMITMENT  
Pierce County Clerk

vs. By \_\_\_\_\_ DEPUTY

GEORGE ANTHONY WILSON,  
Defendant.

- 1)  County Jail
- 2)  Dept. of Corrections
- 3)  Other - Custody

MAR 30 1998

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

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

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

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[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: MARCH 30, 1998

By direction of the Honorable  
[Signature]  
J U D G E

TED RUTT  
C L E R K

By: [Signature]  
D E P U T Y C L E R K

CERTIFIED COPY DELIVERED TO SHERIFF  
Date MAR 30 1998 By [Signature] Deputy



STATE OF WASHINGTON, County of Pierce  
ss: I, Ted Rutt, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

TED RUTT, Clerk  
By: \_\_\_\_\_ Deputy

33

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

STATE OF WASHINGTON,  
Plaintiff,  
vs.  
GEORGE ANTHONY WILSON,  
Defendant.

DOB: 02/10/79  
SID NO.: WA16049387  
LOCAL ID:

CAUSE NO. 97-1-00433-10  
JUDGMENT AND SENTENCE  
(FELONY/OVER ONE YEAR)

FILED  
DEPT. 7  
OPEN COURT  
MAR 30 1998  
Pierce County  
By [Signature]  
DEPUTY

MAR 30 1998

I. HEARING

1.1 A sentencing hearing in this case was held on MARCH 30, 1998.  
1.2 The defendant, the defendant's lawyer, KEITH A. MACELE, and the  
deputy prosecuting attorney, JOHN M. NEEB and GERALD COSTELLO, were  
present.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on FEBRUARY 6,  
1998, by

[ ] plea [X] jury-verdict [ ] bench trial of:

Count No.: I  
Crime: MURDER IN THE FIRST DEGREE, Charge Code: (D3)  
RCW: 9A.32.030(1)(c)  
Date of Crime: January 25, 1997  
Incident No.: 97-025-0373

[ ] Additional current offenses are attached in Appendix 2.1.  
[ ] A special verdict/finding for use of deadly weapon other than a  
firearm was returned on Count(s).

JUDGMENT AND SENTENCE  
FELONY / OVER ONE YEAR - 1 ENTERED  
JUDGEM

98-9-03116-7

Prosecuting Attorney  
City-City Building  
Washington 98402-2171  
Telephone: (253) 798-7400

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- A special verdict/finding for use of a firearm was returned on Counts\_\_\_\_\_.
- A special verdict/finding of sexual motivation was returned on Count(s)\_\_\_\_\_.
- A special verdict/finding of a RCW 69.50.401(a) violation in a school bus, public transit vehicle, public park, public transit shelter or within 1000 feet of a school bus route stop or the perimeter of a school grounds (RCW 69.50.435).
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

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

<u>CRIME</u>	<u>DATE OF SENTENCING</u>	<u>SENTENCING COUNTY/STATE</u>	<u>DATE OF CRIME</u>	<u>ADULT OR JUV.</u>	<u>CRIME TYPE</u>	<u>CRIME ENHANCEMENT</u>
TMVOP	12/29/92	PIERCE/WA	07/23/92	JUVENILE-13	NV	<i>POINT VALUE. 1/2 - 0</i>
TMVOP	08/16/94	PIERCE/WA	01/23/94	JUVENILE-14	NV	<i>1/2 - 0</i>
ROBBERY 2	04/04/94	PIERCE/WA	03/18/94	JUVENILE-15	V	<i>2</i>
CUSTODIAL ASSAULT	02/27/95	PIERCE/WA	09/12/94	JUVENILE-15	NV	<i>1/2</i>

- Additional criminal history is attached in Appendix 2.2.
- Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(11)):

2.3 SENTENCING DATA:

Offender	Serious	Standard	Maximum
----------	---------	----------	---------

JUDGMENT AND SENTENCE  
FELONY / OVER ONE YEAR - 2

AGREED OFFENDER  
SCORE AND STANDARD  
RANGE SENTENCE.

(SENT. ARG 3/20/98)

97-1-00433-2

	<u>Score</u>	<u>Level</u>	<u>Range(SR)</u>	<u>Enhancement</u>	<u>Term</u>
Count I:	22 (from 2.5)	XIV	<del>261 - 341</del> 261-347		LIFE / 50,000

[ ] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE:

[ ] Substantial and compelling reasons exist which justify an exceptional sentence

[ ] above [ ] within [ ] below the standard range for Count(s) \_\_\_\_\_ . Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 RECOMMENDED AGREEMENTS:

[X] For violent offenses, serious violent offenses, most serious offenses, or any felony with a deadly weapon special verdict under RCW 9.94A.125; any felony with any deadly weapon enhancements under RCW 9.94A.310(3) or (4) or both; and/or felony crimes of possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun, the recommended sentencing agreements or plea agreements are [ ] attached [ X ] as follows:

STATE'S RECOMMENDATION: standard range sentence, followed by 24 months of community placement, \$ 110 court costs, \$ 500 CVPA

2.6 RESTITUTION:

~~Restitution will not be ordered, because the felony did not result in injury to any person or damage to or loss of property.~~

[ ] Restitution should be ordered. A hearing is set for \_\_\_\_\_ .

[ ] Extraordinary circumstances exist that make restitution inappropriate. The extraordinary circumstances are set forth in Appendix 2.5.

[ ] Restitution is ordered as set out in Section 4.1, LEGAL FINANCIAL OBLIGATIONS.

JUDGMENT AND SENTENCE  
FELONY / OVER ONE YEAR - 3

2.7 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS: The court has considered the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court specifically finds that the defendant has the ability to pay:

- no legal financial obligations.
- the following legal financial obligations:
  - crime victim's compensation fees.
  - court costs (filing fee, jury demand fee, witness costs, sheriff services fees, etc.)
  - county or inter-local drug funds.
  - court appointed attorney's fees and cost of defense.
  - fines.
  - other financial obligations assessed as a result of the felony conviction.

A notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender, if a monthly court-ordered legal financial obligation payment is not paid when due and an amount equal to or greater than the amount payable for one month is owed.

III. JUDGMENT

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

3.2  The court DISMISSES.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 LEGAL FINANCIAL OBLIGATIONS. Defendant shall pay to the Clerk of this Court:

\$ \_\_\_\_\_, Restitution to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\$ 110.00, Court costs (filing fee, jury demand fee, witness costs, sheriff service fees, etc.);

JUDGMENT AND SENTENCE  
FELONY / OVER ONE YEAR - 4

1  
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4 \$ 500.00, Victim assessment;  
5 \$ \_\_\_\_\_, Fine; [ ] VUCSA additional fine waived due to  
6 indigency (RCW 69.50.430);  
7 \$ \_\_\_\_\_, Fees for court appointed attorney;  
8 \$ \_\_\_\_\_, Washington State Patrol Crime Lab costs;  
9 \$ \_\_\_\_\_, Drug enforcement fund of \_\_\_\_\_;  
10 \$ \_\_\_\_\_, Other costs for: \_\_\_\_\_;  
11 \$ 610.00, TOTAL legal financial obligations [ ] including  
restitution  not including restitution.

12 [ ] Minimum payments shall be not less than \$ \_\_\_\_\_ per month.  
Payments shall commence on \_\_\_\_\_.

13  The Department of Corrections shall set a payment schedule.

14 [ ] Restitution ordered above shall be paid jointly and severally with:

15

Name	Cause Number
_____	_____
_____	_____

17 The defendant shall remain under the court's jurisdiction and the  
18 supervision of the Department of Corrections for a period up to ten  
19 years from the date of sentence or release from confinement to assure  
20 payment of the above monetary obligations.

21 Any period of supervision shall be tolled during any period of time the  
22 offender is in confinement for any reason.

23 Defendant must contact ~~the Department of Corrections~~ at 755 Tacoma  
24 Avenue South, Tacoma upon release or by \_\_\_\_\_.

25 [ ] Bond is hereby exonerated.

26 4.2 CONFINEMENT OVER ONE YEAR: The defendant is sentenced as follows:

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

<u>304</u>	months on Count No.	<u>I</u>	[ ] concurrent [ ] consecutive
_____	months on Count No.	_____	[ ] concurrent [ ] consecutive
_____	months on Count No.	_____	[ ] concurrent [ ] consecutive

JUDGMENT AND SENTENCE  
FELONY / OVER ONE YEAR - 5

\_\_\_\_\_ months on Count No. \_\_\_\_\_ [ ] concurrent [ ] consecutive

Standard range sentence shall be [ ] concurrent [ ] consecutive with the sentence imposed in Cause Nos.: \_\_\_\_\_.

Credit is given for 424 days served;

4.3  COMMUNITY PLACEMENT (RCW 9.94A.120). The defendant is sentenced to community placement for [ ] one year  two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer.

[ ] COMMUNITY CUSTODY (RCW 9.94A.120(1)). Because this was a sex offense that occurred after June 6, 1996, the defendant is sentenced to community custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer.

While on community placement or community custody, the defendant shall: 1) report to and be available for contact with the assigned community corrections officer as directed; 2) work at Department of Corrections-approved education, employment and/or community service; 3) not consume controlled substances except pursuant to lawfully issued prescriptions; 4) not unlawfully possess controlled substances while in community custody; 5) pay supervision fees as determined by the Department of Corrections; 6) residence location and living arrangements are subject to the approval of the department of corrections during the period of community placement.

- (a)  The offender shall not consume any alcohol;
- (b)  The offender shall have no contact with: Any GANG MEMBER OR ANY MEMBER OF THE VICTIM'S FAMILY.
- (c) [ ] The offender shall remain [ ] within or [ ] outside of a specified geographical boundary, to-wit: \_\_\_\_\_

(d) [ ] The offender shall participate in the following crime related treatment or counseling services: \_\_\_\_\_

(e) [ ] The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_

(f)  OTHER SPECIAL CONDITIONS AND CRIME RELATED PROHIBITIONS: ALL STANDARD AND SPECIAL CONDITIONS LISTED IN PSI (PAGE 5) ARE ACCEPTED AND ORDERED. SUBMIT TO POLYGRAPHS AS REQUESTED BY CLO.

(g) [ ] HIV TESTING. The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. (RCW 70.24.340)

JUDGMENT AND SENTENCE  
FELONY / OVER ONE YEAR - 6

(h) ~~(X)~~ DNA TESTING. The defendant shall have a blood sample drawn for purpose of DNA identification analysis. The Department of Corrections shall be responsible for obtaining the sample prior to the defendant's release from confinement. (RCW 43.43.754) *SEPARATE ORDER ATTACHED.*

[ ] PURSUANT TO 1993 LAWS OF WASHINGTON, CHAPTER 419, IF OFFENDER IS FOUND TO BE A CRIMINAL ALIEN ELIGIBLE FOR RELEASE AND DEPORTATION BY THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, SUBJECT TO ARREST AND REINCARCERATION IN ACCORDANCE WITH THIS LAW, THEN THE UNDERSIGNED JUDGE AND PROSECUTOR CONSENT TO SUCH RELEASE AND DEPORTATION PRIOR TO THE EXPIRATION OF THE SENTENCE.

EACH VIOLATION OF THIS JUDGMENT AND SENTENCE IS PUNISHABLE BY UP TO 60 DAYS OF CONFINEMENT. (RCW 9.94A.200(2)).

FIREARMS: PURSUANT TO RCW 9.41.040, YOU MAY NOT OWN, USE OR POSSESS ANY FIREARM UNLESS YOUR RIGHT TO DO SO IS RESTORED BY A COURT OF RECORD.

ANY DEFENDANT CONVICTED OF A SEX OFFENSE MUST REGISTER WITH THE COUNTY SHERIFF FOR THE COUNTY OF THE DEFENDANT'S RESIDENCE WITHIN 24 HOURS OF DEFENDANT'S RELEASE FROM CUSTODY. RCW 9A.44.130.

PURSUANT TO RCW 10.73.090 AND 10.73.100, THE DEFENDANT'S RIGHT TO FILE ANY KIND OF POST SENTENCE CHALLENGE TO THE CONVICTION OR THE SENTENCE MAY BE LIMITED TO ONE YEAR.

Date: March 30, 1998

*[Signature]*  
JUDGE

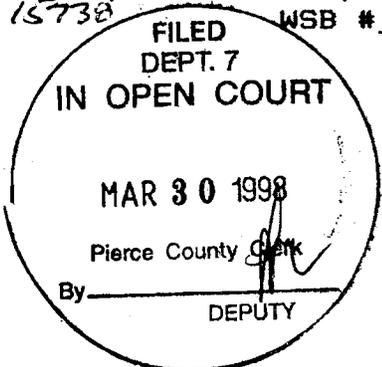
Presented by:

Approved as to form:

*[Signature]*  
JOHN M. NEEB / *GERARD COSTELLO*  
Deputy Prosecuting Attorney  
WSB # 21322 / *WSB # 15738*

*[Signature]*  
KEITH A. MACFIE  
Lawyer for Defendant  
WSB # 11317

jmn



JUDGMENT AND SENTENCE  
FELONY / OVER ONE YEAR - 7

1 APPENDIX F  
 2 FILED  
 3 DEPT. 7  
 4 IN OPEN COURT  
 5 MAR 30 1998  
 6 Pierce County Clerk  
 7 By \_\_\_\_\_  
 8 DEPUTY

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
  - serious violent offense (MURDER 1<sup>st</sup>)
  - assault in the second degree
  - any crime where the defendant or an accomplice was armed with a deadly weapon
  - any felony under 69.50 and 69.52 committed after July 1, 1988
- is also sentenced to one (1) year term of community placement on these conditions:

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

\_\_\_\_\_ (I) The offender shall remain within, or outside of, a specified geographical boundary: \_\_\_\_\_

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals:  
 Any GANG member, Any member of VICTIMS FAMILY.

\_\_\_\_\_ (III) The offender shall participate in crime-related treatment or counseling services;

(IV) The offender shall not consume alcohol;

\_\_\_\_\_ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

\_\_\_\_\_ (VI) The offender shall comply with any crime-related prohibitions.

(VII) Other: ALL CONDITIONS OF PSI (PAGE 5) ARE ADOPTED AND ORDERED

**PRESENTENCE INVESTIGATION  
RECOMMENDATION**

I recommend the following sentence option:

Re: Cause #97-1-00433-2

--Standard Range Sentence

**A. CONFINEMENT:**

Total Confinement: <sup>347</sup>~~416~~ months.

**B. COMMUNITY PLACEMENT:**

Length of Community Placement: 24 months

**C. CONDITIONS OF COMMUNITY PLACEMENT:**

Standard Conditions:

- 1) Report to and be available for contact with the assigned Community Corrections Officer;
- 2) Receive prior approval for living arrangements and residence location;
- 3) Work at a Department of Corrections approved education, employment, and/or community service program;
- 4) No consumption of controlled substances that are not legally prescribed;
- 5) No possession of controlled substances while on Community Custody;
- 6) Pay Community Placement fees as determined by the Department of Corrections.

Special Conditions:

- 1) No consumption of alcohol;
- 2) Do not enter or frequent an establishment that primarily serves alcoholic beverages;
- 3) Provide urine and breath samples for testing when directed;
- 4) No possession of drug paraphernalia;
- 5) No possession or use of any firearm or ammunition;
- 6) No direct or indirect contact with any known gang member;
- 7) Comply with curfew as directed the assigned Community Corrections Officer;
- 8) Do not leave the county of placement without written permission of the assigned Community Corrections Officer.





FINGERPRINTS

Right Hand  
Fingerprint(s) of: GEORGE ANTHONY WILSON, Cause #97-1-00433-2

Attested by: Led Butt CLERK  
By: DEPUTY CLERK Jouanne Martin Date: 3/30/98

CERTIFICATE  
OFFENDER IDENTIFICATION

I, \_\_\_\_\_  
Clerk of this Court, certify that  
the above is a true copy of the  
Judgment and Sentence in this  
action on record in my office.

State I.D. #WA16049387  
Date of Birth 02/10/79  
Sex MALE  
Race BLACK  
ORI \_\_\_\_\_  
OCA \_\_\_\_\_  
OIN \_\_\_\_\_  
DOA \_\_\_\_\_

Dated: \_\_\_\_\_  
\_\_\_\_\_  
CLERK  
By: \_\_\_\_\_  
DEPUTY CLERK

STATE OF WASHINGTON, County of Pierce  
ss: I, Kevin Stock, Clerk of the above  
entitled Court, do hereby certify that this  
foregoing instrument is a true and correct  
copy of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of said Court this  
day of MAR 07 2001  
Kevin Stock, Clerk  
By: \_\_\_\_\_ Deputy



FINGERPRINTS

Appendix H  
Notice of Appeal



Appendix I  
Mandate

CERTIFIED COPY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

GEORGE ANTHONY WILSON,

Appellant.

No. 23203-1-II

MANDATE

Pierce County Cause No.  
97-1-00433-2

FILED  
IN COUNTY CLERK'S OFFICE

A.M. JAN 18 2001 P.M.

PIERCE COUNTY, WASHINGTON  
TED R. HART, COUNTY CLERK  
BY: [Signature] REPHT

The State of Washington to: The Superior Court of the State of Washington  
in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on August 4, 2000 became the decision terminating review of this court of the above entitled case on January 9, 2001. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs have been awarded in the following amount:

Judgment Creditor Respondent State: \$16.33  
Judgment Creditor A.I.D.F.: \$18,697.15  
Judgment Debtor Appellant Wilson: \$18,713.48



IN TESTIMONY WHEREOF, I have  
hereunto set my hand and affixed the  
seal of said Court at Tacoma, this  
16<sup>th</sup> day of January, 2001.

[Signature]  
Clerk of the Court of Appeals,  
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Indeterminate Sentence Review Board

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON****DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

GEORGE ANTHONY WILSON,

Appellant.

No. 23203-1-II

UNPUBLISHED OPINION

AUG 04 2000

Filed:

HOUGHTON, J. -- George Anthony Wilson appeals his first degree felony murder conviction, arguing: (1) violation of the right of confrontation, (2) ineffective assistance of counsel, (3) violation of the right to a speedy trial, and (4) insufficient evidence. We affirm.

**FACTS**

In the late morning of January 25, 1997, friends discovered Yoshiko Couch's brutalized body in her upstairs bathtub. Found dead with towels over her face, Couch had been beaten, sexually assaulted, and forced to inhale the toxic bathroom cleaner, xylene. An autopsy revealed Couch died from asphyxiation and xylene toxicity. Couch's death made a widower of her

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husband of more than 40 years, Richard, whose severe disabilities after several strokes left him bedridden, confined to the downstairs portion of their home.

On January 24, 1997, the Davis-Taylor family, who lived across the street from the Couches, had held a party that lasted into the early morning hours of the next day. At approximately 2:30 a.m., on January 25, 1997, Keith Burks, Cecil Davis and George Anthony Wilson were smoking on the family's porch when Davis looked at the Couches' house and stated he needed to rob someone. Shortly thereafter, Davis stated, "I need to kill me a [expletive]." Report of Proceedings at 1507. Burks then went inside the Davis-Taylor residence, leaving Davis and Wilson on the porch.

Approximately five minutes later, Burks let Wilson into the Davis-Taylor residence through the back door. Upon his return, Wilson looked scared and confused and stated that he and Davis had gone to the Couch residence to "rip the lady off," but Davis had gone crazy -- kicking in the door, beating the lady, and rubbing against her as if he was going to rape her. Report of Proceedings at 1510. Admitting that he initially had planned to rob the victim, Wilson left when he realized they were not going to just rob the house. Wilson stated that he never went into the house, but rather, he remained on the porch while Davis kicked in the door.

The police investigation of Couch's death revealed several links between Davis and the crime scene that indicated Davis was the perpetrator. Several items missing from the house were found in Davis' possession, including Couch's wedding ring, which Davis had offered to sell to his mother. Bloodstains were found on Davis' shoes, along with Comet cleanser that was found dusted throughout the Couches' upstairs residence. Hairs found in the upstairs bedroom were

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also linked to Davis as a potential source. None of the physical evidence recovered at the scene was linked to Wilson.

On February 3, 1997, Davis and Wilson were arrested and charged with first degree murder, with Wilson's charge predicated on an accomplice theory of felony murder and Davis' charge later amended to aggravated first degree murder. Over Wilson's speedy trial objections, the court continued the joint trial date from March 31, 1997 to July 7, 1997, on the request of Wilson's counsel who stated that although he could be ready for trial in late June, he could not provide the requisite effective assistance by the end of March. Davis' counsel protested the July 7, 1997 trial date, stating that in order to provide effective assistance for his client, the trial date needed to be moved to November 3, 1997, a date to which his client had agreed through waiver of his speedy trial rights. The trial court noted the objection but maintained the July 7 date.

On June 17, the parties again engaged in a discussion regarding continuance of the trial date. Wilson repeated his objection to a continuance, and Davis' counsel reiterated his position that he could not provide effective assistance to his client if trial began on July 7, 1997. The trial court preliminarily denied the motion for a continuance but set aside the issue for further argument the following week. The court acknowledged the necessary balancing act entailed by a joint trial where one defendant asserts his speedy trial rights and the other claims there would be ineffective assistance if trial went forward on the scheduled date.

On June 24, the trial court heard arguments on continuance and severance. Davis' counsel stated once again that he would be unable to prepare an effective defense by July 7 and moved that the court either sever the cases under CrR 4.4 or continue the joint trial under CrR 3.3(h)(2) to November 3. In arguing for a continuance, Davis' counsel acknowledged the

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importance of Wilson's right to a speedy trial, but he stated that his client's constitutional right to effective assistance should outweigh Wilson's asserted non-constitutional right. The State concurred in the motion to continue, agreeing that concerns about ineffective assistance were more important than speedy trial rights. The State also submitted that Davis' requested continuance put the trial date at only nine months past arraignment, which was "not slow motion" on an aggravated murder charge. Report of Proceedings at 329. The State further suggested that in weighing whether to grant the continuance, the court should err on the side of the more serious charge, Davis', which carried a possible death penalty, as opposed to Wilson's, which carried a 20 to 25 year standard range sentence.

Wilson joined in Davis' motion to sever. Although admitting there was no mandatory severance issue for his client, Wilson's counsel argued that severance still might be appropriate in light of Davis' request for a continuance some eight months beyond the expiration of Wilson's speedy trial rights. When asked about possible prejudice to his client if a continuance to November 3 was granted, Wilson's counsel replied that the only prejudice he could foresee was that witnesses' recollections of events could cloud, leading them to become more invested in their witness statements that incriminated his client. The State countered that time was the friend of Wilson, and that the passage of time made it more likely that witnesses' testimony would differ from their prior statements, thereby allowing Wilson to impeach those witnesses. Davis' counsel agreed that Wilson's asserted prejudice was speculative.

After hearing argument, the trial court denied Davis and Wilson's severance motion. In issuing its ruling, the court stated that there was no reason to sever in terms of legal issues and that the interests of justice were served by trying the cases together. The trial court then

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acknowledged the delicate balancing of the respective parties' interests necessary in determining whether to grant Davis' motion for continuance. Although the court announced some skepticism as to Davis' assertion that his experts could not be ready in July, it granted the continuance. The court then stated that it would prefer to begin trial in September rather than on November 3. But Davis' counsel held firm to its requested date, stating, "November 3rd is a realistic date. Anything before that is not." Report of Proceedings at 340. The court later granted Davis' request and set trial for November 3, entering an order indicating that a continuance was merited on "due administration of justice" grounds. Report of Proceedings at 341; Clerk's Papers at 140.

On October 21, the court heard argument on the proposed instructions to be given before voir dire. Wilson's counsel expressed concerns with the opening instruction, which he believed did not adequately distinguish between the differing procedures facing Wilson and Davis. Wilson's counsel then requested an instruction indicating that Wilson was not subject to the death penalty and thus would not be involved in any second trial phase. Davis' counsel concurred in Wilson's request, and the court agreed to language instructing the jury that Wilson did not face the death penalty and would not be involved in any second phase of trial.

On November 3, 1997, jury selection commenced. The parties reconvened the following week before Judge Frederick B. Hayes, who stated that the case's presiding judge, Terry Sebring, was ill and likely unavailable for two to three weeks. Counsel for both defendants moved for mistrial, which was granted on November 13. The parties agreed to a new trial date of January 5, 1998. The case was assigned to Judge Frederick W. Fleming, although all prior orders and rulings remained in effect.

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On January 5, 1998, the joint trial began. The court gave the prospective jurors an instruction during voir dire that conformed to the parties' earlier agreed upon language, including informing the jurors that Wilson did not face the death penalty and would not be involved in any second phase of trial. During voir dire, Wilson's counsel asked several jurors whether they understood Wilson did not face the death penalty. Both the State and Davis' counsel repeatedly reminded prospective jurors that the death penalty was sought only against Davis.

During the trial, the court heard extended argument on the admissibility of Asil Hubley's testimony. Hubley, Davis' nephew, had given a statement to police that Wilson had told him conflicting stories about the night in question, including two separate accounts that placed Wilson in the house with Davis while the murder took place. Davis' counsel expressed concern based upon *Bruton*,<sup>1</sup> noting that Hubley's statement implicated Davis. The State suggested it be allowed to ask leading questions to avoid violating the rules set forth in *Bruton*. Wilson then expressed concern about the potential limitation of cross-examination. Eventually, the court allowed Hubley's statement into evidence, deleting all references to Davis, expressed or implied. Wilson objected only to the court's ruling prohibiting inquiry into Hubley and Davis' relationship, which Wilson claimed was essential to establishing potential bias for Hubley placing Wilson at the crime scene.

At trial, Hubley testified that Wilson had twice told him he was inside the Couches' house. Wilson's cross-examination delved only into Hubley's past criminal history.

Wilson appeals.

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<sup>1</sup> *Bruton v. United States*, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968) (holding that a criminal defendant is denied his or her Sixth Amendment right of confrontation when a nontestifying codefendant's pretrial confession is introduced at their joint trial).

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## ANALYSIS

### Death Penalty Information

Wilson contends that he received ineffective assistance when his counsel did not object to a voir dire instruction that he was not facing the death penalty.<sup>2</sup>

To establish ineffective assistance of counsel, a defendant must make two showings: (1) defense counsel's representation was deficient, *i.e.*, it fell below an objective standard of reasonableness based on consideration of all circumstances; and (2) defense counsel's deficient representation prejudiced the defendant, *i.e.*, there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. McFarland*, 127 Wn.2d 322, 334-335, 899 P.2d 1251 (1995) (citing *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987)).

Wilson relies upon *State v. Murphy*, 86 Wn. App. 667, 937 P.2d 1173 (1997), *review denied*, 134 Wn.2d 1002 (1998), in which Division One held that it was error to inform the jury during voir dire that the case did not involve the death penalty. But recently, in *State v. Townsend*, 97 Wn. App. 25, 979 P.2d 453 (1999), *review granted*, 139 Wn.2d 1009 (1999), we rejected the analysis in *Murphy* and held that counsel was not ineffective for failing to object to a voir dire instruction that his client was not facing the death penalty. Here, the need for such an instruction was even more pronounced than in *Townsend* because there are multiple defendants and only one faced the death penalty.

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<sup>2</sup> Wilson's counsel requested the instruction. The invited error doctrine thus prohibits a challenge to the court's instruction. *State v. Henderson*, 114 Wn.2d 867, 870, 792 P.2d 514 (1990). But the doctrine does not prohibit a claim of ineffective assistance based on the request. *State v. Doogan*, 82 Wn. App. 185, 188, 917 P.2d 155 (1996).

### Right of Confrontation

Wilson next contends that the trial court violated his constitutional right of confrontation when it forbid his counsel from inquiring into Hubley's relationship with Davis. He argues that his counsel was entitled to explore any potential bias, including whether Hubley's familial ties to Davis led him to implicate Wilson. The State agreed at oral argument that the trial court unduly limited Wilson's right of confrontation but contends the error was harmless.

The Sixth Amendment to the United States Constitution and article I, section 22 of our state constitution guarantee a criminal defendant's right to confront and cross-examine adverse witnesses. *State v. Hudlow*, 99 Wn.2d 1, 14-15, 659 P.2d 514 (1983) (citing *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); *Chambers v. Mississippi*, 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973)). The denial of a defendant's right to cross-examine a witness adequately as to relevant matters tending to show bias or motive violates his right of confrontation. *State v. Buss*, 76 Wn. App. 780, 788-89, 887 P.2d 920 (1995).

Here, the trial court entered an order that prevented Wilson from asking about the familial relationship between Hubley and Davis. The relevant portion of the order provided:

[A]ll counsel shall refrain from asking any witness whether Asil Hubley and Cecil Davis are related;

Clerk's Papers at 210.

Wilson objected to the order. In answering the State's request for a demonstration of the familial relationship's relevance, Wilson's counsel responded:

Your Honor, to the best of my knowledge, this witness, Asil Hubley, is the only witness who attempts through his statement to the police to put my client into [the Couches'] house. His motivation for that is a question mark. The reason why he is testifying like that is a question mark. And it is a reasonable inference,

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it is a reasonable argument to the jury, that quite possibly in a misguided way Asil Hubley feels that Anthony Wilson may have been part of the reason why Cecil Davis was arrested and charged with the crime and that Asil Hubley has a reason to go after Anthony Wilson now.

Report of Proceedings at 1626-27.

The trial court seemingly acknowledged the inquiry's relevance, stating, "I think it shows some sort of a bias, potentially could show that [Hubley] is biased in some way . . . in favor of his uncle." Report of Proceedings at 1629. Nevertheless, the trial court, without further explanation, proceeded to sign the written order prohibiting Wilson's inquiry.

This was error. Wilson should have been allowed to present to the jury Hubley's relationship to Davis and explore his relevant theory of potential bias. Without establishing familial ties between Hubley and Davis, Wilson could not rationally inquire into Hubley's potential motivation for implicating him. Failure to permit the inquiry violated Wilson's constitutional right of confrontation.

Having concluded that the court's order violated Wilson's right of confrontation, we question whether the error was harmless. "Where the right to confront witnesses is violated, reversal is required unless the error was harmless beyond a reasonable doubt." *Buss*, 76 Wn. App. at 789. In making this determination, a court must consider the importance of the witness's testimony, whether the evidence was cumulative, the extent of corroborating and contradicting testimony, the extent of cross-examination otherwise permitted, and the strength of the State's case. *Buss*, 76 Wn. App. at 789.

The complaint here is that the trial court excluded any disclosure of Hubley and Davis' relationship, even though the relationship was relevant to potential bias. But despite the court's prohibition, the litigants twice presented the jury with evidence that Hubley and Davis were

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related. First, Wilson's counsel elicited from Davis' mother on cross-examination that she was Hubley's grandmother. Second, in its direct examination of Hubley, the State asked, "Asil, you have a number of rings on today. Did you get any of those from your [U]ncle Cecil?" Report of Proceedings at 1873. The jury thus became aware that Hubley and Davis were related, in spite of the court's order prohibiting references to their familial ties. The litigants' actions nullified the effect of the trial court order and rendered the court's error harmless.

#### Severance

Wilson next contends that he received ineffective assistance when his counsel did not move for severance under CrR 4.4(c)(2)(i) and he was later tried by a "death qualified" jury despite not being subject to the death penalty. Br. of Appellant at 20-22.

Wilson's claim fails. Contrary to Wilson's contention, his trial counsel advocated severance, asserting that the trial court had to consider the prejudice to his client's speedy trial rights if severance was not granted. This argument invokes CrR 4.4(c)(2)(i), which provides that a court should sever when it is deemed necessary to protect a defendant's rights to a speedy trial. Wilson's counsel put the trial court on notice of the discretionary grounds for severance.

Further, even assuming, without so holding, that trial counsel's statement was deficient, Wilson cannot demonstrate the requisite prejudice. Where counsel's failure to litigate a motion to sever is the basis of an ineffective assistance claim, the appellant must demonstrate that the motion should have been granted. *State v. Standifer*, 48 Wn. App. 121, 125, 737 P.2d 1308, review denied, 108 Wn.2d 1035 (1987). Despite the language of CrR 4.4(c)(2)(i), severance is not favored in Washington. *State v. Melton*, 63 Wn. App. 63, 68, 817 P.2d 413 (1991), review denied, 118 Wn.2d 1016 (1992). Our Supreme Court has held that a trial court properly

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exercises its discretion in denying severance under CrR 4.4(c)(2)(i) where the interests of judicial economy merit a joint trial. *See State v. Dent*, 123 Wn.2d 467, 869 P.2d 392 (1994). Here, the trial court, after extended discussions on severance, made quite evident that the interests of justice and judicial economy were best served by a joint trial. Thus, because Wilson cannot point to any prejudice, his ineffective assistance claim fails.

### Speedy Trial

Wilson further contends that his CrR 3.3 speedy trial rights were violated when the trial court continued the trial date from July 7 to November 3 in order to maintain joinder with his co-defendant Davis, whose counsel required additional preparation time.<sup>3</sup> We review the grant of a motion to continue the trial date past the speedy trial period for abuse of discretion. *State v. Campbell*, 103 Wn.2d 1, 14, 691 P.2d 929 (1984).

CrR 3.3(c)(1), speedy trial rule, provides that a defendant who is not released from jail must be brought to trial no later than 60 days after the date of arraignment. But trial within 60 days is not a constitutional mandate. *State v. Hoffman*, 116 Wn.2d 51, 77, 804 P.2d 577 (1991). Unless the defendant can demonstrate actual prejudice from the delay, a trial court's decision to continue a joint trial past one defendant's speedy trial date to provide a codefendant's counsel adequate time to prepare for trial is not an abuse of discretion. *Dent*, 123 Wn.2d at 484 (delay of just over two months).

On appeal, Wilson asserts no actual prejudice from the four-month delay. Although Wilson asserts that he was prejudiced when tried by a "death qualified" jury, that concern

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<sup>3</sup> Wilson concedes that the original continuance from March to July was proper under *State v. Campbell*, 103 Wn.2d 1, 13-15, 691 P.2d 929 (1984) (holding that it is not error to continue trial over defendant's speedy trial objection where counsel would be unable to provide effective assistance within the speedy trial period.)

properly goes to the propriety of the trial court's denial of severance, rather than to a continuance of the trial date. Br. of Appellant at 23. Failing to find any actual prejudice, we hold that the trial court properly weighed Wilson's interest in a speedy trial against the considerable burden separate trials would have placed on the court, jurors, and witnesses. *See Dent*, 123 Wn.2d at 484. Thus, the trial court did not abuse its discretion.

### Sufficiency of Evidence

Finally, Wilson contends that there was insufficient evidence to convict him of first degree murder.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

The State charged Wilson as an accomplice to first degree felony murder, with first or second degree robbery listed among the alternative underlying felonies. Robbery occurs when a person unlawfully takes personal property from the person of another against his will by the use or threatened use of immediate force, violence, or fear of injury. RCW 9A.56.190, .210. A

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person is guilty as an accomplice if, with knowledge that it will promote or facilitate the crime, he or she aids or agrees to aid such other person in planning or committing it. RCW 9A.08.020(3). To convict, the jury needed to find that Wilson aided or agreed to aid Davis in planning or committing robbery and knew that his aid would facilitate the robbery.

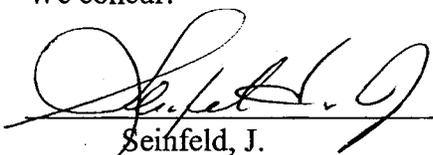
Keith Burks' testimony readily establishes the necessary quantum of proof. Burks testified that Wilson said that he and Davis went over to the Couches' residence "to rip the lady off," but he had left when he realized they were not going to just rob the Couches. Report of Proceedings at 1510. This is sufficient to establish that Wilson agreed to aid Davis in committing the robbery and knew his aid would facilitate the crime. That Davis did more than rob the Couches does not excuse Wilson's liability. See *State v. Davis*, 101 Wn.2d 654, 682 P.2d 883 (1984) (stating that an accomplice, having agreed to participate in a criminal act, runs the risk of having the primary actor exceed the scope of the preplanned illegality).

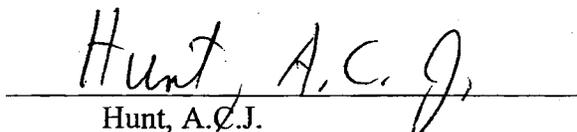
Affirmed.

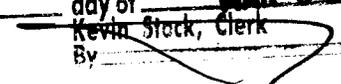
A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

  
Houghton, J.

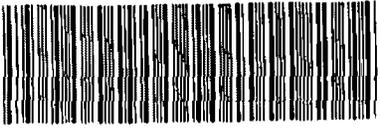
We concur:

  
Seinfeld, J.

  
Hunt, A.C.J.

STATE OF WASHINGTON, County of Pierce  
ss: I, Kevin Stock, Clerk of the above  
entitled Court, do hereby certify that this  
foregoing instrument is a true and correct  
copy of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of said Court this  
day of MAR 17 2001  
Kevin Stock, Clerk  
By  Deputy

Appendix J  
[uncaptioned] Motion for Order for Relief from Judgment under CrR 7.8, filed 12-26-01



97-1-00433-2 10888037 MT 04-13-10

or Court of the State of Washington  
n and for Pierce County

State of Washington  
Plaintiff,

Vs

George A. Wilson  
Defendant.

No. 97-1-00433-2

FILED  
IN COUNTY CLERK'S OFFICE  
PIERCE COUNTY, WASHINGTON  
AM. DEC 26 2001 P.M.  
BOB SAN SOUCIE  
COUNTY CLERK  
BY  DEPUTY

Defendant, George A. Wilson, challenges the denial of his Due Process and Equal Protection Constitutional guarantees under Article One Section Three, Article One Section 12 of the Washington State Constitution, and under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

A. PROCEDURAL HISTORY

Defendant was charged via information, in Pierce County superior Court with the crime of murder in the First Degree, in Pierce County Cause Number 97-1-00433-2.

On February 16, 1998 the defendant was found guilty by jury trial and on March 30, 1998 defendant was sentenced to a term of confinement of 304 months.

B. STANDARD OF REVIEW

Pro-se pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. If the court can reasonably read the pleadings to state a valid claim on which the litigant could prevail, the court should do so despite the failure to cite proper authority, confusion of legal theories, poor syntax and sentence construction, or the litigants unfamiliarity with the pleading requirements. See United States vs. MacDougall, 454 U.S. 364, 102 S. Ct 700, 70 L.ED.2d 551 (1982), Haines vs. Kerner, 404 U.S. 519, 92 S. Ct 594, 30 L.Ed.2d 652 (1972).

Courts in the state of Washington have strong policy of deciding cases on the merits, not on potential defects in the pleadings. See State vs. Olsen, 126 Wn.2d 314, 318, 893 P.2d 629 (1995) (providing that the Supreme Court would rule on an issue which the county prosecutor had failed to find error, because of the policy of reaching the merits of an issue).

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DEC 27 2001

### C. WHY RELIEF SHOULD BE GRANTED

The present CrR 7.8 Motion for Relief from judgment is properly before this Court and should be granted because the interest of justice so requires. See In Re Taylor, 105 Wn.2d 683, 717 P.2d 755 (1986), In Re Cook, 114 Wn.2d 802, 809, 792 P.2d 506 (1990), Sanders Vs. United States, 373 U.S. 1, 16, 83 S.Ct 1068, 1077, 10 L.Ed.2d 148 (1963).

The recent Washington State Supreme Court cases of State vs. Roberts, 142 Wn.2d 471 (2000), State vs. Bui, 142 Wn.2d 568 (2000), declared that the accomplice liability jury instructions employed in those cases relieved the state of their burden of proving every element of the crime charged, and were thus unconstitutional.

Defendants jury instructions No. 15 is word for word exactly as the accomplice liability instructions declared unconstitutional in the case of State vs. Cronin, supra, (at page 572), in that it fails to specify "TO WHICH CRIME" was defendant being an accomplice to; "TO WHICH CRIME" did defendant had knowledge of; and "TO WHICH CRIME" did defendant promote or facilitate the commission of.

The Washington State Supreme Court held in Cronin that "the plain language of the complicity statute does not support the states' argument that accomplice liability attaches so long as the defendant knows that he or she is aiding in the commission of a crime." That "the statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged." That "the legislature intended the culpability of an accomplice to extend beyond the crimes of which the accomplice actually has knowledge(.)" That imposing criminal liability on an alleged accomplice can be done "only so long as that individual has general knowledge of 'the crime for which he or she was eventually charged.'" Cronin at 142 Wn.2d 578-79, citing State vs. Roberts, supra. Because State Vs. Roberts, supra, State vs. Cronin, supra, and State vs. Bui, supra constitute a change in the law that is material to a court order, RCW 10.73.100(6) affords defendant an opportunity to bring this CrR 7.8 motion before this court to be considered on the merits. See In Re Greening 9 p.36 206 (2000) at 211 (RCW 10.73.100(6) preserves access to collateral review in cases where there has been a significant change in the law that is material to a court order citing In Re Personal Restraint of Johnson 131 Wn.2d 558, 933 p2d 1019 (1997).

## D. ARGUMENT

### Jury instruction No. 15 Relieved The State Of Its' Burden of Proving all Essential Elements of the Charged Crime

The state was required to prove every essential element of the crime beyond a reasonable doubt for a conviction to be upheld. See In Re Winship 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L.ED.2d 368 (1970). A criminal defendant is constitutionally entitled to a jury verdict that he is guilty of the crime and absent such a verdict the conviction must be reversed. No matter how inescapable the finding to support that verdict might be. A jury verdict that he is guilty of the crime means of course, a verdict that he is guilty of each necessary element of the crime. California v. Roy 117 S.Ct. 339 (9<sup>th</sup> Cir. 1996) The fifth and sixth amendments require criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged. United States v. Gaudin 515 U.S. 506, 132 L.Ed.2d 447, 115 S.Ct. 2310 (9<sup>th</sup> Cir. 1995) State vs. Acosta 101 Wn2d 612, 615, 683 P.2d 1069 (1984) State vs. McCullum 98 Wn.2d 484, 493-94, 656 P.2d 1064 (1983), State vs. Green, 94 Wn.2d 216, 224, 616, P.2d 628 (1980). A conviction cannot stand if the jury instructions relieved the state of its' burden to prove every essential element of the crime charged. See State vs. Jackson 137 Wn.2d 712, 727, 976 P.2d 1229 (1999).

It is reversible error to instruct the jury in a manner that would relieve the state of its' burden of proving every essential element of the crime charged. See State vs. Burd, 125 Wn.2d 707, 713-14, 887 P.2d 396 (1995).

Because accomplice liability requires assistance or agreement to assist in THE CRIME CHARGED, Instruction 15 relieved the state of its' burden of proving the elements of the crime.

A person is legally accountable for the conduct of another person when he or she is an accomplice in the commission of a crime. RCW 9A.08.020 (c). A person is an accomplice when he or she:

(a) with knowledge that it will promote or facilitate the commission of the crime, he (or she)

...

(ii) aids or agrees to aid such other person in planning or committing it;

RCW 9A.08.020(3)(a)(ii). The use of "the" in the statute refers back to the crime charged, i.e., the crime to which a person is an accomplice if he aids or agrees to aid another in planning or committing it. Thus, RCW 9A.08.020 indicates accomplice liability must be read against the crime charge.

Contrary to this law, the trial court's instruction 15 provides:  
A person who is an accomplice in the commission of a crime is guilty of that  
crime whether present at the scene or not.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of a crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime, or
- (2) aids or agrees to aid another person in planning or committing a crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

Please see exhibit A.

By using "a" instead of "the crime charged", the instruction overlooks the required link between the crime the accomplice aids or agrees to aid and the crime to which he is alleged to be an accomplice.

By requiring only that the accused aid or agree to aid in the commission of "a crime", defendant's Court Jury Instruction No. 15 marks a significant departure from the plain language of the accomplice liability statute. By referring to "it", not some unnamed crime which may or may not include the charged one. The statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged. See State vs. Cronin supra at 579.

The Washington State Supreme Court went on to rule in Cronin that their prior decision in State vs. Roberts, supra directed that "the fact that a purported accomplice knows that the principle intends to commit "a crime" does not necessarily mean that accomplice liability attaches for any and all offenses ultimately committed by the principle." See State vs. Cronin, supra, at 579, citing State vs. Roberts supra.

Even the DISSENT in Roberts, written by Justice Ireland agreed that accomplice liability instruction should have stated: "THE CRIME CHARGED". See State vs. Roberts, supra at 541 (I agree with the majority that the accomplice liability instruction, jury instruction 7 (in defendant's case jury instruction 15) should have stated "THE CRIME CHARGED" rather than 'a crime'" (emphasis added).

The trial court's erroneous jury instruction relieved the state of its' burden of proving that the defendant aided or agreed to aid in the

commission of THE CHARGED CRIME. Accordingly, defendant was denied Due Process of the law and his conviction must be reversed.

The instructional error relieved the State of its' burden of proving the elements of the crime, requiring reversal.

In State vs. Jackson, the Washington State Supreme Court reaffirmed the rule that where jury instructions relieve the State of proving all the essential elements, the error is not susceptible to harmless error analysis, but instead requires reversal. See State vs. Jackson, 137 Wn.2d 712, 726-27, 976 P.2d 1229 (1999). There, the Court found an erroneous accomplice instruction relieved the State of its' burden of proving all essential elements of the crime. Id. Therefore, the Court refused to examine the record to determine if the error prejudiced the defendant. Thus, this court must follow Jackson and find that because instruction No. 15 relieved the State of its' burden of proving the elements of accomplice liability, defendant's conviction must be reversed.

#### E. CONCLUSION

Because defendant's constitutional rights were violated, said rights being his 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> amendment rights, (U.S. Constitution) defendant respectfully asks this Court to order a retrial in defendant's case.

Respectfully submitted this 23 day of December, 2001.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910C72B3-F20D-AA3E-50F566C45EA58336** containing 5 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://www.co.pierce.wa.us/cfapps/secure/linx/courtfilling/certifieddocumentview.cfm>, enter **SerialID: 910C72B3-F20D-AA3E-50F566C45EA58336**. The copy associated with this number will be displayed by the Court.

Appendix K  
[uncaptioned] Motion for Order for Relief from Judgment under CrR 7.8, filed 12-28-01



or Court of the State of Washington  
1 and for Pierce County

Plaintiff,

Vs

George A. Wilson  
Defendant.

No. 97-1-00433-2

FILED  
IN COUNTY CLERK'S OFFICE  
PIERCE COUNTY, WASHINGTON

AM. DEC 28 2001 P.M.

BOB SAN SOUCIE  
COUNTY CLERK  
BY \_\_\_\_\_ DEPUTY

Defendant, George A. Wilson, challenges the denial of his Due Process and Equal Protection Constitutional guarantees under Article One Section Three, Article One Section 12 of the Washington State Constitution, and under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

A. PROCEDURAL HISTORY

Defendant was charged via information, in Pierce County superior Court with the crime of murder in the First Degree, in Pierce County Cause Number 97-1-00433-2.

On February 16, 1998 the defendant was found guilty by jury trial and on March 30, 1998 defendant was sentenced to a term of confinement of 304 months.

B. STANDARD OF REVIEW

Pro-se pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. If the court can reasonably read the pleadings to state a valid claim on which the litigant could prevail, the court should do so despite the failure to cite proper authority, confusion of legal theories, poor syntax and sentence construction, or the litigants unfamiliarity with the pleading requirements. See United States vs. MacDougall, 454 U.S. 364, 102 S. Ct 700, 70 L.Ed.2d 551 (1982), Haines vs. Kerner, 404 U.S. 519, 92 S. Ct 594, 30 L.Ed.2d 652 (1972).

Courts in the state of Washington have strong policy of deciding cases on the merits, not on potential defects in the pleadings. See State vs. Olsen, 126 Wn.2d 314, 318, 893 P.2d 629 (1995) (providing that the Supreme Court would rule on an issue which the county prosecutor had failed to find error, because of the policy of reaching the merits of an issue).

1 DEC 28 2001

### C. WHY RELIEF SHOULD BE GRANTED

The present CrR 7.8 Motion for Relief from judgment is properly before this Court and should be granted because the interest of justice so requires. See In Re Taylor, 105 Wn.2d 683, 717 P.2d 755 (1986), In Re Cook, 114 Wn.2d 802, 809, 792 P.2d 506 (1990), Sanders Vs. United States, 373 U.S. 1, 16, 83 S.Ct 1068, 1077, 10 L.Ed.2d 148 (1963).

The recent Washington State Supreme Court cases of State vs. Roberts, 142 Wn.2d 471 (2000), State vs. Bui, 142 Wn.2d 568 (2000), declared that the accomplice liability jury instructions employed in those cases relieved the state of their burden of proving every element of the crime charged, and were thus unconstitutional.

Defendants jury instructions No. 15 is word for word exactly as the accomplice liability instructions declared unconstitutional in the case of State vs. Cronin, supra, (at page 572), in that it fails to specify "TO WHICH CRIME" was defendant being an accomplice to; "TO WHICH CRIME" did defendant had knowledge of; and "TO WHICH CRIME" did defendant promote or facilitate the commission of.

The Washington State Supreme Court held in Cronin that "the plain language of the complicity statute does not support the states' argument that accomplice liability attaches so long as the defendant knows that he or she is aiding in the commission of a crime." That "the statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged." That "the legislature intended the culpability of an accomplice to extend beyond the crimes of which the accomplice actually has knowledge(.)" That imposing criminal liability on an alleged accomplice can be done "only so long as that individual has general knowledge of 'the crime for which he or she was eventually charged.'" Cronin at 142 Wn.2d 578-79, citing State vs. Roberts, supra. Because State Vs. Roberts, supra, State vs. Cronin, supra, and State vs. Bui, supra constitute a change in the law that is material to a court order, RCW 10.73.100(6) affords defendant an opportunity to bring this CrR 7.8 motion before this court to be considered on the merits. See In Re Greening 9 p.36 206 (2000) at 211 (RCW 10.73.100(6) preserves access to collateral review in cases where there has been a significant change in the law that is material to a court order citing In Re Personal Restraint of Johnson 131 Wn.2d 558, 933 p2d 1019 (1997).

## D. ARGUMENT

### Jury instruction No. 15 Relieved The State Of Its' Burden of Proving all Essential Elements of the Charged Crime

The state was required to prove every essential element of the crime beyond a reasonable doubt for a conviction to be upheld. See In Re Winship 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L.ED.2d 368 (1970). A criminal defendant is constitutionally entitled to a jury verdict that he is guilty of the crime and absent such a verdict the conviction must be reversed. No matter how inescapable the finding to support that verdict might be. A jury verdict that he is guilty of the crime means of course, a verdict that he is guilty of each necessary element of the crime. California v. Roy 117 S.Ct. 339 (9<sup>th</sup> Cir. 1996) The fifth and sixth amendments require criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged. United States v. Gaudin 515 U.S. 506, 132 L.Ed.2d 447, 115 S.Ct. 2310 (9<sup>th</sup> Cir. 1995) State vs. Acosta 101 Wn2d 612, 615, 683 P.2d 1069 (1984) State vs. McCullum 98 Wn.2d 484, 493-94, 656 P.2d 1064 (1983), State vs. Green, 94 Wn.2d 216, 224, 616, P.2d 628 (1980). A conviction cannot stand if the jury instructions relieved the state of its' burden to prove every essential element of the crime charged. See State vs. Jackson 137 Wn.2d 712, 727, 976 P.2d 1229 (1999).

It is reversible error to instruct the jury in a manner that would relieve the state of its' burden of proving every essential element of the crime charged. See State vs. Burd, 125 Wn.2d 707, 713-14, 887 P.2d 396 (1995).

Because accomplice liability requires assistance or agreement to assist in THE CRIME CHARGED, Instruction 15 relieved the state of its' burden of proving the elements of the crime.

A person is legally accountable for the conduct of another person when he or she is an accomplice in the commission of a crime. RCW 9A.08.020 (c). A person is an accomplice when he or she:

(a) with knowledge that it will promote or facilitate the commission of the crime, he (or she)

(ii) aids or agrees to aid such other person in planning or committing it;

RCW 9A.08.020(3)(a)(ii). The use of "the" in the statute refers back to the crime charged, i.e., the crime to which a person is an accomplice if he aids or agrees to aid another in planning or committing it. Thus, RCW 9A.08.020 indicates accomplice liability must be read against the crime charge.

Contrary to this law, the trial court's instruction 15 provides:  
A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of a crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime, or
- (2) aids or agrees to aid another person in planning or committing a crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

Please see exhibit A.

By using "a" instead of "the crime charged", the instruction overlooks the required link between the crime the accomplice aids or agrees to aid and the crime to which he is alleged to be an accomplice.

By requiring only that the accused aid or agree to aid in the commission of "a crime", defendant's Court Jury Instruction No. 15 marks a significant departure from the plain language of the accomplice liability statute. By referring to "it", not some unnamed crime which may or may not include the charged one. The statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged. See State vs. Cronin supra at 579.

The Washington State Supreme Court went on to rule in Cronin that their prior decision in State vs. Roberts, supra directed that "the fact that a purported accomplice knows that the principle intends to commit "a crime" does not necessarily mean that accomplice liability attaches for any and all offenses ultimately committed by the principle." See State vs. Cronin, supra, at 579, citing State vs. Roberts supra.

Even the DISSENT in Roberts, written by Justice Ireland agreed that accomplice liability instruction should have stated: "THE CRIME CHARGED". See State vs. Roberts, supra at 541 (I agree with the majority that the accomplice liability instruction, jury instruction 7 (in defendant's case jury instruction 15) should have stated "THE CRIME CHARGED" rather than 'a crime'" (emphasis added).

The trial court's erroneous jury instruction relieved the state of its burden of proving that the defendant aided or agreed to aid in the

commission of THE CHARGED CRIME. Accordingly, defendant was denied Due Process of the law and his conviction must be reversed.

The instructional error relieved the State of its' burden of proving the elements of the crime, requiring reversal.

In State vs. Jackson, the Washington State Supreme Court reaffirmed the rule that where jury instructions relieve the State of proving all the essential elements, the error is not susceptible to harmless error analysis, but instead requires reversal. See State vs. Jackson, 137 Wn.2d 712, 726-27, 976 P.2d 1229 (1999). There, the Court found an erroneous accomplice instruction relieved the State of its' burden of proving all essential elements of the crime. *Id.* Therefore, the Court refused to examine the record to determine if the error prejudiced the defendant. Thus, this court must follow Jackson and find that because instruction No. 15 relieved the State of its' burden of proving the elements of accomplice liability, defendant's conviction must be reversed.

#### E. CONCLUSION

Because defendant's constitutional rights were violated, said rights being his 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> amendment rights, (U.S. Constitution) defendant respectfully asks this Court to order a retrial in defendant's case.

Respectfully submitted this 23 day of DECEMBER, 2001.



It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

Charges have been made by the prosecuting attorney by filing a document, called an information, informing the defendants of the charges. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence which either was not admitted or which was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorney's remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the

weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed upon defendant George Wilson. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful. The punishment to be imposed upon defendant Cecil Davis will be considered by you in a separate penalty phase only if you unanimously find him guilty of the crime of Premeditated Murder in the First Degree and unanimously find the existence of an Aggravating Circumstance.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdicts.

The defendants have each entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff, and has the burden of proving each element of the crime beyond a reasonable doubt.

Each 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, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

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 experience. 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.

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.

Case Number: 97-1-00433-2 Date: March 7, 2011

4/13/2018 0603 00049

SerialID: 910C711D-F20D-AA3E-5C6F65D12E8E7984

INSTRUCTION NO. 5  
Printed and Filed By: Devin Brock Pierce County Clerk, Washington

Evidence that a witness has been convicted of a crime may be considered by you in deciding what weight or credibility should be given to the testimony of the witness and for no other purpose.

Defendant Cecil Davis is not compelled to testify, and the fact that he has not testified cannot be used to infer guilt or prejudice him in any way.

Case Number: 97-1-00433-2 Date: March 7, 2011

4/13/2010 0603 00051

SerialID: 910C711D-F20D-AA3E-5C6F65D12E8E7984

INSTRUCTION NO. 7  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

Defendant George Wilson is not compelled to testify, and the fact that he has not testified cannot be used to infer guilt or prejudice him in any way.

Homicide is the killing of a human being by the voluntary act of another and is either murder, homicide by abuse, manslaughter, excusable homicide, or justifiable homicide.

Case Number: 97-1-00433-2 Date: March 7, 2011

4/13/2010 06:03 00053

~~SECTION NO~~ DD-AA3E-5C6F65D12E8E7984

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

A person commits the crime of Premeditated Murder in the First Degree when, with a premeditated intent to cause the death of another person, he causes the death of such person.

Case Number: 97-1-00433-2 Date: March 7, 2011

4/13/2010 8603 00054

~~INSTRUMENT-PROD-A43E-8C6F65D12E8E7984~~

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A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

To convict defendant Cecil Davis of the charged crime of Premeditated Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25th day of January, 1997, defendant Cecil Davis suffocated or asphyxiated Yoshiko Couch;
- (2) That defendant Cecil Davis acted with intent to cause the death of Yoshiko Couch;
- (3) That the intent to cause the death was premeditated;
- (4) That Yoshiko Couch died as a result of defendant Cecil Davis' acts; and
- (5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has 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 of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

If you find defendant Cecil Davis guilty of Premeditated Murder in the First Degree as defined in Instruction 9, you must then determine whether the following aggravating circumstance exists:

The murder was committed in the course of, in furtherance of, or in immediate flight from a Robbery in the First or Second Degree, a Rape in the First or Second Degree, or a Burglary in the First or Second Degree.

The State has the burden of proving the existence of an aggravating circumstance beyond a reasonable doubt. In order for you to find that there is an aggravating circumstance in this case, you must unanimously agree that the aggravating circumstance has been proved beyond a reasonable doubt. You need not be unanimous as to any one of the crimes listed within the aggravating circumstance.

A person commits the crime of Felony Murder in the First Degree when he or an accomplice commits or attempts to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree, and in the course of or in furtherance of such crime or in immediate flight from such crime, he or the other participant causes the death of a person other than one of the participants.

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of a crime, he either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing a crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

A person attempts to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree, when, with intent to commit that crime, he does any act which is a substantial step toward the commission of that crime.

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

A "substantial step" is conduct which strongly indicates a criminal purpose and which is more than mere preparation.

A person commits the crime of Robbery in the First Degree when, in the commission of a robbery or in immediate flight therefrom, he inflicts bodily injury.

A person commits the crime of Robbery in the Second Degree when he commits robbery.

"Bodily injury" means physical pain or injury, illness, or an impairment of physical condition.

A person commits "robbery" when he unlawfully and with intent to commit theft thereof, takes personal property from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial. The taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom it was taken, such knowledge was prevented by the use of force or fear.

Cigarettes, packaged food items, canned soda pop, canned beer, and jewelry are all "property".

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

"Theft" means to wrongfully obtain or exercise control of another,

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with intent to deprive that person of such property.

"Wrongfully obtains" means to take wrongfully the property of another.

A person commits the crime of Rape in the First Degree when he engages in sexual intercourse with another person by forcible compulsion, when the perpetrator inflicts serious physical injury or feloniously enters into the building where the victim is situated.

A person commits the crime of Rape in the Second Degree when he engages in sexual intercourse with another person by forcible compulsion or when the victim is incapable of consent by reason of being physically helpless.

"Sexual intercourse" means any penetration of the vagina, however slight, by a penis or by an object, when committed on one person by another.

"Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to oneself.

"Physical injury" means physical pain or injury, illness, or an impairment of physical condition.

A person "feloniously enters a building" if that person enters into a building with the intent to commit a crime against a person or property therein and the person entering is not then licensed, invited or otherwise privileged to enter that building.

"Building" includes any dwelling; "dwelling" means any structure that is ordinarily used by a person for lodging.

"Physically . i ple ~~Serial ID: 910C310-F20D-4A3E-5C6F65D12E8E7904~~ unconscious or

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for any other reason is physically unable to communicate

unwillingness to an act.

A person commits the crime of Burglary in the First Degree when, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a dwelling, and in entering, while in the dwelling, or in immediate flight from the dwelling he or an accomplice in the crime assaults any person.

A person commits the crime of Burglary in the Second Degree when, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building.

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

A person "enters or remains unlawfully" in a building or dwelling when he is not then licensed, invited, or otherwise privileged to so enter or remain.

"Building" includes any dwelling; "dwelling" means any structure that is ordinarily used by a person for lodging.

An "assault" is an intentional touching or striking of another person that is harmful or offensive, regardless of whether any physical injury is done to the person. A touching or striking is offensive if it would offend an ordinary person who is not unduly sensitive.

To convict defendant Cecil Davis of the alternative crime of Felony Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 25th day of January, 1997, Yoshiko Couch was killed;

(2) That defendant Cecil Davis was committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree;

(3) That defendant Cecil Davis caused the death of Yoshiko Couch in the course of and in furtherance of such crime or in immediate flight from such crime;

(4) That Yoshiko Couch was not a participant in the crime;  
and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

The crimes listed in Element Number (2) are alternatives. You must unanimously agree that defendant Cecil Davis was committing or attempting to commit one of those crimes, but you need not be unanimous as to any particular one of those crimes.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

To convict defendant George Wilson of the charged crime of Felony Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 25th day of January, 1997, Yoshiko Couch was killed;

(2) That defendant George Wilson or an accomplice was committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree;

(3) That defendant George Wilson or an accomplice caused the death of Yoshiko Couch in the course of and in furtherance of such crime or in immediate flight from such crime;

(4) That Yoshiko Couch was not a participant in the crime; and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

The crimes listed in Element Number (2) are alternatives. You must unanimously agree that defendant George Wilson or an accomplice was committing or attempting to commit one of those crimes, but you need not be unanimous as to any particular one of those crimes.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

A separate crime is charged against each defendant. The charges have been joined for trial. You must consider and decide the case of each defendant separately. Your verdict as to one defendant should not control your verdict as to the other defendant.

All of these instructions apply to each defendant, unless a specific instruction states that it applies only to a specific defendant.

It is a defense to a charge of Felony Murder in the First Degree based upon committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree that defendant George Wilson:

(1) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(2) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury; and

(3) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(4) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

This defense must be established by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty.

If you are not satisfied beyond a reasonable doubt that defendant Cecil Davis is guilty of the crime of Premeditated Murder in the First Degree, he may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish the defendant's guilt of such lesser crime beyond a reasonable doubt.

The crime of Premeditated Murder in the First Degree necessarily includes the lesser crime of Murder in the Second Degree. However, Murder in the Second Degree is not a lesser crime of Felony Murder in the First Degree. You should only consider the crime of Murder in the Second Degree if you have unanimously agreed that defendant Cecil Davis is not guilty of the felony murder alternative defined above.

When a crime has been proved against a person and there exists a reasonable doubt as to which of two degrees that person is guilty, he shall be convicted only of the lowest degree.

Case Number: 97-1-00433-2 Date: March 7, 2011

4/13/2010 0603 00073

SerialID: 910C711D-F20D-AA3E-5C6F65D12E8E7984

INSTRUCTION NO. 25  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

A person commits the crime of Murder in the Second Degree when, with intent to cause the death of another person but without premeditation, he causes the death of such person.

To convict defendant Cecil Davis of the lesser degree crime of Murder in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25th day of January, 1997, defendant Cecil Davis suffocated or asphyxiated Yoshiko Couch;
- (2) That defendant Cecil Davis acted with intent to cause the death of Yoshiko Couch;
- (3) That Yoshiko Couch died as a result of defendant Cecil Davis' acts; and
- (4) That the acts occurred in State of Washington.

If you find from the evidence that each of these elements has 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 of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 21

As jurors, you have a duty to discuss with one another the case against each defendant and to deliberate in an effort to reach unanimous verdicts. Each of you must decide each 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 change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room for your deliberation of these cases, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence and these instructions. You will be furnished with Verdict Form A, an Interrogatories form, a Special Verdict Form, and Verdict Form B for defendant Cecil Davis. You will be furnished with Verdict Form A for defendant George Wilson. You may consider the case against each defendant in the order you choose.

When you are deliberating the case against defendant Cecil Davis, you will first consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty" according to the decision you reach. If you cannot unanimously agree on a verdict as to that charge, do not fill in the blank provided in Verdict Form A.

If you find defendant Cecil Davis guilty on Verdict Form A, complete the form titled "Interrogatories" by answering the two questions either "Yes" or "No". If you answer the first question "Yes", you will then complete the Special Verdict Form. If you

answer the first question "No", do not complete the Special

Verdict Form. In order to answer either question "Yes", you must unanimously be satisfied beyond a reasonable doubt that "Yes" is the correct answer to that question. Otherwise, you must answer "No" to that question. If you find defendant Cecil Davis guilty on Verdict Form A, do not use Verdict Form B.

If you unanimously find defendant Cecil Davis not guilty of the crime of Murder in the First Degree, or if, after full and careful consideration of the evidence, you unanimously find him not guilty of Felony Murder in the First Degree and you cannot agree as to Premeditated Murder in the First Degree, you will then consider the lesser crime of Murder in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form B the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot unanimously agree on a verdict, do not fill in the blank provided in Verdict Form B.

When you are deliberating the case against defendant George Wilson, you will only consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty" according to the decision you reach. If you cannot unanimously agree on a verdict as to that charge, do not fill in the blank provided on Verdict Form A.

Since these are criminal cases, each of you must agree for you to return a verdict. When all of you have so agreed, fill in

the proper verdict form to use to express your decision. The  
presiding juror will sign it and notify the judicial assistant,  
who will conduct you into court to declare your verdicts.



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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
CECIL EMILE DAVIS,  
  
Defendant.

CAUSE NO. 97-1-00432-4  
  
INTERROGATORIES

We, the jury, having found defendant CECIL EMILE DAVIS guilty of Murder in the First Degree as charged, answer the following questions submitted by the court:

FIRST QUESTION: Did you unanimously agree that defendant Cecil Davis committed Premeditated Murder in the First Degree as defined in Instruction No. 9 ?

ANSWER: \_\_\_\_\_  
(Yes/No)

SECOND QUESTION: Did you unanimously agree that defendant Cecil Davis committed Felony Murder in the First Degree as defined in Instruction No. \_\_\_\_\_ ?

ANSWER: \_\_\_\_\_  
(Yes/No)

\_\_\_\_\_  
PRESIDING JUROR

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

STATE OF WASHINGTON,

Plaintiff,

vs.

CECIL EMILE DAVIS,

Defendant.

CAUSE NO. 97-1-00432-4

SPECIAL VERDICT  
AGGRAVATING CIRCUMSTANCES

---

We, the jury, having unanimously found defendant CECIL EMILE DAVIS guilty of Premeditated Murder in the First Degree as defined in Instruction \_\_\_\_\_, answer the following question submitted by the court:

**QUESTION:** Has the State proved the existence of the following aggravating circumstance beyond a reasonable doubt?

The murder was committed in the course of, in furtherance of, or in immediate flight from a Robbery in the First or Second Degree, a Rape in the First or Second Degree, or a Burglary in the First or Second Degree.

ANSWER: \_\_\_\_\_  
(Yes/No)

---

PRESIDING JUROR

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 97-1-00432-4
	)	
vs.	)	
	)	VERDICT FORM B
CECIL EMILE DAVIS,	)	(SECOND DEGREE MURDER)
	)	
Defendant.	)	
	)	

We, the jury, having unanimously found defendant CECIL EMILE DAVIS not guilty of the crime of Murder in the First Degree as charged, or having unanimously found him not guilty of Felony Murder in the First Degree and being unable to unanimously agree as to Premeditated Murder in the First Degree, find defendant CECIL EMILE DAVIS \_\_\_\_\_ (Not Guilty or Guilty) of the lesser included crime of Murder in the Second Degree.

\_\_\_\_\_  
PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

GEORGE ANTHONY WILSON,

Defendant.

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NO. 97-1-00433-2

VERDICT FORM A

We, the jury, find defendant GEORGE ANTHONY WILSON

\_\_\_\_\_ (Not Guilty or Guilty) of the crime of  
Murder in the First Degree as charged.

\_\_\_\_\_  
PRESIDING JUROR

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910C711D-F20D-AA3E-5C6F65D12E8E7984** containing 47 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

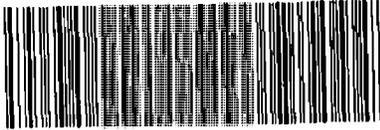
Dated: Mar 7, 2011 8:01 AM



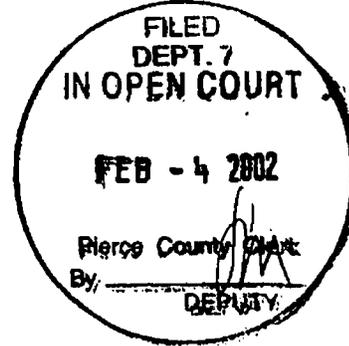
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Appendix L  
Order Transferring Motion to Court of Appeals

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 910C78AF-F20F-6452-DFA7449AED635152  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



97-1-00433-2 15985738 ORTR 02-08-02



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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
GEORGE ANTHONY WILSON,  
  
Defendant.

CAUSE NO. 97-1-00433-2  
  
ORDER TRANSFERRING MOTION TO  
COURT OF APPEALS

THIS MATTER came on before the court on the 4th day of February, 2002, the Honorable Frederick W. Fleming, presiding.

In December, 2001, the defendant filed a motion for relief from judgment pursuant to CrR 7.8 in Pierce County Superior Court relating to his conviction and sentence in this cause number. The court is aware that the defendant took a direct appeal from his conviction after jury trial. The Court of Appeals affirmed the defendant's conviction on August 4, 2000, in COA Case No. 23203-1. The mandate on that case is dated January 9, 2001.

ORDER TRANSFERRING MOTION TO  
COURT OF APPEALS - 1

97-1-00433-2

1  
2  
3 Therefore, being duly advised in all matters, and based on the above stated history of this case,  
4 the court finds, pursuant to Criminal Rule 7.8(c)(2), that the ends of justice would be served if the  
5 defendant's current motion for relief from judgment were considered by the Court of Appeals as a  
6 personal restraint petition.

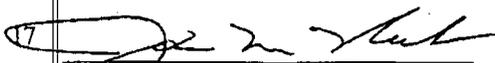
7  
8 **IT IS HEREBY ORDERED** that the defendant's motion is transferred to the Court of Appeals  
9 pursuant to CrR 7.8(c)(2) for consideration as a personal restraint petition.

10 **IT IS FURTHER ORDERED** that the State shall serve the defendant with a copy of this order.

11  
12 **ORDER WAS SIGNED** this 4<sup>th</sup> day of February, 2002.

13  
14   
15 JUDGE

16 Presented by:

17 

18 JOHN M. NEEB  
19 Deputy Prosecuting Attorney  
20 WSB # 21322

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ORDER TRANSFERRING MOTION TO  
COURT OF APPEALS - 2

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910C78AF-F20F-6452-DFA7449AED635152** containing 2 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

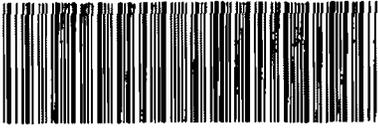
By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified  
document that was transmitted electronically by the Court, sign on to: [https://  
www.co.pierce.wa.us/cfapps/secure/linx/courtfilling/certifieddocumentview.cfm](https://www.co.pierce.wa.us/cfapps/secure/linx/courtfilling/certifieddocumentview.cfm),  
enter **SerialID: 910C78AF-F20F-6452-DFA7449AED635152**.  
The copy associated with this number will be displayed by the Court.

Appendix M  
State's Response to Motion to Reduce or Modify Sentence



97-1-00433-2 25198121 SRSP 03-28-06

FILED  
IN COUNTY CLERK'S OFFICE  
A.M. MAR 28 2006 P.M.  
PIERCE COUNTY WASHINGTON  
KEVIN STOCK County Clerk  
BY \_\_\_\_\_ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

GEORGE ANTHONY WILSON,

Defendant.

NO. 97-1-00433-2

STATE'S RESPONSE TO MOTION TO  
REDUCE OR MODIFY SENTENCE

I. IDENTITY OF RESPONDING PARTY:

Plaintiff, State of Washington, requests the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT:

The State requests that this court deny the defendant's motion because the court does not have the authority to grant his requested relief.

III. PROCEDURAL AND FACTUAL HISTORY:

On February 6, 1998, the defendant was convicted by a jury of one count of Murder in the First Degree (Felony Murder). He was sentenced to the Department of Corrections on March 30, 1998. He is still serving the sentence that was imposed.

ORIGINAL

1 The defendant appealed his conviction. On August 4, 2000, the Division Two  
2 Court of Appeals affirmed the defendant's conviction in an unpublished opinion.<sup>1</sup> The  
3 defendant's petition for review was denied on January 9, 2001, and the mandate issued on  
4 January 16, 2001, terminating his appeal.

5 Late in 2001 or early in 2002, the defendant filed a motion for relief from judgment  
6 that was transferred to the Court of Appeals as a personal restraint petition. This court's  
7 order entered on February 4, 2002. The State has reviewed its records and found the  
8 appellate court never ordered the State to respond to that motion/petition.  
9

10  
11 IV. GROUNDS FOR RELIEF AND ARGUMENT:

12 The defendant has requested this court modify his sentence by reducing the amount  
13 of time he is ordered to serve, and his cites RCW 9.95.045. A review of that statute  
14 reveals the obvious lack of merit to the defendant's motion. That statute is entitled  
15 "Abused victim – Reduction in sentence for murder of abuser," and it requires the  
16 defendant allege a number of things, including:

- 17 1. The defendant was sentenced for a murder committed before July 23, 1989;
- 18 and
- 19 2. The defendant suffered a continuing pattern of physical or sexual abuse at  
20 the hands of the person he eventually killed, and the killing was a response  
21 to the abuse;
- 22 and
- 23 3. The defendant would have been entitled to request an exceptional sentence  
24 RCW 9.94A.535(1)(h) (mitigating factor for killing abuser);
- 25 and
- 4. The trial court did not consider that information at sentencing.

RCW 9.95.045(1)(a)-(c).

<sup>1</sup> Court of Appeals Case No. 23203-1-II.

1 If the defendant meets those criteria, the statute has two additional requirements:  
2 1) he must file his petition with the indeterminate sentence review board; and 2) he must  
3 file his petition no later than October 1, 1993. RCW 9.95.045(1), (2).

4 This defendant was convicted of murdering Yoshiko Couch during an incident that  
5 occurred in January 1997. Ms. Couch was an elderly woman who was not only unrelated  
6 to the defendant, she was a complete stranger to him at the time the defendant entered her  
7 home with his co-defendant. The defendant filed his motion with the superior court, and  
8 he filed it in March, 2006. In short, the defendant meets none of the criteria set out in the  
9 statute he cites in his motion.  
10

11 The State has attached a proposed order setting out the court's options and requests  
12 the court check the first box, denying the defendant's motion as unsupported by the facts  
13 and citing an inapplicable statute. An original has also been provided to the court. Once  
14 the court has signed the order, the State will accept the responsibility of sending a copy of  
15 it to the defendant.  
16

17 V. CONCLUSION:

18 For the reasons stated above, the State respectfully requests that this court deny the  
19 defendant's motion for sentence reduction.  
20

21 DATED: March 28, 2006.

22 GERALD A. HORNE  
23 Pierce County  
24 Prosecuting Attorney

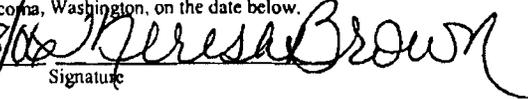


25 JOHN M. NEEB  
Deputy Prosecuting Attorney  
WSB # 21322

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Certificate of Service:

The undersigned certifies that on this day she delivered to the defendant by U.S. mail a true and correct copy of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

3/28/11   
Date Signature

3578 3/28/2006 00019

Case Number: 97-1-00433-2 Date: March 7, 2011

**SerialID: 910C7776-F20D-AA3E-5E08294927DBC728**

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

**APPENDIX "A"**

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

GEORGE ANTHONY WILSON,

Defendant.

NO. 97-1-00433-2

ORDER ON DEFENDANT'S MOTION  
TO REDUCE OR MODIFY SENTENCE

THIS MATTER came before the undersigned judge of the above entitled court on the defendant's motion for to reduce or modify his sentence. The court reviewed the "Defendant's Motion for Sentence Reduction or Modification" dated March 23, 2006, and the "State's Response to Motion to Reduce or Modify Sentence."

Being duly advised in this matter, the court now enters the following order pursuant to CrR 7.8(c)(2):

[ ] **IT IS HEREBY ORDERED** that the defendant's motion is denied without a hearing because the facts alleged do not establish grounds for relief and the statue cited by the defendant does not apply to him.

[ ] **IT IS HEREBY ORDERED** that the defendant's motion is transferred to the Court of Appeals for consideration as a personal restraint petition because such transfer would serve the ends of justice.

1 [ ] IT IS HEREBY ORDERED that the defendant's motion shall be heard on  
2 its merits. The State is directed to appear and show cause why the defendant's motion  
3 should not be granted. That hearing shall be held on \_\_\_\_\_ at  
4 \_\_\_\_\_ a.m. / p.m. The State is further directed to arrange for the defendant's transport  
5 from the Department of Corrections for that hearing.  
6

7 DATED this \_\_\_\_ of March, 2006.  
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9 \_\_\_\_\_  
10 FREDERICK W. FLEMING, JUDGE  
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State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910C7776-F20D-AA3E-5E08294927DBC728** containing 7 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM

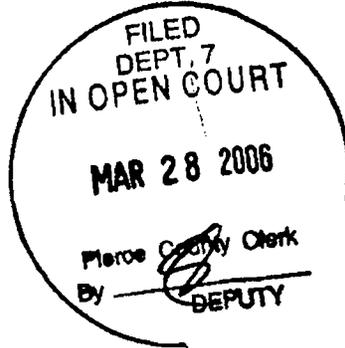


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Appendix N  
Order on Defendant's Motion to Reduce or Modify Sentence



97-1-00433-2 25209348 ORDY 03-30-08



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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

GEORGE ANTHONY WILSON,

Defendant.

NO. 97-1-00433-2

ORDER ON DEFENDANT'S MOTION  
TO REDUCE OR MODIFY SENTENCE

THIS MATTER came before the undersigned judge of the above entitled court on the defendant's motion for to reduce or modify his sentence. The court reviewed the "Defendant's Motion for Sentence Reduction or Modification" dated March 23, 2006, and the "State's Response to Motion to Reduce or Modify Sentence."

Being duly advised in this matter, the court now enters the following order pursuant to CrR 7.8(c)(2):

~~IT~~ **IT IS HEREBY ORDERED** that the defendant's motion is denied without a hearing because the facts alleged do not establish grounds for relief and the statue cited by the defendant does not apply to him.

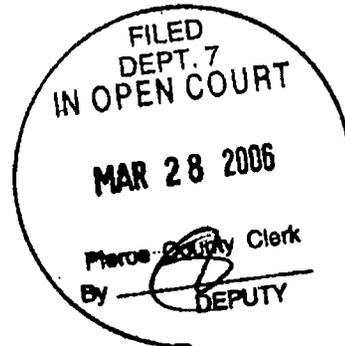
**IT IS HEREBY ORDERED** that the defendant's motion is transferred to the Court of Appeals for consideration as a personal restraint petition because such transfer would serve the ends of justice.

ORIGINAL

1 [ ] IT IS HEREBY ORDERED that the defendant's motion shall be heard on  
2 its merits. The State is directed to appear and show cause why the defendant's motion  
3 should not be granted. That hearing shall be held on \_\_\_\_\_ at  
4 \_\_\_\_\_ a.m. / p.m. The State is further directed to arrange for the defendant's transport  
5 from the Department of Corrections for that hearing.

6  
7 DATED this 28<sup>TH</sup> of March, 2006.

8  
9   
10 FREDERICK W. FLEMING, JUDGE



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910C761E-F20D-AA3E-52566F39C0F50145** containing 2 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



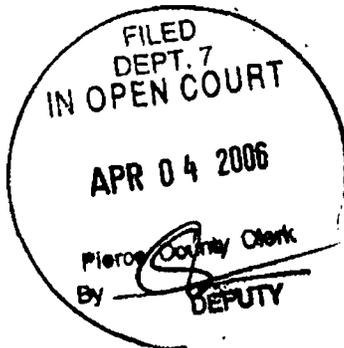
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document that was transmitted electronically by the Court, sign on to: [https://  
www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm](https://www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm),  
enter **SerialID: 910C761E-F20D-AA3E-52566F39C0F50145**.  
The copy associated with this number will be displayed by the Court.

Appendix O  
Motion for Sentence Reduction, filed 04-04-06



1 97-1-00433-2 25238942 MT 04-05-06

2 P.O. Box, 400  
3 Rawlins, Wyoming  
4 82301-0400



7  
8 **IN THE SUPERIOR COURT**  
9 **IN AND FOR PEIRCE COUNTY, WASHINGTON**

10 **STATE OF WASHINGTON**  
11 Plaintiff,

Case No. 97-1-00433-2

12 vs.

13 **GEORGE A WILSON**  
14 Defendant,

15 **DEFENDANTS MOTION FOR SENTENCE REDUCTION OR MODIFICATION**  
16 **PURSUANT TO Rev. Code (ARCW) § 9.95.045 and § 9.95.045.( 2005 )**

17  
18 **COMES NOW**, the defendant himself, Pro-Se ,and do hereby files motion for this court to  
19 enter an "Order," reducing or modifying the sentence imposed by the Honorable **Frederick W**  
20 **Fleming**, on or around the 15<sup>th</sup> day of April, 1998, in accordance with the Rules of the Revised Code  
21 of Washington. On or around the 15<sup>th</sup> day of April, 1998, Mr. Wilson was found guilty of one (1)  
22 count of to wit; "**Felony Murder in the First Degree**", a felony, and was sentenced by the  
23 Honorable **Frederick W Fleming** ,to serve a prison term of not less that Three-Hundred and Four  
24 ( 304 ) months to be served in a penal institution designated by the Washington State Department  
25 of Corrections.

1 IN SUPPORT of this request, the Defendant hereby sets forth the following by way of  
2 declarations:

3  
4 **II JURISDICTION AND VENUE**

5 **Rev. Code (ARCW) § 9.95.045 and § 9.95.045.( 2005 ) Reduction.**

6  
7 **IN THIS INSTANT MATTER**, this court was the trial court which imposed sentence upon  
8 the defendant on or about the 15<sup>th</sup> day of April, 1998 in the aforesaid County, by the Honorable  
9 **Frederick W Fleming** , District Judge

10  
11 **THEREFORE;**

12 **JURISDICTION** and **VENUE** are proper within this **FORUM**.

13  
14  
15 **III. STATEMENT OF MATERIAL FACTS**

16 1. On or about the 15<sup>th</sup> day of April, 1998 the defendant personally appeared with his  
17 attorney, to wit; **Keith A Macfie** , before this Honorable Court upon being found **Guilty** to the  
18 information therein, to wit; **Felony Murder in the First Degree**, as prescribed by WA. Stat., and  
19 counsel of record for the defendant, to wit;, **Keith A Macfie**, with the state having been represented  
20 by the county & prosecuting Solicitors Office to wit; **John Neeb**, and **Gerald T Costello**

21 2. That upon the Defendant being found guilty of the allegations set forth in the States  
22 Criminal Complaint, the Court thereupon ordered that the Defendant be incarcerated for not less than  
23 Three-Hundred and Four ( 304 ) months to be served in a penal institution designated by the  
24 Washington State Department of Corrections.

1           **IN FURTHER SUPPORT** the Defendant avers that he has had received  
2           infractions while incarcerated, but he has learned while incarcerated to stop, cease, and  
3           desist from such, and work towards a more positive attitude and that he has attended  
4           and/ or completed the following self-help and rehabilitation groups that he can while  
5           incarcerated, and continues to participate in and / or has completed the following :

	<b>GROUP</b>	<b>STATUS</b>
6		
7		
8		
9	1.    A – Plus Certification	<b>Completed</b>
10	2.    NCCER	<b>Completed</b>
11	3.    GED	<b>Completed</b>
12	4.    Anger Management	<b>Completed</b>
13	5.    Victim Awareness	<b>Completed</b>
14	6.    Thinking for a Change	<b>In Progress</b>
15	7.    Re – Entry	<b>In Progress</b>
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1           **THE DEFENDANT** would further like to add the following:

2  
3           1.       That he is currently awaiting to participate in substance abuse counseling  
4 and the T.A.C.T. program but the Wyoming State Penitentiary has continued to delay in  
5 allowing him to participate in said programs due to the length of his sentence. This  
6 counseling would enabled him to understand how harmful his action are to himself, his  
7 family, and the community. The groups that I attend allow me to under stand that there  
8 are support systems that I can rely on, and I will rely on them in the future. It is very  
9 important for me upon my release to surround myself with positive and motivating  
10 influences. Importantly, theses groups have instilled in me the idea that I must be  
11 responsible for my actions. It is comforting to know that there are groups, such as  
12 substance abuse , out there that I can go to for support and help when I need it. I am  
13 involved with all the treatment programs that are available to me.

14  
15           2.       My crime and subsequent incarceration has greatly impacted my family  
16 and friends. I have had the support of my family and friends throughout my incarceration.  
17 I know I need to surround myself with supportive people who will help me when I need  
18 support, not the people I was associating with when I got into trouble. It is easier to make  
19 the right choices when I am around the right people. I want to show my family that I have  
20 become a responsible and that I can finally contribute to my family and society and repay  
21 them for all the love and support that they have given me despite my actions. More than  
22 anything I want to show my family and friends how. I have changed, and how much  
23 more responsible I have become.

24  
25           3.       My plans for the future are to stay away from Gang Related Activity and people  
26 who use drugs. Work hard so that I can meet my financial obligations and help my family.

1 4. I hope the Court will not overlook the progress I have made over the last nine years.  
2 I cannot express the deep remorse that I feel for what I have done to community and  
3 family, yet they have remained supportive. I know that in the past I made tragic, life  
4 altering mistakes. Through my actions I have harmed myself , my family, my victims'  
5 family, and my community and I am truly sorry . I want to demonstrate to the Court and  
6 society that those actions were indeed great mistakes and that I feel great remorse due to  
7 my actions. I know the changes I have made will last the rest of my life. I am respectfully  
8 asking for a sentence reduction. I want the opportunity and privileged to prove to society  
9 the Court, and my family that I can be a productive member of society . I take full and  
10 complete responsibility for my actions and I wish to be allowed to make amends and  
11 restitution for my action.

**V. PRAYER FOR RELIEF**

**WHEREFORE**, the defendant respectfully prays for the following judicial consideration of this Honorable Court:

- a. Enter an order Reducing the Imposed Sentence entered in this Honorable Court ;
- b. Order that a Hearing be held in this matter;
- c. Allow the defendant to attend said hearing via tela phonic conferencing, and /or in person, and;
- d. Any further and just relief as deemed appropriate by this Honorable Court.

RESPECTFULLY submitted, MARCH 23 06

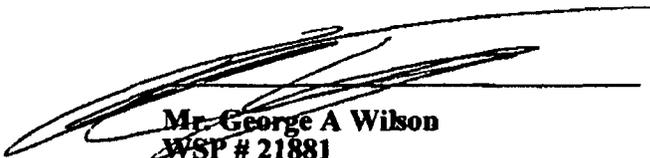


**Mr. George A Wilson  
WSP # 21881  
P.O. Box, 400  
Rawlins, Wyoming  
82301-0400**

**CERTIFICATE OF SERVICES**

1  
2  
3 I, **George Wilson**, do hereby certify that on the 23<sup>th</sup> day of March 2006 did cause  
4 counsel in opposition to be served a true and correct copy of the foregoing document, to wit;  
5 "**Defendant's Motion for Sentence Reduction or Modification**," and in doing so, did mail the  
6 same regular service, pre-paid postage affixed thereto, from the Wyoming State Penitentiary, to the  
7 following address:

8  
9 **Prosecuting Attorney**  
10 **County City Building**  
11 **930 Tacoma Ave South**  
12 **Tacoma, WA**  
13 **98402 - 2117**

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25 **Mr. George A Wilson**  
26 **WSP # 21881**  
27 **P.O. Box, 400**  
28 **Rawlins, Wyoming**  
**82301-0400**

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910C74F5-F20F-6452-D408D2E16AB7AAB3** containing 7 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://www.co.pierce.wa.us/cfapps/secure/linx/courtfilling/certifieddocumentview.cfm>, enter **SerialID: 910C74F5-F20F-6452-D408D2E16AB7AAB3**. The copy associated with this number will be displayed by the Court.

Appendix P  
Motion for Sentence Reduction, filed 04-05-06

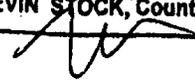
Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 910C96E5-F20F-6452-D1A33F2A3CA498EA  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



97-1-00433-2 25241020 MT 04-05-06

FILED  
IN COUNTY CLERK'S OFFICE

A.M. APR 05 2006 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY  DEPUTY

2 P.O. Box, 400  
3 Rawlins, Wyoming  
82301-0400

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7  
8 **IN THE SUPERIOR COURT**  
9 **IN AND FOR PEIRCE COUNTY, WASHINGTON**

10 **STATE OF WASHINGTON** )  
11 Plaintiff, )

Case No. 97-1-00433-2

12 vs. )

13 **GEORGE A WILSON** )  
14 Defendant, )

15 **DEFENDANTS MOTION FOR SENTENCE REDUCTION OR MODIFICATION**

16 **PURSUANT TO Rev. Code (ARCW) § 9.95.045 and § 9.95.045.( 2005 )**

17  
18 **COMES NOW**, the defendant himself, Pro-Se, and do hereby files motion for this court to  
19 enter an "Order," reducing or modifying the sentence imposed by the Honorable **Frederick W**  
20 **Fleming**, on or around the 15<sup>th</sup> day of April, 1998, in accordance with the Rules of the Revised Code  
21 of Washington. On or around the 15<sup>th</sup> day of April, 1998, Mr. Wilson was found guilty of one (1)  
22 count of to wit; "**Felony Murder in the First Degree**", a felony, and was sentenced by the  
23 Honorable **Frederick W Fleming**, to serve a prison term of not less that Three-Hundred and Four  
24 ( 304 ) months to be served in a penal institution designated by the Washington State Department  
25 of Corrections.

1 **IN SUPPORT** of this request, the Defendant hereby sets forth the following by way of  
2 declarations:

3  
4 **II JURISDICTION AND VENUE**

5 **Rev. Code (ARCW ) § 9.95.045 and § 9.95.045.( 2005 ) Reduction.**

6  
7 **IN THIS INSTANT MATTER**, this court was the trial court which imposed sentence upon  
8 the defendant on or about the 15<sup>th</sup> day of April, 1998 in the aforesaid County, by the Honorable  
9 **Frederick W Fleming** , District Judge

10  
11 **THEREFORE;**

12 **JURISDICTION** and **VENUE** are proper within this **FORUM**.

13  
14  
15 **III. STATEMENT OF MATERIAL FACTS**

16 1. On or about the 15<sup>th</sup> day of April, 1998 the defendant personally appeared with his  
17 attorney, to wit; **Keith A Macfie** , before this Honorable Court upon being found **Guilty** to the  
18 information therein, to wit; **Felony Murder in the First Degree**, as prescribed by WA. Stat., and  
19 counsel of record for the defendant, to wit;, **Keith A Macfie**, with the state having been represented  
20 by the county & prosecuting Solicitors Office to wit; **John Neeb**, and **Gerald T Costello**

21 2. That upon the Defendant being found guilty of the allegations set forth in the States  
22 Criminal Complaint, the Court thereupon ordered that the Defendant be incarcerated for not less than  
23 Three-Hundred and Four ( 304 ) months to be served in a penal institution designated by the  
24 Washington State Department of Corrections.

1           **IN FURTHER SUPPORT** the Defendant avers that he has had received  
2 infractions while incarcerated, but he has learned while incarcerated to stop, cease, and  
3 desist from such, and work towards a more positive attitude and that he has attended  
4 and/ or completed the following self-help and rehabilitation groups that he can while  
5 incarcerated, and continues to participate in and / or has completed the following :

	<b>GROUP</b>	<b>STATUS</b>
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8		
9	1.    A—Plus Certification	<b>Completed</b>
10	2.    NCCER	<b>Completed</b>
11	3.    GED	<b>Completed</b>
12	4.    Anger Management	<b>Completed</b>
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15	7.    Re—Entry	<b>In Progress</b>
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1           **THE DEFENDANT** would further like to add the following:

2  
3           1.       That he is currently awaiting to participate in substance abuse counseling  
4 and the T.A.C.T. program but the Wyoming State Penitentiary has continued to delay in  
5 allowing him to participate in said programs due to the length of his sentence. This  
6 counseling would enabled him to understand how harmful his action are to himself, his  
7 family, and the community. The groups that I attend allow me to under stand that there  
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9 important for me upon my release to surround myself with positive and motivating  
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11 responsible for my actions. It is comforting to know that there are groups, such as  
12 substance abuse , out there that I can go to for support and help when I need it. I am  
13 involved with all the treatment programs that are available to me.

14  
15           2.       My crime and subsequent incarceration has greatly impacted my family  
16 and friends. I have had the support of my family and friends throughout my incarceration.  
17 I know I need to surround myself with supportive people who will help me when I need  
18 support, not the people I was associating with when I got into trouble. It is easier to make  
19 the right choices when I am around the right people. I want to show my family that I have  
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21 them for all the love and support that they have given me despite my actions. More than  
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23 more responsible I have become.

24  
25           3.       My plans for the future are to stay away from Gang Related Activity and people  
26 who use drugs. Work hard so that I can meet my financial obligations and help my family.  
27  
28

1 4. I hope the Court will not overlook the progress I have made over the last nine years.  
2 I cannot express the deep remorse that I feel for what I have done to community and  
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8 asking for a sentence reduction. I want the opportunity and privileged to prove to society  
9 the Court, and my family that I can be a productive member of society . I take full and  
10 complete responsibility for my actions and I wish to be allowed to make amends and  
11 restitution for my action.

**V. PRAYER FOR RELIEF**

**WHEREFORE**, the defendant respectfully prays for the following judicial consideration of this Honorable Court:

- a. Enter an order Reducing the Imposed Sentence entered in this Honorable Court ;
- b. Order that a Hearing be held in this matter;
- c. Allow the defendant to attend said hearing via tela phonic conferencing, and /or in person, and;
- d. Any further and just relief as deemed appropriate by this Honorable Court.

RESPECTFULLY submitted, MARCA - 23-06

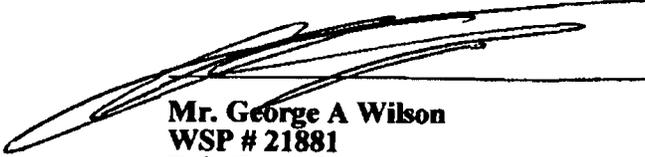


**Mr. George A Wilson  
WSP # 21881  
P.O. Box, 400  
Rawlins, Wyoming  
82301-0400**

## CERTIFICATE OF SERVICES

1  
2  
3 I, **George Wilson**, do hereby certify that on the 23<sup>th</sup> day of March 2006 did cause  
4 counsel in opposition to be served a true and correct copy of the foregoing document, to wit;  
5 "**Defendant's Motion for Sentence Reduction or Modification,**" and in doing so, did mail the  
6 same regular service, pre-paid postage affixed thereto, from the Wyoming State Penitentiary, to the  
7 following address:

8  
9 **Prosecuting Attorney**  
10 **County City Building**  
11 **930 Tacoma Ave South**  
12 **Tacoma, WA**  
13 **98402 -- 2117**

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24   
25 **Mr. George A Wilson**  
26 **WSP # 21881**  
27 **P.O. Box, 400**  
28 **Rawlins, Wyoming**  
**82301-0400**

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910C96E5-F20F-6452-D1A33F2A3CA498EA** containing 7 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://www.co.pierce.wa.us/cfapps/secure/linx/courtfilling/certifieddocumentview.cfm>, enter **SerialID: 910C96E5-F20F-6452-D1A33F2A3CA498EA**. The copy associated with this number will be displayed by the Court.

Appendix Q  
Motion for Sentence Reduction, filed 09-01-06



97-1-00433-2 28078370 MT 09-01-08

WSP # 21881  
P.O. Box, 400  
Rawlins, Wyoming  
82301-0400

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 910C84D4-F20F-6452-D8490A91EF7B1473  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

10365 IN 9/5/2006 88881

PIERCE COUNTY CLERK'S OFFICE  
A.M. SEP 01 2006 P.M.  
PIERCE COUNTY, WASHINGTON  
BY KEVIN STOCK, County Clerk  
DEPUTY

IN THE SUPERIOR COURT  
IN AND FOR PEIRCE COUNTY, WASHINGTON

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GEORGE A WILSON, )  
 )  
 Defendant. )

Case No. 97-1-00433-2

**DEFENDANTS MOTION FOR SENTENCE REDUCTION OR MODIFICATION  
PURSUANT TO Rev. Code Wash (ARCW) § 9. 94A.710, § 9. 94A.905, § 9. 94A.599,  
§ 9. 95.070**

COMES NOW, the defendant himself, Pro-Se, and do hereby files motion for this court to enter an "Order," reducing or modifying the sentence imposed by the Honorable Frederick W Fleming, on or around the 15<sup>th</sup> day of April, 1998, in accordance with the Rules of the Revised Code of Washington. On or around the 15<sup>th</sup> day of April, 1998, Mr. Wilson was found guilty of one (1) count of to wit; "**Felony Murder in the First Degree**", a felony, and was sentenced by the Honorable Frederick W Fleming, to serve a prison term of not less that Three-Hundred and Four (304) months to be served in a penal institution designated by the Washington State Department of Corrections.

**IN SUPPORT** of this request, the Defendant hereby sets forth the following by way of declarations:

**II. JURISDICTION AND VENUE**

**Rev. Code (ARCW ) § 9. 94A.710, § 9. 94A.905, § 9. 94A. 599, § 9. 95.070**

**Motion for Sentence Reduction.**

**IN THIS INSTANT MATTER**, this court was the trial court which imposed sentence upon the defendant on or about the 15<sup>th</sup> day of April, 1998 in the aforesaid County, by the Honorable **Frederick W Fleming** , District Judge

**THEREFORE;**

**JURISDICTION** and **VENUE** are proper within this **FORUM**.

**III. STATEMENT OF MATERIAL FACTS**

1. On or about the 15<sup>th</sup> day of April, 1998 the defendant personally appeared with his attorney, to wit; **Keith A Macfie** , before this Honorable Court upon being found **Guilty** to the information therein, to wit; **Felony Murder in the First Degree**, as prescribed by WA. Stat., and counsel of record for the defendant, to wit;, **Keith A Macfie**, with the state having been represented by the county & prosecuting Solicitors Office to wit; **John Neeb**, and **Gerald T Costello**

2. That upon the Defendant being found guilty of the allegations set forth in the States Criminal Complaint, the Court thereupon ordered that the Defendant be incarcerated for not less than Three-Hundred and Four ( 304 ) months to be served in a penal institution designated by the Washington State Department of Corrections.

**IN FURTHER SUPPORT** the Defendant avers that he has had received infractions while incarcerated, but he has learned while incarcerated to stop, cease, and desist from such, and work towards a more positive attitude and that he has attended and/ or completed the

following self-help and rehabilitation groups that he can while incarcerated, and continues to participate in and / or has completed the following :

	<b>GROUP</b>	<b>STATUS</b>
1.	A—Plus Certification	<b>Completed</b>
2.	NCCER	<b>Completed</b>
3.	GED	<b>Completed</b>
4.	Anger Management	<b>Completed</b>
5.	Victim Awareness	<b>Completed</b>
6.	Thinking for a Change	<b>In-Progress</b> <i>COMPLETED</i>
7.	Re—Entry	<b>In Progress</b>
8.	Alternative to Violence (AVP)	<b>Completed</b>
9.	Advanced Alternative to Violence (AVP)	<b>Completed</b>

**THE DEFENDANT** would further like to add the following;

1. That he is currently awaiting to participate in substance abuse counseling and the T.A.C.T. program but the Wyoming State Penitentiary has continued to delay in allowing him to participate in said programs due to the length of his sentence. This counseling would enabled him to understand how harmful his action are to himself, his family, and the community. The groups that I attend allow me to understand that there are support systems that I can rely on, and I will rely on them in the future. It is very important for me upon my release to surround myself with positive and motivating influences. Importantly, these groups have instilled in me the idea that I must be responsible for my actions. It is comforting to know that there are groups, such as substance abuse

. out there that I can go to for support and help when I need it. I am involved with all the treatment programs that are available to me.

2. My crime and subsequent incarceration has greatly impacted my family and friends. I have had the support of my family and friends throughout my incarceration. I know I need to surround myself with supportive people who will help me when I need support, not the people I was associating with when I got into trouble. It is easier to make the right choices when I am around the right people. I want to show my family that I have become a responsible and that I can finally contribute to my family and society and repay them for all the love and support that they have given me despite my actions. More than anything I want to show my family and friends how I have changed, and how much more responsible I have become.

3. My plans for the future are to stay away from Gang Related Activity and people who use drugs. Work hard so that I can meet my financial obligations and help my family.

4. I hope the Court will not overlook the progress I have made over the last nine years. I cannot express the deep remorse that I feel for what I have done to community and family, yet they have remained supportive. I know that in the past I made tragic, life altering mistakes. Through my actions I have harmed myself, my family, my victims' family, and my community and I am truly sorry. I want to demonstrate to the Court and society that those actions were indeed great mistakes and that I feel great remorse due to my actions. I know the changes I have made will last the rest of my life. I am respectfully asking for a sentence reduction. I want the opportunity and privileged to prove to society the Court, and my family that I can be a productive member of society. I take full and complete responsibility for my actions and I wish to be allowed to make amends and restitution for my action.

**V. PRAYER FOR RELIEF**

**WHEREFORE**, the defendant respectfully prays for the following judicial consideration of this Honorable Court:

- a. Enter an order Reducing the Imposed Sentence entered in this Honorable Court ;
- b. Order that a Hearing be held in this matter;
- c. Allow the defendant to attend said hearing via tela phonic conferencing, and /or in person, and;
- d. Any further and just relief as deemed appropriate by this Honorable Court.

**RESPECTFULLY** submitted, August 27, 2006.

  
George A Wilson # 21881  
P.O. Box, 400  
Rawlins, Wyoming 82301-0400

**CERTIFICATE OF SERVICE**

I, **George Wilson**, do hereby certify that on the 28<sup>TH</sup> day of August, 2006, did cause counsel in opposition to be served a true and correct copy of the foregoing document, to wit; "**Defendant's Motion for Sentence Reduction or Modification,**" and in doing so, did mail the same regular service, pre-paid postage affixed thereto, from the Wyoming State Penitentiary, to the following address:

Prosecuting Attorney, County City Building, 930 Tacoma Ave South, Tacoma, WA 98402—2117

  
George A Wilson

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910C84D4-F20F-6452-D8490A91EF7B1473** containing 5 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



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Appendix R  
letter to defendant, filed 09-20-06

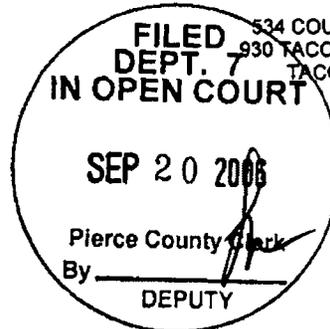
Case Number: 97-1-00433-2 Date: March 7, 2011  
 SerialID: 910C7DA0-F20D-AA3E-5BFF80573CBBF223  
 Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



97-1-00433-2 26177964 LTR7 09-21-06

**SUPERIOR COURT  
 OF THE  
 STATE OF WASHINGTON  
 FOR PIERCE COUNTY**

FREDERICK W. FLEMING, JUDGE  
 LOUANNE MARTIN, *Judicial Assistant*  
 Department 07  
 (253) 798-7568



534 COUNTY-CITY BUILDING  
 930 TACOMA AVENUE SOUTH  
 TACOMA, WA 98402-2108

September 20, 2006

George A. Wilson  
 PO Box 400  
 Rawlins, Wyoming 82301-0400

RE: STATE OF WASHINGTON vs. WILSON, GEORGE ANTHONY  
 Pierce County Cause No. 97-1-00433-2

Dear Mr Wilson:

This Court is in receipt of your letter signed on August 27<sup>th</sup>, 2006. I am writing only to inform you that your letter and any attached pleadings have been filed in the above Court file.

Any request for modification of a sentence must be presented pursuant to proper procedure. Either a motion pursuant to Criminal Rule 7.8 with all the supporting documents and affidavits may be filed with Superior Court or a personal restraint petition can be filed with the Court of Appeals. The Court of Appeals' address is:

Washington State Court of Appeals  
 950 Broadway, Suite 300  
 Tacoma, WA 98402-4454.

No hearings on this matter will be held in the Superior Court at this time based upon the paperwork that you have filed.

Sincerely,  
**LOUANNE MARTIN**  
 JUDICIAL ASSISTANT  
 LOUANNE MARTIN,  
 Judicial Assistant

cc: Original to Pierce County Clerk's Office for filing  
 JOHN M. NEEB, Deputy Prosecuting Attorney  
 KEITH A. MACFIE, Defense Counsel

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 910C7DA0-F20D-AA3E-5BFF80573CBBF223  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

103651 9/5/2006 00001  
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PIERCE COUNTY, WASHINGTON  
BY KEVIN STOCK, County Clerk DEPUTY

P.O. Box, 400  
Rawlins, Wyoming  
82301-0400

IN THE SUPERIOR COURT  
IN AND FOR PEIRCE COUNTY, WASHINGTON

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 97-1-00433-2
	)	
GEORGE A WILSON,	)	
	)	
Defendant.	)	

**DEFENDANTS MOTION FOR SENTENCE REDUCTION OR MODIFICATION  
PURSUANT TO Rev. Code Wash (ARCW) § 9. 94A.710, § 9. 94A.905, § 9. 94A.599,  
§ 9. 95.070**

COMES NOW, the defendant himself, Pro-Se, and do hereby files motion for this court to enter an "Order," reducing or modifying the sentence imposed by the Honorable Frederick W Fleming, on or around the 15<sup>th</sup> day of April, 1998, in accordance with the Rules of the Revised Code of Washington. On or around the 15<sup>th</sup> day of April, 1998, Mr. Wilson was found guilty of one (1) count of to wit; "Felony Murder in the First Degree", a felony, and was sentenced by the Honorable Frederick W Fleming, to serve a prison term of not less that Three-Hundred and Four ( 304 ) months to be served in a penal institution designated by the Washington State Department of Corrections.

IN SUPPORT of this request, the Defendant hereby sets forth the following by way of declarations:

**II. JURISDICTION AND VENUE**

Rev. Code (ARCW ) § 9. 94A.710, § 9. 94A.905, § 9. 94A. 599, § 9. 95.070

**Motion for Sentence Reduction.**

IN THIS INSTANT MATTER, this court was the trial court which imposed sentence upon the defendant on or about the 15<sup>th</sup> day of April, 1998 in the aforesaid County, by the Honorable Frederick W Fleming , District Judge

**THEREFORE;**

**JURISDICTION and VENUE are proper within this FORUM.**

**III. STATEMENT OF MATERIAL FACTS**

1. On or about the 15<sup>th</sup> day of April, 1998 the defendant personally appeared with his attorney, to wit; Keith A Macfie , before this Honorable Court upon being found Guilty to the information therein, to wit; **Felony Murder in the First Degree**, as prescribed by WA. Stat., and counsel of record for the defendant, to wit,, Keith A Macfie, with the state having been represented by the county & prosecuting Solicitors Office to wit; John Neeb, and Gerald T Costello

2. That upon the Defendant being found guilty of the allegations set forth in the States Criminal Complaint, the Court thereupon ordered that the Defendant be incarcerated for not less than Three-Hundred and Four ( 304 ) months to be served in a penal institution designated by the Washington State Department of Corrections.

**IN FURTHER SUPPORT** the Defendant avers that he has had received infractions while incarcerated, but he has learned while incarcerated to stop, cease, and desist from such, and work towards a more positive attitude and that he has attended and/ or completed the

following self-help and rehabilitation groups that he can while incarcerated, and continues to participate in and / or has completed the following :

	<b>GROUP</b>	<b>STATUS</b>
1.	A—Plus Certification	<b>Completed</b>
2.	NCCER	<b>Completed</b>
3.	GED	<b>Completed</b>
4.	Anger Management	<b>Completed</b>
5.	Victim Awareness	<b>Completed</b>
6.	Thinking for a Change	<del>In Progress</del> <i>COMPLETED</i>
7.	Re—Entry	<b>In Progress</b>
8.	Alternative to Violence (AVP)	<b>Completed</b>
9.	Advanced Alternative to Violence (AVP)	<b>Completed</b>

**THE DEFENDANT** would further like to add the following;

1. That he is currently awaiting to participate in substance abuse counseling and the T.A.C.T. program but the Wyoming State Penitentiary has continued to delay in allowing him to participate in said programs due to the length of his sentence. This counseling would enabled him to understand how harmful his action are to himself, his family, and the community. The groups that I attend allow me to under stand that there are support systems that I can rely on, and I will rely on them in the future. It is very important for me upon my release to surround myself with positive and motivating influences. Importantly, theses groups have instilled in me the idea that I must be responsible for my actions. It is comforting to know that there are groups, such as substance abuse

out there that I can go to for support and help when I need it. I am involved with all the treatment programs that are available to me.

2. My crime and subsequent incarceration has greatly impacted my family and friends. I have had the support of my family and friends throughout my incarceration. I know I need to surround myself with supportive people who will help me when I need support, not the people I was associating with when I got into trouble. It is easier to make the right choices when I am around the right people. I want to show my family that I have become a responsible and that I can finally contribute to my family and society and repay them for all the love and support that they have given me despite my actions. More than anything I want to show my family and friends how I have changed, and how much more responsible I have become.

3. My plans for the future are to stay away from Gang Related Activity and people who use drugs. Work hard so that I can meet my financial obligations and help my family.

4. I hope the Court will not overlook the progress I have made over the last nine years. I cannot express the deep remorse that I feel for what I have done to community and family, yet they have remained supportive. I know that in the past I made tragic, life altering mistakes. Through my actions I have harmed myself, my family, my victims' family, and my community and I am truly sorry. I want to demonstrate to the Court and society that those actions were indeed great mistakes and that I feel great remorse due to my actions. I know the changes I have made will last the rest of my life. I am respectfully asking for a sentence reduction. I want the opportunity and privileged to prove to society the Court, and my family that I can be a productive member of society. I take full and complete responsibility for my actions and I wish to be allowed to make amends and restitution for my action.

**V. PRAYER FOR RELIEF**

**WHEREFORE**, the defendant respectfully prays for the following judicial consideration of this Honorable Court:

- a. Enter an order Reducing the Imposed Sentence entered in this Honorable Court ;
- b. Order that a Hearing be held in this matter;
- c. Allow the defendant to attend said hearing via telephonic conferencing, and /or in person, and;
- d. Any further and just relief as deemed appropriate by this Honorable Court.

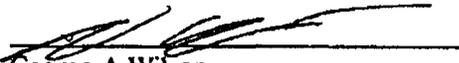
**RESPECTFULLY** submitted, August 27, 2006.

  
George A Wilson # 21881  
P.O. Box, 400  
Rawlins, Wyoming 82301-0400

**CERTIFICATE OF SERVICE**

I, **George Wilson**, do hereby certify that on the 28<sup>TH</sup> day of August, 2006, did cause counsel in opposition to be served a true and correct copy of the foregoing document, to wit; "**Defendant's Motion for Sentence Reduction or Modification**," and in doing so, did mail the same regular service, pre-paid postage affixed thereto, from the Wyoming State Penitentiary, to the following address:

Prosecuting Attorney, County City Building, 930 Tacoma Ave South, Tacoma, WA 98402—2117

  
George A Wilson

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910C7DA0-F20D-AA3E-5BFF80573CBBF223** containing 6 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



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Appendix S  
Defendant's Motion for Sentence Reduction or Modification, signed September 27, 2006

Mr. George A Wilson  
WSP # 21881  
P.O. Box, 400  
Rawlins, Wyoming  
82301-0400

FILED  
COURT OF APPEALS  
06 OCT -2 PM 12:34  
STATE OF WASHINGTON  
BY CA  
CLERK

IN THE SUPERIOR COURT  
IN AND FOR PEIRCE COUNTY, WASHINGTON

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GEORGE A WILSON, )  
 )  
 Defendant. )

Case No. 97-1-004433-2

23203-1  
**35685-6**

DEFENDANTS MOTION FOR SENTENCE REDUCTION OR MODIFICATION  
PURSUANT TO Wash. CrRLJ 7.8 (2006) Rev. Code Wash (ARCW) § 9. 94A.710,  
§ 9. 94A.905, § 9. 94A.599, § 9. 95.070 &

COMES NOW, the defendant himself, Pro-Se, and do hereby files motion for this court to enter an "Order," reducing or modifying the sentence imposed by the Honorable Frederick W Fleming, on or around the 15<sup>th</sup> day of April, 1998, in accordance with the Rules of the Revised Code of Washington. On or around the 15th day of April, 1998, Mr. Wilson was found guilty of one (1) count of to wit; "Felony Murder in the First Degree", a felony, and was sentenced by the Honorable Frederick W Fleming, to serve a prison term of not less that Three-Hundred and Four ( 304 ) months to be served in a penal institution designated by the Washington State Department of Corrections.

**CERTIFICATE OF SERVICE**

I certify that I mailed  
copies of PRD  
to Doc Pros RILEY  
& 1122100 CA  
Date 11/19/07 Signed CA

State of Washington v. George Wilson, Case No. 97-1-004433-2  
Page 1 of 6

PETITIONER MAY FILE THE  
PETITION WITHOUT PAYMENT OF  
A FILING FEE

Doc Pros RILEY  
COURT CLERK 11/19/07

IN SUPPORT of this request, the Defendant hereby sets forth the following by way of declarations:

## **II. JURISDICTION AND VENUE**

Motion for Sentence Reduction, Wash. CrRLJ 7.8 (2006) Rev. Code (ARCW) § 9. 94A.710, § 9. 94A.905, § 9. 94A. 599, § 9. 95.070

IN THIS INSTANT MATTER, this court was the trial court which imposed sentence upon the defendant on or about the 15<sup>th</sup> day of April, 1998 in the aforesaid County, by the Honorable Frederick W Fleming , District Judge

### **THEREFORE;**

**JURISDICTION** and **VENUE** are proper within this **FORUM**.

## **III. STATEMENT OF MATERIAL FACTS**

1. On or about the 15th day of April, 1998 the defendant personally appeared with his attorney, to wit; Keith A Macfie , before this Honorable Court upon being found Guilty to the information therein, to wit; Felony Murder in the First Degree, as prescribed by WA. Stat., and counsel of record for the defendant, to wit;, Keith A Macfie, with the state having been represented by the county & prosecuting Solicitors Office to wit; John Neeb, and Gerald T Costello;
2. That upon the Defendant being found guilty of the allegations set forth in the States Criminal Complaint, the Court thereupon ordered that the Defendant be incarcerated for not less than Three-Hundred and Four ( 304 ) months to be served in a penal institution

I attend allow me to understand that there are support systems that I can rely on, and I will rely on them in the future. It is very important for me upon my release to surround myself with positive and motivating influences. Importantly, these groups have instilled in me the idea that I must be responsible for my actions. It is comforting to know that there are groups, such as substance abuse, out there that I can go to for support and help when I need it. I am involved with all the treatment programs that are available to me.

2. My crime and subsequent incarceration has greatly impacted my family and friends. I have had the support of my family and friends throughout my incarceration. I know I need to surround myself with supportive people who will help me when I need support, not the people I was associating with when I got into trouble. It is easier to make the right choices when I am around the right people. I want to show my family that I have become a responsible and that I can finally contribute to my family and society and repay them for all the love and support that they have given me despite my actions. More than anything I want to show my family and friends how I have changed, and how much more responsible I have become.

3. My plans for the future are to stay away from Gang Related Activity and people who use drugs. Work hard so that I can meet my financial obligations and help my family.

4. I hope the Court will not overlook the progress I have made over the last nine years. I cannot express the deep remorse that I feel for what I have done to community and family, yet they have remained supportive. I know that in the past I made tragic, life altering mistakes. Through my actions I have harmed myself, my family, my victims' family, and my community and I am truly sorry. I want to demonstrate to the Court and society that those actions were indeed great mistakes.

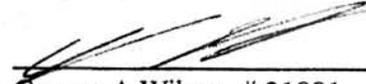
and that I feel great remorse due to my actions. I know the changes I have made will last the rest of my life. I am respectfully asking for a sentence reduction. I want the opportunity and privileged to prove to society the Court, and my family that I can be a productive member of society . I take full and complete responsibility for my actions and I wish to be allowed to make amends and restitution for my action.

#### **V. PRAYER FOR RELIEF**

**WHEREFORE**, the defendant respectfully prays for the following judicial consideration of this Honorable Court:

- a. Enter an order Reducing the Imposed Sentence entered in this Honorable Court ;
- b. Order that a Hearing be held in this matter;
- c. Allow the defendant to attend said hearing via tela phonic conferencing, and /or in person, and;
- d. Any further and just relief as deemed appropriate by this Honorable Court.

**RESPECTFULLY** submitted, **September 27, 2006**

  
George A Wilson # 21881  
P.O. Box, 400  
Rawlins, Wyoming 82301-0400

C

**CERTIFICATE OF SERVICE**

I, **George Wilson**, do hereby certify that on the 27<sup>TH</sup> day of September, 2006 did cause counsel in opposition to be served a true and correct copy of the foregoing document, to wit; **“Defendant’s Motion for Sentence Reduction or Modification,”** and in doing so, did mail the same regular service, pre-paid postage affixed thereto, from the Wyoming State Penitentiary, to the following address:

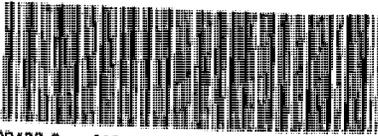
Court of Appeals  
950 Broadway *Suite 300*  
Tacoma  
WA 98402—2117



George A Wilson

FILED  
COURT OF APPEALS  
06 OCT -2 PM 12:34  
STATE OF WASHINGTON  
BY 

Appendix T  
Order Dismissing Petition



97-1-00433-2 28519818 CPPRP 10-29-07

# COURTS OF THE STATE OF WASHINGTON

## DIVISION II

IN COUNTY CLERK'S OFFICE  
FILED  
A.M. OCT 26 2007 P.M.  
PIERCE COUNTY, WASHINGTON  
BY KEVIN S. CLARK, County Clerk  
DEPUTY  
FILED  
OCT 19 PM 2:22  
COUNTY APPEALS

In re the  
Personal Restraint Petition of  
  
GEORGE ANTHONY WILSON,  
  
Petitioner.

No. 35685-6-II

ORDER DISMISSING PETITION

George Anthony Wilson seeks relief from personal restraint imposed after a jury convicted him of first degree murder in Pierce County Superior Court cause 97-1-00433-  
2. He seeks reduction of his sentence based on what he asserts to be reformed behavior in prison. We dismiss his petition without deciding whether it must meet the time limits of RCW 10.73.090.

Petitioner cites no authority allowing this court or the superior court to reduce Petitioner's sentence. Petitioner committed his crime on January 25, 1997. Petitioner was sentenced under the Sentencing Reform Act of 1981 (SRA), which governs sentencing for all felonies committed after June 30, 1984. RCW 9.94A.905. "Modification of a judgment is not appropriate merely because it appears, wholly in retrospect, that a different decision might have been preferable," and "SRA sentences may be modified only if they meet the requirements of the SRA provisions relating directly to the modification of sentences." *State v. Shove*, 113 Wn.2d 83, 88, 89, 776 P.2d 132 (1989). The SRA deprived superior courts of the general "power to defer or suspend the imposition or execution of sentence." RCW 9.94A.575 (emphasis added).

Petitioner cites to RCW 9.95.070, a statute that applies only to felons sentenced under the prior indeterminate sentencing scheme or to sex offenders sentenced under RCW 9.94A.712. RCW 9.95.900(2). It does not apply to him. Even if it did, RCW 9.95.070 authorizes the Indeterminate Sentence Review Board, not a court, to reduce the term of imprisonment that the board set. Petitioner also cites to RCW 9.94A.599,<sup>1</sup> 9.94A.710,<sup>2</sup> and 9.94A.905.<sup>3</sup> None of these statutes authorize a court to reduce Petitioner's previously imposed SRA sentence.

As the Department of Corrections (DOC) notes, Petitioner's current good behavior, if maintained, will have the effect of reducing his prison term. Petitioner is eligible to accumulate "earned release time." See RCW 9.94A.728(1), (1)(a). But DOC, not the court, awards earned release time. Petitioner may also be able to petition the Clemency and Pardons Board to commute his sentence. See RCW 9.94A.885.

Petitioner provides no authority for his requested relief. Further, Petitioner does not demonstrate or even claim that his current restraint is unlawful under RAP 16.4(c), and therefore, we cannot grant relief in a personal restraint petition. See *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 809, 792 P.2d 506 (1990). Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b). Any request for counsel is denied.

DATED this 19~~th~~ day of October, 2007.

Van Beron A.C.J.  
 Acting Chief Judge

<sup>1</sup> This statute sets the statutory maximum as the presumptive sentence when the presumptive range would otherwise exceed the maximum.

<sup>2</sup> This statute requires and defines community custody for certain sex offenders.

<sup>3</sup> This statute establishes some effective dates for the SRA.

35685-6-II/3

Case Number: 97-1-00433-2 Date: March 7, 2011

7639 10/29/2007 00006

SerialID: 910CA424-F20F-6452-D95DFBD77AC40E46

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

cc: George Anthony Wilson  
Department Of Corrections  
Pierce County Cause No. 97-1-00433-2  
Ronda D. Larson

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910CA424-F20F-6452-D95DFBD77AC40E46** containing 3 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



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Appendix U  
Motion for Relief From Judgment [per CrR 7.8]



97-1-00433-2 27072232 MT 03-05-07

v.s.r. South  
P.O. Box 400  
Rawlins, Wyoming 82301-0400

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 910C7B7D-F20F-6452-D10648224BD01688  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

16858 3/5/2007 00152

Wash. St. No. 776910)

FILED  
IN COUNTY CLERK'S OFFICE

A.M. MAR 02 2007 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY *[Signature]* DEPUTY

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
**IN AND FOR PIERCE COUNTY**

STATE OF WASHINGTON )  
Plaintiff, )  
vs. )  
GEORGE A. WILSON, )  
Defendant. )

Case No. 97-1-00433-2

**MOTION FOR RELIEF FROM JUDGEMENT**

COMES NOW, Defendant, George A. Wilson, *Pro Se*, Hereby Respectfully Moves this Honorable for an Order Granting Relief from Judgement pursuant to Rule 7.8 of the Washington State Criminal Rules of Procedure, concerning the Above Cited Pierce County Cause Number.

This Motion under Rule 7.8 is based upon the attached affidavit of George A. Wilson, and Memorandum In Support of Motion For Relief from Judgement under Cr.R. 7.8.

Dated this 27 Day of February, 2007.

*George A. Wilson*  
George A. Wilson, Defendant, Pro Se

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910C7B7D-F20F-6452-D10648224BD01688** containing 1 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



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www.co.pierce.wa.us/cfapps/secure/linx/courtfilin/certifieddocumentview.cfm](https://www.co.pierce.wa.us/cfapps/secure/linx/courtfilin/certifieddocumentview.cfm),  
enter **SerialID: 910C7B7D-F20F-6452-D10648224BD01688**.  
The copy associated with this number will be displayed by the Court.

Appendix V  
Motion for Relief From Judgment



On February 16<sup>th</sup>, 1998 the Defendant was found Guilty of a Jury Trial, and on March 30<sup>th</sup>, 1998, Defendant was sentenced to a term of Confinement of 304 months.

## **B. STANDARD OF REVIEW**

Pro Se Pleadings are supposed to be held to less stringent standards than Formal Pleadings duly Drafted and Presented by Licensed Attorneys. If the Court(s) can reasonable read the pleadings to state a valid claim on which relief can be granted, or the litigant can prevail, they Court should do so despite the failure to cite proper Legal Authority, the possible confusion of Legal Theories, poor syntax and sentence structure, or the litigants un-familiarity with the pleading requirements (See: UNITED STATES vs. MCDOUGALL, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 {1982}; HAINES vs. KERNER, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 {1972}).

Courts in the State of Washington have strong policy of deciding cases on the merits, not on potential defects in the pleadings. See: State vs. Olsen, 126 Wn.2d 314, 318, 893 P.2d 629(1995)(providing that the Supreme Court would rule on an issue which the county prosecutor had failed to find error, because of the policy of reaching the merits of an issue).

## **C. WHY RELIEF SHOULD BE GRANTED**

The present Cr.R 7.8 Motion for Relief From Judgement is properly before this Honorable Court , and should be Granted because the interest of Justice so requires it. See: In Re: Taylor, 105

**Wn.2d 683; 717 P.2.d 755 (1986); In Re: Cook, 114 Wn,2d 802, 809; 792 P.2d 506 (1990); Sanders vs. United States, 373 U.S. 1, 16 S.Ct. 1068, 10 L.Ed.2d 148 (1963).**

The recent Washington State Supreme Court Cases of: State vs. Roberts, 142 Wn. 2d. 471 (2000); State vs. Bui, 142 Wn.2d 568 (2000), declared that the accomplice liability jury instructions employed in those cases relieved the State of their burden of proving every element of the crime charges, and were thus un-constitutional.

**Defendant's Jury Instruction No. 15 is word for word exactly as the accomplice liability instructions declared un-constitutional in the case of State vs. Cronin, supra (at page 572), in that it fails to specify "TO WHICH CRIME" did defendant promote or facilitate the commission of.**

The Washington Supreme Court held in Cronin that "the plain language of the complicity statute does NOT support the Stat's argument that accomplice liability attaches so long as the defendant knows that he or she is aiding in the commission of a crime." That "the statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged." That "the legislature intended the culpability of an accomplice to extend beyond the crimes of which the accomplice actually has knowledge." That imposing criminal liability on an alleged accomplice can be done "only so long as that individual has general knowledge of 'the crime for which he or she is eventually charged'."

Cronin at 142 Wn.2d 578, 579, citing State vs. Roberts, supra. Because State vs. Roberts, supra, State vs. Cronin, supra, and State vs. Bui, supra constitutes a change in the law that is material to a Court Order, RCW 10.73.100(6) affords a defendant an opportunity to bring this CrR 7.8 Motion before this Court to be considered on the merits. See: In Re Greening, 9 p.36 206 (200) at 211 (RCW 10.73.100(6) preserves access to collateral review in cases where there has been a significant change in the law that is material to an order citing In Re Personal Restraint of Johnson, 131 Wn.2d 558, 933 P.2d 1019 (1997).

#### D. ARGUMENT

##### Jury Instruction No. 15 Relieved the State Of It's Burden of Proving All Essential Elements of The Charged Crime

The state was required to prove every essential element of the crime beyond a reasonable doubt for a conviction to be upheld. See: In Re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed2d 368 (1970). A Criminal Defendant is Constitutionally Entitled to a Jury Verdict that he is guilty of the crime, and absent such a verdict the conviction must be reversed. No matter how in-escapable the finding to support that verdict might be. A Jury Verdict that he is guilty of the crime means of coarse, a verdict that he is guilty of each necessary element of the crime. See: California vs. Roy, 117 S.Ct. 339 (9<sup>th</sup> Cir, 1996). The Fifth and Sixth Amendments to the United States Constitution Requires that Criminal Convictions are to rest upon a Jury Determination that the defendant is guilty of every element of the crime with which he is charged. See: U.S. vs. Gaudin, 515 U.S. 506, 132 L.Ed2d 447, 115 S.Ct. 2310 (9<sup>th</sup> Cir. 1995); State vs. Acosta, 101 Wn.2d 612, 615; 683 P.2d 1069 (1984); State vs. McCallum, 98 Wn.2d 484, 493-94; 656 P.2d

1064 (1983); also see: 111 State vs. Green, 94 Wn.2d 216 224; 616 P.2d 628 (1980). A conviction cannot be upheld if the jury instructions relieved the state of its burden to prove every essential element of the crime charged. See: State vs. Jackson, 137 Wn.2d 712, 727; 976 P.2d 1229 (1999).

It is Reversible Error to instruct the Jury in a manner that would relieve the state of its burden of proving every essential element of the crime charged. See: State vs. Burd, 125 Wn.2d 707, 713-14; 887 P.2d 396 (1995).

Because accomplice liability requires assistance or agreement to assist in "THE CRIME CHARGED", Instruction 15 relieved the state of its burden of proving the elements of the crime charged.

A person is legally accountable for the conduct of another person when he or she is an accomplice in the commission of the crime. **RCW 9A.08.020(c)**. A person is an accomplice when he or she:

- (a) With knowledge that it will promote or facilitate the commission of a crime, or
- (b) He or she aids or agrees to aid such other person(s) in planning or committing it;

**RCW 9A.08.020(c)(a)(ii)**. The use of "the" in the statute refers back to the crime charged, i.e.: The crime to which a person is an accomplice if he aids or agrees to aid another in the planning or committing of it. Thus **RCW 9A.08.020 indicates accomplice liability must be read against the crime charged.**

Contrary to the law, the Trial Court's Instruction No. 15 provides:

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not;

A person is an accomplice in the commission of a crime if, with knowledge that will promote or facilitate the commission of a crime, he or she either:

(1.) Solicits Commands, Encourages, or requests another person to commit the crime; or

(2.) Aids or Agrees to aid another person in the planning or commission of a crime. The word "aid" means all assistance whether given by words or actions, encouragement, support or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of a crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person is an accomplice. (Please See Exhibit A.).

By using an "a" instead of "the crime charged", the instruction overlooks the required link between the crime the accomplice aids or agrees to aid in, and the crime to which he is allegedly to be an accomplice to.

By requiring only that the accused aid, or agree to aid, in the commission of a crime, defendant's Court Jury Instruction No. 15 marks a significant departure from the plain language of the accomplice liability statute. By referring to "it", not some un-named crime which may not be included in charge one. The statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged. See: State vs. Cronin, supra at 579.

The Washington State Supreme Court went on to rule in Cronin that their prior decision in State vs. Roberts, supra, Directed that “the fact that a purported accomplice knows that the principle intends to commit ‘a crime’ does not necessarily mean that the accomplice liability attaches its self for any and all offenses ultimately committed by the principle.” See: State vs. Cronin, supra, at 579, Citing State vs. Roberts, supra

Even the DISSENT in Roberts, written by Justice Ireland agreed that accomplice liability instruction should have stated: “THE CRIME CHARGED”. See: State vs. Roberts, supra at 541 (I agree with the majority that the accomplice liability instructions, jury instruct No. 7 {In this Defendant’s Case, Jury Instruction No. 15} should have stated “THE CRIME CHARGED” rather than ‘a crime’) (emphasis added).

The trial Court’s erroneous jury instruction relieved the State of it’s burden of proving that the defendant aided or agreed to aid in the commission of ‘THE CHARGED CRIME’. Accordingly, the Defendant was denied Due Process of the Law, and His Conviction Must Be Reversed. The Instructional Error Relieved the State of It’s Burden of proving the elements of the crime, thereby requiring reversal of the conviction.

In State vs. Jackson, the Washington State Supreme Court re-affirmed the rule that where Jury Instructions Relieve the State of Proving all the essential elements, error is not susceptible to harmless error analysis, but instead requires a reversal. See: State vs. Jackson, 137 Wn.2d 712, 726-27; 976 P.2d 1229 (1999). There the Court found an erroneous accomplice instruction relieved the State of it’s burden of proving all essential elements of the crime. Id.

Therefore, the Court refused to examine the record to determine if the error prejudiced the defendant. Thus this Court Must Follow Jackson and find that because instruction No. 15 relieved the State of it's burden of proving the elements of accomplice liability, Defendant's Conviction must be reversed.

### E. CONCLUSION

Because Defendant's Constitutional Rights Were Violated, and said Rights being His 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendment Rights (U.S. Constitutional Rights), this Defendant Respectfully Asks that this Honorable Court Duly Order a Re-trial in Defendant's Case.

Respectfully Submitted this 27 day of FEBRUARY, 2007.



George A. Wilson, *Pro Se*

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	NO. 97-1-00432-4
vs.	)	NO. 97-1-00433-2
	)	
CECIL EMILE DAVIS,	)	
GEORGE ANTHONY WILSON,	)	
	)	
Defendants.	)	
_____	)	

---

COURT'S INSTRUCTIONS TO THE JURY

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DATED this \_\_\_\_ day of February, 1998.

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FREDERICK W. FLEMING, JUDGE

**INSTRUCTION NO. 1**

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

Charges have been made by the prosecuting attorney by filing a document, called an information, informing the defendants of the charges. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence which either was not admitted or which was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorney's remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the

weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed upon defendant George Wilson. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful. The punishment to be imposed upon defendant Cecil Davis will be considered by you in a separate penalty phase only if you unanimously find him guilty of the crime of Premeditated Murder in the First Degree and unanimously find the existence of an Aggravating Circumstance.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdicts.

**INSTRUCTION NO. 2**

The defendants have each entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff, and has the burden of proving each element of the crime beyond a reasonable doubt.

Each 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, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

Case Number: 07-00433-2 Date: March 7, 2011  
SerialID: 910CA83A-F20F-6452-D379A786F7A3C6D1  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

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 experience. 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.

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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.

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Case Number: 97-1-00433-2 Date: March 7, 2011

16858 3/5/2007 00170

SerialID: 910CA83A-F20F-6452-D379A706F7A3C6D1

INSTRUCTION NO 5  
Digitally signed by Dawn S. Orr, Pierce County Clerk, Washington

Evidence that a witness has been convicted of a crime may be considered by you in deciding what weight or credibility should be given to the testimony of the witness and for no other purpose.

Case Number: 97-1-00433-2 Date: March 7, 2011

16856 3/5/2007 00171

Serial ID: 810CAB3A-F20F-6452-E879A706F7A3C6D1

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

Defendant Cecil Davis is not compelled to testify, and the fact that he has not testified cannot be used to infer guilt or prejudice him in any way.

Defendant George Wilson is not compelled to testify, and the fact that he has not testified cannot be used to infer guilt or prejudice him in any way.

Case Number: 97-1-00433-2 Date: March 7, 2011

16858 3/5/2007 08173

~~Signature PDF~~  
Serial: 0106A83A-R0E-6458-D379A706F7A3C6D1

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

Homicide is the killing of a human being by the voluntary act of another and is either murder, homicide by abuse, manslaughter, excusable homicide, or justifiable homicide.

Case Number: 97-1-00433-2 Date: March 7, 2011

16858 3/5/2007 00174

~~SENSITIVE INFORMATION~~ FIO-6452-D379A706F7A3C6D1

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

A person commits the crime of Premeditated Murder in the  
First Degree when, with a premeditated intent to cause the death  
of another person, he causes the death of such person.

Case Number: 97-1-00433-2 Date: March 7, 2011

16858 3/5/2007 88175

Serial: 9106183A-E28F-6452-D379A708F7A3C6D1

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

INSTRUCTION NO. 12

To convict defendant Cecil Davis of the charged crime of Premeditated Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25th day of January, 1997, defendant Cecil Davis suffocated or asphyxiated Yoshiko Couch;
- (2) That defendant Cecil Davis acted with intent to cause the death of Yoshiko Couch;
- (3) That the intent to cause the death was premeditated;
- (4) That Yoshiko Couch died as a result of defendant Cecil Davis' acts; and

- 
- (5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has 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 of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

If you find defendant Cecil Davis guilty of Premeditated Murder in the First Degree as defined in Instruction 9, you must then determine whether the following aggravating circumstance exists:

The murder was committed in the course of, in furtherance of, or in immediate flight from a Robbery in the First or Second Degree, a Rape in the First or Second Degree, or a Burglary in the First or Second Degree.

The State has the burden of proving the existence of an aggravating circumstance beyond a reasonable doubt. In order for you to find that there is an aggravating circumstance in this case, you must unanimously agree that the aggravating circumstance has been proved beyond a reasonable doubt. You need not be unanimous as to any one of the crimes listed within the aggravating circumstance.

A person commits the crime of Felony Murder in the First Degree when he or an accomplice commits or attempts to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree, and in the course of or in furtherance of such crime or in immediate flight from such crime, he or the other participant causes the death of a person other than one of the participants.

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of a crime, he either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing a crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

A person attempts to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree, when, with intent to commit that crime, he does any act which is a substantial step toward the commission of that crime.

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

A "substantial step" is conduct which strongly indicates a criminal purpose and which is more than mere preparation.



A person commits the crime of Robbery in the First Degree when, in the commission of a robbery or in immediate flight therefrom, he inflicts bodily injury.

A person commits the crime of Robbery in the Second Degree when he commits robbery.

"Bodily injury" means physical pain or injury, illness, or an impairment of physical condition.

A person commits "robbery" when he unlawfully and with intent to commit theft thereof, takes personal property from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial. The taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom it was taken, such knowledge was prevented by the use of force or fear.

Cigarettes, packaged food items, canned soda pop, canned beer, and jewelry are all "property".

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

"Theft" means to wrongfully obtain the property of another,  
with intent to deprive that person of such property.

"Wrongfully obtains" means to take wrongfully the property  
of another.

A person commits the crime of Rape in the First Degree when he engages in sexual intercourse with another person by forcible compulsion, when the perpetrator inflicts serious physical injury or feloniously enters into the building where the victim is situated.

A person commits the crime of Rape in the Second Degree when he engages in sexual intercourse with another person by forcible compulsion or when the victim is incapable of consent by reason of being physically helpless.

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"Sexual intercourse" means any penetration of the vagina, however slight, by a penis or by an object, when committed on one person by another.

"Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to oneself.

"Physical injury" means physical pain or injury, illness, or an impairment of physical condition.

A person "feloniously enters a building" if that person enters into a building with the intent to commit a crime against a person or property therein and the person entering is not then licensed, invited or otherwise privileged to enter that building.

"Building" includes any dwelling; "dwelling" means any structure that is ordinarily used by a person for lodging.

"Physically helpless" means a person who is unconscious or  
for any other reason is physically unable to communicate  
unwillingness to an act.

A person commits the crime of Burglary in the First Degree when, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a dwelling, and in entering, while in the dwelling, or in immediate flight from the dwelling he or an accomplice in the crime assaults any person.

A person commits the crime of Burglary in the Second Degree when, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building.

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

A person "enters or remains unlawfully" in a building or dwelling when he is not then licensed, invited, or otherwise privileged to so enter or remain.

"Building" includes any dwelling; "dwelling" means any structure that is ordinarily used by a person for lodging.

An "assault" is an intentional touching or striking of another person that is harmful or offensive, regardless of whether any physical injury is done to the person. A touching or striking is offensive if it would offend an ordinary person who is not unduly sensitive.

To convict defendant Cecil Davis of the alternative crime of Felony Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 25th day of January, 1997, Yoshiko Couch was killed;

(2) That defendant Cecil Davis was committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree;

(3) That defendant Cecil Davis caused the death of Yoshiko Couch in the course of and in furtherance of such crime or in immediate flight from such crime;

(4) That Yoshiko Couch was not a participant in the crime;  
and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

The crimes listed in Element Number (2) are alternatives. You must unanimously agree that defendant Cecil Davis was committing or attempting to commit one of those crimes, but you need not be unanimous as to any particular one of those crimes.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

---

To convict defendant George Wilson of the charged crime of Felony Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 25th day of January, 1997, Yoshiko Couch was killed;

(2) That defendant George Wilson or an accomplice was committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree;

(3) That defendant George Wilson or an accomplice caused the death of Yoshiko Couch in the course of and in furtherance of such crime or in immediate flight from such crime;

(4) That Yoshiko Couch was not a participant in the crime;  
and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

The crimes listed in Element Number (2) are alternatives. You must unanimously agree that defendant George Wilson or an accomplice was committing or attempting to commit one of those crimes, but you need not be unanimous as to any particular one of those crimes.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

A separate crime is charged against each defendant. The charges have been joined for trial. You must consider and decide the case of each defendant separately. Your verdict as to one defendant should not control your verdict as to the other defendant.

All of these instructions apply to each defendant, unless a specific instruction states that it applies only to a specific defendant.

---

It is a defense to a charge of Felony Murder in the First Degree based upon committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree that defendant George Wilson:

(1) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(2) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury; and

(3) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(4) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

This defense must be established by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty.

If you are not satisfied beyond a reasonable doubt that defendant Cecil Davis is guilty of the crime of Premeditated Murder in the First Degree, he may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish the defendant's guilt of such lesser crime beyond a reasonable doubt.

The crime of Premeditated Murder in the First Degree necessarily includes the lesser crime of Murder in the Second Degree. However, Murder in the Second Degree is not a lesser crime of Felony Murder in the First Degree. You should only consider the crime of Murder in the Second Degree if you have unanimously agreed that defendant Cecil Davis is not guilty of the felony murder alternative defined above.

When a crime has been proved against a person and there exists a reasonable doubt as to which of two degrees that person is guilty, he shall be convicted only of the lowest degree.

Case Number: 97-1-00433-2 Date: March 7, 2011

16858 3/5/2007 00194

Serial: 018CA83A-F20F-6452-D379A706F7A3C6D1

INSTRUCTION NO. 12  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

A person commits the crime of Murder in the Second Degree when, with intent to cause the death of another person but without premeditation, he causes the death of such person.

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To convict defendant Cecil Davis of the lesser degree crime of Murder in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25th day of January, 1997, defendant Cecil Davis suffocated or asphyxiated Yoshiko Couch;
- (2) That defendant Cecil Davis acted with intent to cause the death of Yoshiko Couch;
- (3) That Yoshiko Couch died as a result of defendant Cecil Davis' acts; and
- (4) That the acts occurred in State of Washington.

---

If you find from the evidence that each of these elements has 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 of the evidence, you have a reasonable doubt as to any one of these elements; then it will be your duty to return a verdict of not guilty.

As jurors, you have a duty to discuss with one another the case against each defendant and to deliberate in an effort to reach unanimous verdicts. Each of you must decide each 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 change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room for your deliberation of these cases, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence and these instructions. You will be furnished with Verdict Form A, an Interrogatories form, a Special Verdict Form, and Verdict Form B for defendant Cecil Davis. You will be furnished with Verdict Form A for defendant George Wilson. You may consider the case against each defendant in the order you choose.

When you are deliberating the case against defendant Cecil Davis, you will first consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty" according to the decision you reach. If you cannot unanimously agree on a verdict as to that charge, do not fill in the blank provided in Verdict Form A.

If you find defendant Cecil Davis guilty on Verdict Form A, complete the form titled "Interrogatories" by answering the two questions either "Yes" or "No". If you answer the first question "Yes", you will then complete the Special Verdict Form. If you

answer the first question "No" do not complete the Special

Verdict Form. In order to answer either question "Yes", you must unanimously be satisfied beyond a reasonable doubt that "Yes" is the correct answer to that question. Otherwise, you must answer "No" to that question. If you find defendant Cecil Davis guilty on Verdict Form A, do not use Verdict Form B.

If you unanimously find defendant Cecil Davis not guilty of the crime of Murder in the First Degree, or if, after full and careful consideration of the evidence, you unanimously find him not guilty of Felony Murder in the First Degree and you cannot agree as to Premeditated Murder in the First Degree, you will then consider the lesser crime of Murder in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form B the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot unanimously agree on a verdict, do not fill in the blank provided in Verdict Form B.

When you are deliberating the case against defendant George Wilson, you will only consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty" according to the decision you reach. If you cannot unanimously agree on a verdict as to that charge, do not fill in the blank provided on Verdict Form A.

Since these are criminal cases, each of you must agree for you to return a verdict. When all of you have so agreed, fill in

the proper verdict form or forms to express your decision. The  
presiding juror will sign it and notify the judicial assistant,  
who will conduct you into court to declare your verdicts.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 97-1-00432-4
	)	
vs.	)	
	)	VERDICT FORM A
CECIL EMILE DAVIS,	)	(FIRST DEGREE MURDER)
	)	
Defendant.	)	
	)	

\_\_\_\_\_ We, the jury, find defendant CECIL EMILE DAVIS  
 \_\_\_\_\_ (Not Guilty or Guilty) of the crime of  
 \_\_\_\_\_ ~~Murder in the First Degree as charged.~~ \_\_\_\_\_

\_\_\_\_\_  
 PRESIDING JUROR

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

STATE OF WASHINGTON,

Plaintiff,

vs.

CECIL EMILE DAVIS,

Defendant.

CAUSE NO. 97-1-00432-4

INTERROGATORIES

---

We, the jury, having found defendant CECIL EMILE DAVIS guilty of  
~~Murder in the First Degree as charged,~~ answer the following questions  
submitted by the court:

FIRST QUESTION: Did you unanimously agree that defendant  
Cecil Davis committed Premeditated Murder in the First  
Degree as defined in Instruction No. 9 ?

ANSWER: \_\_\_\_\_  
(Yes/No)

SECOND QUESTION: Did you unanimously agree that defendant  
Cecil Davis committed Felony Murder in the First Degree as  
defined in Instruction No. \_\_\_\_\_ ?

ANSWER: \_\_\_\_\_  
(Yes/No)

---

PRESIDING JUROR

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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
CECIL EMILE DAVIS,  
  
Defendant.

CAUSE NO. 97-1-00432-4  
  
SPECIAL VERDICT  
AGGRAVATING CIRCUMSTANCES

---

We, the jury, having unanimously found defendant CECIL EMILE  
~~DAVIS-guilty-of-Premeditated-Murder-in-the-First-Degree-as-defined-in~~  
Instruction \_\_\_\_\_, answer the following question submitted by the  
court:

**QUESTION:** Has the State proved the existence of the following  
aggravating circumstance beyond a reasonable doubt?

The murder was committed in the course of, in  
furtherance of, or in immediate flight from a  
Robbery in the First or Second Degree, a Rape in  
the First or Second Degree, or a Burglary in the  
First or Second Degree.

ANSWER: \_\_\_\_\_  
(Yes/No)

---

PRESIDING JUROR





State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910CA83A-F20F-6452-D379A706F7A3C6D1** containing 50 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

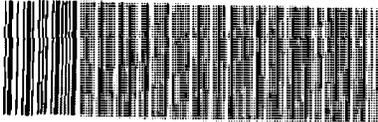
Dated: Mar 7, 2011 8:01 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://www.co.pierce.wa.us/cfapps/secure/linx/courtfilling/certifieddocumentview.cfm>, enter **SerialID: 910CA83A-F20F-6452-D379A706F7A3C6D1**. The copy associated with this number will be displayed by the Court.

Appendix W  
Letter from the Court, filed 08-14-2007

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 910CA675-F20D-AA3E-5C5D9857B274E5DB  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



97-1-00433-2 28067461 LTR7 08-16-07

**SUPERIOR COURT  
OF THE  
STATE OF WASHINGTON  
FOR PIERCE COUNTY**

FILED  
DEPT 7  
IN OPEN COURT  
AUG 14 2007  
Pierce County Clerk  
By \_\_\_\_\_  
DEPUTY  
334 COUNTY CITY BUILDING  
930 TACOMA AVENUE SOUTH  
TACOMA, WA 98402-2108

FREDERICK W. FLEMING, JUDGE  
LOUANNE MARTIN, Judicial Assistant  
Department 07  
(253) 798-7568

August 14, 2007

George A Wilson  
PO Box 400  
Rawlins Way 82301

RE: STATE OF WASHINGTON vs. WILSON, GEORGE ANTHONY  
Pierce County Cause No. 97-1-00433-2

Dear Mr Wilson:

This Court is in receipt of your letter signed on August 10<sup>th</sup>, 2007. I am writing only to inform you that your letter and any attached pleadings have been filed in the above Court file.

Any request for modification of a sentence must be presented pursuant to proper procedure. Either a motion pursuant to Criminal Rule 7.8 with all the supporting documents and affidavits may be filed with Superior Court or a personal restraint petition can be filed with the Court of Appeals. The Court of Appeals' address is:

Washington State Court of Appeals  
950 Broadway, Suite 300  
Tacoma, WA 98402-4454.

No hearings on this matter will be held in the Superior Court at this time based upon the paperwork that you have filed.

Sincerely,  
**LOUANNE MARTIN**  
JUDICIAL ASSISTANT  
LOUANNE MARTIN,  
Judicial Assistant

cc: Original to Pierce County Clerk's Office for filing  
JOHN M. NEEB, Deputy Prosecuting Attorney  
KEITH A. MACFIE, Defense Counsel

FILED  
IN COUNTY CLERK'S OFFICE

A.M. AUG 10 2007 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY DMC DEPUTY

**WORKING COPIES**

DEPARTMENT# 7

HEARING DATE \_\_\_\_\_

**PIERCE COUNTY SUPERIOR COURT, STATE OF WASHINGTON**

STATE OF WASHINGTON

Plaintiff(s),

vs.

George A Wilson

Defendant(s).

Case No. 97-100433-2

NOTE FOR MOTION DOCKET

**TO THE CLERK OF THE SUPERIOR COURT:**

NAME George A Wilson WSB# NA

ADDRESS Po Box 400 ATTORNEY FOR PRO-SE

RAWLINS WA PHONE \_\_\_\_\_

(Please note additional attorneys on an attached page)

Please take notice that the undersigned will bring on for hearing a motion for:

MOTION FOR RELIEF FROM JUDGMENT (7.8)

The hearing is requested to be held during the regular motion calendar on:

DATE REQUESTED FOR HEARING/MOTION  
COURT RESURRECTION at 9:00 am

Nature of Case: MOTION FOR RELIEF FROM JUDGMENT (7.8)

Dated: 8-6-07 Signed: George A Wilson

NAME George A Wilson WSB# NA

ADDRESS Po Box 400 ATTORNEY FOR PRO-SE

RAWLINS WA 82301 PHONE \_\_\_\_\_

THE ABOVE INFORMATION MUST BE COMPLETED AND SIGNED

Case Number: 97-1-00433-2 Date: March 7, 2011  
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W.S.P. South  
P.O. Box 400  
Rawlins, Wyoming 82301-0400  
(Wash. St. No. 776910)

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IN COUNTY CLERK'S OFFICE  
A.M. MAR 02 2007 P.M.

PIERCE COUNTY, WASHINGTON  
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
BY KEVIN STOCK CLERK  
DEPUTY

**IN AND FOR PIERCE COUNTY**

STATE OF WASHINGTON )  
Plaintiff, )  
vs. )  
GEORGE A. WILSON, )  
Defendant. )

Case No. 97-1-00433-2

**MOTION FOR RELIEF FROM JUDGEMENT**

I, Defendant, George A. Wilson, *Pro Se*, Hereby Challenges the Denial of Due Process and Equal Protection Rights, Two of My Constitutionally Insured Rights Under the United States and Washington State Constitutions, Under Article One, Section Three and Article One, Section Twelve of the Washington State Constitution, and Under the Fifth, Sixth, and Fourteenth Amendment to the Constitution of the United States.

**A. PROCEDURAL HISTORY**

Defendant was charged, via information, in Pierce County Superior Court with the Crime of Murder in the First Degree, in Pierce County Cause Number 97-1-00433-2.

On February 16<sup>th</sup>, 1998 the Defendant was found Guilty of a Jury Trial, and on March 30th, 1998, Defendant was sentenced to a term of Confinement of 304 months.

## **B. STANDARD OF REVIEW**

Pro Se Pleadings are supposed to be held to less stringent standards than Formal Pleadings duly Drafted and Presented by Licensed Attorneys. If the Court(s) can reasonable read the pleadings to state a valid claim on which relief can be granted, or the litigant can prevail, they Court should do so despite the failure to cite proper Legal Authority, the possible confusion of Legal Theories, poor syntax and sentence structure, or the litigants un-familiarity with the pleading requirements (See: UNITED STATES vs. MCDUGALL, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 {1982}; HAINES vs. KERNER, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 {1972}).

Courts in the State of Washington have strong policy of deciding cases on the merits, not on potential defects in the pleadings. See: State vs. Olsen, 126 Wn.2d 314, 318, 893 P.2d 629(1995)(providing that the Supreme Court would rule on an issue which the county prosecutor had failed to find error, because of the policy of reaching the merits of an issue).

## **C. WHY RELIEF SHOULD BE GRANTED**

The present Cr.R 7.8 Motion for Relief From Judgement is properly before this Honorable Court , and should be Granted because the interest of Justice so requires it. See: In Re: Taylor.105

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**Wn.2d 683; 717 P.2d 755 (1986); In Re: Cook, 114 Wn.2d 802, 809; 792 P.2d 506 (1990); Sanders vs. United States, 373 U.S. 1, 16 S.Ct. 1068, 10 L.Ed.2d 148 (1963).**

The recent Washington State Supreme Court Cases of: State vs. Roberts, 142 Wn. 2d. 471 (2000); State vs. Bui, 142 Wn.2d 568 (2000), declared that the accomplice liability jury instructions employed in those cases relieved the State of their burden of proving every element of the crime charges, and were thus un-constitutional.

**Defendant's Jury Instruction No. 15 is word for word exactly as the accomplice liability instructions declared un-constitutional in the case of State vs. Cronin, supra (at page 572), in that it fails to specify "TO WHICH CRIME" did defendant promote or facilitate the commission of.**

The Washington Supreme Court held in Cronin that "the plain language of the complicity statute does NOT support the Stat's argument that accomplice liability attaches so long as the defendant knows that he or she is aiding in the commission of a crime." That "the statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged." That "the legislature intended the culpability of an accomplice to extend beyond the crimes of which the accomplice actually has knowledge." That imposing criminal liability on an alleged accomplice can be done "only so long as that individual has general knowledge of 'the crime for which he or she is eventually charged'."

Cronin at 142 Wn.2d 578, 579, citing State vs. Roberts, supra. Because State vs. Roberts, supra, State vs. Cronin, supra, and State vs. Bui, supra constitutes a change in the law that is material to a Court Order, RCW 10.73.100(6) affords a defendant an opportunity to bring this CrR 7.8 Motion before this Court to be considered on the merits. See: In Re Greening, 9 p.36 206 (200) at 211 (RCW 10.73.100(6) preserves access to collateral review in cases where there has been a significant change in the law that is material to an order citing In Re Personal Restraint of Johnson, 131 Wn.2d 558, 933 P.2d 1019 (1997).

#### D. ARGUMENT

##### Jury Instruction No. 15 Relieved the State Of It's Burden of Proving All Essential Elements of The Charged Crime

The state was required to prove every essential element of the crime beyond a reasonable doubt for a conviction to be upheld. See: In Re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed2d 368 (1970). A Criminal Defendant is Constitutionally Entitled to a Jury Verdict that he is guilty of the crime, and absent such a verdict the conviction must be reversed. No matter how in-escapable the finding to support that verdict might be. A Jury Verdict that he is guilty of the crime means of coarse, a verdict that he is guilty of each necessary element of the crime. See: California vs. Roy, 117 S.Ct. 339 (9<sup>th</sup> Cir, 1996). The Fifth and Sixth Amendments to the United States Constitution Requires that Criminal Convictions are to rest upon a Jury Determination that the defendant is guilty of every element of the crime with which he is charged. See: U.S. vs. Gaudin, 515 U.S. 506, 132 L.Ed2d 447, 115 S.Ct. 2310 (9<sup>th</sup> Cir. 1995); State vs. Acosta, 101 Wn.2d 612, 615; 683 P.2d 1069 (1984); State vs. McCallum, 98 Wn.2d 484, 493-94; 656 P.2d

1064 (1983); also see: 111 State vs. Green, 94 Wn.2d 216 224; 616 P.2d 628 (1980). A conviction cannot be upheld if the jury instructions relieved the state of its burden to prove every essential element of the crime charged. See: State vs. Jackson, 137 Wn.2d 712, 727; 976 P.2d 1229 (1999).

It is Reversible Error to instruct the Jury in a manner that would relieve the state of its burden of proving every essential element of the crime charged. See: State vs. Burd, 125 Wn.2d 707, 713-14; 887 P.2d 396 (1995).

Because accomplice liability requires assistance or agreement to assist in "THE CRIME CHARGED", Instruction 15 relieved the state of its burden of proving the elements of the crime charged.

A person is legally accountable for the conduct of another person when he or she is an accomplice in the commission of the crime. RCW 9A.08.020(c). A person is an accomplice when he or she:

- (a) With knowledge that it will promote or facilitate the commission of a crime, or
- (b) He or she aids or agrees to aid such other person(s) in planning or committing it,

RCW 9A.08.020(c)(a)(ii). The use of "the" in the statute refers back to the crime charged, i.e.: The crime to which a person is an accomplice if he aids or agrees to aid another in the planning or committing of it. Thus RCW 9A.08.020 indicates accomplice liability must be read against the crime charged.

Contrary to the law, the Trial Court's Instruction No. 15 provides:

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not;

A person is an accomplice in the commission of a crime if, with knowledge that will promote or facilitate the commission of a crime, he or she either:

(1.) Solicits Commands, Encourages, or requests another person to commit the crime; or

(2.) Aids or Agrees to aid another person in the planning or commission of a crime. The

word "aid" means all assistance whether given by words or actions, encouragement, support or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of a crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person is an accomplice. (Please See Exhibit A.).

By using an "a" instead of "the crime charged", the instruction overlooks the required link between the crime the accomplice aids or agrees to aid in, and the crime to which he is allegedly to be an accomplice to.

By requiring only that the accused aid, or agree to aid, in the commission of a crime, defendant's Court Jury Instruction No. 15 marks a significant departure from the plain language of the accomplice liability statute. By referring to "it", not some un-named crime which may not be included in charge one. The statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged. See: State vs. Cronin, supra at 579.

The Washington State Supreme Court went on to rule in Cronin that their prior decision in State vs. Roberts, supra, Directed that “the fact that a purported accomplice knows that the principle intends to commit ‘a crime’ does not necessarily mean that the accomplice liability attaches its self for any and all offenses ultimately committed by the principle.” See: State vs. Cronin, supra, at 579, Citing State vs. Roberts, supra

Even the DISSENT in Roberts, written by Justice Ireland agreed that accomplice liability instruction should have stated: “THE CRIME CHARGED”. See: State vs. Roberts, supra at 541 (I agree with the majority that the accomplice liability instructions, jury instruct No. 7 {In this Defendant’s Case, Jury Instruction No. 15} should have stated “THE CRIME CHARGED” rather than ‘a crime’) (emphasis added).

The trial Court’s erroneous jury instruction relieved the State of it’s burden of proving that the defendant aided or agreed to aid in the commission of ‘THE CHARGED CRIME’. Accordingly, the Defendant was denied Due Process of the Law, and His Conviction Must Be Reversed. The Instructional Error Relived the State of It’s Burden of proving the elements of the crime, thereby requiring reversal of the conviction.

In State vs. Jackson, the Washington State Supreme Court re-affirmed the rule that where Jury Instructions Relieve the State of Proving all the essential elements, error is not susceptible to harmless error analysis, but instead requires a reversal. See: State vs. Jackson, 137 Wn.2d 712, 726-27; 976 P.2d 1229 (1999). There the Court found an erroneous accomplice instruction relieved the State of it’s burden of proving all essential elements of the crime. Id.

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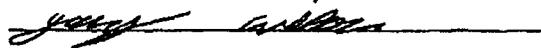
16858 3/5/2007 00162

Therefore, the Court refused to examine the record to determine if the error prejudiced the defendant. Thus this Court Must Follow Jackson and find that because instruction No. 15 relieved the State of it's burden of proving the elements of accomplice liability, Defendant's Conviction must be reversed.

### E. CONCLUSION

Because Defendant's Constitutional Rights Were Violated, and said Rights being His 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendment Rights (U.S. Constitutional Rights), this Defendant Respectfully Asks that this Honorable Court Duly Order a Re-trial in Defendant's Case.

Respectfully Submitted this 27 day of FEBRUARY, 2007.



George A. Wilson, *Pro Se*



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INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

Charges have been made by the prosecuting attorney by filing a document, called an information, informing the defendants of the charges. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence which either was not admitted or which was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

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In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorney's remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the

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weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed upon defendant George Wilson. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful. The punishment to be imposed upon defendant Cecil Davis will be considered by you in a separate penalty phase only if you unanimously find him guilty of the crime of Premeditated Murder in the First Degree and unanimously find the existence of an Aggravating Circumstance.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdicts.

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INSTRUCTION NO. 2

The defendants have each entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff, and has the burden of proving each element of the crime beyond a reasonable doubt.

Each 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, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

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INSTRUCTION NO. 3

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 experience. 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.

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INSTRUCTION NO. 4

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.

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INSTRUCTION NO. 5

Evidence that a witness has been convicted of a crime may be considered by you in deciding what weight or credibility should be given to the testimony of the witness and for no other purpose.

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INSTRUCTION NO. 6

Defendant Cecil Davis is not compelled to testify, and the fact that he has not testified cannot be used to infer guilt or prejudice him in any way.

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INSTRUCTION NO. 7

Defendant George Wilson is not compelled to testify, and the fact that he has not testified cannot be used to infer guilt or prejudice him in any way.

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INSTRUCTION NO. 8

Homicide is the killing of a human being by the voluntary act of another and is either murder, homicide by abuse, manslaughter, excusable homicide, or justifiable homicide.

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INSTRUCTION NO. 9

A person commits the crime of Premeditated Murder in the First Degree when, with a premeditated intent to cause the death of another person, he causes the death of such person.

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INSTRUCTION NO. 10

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

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INSTRUCTION NO. 11

Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

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INSTRUCTION NO. 12

To convict defendant Cecil Davis of the charged crime of Premeditated Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25th day of January, 1997, defendant Cecil Davis suffocated or asphyxiated Yoshiko Couch;
- (2) That defendant Cecil Davis acted with intent to cause the death of Yoshiko Couch;
- (3) That the intent to cause the death was premeditated;
- (4) That Yoshiko Couch died as a result of defendant Cecil Davis' acts; and

- 
- (5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has 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 of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

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INSTRUCTION NO. 13

If you find defendant Cecil Davis guilty of Premeditated Murder in the First Degree as defined in Instruction 9, you must then determine whether the following aggravating circumstance exists:

The murder was committed in the course of, in furtherance of, or in immediate flight from a Robbery in the First or Second Degree, a Rape in the First or Second Degree, or a Burglary in the First or Second Degree.

The State has the burden of proving the existence of an aggravating circumstance beyond a reasonable doubt. In order for you to find that there is an aggravating circumstance in this case, you must unanimously agree that the aggravating circumstance has been proved beyond a reasonable doubt. You need not be unanimous as to any one of the crimes listed within the aggravating circumstance.

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INSTRUCTION NO. 14

A person commits the crime of Felony Murder in the First Degree when he or an accomplice commits or attempts to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree, and in the course of or in furtherance of such crime or in immediate flight from such crime, he or the other participant causes the death of a person other than one of the participants.

INSTRUCTION NO. 15

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of a crime, he either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing a crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

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18856 3/5/2007-00161

INSTRUCTION NO. 16

A person attempts to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree, when, with intent to commit that crime, he does any act which is a substantial step toward the commission of that crime.

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

A "substantial step" is conduct which strongly indicates a criminal purpose and which is more than mere preparation.

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INSTRUCTION NO. 17

A person commits the crime of Robbery in the First Degree when, in the commission of a robbery or in immediate flight therefrom, he inflicts bodily injury.

A person commits the crime of Robbery in the Second Degree when he commits robbery.

"Bodily injury" means physical pain or injury, illness, or an impairment of physical condition.

A person commits "robbery" when he unlawfully and with intent to commit theft thereof, takes personal property from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial. The taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom it was taken, such knowledge was prevented by the use of force or fear.

Cigarettes, packaged food items, canned soda pop, canned beer, and jewelry are all "property".

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

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"Theft" means to wrongfully obtain the property of another,  
with intent to deprive that person of such property.

"Wrongfully obtains" means to take wrongfully the property  
of another.

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SerialID: 910CA675-F20D-AA3E-5C5D9857B274E5D8

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

10058 3/5/2007 80184

INSTRUCTION NO. 18

A person commits the crime of Rape in the First Degree when he engages in sexual intercourse with another person by forcible compulsion, when the perpetrator inflicts serious physical injury or feloniously enters into the building where the victim is situated.

A person commits the crime of Rape in the Second Degree when he engages in sexual intercourse with another person by forcible compulsion or when the victim is incapable of consent by reason of being physically helpless.

---

"Sexual intercourse" means any penetration of the vagina, however slight, by a penis or by an object, when committed on one person by another.

"Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to oneself.

"Physical injury" means physical pain or injury, illness, or an impairment of physical condition.

A person "feloniously enters a building" if that person enters into a building with the intent to commit a crime against a person or property therein and the person entering is not then licensed, invited or otherwise privileged to enter that building.

"Building" includes any dwelling; "dwelling" means any structure that is ordinarily used by a person for lodging.

Case Number: 97-1-00433-2 Date: March 7, 2011

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16858 3/5/2007 00105

"Physically helpless" means a person who is unconscious or  
for any other reason is physically unable to communicate  
unwillingness to an act.

Case Number: 97-1-00433-2 Date: March 7, 2011

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INSTRUCTION NO. 19

16858 3/5/2007 00186

A person commits the crime of Burglary in the First Degree when, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a dwelling, and in entering, while in the dwelling, or in immediate flight from the dwelling he or an accomplice in the crime assaults any person.

A person commits the crime of Burglary in the Second Degree when, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building.

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

A person "enters or remains unlawfully" in a building or dwelling when he is not then licensed, invited, or otherwise privileged to so enter or remain.

"Building" includes any dwelling; "dwelling" means any structure that is ordinarily used by a person for lodging.

An "assault" is an intentional touching or striking of another person that is harmful or offensive, regardless of whether any physical injury is done to the person. A touching or striking is offensive if it would offend an ordinary person who is not unduly sensitive.

Case Number: 97-1-00433-2 Date: March 7, 2011

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16858 3/5/2007 00107

INSTRUCTION NO. 20

To convict defendant Cecil Davis of the alternative crime of Felony Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 25th day of January, 1997, Yoshiko Couch was killed;

(2) That defendant Cecil Davis was committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree;

(3) That defendant Cecil Davis caused the death of Yoshiko Couch in the course of and in furtherance of such crime or in immediate flight from such crime;

(4) That Yoshiko Couch was not a participant in the crime;  
and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

The crimes listed in Element Number (2) are alternatives. You must unanimously agree that defendant Cecil Davis was committing or attempting to commit one of those crimes, but you need not be unanimous as to any particular one of those crimes.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 910CA675-F20D-AA3E-5C5D9857B274E5D8

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16858 3/5/2007 00188

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

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SerialID: 910CA675-F20D-AA3E-5C5D9857B274E5D8

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16856 3/5/2007 00109

INSTRUCTION NO. 21

To convict defendant George Wilson of the charged crime of Felony Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 25th day of January, 1997, Yoshiko Couch was killed;

(2) That defendant George Wilson or an accomplice was committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree;

(3) That defendant George Wilson or an accomplice caused the death of Yoshiko Couch in the course of and in furtherance of such crime or in immediate flight from such crime;

(4) That Yoshiko Couch was not a participant in the crime; and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

The crimes listed in Element Number (2) are alternatives. You must unanimously agree that defendant George Wilson or an accomplice was committing or attempting to commit one of those crimes, but you need not be unanimous as to any particular one of those crimes.

Case Number: 97-1-00433-2 Date: March 7, 2011

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16858 3/5/2007 80190

On the other hand, if, after weighing all of the evidence,  
you have a reasonable doubt as to any one of these elements, then  
it will be your duty to return a verdict of not guilty.

Case Number: 97-1-00433-2 Date: March 7, 2011

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18050 3/5/2007 80191

INSTRUCTION NO. 22

A separate crime is charged against each defendant. The charges have been joined for trial. You must consider and decide the case of each defendant separately. Your verdict as to one defendant should not control your verdict as to the other defendant.

All of these instructions apply to each defendant, unless a specific instruction states that it applies only to a specific defendant.

---

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 910CA675-F20D-AA3E-5C5D9857B274E5D8

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INSTRUCTION NO. 23

It is a defense to a charge of Felony Murder in the First Degree based upon committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree that defendant George Wilson:

(1) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(2) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury; and

(3) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(4) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

This defense must be established by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 910CA675-F20D-AA3E-5C5D9857B274E5D8

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

16658 3/5/2007 00193

INSTRUCTION NO. 24

If you are not satisfied beyond a reasonable doubt that defendant Cecil Davis is guilty of the crime of Premeditated Murder in the First Degree, he may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish the defendant's guilt of such lesser crime beyond a reasonable doubt.

The crime of Premeditated Murder in the First Degree necessarily includes the lesser crime of Murder in the Second Degree. However, Murder in the Second Degree is not a lesser crime of Felony Murder in the First Degree. You should only consider the crime of Murder in the Second Degree if you have unanimously agreed that defendant Cecil Davis is not guilty of the felony murder alternative defined above.

When a crime has been proved against a person and there exists a reasonable doubt as to which of two degrees that person is guilty, he shall be convicted only of the lowest degree.

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16858 3/5/2007 00194

INSTRUCTION NO. 25

A person commits the crime of Murder in the Second Degree when, with intent to cause the death of another person but without premeditation, he causes the death of such person.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 910CA675-F20D-AA3E-5C5D9857B274E5D8

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18858 3/5/2007 00195

INSTRUCTION NO. 26

To convict defendant Cecil Davis of the lesser degree crime of Murder in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25th day of January, 1997, defendant Cecil Davis suffocated or asphyxiated Yoshiko Couch;
- (2) That defendant Cecil Davis acted with intent to cause the death of Yoshiko Couch;
- (3) That Yoshiko Couch died as a result of defendant Cecil Davis' acts; and
- (4) That the acts occurred in State of Washington.

---

If you find from the evidence that each of these elements has 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 of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 910CA675-F20D-AA3E-5C5D9857B274E5D8

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INSTRUCTION NO. 27

16858 3/5/2007 001!

As jurors, you have a duty to discuss with one another the case against each defendant and to deliberate in an effort to reach unanimous verdicts. Each of you must decide each 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 change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 910CA675-F20D-AA3E-5C5D9857B274E5D8

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INSTRUCTION NO. 28

Upon retiring to the jury room for your deliberation of these cases, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence and these instructions. You will be furnished with Verdict Form A, an Interrogatories form, a Special Verdict Form, and Verdict Form B for defendant Cecil Davis. You will be furnished with Verdict Form A for defendant George Wilson. You may consider the case against each defendant in the order you choose.

When you are deliberating the case against defendant Cecil Davis, you will first consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty" according to the decision you reach. If you cannot unanimously agree on a verdict as to that charge, do not fill in the blank provided in Verdict Form A.

If you find defendant Cecil Davis guilty on Verdict Form A, complete the form titled "Interrogatories" by answering the two questions either "Yes" or "No". If you answer the first question "Yes", you will then complete the Special Verdict Form. If you

answer the first question "No", do not complete the Special Verdict Form. In order to answer either question "Yes", you must unanimously be satisfied beyond a reasonable doubt that "Yes" is the correct answer to that question. Otherwise, you must answer "No" to that question. If you find defendant Cecil Davis guilty on Verdict Form A, do not use Verdict Form B.

If you unanimously find defendant Cecil Davis not guilty of the crime of Murder in the First Degree, or if, after full and careful consideration of the evidence, you unanimously find him not guilty of Felony Murder in the First Degree and you cannot agree as to Premeditated Murder in the First Degree, you will then consider the lesser crime of Murder in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form B the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot unanimously agree on a verdict, do not fill in the blank provided in Verdict Form B.

When you are deliberating the case against defendant George Wilson, you will only consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty" according to the decision you reach. If you cannot unanimously agree on a verdict as to that charge, do not fill in the blank provided on Verdict Form A.

Since these are criminal cases, each of you must agree for you to return a verdict. When all of you have so agreed, fill in

Case Number: 97-1-00433-2 Date: March 7, 2011

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16858 3/5/2007 00199

the proper verdict form or forms to express your decision. The  
presiding juror will sign it and notify the judicial assistant,  
who will conduct you into court to declare your verdicts.





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

STATE OF WASHINGTON,

Plaintiff,

vs.

CECIL EMILE DAVIS,

Defendant.

CAUSE NO. 97-1-00432-4

SPECIAL VERDICT  
AGGRAVATING CIRCUMSTANCES

We, the jury, having unanimously found defendant CECIL EMILE  
~~DAVIS-guilty-of-Premeditated-Murder-in-the-First-Degree-as-defined-in~~  
Instruction \_\_\_\_\_, answer the following question submitted by the  
court:

QUESTION: Has the State proved the existence of the following  
aggravating circumstance beyond a reasonable doubt?

The murder was committed in the course of, in  
furtherance of, or in immediate flight from a  
Robbery in the First or Second Degree, a Rape in  
the First or Second Degree, or a Burglary in the  
First or Second Degree.

ANSWER: \_\_\_\_\_  
(Yes/No)

\_\_\_\_\_  
PRESIDING JUROR

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 910CA675-F20D-AA3E-5C5D9857B274E5D8

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

10058 3/5/2007 00283

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 97-1-00432-4
	)	
vs.	)	
	)	VERDICT FORM B
CECIL EMILE DAVIS,	)	(SECOND DEGREE MURDER)
	)	
Defendant.	)	

We, the jury, having unanimously found defendant CECIL EMILE DAVIS not guilty of the crime of Murder in the First Degree as charged, or having unanimously found him not guilty of Felony Murder in the First Degree and being unable to unanimously agree as to Premeditated Murder in the First Degree, find defendant CECIL EMILE DAVIS \_\_\_\_\_ (Not Guilty or Guilty) of the lesser included crime of Murder in the Second Degree.

\_\_\_\_\_  
PRESIDING JUROR

Case Number: 97-1-00433-2 Date: March 7, 2011

SerialID: 910CA675-F20D-AA3E-5C5D9857B274E5D8

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

10056 3/5/2007 00204

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

STATE OF WASHINGTON,

Plaintiff,

vs.

GEORGE ANTHONY WILSON,

Defendant.

NO. 97-1-00433-2

VERDICT FORM A

We, the jury, find defendant GEORGE ANTHONY WILSON

(Not Guilty or Guilty) of the crime of

Murder in the First Degree as charged.

PRESIDING JUROR

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910CA675-F20D-AA3E-5C5D9857B274E5D8** containing 52 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

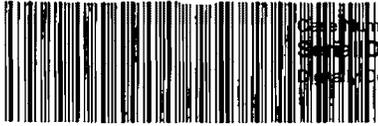
By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



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Appendix X  
Order Dismissing Petition



Case Number: 97-1-00433-2 Date: March 7, 2011  
S.I.D.: 910CA1D2-F20D-AA3E-5159584FB48ACDDE  
Data Certified By: Kevin Stock Pierce County Clerk, Washington

97-1-00433-2 29764058 CPPRP 05-15-08

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II IN COUNTY CLERK'S OFFICE

FILED  
MAY 15 2008 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

No. 37226-6-II

ORDER DISMISSING PETITION

97-1-00433-2

08 MAY -5 PM 12:21

FILED  
COURT OF APPEALS  
DIVISION II

In re the  
Personal Restraint Petition of  
  
GEORGE WILSON,  
  
Petitioner.

George Wilson seeks relief from personal restraint imposed following his 1998 first-degree murder conviction. In this his second personal restraint petition, Wilson argues the trial court gave an erroneous accomplice liability instruction and thus denied him his right to a fair trial. *See State v. Cronin*, 142 Wn.2d 568, 14 P.3d 752 (2000) (incorrect accomplice liability instruction relieved State of its burden of proof and is reversible error); and *State v. Roberts*, 142 Wn.2d 471, 14 P.3d 713 (2000) (WPIC 10.51 relieves State of its obligation to prove every element of the crime beyond a reasonable doubt).

In order to overcome the one-year time limit for personal restraint petition in RCW 10.73.090, and the bar against subsequent petitions in RCW 10.73.140, Wilson claims that the *Cronin* and *Roberts* decisions represent a significant change in the law. But they do not. *See Personal Restraint of Domingo*, 155 Wn.2d 356, 119 P.3d 816

37226-6-II/2

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 910CA1D2-F20D-AA3E-5159584FB48ACDDE  
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(2005) (*Cronin* and *Roberts* decisions do not represent a significant change in the law justifying an otherwise untimely petition under RCW 10.73.090-.100).<sup>1</sup>

This petition is both untimely and successive and thus there is no relief this court can provide. Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b).

DATED this 5<sup>th</sup> day of May, 2008.

Vanderon, A.C.J.  
Acting Chief Judge

cc: George Wilson  
✓ Pierce County Clerk  
County Cause No(s). 97-1-00433-2  
Gerald A. Horne

---

<sup>1</sup> In his prior petition, No. 35685-6-II, filed October 19, 2007, petitioner asked this court to reduce his sentence based on his good behavior while in prison. This court dismissed as there was no legal basis to support his request.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910CA1D2-F20D-AA3E-5159584FB48ACDDE** containing 2 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

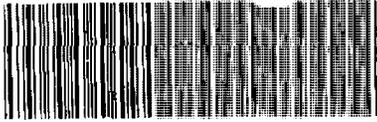
By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



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Appendix Y  
Order Denying Motion to Reinstate, etc.



97-1-00433-2 32812687 CPRM 09-11-09

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 910C9FBF-F20D-AA3E-5C50181E95E81A7F  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

4296 9/11/2009 50042

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

FILED  
IN COUNTY CLERK'S OFFICE

A.M. SEP 10 2009 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

FILED  
COURT APPEALS  
SEP 10 2009  
PIERCE COUNTY, WASHINGTON

In re the  
Personal Restraint Petition of  
  
GEORGE A. WILSON,  
  
Petitioner.

No. 39115-5-II

ORDER DENYING MOTION TO  
"REINSTATE" PETITION,  
MOTION TO APPOINT  
COUNSEL, AND MOTION FOR  
PRODUCTION OF DOCUMENTS

97-1-00433-2

George A. Wilson has moved to "reinstate" a personal restraint petition that he asserts this court received from the superior court as a CrR 7.8(c)(2) transfer in 2002 and subsequently failed to act on. Although it appears that Wilson filed a CrR 7.8 motion in the trial court in December 2001, and that the trial court entered an order transferring that motion to this court under CrR 7.8(c)(2) in February 2002, we have no record of ever having received this transfer order or the accompanying CrR 7.8 motion. In its response to Wilson's motion, the State confirms that although the trial court entered the February 2002 transfer order, the superior court failed to follow through and never sent the transfer order or the CrR 7.8 motion to this court.

Although it is troubling that the trial court never completed the transfer, and equally troubling that it took Wilson several years to follow up on this issue,<sup>1</sup> because the

<sup>1</sup> The trial court's failure to complete the transfer is particularly troubling because Wilson's CrR 7.8 motion was clearly timely when Wilson filed it and it is possible that his legal argument may have had merit.

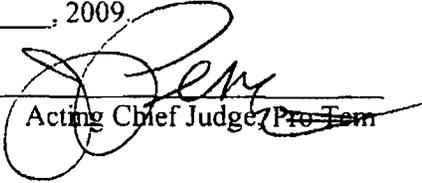
39115-5-II

motion Wilson seeks to "reinstate" is not currently before this court, this court cannot further consider Wilson's motion to "reinstate." If Wilson chooses to continue to pursue this matter, he should file the appropriate motions with superior court. Should the trial court complete the CrR 7.8 transfer, this court will then consider whether the transfer is appropriate.

Accordingly, it is hereby

ORDERED that petitioner's motion to reinstate petition is **denied**. Petitioner's motions for appointment of counsel and motion for production of documents are also **denied**.

DATED this 27<sup>th</sup> day of August, 2009.

  
Acting Chief Judge ~~Pro Tem~~

cc:  George A. Wilson  
 Pierce County Clerk  
County Cause No(s). 97-1-00433-2  
Stephen Trinen  
Kathleen Proctor

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910C9FBF-F20D-AA3E-5C50181E95E81A7F** containing 2 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

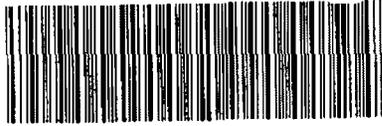
By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



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Appendix Z  
Order Referring Petition to Panel



97-1-00433-2 34431169 CPRM 06-07-10

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 910CB942-F20F-6452-D9F54FD953F14957  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

8552 6/8/2010 88881

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

FILED  
IN COUNTY CLERK'S OFFICE

A.M. JUN - 7 2010

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

No. 39115-5-II

ORDER REFERRING PETITION  
TO PANEL, APPOINTING  
COUNSEL, AND SETTING  
BRIEFING SCHEDULE

97-1-00433-2

10 JUN 2 AM 11:56

COURT OF APPEALS  
DIVISION II

In re the  
Personal Restraint Petition of  
  
GEORGE ANTHONY WILSON,  
  
Petitioner.

George Anthony Wilson seeks relief from personal restraint imposed following his 1998 jury conviction for first degree murder. In December 2001, less than one year after his direct appeal mandated, petitioner filed a CrR 7.8 motion in the Pierce County Superior Court in which he challenged the accomplice liability instruction given in his case. In February 2002, the superior court attempted to transfer the CrR 7.8 motion to this court for consideration as a personal restraint petition, but that transfer was never received.

In 2006, petitioner filed a personal restraint petition raising issues that were not related to the issue he raised in his 2001 motion; this court dismissed that petition. See Order Dismissing Petition, No. 35685-6-II (filed Oct. 19, 2007; certificate of finality issued Jan. 28, 2008). In 2007, he filed a second personal restraint petition; this time he again argued that the trial court had given an erroneous accomplice liability instruction. Citing *In re Domingo*, 155 Wn.2d 356 (2005), this court dismissed the petition as time barred. See Order Dismissing Petition, No. 37226-6-II (filed May 5, 2008; certificate of

39115-5-II

finality issued July 1, 2008). Petitioner did not refer to his 2001 CrR 7.8 motion in either of these petitions.

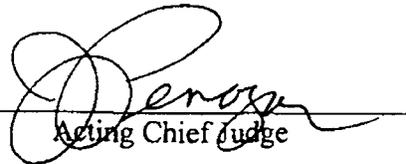
On March 27, 2009, petitioner filed a "Motion to Reinstate" the 2001 CrR 7.8 motion. After determining that the trial court had never completed its CrR 7.8(c)(2) transfer, we denied petitioner's motion to reinstate. Petitioner then filed a motion for discretionary review with our supreme court. The court granted petitioner's motion for discretionary review and remanded "Petitioner's 2001 Personal Restraint Petition" back to us to "determine whether Mr. Wilson abandoned his petition, and to address the merits of the petition if it is determined that he did not abandon it." See Washington State Supreme Court Order, No. 83584-5 (filed Feb. 9, 2010). We then obtained a proper transfer from the superior court. After initial consideration of the abandonment issue and the merits of petitioner's claim under RAP 16.11(b), the Acting Chief Judge has determined that the abandonment issue and the accomplice liability instruction issue are not frivolous.

Accordingly, it is hereby ordered that this petition is referred to a panel of judges for determination on the merits. Under RAP 16.11(b) and RAP 16.15(h), this court will appoint counsel to represent petitioner in this court's consideration of the abandonment and accomplice liability instruction issues at public expense, including briefing of any issues raised by petitioner. This court also orders that under RAP 16.15(h), any necessary preparation of the record of prior proceedings shall be at public expense and waives charges for reproducing briefs or motions in this cause. At public expense, this court will provide petitioner's appointed counsel with copies of the briefs, together with attached records.

Within 20 days of appointment of counsel, petitioner must arrange to transcribe any hearings from other proceedings necessary to resolve the above issues by filing a statement of arrangements. *See* RAP 9.2, 16.7(a)(2)(i). Within the same 20 days, petitioner must also designate any clerk's papers or exhibits from other proceedings necessary to resolve the petition. *See* RAP 9.6, 16.7(a)(2)(i). The record on review should be filed within 30 days of when petitioner files the statement of arrangements and the designation of clerk's papers. Respondent also remains obligated to provide to this court copies of any records of other proceedings relevant to answering the petition. *See* RAP 16.9. The parties must comply with Title 9 RAP when providing the record necessary to decide this petition.

Petitioner's opening brief is due within 45 days after the report of proceedings is filed. Respondent is directed to file a responding brief within 30 days after service of petitioner's brief. Petitioner may, but is not required to, file a reply brief within 20 days after service of respondent's brief. After the briefs are filed, this court will determine under RAP 16.11(c) whether to decide the petition with or without oral argument.

DATED this 2nd day of June, 2010.

  
Acting Chief Judge

cc: George Anthony Wilson  
David L. Donnan  
Pierce County Clerk  
County Cause No(s). 97-1-00433-2  
Kathleen Proctor  
Stephen D. Trinen

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910CB942-F20F-6452-D9F54FD953F14957** containing 3 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://www.co.pierce.wa.us/cfapps/secure/jinx/courtfilling/certifieddocumentview.cfm>, enter **SerialID: 910CB942-F20F-6452-D9F54FD953F14957**. The copy associated with this number will be displayed by the Court.

Appendix AA  
Motion for Reinstatement and transfer to the court of appeals



97-1-00433-2 32893974 MT 09-24-09

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 910CAA2E-F20D-AA3E-5E3EBC795A4ED3C0  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

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FILED  
IN COUNTY CLERK'S OFFICE

A.M. SEP 24 2009 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

1 *George A. Wilson, pro se*  
2 Wyoming State Penitentiary  
3 P.O. Box 400  
4 Rawlins, WY 82301

5  
6 **IN THE SUPERIOR COURT FOR PIERCE COUNTY**

6 In re the )  
7 Personal Restraint Petition of )  
8 GEORGE WILSON, )  
9 Petitioner. )

No. 97-1-00433-2

**MOTION FOR REINSTATEMENT  
AND TRANSFER TO THE COURT  
OF APPEALS, DIVISION II**

10  
11 The Court of Appeals, Division II, has denied the Petitioner's *Motion for Reinstatement* on  
12 August 27, 2009, stating in its *Order* that the Petitioner Mr. Wilson "*should file the appropriate*  
13 *motions with the superior court.*" *Order Denying Motion to "Reinstate" Petition* at 2 (emphasis  
14 added). The Court of Appeals further suggested, "Should the trial court complete the CrR 7.8  
15 transfer, this court will then consider whether transfer is appropriate." *Ibid.*

16 Based on the above *Order*, Petitioner George A. Wilson *pro se* moves this Court to reinstate  
17 the *original Personal Restraint Petition* executed by the Petitioner on December 23, 2001 and filed  
18 in this Court on December 26, 2001. This Court received and filed the *Petition*, and filed an *Order*  
19 *Transferring Motion* on February 4, 2002.<sup>1</sup> However, this *Order Transferring Motion* was never  
20 effectuated, and the Petitioner moves this Court to complete the transfer, as noted by the Court of  
21 Appeals in the *Order Denying Motion to "Reinstate" Petition*, at p. 1.

22  
23 Petitioner wrote this Court on September 25, 2006, October 7, 2006, October 29, 2006, and  
24 November 23, 2006, requesting the current status of the filing, but did not receive any coherent  
25 response from the Clerk of this Court. For instance, on one occasion the Clerk responded with a  
26 docket listing; on another a file-stamped copy of the request for a ruling filed by the Petitioner in this  
27 Court, etc. Nothing substantive telling the Petitioner that his case had been transferred to the Court  
28

<sup>1</sup>The prosecution's date is February 2, 2002.

1 of Appeals, or telling the Petitioner even the case number in the Court of Appeals.

2  
3 **RELEVANCE**

4 The relevance of the receipt or non-receipt of the transferred case is that the Petitioner, being  
 5 wholly ignorant of the law,<sup>2</sup> and particularly ignorant of the import of repeated PRP filings, filed not  
 6 just one more PRP, but *two* such additional PRPs.<sup>3</sup> The second dealt with a sentence reduction, and  
 7 the third dealt with the facts set out in the *original*, or first, PRP. However, in its decision on the  
 8 *third* PRP, the Court of Appeals mistakenly noted only the one prior PRP:

9 In his prior petition, No. 35635-6-II, filed October 29, 2007, petitioner asked this  
 10 court to reduce his sentence based on his good behavior while in prison. This court  
 dismissed as there was no legal basis to support his request.

11 *Order Dismissing Petition*, No. 37226-6-II, page 2 footnote 1. The Court of Appeals entirely  
 12 neglected to mention the *first* petition. The relevance of the mistake is found in that same *Order*  
 13 *Dismissing Petition*, on the first page:

14 George Wilson seeks relief from personal restraint imposed following his  
 15 1998 first-degree murder conviction. In this *his second personal restraint petition*,  
 16 Wilson argues the trial court gave an erroneous accomplice liability instruction and  
 17 thus denied him his right to a fair trial. *See State v. Cronin*, 142 Wn.2d 568, 14 P.3d  
 752 (2000)(incorrect accomplice liability instruction relieved State of its burden of  
 18 proof and is reversible error); and *State v. Roberts*, 42 Wn.2d 471, 14 P.3d 713  
 (2000)(WPIC 10.51 relieves State of its obligation to prove every element of the  
 crime beyond a reasonable doubt).

19 In order to *overcome the one-year time limit for personal restraint petition*  
 in RCW 10.73.090, and *the bar against subsequent petitions* in RCW 10.73.140,  
 20 Wilson claims that the *Cronin* and *Roberts* decisions represent a significant change  
 in the law. But they do not. *See Personal Restraint of Domingo*, 155 Wn.2d 356,  
 21 119 P.3d 816 (2005)(*Cronin* and *Roberts* decisions do not represent a significant  
 change in the law justifying an otherwise untimely petition under RCW 10.73.090-  
 22 .100).

23 *Order Dismissing Petition*, No. 37226-6-II, page 1 (emphasis added).

24  
25 <sup>2</sup>The Petitioner is not drafting this *Motion for Reinstatement*, but rather has the assistance of  
 26 Derrick R. Parkhurst, a prisoner at the Wyoming State Penitentiary. This is the *third* such assistant  
 27 the Petitioner has had, which is an argument for appointment of counsel if there ever was one.

28 <sup>3</sup>Counting the original as the first.

1 The Court of Appeals thus presumed that it was dealing with the second petition; and quite  
 2 properly denied it for being out-of-time and a subsequent petition. The Petitioner, *had he known*  
 3 *of his ability to file for rehearing in the Court of Appeals*, a pleading he had no idea of the  
 4 existence of, would have immediately corrected this misapprehension.<sup>4</sup> He would have stated the  
 5 obvious:

6 Generally, a defendant may not collaterally attack a judgment and sentence  
 7 in a criminal case more than one year after his judgment and sentence becomes final.  
 8 *RCW 10.73.090(1)*. A personal restraint petition is a collateral attack on a judgment.  
 9 *RCW 10.73.090(2)*. A judgment and sentence becomes final on the day that it is filed  
 10 with the clerk of the trial court, *RCW 10.73.090(3)(a)*, or the day an appellate court  
 11 issues its mandate disposing of a timely direct appeal from the conviction. *RCW*  
 12 *10.73.090(3)(b)*.

13 *Personal Restraint Petition of Domingo*, 155 Wn.2d 356, 362, 119 P.3d 816 (2005).

14 And, quoting from the *State's Response to Motion to Reduce or Modify Sentence* filed on  
 15 March 28, 2006, the *Procedural and Factual History* portion of that document:

16 On February 6, 1998, the defendant was convicted by a jury of one count of  
 17 Murder in the First Degree (Felony Murder). He was sentenced to the Department  
 18 of Corrections on March 30, 1998. He is still serving the sentence that was imposed.

19 The defendant appealed his conviction. On August 4, 2000, the Division Two  
 20 Court of Appeals affirmed the defendant's conviction in an unpublished opinion.  
 21 (Footnote: Court of Appeals Case No. 23203-1-II) The defendant's petition for  
 22 review was denied on January 9, 2001, and the *mandate issued on January 16,*  
 23 *2001, terminating his appeal.*

24 Late in 2001 or early in 2002, the defendant filed a motion for relief from  
 25 judgment that was transferred to the Court of Appeals as a personal restraint petition.  
 26 This Court's order entered on February 2, 2002.<sup>5</sup> *The State has reviewed its records*

---

27 <sup>4</sup>The Petitioner is housed in the Wyoming State Penitentiary, at Rawlins, Wyoming, on a  
 28 transfer from Washington. Wyoming prison officials however will not – and adamantly refuse to  
 – provide the Petitioner with any Washington rules or law. The Petitioner has included statements  
 from the Wyoming State Penitentiary's Law Librarian to this effect, where his requests for law and  
 rules is checked as "Denied." Petitioner also has attested to the accuracy of these documents in his  
 Affidavit, attached hereto.

<sup>5</sup>See footnote 2.

1 *and found the appellate court never ordered the State to respond to that*  
 2 *motion/petition.*

3 *Id.* at pages 1-2 (emphasis added).

4 The Court of Appeals was thus in error, and the error was easily correctable *had the*  
 5 *petitioner has access to the rules.* He did not.<sup>6</sup>

6 **§ 24 Effect of breach of duty on rights of litigants**

7 Those dealing with the clerk of a court concerning an action or matter then  
 8 pending have a right to expect that he or she will perform the ministerial duties  
 9 connected with his or her office, and his or her neglect or failure to do so will not  
 10 prejudice their rights.

11 **§ 25 Filing of papers**

12 It is the official duty of the clerk of a court to file all the papers in a cause  
 13 presented by the parties . . .

14 Unless otherwise specifically authorized by statute, the duty of the clerk of  
 15 court to file papers presented to him or her is purely ministerial and he or she may not  
 16 refuse to perform such a duty except upon the order of the court; a court clerk has no  
 17 discretion in the matter of filing papers recognized by law as properly belonging in  
 18 the record of causes.

19 If a court clerk makes a mistake in recording a document, the court may  
 20 amend the record. Similarly, it is the province of the court alone to correct clerical  
 21 errors made by the clerk.

22 **§ Negligence or misconduct**

23 The principle that a public officer should be held to a faithful performance of  
 24 his or her official duties and made to answer in damages to all persons who are  
 25 injured through his or her malfeasance, omission, or neglect applies to the  
 26 negligence, carelessness, or misconduct of a clerk of a court. As a public ministerial  
 27 officer, a court clerk is answerable for any act of negligence or misconduct in office  
 28 resulting in an injury to the complaining party.

*Am. Jur. 2d (2000), Clerks of Court, pp. 159 - 166.*

The *original* PRP was thus timely, and of course was *not* a subsequent or successive petition.  
 If the Petitioner had access to the Washington Rules of Appellate Procedure<sup>7</sup> and statutes, he would

---

<sup>6</sup>See footnote 4 above.

<sup>7</sup>Petitioner presumes that those Rules would provide for a Petition for Rehearing, but does

1 have argued this.<sup>8</sup> The Petitioner takes the position that all filings of Personal Restraint Petitions  
2 after the original PRP were void *ab initio*, and had no legal force or effect. This is the only way to  
3 correct the errors of (1) failure of the transfer mechanism to the Court of Appeals of the PRP, in a  
4 (2) statutory scheme which penalizes both (a) late and (b) successive PRPs. To interpret the *original*  
5 PRP otherwise would run afoul of the Due Process clauses of the Fifth and Fourteenth Amendments.

### 7 THE ARGUMENT IN THE ORIGINAL PERSONAL RESTRAINT PETITION

8 The argument in the original PRP, the *first* PRP, was as follows (between the asterisks):<sup>9</sup>

9 \* \* \*

#### 10 A. PROCEDURAL HISTORY

11 Defendant was charged via information, in Pierce County superior Court with  
12 the crime of murder in the First Degree, in Pierce County Cause Number 97-1-00433-  
2.

13 On February 16, 1998 the defendant was found guilty by jury trial and on  
14 March 30, 1998 defendant was sentenced to a term of confinement of 304 months.

#### 15 B. STANDARD OF REVIEW

16 Pro-se pleadings are to be construed liberally and held to a less stringent  
17 standard than formal pleadings drafted by lawyers. If the court can reasonably read  
18 the pleadings to state a valid claim on which the litigant could prevail, the court should  
19 do so despite the failure to cite proper authority, confusion of legal theories, poor  
20 syntax and sentence construction, or the litigants unfamiliarity with the pleading  
21 requirements. See United States vs. MacDougall, 454 U.S. 364, 102 S. Ct. 700, 70  
22 L.Ed.2d 551 (1982), Haines vs. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L.Ed.2d 652  
23 (1972).

24 Courts in the state of Washington have strong policy of deciding cases on the  
25 merits, not on potential defects in the pleadings. See State vs. Olsen, 126 Wn.2d 314,  
26 318, 893 P.2d 629 (1995)(providing that the Supreme Court would rule on an issue  
27 which the county prosecutor had failed to find error, because of the policy of reaching  
28 the merits of an issue).

#### 29 C. WHY RELIEF SHOULD BE GRANTED

30 not know, until he receives a copy of the Rules themselves.

31 <sup>8</sup>See footnote 6 above.

32 <sup>9</sup>Mistakes in grammar and syntax remain, to the best of the typist's ability.

1 The present CrR 7.8 Motion for Relief from judgment is properly before this Court and  
 2 should be granted because the interest of justice so requires. See In Re Taylor, 105 Wn.2d 802, 809,  
 3 792 P.2d 506 (1990), Sanders Vs. United States, 373 U.S. 1, 16, 83 S.Ct 1068, 1077, 10 L.Ed.2d 148  
 4 (1963).

5 The recent Washington State Supreme Court cases of State vs. Roberts, 142  
 6 Wn.2d 471 (2000) and State v. Bui, 142 Wn.2d 568 (2000), declared that the  
 7 accomplice liability jury instructions employed in those cases relieved the state of  
 8 their burden of proving every element of the crime charged, and were thus  
 9 unconstitutional.

10 Defendants jury instructions No. 15 is word for word exactly as the  
 11 accomplice liability instructions declared unconstitutional in the case of State vs.  
 12 Cronin, supra, (at page 572), in that it fails to specify "TO WHICH CRIME" was  
 13 defendant being an accomplice to; "TO WHICH CRIME" did defendant had  
 14 knowledge of; and "TO WHICH CRIME" did defendant promote or facilitate the  
 15 commission of.

16 The Washington State Supreme Court held in Cronin that "the plain language  
 17 of the complicity statute does not support the states' argument that accomplice  
 18 liability attaches so long as the defendant knows that he or she is aiding in the  
 19 commission of a crime." That "the statutory language requires that the putative  
 20 accomplice must have acted with knowledge that his or her conduct would promote  
 21 or facilitate the crime for which he or she is eventually charged." That "the  
 22 legislature intended the culpability of an accomplice to extend beyond the crimes of  
 23 which the accomplice actually has knowledge(.)" That imposing criminal liability  
 24 on an alleged accomplice can be done "only so long as that individual has general  
 25 knowledge of 'the crime for which he or she was eventually charged.'" Cronin at 142  
 26 Wn.2d 578-79, citing State vs. Roberts, supra.

27 THERE FOLLOWS AN ARGUMENT THAT  
 28 Roberts, Cronin and Bui CONSTITUTE A CHANGE  
 IN THE LAW, WHICH IS NOT BROUGHT  
 HEREIN.

#### D. ARGUMENT

#### Jury instruction No. 15 Relieved The State Of Its' Burden of Proving all Essential Elements of the Charged Crime

1 The state was required to prove every essential element of the crime beyond  
 2 a reasonable doubt for a conviction to be upheld. See In Re Winship 397 U.S. 358,  
 3 364, 90 S. Ct. 1068, 25 L.ED.2d 368 (1970). A criminal defendant is constitutionally  
 4 entitled to a jury verdict that he is guilty of the crime and absent such a verdict the  
 5 conviction must be reversed. No matter how inescapable the finding to support that  
 6 verdict might be. A jury verdict that he is guilty of the crime means of course, a  
 7 verdict that he is guilty of each necessary element of the crime. California v. Roy,  
 8 117 S.Ct. 339 (9th Cir. 1996). The fifth and sixth amendments require criminal  
 9 convictions to rest upon a jury determination that the defendant is guilty of every  
 10 element of the crime with which he is charged. United States v. Gaudin 515 U.S.  
 11 506, 132 L.Ed.2d 447, 115 S.Ct. 3210 (9th Cir. 1995) State vs. Acosta 101 Wn.2d  
 12 612, 615, 683 P.2d 1069 (1984) State vs. McCullum 98 Wn.2d 484, 493-94, 656  
 13 P.2d 1064 (1983), State vs. Green, 94 Wn.2d 216, 224, 616 P.2d 628 (1980). A  
 14 conviction cannot stand if the jury instructions relieved the state of its' burden to

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prove every essential element of the crime charged. See State vs. Jackson 137 Wn.2d 712, 727, 976 P.2d 1229 (1999).

It is reversible error to instruct the jury in a manner that would relieve the state of its' burden of proving every essential element of the crime charged. See State vs. Burd, 125 Wn.2d 707, 713-14, 887 P.2d 396 (1995).

Because accomplice liability requires assistance or agreement to assist in THE CRIME CHARGED, Instruction 15 relieved the state of its' burden of proving the elements of the crime.

A person is legally accountable for the conduct of another person when he or she is an accomplice in the commission of a crime. RCW 9A.08.020(c). A person is an accomplice when he or she:

- a. with knowledge that it will promote or facilitate the commission of the crime, he (or she)
- ii aids or agrees to aid such other person in planning or committing it;

RCW 9A.08.020(3)(a)(ii). The use of "the" in the statute refers back to the crime charged, i.e., the crime to which a person is an accomplice if he aids or agrees to aid another in planning or committing it. Thus, RCW 9A.08.020 indicates accomplice liability must be read against the crime charge.

Contrary to this law, the trial court's instruction 15 provides:

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of a crime, he or she either;

- (1) solicits, commands, encourages, or requests another person to commit the crime, or
- (2) aids or agrees to aid another person in planning or committing a crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

Please see exhibit A.<sup>10</sup>

<sup>10</sup>This exhibit A has been reduced to just the instruction no. 15 complained of, for the sake

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By using "a" instead of "the crime charged", the instruction overlooks the required link between the crime the accomplice aids or agrees to aid and the crime to which he is alleged to be an accomplice.

By requiring only that the accused aid or agree to aid in the commission of "a crime", defendant's Court Jury Instruction No. 15 marks a significant departure from the plain language of the accomplice liability statute. By referring to "it", not some unnamed crime which may or may not include the charged one. The statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged. See State vs. Cronin supra at 579.

The Washington State Supreme Court went on to rule in Cronin that their prior decision in State vs. Roberts, supra directed that "the fact that a purported accomplice knows that the intends to commit "a crime" does not necessarily mean that accomplice liability attaches for any and all offenses ultimately committed by the principle." See State vs. Cronin, supra, at 579, citing State vs. Roberts supra.

Even the DISSENT in Roberts, written by Justice Irelant agreed that accomplice liability instruction should have stated: "THE CRIME CHARGED" rather than 'a crime'" (emphasis added).

The trial court's erroneous jury instruction relieved the state of its' burden of proving that the defendant aided or agreed to aid in the commission of THE CRIME CHARGED. Accordingly, defendant was denied Due Process of the law and his conviction must be reversed.

The instructional error relieved the State of its' burden of proving the elements of the crime, requiring reversal.

In State vs. Jackson, the Washington State Supreme Court reaffirmed the rule that where jury instructions relieve the State of proving all the essential elements, the error is not susceptible to harmless error analysis, but instead requires reversal. See State v. Jackson, 137 Wn.2d 712, 726-27, 976 P.2d 1229 (1999). There, the Court found an erroneous accomplice instruction relieved the State of its' burden of proving all essential elements of the crime. Id. Therefore, the Court refused to examine the record to determine if the error prejudiced the defendant. Thus, this court must follow Jackson and find that because instruction No. 15 relieved the State of its' burden of proving the elements of accomplice liability, defendants' conviction must be reversed.

**E. CONCLUSION**

Because defendant's constitutional rights were violated, said rights being his 5th, 6th and 14th amendments rights, (U.S. Constitution) defendant respectfully asks this Court to order a retrial in defendant's case.

Respectfully submitted this 23 day of December, 2001.

\* \* \*

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of brevity. If this Court requires the other pages of the exhibit, please say so.

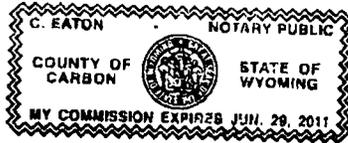
1 While this author believes the arguments above were needlessly complex, *they are sufficient*  
2 *to state a case.* This Court should (1) grant the *in forma pauperis* application, (2) declare that the  
3 case filed on December 26, 2001 is reinstated to active status, (3) grant the *Motion for Production*  
4 *of Documents* in its entirety, and (4) order that counsel be appointed to represent the Petitioner, and  
5 finally (5) transfer to the Court of Appeals, Division II. To do less would create a mockery of the  
6 Due Process clauses of the Fifth and Fourteenth Amendments and Washington jurisprudence.

8 **DECLARATION**

9 I swear that the foregoing facts are true and correct, under penalty of perjury under the laws  
10 of the States of Washington and Wyoming.

11  
12 DATED this 17 day of September, 2009.

13  
14   
George A. Wilson, *pro se*



18 EXECUTED BEFORE ME:

19   
Notary Public

20 My commission expires:

21 6-29-11

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1 George A. Wilson, *pro se*  
2 Wyoming State Penitentiary  
3 P.O. Box 400  
4 Rawlins, WY 82301

5  
6 **IN THE SUPERIOR COURT FOR PIERCE COUNTY**

7 In re the )  
8 Personal Restraint Petition of ) No. 97-1-00433-2  
9 GEORGE WILSON, )  
10 )  
11 ) **MOTION FOR LEAVE TO PROCEED**  
12 ) ***IN FORMA PAUPERIS***  
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11 COMES the Petitioner, George A. Wilson *pro se*, and moves this Court to permit the  
12 Petitioner to proceed in this matter *in forma pauperis*.

13 In support of his Motion, Petitioner states as follows:

- 14 1. My name is George Anthony Wilson, and I am the Petitioner herein.  
15 2. I have no money to pay the fees and costs of this proceeding, or give security  
16 therefore.  
17 3. I believe I am entitled to relief, as the other filings in this action make clear.

18  
19 WHEREFORE, Petitioner moves this Court to grant the Motion.<sup>1</sup>  
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<sup>1</sup>If further statements are required by this Court, please make a statement to this effect.

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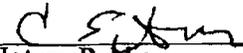
**DECLARATION**

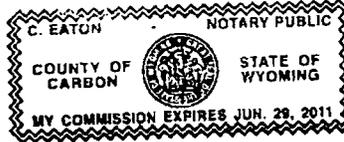
I swear that the foregoing facts are true and correct, under penalty of perjury under the laws of the States of Washington and Wyoming.

DATED this 17 day of SEPTEMBER, 2009.

  
George A. Wilson, *pro se*

EXECUTED BEFORE ME:

  
Notary Public



My commission expires:

10-29-11

1 George A. Wilson, *pro se*  
2 Wyoming State Penitentiary  
3 P.O. Box 400  
4 Rawlins, WY 82301

5  
6 **IN THE SUPERIOR COURT FOR PIERCE COUNTY**

7 In re the )  
8 Personal Restraint Petition of ) No. 97-1-00433-2  
9 GEORGE WILSON, )  
10 )  
11 ) **MOTION FOR APPOINTMENT**  
12 ) **OF COUNSEL**  
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Petitioner. )

COMES the Petitioner, George A. Wilson *pro se*, and moves this Court to appoint counsel to represent the Petitioner. This Motion is based upon the following facts.<sup>2</sup>

1. My name is George Anthony Wilson, and I am the Petitioner herein.
2. I have no knowledge or training in law or legal procedure.
3. The many mistakes in the Washington Court of Appeals and this Court show resoundingly the necessity for appointment of counsel in this case. Had I had counsel appointed in this case at the time of the initial filing in 2001, I would have prevailed already. If I had counsel who was aware of the successive petitions bar, I would not have filed the two successive – and therefore ineffective – PRPs.
4. This *Motion for Reinstatement* and attendant documents is composed and drafted with the assistance of Derrick R. Parkhurst, another prisoner at the Wyoming State Penitentiary. I have had two prior assistants, one of whom prepared the third PRP for filing, unknowing the futility of such filing.
5. To deny this Motion is to deny the Petitioner Due Process of Law under the Fifth and Fourteenth Amendments.

<sup>2</sup>Petitioner does not know the specific rule which supports his request, but assumes there is one. If, after obtaining the documents Petitioner requests, the Court prefers a re-filing of this Motion for Reinstatement, then please say so.

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WHEREFORE, Petitioner moves this Court to grant the Motion.<sup>1</sup>

DATED this 17 day of September, 2009.

~~George A. Wilson~~  
George A. Wilson, *pro se*

---

<sup>1</sup>If any further statements are required by this Court, please make a statement to this effect.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910CAA2E-F20D-AA3E-5E3EBC795A4ED3C0** containing 13 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



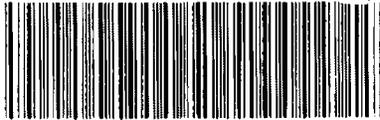
Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://www.co.pierce.wa.us/cfapps/secure/linx/courtfilling/certifieddocumentview.cfm>, enter **SerialID: 910CAA2E-F20D-AA3E-5E3EBC795A4ED3C0**. The copy associated with this number will be displayed by the Court.



97-1-00433-2 32893990 AFS 09-24-09

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 910CB6F0-F20F-6452-D05121814E69265  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

4602 9/25/2009 00107

FILED  
PIERCE COUNTY CLERK'S OFFICE  
IN COUNTY  
SEP 24 2009 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

2 Wyoming State Penitentiary  
3 P.O. Box 400  
4 Rawlins, WY 82301

5 **IN THE SUPERIOR COURT FOR PIERCE COUNTY**

6 In re the )  
7 Personal Restraint Petition of ) No. 97-1-00433-2  
8 GEORGE WILSON, )  
9 Petitioner. ) **AFFIDAVIT IN SUPPORT OF  
MOTION FOR REINSTATEMENT**

10 COMES the Petitioner, George A. Wilson *pro se*, and submits his Affidavit in Support of his  
11 Motion for Reinstatement.

- 12 1. My name is George Anthony Wilson, and I am the Petitioner herein.  
13 2. My filings in this Court have included three (3) *Personal Restraint Petitions*,

14 described as follows:

- 15 (a) the first, which this *Affidavit* is in support of, was numbered 97-1-00433-2 in  
16 the Superior Court for Pierce County;  
17 (b) a second PRP, where I argued my reduction of sentence, case number 35685-  
18 6-II filed March 28, 2006;<sup>3</sup> and  
19 (c) a third PRP, case number 37226-6-II filed February 27, 2007, where I argued  
20 the facts involved in the instant case.

21 3. Since December 10, 2002 I have been housed in the Wyoming State Penitentiary at  
22 Rawlins, Wyoming on transfer from Washington.

23 4. In Wyoming I have not had Washington laws or rules of court available to me because  
24 the Wyoming State Penitentiary's Law Librarian, an untrained guard named N. York, refuses to  
25 provide them. Witness the two order forms attached, where she checked "Denied" and claims below

26 \_\_\_\_\_

27 <sup>3</sup>This was mistakenly noted as filed on October 19, 2007, in a footnote in this Court's *Order*  
28 *Dismissing Petition* dated May 5, 2008.

1 that they are unavailable.

2 5. I am not trained in law and legal procedure at all, and am completely ignorant of my  
3 rights and duties under the law.

4 6. It is thus mandatory that I be appointed counsel to represent me. Without appointed  
5 counsel, I will be left to the best efforts of people such as Mr. Parkhurst. While Mr. Parkhurst's  
6 efforts are very good, he is not an attorney and most particularly does not have Washington law or  
7 rules of court available to him.

8 7. All documents attached are true and correct documents, as they were received by me.  
9

10 WHEREFORE, Petitioner moves the Court to grant his Motion.

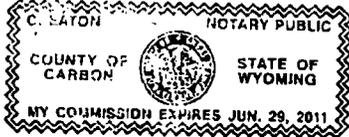
11 DATED this 17 day of SEPTEMBER, 2009.

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George A. Wilson, *pro se*

EXECUTED BEFORE ME:

  
Notary Public



My commission expires:  
6-29-11

**CERTIFICATE OF SERVICE**

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I certify that I mailed a true and correct copy of the foregoing *Motion for Reinstatement and Transfer to the Court of Appeals, Division II*, first-class mail prepaid, to Stephen Trinen, Office of Prosecuting Attorney, 930 Tacoma Avenue South, Room 946, Tacoma, WA 98402-2171, on this 17 day of SEPTEMBER 2009.

  
George A. Wilson, *pro se*

Case Number: 97-1-00433-2 Date: March 7, 2011  
SerialID: 910CB6F0-F20F-6452-D05121814E692051



WYOMING DEPARTMENT OF CORRECTIONS	WDOC Form #326	Page 1 of 1
	Law Library Service Request	Last Revised: 03/26/07

### REQUEST FOR LAW LIBRARY MATERIAL

Inmate Name: Garrett A Wilson WDOC #: 21881  
 Facility: USSP Housing Unit: B-2-274

#### Specific Item(s) Requested:

		For WDOC Use Only		
1.	Rule <u>Shepardize Wash. P. Crim. P. 7.8</u>	<input type="checkbox"/> Approved	<input checked="" type="checkbox"/> Denied	<input type="checkbox"/> Returned
2.	<u>Personal Restraint Petition of Amurigo, 119 P2d 919</u>	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Returned
3.	<u>Law of Evidence Vol 21</u>	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Returned
4.	<u>PK of Johnson 933 P2d 1019</u>	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Returned
5.	<u>Am Fur 2d Criminal Law (2 vols)</u>	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Returned

#### Loan of law library material is under the following express conditions:

- This material remains the property of the Wyoming Department of Corrections. Material must remain in your personal possession at all times until it is returned to the legal law library. You are not allowed to give or loan this material to another inmate.
- You may request up to five (5) items per request, with no more than two (2) requests per inmate per week. You may only possess a total of ten (10) authorized sets of copies. You may not have any outstanding materials for this request to be honored. Items must be returned in the envelope it was provided to you in. All loan materials are to be returned on or before the due date.
- Failure to return this material may result in further requests being denied and/or in your being charged a replacement cost of the material at the cost of twenty (20) cents per page.

Inmate Signature: (required) [Signature] Date: 3-6-09

Requested items marked "Approved" by WDOC have been approved and must be returned by the date indicated below. Requested items marked "Denied" have been denied for the following reason(s):

- Your request was not properly completed- you must sign signature block.
- Request is too voluminous. You have reached the weekly maximum amount of loan items.
- The information provided on request is not specific enough to identify your need.
- You are allowed to submit only two requests per week.
- The law library does not have all or part of the materials you requested.
- You have outstanding loan items that were due on: \_\_\_\_\_
- Other (specify): \_\_\_\_\_

Materials are to be returned no later than: 3-17-09

WDOC Staff Signature: [Signature] Date: 3-10-09

Date of request: 3-9-09 Date request processed and returned to inmate: 3-10-09

I, the above identified inmate, hereby acknowledge receipt of the approved items.

Inmate Signature: (required) [Signature] Date: 3-10-09



<b>WYOMING DEPARTMENT OF CORRECTIONS</b>	<b>WDOC Form #326</b> <small>Digitally Certified By: Kevin Stack Pierce, County Clerk, Washington</small>	<b>Page 1 of 1</b> Last Revised: 03/26/07
	<b>Law Library Service Request</b>	

### REQUEST FOR LAW LIBRARY MATERIAL

Inmate Name: HILSON WDOC #: 21881  
 Facility: WSP Housing Unit: B-2-229

#### Specific Item(s) Requested:

		For WDOC Use Only		
1. <u>Am Jur 2d Courts Vol. 20</u>	<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input checked="" type="checkbox"/> Returned	
2. <u>Revised Code Wash State 10.73.090</u>	<input type="checkbox"/> Approved	<input checked="" type="checkbox"/> Denied	<input checked="" type="checkbox"/> Returned	
3. <u>Washington Criminal Rule 7.8</u>	<input type="checkbox"/> Approved	<input checked="" type="checkbox"/> Denied	<input type="checkbox"/> Returned	
4. _____	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Returned	
5. _____	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input checked="" type="checkbox"/> Returned	

#### Loan of law library material is under the following express conditions:

- This material remains the property of the Wyoming Department of Corrections. Material must remain in your personal possession at all times until it is returned to the legal law library. You are not allowed to give or loan this material to another inmate.
- You may request up to five (5) items per request, with no more than two (2) requests per inmate per week. You may only possess a total of ten (10) authorized sets of copies. You may not have any outstanding materials for this request to be honored. Items must be returned in the envelope it was provided to you in. All loan materials are to be returned on or before the due date.
- Failure to return this material may result in further requests being denied and/or in your being charged a replacement cost of the material at the cost of twenty (20) cents per page.

Inmate Signature: (required) [Signature] Date: 3-15-09

Requested items marked "Approved" by WDOC have been approved and must be returned by the date indicated below. Requested items marked "Denied" have been denied for the following reason(s):

- \_\_\_ Your request was not properly completed- you must sign signature block.
- \_\_\_ Request is too voluminous. You have reached the weekly maximum amount of loan items.
- \_\_\_ The information provided on request is not specific enough to identify your need.
- \_\_\_ You are allowed to submit only two requests per week.
- The law library does not have all or part of the materials you requested.
- \_\_\_ You have outstanding loan items that were due on: \_\_\_\_\_
- \_\_\_ Other (specify): \_\_\_\_\_

Materials are to be returned no later than: 3-23-09

WDOC Staff Signature: [Signature] Date: 3-17-09

Date of request: 3-10-09 | Date request processed and returned to inmate: 3-17-09

I, the above identified inmate, hereby acknowledge receipt of the approved items.

Inmate Signature: (required) [Signature] Date: \_\_\_\_\_

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910CB6F0-F20F-6452-D05121814E692051** containing 5 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Mar 7, 2011 8:01 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm>, enter **SerialID: 910CB6F0-F20F-6452-D05121814E692051**. The copy associated with this number will be displayed by the Court.



07 1 00433 2 33801281 LTRDF 02-22-10

FEB 22 2010 7:14 10  
A.M. P.M.

END OUT THE STATUS OF  
PIECE COUNTY WASHINGTON  
KEVIN STOCK, COUNTY CLERK  
BY \_\_\_\_\_ DEPUTY

CAUSE # 97-1-00433-2, THAT WAS FILED IN YOUR  
COURT ON 9-24-09, YOU SENT ME A NOTE FOR MOTION  
DIRECT FORM ON 12-28-09 WHICH I FILLED OUT AND SENT  
BACK ON OR ABOUT 12-31-09, BUT HAVE RECEIVED  
NO FURTHER WORD INFORMING ME OF THE ACTION OF THE  
COURT.

SO CAN YOU PLEASE UPDATE ME ON THE STATUS OF MY  
MOTION? THANK YOU FOR YOUR TIME.

Sincerely,

George A. Wilson #21881

MR. George Anthony Wilson #21881

LSP

Po Box 400

RAVENNA NY 82301

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
**SerialID: 910CB22D-F20D-AA3E-5407C9FFC7847590** containing 1 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

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