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STATE OF WASHINGTON

NO. 39721-8-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

BY JW
DEPUTY

STATE OF WASHINGTON, Respondent

v.

ALBERT JAMAAL YOUNGBLOOD, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE JOHN NICHOLS
CLARK COUNTY SUPERIOR COURT CAUSE NO.08-1-00819-3

BRIEF OF RESPONDENT

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I. STATEMENT OF FACTS

The State accepts the statement of facts as listed on pages 8 through 14 of the Appellant's Brief. The pages are attached and incorporated by this reference.

II. RESPONSE TO ASSIGNMENTS OF ERROR NOS. 1 AND 2

The first two assignments of error raised by the defendant deal with the convictions for kidnapping and robbery and questions concerning double jeopardy and sufficiency of evidence. Part of the claim is that the kidnapping counts were incidental and necessary to the robbery and therefore merged for purposes of conviction. The second part of that argument is that the kidnapping convictions violated the defendant's constitutional right not to be twice put in jeopardy for the same offense.

The defendant was charged with Robbery in the First Degree, two counts of Kidnapping in the First Degree, and Attempt to Elude a Pursuing Police Vehicle. The first trial led to convictions for Robbery in the First Degree and Attempting to Elude with the jury hanging up on the Kidnapping charges. A second trial was then conducted and the defendant was found guilty of the kidnappings as well. The convictions also had a firearm enhancement. A copy of the Felony Judgment and Sentence –

Prison (CP 160) is attached hereto and by this reference incorporated herein.

The two sets of Court's Instructions to the Jury (CP 42 and CP 98) are also attached hereto and by this reference incorporated herein. Finally, the Memorandum of Disposition entered by the court between the first and second trials finding the hung jury and dated February 20, 2009 (CP 87) is also attached and incorporated by this reference.

Evidence is sufficient to 'support a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the crime's essential elements beyond a reasonable doubt. State v. Luther, 157 Wn.2d 63, 77, 134 P.3d 205 (*quoting State v. Townsend*, 147 Wn.2d 666, 679, 57 P.3d 255 (2002)), cert. denied, 127 S. Ct. 440 (2006). A defendant claiming insufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. Luther, 157 Wn.2d at 77-78 (*citing State v. Alvarez*, 105 Wn. App. 215, 223, 19 P.3d 485 (2001)).

In considering the sufficiency of evidence, the Appellate Court gives equal weight to circumstantial and direct evidence. State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). The Court defers to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75,

83 P.3d 970 (2004) (*citing State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)). It does not substitute its judgment for that of the jury on factual issues. *State v. Israel*, 113 Wn. App. 243, 269, 54 P.3d 1218 (2002) (*citing State v. Farmer*, 116 Wn.2d 414, 425, 805 P.2d 200, 812 P.2d 858 (1991)), review denied, 149 Wn.2d 1013 (2003). “In determining whether the requisite quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case.” *State v. Jones*, 93 Wn. App. 166, 176, 968 P.2d 888 (1998), review denied, 138 Wn.2d 1003 (1999). Substantial evidence exists when the record contains evidence of sufficient quantity to persuade a fair-minded, rational person that the declared premise is true. *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 112, 937 P.2d 154, 943 P.2d 1358 (1997), cert. denied, 522 U.S. 1077, 139 L. Ed. 2d 755, 118 S. Ct. 856 (1998); *World Wide Video, Inc. v. City of Tukwila*, 117 Wn.2d 382, 387, 816 P.2d 18 (1991).

The evidence in this case establishing the target crimes is set forth by the appellant in his brief covering pages 8-14 (set out in Appendix). The State submits that that evidence is sufficient to allow the charges to go to the jury.

Coupled with that argument is also the contention that the robbery and kidnapping charges merge or are the same criminal conduct or are

necessary to establish the elements of the crimes and thus constitute the grounds for a double jeopardy argument. The State submits that recent case law has made it quite clear that this is inaccurate. The rule is that the defendant may be punished separately for robbery and kidnapping. Because the State's evidentiary burden was to prove all elements of a crime beyond a reasonable doubt, the Court must first look to what elements the State had to prove in order to determine if the evidence is sufficient.

The Appellate Court reviews statutory interpretation questions de novo. State v. Swecker, 154 Wn.2d 665, 115 P.3d 297 (2005). When interpreting a statute, the primary objective is to carry out the legislature's intent. State v. Young, 125 Wn.2d 688, 694, 888 P.2d 142 (1995). To determine intent, the Court first looks to the statute's language. Young, 125 Wn.2d at 694. While the court may not look beyond unambiguous statutory language, the court must read the statute as a whole and harmonize each provision. State v. Thorne, 129 Wn.2d 736, 761, 921 P.2d 514 (1996). In harmonizing provisions, the Court gives meaning to every word the legislature includes in a statute so as to avoid rendering any included words superfluous. State v. Cooper, 156 Wn.2d 475, 483, 128 P.3d 1234 (2006).

Under the criminal statutes, a defendant may be found guilty of robbery where the State proves he "takes personal property from the person of another or in [her] presence against [her] will by the use or threatened use of immediate force." RCW 9A.56.190 (emphasis added). The statute thus defines robbery to include two alternatives: taking from a victim's person or taking property in a victim's presence. Personal property is within a victim's presence when it is "within [the victim's] reach, inspection, observation or control, that [she] could, if not overcome with violence or prevented by fear, retain her possession of it. State v. Manchester, 57 Wn. App. 765, 768-69, 790 P.2d 217 (1990) (quoting C. Torcia, Wharton on Criminal Law §473 (14th ed. 1981)), review denied, 115 Wn.2d 1019 (1990).

As explained in State v Louis, 155 Wn.2d 563, 570-571, 120 P.3d 936 (2005):

Applying the same evidence test here, we conclude that the robbery and kidnapping charges against Louis are not the same "in law." We reach that conclusion because each offense includes an element not included in the other. As we previously observed in two cases that are similar to the one before us, "[i]n order to prove robbery, the State [is required to] prove a taking of [personal] property, which is not an element of kidnapping," while kidnapping requires the State to prove "the use or threatened use of 'deadly force,'" which is not an element of robbery. State v. Vladovic, 99 Wn.2d 413, 423-24, 662 P.2d 853 (1983); see

also In re Pers. Restraint of Fletcher, 113 Wn.2d 42, 50, 776 P.2d 114 (1989) ("[K]idnapping and robbery charges are not the same offense.").

Moreover, we note, as did the Court of Appeals, that Louis's robbery and kidnapping charges were not the same factually: "The robbery necessitated the intentional taking of jewelry at gunpoint, while the kidnapping charge was based on Louis's binding and gagging the victims with duct tape to facilitate commission of the robbery." State v. Louis, noted at 119 Wn. App. 1080 (2004).

Although the result of the same evidence test creates a strong presumption of the legislature's intent, it is "not always dispositive of the question whether two offenses are the same." Calle, 125 Wn.2d 769, 888 P.2d 155 (1995). This presumption can "be overcome only by clear evidence of contrary [legislative] intent." *Id.* Louis fails, however, to set forth any legislative history of the robbery and kidnapping statutes that clearly show the legislature sought to provide a single punishment for violating both statutes. Accordingly, we hold that the charges are not the same in fact or law and that double jeopardy principles do not preclude separate convictions for robbery and kidnapping.

B. Merger Doctrine

Louis argues, alternatively, that his kidnapping charges should merge into his robbery charges. He reasons that a kidnapping will always be simultaneous and incidental to armed robbery. Although he acknowledges that this court has rejected an identical argument in Vladovic, he urges us to overrule that decision and adopt the "kidnapping merger" rule. *Suppl. Br. of Pet'r* at 16-18.

The merger doctrine is a tool of statutory construction "used to determine whether the Legislature intended to impose multiple punishments for a single act which violates several statutory provisions." Vladovic, 99 Wn.2d at 419 n.2 (*citing* Blockburger v. United States, 284 U.S. 299, 76 L. Ed. 306, 52 S. Ct. 180). As we noted there, the merger

doctrine only applies where the Legislature has clearly indicated that in order to prove a particular degree of crime (e.g., first degree rape) the State must prove not only that a defendant committed that crime (e.g., rape) but that the crime was accompanied by an act which is defined as a crime elsewhere in the criminal statutes (e.g., assault or kidnapping).
Id. at 421.

We see no reason to depart from our decisions in Vladovic and Fletcher. In Vladovic, the defendant was convicted of attempted first degree robbery, first degree robbery, and four counts of first degree kidnapping. We concluded that "kidnapping does not merge into first degree robbery" because proof of kidnapping is not necessary in order to prove robbery. Id. at 421. In Fletcher, the defendant pleaded guilty to first degree kidnapping, first degree robbery, and first degree assault. We held there that the merger doctrine did not apply to first degree kidnapping and first degree robbery because a "person who intentionally abducts another need do so only with the intent to carry out one of the incidents enumerated in RCW 9A.40.020(1)(a) through (e) inclusive;" not that the person actually complete the action. Fletcher, 113 Wn.2d at 53. As neither statute has been changed in any significant way since we rendered our decisions in Vladovic and Fletcher, we can conclude only that the legislature has not indicated that a defendant must commit kidnapping before he or she can be found guilty of first degree robbery or commit armed robbery before he or she can be convicted of first degree kidnapping. Thus, we adhere to our decisions in Vladovic and Fletcher and hold that Louis may be punished separately for robbery and kidnapping.

The State submits that there is ample evidence in this case to allow the jury to hear the facts. Case law clearly sets forth that this is not a double jeopardy situation.

III. FURTHER RESPONSE TO THE ASSIGNMENT OF ERROR –

MISTRIAL

Also part of the second assignment of error is the question of the mistrial. The defendant maintains that this was not properly done by the court and therefore had a prejudicial effect on the defendant and the defendant's constitutional rights.

The closing arguments for the three co-defendants being tried together were completed on the afternoon of February 18, 2009. The jury deliberated for two days and on the afternoon of February 20, 2009 the jury rendered a verdict on the Robbery and Attempt to Elude but hung up on the Kidnapping charges as it relates to all three co-defendants. The defendant, in his brief, argues that the jury was not properly discharged and that this was done without thorough discussion with the attorneys and without proper discussion with the jury. The State submits that this is inaccurate. The transcript clearly demonstrates that the prosecutor and three defense attorneys were all present and discussing the situation of a hung jury before any verdicts were brought in by the jury. (RP 1116-1129). All through this discussion there is no indication by any of the parties involved that they are misinformed or do not understand what is occurring. All through this discussion there are no claims for clarification

by any of the defendants nor is there any objections raised by anyone concerning the procedures and the format that is being followed by the court.

In the Report of Proceedings (RP 1128-1129) the jury is brought back in and further instructions are read to the jury with a clear understanding that the foreperson will be the spokesman for the other jurors. The Judge curtails the type of information that he wants the foreperson to deliver. The critical thing for our discussion is that the jury was then excused to go back into the deliberation room to discuss among themselves the current status of the case. This entire proceedings took place with all of the attorneys and defendants present and all of them in agreement that this is the way that it should be handled.

The jury then was brought back into court and the foreperson was asked a series of questions by the court with giving just basically yes or no answers. (RP 1131-1135). The jury renders the verdicts that it has and indicates that it's hung up on the other matters. The jury then is excused and the court then has further discussion with the attorneys. Again, at this time there are no questions being raised by any of the defendants or their attorneys, no criticism of the procedure that's being used and no misunderstanding that a mistrial is being declared. This was then followed up by a Memorandum of Disposition that has been submitted with this

packet indicating the convictions and that the jury was hung up on some of the other ones. Finally, during this entire discussion, the primary thing is looking at docketing of this matter for the continuation of the retrial. However, before that was to be done, the attorneys wanted to talk to some of the jurors to determine what the split was so that they could clearly understand whether or not it would be of benefit to proceed in this matter. (RP 1135-1139).

Mistrial is appropriate only when the defendant has been so prejudiced that nothing less than a new trial will insure a fair trial. State v. Thompson, 90 Wash. App. 41, 45, 950 P.2d 977, review denied sub nom. State v. Walker, 136 Wash. 2d 1002, 966 P.2d 902 (1998); State v. Johnson, 124 Wash. 2d 57, 76, 873 P.2d 514 (1994). The trial court is best suited to determine the prejudicial effect of a statement, and we review for abuse of discretion. Thompson, 90 Wash. App. at 45-46. State v Bishop, 6 Wn. App. 146, 150, 491 P.2d 1359 (1971) spelled it out as follows:

Where, for reasons deemed compelling by the trial judge, who is best situated intelligently to make such a decision, the ends of substantial justice cannot be attained without discontinuing the trial, a mistrial may be declared without the defendant's consent and even over his objection, and he may be retried consistently with the Fifth Amendment. Simmons v. United States, 142 U.S. 148; Logan v. United States, 144 U.S. 263; Dreyer v. Illinois, 187 U.S. 71, 85-86. It is also clear that "This Court has long favored the rule of

discretion in the trial judge to declare a mistrial and to require another panel to try the defendant if the ends of justice will be best served . . .," Brock v. North Carolina, 344 U.S. 424, 427, and that we have consistently declined to scrutinize with sharp surveillance the exercise of that discretion.

The discharge of the jury in the present case, therefore, will have the same effect as an acquittal, that is, it will bar a retrial unless it can be shown that the discharge was necessary in the interest of the proper administration of justice. One situation where the proper administration of justice requires the discharge of a jury is where that jury is unable to agree on a verdict. See RCW 4.44.330; CrR 6.10. See generally ABA Standards Relating to Trial by Jury § 5.4(c), Commentary at 156-58 (Approved Draft, 1968). The State Supreme Court in State v. Connors, 59 Wn.2d 879, 883, 371 P.2d 541 (1962) made these observations on the necessity of discharging a hung jury:

[I]t is universally recognized that a jury which, after a reasonable time, cannot arrive at a verdict, may be discharged and the defendant tried again. Even so, a too quick discharge of a hung jury would be held a violation of the defendant's right to a verdict of that jury . . .

It is well established that a trial judge should be allowed broad discretion in deciding whether the circumstances justify a discharge of the

jury. Arizona v. Washington, 434 U.S. 497, 98 S. Ct. 824, 54 L. Ed.2d 717 (1978); State v. Brunn, 22 Wn.2d 120, 145, 154 P.2d 826, 157 A.L.R. 1049 (1945).

The defendant has not shown any prejudice by the procedures followed and agreed to by the court, counsel and defendants. There is no error.

IV. FURTHER RESPONSE TO THE ASSIGNMENT OF ERROR –
INVITED ERROR

The State submits that the procedures that were being utilized by the court and the attorneys were matters that were all agreed to by the parties. No one objected to the jury instructions or to the procedures on the mistrial declaration or any other errors or irregularities. This obviously would have been extremely helpful if it had been raised at the time by any of the attorneys if they found that it was objectionable. None of them did. The attorneys and the defendants appear to have been in complete agreement with the procedure and approach taken by the trial court.

The Appellate Court adheres to the invited error doctrine which provides that a party may not request an instruction or a procedure and then later complain on appeal that the requested instruction was given or the procedure agreed to by the parties was used. State v. Neher, 112

Wn.2d 347, 352-53, 771 P.2d 330 (1989); State v. Kincaid, 103 Wn.2d 304, 314, 692 P.2d 823 (1985). Under that doctrine, a defendant may not set up an error at trial and then complain of it on appeal. State v. Studd, 137 Wn.2d 533, 546, 973 P.2d 1049 (1999). Thus, a defendant may not challenge on appeal a jury instruction that he proposed at trial. Studd, 137 Wn.2d at 546. This is true even if the defendant proposed a pattern jury instruction. Studd, 137 Wn.2d at 546-47; State v. Summers, 107 Wn. App. 373, 381, 28 P.3d 780 (2001).

The rule is spelled out in Seattle v Patu, 147 Wn.2d 717, 721-722, 58 P.3d 273 (2002):

The original goal of the invited error doctrine was to "prohibit a party from setting up an error at trial and then complaining of it on appeal." State v. Pam, 101 Wn.2d 507, 511, 680 P.2d 762 (1984), overruled on other grounds by State v. Olson, 126 Wn.2d 315, 893 P.2d 629 (1995). In Pam, the State intentionally set up an error in order to create a test case for appeal. Pam, 101 Wn.2d at 511. Since then, the doctrine has been applied even in cases where the error resulted from neither negligence nor bad faith. See, e.g., State v. Studd, 137 Wn.2d 533, 547, 973 P.2d 1049 (1999). In Studd, a consolidated case, the six defendants all proposed instructions that erroneously stated the law of self-defense. *Id.* at 545. Some, however, also proposed an instruction that effectively remedied the error. While concluding that the error was of constitutional magnitude and therefore presumed prejudicial, we held that those defendants who had proposed the erroneous instruction without attempting to add a remedial instruction had invited

the error and could not therefore complain on appeal. *Id.* at 546-47.

This court has treated missing elements with especial care. Nevertheless, the invited error doctrine has been applied in cases where, as here, the "to convict" instruction omitted an essential element of the crime. See, e.g., *State v. Henderson*, 114 Wn.2d 867, 869, 792 P.2d 514 (1990) (failing to specify the intended crime in a conviction for attempted burglary); *State v. Summers*, 107 Wn. App. 373, 380-82, 28 P.3d 780 (2001) (omitting the knowledge element of unlawful possession of a firearm).

We affirm our holding in *Studd*. "A party may not request an instruction and later complain on appeal that the requested instruction was given." *Studd*, 137 Wn.2d at 546 (quoting *State v. Henderson*, 114 Wn.2d 867, 870, 792 P.2d 514 (1990) (emphasis omitted in *Studd*) (quoting *State v. Boyer*, 91 Wn.2d 342, 345, 588 P.2d 1151 (1979))). Accordingly, we affirm the Court of Appeals and remand this case to Seattle Municipal Court for reimposition of the sentence.

As indicated in the case law, the defendant cannot complain of an error that he has brought about by his own conduct. This is not a claim by the defense of ineffective assistance of counsel. The defendant maintains that the onus is on the court for improperly instructing the jury. However, that instruction was offered, accepted, and used by the trial court after being proposed by the defendant himself. It simply has not been preserved for purposes of appeal.

V. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is ineffective assistance of counsel. Specifically, the claim is that his attorney should have objected to testimony concerning Mr. Rivera. Mr. Rivera, at the first trial, testified that he did not see a gun and then at the second trial he was talking about having seen a weapon. He was making claim that he was afraid for the safety of his family. The defendant on appeal claims that an objection should have been made and that this was inadmissible testimony and was prejudicial to the defendant.

However, when we look at the transcript to determine exactly what was going on we discover that the question of the inconsistent testimony concerning the firearm and his fear thus leading to him not being forthcoming at the first trial was first raised by this defendant's attorney. (RP 1228-1231). It was then further raised by co-counsel representing one of the other defendants. He further fleshed out then this concept of the fear that the witness had and apparently was trying to indicate that he was not credible and could not be believed. (RP 1247-1253).

On re-direct examination by the prosecutor it was first brought forward then by him as an explanation to explain why he was fearful

under the circumstances. (RP 1255-1257). Objections were made by the defense attorneys but the court allowed the testimony.

On re-cross of this witness, this defendant's attorney again raised the questions of threats and fear, thus further discussing this matter with the jury. (RP 1259-1260). This matter was not discussed or fleshed out by the prosecution in its primary questioning, but only raised on re-direct to explain the issue that had been raised for the first time by the defense. This matter was further discussed then by the other attorney during re-cross. He again discussed threats and fear and had the witness further clarify what he meant. (RP 1262-1263).

To show ineffective assistance of counsel, an appellant must show that (1) counsel's performance was deficient, and (2) the deficient performance prejudiced him. State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987). Deficient performance occurs when counsel's performance falls below an objective standard of reasonableness. State v. Stenson, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997), cert. denied, 523 U.S. 1008, 140 L. Ed. 2d 323, 118 S. Ct. 1193 (1998). Prejudice occurs when there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). In other words, counsel's deficiencies must have

adversely affected the defendant's right to a fair trial to an extent that "undermine[s] confidence in the outcome." State v. Brett, 126 Wn.2d 136, 199, 892 P.2d 29 (1995), cert. denied, 516 U.S. 1121, 133 L. Ed. 2d 858, 116 S. Ct. 931 (1996); State v. Horton, 116 Wn. App. 909, 922, 68 P.3d 1145 (2003) (quoting Strickland, 466 U.S. at 694).

When trial counsel's actions involve matters of trial tactics, the Court hesitates to find ineffective assistance of counsel. State v. Jones, 33 Wn. App. 865, 872, 658 P.2d 1262, review denied, 99 Wn.2d 1013 (1983). And the Appellate Court presumes that counsel's performance was reasonable. State v. Bowerman, 115 Wn.2d 794, 808, 802 P.2d 116 (1990). The decision of when or whether to object is an example of trial tactics, and only in egregious circumstances, on testimony central to the State's case, will the failure to object constitute incompetence of counsel justifying reversal. State v. Madison, 53 Wn. App. 754, 763, 770 P.2d 662, review denied, 113 Wn.2d 1002, 777 P.2d 1050 (1989). "However, even a lame cross-examination will seldom, if ever, amount to a Sixth Amendment violation." In re Pers. Restraint of Pirtle, 136 Wn.2d 467, 489, 965 P.2d 593 (1998) (citing Henderson v. Norris, 118 F.3d 1283, 1287 (8th Cir. 1997), cert. denied, 522 U.S. 1129, 140 L. Ed. 2d 138, 118 S. Ct. 1081 (1998)).

Another way of looking at this entire matter is that the defense, as part of tactics or strategy, opened the door for this discussion. It was not being highlighted by the prosecution during its questioning of this witness but was raised by the defense as part of a tactical approach. Under the open door rule, a party may examine a witness within the scope of the opposing party's previous examination. State v. Jones, 26 Wn. App. 1, 8, 612 P.2d 404 (1980). The introduction of evidence that would be inadmissible if offered by the opposing party "opens the door" to otherwise inadmissible evidence and improper cross examination to explain or contradict the initial evidence. State v. Avendano-Lopez, 79 Wn. App. 706, 714, 904 P.2d 324 (1995). The rules will permit cross-examination within the scope of the examination in which a subject matter is first introduced. State v. Gefeller, 76 Wn.2d 449, 455, 458 P.2d 17 (1969). "It would be a curious rule of evidence which allowed one party to bring up a subject, drop it at a point where it might appear advantageous to him, and then bar the other party from all further inquiries about it." Gefeller, 76 Wn.2d at 455.

The State submits that there was nothing improper about how this was done. It appeared that the defense wanted to utilize this for purposes of showing inconsistencies with this witness and thus attacking his credibility. The State submits because of the tactics and strategies

involved, this cannot be the basis of a claim of ineffective assistance of counsel.

VI. RESPONSE TO ASSIGNMENT OF ERROR NO. 4

The fourth assignment of error raised by the defendant is a claim that there was insufficient evidence to prove the elements of accomplice liability for purposes of the conviction of attempting to elude a pursuing police vehicle.

The State again incorporates the statement of facts set forth by the defendant and alluded to previously by the State. It is obvious in reviewing these matters that the defendants were acting in concert with each other to accomplish the primary goal of escaping, or eluding, capture after the commission of the robbery/kidnappings.

Accomplice liability is not an element or alternative means of a crime. State v. Teal, 152 Wn.2d 333, 338, 96 P.3d 974 (2004). "Principal" and "accomplice" are, however, alternative theories of liability requiring different considerations. RCW 9A.08.020(3) (defining complicity); State v. Jackson, 137 Wn.2d 712, 726-27, 976 P.2d 1229 (1999). And although the State need not charge the defendant as an accomplice in order to pursue liability on that basis, the court must instruct the jury on accomplice liability. State v. Davenport, 100 Wn.2d 757, 764-65, 675 P.2d

1213 (1984). Jury instructions are sufficient because "when, read as a whole, they accurately state the law, do not mislead the jury, and permit each party to argue its theory of the case." Teal, 152 Wn.2d at 339.

The accomplice instructions read as follows:

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

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

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

-(Court's Instructions to the Jury (first trial): Instruction No. 9, CP 42)

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the 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 the 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. A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

-(Court's Instructions to the Jury (second trial): Instruction No. 8, CP 98)

The defense took no exceptions to the proposed instructions. The State submits that this is a clear example of invited error on the part of a defendant and has not been properly preserved for purposes of appeal.

Further, the State submits there is adequate information and direct and circumstantial evidence to allow the issue to go to the trier of fact.

VII. CONCLUSION

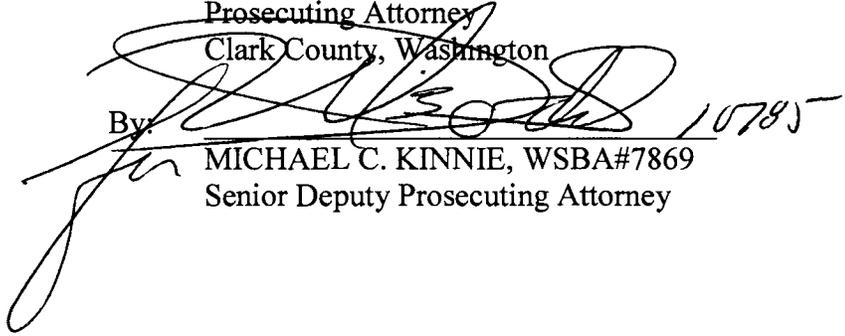
The trial court should be affirmed in all respects.

DATED this 8th day of Sept, 2010.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By

A large, stylized handwritten signature in black ink, appearing to read 'Michael C. Kinnie', is written over the printed name and extends upwards into the signature area of Arthur D. Curtis.

MICHAEL C. KINNIE, WSBA#7869
Senior Deputy Prosecuting Attorney

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James Kirkham Jr

S3

C.S.F.

FILED

AUG 07 2009
3:45pm
Sherry W. Parker, Clerk, Clark Co.

Superior Court of Washington
County of Clark

State of Washington, Plaintiff,

No. 08-1-00819-3

vs.

Felony Judgment and Sentence -

ALBERT JAMAAL YOUNGBLOOD,
Defendant.

Prison
(FJS)

09-9-05811-2

SID: WA24538465
If no SID, use DOB: 8/12/1981

- Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2, 5.3, 5.5 and 5.7
- Defendant Used Motor Vehicle

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court **Finds:**

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon
 guilty plea jury-verdict 5/21/2009 bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	ROBBERY IN THE FIRST DEGREE	9A.08.020(3)/9A.56.190 /9A.56.200/9A.56.200(1) (a)(i)	FA	5/21/2008
02	KIDNAPPING IN THE FIRST DEGREE	9A.08.020(3)/9A.40.020 /9A.40.020(1)(b)	FA	5/21/2008
03	KIDNAPPING IN THE FIRST DEGREE	9A.08.020(3)/9A.40.020 /9A.40.020(1)(b)	FA	5/21/2008
04	ATTEMPTING TO ELUDE A PURSUING POLICE VEHICLE	9A.08.020(3)/46.61.024(1)	FC	5/21/2008

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1a.

The jury returned a special verdict or the court made a special finding with regard to the following:

The defendant used a **firearm** in the commission of the offense in Count 01, 02, 03, RCW 9.94A.602, 9.94A.533.

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- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____ RCW 9.94A.602, 9.94A.533.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____ RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count _____ is a **criminal street gang-related felony** offense in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense. Laws of 2008, ch. 276, § 302.
- Count _____ is the crime of **unlawful possession of a firearm**. The defendant was a **criminal street gang member** or associate when the defendant committed the crime. RCW 9.94A.545.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. Laws of 2008, ch. 219 § 2.
- Count 4 is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime(s) charged in Count _____ involve(s) **domestic violence**. RCW 10.99.020.
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):**

	Crime	Cause Number	Court (county & state)
1.			

- Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

	Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv	Type of Crime
1	See attached criminal history					

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
01	7	IX	87 MONTHS to 116 MONTHS	60 MONTHS	147 MONTHS to 176 MONTHS	LIFE
02	5	X	77 MONTHS to 102 MONTHS	60 MONTHS	137 MONTHS to 162 MONTHS	LIFE
03	0	X	51 MONTHS to 68 MONTHS	60 MONTHS	111 MONTHS to 128 MONTHS	LIFE
04	4	I	3 MONTHS to 8 MONTHS		3 MONTHS to 8 MONTHS	5 YEARS

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are attached as follows: _____.

2.4 Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

- within below the standard range for Count(s) _____.
- above the standard range for Count(s) _____.

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury, by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds:

That the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753): _____

The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

III. Judgment

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

3.2 The court **dismisses** Counts _____ in the charging document.

IV. Sentence and Order

It is ordered:

4.1 Confinement. The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

155 months on Count 01 155 months on Count 02
114 months on Count 03 3 months on Count 04

- The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.
- The confinement time on Count 01, 02, 03, includes 60 months as enhancement for firearm deadly weapon VUCSA in a protected zone
 manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: 329 Months

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: Counts 2 & 3 (Kidnapping counts) shall be served consecutive to each other.

All Firearm enhancements shall be served consecutive to the underlying crimes and to all other firearm enhancement.

The sentence herein shall run consecutively with any other sentence in any other case, including other cases in District Court or Superior Court, unless otherwise specified herein: _____.

Confinement shall commence immediately unless otherwise set forth here: _____

(b) **Credit for Time Served:** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served unless the credit for time served prior to sentencing is specifically set forth here, by the court: 443 days

(c) **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of confinement.

4.2 Community Placement or Community Custody. (To determine which offenses are eligible for or required for community placement or community custody see RCW 9.94A.700, .705, and .715)

(A) The defendant shall be on community placement or community custody for the longer of:

- (1) the period of early release. RCW 9.94A.728(1)(2); or
(2) the period imposed by the court, as follows:

Count 01 36 months
Count 02 36 months
Count 03 36 months
Count 04 ✓ months

The total time of incarceration and community supervision/custody shall not exceed the statutory maximum for the crime.

(B) DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) The defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) The conditions of community placement or community custody include chemical dependency treatment		
c) The defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745		

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 DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.720. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody.

The court orders that during the period of supervision the defendant shall:

- consume no alcohol.
- have no contact with: _____
- remain within outside of a specified geographical boundary, to wit: _____
- participate in the following crime-related treatment or counseling services: _____
- undergo an evaluation for treatment for domestic violence substance abuse mental health anger management, and fully comply with all recommended treatment. _____
- comply with the following crime-related prohibitions: _____
- Other conditions: _____

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

4.3 Legal Financial Obligations: The defendant shall pay to the clerk of this court:

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~~RTN/RJN \$160.00 Restitution to: SHARIS (\$160.00)
(Name and Address address may be withheld and provided confidentially to
Clerk of the Court's office.)~~

PCV \$ 500.00 Victim assessment RCW 7.68.035

\$ _____ Domestic Violence assessment RCW 10.99.080

CRC \$ _____ Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 200.00 FRC
 Witness costs \$ _____ WFR
 Sheriff service fees \$ _____ SFR/SFS/SFW/WRF
 Jury demand fee \$ 250.00 JFR
 Extradition costs \$ _____ EXT
 Other \$ _____

PUB \$ 4000.00 Fees for court appointed attorney RCW 9.94A.760

\$ _____ Trial per diem, if applicable.

WFR \$ 470.00 Court appointed defense expert and other defense costs RCW 9.94A.760

\$ _____ DUI fines, fees and assessments

FCM/MTH \$ 500.00 Fine RCW 9A.20.021; VUCSA chapter 69.50 RCW, VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/BCD \$ _____ Drug enforcement Fund # 1015 1017 (TF) RCW 9.94A.760
NTF/SAD/SDI

\$ 100.00 DNA collection fee RCW 43.43.7541

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

RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430

\$ _____ Other fines or costs for: _____

\$ _____ **Total** RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor.
 is scheduled for _____ (date).

The defendant waives any right to be present at any restitution hearing (sign initials): _____.

Restitution Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

<i>RJN</i>	Name of other defendant	Cause Number	Victim's name	Amount
	SAMUEL EUGENE FERGUSON III	08-1-00818-5		
	JOHN LANELL FITZPATRICK	08-1-00820-7		

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____. RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 No Contact: The defendant shall not have contact with TALMIN JAMES FITZPATRICK, JAMES BRUCE, SHARIS, ROBERTA ANN DAMEWOOD, JAVIER COLON RIVERA, REGINA M BRIDGES including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.6 Other: _____

4.7 Off-Limits Order. (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 Notice of Income-Withholding Action. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 Community Custody Violation.

- (a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.
- (b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).

5.5 Firearms. You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 Reserved

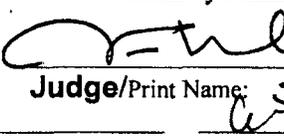
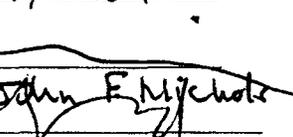
5.7 Motor Vehicle: If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

5.8 Persistent Offense Notice

The crime(s) in count(s) 01, 02, 03 is/are "most serious offense(s)." Upon a third conviction of a most "serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505

The crime(s) in count(s) _____ is/are one of the listed offenses in RCW 9.94A.030(32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

Done in Open Court and in the presence of the defendant this date: August 7, 2009

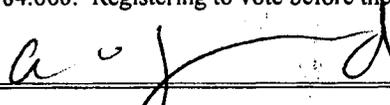
		
Deputy Prosecuting Attorney WSBA No. 25172 Print Name: Anthony F. Golik	Attorney for Defendant WSBA No. 36612 Print Name: James Doyle Kirkham Jr	Defendant Print Name: ALBERT JAMAAL YOUNGBLOOD

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: _____



I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: _____

I, Sherry Parker, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

Witness my hand and seal of the said Superior Court affixed this date: _____.

Clerk of the Court of said county and state, by: _____, Deputy Clerk

Identification of the Defendant

ALBERT JAMAAL YOUNGBLOOD

08-1-00819-3

SID No: WA24538465

(If no SID take fingerprint card for State Patrol)

Date of Birth: 8/12/1981

FBI No. 284617CB9

Local ID No. 193316

PCN No. _____

Other _____

Alias name, DOB:

Race: B

Ethnicity:

Sex: M

Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk,

Dated:

8-7-09

The defendant's signature:

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,
 v.
 ALBERT JAMAAL YOUNGBLOOD,
 Defendant.
 SID: WA24538465
 DOB: 8/12/1981

NO. 08-1-00819-3

**WARRANT OF COMMITMENT TO STATE
 OF WASHINGTON DEPARTMENT OF
 CORRECTIONS**

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	ROBBERY IN THE FIRST DEGREE	9A.08.020(3)/9A.56.190/9A.56.200/ 9A.56.200(1)(a)(i)	5/21/2008
02	KIDNAPPING IN THE FIRST DEGREE	9A.08.020(3)/9A.40.020/9A.40.020 (1)(b)	5/21/2008
03	KIDNAPPING IN THE FIRST DEGREE	9A.08.020(3)/9A.40.020/9A.40.020 (1)(b)	5/21/2008
04	ATTEMPTING TO ELUDE A PURSUING POLICE VEHICLE	9A.08.020(3)/46.61.024(1)	5/21/2008

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
01	ROBBERY IN THE FIRST DEGREE	155 30 Days/Months

COUNT	CRIME	TERM
02	KIDNAPPING IN THE FIRST DEGREE	155 Days/Months
03	KIDNAPPING IN THE FIRST DEGREE	114 Days/Months
04	ATTEMPTING TO ELUDE A PURSUING POLICE VEHICLE	3 Days/Months

These terms shall be served concurrently to each other unless specified herein:

Ct 2 & 3 are consecutive to each other - Total sentence = 329 months including enhancements

The defendant has credit for 443 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

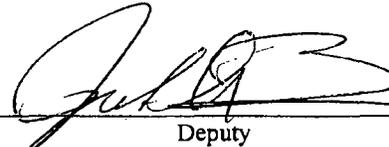
HEREIN FAIL NOT.

WITNESS, Honorable



JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 8-7-09

SHERRY W. PARKER, Clerk of the
Clark County Superior Court

By: 
Deputy



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

STATE OF WASHINGTON,
Plaintiff,
v.
ALBERT JAMAAL YOUNGBLOOD,
Defendant

No. 08-1-00819-3

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

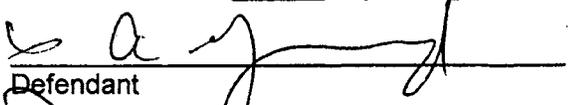
CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
GIVING FALSE NAME, ADDRESS, OR BIRTHDATE TO LAW ENFORCEMENT OFFICER	FULTON/GA UNKNOWN	2/5/2007		0
WILLFUL OBSTRUCTION OF LAW ENFORCEMENT OFFICERS BY USE OF THREATS OR VIOLENCE	FULTON/GA UNKNOWN	2/5/2007		0
RAPE	FULTON/GA UNKNOWN	2/5/2007		2
ORAL COPULATION: VICTIM INTOX/ETC	SAN BERNARDINO/WA UNKNOWN		3/29/2001	2
FORCE/ADW NOT FIREARM; GBI LIKELY	SAN BERNARDINO/CA UNKNOWN		9/15/2003	0

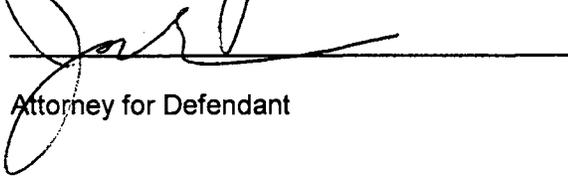
Same course of conduct

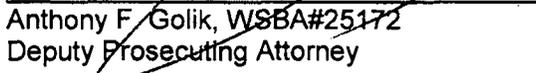
The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

DATED this 7 day of August, 2009.

Total = 2 points for Criminal History


Defendant


Attorney for Defendant


Anthony F. Golik, WSBA#25172
Deputy Prosecuting Attorney

DECLARATION OF CRIMINAL HISTORY
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

30

FILED

FEB 18 2009
RECEIVED @ 10:46 AM
Sherry W. Parker, Clerk, Clark Co.
BY DEPUTY CLERK
KUPA KOVALEU

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

STATE OF WASHINGTON,

Plaintiff,

v.

SAMUEL EUGENE FERGUSON III,
and
ALBERT JAMALL YOUNGBLOOD,
and
JOHN LANELL FITZPATRICK,

Defendant.

No. 08-1-00818-5
and 08-1-00819-3
and 08-1-00820-7

COURT'S INSTRUCTIONS TO THE JURY



SUPERIOR COURT JUDGE

February 17, 2009
DATE

60 (RW)

INSTRUCTION NO. 1

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

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

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

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

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

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

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

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

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have

a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

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

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

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

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

INSTRUCTION NO. 2

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

INSTRUCTION NO. 3

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

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

INSTRUCTION NO. 4

A separate crime is charged in each count. You must separately decide each count charged against each defendant. Your verdict on one count as to one defendant should not control your verdict on any other count or as to any other defendant.

INSTRUCTION NO. 5

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. 6

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. 7

Certain evidence has been admitted in this case for the limited purpose of impeachment evidence on the credibility of a witness, and that said evidence shall be used for that purpose only.

INSTRUCTION NO. 8

A defendant is not compelled to testify, and the fact that a defendant has not testified cannot be used to infer guilt or prejudice him in any way.

INSTRUCTION NO. 9

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

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

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

INSTRUCTION NO. 10

A person commits the crime of Robbery in the First Degree when in the commission of a robbery or in immediate flight therefrom he is armed with a deadly weapon or displays what appears to be a firearm or other deadly weapon.

INSTRUCTION NO. 11

To convict a defendant of the crime of Robbery in the First Degree, each of the following six elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about May 21, 2008, a defendant unlawfully took personal property from the person or in the presence of another;
- (2) That a defendant intended to commit theft of the property;
- (3) That the taking was against the person's will by a defendant's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;
- (4) That force or fear was used by a defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking or to prevent knowledge of the taking;
- (5) That in the commission of these acts or in immediate flight therefrom a defendant was armed with a deadly weapon or a defendant displayed what appeared to be a firearm or other deadly weapon;
- (6) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2), (3), (4), (5) and (6), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 12

A person commits the crime of robbery when he or she 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 or to that person's property or to the person or property of anyone. 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.

INSTRUCTION NO. 13

Deadly weapon means any weapon, device, instrument, substance, or article, which under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.

INSTRUCTION NO. 14

A person commits the crime of kidnapping in the first degree when he intentionally abducts another person with intent to facilitate the commission of Robbery or flight thereafter.

INSTRUCTION NO. 15

To convict a defendant of the crime of Kidnapping in the First Degree, as charged in Count 2, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about May 21, 2008, a defendant intentionally abducted

Roberta Damewood;

(2) That a defendant abducted that person with intent to facilitate the commission of Robbery or flight thereafter,

and

(3) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2) and (3), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements (1), (2), or (3), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 16

To convict a defendant of the crime of Kidnapping in the First Degree, as charged in Count 3, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about May 21, 2008, a defendant intentionally abducted

Javier C. Rivera;

(2) That a defendant abducted that person with intent to facilitate the commission of Robbery or flight thereafter,

and

(3) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2) and (3), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements (1), (2), or (3), then it will be your duty to return a verdict of not guilty.

JURY INSTRUCTION NO. 17

Abduct means to restrain a person by using or threatening to use deadly force.

Restraint or restrain means to restrict another person's movements without consent and without legal authority in a manner that interferes substantially with that person's liberty.

INSTRUCTION NO. 25

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

INSTRUCTION NO. 19

A person knows or acts knowingly or with knowledge when he or she is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge.

Acting knowingly or with knowledge also is established if a person acts intentionally.

INSTRUCTION NO. 20

A person commits the crime of attempting to elude a pursuing police vehicle when he wilfully fails or refuses to bring his vehicle to a stop after being given a visual or audible signal to bring the vehicle to a stop by a police officer, and while attempting to elude a pursuing police vehicle he drives his vehicle in a reckless manner.

A signal to stop given by a police officer may be by hand, voice, emergency light, or siren. The police officer giving such a signal must be in uniform and the officer's vehicle must be appropriately marked showing it to be an official police vehicle.

INSTRUCTION NO. 21

To convict a defendant of attempting to elude a pursuing police vehicle, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 21st day of May, 2008, a defendant drove a motor vehicle;

(2) That a defendant was signaled to stop by a uniformed police officer by hand, voice, emergency light or siren;

(3) That the signaling police officer's vehicle was appropriately marked, showing it to be an official police vehicle;

(4) That a defendant wilfully failed or refused to immediately bring the vehicle to a stop after being signaled to stop;

(5) That while attempting to elude a pursuing police vehicle, a defendant drove his vehicle in a reckless manner; and

(6) 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. 22

To operate a motor vehicle in a reckless manner means to drive in a rash or heedless manner, indifferent to the consequences.

INSTRUCTION NO. 23

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have

• been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.

INSTRUCTION NO. 24

You will also be given special verdict forms for the crimes charged. If you find a defendant not guilty of a crime, do not use the special verdict form for that crime. If you find a defendant guilty of a crime, you will then use the special verdict form for that crime and fill in the blank with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict forms "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously have a reasonable doubt as to this question, you must answer "no".

INSTRUCTION NO. 25

For purposes of a special verdict, the State must prove beyond a reasonable doubt that a defendant was armed with a firearm at the time of the commission of a crime.

A person is armed with a firearm if, at the time of the commission of the crime, the firearm is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the firearm and a defendant or an accomplice. The State must also prove beyond a reasonable doubt that there was a connection between the firearm and the crime. In determining whether this connection existed, you should consider the nature of the crime, the type of firearm, and the circumstances under which the firearm was found.

If one participant in a crime is armed with a firearm, all accomplices to that participant are deemed to be so armed, even if only one firearm is involved.

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

22

FILED
2:00 pm
MAY 21 2009
Heather Hunt
Sherry W. Parker, Clerk, Clark Co. Deputy

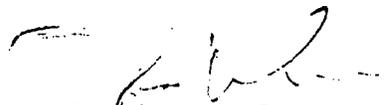
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND
FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
vs.

SAMUEL EUGENE FERGUSON III
ALBERT JAMAAL YOUNGBLOOD
Defendant

No. 08-1-00818-5
No. 08-1-00819-3

COURT'S INSTRUCTIONS TO THE JURY


Superior Court Judge

Date: May 21 2009

109 WF

INSTRUCTION NO. 1

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

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

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

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

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

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

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

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have

a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

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

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

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

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

INSTRUCTION NO. 2

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

INSTRUCTION NO. 3

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

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

INSTRUCTION NO. 4

A separate crime is charged in each count. You must separately decide each count charged against each defendant. Your verdict on one count as to one defendant should not control your verdict on any other count or as to any other defendant.

INSTRUCTION NO. 5

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. 6

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. 2

A defendant is not compelled to testify, and the fact that a defendant has not testified cannot be used to infer guilt or prejudice him in any way.

INSTRUCTION NO. 8

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

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

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

INSTRUCTION NO. 9

A person commits the crime of kidnapping in the first degree when he intentionally abducts another person with intent to facilitate the commission of Robbery or flight thereafter.

INSTRUCTION NO. 10

To convict a defendant of the crime of Kidnapping in the First Degree, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about May 21, 2008, a defendant intentionally abducted

Roberta Damewood;

(2) That a defendant abducted that person with intent to facilitate the commission of Robbery or flight thereafter,

and

(3) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2) and (3), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements (1), (2), or (3), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 11

To convict a defendant of the crime of Kidnapping in the First Degree, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about May 21, 2008, a defendant intentionally abducted

Javier C. Rivera;

(2) That a defendant abducted that person with intent to facilitate the commission of Robbery or flight thereafter,

and

(3) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2) and (3), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements (1), (2), or (3), then it will be your duty to return a verdict of not guilty.

JURY INSTRUCTION NO. 12

Abduct means to restrain a person by using or threatening to use deadly force.

Restraint or restrain means to restrict another person's movements without consent and without legal authority in a manner that interferes substantially with that person's liberty.

INSTRUCTION NO. 13

A person commits the crime of robbery when he or she 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 or to that person's property or to the person or property of anyone. 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.

INSTRUCTION NO. 14

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

INSTRUCTION NO. 15

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly; not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have

been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.

INSTRUCTION NO. 16

You will also be given special verdict forms for the crimes charged. If you find a defendant not guilty of a crime, do not use the special verdict form for that crime. If you find a defendant guilty of a crime, you will then use the special verdict form for that crime and fill in the blank with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict forms "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously have a reasonable doubt as to this question, you must answer "no".

INSTRUCTION NO. 17

For purposes of a special verdict, the State must prove beyond a reasonable doubt that a defendant was armed with a firearm at the time of the commission of a crime.

A person is armed with a firearm if, at the time of the commission of the crime, the firearm is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the firearm and a defendant or an accomplice. The State must also prove beyond a reasonable doubt that there was a connection between the firearm and the crime. In determining whether this connection existed, you should consider the nature of the crime, the type of firearm, and the circumstances under which the firearm was found.

If one participant in a crime is armed with a firearm, all accomplices to that participant are deemed to be so armed, even if only one firearm is involved.

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

INSTRUCTION NO. 18

A person knows or acts knowingly or with knowledge when he or she is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge.

Acting knowingly or with knowledge also is established if a person acts intentionally.

FILED

FEB 20 2009

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,
Plaintiff,

No. 08-1-00819-3

Albert J. Youngblood
Defendant.

MEMORANDUM OF DISPOSITION

CRIME(S): Rob 1°, Kidnap & 2, Attempt to Elude

The defendant shall be released from custody today on the above-captioned case(s) only.

The defendant is hereby remanded to custody: Hold without Bail Bail is set at \$ _____

The defendant has been sentenced to confinement totaling _____ days/months, to be served as follows:

_____ days credit for time served _____ days of additional total confinement

_____ days of additional partial confinement on:

_____ work/educational release _____ work crew _____ community service

Defendant shall report within 24 hours of this order/release from custody

Defendant shall be screened while in custody.

(If found to be medically unfit for work crew, refer to original sentencing orders for instructions)

The defendant is hereby Ordered to return to court on 2-27-09 at 1:30 am (pm).

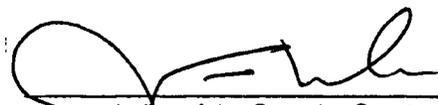
The defendant shall report to the Department of Corrections within 24 hours of this order/release from custody.

The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. Report to the CCSO within 24 hours to submit sample.

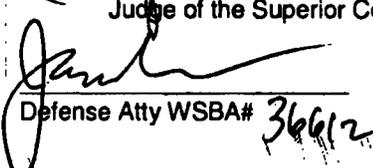
FAILURE TO REPORT TO JAIL, WORK RELEASE OR WORK CREW MAY CONSTITUTE THE CRIME OF ESCAPE AND COULD SUBJECT THE DEFENDANT TO IMMEDIATE ARREST. FAILURE TO RETURN TO COURT AS ORDERED MAY CONSTITUTE THE CRIME OF BAIL JUMP.

Other: Defendant convicted of Rob 1° + Attempt to Elude, Jury Hung on Kidnap Charges. Defendant to be held without Bail

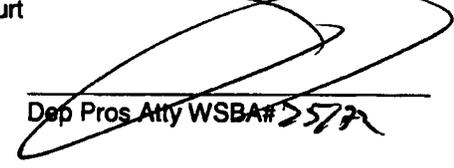
Dated this 20 day of Feb, 2009.



Judge of the Superior Court



Defense Atty WSBA# 36612



Dep Pros Atty WSBA# 2572



Defendant

73 (RL)

sentenced Mr. Youngblood within the standard range. 11RP at 1801-08; CP 160.

Timely notice of appeal by the defense was filed on August 28, 2009. CP 174. This appeal follows.

2. First trial testimony:

Two men wearing hats with eyeholes cut in them entered a Shari's Restaurant in Vancouver, Washington at approximately 5 a.m. on May 21, 2008. 2Report of Proceedings [RP] at 116, 119, 143.³ Once inside the restaurant, the men directed two restaurant employees—Javier Rivera and pie maker Roberta Damewood—to move from the kitchen area to another part of the restaurant where the mops are kept, and for both of them to lie on the floor. 2RP at 120, 121, 122, 123, 143, 148. In the mop room, Ms. Damewood hid her cell phone under some mops. 2RP at 123. Ms. Damewood testified that she did not see a gun. 2RP at 130, 132, 135, 139. After five to ten minutes, when it was quiet, she retrieved her phone and called 911. 2RP at 124, 126. Mr. Rivera also testified that he did not see

³The Verbatim Report of Proceedings consists of thirteen volumes:

1RP February 10, 2009, jury trial (morning);
2RP February 10, 2009, jury trial; (afternoon);
3RP February 11, 2009, jury trial (morning);
4RP February 11, 2009, jury trial (afternoon);
5RP February 12, 2009, jury trial;
6RP February 17, 2009, jury trial;
7RP February 18, 2009, jury trial;
8RP February 19, 20, 2009, jury trial, April 21, 2009, motion hearing;
9RP May 19, 2009, second jury trial;
10RP May 20, 2009, second jury trial;
11RP May 21, 2009, second jury trial, August 7, 2009, sentencing.
RP February 9, 2009 (voir dire, first trial); and
RP May 18, 2009 (voir dire, second trial)

Fruit
8-14

a gun. 2RP at 145, 146. Mr. Rivera stated that the man was wearing gloves but he could see a little bit of his forearms and that his skin was “brownish, dark, black.” 2RP at 153.

One of the men directed Shari’s employee Regina Bridges to go to the cash register and open the till. 2RP at 168. She stated that he was wearing a hoody over a grayish stocking cap with eyeholes cut in it, and that he pointed a handgun at her. 2RP at 167, 168. She stated that she saw the other man and that he also was wearing a hoody with the hood portion over his head, had a cap pulled over his face with eyeholes in it, and that he was standing behind Mr. Rivera holding a gun. 2RP at 170. Ms. Bridges opened the till using a magnetic swipe card and after she did so, the man took money from the register and put it in his pocket. 2RP at 173, 174. After taking the money, both men went out the front door. 1RP at 65-66. Ms. Bridges stated that the man who had her open the till was wearing white knit cotton gardening gloves with blue piping. 2RP at 196.

Jason Godsil and his wife walked into the restaurant as the two men ran past them out the door. 1RP at 65-66. Mr. Godsil had seen a black Lincoln Town Car idling in the parking lot by the door as he entered the restaurant. 1RP at 65. He went out of the restaurant and saw the car drive slowly out of the parking lot and down 164th Street toward Highway 14. 1RP at 69. Ms. Bridges called 911 and said that she thought the men were African American. 2RP at 178, 179.

While traveling southbound on Interstate 205 at 4:58 a.m. on May

21, 2008, Neil Martin of the Vancouver Police Department saw a black Lincoln Town Car going northbound on the interstate. 1RP at 11. He radioed that he has seen a Town Car heading northbound, and police were positioned where I-205 merges with I-5. 4RP at 401. Deputy Thomas Yoder and several other police units followed the car, which was travelling at normal speed on northbound I-5 until they reached the Ridgefield exit, at which time Deputy Yoder activated his overhead lights. 4RP at 403, 404. The Town Car exited the freeway at the Ridgefield exit and went into the Tri Mountain Shopping Plaza and turned around. 4RP at 405, 407, 466. Det. Thomas Mitchum was standing with his gun drawn in the area between the parking lot and the roadway, and was able to see the driver, whom he identified as Mr. Ferguson. 4RP at 409, 469, 473, 474. The car did not stop and went around the police car, which Det. Mitchum described as being parked in a "semi-roadblock." 4RP at 469, 472. After the car left the Tri Mountain parking lot, Deputy Yoder saw an object tossed from the car, which was later identified as a gun wrapped inside a gray hat with eyeholes cut in it. 4RP at 410, 441.

After leaving the parking lot, the car reentered the freeway headed northbound and increased its speed to 100 or 110 miles per hour with several units following it. 4RP at 413, 414, 417.

Continuing northbound into Cowlitz County, the car hit a spike strip deployed by officers. 4RP at 418. The car exited into Longview when several of its tires degraded and broke up. 4RP at 418, 420. The

car continued onto Highway 432 and went through three red lights. 4RP at 420. The car hit a traffic median at the intersection of Oregon Way and 15th Avenue and came to a stop. 4RP at 420. Deputy Yoder saw three African American males get out of the car and run down 15th Avenue. 4RP at 423. Mr. Fitzpatrick was taken into custody by Deputy Jeremy Koch, who stated that Mr. Fitzpatrick was breathing hard. 4RP at 515, 533. Mr. Youngblood was arrested by Officer Tim Deisher and was found with a black hat with eyeholes cut in it, and currency in his pocket. 4RP at 546. Police found a roll of coins under him after he was arrested. 4RP at 489, 493, 546. Mr. Youngblood was determined to be a possible contributor of DNA found on the black hat. 5RP at 670, 671. Police found Mr. Ferguson behind a couch on the porch of a house. 5RP at 575.

Inside the Town Car police found a pair of white gloves with blue piping and a roll of pennies. 5RP at 591, 597.

3. Second trial testimony:

Mr. Rivera testified that early in the morning of May 21, 2008, while he was in the kitchen of Shari's, he turned around and was grabbed by a person, and saw another person pointing a handgun at him. Both were wearing masks. 9RP at 1207, 1208, 1220. The man who had grabbed him took him to the back of the restaurant near the icemaker, where saw Roberta Damewood. The man then took both of them to the room where they keep the cleaning equipment. 9RP at 1209. He stated that the man was wearing a mask and that he could not see his face, but

that his skin was "dark." 9RP at 1210, 1211, 1219. After approximately thirty seconds the man grabbed him and made him lie face down on the floor. 9RP at 1214, 1215. While on the floor he took his wallet and put it under some mops in the room. 9RP at 1233, 1234. The man with the gun stayed in the front of the restaurant. 9RP at 1212. After about two minutes it was quiet and Ms. Damewood got up from the floor, and both of them went toward the front cash register. 9RP at 1217, 1218.

Mr. Rivera said that he did not remember his testimony from the first trial when he said that he saw a person pointing something at him, but he did not know what it was. 9RP at 1245, 1246. Mr. Rivera said that he was untruthful during the first trial because he "was afraid." 9RP at 1247.

He stated that he was afraid

[b]ecause you don't know if the person who you're testifying against has family members, have friends that can come after you and hurt you or hurt your family. I go to work at night, and my children go to school by themselves. One time they stay home at --- alone for a short period of time. And I do have to go to work to support them.

9RP at 1256.

He stated that no one had bothered him since he testified at the first trial. 9RP at 1259-60.

Regina Bridges testified that while making coffee at Shari's on May 21, 2008, she saw a man come into the restaurant wearing a silver-grayish stocking hat with eyeholes cut in it, and with a hoody pulled over

the hat. 9RP at 1274, 1275. She said that he had brown, tan, or dark brown skin. 9RP at 1276. He walked up to her and she saw he had a gun which he pointed at her. 9RP at 1275, 1276. He took her back into the kitchen, and she saw another man standing behind Mr. Rivera. 9RP at 1277, 1278. The two men spoke to each other and then the man took her from the kitchen area to the cash register. 9RP at 1280. She told him that he had to use her card to open the register, and he said to "do it." 9RP at 1280. She opened the register and then he took money from the till and put it in his pocket. 9RP at 1280. She said that he was wearing white gardening gloves with blue piping around the wrists. 9RP at 1280. He then said "let's roll" to the other man in the kitchen, who walked toward the pass-through and said "what?" The man said "let's roll" a second time and they both ran out the door. 9RP at 1282, 1283. Ms. Bridges then called 911. 9RP at 1284, 1286-1291. She stated that a hat and gloves entered as exhibits by the State were worn by the man in the restaurant. 9RP at 1292-94. A hat entered as an exhibit contained DNA that included Mr. Youngblood as a possible contributor. 11RP at 1612. Ms.

Damewood said while in the restaurant the morning of May 21, 2008, a man entered the restaurant wearing a mask told her to "go this way" and she went to the mop room with Mr. Rivera behind her. 9RP at 1321. He asked if they had anything on them and she said "no." 9RP at 1323. Ms. Damewood had a cell phone which she threw in a corner when the man stepped away. 9RP at 1323. The man returned and asked if they had a

cell phone and she said “no,” and then he left again. 9RP at 1323. He returned a third time and told her to get down on the floor and told Mr. Rivera to come with him. 9RP at 1324. She got down on the floor on her hands and knees. 9RP at 1324. The man told Mr. Rivera to get down on the floor which he did. 9RP at 1325-26. Ms. Damewood heard noises and then called 911 using her cell phone. 9RP at 1326, 1335-38. She did not see a gun held by either man. 9RP at 1344.

D. ARGUMENT

4. **THE TWO COUNTS OF KIDNAPPING WERE INCIDENTAL TO THE ROBBERY AND THEREFORE THE STATE PRESENTED INSUFFICIENT EVIDENCE OF KIDNAPPING, AND THE SEPARATE CONVICTIONS VIOLATE MR. YOUNGBLOOD’S RIGHT TO DUE PROCESS OF LAW.**

Mr. Youngblood’s first degree robbery conviction rested on the State’s contention that he or an accomplice displayed and threatened use of a firearm. CP 1. Likewise, the kidnapping convictions rested on his intent to facilitate the commission of first degree robbery. CP 1-2.

In all criminal prosecutions, due process requires that the state prove every fact necessary to constitute the charged crime beyond a reasonable doubt. U.S. Const. amend. 14; Const. art. 1, § 3; *In re Winship*, 397 U.S. 358, 364, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970); *State v. Crediford*, 130 Wn.2d 747, 749, 927 P.2d 1129 (1996).

Evidence is sufficient to support a conviction only if, viewing the

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DIVISION II

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STATE OF WASHINGTON

BY _____
DEPUTY

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

STATE OF WASHINGTON,
Respondent,

v.

ALBERT JAMAAL YOUNGBLOOD,
Appellant.

No. 39721-8-II

Clark Co. No. 08-1-00819-3

DECLARATION OF
TRANSMISSION BY MAILING

STATE OF WASHINGTON)

: ss

COUNTY OF CLARK)

On Sept. 8, 2010, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

TO: David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Peter B Tiller
Attorney at Law
PO Box 58
Centralia WA 98531

ALBERT JAMAAL YOUNGBLOOD
DOC # 333592
Washington State Penitentiary
1313 N 13th Avenue
Walla Walla, WA 99362-1065

DOCUMENTS: Brief of Respondent

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Jennifer Casey
Date: Sept. 8, 2010.
Place: Vancouver, Washington.