

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

IN RE THE PERSONAL)	NO. 42926-8-II
RESTRAINT PETITION OF)	RESPONSE TO
)	PERSONAL RESTRAINT
TOMMY LEE CROW, JR.)	PETITION

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

I. BASIS OF CURRENT RESTRICTIONS ON LIBERTY

Tommy Lee Crow, Jr., is currently serving a term of 660 months in the custody of the Washington Department of Corrections. Following a jury trial, he was convicted of two counts of second degree murder and one count of second degree arson. See Judgment and Sentence, CP 90-100.

II. STATEMENT OF PROCEEDINGS

Crow was charged, along with co-defendants Christopher Durga and Bryan Eke, with two counts of second degree murder under the alternative means of intentional murder and felony murder.

Each count carried an aggravating factor—that the crime was committed against a person acting as a good Samaritan in Count I, and that the crime manifested deliberate cruelty in Count II. He was also charged with second degree arson. See Second amended information, CP 40-41.

Before Crow's trial, Durga and Eke entered into plea agreements with the State. Appendix A (Durga's statement of defendant on plea of guilty and plea agreement) and Appendix B (Eke's statement of defendant on plea of guilty and plea agreement). Both testified at Crow's trial. The jury found him guilty of all three charges and answered "yes" to both aggravating factors. See verdict forms, CP 60-64. The State sought, and the court imposed, an exceptional sentence of 660 months. CP 94.

Crow appealed to the Court of Appeals, which affirmed in an unpublished decision on October 5, 2010. Appendix C, unpublished opinion. The substantive facts of the case are included in that opinion at pages 2-3. A mandate did not issue until March 2, 2011. Appendix D. Crow now brings this timely Personal Restraint Petition (PRP).

The State has no additional information regarding Crow's

financial status and does not contest his indigency.

This court has granted the State's motion to transfer the record from the direct appeal, Case No. 39075-2-II, to this PRP.

List of Appendices

Because there are a number of appendices attached to this response, the following list is provided in an effort to make them easier to locate.

Appendix A: Christopher Durga's Statement of Defendant on Plea of Guilty and Plea Agreement.

Appendix B: Brian Eke's Statement of Defendant on Plea of Guilty and Plea Agreement.

Appendix C: Unpublished opinion from the Court of Appeals affirming Crow's convictions following direct appeal.

Appendix D: Mandate from the Court of Appeals terminating the direct appeal.

Appendix E: State's Motion and the Order for Handwriting Exemplar, report by Detective Sam Costello, report of document examiner, copies of exemplars and questioned writings.

Appendix F: Police interview with Christopher Durga on March 28, 2008.

Appendix G: Police interview with Christopher Durga on October 15, 2008.

Appendix H: Transcript of Christopher Durga's guilty plea hearing.

Appendix I: Police interview with Anthony McKague on January 30, 2009.

Appendix J: Declaration of James Powers authenticating the documents in Appendix E.

Appendix K: Declaration of James Powers authenticating the document in Appendix F.

Appendix L: Declaration of James Powers authenticating the document in Appendix G.

Appendix M: Declaration of James Powers regarding discovery provided before and during the trial.

Appendix N: Transcript of Christopher Durga's sentencing hearing.

Appendix O: Declaration of James Powers authenticating the document in Appendix I.

Appendix P: Declaration of James Powers regarding the testimony of Christopher Durga.

Appendix Q: Declaration of Ronald Sergi regarding discovery received from the State before and during the trial.

Appendix R: Declaration of Sergeant S. A. Costello.

A. Standard of review of a Personal Restraint Petition.

A PRP is different from an appeal. "Personal restraint petitions are not a substitute for direct review." In re Pers. Restraint of Dalluge, 162 Wn.2d 814, 817, 177 P.3d 675 (2008). Collateral attacks on convictions, whether based on constitutional or non-constitutional

grounds, are limited, but not so limited as to prevent the consideration of serious and potentially valid claims. In re Pers. Restraint of Cook, 114 Wn.2d 802,809, 792 P.2d 506 (1990).

To be entitled to relief in a personal restraint petition, as opposed to a direct appeal, a petitioner must meet several special requirements. First, the petitioner can only obtain relief from restraint that is unlawful for the limited reasons set forth in the rules defining the procedure. RAP 16.4(c); Cook, 114 Wn.2d at 809. Second, a petitioner cannot obtain relief by petition if he or she has other adequate remedies. RAP 16.4(d). Third, a petitioner cannot raise grounds previously decided on the merits, either in a prior petition or on appeal, without demonstrating good cause (prior petition) or that the interests of justice require re-litigation (prior appeal). RAP 16.4(d); Cook, 114 Wn.2d at 806-7, 813 (prior petition); In re Pers. Restraint of Brown, 143 Wn.2d 431, 445, 21 P.3d 687 (2001)(prior appeal).

Although petitions raising constitutional or non-constitutional issues not raised at trial or on appeal are no longer absolutely barred, special restrictions still apply. In re Pers. Restraint of Hews, 99 Wn.2d 80, 85-87, 660 P.2d 263 (1983). Thus a fourth limitation is

that a petitioner claiming purported constitutional error must demonstrate actual prejudice from the error before a court will consider the merits. In re Pers. Restraint of St. Pierre, 118 Wn.2d 321, 328-30, 823 P.2d 492 (1992) (applying this threshold standard to deny relief for a constitutional error that would be per se prejudicial error on appeal). Fifth, a petitioner claiming purported non-constitutional error must “establish that the claimed error constitutes a fundamental defect which inherently results in a complete miscarriage of justice.” In re Pers. Restraint of Fleming, 129 Wn.2d 529, 532-34, 919 P.2d 66 (1996) (applying this threshold standard to deny relief for an error that would require reversal on direct appeal).

Even meeting this threshold does not automatically entitle a petitioner to relief or a reference hearing, however. A personal restraint petitioner is required by the rules to provide both “a statement of ... facts upon which the claim is ... based and the evidence to support the factual allegations. RAP 16.7(a)(2)(i). A sixth procedural prerequisite to consideration on the merits is that “the petitioner must state with particularity facts which, if proven, would entitle him (or her) to relief”, “bald assertions” and “conclusory

allegations” are not enough. In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086, *cert. denied*, 506 U.S. 958 (1992). Seventh, “the petitioner must demonstrate that he (or she) has competent, admissible evidence to establish the facts that entitle him (or her) to relief”; claims as to what other persons would say must be supported by “their affidavits or other corroborative evidence” consisting of competent and admissible evidence. Cook, 114 Wn.2d at 813-14. Both the factual basis and evidentiary support requirements are threshold procedural bars; the court must refuse to reach the merits of any petition that fails to comply. Cook, 114 Wn.2d at 814.

Finally, if a petition clears these procedural hurdles, the petitioner still must actually prove the error that makes his or her restraint unlawful by a preponderance of the evidence. St. Pierre, at 328.

On direct appeal, the burden is on the State to establish beyond a reasonable doubt that any error of constitutional dimensions is harmless. . . . On collateral review, we shift the burden to the petitioner to establish that the error was not harmless.

In re Pers. Restraint of Hagler, 97 Wn.2d 818, 825-26, 650 P.2d 1103 (1982).

If a petitioner has had no other avenue for raising his challenges, the threshold requirements are much less. In re Pers. Restraint of Stewart, 115 Wn. App. 319, 331-32, 75 P.3d 521 (2003); In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994). Here, Crow has had a direct appeal in which he could have raised the issues he now brings, but did not.

III. RESPONSE TO ISSUES RAISED

A. Crow maintains that during closing argument the prosecutor committed misconduct by testifying himself and by telling the jury that it had a duty to determine the truth. Neither of these claims is true.

Crow did not raise this complaint in his direct appeal, nor does he explain why he failed to do so. Because this claim of error does not fall within the reasons set forth in RAP 16.4(c), this court should decline to consider it. Even if the court does review it, Crow is mistaken.

A defendant who claims prosecutorial misconduct must first establish the misconduct, and then its prejudicial effect. State v. Dhaliwal, 150 Wn.2d 559, 578, 79 P.3d 432 (2003) (citing to State v. Pirtle, 127 Wn.2d 628, 672, 904 P.2d 245 (1995)). “Any allegedly improper statements should be viewed within the context of the

prosecutor's entire argument, the issues in the case, the evidence discussed in the argument, and the jury instructions." Dhaliwal, 150 Wn.2d at 578. Prejudice will be found only when there is a "substantial likelihood the instances of misconduct affected the jury's verdict." Id. A defendant's failure to object to improper arguments constitutes a waiver unless the statements are "so flagrant and ill-intentioned that it causes an enduring and resulting prejudice that could not have been neutralized by a curative instruction to the jury." Id. The absence of an objection by defense counsel "strongly suggests to a court that the argument or event in question did not appear critically prejudicial to an appellant in the context of the trial." State v. Swan, 114 Wn.2d 613, 661, 790 P.2d 610 (1990).

A prosecutor may not argue evidence that was not presented at trial. United States v. Garza, 608 F.2d 659, 663 (5th Cir. 1979). It is proper, however, for the prosecutor to argue that evidence does not support the defense theory of the case. State v. Contreras, 57 Wn. App. 471, 476, 788 P.2d 1114, *rev. denied*, 115 Wn.2d 1014, 797 P.2d 514 (1990).

The prosecutor is prohibited from expressing a personal belief

as to the credibility of witnesses, but does have wide latitude to draw inferences from the evidence, including commenting on the credibility of witnesses based upon evidence before the jury. The use of the words “I think” or “I believe” do not necessarily constitute misconduct. State v. Hoffman, 116 Wn.2d 51, 93, 804 P.2d 577 (1991).

The entirety of the State closing and rebuttal arguments is found at RP 1288-1358, 1371-78.¹ It is apparent that the prosecutor never even suggested that he had personal knowledge of the case. He did comment on the credibility of Durga and Eke, each time referring to specific testimony. See, e.g., RP 1296, 1298, 1302-03, 1336, 1341, 1342, 1356, 1358. He did not tell the jury it had a duty to determine the truth. What he did say was that “you can glean the truth. It is there to be gleaned.” RP 1358. A jury is expected to determine the truth of the facts presented. State v. Balisok, 123 Wn.2d 114, 119, 866 P.2d 631 (1994). The prosecutor specifically did not vouch for the credibility of the State’s witnesses, but urged the

1 Unless otherwise noted, the references to the Verbatim Report of Proceedings are to the sequentially numbered trial transcript.

jury to use caution in evaluating the testimony of Durga and Eke. RP 1302. Crow simply mischaracterizes the State's argument.

Crow relies on United States v. Edwards, 154 F. 3d 915 (9th Cir. 1998) and United States v. Roberts, 618 F.2d 530 (9th Cir. 1979), but neither case is applicable to Crow's. In Roberts, the prosecutor, in closing argument, implied to the jury that he knew that a witness had testified truthfully because a detective was sitting in the courtroom to monitor his testimony. In Edwards, the prosecutor had himself actually discovered a key piece of evidence, and although he had a police officer testify about the discovery, he conveyed the idea that he knew the officer's testimony to be true. Neither of those situations is even remotely similar to the facts of Crow's case, and the holdings of those cases are not germane to this case.

There was no misconduct on the part of the prosecutor.

B. Crow argues that the State withheld exculpatory evidence in the form of handwritten notes and a handwriting analysis of those notes.

Crow maintains that his attorney was never informed that handwriting exemplars had been obtained from Bryan Eke and Anthony McKague, and that a handwriting expert had compared those

exemplars to unsigned handwritten notes believed to have been written by Eke and McKague. See Appendix E, copies of motion, declaration, and order for handwriting exemplar from Eke, (pages 1-4) police report regarding the writing of the exemplars, (pages 5-7), the document examiner's report, which includes the exemplars and the questioned documents (pages 8-27). See also Appendix J, declaration of James Powers identifying the documents in Appendix E. Presumably Crow is bringing this claim under RAP 16.4(c)(3), newly discovered evidence, although he does not specify when he personally became aware of these documents.

As his only evidence that he did not have notice of the handwriting analysis, he provides a letter from his trial attorney, Ronald Sergi, written on February 29, 2011. Petitioner's Exhibit 5. James Powers recalls providing the disputed documents to Mr. Sergi. Appendix M at page 4.

It is apparent from Mr. Sergi's letter that he thought Crow was talking about handwriting reports requested by the defense; it refers to an obligation on the part of the defense to pay for any analysis. And, in fact, that is the case. Mr. Sergi has filed a declaration indicating

that he is satisfied he was provided with all of the discovery in the case, including the jail letters and the handwriting analysis. See Appendix Q, declaration of Ronald Sergi.

In addition, the record of the trial shows that Crow's counsel not only knew of the handwritten notes, but was aware of the police interview with Anthony McKague at the time he cross-examined McKague. See RP 1242-1252 and Appendix I at 43-59. See also Appendix O, declaration of James Powers authenticating the interview in Appendix I. McKague had discussed in detail those notes between himself and Eke. Since Sergi was familiar with the McKague interview, he most likely had a copy of the notes; he was certainly on notice to ask for them if he did not. There is no record that he did so or that he was surprised by McKague's testimony.

A PRP petitioner bears the burden of producing evidence to support his allegations. RAP 16.7(a)(2)(i). Crow's recitation of facts is confusing. He alleges that Eke wrote a series of notes to Aaron Adams and Anthony McKague, asking them to lie for him. Petition at 8-9, Exhibit 2. He refers to a statement dated February 26, 2009, which the State presumes is his Appendix B. The State does

not find any reference to a \$15,000 offer for providing false information. Crow maintains that his first attorney, Samuel Meyer, had these letters and they were the reason that Ronald Sergi substituted for Mr. Meyer as his counsel, but that Mr. Sergi never saw the letters. Petition at 7. At the hearing in which the substitution of counsel was approved, Mr. Sergi told the court he would be picking up all the discovery that morning. 11/12/08 RP 8. If Mr. Sergi did not have the letters purportedly written by Eke to Adams, it would not be the fault of the State. Finally, Mr. Sergi interviewed Aaron Adams and had the opportunity to discuss the letters with him. RP 1253.

Even if Crow were correct that the State did not provide his attorney with the handwriting analysis, his argument fails because the evidence was not exculpatory. He claims that the analysis proved that Eke wrote the questioned documents, Petition at 13, but the analysis was inconclusive. Appendix E at 8. It would have been of no impeachment value when his attorney cross-examined Eke at trial.

The State's obligation to disclose information to the defense is largely described in Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). To prove a violation of the State's duty, a

defendant must demonstrate that (1) the evidence at issue is favorable to him either because it was exculpatory or impeaching; (2) the evidence was either willfully or inadvertently suppressed by the State, and (3) he was prejudiced by the failure to disclose. State v. Mullen, 171 Wn.2d 881, 895, 259 P.3d 158 (2011). Regarding the third element, the evidence is “material” or “prejudicial” “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” Id. at 897, quoting Kyles v. Whitley, 514 U.S. 419, 433-34, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).

Here, the handwriting analyst could not say whether Eke and McKague were the authors of the questioned documents or not, and therefore could not have been used by the defense to impeach Eke. Nor was it exculpatory. Crow has failed to establish the second element set forth by Mullen, and the first and third elements are disproved. If there was any error it was harmless because it could have had no effect on the verdict.

C. Crow asserts that Durga, who testified against him at trial, was coerced into testifying falsely because the prosecutor threatened him with a longer prison sentence. The evidence does not support this claim.

Crow presents a declaration signed by Christopher Durga under oath that Crow was not even present at the time David Miller was killed. It does not mention the death of Norm Peterson. Petitioner's Exhibit 7.

Crow cannot raise this issue as newly discovered evidence; he raised it during trial. Mr. Sergi brought a motion to dismiss at Crow's request, but he himself believed it was something to be addressed in cross-examination. RP 132-34. Crow did not claim this as error on direct appeal and has no basis in RAP 16.4(c) to raise it now. Even if this court reviews the claim, there are no grounds for reversal.

Durga was interviewed by the Olympia police on March 28, 2008, the day of the murders. The transcript of that interview is attached as Appendix F and authenticated by James Powers' declaration, Appendix K. At that very first interview, Durga told police that Crow was present and participated in the killings. A longer interview was conducted on October 15, 2008, at which the

prosecutor, James Powers, was present and asked questions. A complete transcript of that interview is attached as Appendix G, again authenticated by James Powers, Appendix L. In that interview, Durga again implicated Crow in the killings. Appendix G at 27-29, 34, 38, 82-84, 93-95, 99-102, 107. At trial, Durga testified consistently with his earlier account, although he had to be reminded repeatedly of his prior statements. RP 1120, 1124-27, 1131-37, 1141-43, 1154-56, 1161-65. His testimony put Crow at the scene and assisting with the murders of both victims. RP 1139-43, 1151-56, 1158-59.

On October 21, 2008, Durga entered a guilty plea to two counts of second degree murder. Appendix H, transcript of the plea hearing. He was sentenced on March 26, 2009. Appendix N, transcript of sentencing hearing. At no time did Durga express any claim that he had been threatened or pressured into testifying to anything that was not the truth. See *also* Appendix P, declaration of James Powers regarding Durga's trial testimony, and Appendix R, declaration of Detective (now Sergeant) Costello, attesting that no pressure was put on Durga to testify to anything other than the truth.

It is ludicrous to believe that Durga was threatened into implicating Crow in Miller's murder when he told the police that very thing the same day the murders occurred. There is no evidence that he had any contact with a prosecutor at that time or that a prosecutor would have been in a position to threaten him with anything. The fact that Durga carefully words his declaration to mention only Miller's killing implies that Crow was involved in killing Peterson, which means he had to have been present when Miller was being killed. And, as a reading of the Durga's statements shows, Durga always admitted to choking Miller into unconsciousness. He claimed that Crow hit Miller and was present while Durga choked him and Eke kicked him. Eke and Crow chased Norm Peterson while Durga was still choking Miller. Appendix F at 9-11; Appendix G at 81-94; RP 1140-49. Durga's declaration is consistent with statements he made to the police and the prosecutor, but it does not indicate how Durga was threatened into implicating Crow in Miller's killing. His trial testimony was consistent. RP 1138-44, 1149-60. Crow was charged as either a principal or an accomplice to the murder of Miller, and accomplice

liability is clearly proven by Durga's statements every time he was questioned.

D. Crow asserts that his appellate counsel was ineffective for failing to claim on appeal the ineffective assistance of trial counsel. The evidence does not support his claim.

A convicted criminal has the right to effective assistance of counsel on his first appeal of right. In re Pers. Restraint of Dalluge, 152 Wn.2d 772, 787, 100 P.3d 279 (2009) (*overruled in part on other grounds*, State v. Posey, ___ Wn.2d ___, 272 P.3d 840, 844 (2012)). Crow appealed, asserting ineffective assistance of trial counsel, but on different grounds than raised in this PRP. Appendix C at 9. In order to establish ineffective assistance of counsel, the defendant must prove that appellate counsel failed to raise issues which had merit and that he was actually prejudiced by the failure to raise or adequately raise the issues. Id. It is not ineffective assistance of counsel to fail to raise all nonfrivolous issues on appeal; "the exercise of independent judgment in deciding what issues may lead to success is the heart of the appellate attorney's role." Id. The standard for evaluating the performance of appellate counsel is the same as that

set forth in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Id. at 788.

An appellate court reviews a claim of ineffective assistance of counsel de novo based on the entire record below. There is a strong presumption that counsel provided adequate representation. State v. Pittman, 134 Wn. App. 376, 384, 166 P.3d 720 (2006)

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 (1998). As the Supreme Court noted, "This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687. "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Id. at 688. An appellant cannot rely on matters of legitimate trial strategy or tactics to establish that deficiency. State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). Moreover, "judicial scrutiny of counsel's performance

must be highly deferential.” Strickland, 466 U. S. at 689; *See also* State v. McFarland, 127 Wn.2d 332, 335, 899 P.2d 1251 (1995).

Further,

A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy.”

Strickland, 466 U. S. at 694-95.

Second, prejudice occurs when but for the deficient performance, the outcome would have been different. In re Personal Restraint Petition of Pirtle, 136 Wn.2d 467, 487, 965 P.2d 593 (1996).

It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test, and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding.

Strickland, 466 U.S. at 693 (internal quotation omitted). Thus, the focus must be on whether the verdict is a reliable result of the

adversarial process, not merely on the existence of error by defense counsel. Id. at 696. A reviewing court is not required to address both prongs of the test if the appellant makes an insufficient showing on one prong. State v. Fredrick, 45 Wn. App. 916, 923, 729 P.2d 56 (1989). "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . [then] that course should be followed [first]." Strickland, 466 U.S. at 697.

It is not ineffective counsel to refuse to present a defense not warranted by demonstrable facts. State v. Lottie, 31 Wn. App. 651, 655, 644 P.2d 707, 710 (1982).

A defendant is not entitled to perfect counsel, to error-free representation, or to a defense of which no lawyer would doubt the wisdom. Lawyers make mistakes; the practice of law is not a science, and it is easy to second guess lawyers' decisions with the benefit of hindsight. Many criminal defendants in the boredom of prison life have little difficulty in recalling particular actions or omissions of their trial counsel that might have been less advantageous than an alternate course. As a general rule, the relative wisdom or lack thereof of counsel's decisions should not be open for review after conviction. Only when defense counsel's conduct cannot be explained by any tactical or strategic justification which at least some reasonably competent, fairly experienced criminal defense lawyers might agree with or find reasonably debatable, should counsel's performance be considered inadequate. Such a finding of ineffective representation should reverse a defendant's conviction if counsel's conduct created a

reasonable possibility of contributing to that conviction.

State v. Adams, 91 Wn.2d 86, 91, 586 P.2d 1168, 1171 (1978)

Crow, then, must establish that his trial counsel was ineffective in order to show that his appellate counsel was ineffective. He brings a number of complaints against his trial counsel.

1. Crow claims his attorney spent a total of two hours with him in preparation for the trial and failed to adequately investigate his case.

Crow makes this argument by way of an unsworn petition. He includes as his Exhibit 8 two pages of the jail log documenting visits by Mr. Sergi. The State obviously has no independent knowledge of the amount of time counsel spent with Crow or what steps he took to investigate the case.

A defense attorney must, "at a minimum, conduct a reasonable investigation enabling [counsel] to make informed decisions about how best to represent [the] client." In re Pers. Restraint of Davis, 152 Wn.2d 647, 721, 101 P.3d 1 (2004) (quoting In re Pers. Restraint of Brett, 142 Wn.2d 868, 873, 16 P.3d 601 (2001)). "An attorney's action or inaction must be examined according to what was known and reasonable at the time the attorney made his choices and ineffective

assistance claims based on a duty to investigate must be considered in light of the strength of the government's case." Davis, 152 Wn.2d at 722 (citations omitted). Although failure to interview a witness to a crime may be deficient performance, counsel "need not interview every possible witness to have performed proficiently." Riley v. Payne, 352 F.3d 1313, 1318 (9th Cir. 2003), *cert. denied*, 543 U.S. 917, 125 S. Ct. 39, 160 L. Ed. 2d 200 (2004).

Defense counsel also has a duty to assist the client in evaluating a plea offer. RPC 1.2(a).

The degree and extent of investigation required will vary depending upon the issues and facts of each case, but we hold that at the very least, counsel must reasonably evaluate the evidence against the accused and the likelihood of a conviction of the case proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty.

State v. A.N.J., 168 Wn.2d 91, 111-12, 225 P.3d 956 (2010).

Crow has not presented any evidence that a plea offer was tendered. He also has not presented any evidence that, even if counsel did spend only two hours with him at the jail, that amount of time was insufficient to accomplish what needed to be done. Crow has attached to his petition, as Exhibit 9, several pages of notes from

a private investigator, so trial counsel must have retained that investigator. The State knows of no requirement that defense counsel personally investigate every issue or interview witnesses if a professional investigator does so as his agent. Nor is there any specific number of hours required to be spent with a defendant in preparation for trial. Most trial preparation may well not require face-to-face time with the defendant. An overall review of the trial record shows that defense counsel conducted a vigorous defense and was knowledgeable about the facts of the case and the law.

2. Defense counsel refused to call Aaron Adams as a defense witness.

Crow has included in his Appendix B a copy of page 1253 of the trial transcript. Right after the State rested, defense counsel told the court:

Your Honor, as I stated yesterday, and this is for the benefit as far as preserving a record, Mr. Crow. I talked to Mr. Adams, and my opinion is that he doesn't add anything. In fact, he adds to the State's case if he were to testify. And it's over Mr. Crow's objection that I'm not going to be calling him as a witness.

This decision can only be described as a tactical decision, which cannot form the basis of a claim of ineffective assistance of

counsel. Hendrickson, 129 Wn.2d at 77-78. While Crow may think Adams was a valuable witness, an experienced attorney would better understand the consequences of calling a particular witness and the damage that might cause to his client's case. It was good practice for trial counsel, who had talked to Adams, to refuse to call a witness who would harm the defense.

3. Counsel did not request a lesser-included instruction for manslaughter.

Manslaughter is a lesser included offense of premeditated murder. State v. Schaffer, 135 Wn.2d 355, 957 P.2d 214 (1998). (Neither first nor second degree manslaughter is a lesser included offense of felony murder. State v. Dennison, 115 Wn.2d 609, 626-27, 801 P.2d 193 (1990).) The State does not dispute a defendant's right to a lesser included instruction when the law and the facts of the case permit. Amendments V, VI, and XIV of the federal constitution require the trial court to give a requested instruction when the lesser included offense is supported by the evidence. Vujosevic v. Rafferty, 844 F.2d 1023 (1988). This right protects a defendant who might otherwise be convicted of a crime more serious than that which the jury believes he committed simply because it wishes to avoid setting him free. Keeble

v. United States, 412 U.S. 205, 212-13, 36 L. Ed. 2d 844, 93 s. Ct. 1993 (1973).

Under current Washington law, the defendant's right to a lesser included instruction is, in addition to his federal rights, a statutory right. RCW 10.61.006 provides:

In all other cases [those not involving crimes with inferior degrees, RCW 10.61.003] the defendant may be found guilty of any offense the commission of which is necessarily included within that with which he is charged in the indictment or information.

See *also* State v. Bowerman, 115 Wn.2d 794, 805, 802 P.2d 116 (1990). This right applies when (1) each element of the lesser offense is a necessary element of the crime charged, and (2) the evidence supports an inference that only the lesser included crime was committed. State v. Workman, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978); State v. Peterson, 133 Wn.2d 885, 891, 948 P.2d 381 (1997).

This two-prong test reflects consideration for the specific constitutional rights of the defendant, particularly his right to know the charges against him and to present a full defense. Peterson, 133 Wn.2d at 889. An inference that only the lesser offense was committed is justified “[i]f the evidence would permit a jury to

rationally find a defendant guilty of the lesser offense and acquit him of the greater.” State v. Fernandez-Medina, 141 Wn.2d 448, 456, 6 P.3d 1150 (2000) (quoting State v. Warden, 133 Wn.2d 559, 563, 947 P.2d 708 (1997)).

The party requesting the lesser included instruction must point to evidence that affirmatively supports the instruction and may not rely on the possibility that the jury will disbelieve the opposing party’s evidence. Fernandez-Medina, 141 Wn.2d at 456; State v. Leremia, 78 Wn. App. 746, 755, 899 P.2d 16 (1995).

First degree manslaughter is recklessly causing the death of another person, RCW 9A.32.060, and second degree manslaughter is causing the death of another person with criminal negligence. RCW 9A.32.070. Trial counsel correctly concluded that neither of these definitions could reasonably be applied to Crow’s situation, and, having considered it at length, chose not to request a lesser-included instruction for manslaughter. RP 1184-85.

Crow’s argument seems to be that the jury could have found, because of his intoxication, he was not able to form the intent to commit murder, but could have been negligent or reckless in causing

the death of Miller and Peterson. Petition at 8, 16. The mental states which give rise to criminal culpability are defined in RCW 9A.08.010:

- (a) INTENT. A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.
- (b) KNOWLEDGE. A person knows or acts knowingly when:
 - (i) he or she is aware of a fact, facts, or circumstances or result described in a statute defining an offense; or
 - (ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.
- (c) RECKLESSNESS. A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.
- (d) CRIMINAL NEGLIGENCE. A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and his or her failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

The decision to exclude lesser-included offenses is a decision that should be made after consultation with the defendant, but in the end it is a decision to be made by counsel. State v. Grier, 171

Wn.2d 17, 31-32, 246 P.3d 1260 (2011). Where trial counsel's decision can be described as legitimate trial tactics or strategy, and it was reasonable, it cannot be deficient performance. Id. At 33-34. Crow argues that "when the prongs of Ward are applied to this case", he is clearly prejudiced. Petition at 16. Presumably he is referring to State v. Ward, 125 Wn. App. 243, 104 P.3d 670 (2005), although he does not provide a citation. The court in Grier, however, disapproved the three-pronged test set forth in Ward, Id. at 38, finding that it was inconsistent with the standard of Strickland.

The Supreme Court followed Greir when it decided State v. Breitung, 173 Wn.2d 393, 267 P.3d 1012 (2011). In that case, it found that seeking a lesser-included instruction would have weakened the defendant's claim of innocence. Id. at 399-400.

Here, defense counsel declined to seek instructions for manslaughter because the facts did not support them. RP 1184-85. That is clearly a decision of strategy. As in Grier, Crow cannot establish prejudice because the jury found him guilty of second degree murder. "Assuming, as this court must, that the jury would not have convicted Grier of second degree murder unless the State

had met its burden of proof, the availability of a compromise verdict would not have changed the outcome of Grier's trial." Grier, 171 Wn.2d at 43-44.

Had trial counsel requested, and received, a lesser-included first degree manslaughter instruction, he would have been in the awkward position of arguing that Crow was drunk enough that he knew of a risk and disregarded it, but too drunk to form intent. Given the evidence, there was no way he could have argued with a straight face that Crow failed to be aware that a wrongful act might occur, as required for second degree manslaughter. Defense counsel correctly concluded, in a deliberately considered decision, that Crow was not entitled to lesser-included manslaughter instructions. This is the very essence of attorney strategy; it is not ineffective assistance of counsel.

4. Defense counsel did not seek to suppress the shoe print evidence.

On the back of one of the victims, Norm Peterson, was found the impression of a shoe. RP 909-11. A photo of that impression and the shoes Crow was wearing were submitted to the Washington State Patrol Crime Lab for comparison. RP 861, 865, 867, 876. The

photos were compared to Crow's shoes. RP 878, CP 56-57. The analyst concluded that neither of Crow's shoes could be eliminated as the source of the impression on Norm Peterson's back. RP 894. He further concluded that neither Durga's nor Eke's shoes could have made the impression. RP 895-96. Crow now argues for the first time that his trial attorney should have sought to suppress that evidence.

Crow argues that no witness could say that he stepped on Mr. Peterson, and therefore his counsel should have sought to suppress the evidence. But evidence is relevant if it has a tendency to make any issue of fact more or less probable. ER 401. All relevant evidence is admissible unless it is unfairly prejudicial, confusing, misleading, wastes time, or is cumulative. ER 402, 403. The footprint of Norm Peterson's back was part of the crime scene. The shoes Crow was wearing were relevant and admissible evidence. The shoe print analyst could not say definitely that Crow's shoe made the print, but it was possible. Neither of the other suspects could have left the print with the shoes they were wearing when arrested. Any lack of certainty about whether the shoe print was

made by Crow or not goes to its weight, not admissibility, and a motion to suppress would never have been granted. Defense counsel was not ineffective for failing to seek suppression.

Crow makes reference to having been pushed into a fire. There was disputed evidence that Crow had fallen or been pushed into a fire at the time Cover was beaten, which occurred on March 7, 2008, three weeks before the murders. RP 240, 335, 453, 1080, 1191. The likelihood that soot remained on his shoe by the time of the murders is remote, and Crow's argument that this somehow makes the shoe print on the victim's back irrelevant or inadmissible is not clear to the State.

In sum, trial counsel in no way provided ineffective assistance, and therefore it was not ineffective assistance on the part of appellate counsel to fail to raise these issues.

D. Crow is incorrect that a jury must be unanimous when deciding on the alternative means of committing a crime. The instruction regarding the special verdicts was incorrect under *State v. Guzman-Nunez*, but Crow was not prejudiced by the error and is not entitled to relief.

The concluding jury instruction, in pertinent part, reads as follows:

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.

You will also be given special verdict forms for the crimes charged in counts 1 and 2. If you find the defendant not guilty of these crimes, do not use the special verdict forms,

If you find the defendant guilty of count 1, you will then use the special verdict form I-A. In special verdict form I-A you will fill in the blank with the answer "yes" or "no" according to the decision you reach.

If you find the defendant guilty of count 2, you will then use the special verdict forms (sic) 2-A. In special verdict form 2-A you will fill in the blank with the answer "yes" or "no" according to the decision you reach.

Because this is a criminal case, to answer a special verdict form "yes," you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you are not unanimously satisfied beyond a reasonable doubt that "yes" is the correct answer to the question in a special verdict form, you must answer "no" on that special verdict form. The presiding juror must sign the special verdict form.

Instruction No. 30, CP 87-88. For both counts of second degree murder, the jury was instructed in the "to-convict" instructions that it must be unanimous that one or the other alternative, or both, were proved beyond a reasonable doubt, but that it was not required to be

unanimous as to which alternative was proved. Jury Instructions Nos. 18 and 19, CP 77-80.

In his argument, Crow has confused unanimity on alternative means with unanimity as to a special verdict. As long as sufficient evidence exists to support each alternative means of committing a charged offense, the jury need not be unanimous on which of those alternatives it convicted. State v. Ortega-Martinez, 124 Wn.2d 702, 707-08, 881 P.2d 231 (1994); State v. Berlin, 133 Wn.2d 541, 553, 947 P.2d 700 (1997). Here there was ample evidence to support both alternatives. The jury was properly instructed and the court correctly answered the jury question. CP 65.

Crow argues that the prosecutor told the judge that the jury must be unanimous. Petition at 18. That is true, but the prosecutor was referring to the requirement that the jury be unanimous to answer “guilty” or “not guilty”, not as to the alternative means. RP 1394-95. Crow further argues that State v. Petrich, 101 Wn.2d 566, 683 P.2d 193 (1984), requires unanimity as to the incident upon which it convicts. Petition at 19. He confuses distinct acts with alternative means. When the State presents evidence of more than one act

which would support a charge, but there is only one charge, the jury must be unanimous as to which act it finds proves guilt. Here there was only one killing of each victim, and thus one incident, but the facts supported both intentional second degree murder and second degree felony murder. Petrich is inapplicable to Crow's case.

Crow also argues that the instruction as to the special verdicts was incorrect. It is included in the language from Instruction No. 30 set forth above and is found in CP 87-88. Crow apparently misreads this instruction, because it says exactly what he argues is correct. And it was correct at the time it was given.

At the time of trial, Division III of the Court of Appeals had decided State v. Bashaw, 144 Wn. App. 196, 182 P.3d 451 (2008). That case held that the jury must be unanimous to answer a special verdict. On July 1, 2010, after Crow's trial, the Supreme Court reversed the Court of Appeals, and held that while the jury must be unanimous to answer "yes" to a special verdict, it need not be unanimous to answer "no." State v. Bashaw, 169 Wn.2d 133, 147, 234 P.3d 195 (2010).

At the jury instruction conference, there was a considerable

discussion of the Court of Appeals Bashaw decision, and State v. Goldberg, 149 Wn.2d 888, 72 P.3d 1083 (2003). RP 1174-81. The result was that the court gave exactly the instruction that the Supreme Court later decided was correct. Bashaw, 169 Wn.2d at 147. Crow's jury was specifically instructed that if it could not decide unanimously on "yes," it must answer "no." CP 88. Crow got exactly the instruction he argues that he should have.

On June 7, 2012, the Supreme Court reversed its holding in Bashaw and Goldberg. State v. Guzman-Nunez, 85789-0 (June 7, 2012). The jury should have been instructed that it must be unanimous to return a verdict on an aggravating factor. Therefore, both the instruction given, CP 88, and Crow's argument are incorrect. Nevertheless, he is not entitled to relief.

First, Crow did not take exception to Instruction No. 30 at trial, and cannot therefore raise it for the first time in a PRP. An instructional error may be raised for the first time on appeal only if it is

a “manifest error affecting a constitutional right.” RAP 2.5(a)(3); State v. Scott, 110 Wn.2d 682, 686-87, 757 P.2d 492 (1988); State v. Morgan, 163 Wn. App. 341, 261 P.3d 167 (2011).² In Bashaw, the court acknowledged that its holding was not based on a constitutional right but on common law precedent. Bashaw, 169 Wn.2d at 146 n. 7.

Second, Crow did not suffer any prejudice. The rule now is that the jury must be unanimous, and in this case, it clearly was, because it answered “yes” to the aggravating factors. CP 61-62. Had it not been unanimous, it would have answered “no.” Because he was not prejudiced by the incorrect jury instruction, he cannot prevail in a PRP. As argued above, he must show both error and “a complete miscarriage of justice.”

///

///

² Different panels of Division I of the Court of Appeals have reached different results on the constitutional basis of the instructional error. See State v. Ryan, 160 Wn. App. 944, 252 P.3d 895 rev. granted, 172 Wn.2d 1004 (2011); State v. Campbell, 163 Wn. App. 394, 260 P.3d 235 (2011).

IV. CONCLUSION

Crow cannot show prejudice from any of his claimed errors, and therefore cannot prevail on a PRP. All of the issues he raises are without merit. The State respectfully asks this court to deny the petition.

RESPECTFULLY SUBMITTED this 8th day of June, 2012.

JON TUNHEIM
Prosecuting Attorney



CAROL LA VERNE, WSBA#19229
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I certify that I served a copy of the Respondent's Brief, on the date below as follows:

Electronically filed at Division II

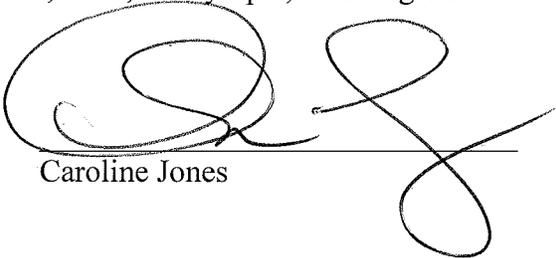
TO: DAVID C. PONZOHA, CLERK
COURTS OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA, WA 98402-4454

--AND TO--

TOMMY L. CROW, JR, (VIA USPS)
#773446
CLALLAM BAY CORR CTR
1830 EAGLE CREST WY
CLALLAM BAY, WA 98326

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

Dated this 8 day of June, 2012, at Olympia, Washington.



Caroline Jones

APPENDIX A

13

FILED
SUPERIOR COURT
THURSDAY

'08 OCT 21 P3:15

**SUPERIOR COURT OF WASHINGTON
FOR**

STATE OF WASHINGTON
Plaintiff

vs. Christopher Durga
Defendant.

BY _____ DEPUTY

NO. 08-1-00586-4

**STATEMENT OF DEFENDANT ON
PLEA OF GUILTY
(STTDFG)**

[Docket No. all on] #1

1. My true name is: Christopher Jay Durga
2. My age is: 22
3. I went through the 11th grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
 - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
 - (b) I am charged with: murder 2^o, murder 2^o

The elements are as set forth in the State's (sent amended original) information.

5. I UNDERSTAND I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:
 - (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
 - (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
 - (c) The right at trial to hear and question the witnesses who testify against me;
 - (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
 - (e) That I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
 - (f) The right to appeal a finding of guilt after a trial.

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

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
		123 - 220		123 - 220		
1	0	174 - 244	-	174 - 244	24 - 48 m	life 50k
2	0	174 - 244	-	174 - 244	24 - 48 m	life 50k
		123 - 220		123 - 220		

*(F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history has been filed with this statement. Unless I have attached a different statement, I stipulate and agree that the prosecuting attorney's statement is true, correct and complete, and that any federal or out of state convictions listed are properly classified under the laws of this state as a felony, that none of the convictions constitutes same criminal conduct, and I waive any and all challenges to that history. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is not more than 12 months. If this crime is a drug offense,

assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, and I am sentenced to more than 12 months, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.150 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody. If the crime I have been convicted of is not listed in the following chart and I am sentenced to more than 12 months, then there will be no period of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW	9 to 12 months or up to the period of earned release, whichever is longer.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

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

*see attached plea agreement incorporated
 BY REFERENCE TO FILING PER, CRIME VICTIM AGREEMENT, OF \$500
 DNA FEE OF \$100, AND AM AN APPROPRIATE
 RESTITUTION REQUESTED, SUCH AS FOR
 BURIAL EXPENSES*

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the state or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.
- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) Public assistance will be suspended during any period of imprisonment.

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

- [l] This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- [m]  The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.
- [n] If this crime involves a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in Attachment "A."
- [o] **For all sentencings on or after July 1, 2002, that involve a felony, or stalking under RCW 9A.46.110, or harassment under RCW 9A.46.020, or communicating with a minor for immoral purposes under RCW 9.68A.090, I will be required to provide a biological sample for purposes of DNA identification analysis, and will be assessed a \$100 fee for this purpose.**
- [p] If this is a crime of domestic violence, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- [q]  If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.

[r] The judge may sentence me under the special drug offender sentencing alternative (DOSAs) if I qualify under former RCW 9.94A.120(6) (for offenses committed before July 1, 2001) or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 6(e). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions.

 [s] If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

[t] If this crime involves the manufacture of methamphetamine, a mandatory clean-up fine of \$3,000.00 will be assessed. If this crime involves a felony violation of the Uniform Controlled Substances Act, then a mandatory \$1,000 drug enforcement fund penalty will be assessed, and shall be doubled if this is a subsequent controlled substances offense.

[u] If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.

[v] If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.

[w] If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8).

[x] The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence.

[y] I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts 1 and 2 will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

 [z] I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be

served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

① ①

[aa] I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

[bb] I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least 6 months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

7. I plead guilty to:

count I murder 2°
count II murder 2°
count _____

in the and (verdict) ~~original~~ Information. I have received a copy of that Information, discussed it with my attorney, and understand the nature of the charges to which I am pleading guilty.

8. I make this plea freely and voluntarily.

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

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

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement:

Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea. I do not believe I am guilty. However, I wish to plead guilty in order to take advantage of the State's plea offer. I agree that the State could produce sufficient evidence at trial from which a reasonable jury would likely find me guilty beyond a reasonable doubt of the above charges.

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

Chris Dugga
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

J. C. Parker
Deputy Prosecuting Attorney, WSBA # 1279
JAMES C. PARKER

[Signature]
Defendant's Lawyer, WSBA # 25022

COURT'S FINDINGS

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

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

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

Dated: 10/21/08

Anne Hirsch
JUDGE ANNE HIRSCH

INTERPRETER'S DECLARATION

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

Dated: _____

Interpreter

Location: Olympia, Washington

1
2
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4
5
6
7 **IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

NO. 08-1-00586-4

8 STATE OF WASHINGTON,

Plaintiff,

PLEA AGREEMENT

9 vs.

10 CHRISTOPHER J. DURGA,

11 Defendant.
12

13 THE PLAINTIFF, State of Washington, represented by Deputy Prosecuting Attorney James C.
14 Powers and Deputy Prosecuting Attorney Donald J. Smith Jr., enters into the following plea agreement with
15 the defendant, Christopher J. Durga. The defendant is represented by his attorney, Charles Lane.
16

17 **TERMS OF AGREEMENT**

18 **Defendant's Obligations:** The defendant's obligations under this agreement are as follows:

19 1. The defendant will cooperate fully with both State prosecutors and all law enforcement officers
20 in providing complete and truthful information at all times concerning the following: the defendant's
21 prior contacts with Bryan Dana Eke (hereinafter referred to as "Eke") and Tommy Lee Crow Jr.
22 (hereinafter referred to as "Crow"); the defendant's knowledge concerning past actions by Eke and
23 Crow during the period of his acquaintance with either one, including any statement made by Eke or
24 Crow in the presence of the defendant concerning such actions; any personal knowledge the defendant
25 has concerning any assault committed upon Scott Cover; any personal knowledge the defendant has
26

1 concerning the commission of any act of force or violence by Eke or Crow upon another person; any
2 statement made by Eke or Crow in the presence of the defendant concerning the commission of an act of
3 force or violence by Eke or Crow upon another person; defendant's actions and personal knowledge of
4 any events occurring during the four-week period prior to the deaths of David Miller and Norman
5 Peterson; any information the defendant has concerning the death of David Miller or the death of
6 Norman Peterson or concerning events leading to the death of either one, including full disclosure of the
7 defendant's involvement in the death of David Miller or the death of Norman Peterson or involvement in
8 any action taken toward the body of either one after death; full disclosure of the defendant's knowledge
9 concerning the involvement of any other person in the death of David Miller or the death of Norman
10 Peterson or in actions taken toward the body of either one after death; any statement made in the
11 defendant's presence by any other person concerning the death of David Miller or the death of Norman
12 Peterson; the defendant's actions from the time of the death of David Miller and the death of Norman
13 Peterson until the arrest of the defendant on March 28, 2008; the defendant's knowledge concerning the
14 actions and whereabouts of Eke or Crow from the time of the deaths of David Miller and Norman
15 Peterson until the defendant's arrest on March 28, 2008; any communication by Eke or by Crow to the
16 defendant following the defendant's arrest on March 28, 2008, regardless of whether such
17 communication was in person or through a third person, and regardless of whether such communication
18 was verbal or in writing. The defendant will provide one or more full and truthful ^{for} ~~tape~~-recorded *CD 10/17/08 CT*
19 interviews to law enforcement concerning his knowledge of the matters described above, as is necessary
20 to fully cover the topics detailed above. The defendant understands that State prosecutors will rely upon
21 these tape-recorded interviews to define what would constitute truthful testimony by the defendant under
22 oath in any trial or other court proceeding regarding any criminal charge filed against Bryan Dana Eke or
23
24
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1 Tommy Lee Crow Junior. The Plaintiff, State of Washington, agrees that such ~~tape~~-recorded interview
2 or interviews to law enforcement, taking place pursuant to this agreement as set forth above, shall not be
3 used either as substantive evidence or as impeachment against the defendant should this plea agreement
4 break down prior to the entry of guilty pleas by this defendant pursuant to this agreement. However, the
5 defendant understands that this exclusion agreement does not include any non-recorded or recorded
6 statement made by the defendant to law enforcement on or before March 28, 2008. Should this plea
7 agreement break down prior to the entry of guilty pleas by the defendant pursuant to this agreement, the
8 defendant understands that it is the intent of the prosecution to offer at any trial of the defendant in this
9 case the non-recorded and recorded statements of the defendant made on or before March 28, 2008.

10
11
12 2. The defendant will testify truthfully when called to testify as a witness under oath in any trial or
13 other court proceeding regarding criminal charges filed against Bryan Dana Eke. For purposes of this
14 obligation, truthful testimony is understood by the parties to be testimony consistent with statements
15 made by the defendant during the ~~tape~~-recorded interview or interviews to law enforcement pursuant to
16 this agreement, asserted by the defendant to constitute a truthful record of past events to the best of the
17 defendant's recollection.

18
19 3. The defendant will testify truthfully when called to testify as a witness under oath in any trial or
20 other court proceeding regarding criminal charges filed against Tommy Lee Crow Junior. For purposes
21 of this obligation, truthful testimony is understood by the parties to be testimony consistent with
22 statements made by the defendant during the ~~tape~~-recorded interview or interviews to law enforcement
23 pursuant to this agreement, asserted by the defendant to constitute a truthful record of past events to the
24 best of the defendant's recollection.
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1 3. The defendant will submit to pre-trial interviews conducted by the defense in the course of the
2 prosecution of a criminal charge or charges filed against Bryan Dane Eke or Tommy Lee Crow Jr..

3 4. The defendant understands that the Plaintiff, State of Washington, will not tolerate deception
4 from the defendant either in his statements to prosecutors or to law enforcement, or to the defense. If
5 any information the defendant provides is not truthful, or his testimony at a trial or other court
6 proceeding pursuant to this agreement is not truthful (regardless of whether the untruthfulness helps or
7 hurts the prosecution's case or any investigation), the State will move the Court to find by a
8 preponderance of the evidence that the defendant has materially breached this agreement by failing to be
9 truthful, thereby freeing the prosecution from its obligations under this agreement.

10 5. Upon the defendant providing the ^{per 10/15/08} ~~tape~~ recorded interview or interviews to law enforcement
11 _{DS CX}
12 described above, the State will then file a Second Amended Information charging one count of murder in
13 the second degree for the death of David Miller and a second count of murder in the second degree for
14 the death of Norman Peterson, but excluding any allegation of an aggravated circumstance. The
15 defendant will then enter a plea of guilt to each of the counts in the Second Amended Information. The
16 parties will agree to a delay of a sentencing hearing in this case until after a disposition of criminal
17 charges presently filed or hereinafter charged against Bryan Dana Eke in Thurston County Superior
18 Court Cause No. 08-1-00581-3, and after a disposition of criminal charges presently filed or hereinafter
19 charged against Tommy Lee Crow Jr. in Thurston County Superior Court Cause No. 08-1-00585-6. The
20 defendant will file a written waiver of speedy sentencing for purposes of that delay of sentencing.

21 6. The defendant shall remain in custody in the Thurston County Jail at all times during his
22 performance of his obligations under this agreement.
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1 **Prosecutor's Obligations:** The prosecution's obligations under this agreement are as follows:

2 1. If the defendant completely fulfills all of his obligations under this agreement as set forth above,
3 the State will recommend at the sentencing hearing in this cause that the Court impose a sentence of 132
4 months in prison for Count I, murder in the second degree, and to impose a sentence of 132 months in
5 prison for Count II, murder in the second degree, to run consecutive to the sentence for Count I. The
6 total period of incarceration recommended would be 264 months or 22 years in prison. The period of
7 community custody following release from prison would be for 24 to 48 months.

8
9 2. Should a disposition of charges against Bryan Dana Eke in Cause 08-1-00581-3 be reached
10 without the necessity of this defendant testifying in any court proceeding in that cause, or should a
11 disposition of charges against Tommy Lee Crow Jr. in Cause 08-1-00585-6 be reached without the
12 necessity of this defendant testifying in any court proceeding in that cause, and should the defendant
13 otherwise fulfill all of his obligations under this agreement, the State will make the sentence
14 recommendations detailed in the preceding paragraph.

15
16 3. If the defendant fails to fulfill any of his obligations set forth in this plea agreement, the State
17 will move the Court to find by a preponderance of the evidence that the defendant has materially
18 breached this plea agreement. Should the court find that the defendant has committed such a material
19 breach of the agreement prior to the defendant's entry of guilty pleas, the parties agree that this
20 agreement shall be null and void, and the prosecution of this defendant shall proceed as if this agreement
21 had never been made. Should the court find that the defendant has committed such a material breach of
22 the agreement after the defendant's entry of guilty pleas, the defendant understands and agrees that he
23 shall be held to his guilty pleas and found guilty pursuant to those pleas, but the State shall be free to
24 recommend the high end of the sentence range for each count of second-degree murder in the
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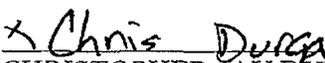
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Second Amended Information, and to recommend that the sentence for Count II run consecutive to the sentence for Count I in that Second Amended Information.

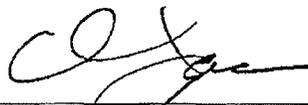
LIMITS OF AGREEMENT

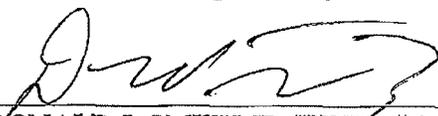
Both the State and the defendant understand that the judge is not bound by this agreement or by the prosecution's sentence recommendation. After entry of the defendant's guilty pleas, the Court will have the authority to impose any sentence permitted by law regardless of the level of the defendant's cooperation or compliance with this agreement.

DATED this 9th day of October, 2008.


CHRISTOPHER JAY DURGA
Defendant


JAMES C. POWERS/WSBA #12791
Deputy Prosecuting Attorney


CHARLES LANE/WSBA #25022
Attorney for Defendant


DONALD J. SMITH JR./WSBA # 24665
Deputy Prosecuting Attorney

APPENDIX B

7

FILED
SUPERIOR COURT
THURSTON

'09 FEB 18 P3:16

**SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY**

BY _____ DEPUTY

STATE OF WASHINGTON _____
Plaintiff

NO. 08-1-00581-3

**STATEMENT OF DEFENDANT ON
PLEA OF GUILTY
(STTDFG)**

vs.
Bryan Eke
Defendant.

[Docket No. ADD ON #1]

1. My true name is: Bryan Eke

2. My age is: 34

3. I went through the 8th grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

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

(b) I am charged with: Murder Second Degree w/ aggravating circumstances ~~circumstances of Murder Second Degree w/ aggravating circumstances + Arson Second Degree~~ (u)

The elements are as set forth in the State's (SECOND AMENDED) information.

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

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) That I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a finding of guilt after a trial.

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

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
F	1	134-234	#	134-234	24-48 mo	life 400,000
D	0	123-220	#	123-220	24-48 mo	life 200,000

*(F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history has been filed with this statement. Unless I have attached a different statement, I stipulate and agree that the prosecuting attorney's statement is true, correct and complete, and that any federal or out of state convictions listed are properly classified under the laws of this state as a felony, that none of the convictions constitutes same criminal conduct, and I waive any and all challenges to that history. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is not more than 12 months. If this crime is a drug offense,

assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, and I am sentenced to more than 12 months, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.150 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody. If the crime I have been convicted of is not listed in the following chart and I am sentenced to more than 12 months, then there will be no period of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW	9 to 12 months or up to the period of earned release, whichever is longer.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

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

21 years, 5 months if defendant complies w/ plea agreement, if not state will recommend 4 1/2 years 24-48 months community custody (134 months on count I, 123 months on count II consecutive to count I = total of 257 months or 21 years, 5 months)

STATEMENT ON PLEA OF GUILTY (STDFG)-3
CrR 4.2(g) (11/2008)

ORIGINAL OF PLEA AGREEMENT ATTACHED AND INCORPORATED HEREIN BY REFERENCE.

CONTINUE SENTENCING UNTIL AFTER TRIAL OR GUILTY PLEAS IN STATE V. CROW, THURSTON COUNTY CASE NO. 08-1-00585-6.

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the state or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.
- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) Public assistance will be suspended during any period of imprisonment.

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

- [l] This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- [m] The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.
- [n] If this crime involves a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in Attachment "A."
- [o] For all sentencings on or after July 1, 2002, that involve a felony, or stalking under RCW 9A.46.110, or harassment under RCW 9A.46.020, or communicating with a minor for immoral purposes under RCW 9.68A.090, I will be required to provide a biological sample for purposes of DNA identification analysis, and will be assessed a \$100 fee for this purpose.
- [p] If this is a crime of domestic violence, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

- [q] If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.
- [r] The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under former RCW 9.94A.120(6) (for offenses committed before July 1, 2001) or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 6(e). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions.
- [s] If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- [t] If this crime involves the manufacture of methamphetamine, a mandatory clean-up fine of \$3,000.00 will be assessed. If this crime involves a felony violation of the Uniform Controlled Substances Act, then a mandatory \$1,000 drug enforcement fund penalty will be assessed, and shall be doubled if this is a subsequent controlled substances offense.
- [u] If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.
- [v] If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.
- [w] If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8).
- [x] The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence.
- [y] I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts I and II will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

RE

[z] I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

[aa] I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

[bb] I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least 6 months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

7. I plead guilty to: Murder Second Degree *(PW)*
count Murder Second Degree with Agg.
count Murder Second Degree with Agg.
count ~~Arson Second Degree~~ *(PW) C.V. 100176*
in the 2nd AMENDED Information. I have received a copy of that information, discussed it with my attorney, and understand the nature of the charges to which I am pleading guilty.

8. I make this plea freely and voluntarily.

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

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

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime.

This is my statement: _____

Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

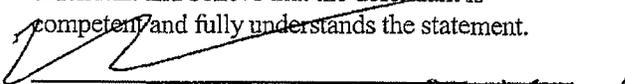
[] I do not believe I am guilty. However, I wish to plead guilty in order to take advantage of the State's plea offer. I agree that the State could produce sufficient evidence at trial from which a reasonable jury would likely find me guilty beyond a reasonable doubt of the above charges.

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


Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.


Deputy Prosecuting Attorney, WSBA # 12791
JAMES C. POWER


Defendant's Lawyer, WSBA # 1868

COURT'S FINDINGS

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

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

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

Dated: 2-18-09


JUDGE GARY R. DEOR

INTERPRETER'S DECLARATION

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

Dated: _____

Interpreter

Location: Olympia, Washington

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FILED
SUPERIOR COURT
THURSTON COUNTY

'09 FEB 18 P3:16

BY _____ DEPT

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

NO. 08-1-00581-3

STATE OF WASHINGTON,

vs.

BRYAN DANA EKE,

Plaintiff,

Defendant.

PLEA AGREEMENT

THE PLAINTIFF, State of Washington, represented by Deputy Prosecuting Attorney James C. Powers and Deputy Prosecuting Attorney Donald J. Smith Jr., enters into the following plea agreement with the defendant, Bryan Dana Eke. The defendant is represented by his attorney, Richard Woodrow.

TERMS OF AGREEMENT

Defendant's Obligations: The defendant's obligations under this agreement are as follows:

1. The defendant will cooperate fully with both State prosecutors and all law enforcement officers in providing complete and truthful information at all times concerning the following: the defendant's prior contacts with Tommy Lee Crow Jr. (hereinafter referred to as "Crow"); the defendant's knowledge concerning past actions by Crow during the period of his acquaintance with him, including any statement made by Crow in the presence of the defendant concerning such actions; any personal knowledge the defendant has concerning any assault committed upon Scott Cover; any personal knowledge the

1 defendant has concerning the commission of any act of force or violence by Crow upon another person;
2 any statement made by Crow in the presence of the defendant concerning the commission of an act of
3 force or violence by Crow upon another person; defendant's actions and personal knowledge of any
4 events occurring during the four-week period prior to the deaths of David Miller and Norman Peterson;
5 any information the defendant has concerning the death of David Miller or the death of Norman Peterson
6 or concerning events leading to the death of either one, including full disclosure of the defendant's
7 involvement in the death of David Miller or the death of Norman Peterson or involvement in any action
8 taken toward the body of either one after death; full disclosure of the defendant's knowledge concerning
9 the involvement of any other person in the death of David Miller or the death of Norman Peterson or in
10 actions taken toward the body of either one after death; any statement made in the defendant's presence
11 by any other person concerning the death of David Miller or the death of Norman Peterson; the
12 defendant's actions from the time of the death of David Miller and the death of Norman Peterson until
13 the arrest of the defendant on March 28, 2008; the defendant's knowledge concerning the actions and
14 whereabouts of Crow from the time of the deaths of David Miller and Norman Peterson until the
15 defendant's arrest on March 28, 2008; any communication by Crow to the defendant following the
16 defendant's arrest on March 28, 2008, regardless of whether such communication was in person or
17 through a third person, and regardless of whether such communication was verbal or in writing. The
18 defendant will provide one or more full and truthful digitally-recorded interviews to law enforcement
19 concerning his knowledge of the matters described above, as is necessary to fully cover the topics
20 detailed above. The defendant understands that State prosecutors will rely upon these digitally-recorded
21 interviews to define what would constitute truthful testimony by the defendant under oath in any trial or
22 other court proceeding regarding any criminal charge filed against Tommy Lee Crow Junior.
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1 2. The defendant will testify truthfully when called to testify as a witness under oath in any trial or
2 other court proceeding regarding criminal charges filed against Tommy Lee Crow Junior in Thurston
3 County Superior Court Cause No. 08-1-00585-6. For purposes of this obligation, truthful testimony is
4 understood by the parties to be testimony consistent with statements made by the defendant during the
5 digitally-recorded interview or interviews to law enforcement pursuant to this agreement, asserted by the
6 defendant to constitute a truthful record of past events to the best of the defendant's recollection.
7

8 3. The defendant will submit to pre-trial interviews conducted by the defense in the course of the
9 prosecution of a criminal charge or charges filed against Tommy Lee Crow Jr..
10

11 4. The defendant understands that the Plaintiff, State of Washington, will not tolerate deception
12 from the defendant either in his statements to prosecutors or to law enforcement, or to the defense. If
13 any information the defendant provides is not truthful, or his testimony at a trial or other court
14 proceeding pursuant to this agreement is not truthful (regardless of whether the untruthfulness helps or
15 hurts the prosecution's case or any investigation), the State will move the Court to find by a
16 preponderance of the evidence that the defendant has materially breached this agreement by failing to be
17 truthful, thereby freeing the prosecution from its obligations under this agreement.
18

19 5. The State will file a Second Amended Information charging one count of murder in the second
20 degree for the death of David Miller and a second count of murder in the second degree for the death of
21 Norman Peterson, but excluding any allegation of an aggravated circumstance. The defendant will then
22 enter a plea of guilt to each of the counts in the Second Amended Information. The parties will agree to
23 a delay of a sentencing hearing in this case until after a disposition of criminal charges presently filed or
24 hereinafter charged against Tommy Lee Crow Jr. in Thurston County Superior Court Cause No. 08-1-
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1 00585-6. The defendant will file a written waiver of speedy sentencing for purposes of that delay of
2 sentencing.

3 6. The defendant shall remain in custody in the Thurston County Jail at all times during his
4 performance of his obligations under this agreement.
5

6 **Prosecutor's Obligations:** The prosecution's obligations under this agreement are as follows:

7 1. If the defendant completely fulfills all of his obligations under this agreement as set forth above,
8 the State will recommend at the sentencing hearing in this cause that the Court impose a sentence of 134
9 months in prison for Count I, murder in the second degree, and to impose a sentence of 123 months in
10 prison for Count II, murder in the second degree, to run consecutive to the sentence for Count I. The
11 total period of incarceration recommended would be 257 months or 21 years and 5 months. The period
12 of community custody following release from prison would be for 24 to 48 months, or the period of
13 earned early release, whichever is longer.
14

15 2. Should a disposition of charges against Tommy Lee Crow Jr. in Cause 08-1-00585-6 be reached
16 without the necessity of this defendant testifying in any court proceeding in that cause, and should the
17 defendant otherwise fulfill all of his obligations under this agreement, the State will make the sentence
18 recommendations detailed in the preceding paragraph.
19

20 3. If the defendant fails to fulfill any of his obligations set forth in this plea agreement, the State
21 will move the Court to find by a preponderance of the evidence that the defendant has materially
22 breached this plea agreement. Should the court find that the defendant has committed such a material
23 breach of the agreement prior to the defendant's entry of guilty pleas, the parties agree that this
24 agreement shall be null and void, and the prosecution of this defendant shall proceed as if this agreement
25 had never been made. Should the court find that the defendant has committed such a material breach of
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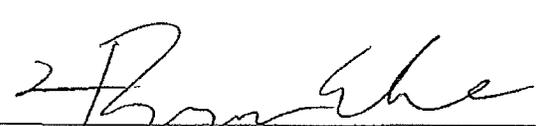
EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

1 the agreement after the defendant's entry of guilty pleas, the defendant understands and agrees that he
2 shall be held to his guilty pleas and found guilty pursuant to those pleas, but the State shall be free to
3 recommend the high end of the sentence range for each count of second-degree murder in the
4 Second Amended Information, and to recommend that the sentence for Count II run consecutive to the
5 sentence for Count I in that Second Amended Information.
6

7
8 **LIMITS OF AGREEMENT**
9

10 Both the State and the defendant understand that the judge is not bound by this agreement or by
11 the prosecution's sentence recommendation. After entry of the defendant's guilty pleas, the Court will
12 have the authority to impose any sentence permitted by law regardless of the level of the defendant's
13 cooperation or compliance with this agreement.

14 DATED this 18th day of February, 2009.
15

16 
17 _____
18 BRYAN DANA EKE
19 Defendant

16 
17 _____
18 JAMES C. POWERS/WSBA #12791
19 Deputy Prosecuting Attorney

19 
20 _____
21 RICHARD WOODROW/WSBA #18680
22 Attorney for Defendant

19 
20 _____
21 DONALD J. SMITH JR./WSBA # 24665
22 Deputy Prosecuting Attorney

APPENDIX C

COURT OF APPEALS
DIVISION II

10 OCT -5 AM 9:14

STATE OF WASHINGTON
BY *sp*

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

STATE OF WASHINGTON,
Respondent,
v.
TOMMY LEE CROW, JR.,
Appellant.

No. 39075-2-II

UNPUBLISHED OPINION

SWEENEY, J. — This appeal follows a successful prosecution for two counts of second degree murder and one count of second degree arson. The defendant assigns error to the trial judge's decision to allow evidence of an earlier assault on the question of motive. We conclude that the judge properly admitted this evidence. The defendant also assigns error to two of the court's instructions, one oral, limiting the use of the "prior bad acts" evidence (the earlier assault) and the second instructing the jury on the legal requirements for accomplice liability. We conclude that both instructions were proper statements of the law and that each allowed the defendant to argue his theory of the case. We therefore affirm the convictions.

FACTS

Tommy Lee Crow, Jr., along with Bryan Eke and Christopher Durga, assaulted Scott Cover with a baseball bat in early March 2008; they severely injured him. Mr. Cover wound up in the hospital for six days. Justin Van Horn and Karen Ann Schaeffer, both acquaintances of Mr. Cover, visited him in the hospital. Mr. Cover asked Ms. Schaeffer to tell Mr. Crow and Mr. Eke that he had not told police that they were responsible for the assault.

David Miller saw the assault on Mr. Cover. Officer Bryan Henry arrested Mr. Miller on an unrelated outstanding warrant, and, while in custody, Mr. Miller told Officer Henry that Mr. Eke and Mr. Durga had assaulted Mr. Cover.

On March 27, 2008, Officer Henry found Mr. Durga and followed him to a campsite in the woods where Mr. Durga lived. Officer Henry told Mr. Durga that he had information that Mr. Durga was involved with Mr. Cover's assault and that a baseball bat had been used. Officer Henry had previously seen a baseball bat at Mr. Durga's campsite, and asked him about it; Mr. Durga gave the bat to Officer Henry, who then left.

Mr. Durga told Mr. Crow and Mr. Eke that the police had taken the bat. The three were upset and asked around about who had told police that they assaulted Mr. Cover. They ultimately confronted Mr. Miller and accused him of telling police about Mr. Cover's assault. One of the three drew a line in the dirt with his shoe and said to Mr. Miller, "You've crossed the line." 5 Verbatim Report of Proceedings (VRP) at 828. Another said, "I'm gonna fuck you up." 5 VRP at 831.

Later that evening, around 10:30 PM to 11:00 PM, Messrs. Crow, Eke, and Durga discussed how to resolve the situation and decided to murder Mr. Miller and burn his body.

The three went to Mr. Miller's camp around 1:00 AM on March 28. Mr. Crow confronted Mr. Miller, "Why did you turn us in. I thought we were family?" 6 VRP at 1152. Mr. Crow struck Mr. Miller in the face, and Mr. Durga choked him until he was unconscious. Mr. Durga then dragged Mr. Miller's body into a campsite fire. Norman Peterson showed up at Mr. Miller's camp and saw Mr. Miller's body halfway into a fire. Mr. Crow struck Mr. Peterson in the head with a tree limb, wrestled him to the ground, choked him, and eventually threw him in the fire with Miller. Both Mr. Crow and Mr. Peterson died from asphyxia, most likely by strangulation.

The State charged Mr. Crow with two counts of second degree murder and one count of second degree arson. The trial judge permitted the State to present evidence of Mr. Crow's earlier assault on Mr. Cover. A jury found Crow guilty on all counts.

DISCUSSION

PRIOR BAD ACTS EVIDENCE

Mr. Crow first argues that the trial court erred in admitting evidence of his earlier assault on Mr. Cover.

We review a trial court's decision to admit evidence for abuse of discretion. *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997), *cert. denied*, 523 U.S. 1008 (1998). Here the questions are whether evidence of Mr. Cover's prior assault was first proved by a preponderance of the evidence; next whether that evidence tended to show something other than propensity to commit these crimes (here motive); and, finally, whether the court appropriately balanced the probative value of this evidence against its prejudicial impact on the jury. *State v. Pirtle*, 127 Wn.2d 628, 648-49, 904 P.2d 245 (1995), *cert. denied*, 518 U.S. 1026 (1996).

Evidence of prior bad acts may not be admitted to show that the defendant had the propensity to commit the crime with which he is charged. *State v. Wade*, 98 Wn. App. 328, 334, 989 P.2d 576 (1999). But that same evidence is admissible to show motive, even if the evidence also shows propensity. *Wade*, 98 Wn. App. at 333. Before allowing the evidence, the court must find that the misconduct actually occurred; it must identify the purpose for the evidence; it must determine that it shows something other than propensity to commit the crime; and it must balance the probative value of the evidence against any unfair prejudice to the defendant. *Pirtle*, 127 Wn.2d at 648-49.

Mr. Crow first contends that the State failed to prove that he was involved in the earlier assault. The test here is whether there is substantial evidence to support the court's finding that he was involved. ER 104(a) (trial judge must resolve preliminary questions of fact necessary for the admissibility of evidence); *State v. Benn*, 120 Wn.2d 631, 653, 845 P.2d 289, *cert. denied*, 510 U.S. 944 (1993); *State v. Karpenski*, 94 Wn. App. 80, 102-03, 971 P.2d 553 (1999), *rev'd on other grounds*, *State v. C.J.*, 148 Wn.2d 672, 63 P.3d 765 (2003). And that turns on whether the State met its burden of production; that is whether the State produced evidence, which if believed, supported the court's finding that Mr. Crow was involved in the earlier assault. *State v. Nelson*, 152 Wn. App. 755, 770, 219 P.3d 100 (2009), *review denied*, 168 Wn.2d 1028 (2010). And the evidence here easily meets this test.

Mr. Van Horn testified that after he visited Mr. Cover in the hospital, he crossed paths with Mr. Crow and Mr. Eke. They claimed responsibility for Mr. Cover's assault and threatened that they would also put Mr. Van Horn in the hospital. Ms. Schaeffer testified that, while visiting Mr. Cover in the hospital, he asked her to tell Mr. Crow and Mr. Eke that he had not

reported their assault to police. And Mr. Cover testified that he remembered Mr. Crow standing over him and hitting him over the legs and back with a baseball bat. Mr. Cover also identified Mr. Crow and Mr. Eke as his assailants, from two photomontages. Substantial evidence supports the trial court's finding that Mr. Crow was involved with the assault.

Mr. Crow next argues that evidence of his involvement in Mr. Cover's assault was irrelevant to show motive and therefore only showed propensity. Our review of this record also leads us to agree with the court that the evidence tended to show motive. "Motive is an inducement which tempts a mind to commit a crime." *State v. Boot*, 89 Wn. App. 780, 789, 950 P.2d 964, *review denied*, 135 Wn.2d 1015 (1998). And evidence of prior assaults is admissible to show motive, if motive is relevant. *State v. Powell*, 126 Wn.2d 244, 260, 893 P.2d 615 (1995). Here it certainly was.

Evidence of Mr. Cover's assault tended to show Mr. Crow's motive to murder Mr. Miller. The earlier assault shows why Mr. Crow looked to punish Mr. Miller. And Mr. Peterson's murder followed from his walking in on Mr. Cover's murder.

Finally, balancing the probative value of this evidence against any potential prejudice is uniquely a trial court function, which we will not second guess here. *State v. Scherner*, 153 Wn. App. 621, 642, 225 P.3d 248 (2009), *review granted*, 168 Wn.2d 1036 (2010). And the probative value of this evidence easily outweighs any attendant prejudice, given the nature of the crimes with which Mr. Crow was charged and the circumstances of the earlier assault. The trial court properly admitted this evidence.

PRIOR BAD ACTS INSTRUCTION

Mr. Crow next contends that the court's instruction to the jury to limit consideration of the prior bad acts evidence (the earlier assault) permitted the jury to use the evidence without limitation. He complains that the court did not limit or provide direction about which of the three crimes the evidence pertained to, and as a result, the instruction amounted to a comment on the evidence. Mr. Crow also argues that the court's limiting instruction effectively told the jury that Mr. Crow was involved with the earlier assault on Mr. Cover and thereby "removed the material fact of whether Crow was associated with this evidence." Br. of Appellant at 19. From this he asks us to review this assignment of error in the first instance here on appeal because our state constitution prohibits the trial court from commenting on the evidence. WASH. CONST. art. IV, § 16 ("Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law").

Of course, the function of a judge in a jury trial is limited to passing and instructing on questions of law (with the notable exception of the findings ER 104 required). *State v. Hughes*, 106 Wn.2d 176, 193, 721 P.2d 902 (1986); WASH. CONST. art. IV, § 16. So, for that reason, the court is not permitted to comment on the evidence. Mr. Crow assigns error to the court's decision to give this limiting instruction:

I have allowed evidence and will allow evidence regarding an earlier assault upon Scott Cover to be admitted in this case for only a limited purpose. This evidence may be considered by you only on the issue of defendant's motive. You may not consider it for any other purpose. Any discussion of this evidence during your deliberations must be consistent with this limitation.

2 VRP at 326-27. First, the instruction is a comment on the evidence and an appropriate comment at that. The judge told the jury not to consider this prior bad acts evidence for anything

other than motive. Second, this assignment of error in the first instance, here on appeal, highlights why it is important that the lawyers make these objections in the trial court. ER 103; CrR 6.15(c). A factual issue at trial was Mr. Crow's motive to murder. The earlier assault explained a motive. Objections at trial that the limiting instruction was not specific enough or not sufficiently categorical would have permitted the court to further refine the wording. But those objections were not made—and may well have not been made—because everyone understood, given the context here, what motive and what crime was at issue.

Finally, the court found as a matter of preliminary fact, which ER 104 requires, that Mr. Crow had assaulted Mr. Cover earlier. *Karpenski*, 94 Wn. App. at 102-03. The court was required to do so by the rules of evidence. And, significantly, it was not necessary to submit the question of the earlier assault to a jury for some finding beyond a reasonable doubt because Mr. Crow was not charged with the earlier assault. ER 104(a).

In sum, the instruction appears to do exactly what ER 404(b) requires—limit consideration of the prior bad acts evidence. It is modeled on 11 *Washington Practice: Washington Pattern Jury Instructions: Criminal* 5.30, at 180-81 (2008) (WPIC). The wording did not convey the trial court's personal belief but rather limited consideration of certain evidence in accordance with ER 404(b). And any requests for fine tuning should have been made in the trial court, not here on appeal. ER 103.

ACCOMPLICE LIABILITY INSTRUCTION

Mr. Crow next assigns error to the court instruction to the jury on accomplice liability, instruction 11. He argues that it allowed the jury to convict him as an accomplice based on mere presence and thereby relieved the State of its burden to prove he committed an overt act.

The court instructed that:

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 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 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.

Clerk's Papers (CP) at 74. This instruction required the jury to find more than that Mr. Crow assented to the crimes or was simply present. It required the jury to find that he knowingly promoted or facilitated the crime by aiding or agreeing to aid in its commission. It properly informed the jury that mere presence and knowledge of the criminal activity alone does not satisfy the requirements of accomplice liability. But that said, presence can be enough if by being present, one stands ready to assist in the crime. *State v. Luna*, 71 Wn. App. 755, 759, 862 P.2d 620 (1993).

Mr. Crow argues, nonetheless, that the court failed to exclude "other situations, such as when a person is present and unwilling to assist but approves of the crime. . . . [and it failed to exclude] presence coupled with silent assent or silent approval, with the result that a person who is present and unwilling to assist, but who silently approves of the crime, could be convicted." Br. of Appellant at 24. Again, Mr. Crow did not raise these concerns in the trial court where the judge could have done something about them—assuming that the court would have tweaked or amended the instruction.

No. 39075-2-II

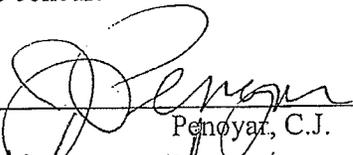
But even if Mr. Crow objected, the trial court would have been well within its legal authority to instruct as it did. The instruction correctly states the law. *See State v. O'Neal*, 126 Wn. App. 395, 418-19, 109 P.3d 429 (2005), *aff'd*, 159 Wn.2d 500, 150 P.3d 1121 (2007); *State v. Mangan*, 109 Wn. App. 73, 78, 34 P.3d 254 (2001). It does not allow conviction for mere presence because it specifically required something more.

Finally, Mr. Crow contends his lawyer was ineffective for failing to raise the issues we have discussed here in the first instance on appeal. We need not address that challenge given our disposition here.

We affirm the convictions.

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

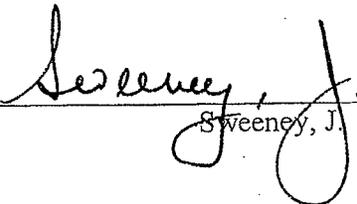
We concur:



Penoyar, C.J.



Worswick, J.



Sweeney, J.

APPENDIX D

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FILED
SUPERIOR COURT
THURSTON COUNTY, WA
2011 MAR 21 AM 11:13
BETTY J. GOULD, CLERK

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

TOMMY CROW, JR.,

Appellant.

No. 39075-2-II

MANDATE

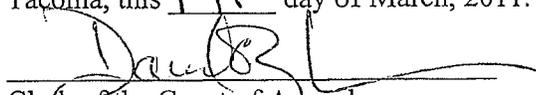
Thurston County Cause No.
08-1-00585-6

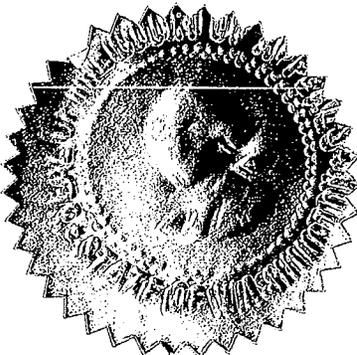
The State of Washington to: The Superior Court of the State of Washington
in and for Thurston County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on October 5, 2010 became the decision terminating review of this court of the above entitled case on March 2, 2011. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs have been awarded in the following amount:

Judgment Creditor: State of Washington - \$50
Judgment Creditor: A.I.D.F. - \$8,454.97
Judgment Debtor: Tommy Crow, Jr. - \$8,504.97

IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Court at
Tacoma, this 14th day of March, 2011.


Clerk of the Court of Appeals,
State of Washington, Div. II



09-9-10581-5

APPENDIX E

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

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BETTY J. GOULD, CLERK

BY DM
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7 **IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

NO. 08-1-00581-3

8 STATE OF WASHINGTON,
9 Plaintiff,

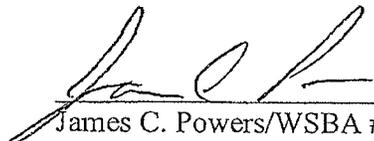
10 vs.

11 BRYAN DANA EKE,
12 Defendant.

MOTION FOR HANDWRITING EXEMPLAR

13 COMES NOW James C. Powers, Deputy Prosecuting Attorney in and for Thurston County, State of
14 Washington, and moves the Court for an Order requiring the defendant, BRYAN DANA EKE, to provide
15 specimens of his handwriting in a handwriting exemplar form provided either by Olympia Police Detective
16 Samuel Costello or by another person authorized by Detective Costello to obtain the handwriting specimens
17 from the defendant. This motion is based upon the attached declaration of James C. Powers and Criminal
18 Rule 4.7(b)(2)(vii).

19 DATED this 30th day of January, 2009.

20
21 
22 James C. Powers/WSBA #12791
23 Deputy Prosecuting Attorney
24
25
26

MOTION FOR HANDWRITING EXEMPLAR

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

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

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BETTY J. GOULD, CLERK

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

NO. 08-1-00581-3

8 STATE OF WASHINGTON,
9 Plaintiff,

10 vs.

DECLARATION OF JAMES C. POWERS

11 BRYAN DANA EKE,
12 Defendant.

13 STATE OF WASHINGTON)
14 COUNTY OF THURSTON)

15 James C. Powers declares and affirms:

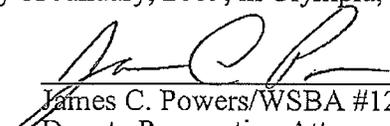
16 I am a Deputy Prosecuting Attorney for Thurston County, Washington, representing the Plaintiff in
17 the above-entitled cause. The defendant, BRYAN DANA EKE, is currently charged in the above cause with
18 2 counts of Murder in the Second Degree and 1 count of Arson in the Second Degree. The State has
19 received documents from a prisoner in the Thurston County Jail claimed to be writings of defendant Eke
20 voluntarily passed to this prisoner as communications between the two. The writings address the alleged
21 events which are the basis for the above charges. In the writings, there are purported statements by the
22 defendant concerning his actions at the time of the alleged murders inconsistent with a statement the
23 defendant initially provided to law enforcement in their investigation of the murders. The State had no prior
24 knowledge of the existence of these writings, or the fact of communications between this prisoner and
25 defendant Eke, prior to being first shown the writings.

26 The State seeks samples of the defendant's handwriting in the form of a handwriting exemplar to be
used for comparison and analysis by a handwriting expert as part of the continuing investigation of this

1 matter. Superior Court Criminal Rule 4.7(b)(2)(vii) states as follows: "Notwithstanding the initiation of
2 judicial proceedings, and subject to constitutional limitations, the court on motion of the prosecuting
3 attorney or the defendant may require or allow the defendant to: ... (vii) provide specimens of the defendant's
4 handwriting." In State v. Miller, 74 Wn. App. 334, 341, 873 P.2d 1197 (1994), the appellate court held that
5 a handwriting exemplar order is justified if the prosecution makes a showing of reasonable necessity.
6 According to the appellate court, such a showing is made if the court finds the exemplar would be highly
7 relevant and useful to the State's case, even when there is other evidence available to show that the
8 defendant wrote the documents at issue, since an exemplar provides a known sample of the defendant's
9 handwriting. Miller, 74 Wn. App. at 341. The evidence described above would obviously be "highly
relevant" and "useful" in the present case, for the reasons noted above.

10 I certify (or declare) under penalty of perjury under the laws of the State of Washington that the
11 foregoing is true and correct to the best of my knowledge

12 DATED and signed this 30th day of January, 2009, in Olympia, Washington

13 
14 James C. Powers/WSBA #12791
Deputy Prosecuting Attorney

FILED
SUPERIOR COURT
THURSTON COUNTY

09 FEB -5 P12:07

BY _____ DEPUTY

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<i>IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY</i>	
STATE OF WASHINGTON,	Plaintiff,
vs.	
BRYAN DANA EKE,	Defendant.

NO. 08-1-00581-3

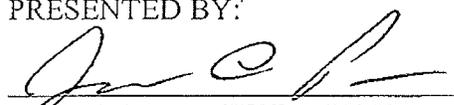
ORDER FOR HANDWRITING EXEMPLAR

THIS MATTER having come upon the motion of James C. Powers, Deputy Prosecuting Attorney in and for Thurston County, State of Washington, for an Order for a handwriting exemplar from the defendant, BRYAN DANA EKE, and the defendant being present personally and through his attorney, Richard Woodrow, and the Court having examined the files and records herein, including the Declaration of James C. Powers submitted in support of the motion, and being fully advised in the premises of that motion, it is hereby

ORDERED that, pursuant to CrR 4.7(b)(2)(vii), the defendant, BRYAN DANA EKE, shall provide specimens of his handwriting in a handwriting exemplar form provided either by Olympia Police Detective Samuel Costello or by another person authorized by Detective Costello to obtain the handwriting specimens from the defendant.

DATED this 5 day of February, 2009.


JUDGE GARY R. TABOR

PRESENTED BY:

James C. Powers/WSBA #12791
Deputy Prosecuting Attorney

APPROVED AS TO FORM

Richard Woodrow/WSBA #18680
Attorney for Defendant

COPY TO PROSECUTING ATTORNEY

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

Olympia Police Department
Follow-Up Report

Reporting Officer: S.A. Costello
Date of Report: 2-9-09

Case # 2008-2501

Follow-Up Investigation-

On 2-6-09 I conducted follow-up investigation into this case. Senior Deputy Prosecutor J. Powers advised me that one of the suspects in these crimes, identified as Bryan D. Eke, had been corresponding in writing with another inmate identified as Anthony J. McKague (see previous follow-up report). On the listed date at about 1530 hours I secured Eke from the TCSO Jail and escorted him to the Thurston County Sheriff's Office where I spoke with him. Present at that time were Eke, Detective R. Gies and I.

The contact was pursuant to a court order issued in Thurston County Superior Court directing Eke to provide samples of his handwriting for analysis against writings thought to be attributed to him which were turned over by Anthony J. McKague. Eke's attorney, Mr. R. Woodrow, was aware of the order and chose not to be present when I contacted Eke. I presented Eke with the order and he had some difficulty understanding it because of the legal manner in which it was written. He further told me that he had not heard anything about this from his attorney. He was compliant however and stated that he'd do anything he was supposed to. I explained that the order meant that a judge had ordered him to provide samples of his handwriting and that his attorney was aware of the order and that I was talking to him. Eke agreed to provide the samples. It should be noted that the contact with Eke was recorded using a digital recorder for purposes of propriety. A transcript of that recording will be attached to the report.

At about 1535 hours I advised Eke of his Miranda Warnings and then stated several times very clearly that I did not intend to ask him any questions and that it would be best if he did not say anything at all to me about the case. The one question I did ask Eke is whether he ever wrote anything in the jail with just a pencil lead. Eke said that he had never used only the lead. He admitted that he'd written things in jail but said he'd used one of the small issued jail pencils to complete all of that writing.

At the request of the handwriting analysis expert, Commander J. Upton with the Lacey Police Department, I typed out portions of the original documents authored by Eke and McKague. This was to offer a non-handwritten sample of the questionable writing to Eke so that he might reproduce it without viewing the questioned writing. I also requested that Eke complete the WSP handwriting exemplar minus the last (page 4) page which is case specific and was unnecessary because it had been completed with the typed examples offered to Eke described above.

Eke began on the typed exemplar I'd produced at about 1540 hours using a small jail issued pencil which he used for much of the completion of both writing samples. Eke wrote very, very slowly at first and began writing more fluidly as he wrote more. He completed most of the typed

exemplar using the small pencils alternately. Detective Gies sharpened one of the two smaller pencils twice as Eke wrote. At one point (noted below) I had Eke use just a pencil lead which I broke out of a pencil (as McKague had demonstrated) to write a short section of the typed exemplar. Eke complained after writing the short segment that his fingers hurt from doing it that way. He did not want to continue that way.

Once the exemplars were complete, I seized the used pencils, leads and related paraphernalia which has been logged as evidence at OPD. Logged as evidence were:

- Pencil #1 used intermittently to complete samples marked E1b-E6b
- Pencil #2 used intermittently to complete samples marked E1b-E6b
- Pencil #3 and associated lead; lead broken out to complete small section marked E6c

I placed the exemplars and evidence in a temporary evidence locker at the OPD Detective facility until 2-9-09. I then used temporary markings (stickers) to correlate the original documents, the typed exemplar, the handwriting samples provided by Eke, and the WSP exemplar. The documents are marked in two ways. I placed small orange decals on the documents which indicate how one piece of writing corresponds to another (as detailed below). The other tags (pink, purple, yellow, and blue) are used to indicate the overall content in each document. The documents and writing are detailed as follows:

Multi-colored tags:

Blue= original documents as presented by Attorney Carl Hack and attributed to Bryan Eke and Anthony McKague.

Yellow= document which contains sample questions and answers taken from the original documents which was presented to Eke for him to reproduce.

Pink= Eke's handwriting as completed pursuant to the typed text he was given in the yellow tagged document.

Purple= WSP handwriting exemplar completed by Eke.

Green= envelope containing additional documents attributed to Eke and McKague not used in this examination.

Orange tags (as marked):

- 1a typed correlates with E1b completed by Eke
- 2a typed correlates with E2b completed by Eke
- 3a typed correlates with E3b completed by Eke
- 4a typed correlates with E4b completed by Eke
- 5a typed correlates with E5b completed by Eke
- 6a typed correlates with E6b completed by Eke
- E6c completed with the small lead by Eke

So, to be clear, the documents marked 1-6 with orange stickers are the original documents obtained from Mr. Hack. They correspond with the typed exemplar marked with orange stickers marked 1a-6a. 1a-6a correspond with the samples marked 1b-6b provided by Eke. 6c is a short sample of Eke's writing with only the pencil lead.

**Status: Refer to the Thurston County Prosecuting Attorney's Office ATTN: Senior DPA
Jim Powers for review and addition to the main case file.**

Document Examination
Commander Joe Upton
Lacey Police Department

Date: 02-17-2009
Case: OPD 2008-2501
Subject(s): Bryan D. Eke
 Anthony J. McKague

Comparison of the documents was conducted, when necessary, using a Bausch & Lomb stereo zoom microscope set at low power magnification. Characteristics looked for include (where applicable): writing line quality, pressure, slant, spacing, size, baseline orientation, pen lifts, pen adjustments, alignment, abbreviations, punctuation, letter form, number form, embellishments, initial strokes, terminal strokes, and the connections between letters.

I have examined copies of the questioned documents labeled Q1 through Q3. (see attached copies) I have also viewed the originals of these documents.

I have examined copies of the known writing of Anthony McKague labeled K1 through K5. (see attached copies) I have also viewed the originals of these documents.

I have examined copies of the known writing of Bryan Eke labeled K6 through K9. (see attached copies) I have also viewed the originals of these documents.

I have carefully compared the questioned items with the known documents, and based on the available writing I have formed the following opinions:

1. I am unable to determine what involvement, if any, either Bryan Eke or Anthony McKague may have had in writing the questioned items.



Definitions of Certainty in Handwriting Opinions

Positive Identification: There is no stronger opinion that can be expressed by a document examiner. As far as the document examiner is concerned, the subject has written the questioned material. There is excellent agreement in all important aspects of the writing and a lack of any significant or unexplained differences.

Highly Probable: There is agreement in most important aspects of the writing, but the presence of differences or the absence of some feature(s) are noted. This opinion is only slightly less than a positive identification. Although the document examiner is virtually certain that the subject wrote the questioned material, he does feel there is a remote possibility that the subject may not be responsible.

Probable: There are a number of significant similarities between the questioned and known writings, but there are also several differences or absences of features. The evidence falls considerably short of the virtual certainty category, yet still points rather strongly towards the subject. There is more evidence for than against, more likely than not.

Indications: There are some features in agreement, but also the presence of many differences. The body of questioned writing may also have very few features which are significant for identification purposes, but those few features are in agreement with the known writing.

No Evidence to Indicate: There is a lack of agreement in the features and the differences between the known and questioned writings cannot be reconciled. This opinion includes the idea that the subject could not be eliminated from consideration as a possible writer of the questioned materials.

Unable to Determine: The document examiner is unable to form an opinion based on any number of factors, including lack of identifying characteristics in the questioned or known writing, insufficient known writing samples, or conflicting evidence.

Positive Elimination: The most difficult determination that a document examiner can make because it is not often possible to ascertain the true ability and range of variation of a person, possible effect of intentional disguise, effects of intoxicants or medications, illness, or age. This opinion carries that same degree of certainty of a positive identification.

Question-

How did they leave them in the tent outside what. Did pap die cuz the smoke fire or strangle. There some important details I need to know for my statement to be right. What did yall say afterward. I also need to know what I can find out from Tommy that will help

Answer-

Don't know how he died nothing was said afterward we didn't talk about it

Question-

Why did they drag them over there. I dont believe what he said about the rain do you know if they had it all planned out or was it the spure of the moment. Where were you. Oh I forgot to tell ya that Tom is saying you told on him. I dont care cuz they are trying to blame it all on you. Did you notice if the tent actually burnt all the way or did you leave before you could see.

Answer-

It wasn't raining, no I don't think so. "They had it planned" Left before

Question-

I flush everything I write cuz it's a good habit. That sux having nightmares. Is there anything you would of done different. How did Tom and Chris act after yall burnt them up, did they atleast felt guilty. You know they are bragging about that shat. How no one will mess with yall cuz yall are labeled murderers. Id hate to have that reputation. Did you get any of your stuff back or what

Answer-

Never brought Chris or tom to my place, and introduced them to Pop's + Norm should've just let them find their own place to camp

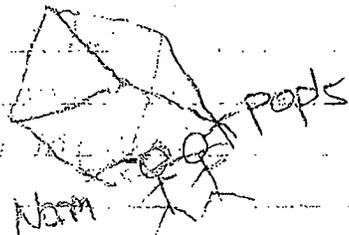
They weren't sad If I had to say how they were they were kinda happy in a sick way

No I got nothing it was all torn up try to save but couldn't

I'm not no murderer but but no one fears me cuz I'm no Badass just someone who get's along with all sorts of people and help's out the little guy or helps out who needs help

I wish I could wake up from this nightmarish dream to realize it didn't happen It was just a dream not real

How did they leave them in the tent
 Outside inside what. Did pap die cuz
 the smoke fire or strangle. There some
 important details. I need to know for my
 statement to be right. What did you say
 afterward. I also need to know what I
 can find out from Tommy that will help



Don't know how he died

Nothing was said afterward

We didn't talk about it

Why did they drag them over there. I
 don't believe what he said about the rain
 Do you know if they had it all planned
 out or was it the spur of the moment.
 Where were you. Oh I forgot to tell ya
 that Tom is saying you told on him. I don't
 care cuz they are trying to blame it all
 on you. Did you notice if the tent actually
 burnt all the way or did you leave before
 you could see

I don't know why

It wasn't raining, so I don't think so.

"they had it planned"

left before

I just got done talking with Woodrow
he a very good attorney. Why did they
steal that stuff from you. Personally
me I'm not a violent type. I would of stole
10x from them. Well they deserve everything
that happened to them even tho it wasn't
intentional. How do you feel now that you
know they died the way they did

They didn't steal from me a friend stole the
stuff from me and they had it at there tent
not knowing it was my stuff he brought it to
there camp

I HAVE night mares ~~about~~
About how they died cant sleep At night
or really At all just wish I could have
done more to help them wish I wasn't
so drunk that night I could've probably
save them or done better and Beath
on tom to get him to stop Chris
had ~~was~~ already choked out pops but
I don't know if he was alive went he
went into the camp fire

If you did kill him intentionally
and planned it would you admit
to it ~~obviously~~ and take a good
deal or would you try to
deny it to the fullest till the
very end.
~~no~~ no And I

I Flush everything I write cuz its a good habit. They ~~the~~ suck having Nightmares. Is there anything you would of done different. How did Tom and Chris act after you burnt them up, did they atleast felt guilty. You know they are bragging about that shit. How no one will mess with you cuz you are labeled murderers I'd hate to have that reputation. Did you get any of your stuff back or what

never brought Chris or Tom to my place and introduced them to Pop's & from should've just let them find there ~~own~~ place ~~to camp~~

They weren't sad IF I had to say how they were they were kinda Happy in a sick way

No I got nothing it was all torn up try to save it but couldn't

I'm not no murderer but I'm one fears me cuz I'm no Bad ASS just someone who gets along with all sorts of people and helps out the little guy or helps out who needs help.

I wish I could wake up from this Nightmarish Dream to realize it didn't happen. It was just a dream not REAL

Wasnt the tent already on fire when you lit it or was that the pit fire place or what. Was you thinking or what. That's serious shit dude. They should make tent fire proof cuz everyone always has a fire outside their tent. how fast did it go up. That's CRAZY they was all EXCITED when the tent was BLAZING. What do you think about what they was saying or when the Cops came to their camp site

No it wasn't lit already I WAS sleeping when they put them in it But I believe when they put them in it is what got it to really Burn Cause when I lit it it was going but burned up part of it before they were in it but when they put them in it it caught the mattress and blankets on fire took 5-6 mins to Burn.

they are seriously fucked up in the head may god have mercy on their souls & I feel they should get punished the way those guys did.

Man Slater	1st	86-114
Man Slater	2nd	26-341
Arson	1st	26-34
Arson	2nd	6-12

how did they leave them in the tent outside
What did Pop die cuz the smoke fire or
strange. there some important details I need to
know for my statement to be right. what did
yall say afterward. I also need to know what
I can find out from Tommy that will help.

Don't know how he died nothing was said afterward we didn't talk about it.

Why did they drag them over there. I don't believe
what he said about the rain do you know if
they had it all planned out or was it the spur of the
moment. where were you. oh yah I forgot to tell ya
that tom is saying you told on him. I don't
care cuz they are trying to blame it all
on you. Did you notice if the tent was
actually burnt all the way or did you leave
before you could see.

It wasn't raining. no I don't think so. They
had it planned. best before

I flush everything = write cuz its a good habit. that sure having nightmares. is there anything you would of done different. How did Tom and Chris act after yall burnt them up. did they atleast feel guilty. you know how they are dragging about that shoot. how no one will mess with yall cuz yall are labeled murderers. I'd hate to have that reputation. did you get any of your stuff back or what.

never thought Chris or Tom - o my place. and introduced them to Pops + Norm should've just let them find their own place to camp. They weren't sad if I had to say how they were - they were kinda happy in a sick way. No I got nothing it was all torn up to try to save but COME ON

I'm not no murderer but no one fears me cuz in no badass just some one who gets along with all sorts of people and helps out the little guy or help out the weak

I wish I could wake up from this Night-Markish dream to
realize it didn't happen it was just a dream not for!

K3

CRIME LABORATORY DIVISION



Agency Case # 2008-2501

Laboratory Case # _____

U. S. Supreme Court decision 384 U. S. 757 (1966) ruled that "The privilege against self-incrimination offers no protection against compulsion to submit to fingerprinting, photographing or measurements, to write or to speak for identification."

WRITE - DO NOT PRINT

Name Anthony James McKague Sex male Telephone # 858-7162
 Address 17340 Sargeant Rd #8 City Rochester State WA
 Birthplace _____
 City Madigan Ft. Lewis Army State Washington Birthday 12-24-1983
 Color of Hair Red Color of Eyes blue Age 25 Height 5" 7 1/2 Weight 161 1/2
 Highest Grade Completed 12 Name of School Yelm High School City Yelm
 Current Occupation _____ Previous Jobs _____

Present Employer (or last) _____ From _____ To _____
 Name of Nearest Relative Rob McKague Relationship Father Telephone # 858-7162
 Address of Above 17340 Sargeant Rd #8 City Rochester State WA
 In Case of Emergency Notify Pat O'Neil Relationship Grandma Telephone # 858-7162
 Address of Above 17340 Sargeant Rd #8 City Rochester State WA

Months of the Year November October December
January February March April May June July August September

Days of the Week Monday Tuesday Wednesday Thursday Saturday Sunday

Capital Letters (cursive) G
A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Small Letters (cursive)
a b c d e f g h i j k l m n o p q r s t u v w x y z

Write the Following
ten one two Cash five nine three forty
twelve eighteen sixty thousand eleven seventeen
Dollars hundred twenty thirty-one fifty-four

What hand are you writing this exemplar with? Right hand

Signature [Handwritten Signature] Date 1-30-09

Print Full Name Anthony James McKeague
(First, Middle, Last)

Date 1-30-09

PRINT — DO NOT WRITE — PRINT

Capital Letters A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Small Letters a b c d e f g h i j k l m n o p q r s t u v w x y z

Months of the Year January February March April May June July August
September October November December

Days of the Week
Monday Tuesday Wednesday Thursday Friday Saturday Sunday

Print the names of:

5 Washington Cities

5 U. S. States

5 European Countries

5 Businesses

- (1) Yelm
- (2) Wacey
- (3) Olympia
- (4) tenino
- (5) Rainier

- (1) California
- (2) Washington
- (3) Oregon
- (4) Idaho
- (5) Texas

- (1) Canada
- (2) Ireland
- (3) Germany
- (4) France
- (5) Mexico

- (1) Bushin Robbins
- (2) Target
- (3) Wal-Mart
- (4) A.F.C
- (5) Fred Meyer's

Use this space for dictated material.

Sign: [Signature]
Printed Name: Anthony James McKeague
Date: 1-30-09

Witnessed by: Sign S. A. Costell.
Print Sam Costell.
Agency: Olympia PD
Date: 1-30-09

WRITE or PRINT AS INSTRUCTED

7765 Bellevue Way E

8765 Bellevue Way E

Howard U. Zimmerman

Howard U. Zimmerman

Majestic Pizza

Majestic Pizza

Wenatchee Apple Farm

Wenatchee Apple Farm

Everett R. Jefferson

Everett R. Jefferson

Fairbanks, Alaska

Fairbanks, Alaska

Yakima Cherry Orchard

Yakima Cherry Orchard

Edward Albert King

Edward Albert King

6336 Dayton N

6336 Dayton N

Fred Meyer @ Target.com

FredMeyer@Target.com

Olympia Credit Union

Olympia Credit Union

2439 Penny SW

2439 Penny SW

Benjamin's Bar & Grill

Benjamin's Bar & Grill

342nd Montlake Blvd

342nd Montlake Blvd

4475 63rd Street N

4475 63rd Street N

Oliver Quincy Graham

Oliver Quincy Graham

Seattle, Washington

Seattle, Washington

Xavier University

Xavier University

Alfred Michael McCoy

Alfred Michael McCoy

What are you doing?

What are you doing?

Spokane Expressjet

Spokane Expressjet

Hook & Ladder Restaurant

Hook & Ladder Restaurant

Give me that now!

Give me that now!

Fort Vancouver

Fort Vancouver

Kirklands Best Coffee

Kirklands Best Coffee

Nordstrom Foods Inc.

Nordstrom Foods Inc.

I won 1st Place!

I won 1st Place!

Tukwila Apparel Shop

Tukwila Apparel Shop

How are you today?

How are you today?

Jason G. Dudley

Jason G. Dudley

609 Hobbs Rd Apt #573

609 Hobbs Rd Apt #573

4870 Kennewick Ave

4870 Kennewick Ave

Lexmark Inkjet

Lexmark Inkjet

George Kelly @ Xerox.com

George Kelly @ Xerox.com

1215th Perry Loop NW

1215th Perry Loop NW

Richard & Pasco

Richard & Pasco

Jack Bradley Johnson

Jack Bradley Johnson

596th Terrace St SE

596th Terrace St SE

Snoqualmie Inn

Snoqualmie Inn

Jennifer D. Youngberg

Jennifer D. Youngberg

Zillah Railroad Co.

Zillah Railroad Co.

Let's go to Costco!

Let's go to Costco!

Elizabeth Dee Vaughn

Elizabeth Dee Vaughn

Issaquah Tool Supply

Issaquah Tool Supply

Tacoma Quickie

Tacoma Quickie

Signature

[Handwritten Signature]

Date

10-02-10

How did they leave them in the tent outside what. Did pap die cuz the smoke fire or strangle. There some important details I need to know for my statement to be right. What did yallh say afterward I also need to know what I can find out from tommy that will help

Dont know how he died nothing was said afterward we didnt talk about it.

Why did they drag them over there I dont believe what he said about the rain do you know if they had it all planned out or was it the spur of the moment where where you oh I forgot to tell you that Tom is saying you told on him I dont care cuz they are trying to blame it all on you Did you notice if the tent Actully burnt all the way or did you leave before you could see.

● It wasn't raining, no I dont think so. "They had it planned"
Left before

● I flush everything I write cuz it's a good habit. That sux having nightmares Is there anything you would of done different How did Tom and Chris Act After yall burnt them up did they atleast felt guilty. You know they are bragging about that shat How no one will mess with yall cuz yall are Labeled murderers. Id hate to have that reputation Did you get Any of your stuff back or what,

Never brought Chris or Tom to my place, And introduced them to pop's + Norm should've just let them find their own place to Camp

They weren't sad, If I had to say how they were they were Kinda Happy in a Sick way

No I got nothing it was all torn up try to save but couldn't

I'm not no murderer but but no one fears me cuz I'm no Badass just someone who gets along with all sorts of people and help's out the little guy or helps out who needs help

I wish I could wake up from this nightmarish dream to realize it didn't happen It was just a dream not real

CRIME LABORATORY DIVISION



K8
2 pages -
sides

Agency Case # 2008-2501

Laboratory Case # _____

U. S. Supreme Court decision 384 U. S. 757 (1966) ruled that "The privilege against self-incrimination offers no protection against compulsion to submit to fingerprinting, photographing or measurements, to write or to speak for identification."

WRITE - DO NOT PRINT

Name EKE Bryan D. Sex M Telephone # (360)

Address 528 Courtside ct S.W City Olympia State W.A.

Birthplace Olympia City Olympia State W.A. Birthday _____

Color of Hair Blonde Color of Eyes Blue Age 34 Height 6'3" Weight 204

Highest Grade Completed 9th Name of School Tumwater High School City Tumwater

Current Occupation Logger Previous Jobs Cement Work

Present Employer (or last) Olympic tree Services From 02 To 06

Name of Nearest Relative CAROLYN L EKE Relationship MOM Telephone # 352-9824

Address of Above 528 Courtside ct. City Olympia State W.A.

In Case of Emergency Notify CAROLYN L EKE Relationship MOM Telephone # 352-9824

Address of Above 528 Courtside ct. City Olympia State W.A.

Months of the Year JANUARY February March April, May June July August
September October November December

Days of the Week Sunday Monday Tuesday Wednesday Thursday Friday
Saturday

Capital Letters (~~cursive~~) A, B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Small Letters (~~cursive~~) a b c d e f g h i j k l m n o p q r s t u v w x y z

Write the Following

<u>10</u> Ten	<u>1</u> One	<u>2</u> Two	<u>CASH</u> Cash	<u>5</u> Five	<u>Nine</u> Nine	<u>Three</u> Three	<u>Fourty</u> Forty
<u>Twelve</u> Twelve	<u>Eighteen</u> Eighteen	<u>Sixty</u> Sixty	<u>Thousand</u> Thousand	<u>Eleven</u> Eleven	<u>Seventeen</u> Seventeen		
<u>Dollars</u> Dollars	<u>Hundred</u> Hundred	<u>Twenty</u> Twenty	<u>thirty one</u> Thirty-one	<u>Fifty Four</u> Fifty-four			

What hand are you writing this exemplar with? Right hand

Signature Bryan D. EKE Date 2/6/09

Print Full Name BRYAN. D. EKE
(First, Middle, Last)

Date 2/06/09

PRINT — DO NOT WRITE — PRINT

Capital Letters A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z

Small Letters A, b, c, d, e, f, g, h, i, j, k, l, m, n, o, p, q, r, s, t, u, v, w, x, y, z

Months of the Year JANUARY, February, MARCH, April, MAY, June, July, August, September, October, November, December

Days of the Week Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday

Print the names of:

5 Washington Cities

5 U. S. States

5 European Countries

5 Businesses

- (1) Olympia
- (2) Tumwater
- (3) Lacey
- (4) Tenino
- (5) Yelm

- (1) Washington
- (2) Idaho
- (3) Oregon
- (4) Alabama
- (5) Florida

- (1) France
- (2) Greece
- (3) England
- (4) German
- (5) Italy

- (1) Cotco
- (2) JEI
- (3) Madsen's
- (4) Big 5
- (5) Kapela's

Use this space for dictated material.

Sign: BRYAN D. EKE
 Printed Name: BRYAN, D. EKE
 Date: 2/6/09

Witnessed by: Sign S. A. Castell
 Print Sam Castell
 Agency: Olympia PD
 Date: 2-8-09
63

WRITE or PRINT AS INSTRUCTED

8765 Bellevue Way E

8765 Bellevue Way E

Howard U. Zimmerman

Howard U. Zimmerman

Majestic Pizza

Majestic Pizza

Wenatchee Apple Farm

Wenatchee Apple Farm

Everett R. Jefferson

Everett R. Jefferson

Fairbanks, ALASKA

Fairbanks, Alaska

YAKIMA cherry Orchard

Yakima Cherry Orchard

Edward Albert King

Edward Albert King

6336 Dayton N

6336 Dayton N

Fred Meyer @ Target.com

FredMeyer@Target.com

Olympia Credit Union

Olympia Credit Union

2439 Penny S.W

2439 Penny SW

Benjamin's Bar & Grill

Benjamin's Bar & Grill

342nd Montlake Blvd

342nd Montlake Blvd

4475 63rd street N

4475 63rd Street N

Oliver Quincy Graham

Oliver Quincy Graham

Seattle, Washington

Seattle, Washington

Xavier University

Xavier University

Alfred Michael McCoy

Alfred Michael McCoy

What Are you doing

What are you doing?

Spokane Expressjet

Spokane Expressjet

Hook & Ladder Resturant

Hook & Ladder Restaurant

Give me that now!

Give me that now!

Fort Vancouver

Fort Vancouver

Kirkland's Best Coffee

Kirklands Best Coffee

Nordstrom Food Inc.

Nordstrom Foods Inc.

I won 1st Place

I won 1st Place!

Tukwila Apparel Shop

Tukwila Apparel Shop

How are you Today?

How are you today?

Jason G. Dudley

Jason G. Dudley

609 Hobbs Rd Apt #573

609 Hobbs Rd Apt #573

4870 Kennewick Ave

4870 Kennewick Ave

Lexmark inkjet

Lexmark inkjet

George Kelly @ Xerox.com

George Kelly@Xerox.com

1215th Perry Loop NW

1215th Perry Loop NW

Richard & Pasco

Richard & Pasco

Jack Bradley Johnson

Jack Bradley Johnson

596th Terrace St SE

596th Terrace St SE

Snoqualmie Inn

Snoqualmie Inn

Jennifer D. Youngberg

Jennifer D. Youngberg

Zillah Railroad Co.

Zillah Railroad Co.

Let's go to Costco

Let's go to Costco!

Elizabeth Dee Vaughn

Elizabeth Dee Vaughn

Issaquah Tool Supply

Issaquah Tool Supply

Tacoma Quicktube

Tacoma Quicktube

Signature

Bryan D. Eke

Date

2/6/09

CASE-SPECIFIC DICTATED MATERIAL

Dictated Signatures/Endorsements

Dictated Amounts (e.g., Three thousand five hundred eighty three, \$793.50)

SEE ATTACHED TYPED EXEMPLAR AND
CORRESPONDING SUSPECT WRITING

Questioned Text

Dictated Pay to the Order Of:

Dictated Signatures/Endorsements

Sign: _____
Printed Name: _____
Date: _____

Witnessed by: Sign S.A. Costello
Print Sam Costello
Agency: Olympia PD
Date: 2-6-09

APPENDIX F

Olympia Police Department

- Suspect
- Victim
- Witness

Case # 08-2501

Date of Statement: 3-28-2008

Time of Statement: 2225

Name of Person Being Interviewed: Christopher Durga

Date of Birth:

Address: Transient

Interviewing Officer/Detective: Detective Sam Costello

Location of Interview: Olympia Police Department

Also present Detective Brenda Anderson

1 Q Okay. So this will be the statement of, uh, Christopher Durga. Uh, it's related to Olympia
2 Police Department case number...2051. Uh, it's, uh, an assault, uh, that occurred, and an
3 arson that occurred up in the 3400 block of Harrison Avenue. Um,...statement's being
4 taken at the Olympia Police Department detective division, 825 Legion Way southeast in
5 Olympia. Uh, the date, 3-28-2008. The time is 10:25 PM. Present in the room, Detective
6 Brenda Anderson with the Olympia Police Department, Detective Sam Costello with the
7 Olympia Police Department, and Christopher Durga. Chris, this statement's being
8 recorded. Is that with your permission?

9 A Yes.

10 Q Okay. Um,...can you please state and spell your name for the recording?

11 A Um,...

12 Q Just say your name and then spell it...

13 A It's...

14 Q Spell it.

15 A ...Christopher Durga.

16 Q And how do you spell it?

17 A CHRISTOPHERDURGA.

18 Q Okay. And do you have a home right now? You...

19 A I'm homeless.

20 Q ...living anywhere? Okay. Do you have a contact phone number?

21 A No.

22 Q Okay. Uh,...I read you, read, you remember earlier, before we started talking, I read you
23 your rights. Is that right?

- 1 A Yes.
- 2 Q Do you, did you understand them then?
- 3 A Yes.
- 4 Q Okay. And you signed here, acknowledging that. Is that correct?
- 5 A Yes, I did.
- 6 Q Okay. And that was about...uh, thirty-five minutes ago?
- 7 A Yeah.
- 8 Q Give or take. Okay. Um, I'm gonna read them to you again, just so we're on, on the same
9 page. You have the right to remain silent. Anything you say can be used against you in a
10 court of law. You have the right at this time to an attorney of your own choosing and to
11 have him or her present before and during questioning or the making of any statements. If
12 you cannot afford an attorney, you're entitled to have one appointed for you by a court
13 without cost to you, and to have him or her present before and during questioning or the
14 making of any statement. You have the right to exercise any of the above rights at any
15 time, before or during any questioning and the making of any statements. You
16 understand?
- 17 A Yes.
- 18 Q Okay. The next part says I have read or have had read to me the above explanation of my
19 constitutional rights, and I understand them. I've decided not to exercise these rights at
20 this time. Any statements are made by me freely, voluntarily, and without threats or
21 promises of any kind. Do you understand?
- 22 A Yes.
- 23 Q Okay. Are you willing to talk to me about what we talked about prior to?
- 24 A Yes.
- 25 Q Okay. So listen, I'm, we'll just cut to the chase. We were talking about something that
26 happened yesterday. Um, you guys, sounds like you had, you, yeah, you were drinking
27 with some friends of yours. Do you know a guy named Norm?
- 28 A Yes, I met Norm yesterday.
- 29 Q Okay. Do you know a guy named Pops, goes by Pops?
- 30 A Yes.
- 31 Q Okay. Do you know his real name?

1 A David something.

2 Q Okay. Uh, do you know a guy named Bryan?

3 A Yes.

4 Q Who is he to you?

5 A Um, adopted brother.

6 Q Okay. You're talking like a street...

7 A Street...

8 Q Street brother?

9 A ...adopted brother, yeah.

10 Q Okay. And you know a guy named Kelly or Tom?

11 A Tom.

12 Q He goes by both.

13 A Yes.

14 Q Is his name really Tom?

15 A It's Tom, yeah.

16 Q Okay. So if he told me Kelly, he was telling me a story?

17 A Uh, his brother's Kelly.

18 Q Okay. Does he use Kelly's name sometimes?

19 A Yeah.

20 Q All right. So sometimes Tom, sometimes Kelly. But, his real name is Tom.

21 A His real name's Tom, yes.

22 Q Okay. Um,...uh, so you guys were drinking somewhere. Where were you drinking?

23 A They were drinking behind, um,...the taco truck, uh,...

24 Q Near Wendy's up there?

25 A Yeah. Near Wendy's, yeah.

- 1 Q Okay. On the west side of Olympia.
- 2 A Yes.
- 3 Q Okay. And who was there...when you were doing it?
- 4 A Um,...
- 5 Q You weren't doing it. I, I shouldn't say you. Because you don't drink. Right? Or...
- 6 A I,...
- 7 Q ...rarely. Only rarely.
- 8 A Yeah, rarely drink, yep. But, it was, um, me, Bryan, Tom,...Norm, Pops...Vicky, Jeff,
9 Sam...Mark, and...some other guy, I don't know his name.
- 10 Q Okay. Um, did at any time during the time that you guys were all hanging out there, did
11 somebody, um, did Bryan, did Bryan and Pops ever get in an argument that you
12 remember?
- 13 A No. They, they were like father and son.
- 14 Q Oh, okay. So if they got in a fight, it was more of a, kind of a playful...
- 15 A Yes.
- 16 Q Okay. You remember anything like that?
- 17 A Never went on like that (sounds like).
- 18 Q Not that you remember. Or not that you saw.
- 19 A I was standing right there. Bryan never yelled at Pops, and Pops never yelled at Bryan.
- 20 Q Okay. How long have you known Bryan?
- 21 A Four, four and a half years.
- 22 Q Okay. What's, you know his last name?
- 23 A Uh, Eke.
- 24 Q You know how to spell it?
- 25 A EKE.
- 26 Q All right. What does he look like?

1 A Tall, long hair...long facial hair.

2 Q Okay.

3 A Like a Sasquatch.

4 Q Is he blond, brunette...I mean, does he have blond hair, brown hair?

5 A Well, I thought it was brown.

6 Q You thought it was brown?

7 A I thought his hair was brown.

8 Q Okay. All right.

9 A It looks brown.

10 Q All right. And he's lived with you at that camp for a while?

11 A Yeah. About the same, like a month...

12 Q Okay.

13 A ...month and a half. Something like that.

14 Q And, uh, Kelly slash...I'm gonna just call him Tom from now on.

15 A Just call him Tom.

16 Q Okay. Tom...Tom's a brother of your, or a street brother of yours as well?

17 A Yes.

18 Q How long have you known him?

19 A About five years.

20 Q Okay. You guys all, do you stay in the same camp?

21 A Yes.

22 Q All right. How long has that been the arrangement?

23 A Uh,...he got out...April something.

24 Q Out of jail?

25 A I think it was April.

1 Q Tom or Bryan?

2 A Tom.

3 Q What was he in jail for?

4 A I, I don't remember.

5 Q Okay. Okay. So last night, you're...there drinking up behind the taco cart on Harrison.
6 And what time did that all come to an end?

7 A (unintelligible) um, maybe like one o'clock, after noon.

8 Q One o'clock in the afternoon?

9 A (No verbal response).

10 Q Okay. What time did you all get back to your camp?

11 A Like...10:30 to eleven.

12 Q PM.

13 A Yeah. Yes.

14 Q Did Norm and Pops go their own separate way when you guys left?

15 A Yes, they did.

16 Q Okay. And then you and Bryan and Tom and others kind of went your own separate
17 ways?

18 A Me, Tom and Bryan went in a group. We left together.

19 Q Where did you go?

20 A Grocery Outlet.

21 Q Okay. Uh, at some point in the later in the evening, did you get contacted by a police
22 officer at your camp?

23 A Yes.

24 Q Okay. Um, do you remember what time, roughly?

25 A I think it was around like...oh,...four.

26 Q Okay.

1 A Maybe. Like three.

2 Q Okay.

3 A Four.

4 Q All right.

5 A Maybe four.

6 Q And you were the only one there then.

7 A Yes.

8 Q Okay.

9 A (unintelligible) came back into town.

10 Q So at some point, you came back into town. And then all you guys went back to the camp
11 at what time?

12 A Around 10:30 to eleven.

13 Q Okay. And what happened then?

14 A Uh, we stayed there about like two, um,...uh,...two...two o'clock in the morning. Then
15 we went to go see Pops.

16 Q Why, why did you go see Pops?

17 A Because Pops was talking shit. And (unintelligible) we were hearing from everyone.

18 Q Talking shit about...?

19 A Us.

20 Q Your street family.

21 A Yes.

22 Q Okay. So, it, everybody else that's camping out in that part of the world (sounds like) is
23 that what you're telling me?

24 A Yeah.

25 Q Okay. So you and Bryan and Tom went to talk to Pops.

26 A (No verbal response).

1 Q Okay. So what happened?

2 A Um,...we found out it was him talking shit.

3 Q You did find that out?

4 A Yes.

5 Q Did he admit it?

6 A He didn't really admit it. But, everyone that we talked to...and...he has talked to the
7 cops.

8 Q Okay.

9 A That's what...

10 Q Is that...

11 A That's...

12 Q Is that what you were mad about?

13 A That's why the cops came to our camp.

14 Q So is that what you guys were pissed about, that the cops showed up at your
15 camp...about the Scott Cover thing or whatever, the bat thing?

16 A No, they...yeah, they did come there for the bat. But, I found the bat at the...beginning of
17 the trail.

18 Q Okay. But, that's what you were mad about, that the cops showed up because...

19 A Yeah.

20 Q ...because Pops told, told the cops whatever.

21 A Yeah.

22 Q Right? Okay. So you guys go, you confront Pops. Did he deny that he'd done that?

23 A He didn't deny it. He, or, or did he say he did.

24 Q Okay. So what happens?

25 A I punched him, and I cou-, I punched him a couple times and...I got him in a sleeper.

26 Q Did you punch him in the face?

1 A Yeah.

2 Q You knock him out?

3 A I think I, when I put him in the sleeper, yeah, I think he fell asleep. But, yeah, he was
4 knocked out.

5 Q Okay. So he was down.

6 A Yeah.

7 Q Whereabouts on, in this campground there was he down?

8 A Where he left, he fell next to the fire. He kinda got the ash on his face. Like nothing was
9 burnt. It's just black ash.

10 Q Okay.

11 A Because the fire wasn't really going. It was just like a couple coals.

12 Q Okay.

13 A It was put out. But,...and I picked him up and dragged him to his tent. And...he was still
14 breathing.

15 Q Okay. Could, you could tell that?

16 A Yeah. His stomach was...

17 Q Okay.

18 A ...moving up and down.

19 Q Were you looking for that?

20 A (No verbal response).

21 Q Okay.

22 A Actually I was.

23 Q And then you tried to put him in a sleeper?

24 A No. That was after.

25 Q Oh, after you put, so you put him in a sleeper near the fire.

26 A Yes.

1 Q Now when you say sleeper, does that, you're wrapping your arm around his throat kind
2 of?

3 A Yeah, like this.

4 Q Okay. But, he's still breathing after that happens.

5 A Yes.

6 Q You dragged him, drag him back over to the tent.

7 A Yes.

8 Q And how did you lay him there?

9 A Um, he was flat on his side.

10 Q Okay. Flat, on his side...

11 A Yeah. But,...I, I think he curled up in a ball. He, when I turned around, he was...in a ball
12 shape.

13 Q Okay. And what, what was going on with Norm at this time?

14 A Uh, Norm, I think, was passed out, knocked out.

15 Q Who knocked him out?

16 A I, I don't have a clue.

17 Q Well, who was...

18 A I, I, when I turned around, he was on the ground...

19 Q Who was...

20 A ...snoring.

21 Q ...fighting with him?

22 A Uh, Tom and Bryan.

23 Q I'm sorry?

24 A Tom and Bryan.

25 Q Okay. So...

26 A They were both...

- 1 Q ...while you were, while you were dealing with Pops, they were over there doing
2 whatever they, you weren't watching. But, they were over there with Norm.
- 3 A Yeah.
- 4 Q And then Norm comes back, and he's...knocked out, too.
- 5 A Yes.
- 6 Q Okay. And what did they do with Norm?
- 7 A Um,...at the time, he was still snoring. And Tom...said let's just drag them over by the
8 tent and...get the hell out of here.
- 9 Q Right.
- 10 A So, I, me and Tom grab Norm, try to get him in the tent, but...he only made it half way.
11 And...just laid there.
- 12 Q Okay. So now, what you're, if I'm hearing you right, Tom and Pops are laying next to
13 each other, right next to each other.
- 14 A Yes.
- 15 Q About halfway into the tent.
- 16 A Yes.
- 17 Q Okay. And then what?
- 18 A The tent, it wasn't, it was...on fire, but it wasn't really on fire. It's just a little...kind of
19 like...you know how when you like light a newspaper.
- 20 Q Yeah.
- 21 A It has such, it starts out like that.
- 22 Q Yeah.
- 23 A And it dies out.
- 24 Q Mm hmm.
- 25 A That's what it was.
- 26 Q Okay. When you saw that, that the tent ha-, was just barely on fire, where were you?
- 27 A I was right in front of it.

1 Q How far away from it?

2 A Life fifteen feet.

3 Q Okay. And who was near you?

4 A My brother Tom.

5 Q Tom. Were either of you...did either of you have your lighters out?

6 A No. I, I didn't. I know he didn't.

7 Q You know he didn't?

8 A Yeah.

9 Q Is that because you saw that he didn't?

10 A Actually, I think he left his lighter at the, back at our camp.

11 Q Okay. So...who was near the tent when the fire started?

12 A Um, Bryan was.

13 Q Was he kneeling down there?

14 A No. He was just standing straight up. But, I didn't see him light the tent on fire.

15 Q Did he have his lighter in his hand?

16 A Yeah, because he (unintelligible) his cigarette.

17 Q Oh, okay. But, he had his lighter in his hand then.

18 A Yes.

19 Q Okay. And, and, and then shortly after that, when you saw him with his lighter in his
20 hand, you saw the tent was on fire. You didn't see him light it on fire. But, you saw that it
21 was on fire.

22 A Yeah, just...little...dots.

23 Q And you guys, what, left?

24 A Yes.

25 Q Okay. So...then what?

26 A (No verbal response).

1 Q Did you hear anybody before? Did you hear anybody make a statement? I mean, let's
2 light this thing on fire so nobody finds it?

3 A Well...and also that, when that was going on,...Bryan, he looked up and he swore he saw
4 somebody running out. And...

5 Q Of the camp?

6 A Yeah.

7 Q Mm hmm.

8 A But, there was only us five there.

9 Q Okay.

10 A And, was Sco-, um, not...not Scotty, um,...but, um, Pops and...um,...what's his name,
11 the other guy?

12 Q Norm?

13 A Norm.

14 Q Uh huh.

15 A What, counting them and then us three, that makes five.

16 Q Okay.

17 A So...

18 Q But, nobody, nobody else there.

19 A Yeah. There was...

20 Q Bryan thought he saw somebody else?

21 A Yeah.

22 Q Did Bryan say let me light this on fire? I mean, how did that go down?

23 A I,...I don't know.

24 Q Do you think the fire was an attempt to cover up the fact that they were both knocked out
25 there?

26 A I think it might've been an accident.

27 Q Okay.

- 1 A Yeah. I don't think he would do it on purpose. No.
- 2 Q Okay.
- 3 A We're, they were drunk, but...
- 4 Q Okay. So after the fact, did you guys agree that you weren't gonna talk about it with
5 anybody?
- 6 A Yeah. What, that, he goes what we did that night, don't, don't talk to anyone. If they start
7 talking,...because I told them they're, they were both (unintelligible).
- 8 Q Right. Let me ask you this. Uh,...where, you know, the, obviously at some point
9 probably tomorrow or the next day, they're gonna do an autopsy on these two guys.
10 Okay? And they're gonna be able to figure out if they've got broken bones or whatever.
11 Do you think you hit Pops hard enough to break his jaw?
- 12 A I don't know if I,...maybe his nose. Because that's where I maybe hit him, was, um, right
13 up here on the side of the face.
- 14 Q Like his cheek?
- 15 A Yeah. His, like lower cheek.
- 16 Q Which side?
- 17 A His, um,...the left side.
- 18 Q Okay. Did he fight back...at all?
- 19 A Uh, after I got him, no. No.
- 20 Q Okay.
- 21 A No, he didn't.
- 22 Q Do you know if either Bryan or Tom hit Norm with anything, like a stick or a bat or...
- 23 A No, I don't.
- 24 Q ...a pipe or...okay. Do you have any explanation for how Norm may or may not have
25 broken bones?
- 26 A If he does have a broken bone, probably in the face, like a broken nose, maybe a broken
27 jaw...he hit...
- 28 Q If he...

1 A ...(unintelligible) the face.

2 Q If he's, if he's got a broken bone somewhere else, I mean, do you know how it happened?

3 A No.

4 Q Okay. Did, was anybody throwing knees at him or anything like that?

5 A Um, Tom (unintelligible) knee him and his weight...

6 Q A what?

7 A His weight.

8 Q His weight with a knee?

9 A Yeah.

10 Q Kind of like dropped on him or something or what?

11 A Well, yeah, that, that was...I don't know if it was right here on the stomach, to knock the
12 wind out of him.

13 Q Okay. So...what was your intent in assaulting, because that's essentially what you did, I
14 mean, you assaulted Pops. What was your intent? What did you mean to do?

15 A We...not for him to die. Meant, you know,...

16 Q You were just trying to teach him a lesson.

17 A (No verbal response).

18 Q Is that a yes?

19 A Yes.

20 Q You were nodding, so...um,...the tent got lit on fire. Did you know that it was on fire
21 when you left?

22 A Just a little bit. But, I didn't think it would catch. Just like...when, um,...you first light
23 something, then it goes like...kinda like big but it dies out.

24 Q Mm hmm.

25 A That's what it was.

26 Q Let me ask you this. Did anybody suggest or did anybody make any attempt to put the
27 fire out?

1 A No.

2 Q Did anybody call the police or the fire department?

3 A No. Because...it wasn't really on fire. It was dying out.

4 Q Okay. Given these guys' condition on the ground, do you think that if, let's just say that it
5 caught fire. Well, let's not say it. It did catch fire. Were they in any condition on the
6 ground there to do anything about that?

7 A (No verbal response).

8 Q Or were they, as you say, unconscious?

9 A They were knocked out.

10 Q So if it was...

11 A (unintelligible).

12 Q If it was burning, they couldn't really have gotten up. Right? I mean, they couldn't have
13 really gotten away. Is that fair?

14 A Oh, they coulda.

15 Q If they woke up. Right?

16 A Yeah.

17 Q But, they were unconscious.

18 A Because you just, I could feel the heat...

19 Q Right. But, they were, you're saying they were, they were unconscious. Yeah?

20 A Yeah.

21 Q Okay.

22 A But, their legs weren't broken, nothing like that. I don't think were broken.

23 Q Let me ask you...

24 A I know, I, on Pop it wasn't.

25 Q Let me ask you this. When, when you first went in there and confronted these guys and
26 started hitting them, were they saying no, no, or what were they doing?

27 A When Tom hit him, yeah. He said no.

1 Q When Tom hit Norm?
2 A Um, Norm and Pops.
3 Q Did Tom hit Pops, too?
4 A Yeah. That's when I stepped in.
5 Q What, so Tom hit him first and then you hit him?
6 A Yeah. I got him on the ground. And...
7 Q And then what?
8 A ...he hit him.
9 Q How did Norm get involved in this whole thing?
10 A I don't know how he got involved.
11 Q Okay. All right.
12 A At...that, I don't know.
13 Q Okay. So...as far as you know, you punched Pop a couple of times, Pops a couple of
14 times. And then you tried to kind of, to, to put him in a sleeper hold.
15 A Yes.
16 Q And somehow, he was unconscious, and you put him near the tent.
17 A (No verbal response).
18 Q Okay. And Bryan and Tom were doing something with Norm. And you couldn't see it.
19 A Yes.
20 Q Okay. And you, but did you hear Norm yelling?
21 A All he said is I wasn't going, I'm not going to snitch.
22 Q Okay.
23 A But, that...
24 Q That's what Norm said?
25 A ...but he wasn't screaming in pain. He just kept repeating I'm not going to snitch, man.
26 I'm better than that.

1 Q When they were beating him up?

2 A I, I don't know if they were beating him up or not.

3 Q Okay. But, he came back unconscious...to the tent.

4 A Yeah. After that, I did see...a couple times get hit.

5 Q By?

6 A Um, Tom. But,...I think he did just knock him out in a couple hits.

7 Q Okay.

8 A That's when we both dragged them by the tent.

9 Q Were you just trying to put them to bed then?

10 A Well...didn't want, really want to leave them where, where (sounds like).

11 Q So you were trying to put them in the tent so they could kind of sleep...

12 A Yeah.

13 Q ...sleep it off?

14 A (No verbal response).

15 Q You're pretty sure they were both breathing at that point?

16 A Yes, they were.

17 Q Okay.

18 A Because Norm, he was snoring. And Pops' stomach was going, breathing up and down.

19 Q Checked for that? Make sure they were still alive?

20 A Yes.

21 Q Okay. And then you're saying that Bryan was...

22 A But,...

23 Q Bryan was standing near the tent...

24 A Yeah.

25 Q ...when it, when it caught on fire.

1 A But, I told Bryan and Tom that they were dead. So they would stop.

2 Q So they would stop hitting Norm?

3 A So, no, so we could get the, get out of there.

4 Q Okay.

5 A We, so I just said they're both dead.

6 Q Well, okay. If you said they're both dead...then it stands to reason...Bryan thought they
7 were dead. Is that right?

8 A Yes.

9 Q Why did the tent get lit on fire then?

10 A (No verbal response).

11 Q You gotta be straight with me.

12 A I, I don't...

13 Q Did somebody say something about trying to cover it up?

14 A Someone said the best way to get rid of a body is to burn it.

15 Q And that's what happened. Yeah?

16 A Yes.

17 Q Who said that?

18 A I don't remember which, because I wasn't paying attention.

19 Q You don't remember which, it was either Bryan or Tom. One of them said the best way
20 to get rid of a body is to...

21 A (unintelligible).

22 Q ...burn it?

23 A I think it might've been Bryan.

24 Q You think or you know?

25 A Think might, I guess his background in the Marines. Best way to dispose, because Tom
26 was just going to leave them there.

1 Q Tom said leave them there. Tom would've just leave them.

2 A Yeah. He, he...

3 Q Okay.

4 A And then...

5 Q And Bryan...

6 A ...when I said yeah, they're both dead...

7 Q ...was that...

8 A (unintelligible)

9 Q ...about, was that about the same time that Bryan said best way to get rid of a body is to
10 burn it?

11 A I don't know if he said it like that. But, he said it before we left our camp.

12 Q Okay. That the best way to get rid of a body is to burn it?

13 A Yeah.

14 Q So did you guys go over there with the intent to assault these guys, to beat them up?

15 A Just to beat them up.

16 Q You didn't want to kill them?

17 A No.

18 Q Well, why would he be talking about burning the tent, or burning the bodies, if you didn't
19 go over...

20 A I think it's just the alcohol.

21 Q Just talking trash?

22 A Yeah.

23 Q Okay.

24 A I thought he was just joking around.

25 Q You think he intended to kill somebody?

- 1 A I, I don't think he really did. Because he, he has...one of the kindest hearts. Because they
2 were more like father and son.
- 3 Q Right.
- 4 A I, I can't see him doing that. But,...
- 5 Q You guys have a conversation about it this morning?
- 6 A We started to. And then we said leave it alone.
- 7 Q Did you know they were dead then?
- 8 A No, we didn't. We found...
- 9 Q Did you guys talk about it after you knew they were dead?
- 10 A No. We found out...we walked all the way into Grocery Outlet. That's where Sam and
11 Gina and Chuck...and...looked like Dirty Dave...they were all crying. We went to see
12 what was wrong. And they told us.
- 13 Q You guys talk about it then?
- 14 A They were talking to us about...
- 15 Q Yeah. But, did you guys later on when it was just the three of you, did you ever talk about
16 it again?
- 17 A No.
- 18 Q Okay. Because you already agreed not to talk about it?
- 19 A I, (unintelligible)...I didn't know they were dead (sounds like).
- 20 Q All right. Do you have anything...Bren?
- 21 Q (Anderson): when you said that, um, Norm was saying, um, he wasn't gonna snitch,
22 what was he referring to?
- 23 A I don't know. They were behind the tent.
- 24 Q But, you must've known what he was talking about. I mean, what, why would he say
25 that? That seems like...
- 26 A Probably when I was beating up Pops.
- 27 Q Okay. And you said that you went to beat up Pops because he was talking shit. Right?

1 A Yes.

2 Q What was he saying? What was shit?

3 A That he was blaming us for beating up Scotty, when Pops was...I don't even know what
4 Pops was...actually, Pops and Scotty, they never got along. Pops was always telling
5 Scotty get the fuck out of his camps, or something bad is going to happen to you.
6 And...just like, I think it was a couple...not even a week later, he ends up in the hospital.
7 And Pops is blaming us for it.

8 Q Okay. But, did, were you responsible for that?

9 A What, for Scotty?

10 Q Mm hmm.

11 A No.

12 Q (Costello): any, none of you were?

13 A No.

14 Q Okay. All right. Anything else?

15 Q (Anderson): no.

16 Q (Costello): okay. Do you have anything you want to add?

17 A No, I don't.

18 Q Okay. Uh, that'll be the end of this statement. Time's now 10:49 PM. Date's the same, 3-
19 28-2008. Uh, this'll be the end of the recording.

20

21

22 [End of Transcript]

23 SAC LTS/LP

24 REVIEWED BY:

APPENDIX G

Olympia Police Department

 Suspect

Case # 08-2501

 Victim

Date of Statement: 10/15/2008

 Witness

Time of Statement: approximately 1300

Name of Person Being Interviewed: Christopher Jay Durga

Date of Birth: 11-25-1985

Address: Thurston County Jail

Interviewing Officer/Detective: Detective Sam Costello

Location of Interview: Thurston County Sheriff's Office

Also present
Detective Sergeant Dan Smith, Olympia Police Department
Senior Deputy Prosecutor Jim Powers, Thurston County Prosecutor's Office
Attorney Charles Lane, Defense Counsel

Q (Powers?): In addition to, uh, this statement at the beginning of the fact (sounds like) of the recording, and the fact of the, um, (unintelligible) get a consent for that.

Q (Costello): Sure.

Q (Powers?): And also, uh, the fact of the plea agreement. One other thing I want to just again put on tape is, um, to stress for Durga's sake, the expectation that we have that no matter how painful it may be to, um, be, um, graphically truthful about anything that's happened, that that be whatever is said here today. Um, and I'll say that more formally on the statement, Mr. Durga. But, um, ... it's the expectation, everything that's said here today is the truth to the best of your memory. Even if it hurts to say it. Because that's part of the agreement. And that's, um, ... part of what's required of you to get the benefit of the agreement. And there will be other interviews down the road. You know that. Um, there'll be defense interviews. There'll be trial testimony. There will be other police interviews going over the same things. And if you're not as truthful as you can be today, you won't be consistent. You know? It won't be the same.

Q (Lane): And that's...

Q And we'll know that.

Q (Lane): And that's if it actually... um, there's no guarantees it'll actually go to trial. But, that's just... I mean, uh, obviously, of course, if it goes to trial, it's expected.

Q (Powers?): So I'll say that again on tape. But, I just wanted to...

Q (Costello): well, we're, we're going...

A (unintelligible).

Q . We're going. So it's on tape.

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- Q (Powers): We're on tape now? Okay.
- Q (Costello): It's on.
- Q (Powers): All right. That's fine then.
- Q (Costello): It's, it's recorded.
- Q (Powers): That's fine.
- Q (Costello): Um,...
- Q (Powers): Go ahead.
- Q (Costello): you good?
- Q (Powers): Yeah.
- Q (Costello): Okay.
- Q (Powers): That's, I think that's what I wanted to say.
- Q (Costello): okay. So, uh, with that...get started. Um, this'll be the statement of Christopher Durga with relation to Olympia Police Department case number 2008-2501. Present in the room, uh, myself Detective Sam Costello with the Olympia Police Department, uh, Detective Sergeant Dan Smith with the Olympia Police Department, uh, Senior Deputy Prosecutor Jim Powers with the Thurston County Prosecutor's Office, uh, Attorney Chuck...Charles?
- Q (Lane) Charles.
- Q (Costello): Charles Lane, uh, who is, uh, defense counsel, and Mr. Durga. Uh, Mr. Durga, this statement's being recorded as you know. Is that with your consent?
- A Yes.
- Q (Costello): okay. Uh, can you please say your name and then spell it for the record?
- A Chris Durga, CHRISDURGA.
- Q Okay. And do you have a middle name?
- A Jay JAY.
- Q All right. And what's your date of birth?
- A 11-25-85.

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Q All right. And do you have a physical address?

A No.

Q Okay. Uh, any contact information at all?

A No.

Q Okay. Uh, what I'm gonna do is, uh, you've been read your Miranda warnings before. Is that right?

A Yes.

Q Okay. And your attorney is present. Is that correct?

A Yes.

Q All right. Um, so I'm gonna read those on the recording, and I want you to, if you have any questions, make sure that you, you ask them before we start. You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right at this time to an attorney of your own choosing, and to have him or her present before and during questioning or the making of any statements. If you cannot afford an attorney, you're entitled to have one appointed for you by a court without cost to you, and to have him or her present before and during questioning or the making of any statement. You have the right to exercise any of the above rights at any time before or during any questioning and the making of any statements. Do you understand?

A Yes.

Q Okay. The next part reads...I have read or have had read to me the above explanation of my constitutional rights and I understand them. I've decided not to exercise these rights at this time. Any statements made by me are made freely, voluntarily, and without threats or promises of any kind. Do you understand that?

A Yes.

Q Okay. With those rights in mind, are you willing to make this statement?

A Yes.

Q Okay.

Q (Powers): Um, Sam...

Q (Costello): go ahead.

Q (Powers): One more thing before we get started. Mr. Durga, um, I'll just put in front of

you and Mr. Lane can help me. Um, the plea agreement that we've reached in this case and, uh, you've just gone back over that to initial a couple of minor changes. Is that right?

A Yes.

Q (Powers): Okay. And so at that, at last page of that agreement there's, uh, a signature that, uh, is indicated as your signature. And I, I would just ask you to confirm for us that that is your signature.

A Yep.

Q (Powers): Okay. And so you understand that this agreement, um, is agreement to both enter certain pleas of guilty after the state has amended the charges as it's set forth in there. You understand that's part of the agreement?

A Yes.

Q (Powers): Okay. And another part of the agreement is that today, uh, you give us a truthful statement to the best of your ability, uh, with regard to the things that will be asked of you.

A Yes, I do.

Q (Powers): Okay. Thank you.

Q (Lane): And just to (unintelligible) Charles Lane for the record, um, you and I have had an opportunity to go over this agreement prior to today. Correct?

A (No verbal response).

Q (Lane): And, and you've had an opportunity to read it thoroughly. Correct?

A Mm hmm.

Q (Lane): And you've had an opportunity to ask me questions regarding, uh, any...to make sure that you understand it's contents?

A Yes.

Q (Lane): Okay.

Q (Costello): Okay. And the only other thing I would ask is we're, we're all doing a pretty good job. We need to make sure we speak up a little bit. I'll get these (unintelligible).

A I'm sick.

Q (Costello): what's that?

A I'm sick.

Q (Costello): Okay. I'll get, we'll do as best, we'll do the best we can here.

Q (?) Do you want some water, Chris?

A No.

Q Okay.

Q (?) Let us know if you do, okay?

A (No verbal response).

Q (Costello): Okay.

A Is there a Kleenex or anything?

Q (Costello): First I just typically, I'm gonna, uh, I, I usually ask people just some general questions. Um, where'd you grow up?

A Tenino.

Q Okay. Do you have brothers and sisters?

A Yes.

Q How many?

A Uh, one brother, two sisters.

Q Okay. Did you graduate from high school?

A No.

Q Okay. Have you been arrested before?

A Adult? No.

Q Okay. What about anyone in your family?

A Yes.

Q Close family?

A Yes.

Q What kinds of crimes were they, uh, arrested for?

A Uh,...murder.

Q Who, who got arrested for murder?

A My two uncles.

Q Okay. And whereabouts did you grow up?

A (No verbal response).

Q Tenino, where at?

A (No verbal response).

Q Out in the county?

A Yep. Old, Old Highway 99.

Q Okay. Okay. And where were you living before you, and obviously now you're, you're in jail. But, where were you living before that?

A Homeless.

Q Where specifically were you staying, though?

A Right by Grass Lake.

Q Okay. And so when we're talking about, um, the camp that I went to...well, I've been to two, two camps out there. But, where, where you were contacted by the police, um, near to say Starbucks is probably a good description?

A Yes.

Q That, that's the camp, that's the correct camp, the furthest one back, uh, on that trail?

A Yeah, by Starbucks and...yes.

Q Okay. And who did you live with there?

A Um,...Tommy Crow, Bryan Eke.

Q Anyone else live with you?

A No.

Q How long had you been living on the streets?

A About a year and a half.

Q And how long had you been living with those two?

A Tommy, um, about like five years almost. Bryan...I met him through my, um,...well, Bryan, maybe a year.

Q And so most of the time that you spent...um, on the streets, was that in west Olympia?

A Um,...no. I only been in west Olympia for like...maybe four months.

Q Where were you before that?

A Downtown Olympia.

Q Where'd you stay downtown, or thereabouts? -

A Everywhere.

Q Just wherever you could find a place?

A Yeah.

Q Okay. Did you know (unintelligible) uh, it sounds like you spent quite a, quite a bit of time out on the streets. Did you know a male whom, uh, people called Pops?

A I met him, just like when I started living west, on the west side.

Q So you didn't know him before that?

A No.

Q Do you know what his real name is?

A David Miller.

Q Do you know where Pops lived, and, and Pops being David Miller?

A At, um, maybe like two hundred yards from my camp.

Q Through the woods?

A Yes.

Q Is there a trail through the middle of that?

A No.

- Q So you gotta go the long way.
- A Yes.
- Q Okay. And by the long way, I mean out to Mud Bay and then down, and then down the road?
- A Mud Bay?
- Q Well, Harrison. That big street.
- A Yeah.
- Q You gotta go all the way down to the big street, then go down....
- A Yeah.
- Q ...to the access road?
- A Yes.
- Q Okay. Did you have any kind of relationships with, with Pops? I mean, did you talk daily or...?
- A Uh, we talked. But,...
- Q Were you friends?
- A Yeah.
- Q Did you party together?
- A No.
- Q Eat together?
- A Yeah, we'd eat, but...never really partied.
- Q Did you ever stay in his camp?
- A Nope.
- Q Did he ever stay in yours?
- A Nope.
- Q Okay. Did you ever have any problem with Pops, um, before...what we're gonna tel-, and

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we'll, and we're gonna go over it as, as time goes today. But, did you ever run-, have any problems with him before then?

A No.

Q Did, did you know a male that people called Norm?

A I know a Norm.

Q Okay. Do you know what Norm's last name?

A Peterson.

Q Did you know that then, or just since then?

A I, I just met Norm...prob-...the day after what happened.

Q Okay. And where was Norm staying, do you know?

A Nowhere. He just got released.

Q Do you know where he was released from?

A No.

Q Jail?

A I don't know.

Q Okay. All right. Did you ever have any kind of relationship with Norm?

A No.

Q Okay. You guys weren't friends?

A I, I just met that guy.

Q Now you and, and, uh, Tommy and Bryan, did you guys think of each other as brothers?

A Yes.

Q Like street brothers?

A Yeah.

Q Be accurate to describe you guys as a street family?

A Yes.

Q Sometimes, um, in street families, um,...people have names that they use, other than their real names. Um, did you guys have names like that that you called each other?

A No.

Q Okay. So nobody went by any kind of...other name at all?

A No.

Q Okay. Did the family have a name?

A No. We just...Bryan, Tommy, Chris.

Q Did you guys ever call yourself a na-, a name for the group, though, for the three of you?

A No. Because Tommy spent most of his time in jail. So, there's no really...

Q Okay. Would you say that, that people were general-, generally afraid of the three of you?

A That's what Tommy said. But,...I wouldn't see why. We all, we really never talked to anybody.

Q What Tommy said then or what Tommy said now?

A What do you mean?

Q Well, are you, you said that that's what Tommy said. That they, people were afraid of you. How do you mean that? That they should, should've been afraid of you then? Or, or...

A Um,...

Q I don't understand.

A Tommy just hear, hear from other people that...don't go around them, don't, don't be like around those people.

Q Okay. So Tommy thought people were afraid of you guys.

A Yes.

Q Okay. But, you never really had that...

A No.

Q That was never really your thought about them?

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A No.

Q Okay.

A Because people come up, talk to us. But, we never really talked.

Q Okay. Kind of stuck to yourselves?

A Yes.

Q Okay. Uh, why would people be afraid of you?

A I have no clue.

Q Okay. Um, do you know Scott Cover?

A Scottie, yes.

Q You call him Scottie?

A Yes.

Q Okay. How do you know him?

A Um, I met him when I met Pops.

Q Where was Scott, Scottie living?

A I have no clue.

Q Uh, were you, Bryan or Tommy involved in assaulting Scott Cover?

A Bryan was.

Q How'd that happen? I mean, to your knowledge?

A Well, Tommy came back from our camp from Pops' camp. He, he was wasted, drunk. They shoved him in the fire, and his whole pants legs were burnt, was all burnt up. And they said, he told me that they wouldn't let Bryan go. He, he tried to get Bryan out there. Bryan, he was (unintelligible) off in... (unintelligible) acid. So I went there to go get Bryan. And the only person that was in the camp was... let's see, there was three people actually in the camp. Actually four, counting Bryan. There was, um, Pops, Sam I Am, Scottie, and Bryan. And Bryan was hitting (sounds like) Scott with the baseball bat. He was hitting his legs. And I grabbed the baseball bat and said let's go. And that's when, um, Pops jumped out of the tent, go what are you doing. And he grabbed the baseball bat from me. And he told me to help him put him in the tent. And I put, I helped, um, Pops put Sam I Am, not Sam I Am, but Scott in the tent with Sam I Am.

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Q Okay. Let me see if I understand what you're saying. You, uh, as I recall on a interview that you and I, uh, had before, you don't, you don't drink that much.

A I (unintelligible) drink.

Q Okay. On occasion, but only hard liquor, if I remember. That right?

A Yeah.

Q Okay. And so what was the time period in between, uh, how long before what happened, the reason you're in jail now, how long before that did this Scott Cover thing happen?

A Maybe a month.

Q Okay. And so let me make sure I understand. And then if I, if I don't, I want you clarify it. Uh, Tom and Bryan, Tommy and Bryan were at the camp of, uh, Scottie and Sam I Am and Pops. That right?

A Yes.

Q And they were drinking around the fire. That sound, to your, your understanding?

A Yeah.

Q Okay. And somehow, was it Bryan or Tommy that got pushed into the fire?

A Tommy.

Q Okay. So Tommy got pushed into the fire. And is it your understanding that there was some kind of a fight after that?

A Yeah. When I showed up, yeah, there was.

Q Okay. So did someone come and get you and tell you there was a problem?

A Yeah. Tommy did.

Q Okay. So Tommy comes to get you. And that's quite a walk. How long do you think it takes?

A For me, maybe ten, less than ten minutes.

Q Okay. So ten minutes passes. And when you get there, you and Tommy get there.

A No, just me.

Q Well, where, where did Tommy go?

A I left him at our camp.

Q Okay. And so when you got back, you, you saw Bryan hitting Scott with a baseball bat.

A Yeah, and on the legs. But, he wasn't hitting him that hard. It was just like taps.

Q Just taps?

A Yeah. I mean, he was taking swings. But, it wasn't hard hits.

Q Okay. Was, was, was Scottie yelling?

A Uh, the only thing he was saying is I'm sorry.

Q Okay. Uh, and so then you said that you took the bat from Bryan.

A Yes.

Q All right. And were you gonna take it with you?

A Take it back to our camp, yes.

Q What, whose bat was it?

A I don't know.

Q Do you, do you, you don't know where it came from?

A No.

Q Is that the first time you'd ever seen it?

A Yeah.

Q Okay. So then you say you grabbed the bat and then Pops comes. Pops being...uh,...

A David Miller.

Q ...David Miller. And he takes the bat from you?

A Yes.

Q Okay. And then what'd you guys do?

A We went back to our camp.

Q Okay. What was your perception of Scottie's condition at that point?

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A Scottie was fine.

Q How do you mean fine?

A Uh, there was nothing wrong with him, really. Be-, he had his nose...like blood. It looked like he broke his nose. But, yeah. He, he got up with us and he was walking. He had, the, didn't look like he had any broken bones.

Q Okay.

A And the next day, um,...David Miller said, um, that...Scottie got up and walked to the hospital. I think it was Black Lake Hospital. That's a long walk.

Q Sure. Okay. Um,...so can you describe that bat to me?

A (No verbal response).

Q What do you recall it looking like?

A Um,...I think it was aluminum, or hard plastic. Um, about like three and a half feet long.

Q So it would hurt if you got hit with it, I mean, if somebody hit you hard, it would hurt.

A Yeah.

Q Is it enough of a weapon that if you did swing it hard that you could break someone's bones?

A I think so, yeah.

Q Okay. So, uh, were you personally, did, were you ever contacted by law enforcement about Scottie's thing?

A Like...I think it was like three days before we were arrested.

Q And what happened?

A Um, Officer, um, Henry came and took the baseball bat from me. From our camp.

Q Did he say anything to you about the, uh,...about Scottie getting beat up at that point?

A Uh, he didn't say who it was. But, he said it was used as a weapon. So I told Officer Henry, yeah, you just take it.

Q Okay. Did, now initially you told me that, that, uh, Pops had taken the bat from you. Did you go back over there in the morning or something and get it?

A (No verbal response).

Q How did you get the bat back to your camp?

A Um,...I think we took it that night.

Q Okay. So did Pops take it or not take it?

A He did take it.

Q Okay.

A But, I asked for it back.

Q That night?

A Yeah, I think so. I think it was that night.

Q Okay. And so that bat now...we have. Is that right?

A Yes.

Q That's what you're saying. Okay. So how did it make you feel that the police showed up at your camp about that?

A Little mad, but...

Q A little mad or a lot mad?

A Just a little.

Q Well, I mean, I know how things are on the street. And the last thing you want is cops coming into your camp for any reason. Is that pretty fair to say?

A The cops could go anywhere they want. They told us we had to move out, um, and just go to Mud, Mud Bay. That's Thurston County. And they won't bother us.

Q That's what they told you?

A Yeah.

Q Okay. But, that had to make you a little mad, because you were living pr-, pretty well back there by, without anybody bothering you until then. Right?

A We were only there for like a half a month.

Q Okay. So...did you guys do anything about the police coming to the camp?

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- A No. Um,...told Tommy that the cops...well, this ain't the first, um,...time they came to our camp.
- Q When else did they come?
- A They came, um, well...that's the reason why we had to keep moving. Um,...forgot when it was. I think the first, the, not the first time, but the other time was in January.
- Q Okay. So this time, though, they come and ask questions and take a bat. And you were a little angry about it, a little mad. Uh, when you told Tommy and Bryan about what happened, did they get angry?
- A Yep.
- Q Very angry?
- A Uh, just a little pissy. But,...
- Q Okay. Well, did you guys make a decision? Did somebody in the group make a decision that they need, that you guys needed to find out who...who told the police to go there?
- A Uh, it was just like a random thing. It wasn't decided. It was...(unintelligible) we see someone, we just ask what happened.
- Q Okay. Okay. Did you guys form a, did you, did, did you guys decide who you thought maybe had told, told the police about it?
- A Well, it wasn't formed (sounds like), it, it was Norm Peterson that told us.
- Q Norm Peterson told you what?
- A That it was, um, Pops that...told on us.
- Q I thought Norm was in jail...until just before this happened. So just right when he got out then?
- A No. He was out for a couple days.
- Q Okay. Yeah. So in that, in the interim there, in those, in that couple of days is when you kinda got that...that information from him?
- A Yeah.
- Q Okay. So was there a time that...you can recall where the three of you were there and you confronted Pops about this?
- A Yeah.

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- Q When was it?
- A It was behind that like taco truck thing.
- Q Okay.
- A Norm Peterson was there, um, ... Pops was there, yeah. And Norm confronted Pops right, right in the face.
- Q I'm sorry?
- A Norm said, yeah, Bryan, um, Pops was the one that told on us.
- Q Norm said that to, to Pops?
- A Yeah.
- Q Okay. And what, what were you guys doing?
- A I, I was just standing back. That, I don't like being around people. That...
- Q Okay.
- A And Bryan was next to me. Tommy was the one that was asking all the questions.
- Q Were they angry?
- A Huh?
- Q Were they angry? Bryan, Tom? Were they angry?
- A Tom was, because everyone kept pointing the fingers at me.
- Q And he kinda took care of you, or...?
- A Uh, um, I'm like his little brother.
- Q Okay. Okay.
- A And... with Bryan going around saying that... I don't know. They all think Bryan's all this nice guy.
- Q What do you think about Bryan?
- A He's a hypocrite.
- Q How so?

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A He believes his own lies.

Q Remember if anybody else was there when this whole thing happened behind the taco cart? You said that Norm and Pops, you, you...you and Bryan and, uh,...

A Uh,...

Q ...Tommy. And then Norm and Pops and anybody else?

A Sam I Am, Mark, um, I can't, I can't think of their last names but...

Q Mark you say?

A Yeah.

Q Okay. What does Mark look like?

A Uh,...short guy, um,...

Q Do you know what he does?

A Yeah, he's home-, we're all homeless.

Q Oh, okay. All right. Anything unusual about Mark?

A Nuh huh.

Q Okay. You're pretty sure his name's Mark.

A Yeah. I know him.

Q Okay. So while they were confronting, uh, Pops...uh, what were you doing?

A Um,...I was out in my own little world.

Q Were you, were you mad?

A Not really. I was blowing them off.

Q Okay. Were you...were you breaking anything?

A Uh, the TV was already broke.

Q What TV?

A The TV that's already in the report.

Q Mm hmm. So you didn't break the TV.

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A No. The TV was already broke.

Q Did you kick it though?

A Yeah, I kicked it.

Q Were you cursing?

A No. Not really.

Q Did you threaten anyone?

A No. I didn't threaten anyone. And that's when, um,...after I kicked the TV, Bryan came over to me and he introduced me to, um, Norm. Bryan said that they've been friends for about ten years.

Q Okay. Do you know, uh, Yancy Yancy?

A Who?

Q His name's Yancy.

A No.

Q Okay. Were you guys ever involved in any other kind of, uh,...assault on anyone?

A Shit, I was.

Q Okay.

A That's in a police report, too.

Q So do you know Yancy Yancy?

A No.

Q You don't know his name?

A I didn't, I didn't say that.

Q No, I'm just wondering. I'm just, I mean...I'm just asking you. Where did this thing that you're talking about happen?

A It happened in front of, uh, the lottery place downtown Olympia. The guy, he was on PCP, I think. And he come up and he bit my lip. Uh, I don't know what the...and we got in a fight. And...I even went to the hospital that night. He bit my lip right here.

Q You, you, you went to the hospital?

A Yeah.

Q Okay. St. Pete's?

A Yeah. December 26th. They had to ship me all the way to... Seattle, Harborville, I think it is. Then they released me on the 27th, and I went back to St. Pete's on the 27th, because I had a seizure.

Q Okay. So when this guy bit you in the lip, you say you got in a fight. Uh,... obviously you were hurt, and I'll, and I can try to, I'll figure out more about that. What about this guy? What happened to him?

A I don't know.

Q Well, I mean the fight part of it, what did you do to him?

A Punched him in his face a couple times.

Q Okay. Who, who was with you?

A Um, Bryan. I can't remember who else.

Q Okay. Did anyone else do anything to this guy?

A Bryan hit him in his head a couple times, just trying to let him get him let go of my lip.

Q Anybody hit him with anything?

A No. Just a, our fists.

Q Anything that would've broken a bunch of bones?

A No.

Q If I were to tell you that, uh,... he had the material of his shirt kind of, uh, burned into his skin in the fashion of a stick or something, would you know how that happened?

A (No verbal response).

Q No? And his legs were broken multiple times. No?

A Who are you talking about?

Q The same guy.

- A Same guy?
- Q Yeah. I mean, I'm just, if, if the answer's no, then it's no. I'm not accusing you of something. I'm just wondering, there's a guy saying that...I'm just wondering. So no?
- A No.
- Q Okay. Okay.
- A Fuck it (sounds like), you could go back to the lottery place and check the cameras.
- Q Yeah. It's fine. I'm not accusing you of anything. Uh, it's not time to get angry. I'm just wondering...
- A I'm not getting angry.
- Q Okay. Um, so let me get back to, to, uh, Mr. Peterson and Mr. Miller. Um,...how'd the idea come up to, uh, go over and confront Pops that night? Whose idea was it?
- A I think it was really just more of the group.
- Q Okay. A group decision?
- A Yeah.
- Q Okay. And was it something that you guys arrived at after talking about it for a while? I mean, did you sit around the campfire and talk about it?
- A Well, I think it was Bryan that woke me up. I was half asleep. I just wanted to go to bed.
- Q So Bryan woke you up. What'd he say?
- A He just said we're leaving. Well, yeah, I'm coming with you. We always leave as a group. And he said Tommy's going with us. So, yeah. So I got up.
- Q Okay. What was the plan?
- A Just to talk to...Pops.
- Q Was everyone intoxicated or...was anybody?
- A Um, yeah. Um, Tommy, he was...shitfaced. Um, Bryan, he was kind of buzzing.
- Q So when we're talking about buzzing and really drunk with these two, that, they, do they have a tolerance for alcohol? I mean, does it take a lot of alcohol before they...
- A Not on Tommy, no. Since he just got out for like doing, I think, six months.

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Q Okay.

A Um,...

Q (unintelligible)

A He takes like maybe three tall boys. Three or four tall boys, and he gets buzzing.

Q Okay.

A It's the 2-11.

Q Okay. So...you went over there to talk to him. Did you go over there to teach him a lesson...beat him up?

A Uh, to hit him a couple times.

Q Okay. When you say hit him a couple times, what, just, what, so he got the idea that he shouldn't rat you out to the police or whatever?

A Right. Any,...yeah.

Q Rat anyone out.

A Yeah.

Q Did everybody intend to hit him?

A No.

Q Who was supposed to hit him?

A I think it was just Tommy, Tommy hit him. Then I stepped in. But, really, Tommy hit him and he just fell (sounds like). That's, that's how drunk Tommy was.

Q Oh, Tommy hit him and then Tommy fell?

A Yeah.

Q Okay.

A Tommy couldn't...couldn't stand.

Q So, uh, I'm gonna give you a chance to talk. I want to get into that in just a second. So when you went over there,...I know Tommy's the oldest of the bunch of you.

A Bryan.

Q Bryan's older?

A (No verbal response).

Q Really?

A Bryan's 34, Tommy's 32.

Q Okay. So is one of you more in charge of the group than the rest? Or do you all kind of have ev-, equal say in what happens?

A Well, all have our say.

Q So if somebody would've said hey, this is a bad idea, let's bag this idea...everybody would've listened?

A I, I...I don't know. Everybody was fucked up, (sounds like) going like that.

Q Yeah?

A Because we're all in our...own world.

Q Just together?

A Yeah. We just...

Q Okay. And, and so you're saying Tommy's the one that decided that he was gonna hit Pops to teach him a lesson. Is that...

A Um, I don't think he was all there, though.

Q What do you mean?

A He, he was too drunk. He was, he wasn't thinking right. Most of the time when he gets drunk like that, he doesn't even know who I am.

Q Hmm. Okay. So...while you were walking, what was, what kind of conversation did you guys have?

A Well, it was Bryan, he said the best way to get rid of a body is to burn them. And I thought Bryan was just joking around. Because Bryan does have a kind heart. And never really know him...to be like this, uh,...

Q Well,...so...the intent was to go over there and hit him. But, then Bryan starts talking about burning bodies is the best way to get rid of them?

A Yeah. That's what he said when he was in the military.

Q He said that's where he learned it, in the military?

A Yeah, in the marines.

Q Okay. And you thought he was kidding.

A Yeah. Because he said he was in Desert Storm, and he's only 34, well...that Storm happened in '91, '92. He wouldn't be old enough.

Q Okay. Did he, uh, say anything more about that, or was it just sort of a passing comment like that?

A About what that, uh,...

Q Burning bodies?

A It was just...came and go.

Q Okay. Did you talk about anything else while you were walking over there?

A (No verbal response).

Q I mean, did anybody, like what I'm getting at, Chris, is did anybody talk about the, the, the, the, what would happen if...by accident or otherwise someone ended up dead?

A No. Because we were planning to kill anyone. We just...

Q Okay. Just teach him a lesson.

A Yeah.

Q Okay.

A So this, this happened by accident.

Q Okay. So that night...as I recall, at least the next night, it was sort of wet, kind of cold, and really hard to see through the woods. So, do you think it still took ten minutes to get over there or do you think it took longer than that?

A On what night?

Q The night this happened?

A Probably about a half an hour.

Q Okay.

A Because we were trying to get Tommy out of the road.

Q Trying to get Tommy out of the road?

A Yeah. He can't walk straight. Every, like every five feet he, he moved, he'll fall.

Q Ah.

A That's how, that's how drunk he is.

Q Okay. All right.

A We try even pick up a shopping cart, but he wouldn't get in.

Q Okay. Um, as far as Pops, did you think that he would be, Pops would be alone when you got there?

A No. I, I knew Pops always has somebody at his camp, no matter what.

Q Did you know who it would be that night?

A No.

Q Did you care?

A I, I, I didn't care, beca-...I wasn't going to do anything besides hit him a couple times.

Q Well, yeah. And that's kinda what I'm getting at. So if you're gonna go hit somebody, and they have somebody in their camp, you know, you might...

A Oh.

Q You'd want, you'd want to be cognizant of who that person was, in case they were...

A Oh, no. I'm not the first person to ever hit, um, Pops.

Q Okay.

A All the people that he stays with hit Pops before. Because Pops always ran his mouth.

Q So you're saying everybody hit Pops.

A Yeah.

Q Okay. Frequently hit.

A Mm...yeah.

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Q Okay. So did you think that anybody that was at his camp was gonna help you maybe?

A Help me?

Q Well, help you guys.

A No.

Q Okay.

A They usually stay at their own...

Q So you wouldn't have, you, you, it's not your recollection that you guys believed that he was alone there.

A Not mine, no. I know he was going to be with somebody.

Q Okay. So what I'd like to do is I have a piece of paper here and a pen. And what I'd like you to do is, um, if we use, uh, and you can draw how you want. But, maybe if you could just draw me a diagram, uh, with the road and a trail, and then kind of the way the camp is. To the best of your recollection, or was at that time. You think you could do that for me? So we have a point of reference when we're talking on the tape?

A (Lane?): Which camp?

Q What's that?

A (Lane): Which camp?

Q The one that they went to, yeah. Thanks for, thanks for that clarification. Pops' camp.

A You want us to draw like our camp, too?

Q No. Pops' camp for now, that's fine. Uh, well, if you want, yeah. But, it's probably gonna need to be a little more detailed for Pops'...Pops' camp.

A It's just I can't draw.

Q Okay. Well, do the best you can. And if we need to, to work another way, then we will. If you don't even know where to start, then maybe we can do it a different way.

A Here's the main road (unintelligible). Main road. Um,...our camp's up here. You just come down...main road, about, there's another...road that comes back here. And about maybe two hundred yards back, like maybe right in here, go down the trail like this and...it scoops in like a snake. Like that. And Pops' tent's right here. You got...there's a tree...big ass tree right here. And...you come in and you could see before you get right, right here, you could see in...on everything.

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Q All right. Was there a fire going?

A It wasn't really a fire going.

Q What did, describe it to me.

A We just...

Q Go...

A I think they had like a light going in their tent, because you could hear the voices. There was only two voices. That was Norm Peterson and...and, um, David Miller.

Q Did you know that before you walked in the camp who, who it was?

A Not Norm's voice. I didn't know Norm.

Q Oh, but you could hear Dave...you could hear, you could hear Pops' voice in, in the tent.

A Yes.

Q Okay. Uh, was there any kind of fire going, coals or otherwise?

A Um, little coals.

Q Okay. Was it still glowing?

A Uh, half glowing, half died out. And it was kind of wet (sounds like).

Q Okay. So what happened when you walked in there? Did you walk in there as a group?

A Yeah, we all walked in.

Q Okay. And...

A Bryan was the first one to walk in. I was the second. Tommy was the third.

Q Why don't you just tell me what, what happened. Then we'll go back and clarify if we don't understand.

A We walked in it. Um, Bryan, I think it was Bryan, that said something. I forgot what he said. And Pops come out, he sat in that chair. It... Tommy asked why did you, uh, why you snitch on my brother? And they got in an argument. Said, saying...I didn't, yes you did, no I didn't. When, um, Peter-, Norm Peterson just said yeah, you did, Pops. And Tommy hit him. Tommy fell. And I hit him on the side of his face a couple times and got him in the sleeper. And after, um,...all that...I don't know what happened to Norm. Because Norm went behind the tent, and Bryan was talking to him. And then I heard let's

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get him. And, Tom, Tommy's trying to get up. And he got up and...went behind the tent. I couldn't see what was going on. Then, um, Tommy comes, comes back. Norm comes back and says no, I'm not going to snitch. Tommy grabbed a hold of him, told...hit him a couple times, threw him on the ground and basically all he did was sat on him. Because he was too drunk to do anything else. And they got in an arg-, he said you're not gonna snitch on my brother. No, I'm....Tommy just kept repeating himself over and over, you're not going to snitch on my brother. And I, I didn't see where Bryan was, because Bryan said he saw somebody. And he left. Then like...five minutes later he comes back and...um,...I for-, I don't know if it was Tommy that knocked out...Norm, or Bryan. But,...he got knocked out. I dragged, I tried to drag Pops to the tent, his tent, um,...Pops was snoring. He was knocked out, unconscious. Dragged him back to the tent. And it took all three of us to grab Norm and drag him by the tent. Norm was snoring. He snores loud though. So, they were both alive.

Q Okay. Let me, let me go through part of that. So you're saying that, um,...Tommy hit Pops first?

A Yes.

Q Okay. And then when he fell down, you stepped in.

A Yeah.

Q All right. Did Bryan ever hit him?

A No.

Q Okay. And, uh, from what you saw with Tommy hitting Pops and when you hit Pops, did you hit him hard enough that you felt like you would've broken something?

A No. Um, Bryan did kick him in the face, though. And kicked him under here when I had him in the sleeper, under the chin.

Q Hard?

A It...hard enough it, when, when he kicked him at all (sounds like), and it hit me in the head.

Q His head...Pops' head hit you?

A Yes. I don't know if Bryan wears, if he's wearing steal toed boots at the time or not.

Q Okay. Um, where in the camp did all this happen?

A (No verbal response).

Q With you, with you and Pops, I'm saying.

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A I had Pops right here. Right by, like by his tent.

Q Okay.

A And they had Norm up here. And, um, they came back.

Q (Lane): where's the campfire?

A The campfire's right here.

Q (Costello): okay. So, uh, when you were having this, when you were, when you were fighting with Pops, you hit him, and then you said you put him in the sleeper, the sleeper hold.

A Yes.

Q Okay. Before, while you, while you guys were fighting, while you were hitting him, did he say anything to you?

A I'm sorry.

Q He said I'm sorry?

A Yeah.

Q What did you take that, I'm sorry for what, you think? What was he saying I'm sorry for?

A I don't know.

Q Okay. So...you say he was alive...when, when you dragged him to the tent. Is that right?

A Yes.

Q How do you think he died?

A I thought he had burned (unintelligible)...

Q In the tent?

A By the tent.

Q By the tent.

A Yeah.

Q Now, I know that, uh,...let me ask this. Would, did you ever use any weapons on...

A No.

Q Okay. So Pops never was hit with anything, any, did he ever get hit with any sticks or bats or...

A No...

Q ...rocks or anything like that?

A No.

Q Never stabbed or anything like that.

A He only got hit by a boot and a fist.

Q Okay. Um,...so this is where I know it gets a little bit uncomfortable. Uh, but before, when we talked, we were talking about, uh, people getting put in the campfire.

A Yeah.

Q Do you recall that part?

A I was told that.

Q Okay. Is...that true or false?

A I didn't put anyone in the campfire.

Q Okay. Did anyone else get put in the campfire?

A Nobody got put in the campfire.

Q So nobody's, nobody's head got put in the fire.

A No.

Q Could it have happened on accident?

A No. Because...when I knocked out...Norm...not Norm, but, um, Pops, I put him in the sleeper right here. Then I dragged him to his tent, which is right here. The campfire's down here.

Q Mm hmm.

A By the, there's another tree right here. If you've been there, been to that camp, you would see, saw the tree. Right in front of that tree was the campfire.

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- Q Okay. So if you had to say...uh, who you think is responsible for Pops'...death, who would you say is responsible for it?
- A I was told...told that Bryan lit the tent on fire. And I seen him by the tent. But, I didn't see him light the tent on fire.
- Q Okay. Let me ask you this. The condition, I mean, you were, you hit, you're saying you hit Pops and, and you had him in a sleeper hold, which probably amounts to some...would you agree that it amounts to some, maybe some kind of choking a little bit?
- A Yeah.
- Q Okay. And so, and he was on, and you're saying he's not, he's unconscious.
- A Yes. He was.
- Q Okay. And then he got put in a tent and, and it, and it burned. Right?
- A Yeah.
- Q Okay. And you don't know how it lit on fire precisely, because you didn't see it happen.
- A Exactly.
- Q Okay. So him being unconscious in your opinion, do you think he would've been able to move or leave?
- A Yes.
- Q But, he would've had to wake up first.
- A Yeah. It's just like getting cold water slammed in your face. You're going to wake up. Right?
- Q Yeah. You mean, are you drawing a parallel between the, the cold water and smoke?
- A The smoke, yeah. You could be dead asleep.
- Q Okay.
- A And you could smell smoke.
- Q Sure. I'm not...
- A And...
- Q I'm not, and I'm not trying to be argumentative. I just want to make sure I understand

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what you're saying. Um,...so to you, Bryan then, if he lit the tent on fire...he's the one that, that killed Pops.

A Yeah. And Norm.

Q And Norm.

A Because they were both by the tent.

Q Okay.

A (unintelligible) like...they said the tent was already on fire.

Q Who said the tent was already on fire?

A Um,...that's just what, what everyone's saying. He said the tent was already on fire and that we dra-, drug the bag-...uh, drug the ba-, bodies to the tent, put them in the tent. If that was the case, wouldn't I be on, wouldn't I get like nylon burns all over me?

Q Well, I suppose so, if the tent was already on fire. Right?

A Exactly. I mean, because no matter which way I had to go, if I had to drag, drag this way, I'm gonna get it on, um, on my back. If I dragged them this way, it would be down my neck.

Q Right. But, rather than theorize about what happened, I, I, I want to know what you remember. That's my, my concern. It's not necessarily what you've thought about after the wards, what could've happened. Or what I think happened. Because I'm not, I mean, I'm asking you what happened and what your recollection, as far as what you observed and what you did. So...but...what I want to get to...is...you, you don't remember much about Norm. Is that right?

A Yeah.

Q As far as what happened to him?

A That's right.

Q Okay. And you didn't know he was gonna be there.

A No.

Q At what point did you recognize that he was there?

A When he came out of the tent.

Q Was this after Pops had been hit?

A Uh, yes.

Q Okay. So you were hitting Pops when you recognized that Norm was there.

A Yeah.

Q Did you know it was Norm?

A No.

Q Just somebody.

A Yeah.

Q And were you concerned about him?

A No.

Q Why?

A Because he, he wasn't doing anything. He goes oh, hey, guys. Hey, Bryan, what's up.

Q Even though you were hitting Pops?

A Yeah.

Q Okay. Um, was it sort of the agreement between you and Bryan and Tommy that they would take care of Norm if he got involved?

A No. We didn't know Norm was gonna be there.

Q Okay. But, I mean, once he was there, you're saying you weren't concerned about him.

A Um,...

Q But, what I'm trying to get at, is I, I guess, uh,...

A Because he, he was basically talking to...um, Bryan. So I thought nothing of it.

Q Yeah. Did, can you see where somebody might, just somebody might think it was weird that, you know, if I started, if I started hitting, punching him and you were having a conversation with him, and you guys just talked and it was good and nobody did anything about it and...it just doesn't, it's weird, you know. I mean, it seems a little odd to me. You know. And maybe it's different. And so what I'm saying is maybe on the street it's different. Maybe it's different...on the...

A On the streets, that's how we joke around.

Q By...hitting each other?

A Yeah.

Q Okay. Okay. Um,...and so why, at least...by your recollection, did, did they start...hitting Norm?

A No clue.

Q Okay. Do you, do you know who, who hit him first?

A No, I don't.

Q Okay. Do you know where he, he got hit? You kinda pointed it out. But, could you describe it for the recording...where it started?

A He got hit behind the tent where I couldn't see.

Q Could you hear?

A Yeah. I, I, I heard Norm. And he said no, man, I, I'm not a snitch, I'm not gonna tell. You, you can trust me, I'm not gonna tell.

Q Okay. Do you know who was dealing with him at that point?

A I think he was talking to Bryan. Because Tommy tried to, he was trying to get up...maintain his balance. And, and he wobbled his way over there.

Q Okay. So...uh,...do you know what, what Norm was hit with?

A No, I don't. I didn't know he was hit with anything.

Q Okay. Are you, uh, it sounds to me like, just you made some references to the police report and things. Are, have you read the police report?

A Somewhat.

Q Somewhat?

A (No verbal response).

Q Okay. So if someone, if Norm...if Norm had a broken or fractured...um, body part, any idea how that would've come about?

A I, I seen the pictures of it. And...I don't know how you might do something like that. I, the only part that I seen broken was that foot. And I don't know how you're going...break a foot like that.

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Q Okay.

A It's a lot of power.

Q Okay. And did you see anybody do anything to him that would've done that?

A No.

Q Okay. Can, do, do you presume that it happened then? He wasn't limping before then. Right?

A (No verbal response).

Q I mean, you would think that if you had that, and...

A I...

Q ...you were walking around like that, you'd be limping or, or not walking.

A Yep.

Q Okay.

A When...when we dragged him to the tent...I didn't see no broken bones. No...and he was wearing his boots. Which the bone, I didn't see the bone sticking out.

Q Okay. So the parts that you were aware of, how do you think he was, how do you think they, they hit him? What do you think they did to him? Based on what you saw and what you heard. Not what you read since.

A Uh, I thought they just hit him in the...face and the stomach a couple times.

Q Okay.

A See, he's a good size. He was like what, 250.

Q Okay. But, he was unconscious. Yeah? At the end?

A Yeah, he was.

Q Did he say anything? We went through this. I just want to be clear, that you can recall, Norm? Did he say anything that you can remember?

A He said I'm not going to tell. I'm not going to snitch. That's, that was it. You can trust me, guys.

Q How do you think he died?

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A Um, I thought he died of suffocation in the fire.

Q And so you never saw him or any part of him get put in the campfire either?

A No.

Q Who do you think is responsible, and this is the same question that we asked about Pops, for, uh, Norm...Norm's death?

A Bryan (sounds like) I thought they both the same way.

Q Bryan.

A Yeah.

Q Okay. So by the same means, the tent being on fire. And your belief that Bryan lit the tent on fire.

A Yes.

Q Okay. Do you think anybody else bears any responsibility for that?

A For lighting the tent on fire?

Q Well, for their death.

A Well, I did get him in a sleeper. But...

Q Pops or Norm?

A Pops.

Q Okay.

A But, I...I didn't think that would kill him.

Q What about Norm? Pretty much on Bryan?

A Yeah. Uh, Tommy, he was too drunk to even stand.

Q (Smith): (unintelligible).

Q (Costello): go ahead. Sergeant Smith.

Q (Smith): Chris, when you're talking about the sleeper, can you describe to us what that is?

A A sleeper, you just...your arm around their...lower chin right here, and you just squeeze...until like they shut their eyes and you start hearing them snore. And that's how you know they're asleep. It puts you to sleep.

Q Okay. When you did that to Pops, were you on top of him?

A Uh, on the bottom. He was on top of me. Facing up.

Q Okay.

A (unintelligible) to back.

Q Okay. Just say that again now.

Q (Lane): It's (unintelligible).

Q (Smith): yeah.

Q (Lane): They weren't standing up. If that's what you were...

Q (Smith): Yeah, no.

Q (Lane): so it's (unintelligible).

Q (Smith): When you, yeah, when you gave...when you gave him the sleeper...

A His back was on my belly.

Q His back was on your belly.

A He was facing up.

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Q Okay.

A With (unintelligible) belly to back.

Q Okay. It's all I have, Sam.

Q (Costello): Okay. Do you recall you personally saying anything to either Pops or Norm, while all this was going on?

A I didn't say anything. I'm not really a talkative person...from even all through my foster home, um,...even...stayed out at foster care, I didn't really talk to any of my foster moms, except for Ester.

Q Did you mean to kill either of them?

A No.

Q Why'd you put them in the tent? Or near the tent or however it is that you rec-, recall?

A Because it started snowing.

Q I'm sorry?

A It, it started snowing.

Q That's why you did it.

A Yeah.

Q Do you know why...is that, was it the same reason for both of them?

A Well, I asked Tommy to try to help me drag them in there, drag Pops in by the tent. So um,...af-, after I got him there, that's when Bryan grabbed, not Bryan, but Tom, he grabbed Pop...not Pops but, um, Norm. We both grabbed him, and we tried to scoot him. But, he was too heavy. So I asked, uh, Bryan to come.

Q So all three of you ended up putting, putting him in.

A Yeah. Put him by the tent, yeah.

Q Okay. Would he have been under the tent at all?

A His head.

Q Or under the rain fly? Or whatever. Because it sounds like there were...

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A Yeah.

Q ...rain fly and a tent. Would they have been under, under the area where the, where the, where that tarp used as a rain fly would've been?

A Yes.

Q Okay. But, not in the tent.

A Not in the tent.

Q Okay. Now we come to the area where...the tent gets lit on fire. And I know that's a little bit unclear. So what I'd like you to do is just, to just describe it to the best of your recollection.

A Well, I did see the tent on fire, started. But, it die-, it died out. After that, that's when we left.

Q How did the tent, how do you think the tent got lit, how do you think it lit on fire?

A I was just gonna explain it.

Q Okay. I'm sorry. I'm sorry.

A Then we left. I forgot it was like...a couple months ago...I was told that...I was told in here that Bryan...went back to the tent, because he forgot something. And the next day we walked into town...I mean, um, from that day after that fire, the next day we went to the town. That's when everyone was crying and told us that Pops and Norm Peterson died in a fire in their tent.

Q So you didn't have any knowledge of that until then.

A Yes.

Q So, if I'm hearing you correctly, you were surprised that the tent, that, that they'd died in a fire. Is that, was that what you're saying?

A Yes.

Q Okay. And so...I still don't understand, when you say that the tent was on fire and then died out, how did that occur?

A I don't know if Bryan lit it or not. But, he was the only one standing by the tent.

Q Did he have a lighter in his hand?

A Yeah. I thought he lit a cigarette.

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Q So, okay. With a lighter?

A Yeah.

Q Okay. And so can you describe, when you say it was kind of on fire, what, how do you mean?

A It, it started going, going since...since it was like wet and cold, it died out.

Q Okay.

A So...

Q All right. So you thought it went out all the way.

A Yes.

Q Be surprising you if it lit back up after that.

A Yeah.

Q Did you ever lose sight of Bryan at any time after that?

A Um, when I was, um, walking with Tommy.

Q What do you mean?

A Tommy was so drunk I, I stood on the outside road right here, when we were walking back to our camp, so he wouldn't weave back and forth. If he did fall, he'll fall in the ditch.

Q So these guys are unconscious in the tent. And then you walk away. And as you walk away, it looks like it's on fire, but it looks like it's going out.

A It went out.

Q Okay. It went out. And then you walk out to that dirt access road. Right?

A (No verbal response).

Q And then Bry-, you're saying that Bryan went back then?

A Not that night. But,...I was told that...some, um, somebody talked to, um, Tommy and told Tommy. And Tommy told that guy that, um,...Bryan woke up that night when Tommy was out going to the bathroom, that he went, said oh, I forgot something at Pops', I'll be right back.

Q Okay. So it could've happened then.

A Yeah.

Q You're not, you don't know, though.

A Exactly.

Q Did Bryan come back and say...?

A No. Bryan...he didn't, he didn't, he wasn't talking. Usually Bryan...he's quiet, but...when he was around us, he always talks. And he didn't really...say anything.

Q You're talking about the morning after?

A Yes.

Q Did he sleep?

A I was already passed out.

Q Okay. So you don't know, he, he came back, they were unconscious, you left with to-, with Tommy, went back to your camp, and went to sleep.

A Yeah. Yes. That's what I was told.

Q Okay. But, is that your recollection?

A I don't know. I was already passed out.

Q No, no. But, what; at what point do you stop remembering things that night, though?

A When we went back to our tent.

Q Okay. And after that, you don't have a recollection until the morning.

A Yeah. When Officer Henry and Detective Anderson came to our tent.

Q Okay. Did anyone ever discuss lighting the tent on fire?

A No.

Q And there would, they would've been breathing at the time that you left, at least per your recollection.

A Yes, they were.

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Q How did you know that?

A Because, um, Norm Peterson was snoring. And I saw, you know, Pops, he kinda snored and I saw his stomach move up and down. So he was snoring.

Q Okay. Did you guys have any discussion about it right after it happened?

A No.

Q To your knowledge was, uh, were both Bryan and...well, particularly Tommy, were they with you the whole time until Officer Henry came back? Other than Bryan going back to the camp?

A Um,...

Q Was Tommy with you for the rest of the time?

A Well, we were walking on this trail, we were leaving out to go on the main t-, main road. Stopped to go to the ba-, I stopped to go to the bathroom. Then I caught up with Tommy. And I (unintelligible) I asked him where's Bryan and (unintelligible) Bryan just passed us. And he was...weaving his feet in the dirt, says you gotta do this to...so the detectives can't pick up on your...imprints.

Q Okay. I'm,...explain that to me again.

A See...we were...right here on the main trail. Right here.

Q The road, the dirt road.

A Yeah.

Q Okay.

A I stopped to take a leak, to go to the bathroom.

Q Okay.

A And I caught up with Tommy. Tommy kept walking.

Q Okay.

A Bryan zoomed out this way and says you gotta weave your feet...in the, um, mud, scr-, scrape your feet so that, um, detectives can't pick up on your...imprints. And...I didn't think about it...what was going on. And we just kept walking.

Q Okay. Um,...did you ever lose sight of Bryan or Tommy again? I mean, they could've left while you were sleeping. But, at...between the, the time you're aware of...and the

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morning...

A No, we all stuck together...that night. We all went, went in the tent.

Q Did anyone threaten anybody else?

A Nope.

Q Nobody said if, if you, you know, we won't talk about this. If you say something then whatever?

A No. Because all we, all we, me and Tommy felt we did was just beat them up.

Q Okay. So, uh, since you've been in jail, Tommy or Bryan, have they tried to get a hold of you some how?

A Um,...people sent letters out, and people...you know, talk. Just rumors. That's all they are.

Q Who sent you letters?

A People said Tommy tried. But,...

Q Did you get any letters?

A I got one. But, it was all chicken scratch. It wasn't Tommy's handwriting.

Q Do you remember who sent it to you?

A No, I don't.

Q Could you read it?

A I, I could barely read it.

Q What did it say?

A Uh, this was, I don't know, like four months ago.

Q Mm hmm.

A I don't remember really.

Q Was it trying to tell you what to say?

A Basically, yeah.

Q Do you remember what it was trying to tell you to say?

- A Something about mistrial.
- Q You don't recall what?
- A Yeah.
- Q What were you supposed to say, do you remember...what your story was supposed to be?
- A Um, I don't (unintelligible).
- Q What's that?
- A I don't know.
- Q Not on that one or...
- A Like I don't...I couldn't really read it.
- Q Okay. Um,...anybody else try to get a hold of you while you were in jail and pass messages from Tommy or Bryan to you?
- A No.
- Q Okay. You think Pops or, or Norm were bad guys?
- A I, from what I met from Norm, no. Pops, Pops he...he runs his mouth, starts it...and stuff, but...not really a bad guy.
- Q Did either of them deserve what they got?
- A No.
- Q Of the three of you that were there that night, who do you think is responsible? I mean, are you all responsible?
- A No.
- Q Are you responsible? Bryan? Tommy? Who's responsible for these two being dead?
- A Probably...it would probably be Bryan. But,...
- Q Do you regret this?
- A Yes.
- Q Sorry...that it happened?

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- A Yes, I am.
- Q It's all I have. Mr. Powers?
- Q (Powers): Chris,...I've got a number of questions for you. You need a break, you need some water, you need to go to the bathroom or anything like that?
- A No.
- Q All right. Tell me if you do. Okay?
- A (No verbal response).
- Q All right. So, um,...you said you knew Tommy for about five years before this happened?
- A Yes.
- Q Okay. Well, tell me how you got to know Tommy.
- A Well,...I was in foster care. And, I was about like eighteen I think it was. Or was it nineteen, something like that. Um, and I wasn't...really doing anything in my foster care. So I walked out. I had, I had enough of my foster mom. We always got along. But, I wasn't doing anything.
- Q Mm hmm.
- A And she kicked me out. Basically walked out, actually.
- Q Oh, okay. So you just walked away?
- A Yeah. I called Chris Pollenson (sounds like)...
- Q Who?
- A ..and signed...Chris Ponson (sounds like) he was my case worker.
- Q Oh.
- A Um, he made me sign a form and...I left. I went to, um,...Salvation Army. And that's when I met, um, Tom. But, we, we didn't really hang out then.
- Q Where was the Salvation Army?
- A It's downtown Olympia.

Q Okay.

A Well, when we started really hanging out is, um, when Tom almost got, we almost got, Tom almost got in a fight with a group of people downtown Olympia...over one guy, there was like maybe like twenty-five to thirty people all ganging up on this one guy. And I, that's when I jumped in, I said don't worry, I got your back. Because I, I knew who Tom was. And after, that, it didn't really, the fight, the people didn't really gang up on us. It wasn't really a fight. Just hit a couple people, then the fight was over.

Q So this was a time in Olympia?

A Yes.

Q Okay. And, uh, it was, uh, a bunch of people who were gonna jump on Tommy?

A Yes.

Q And you intervened to help Tommy.

A Yes.

Q Okay. How long ago?

A That's what, basically about four or five years ago...

Q Oh, yeah.

A When we first started...and after that he said then I'll, I will always have your back.

Q Okay.

A You're a little brother to me. That's when we started hanging out.

Q So, uh, in the time from that point until all this happened in the spring of this year...

A Yeah.

Q Uh, were you guys together quite a bit of the time?

A Basically...I, I lost my, um,...apartment over here in, in CYS. And...after that, he told me I could live with his, his old lady and with him.

Q Mm hmm.

A At Salmon Shores. So...that, I did. And...

Q When was that?

A Uh,...just like almost two years ago before we became homeless.

Q Okay. So you lived with him for a while.

A Yes.

Q Uh huh. Um, and then what happened?

A Um, his old lady got, um,...evicted. So that's what put us on home...me and Tommy homeless. And she...

Q About how long ago?

A About, about the two years.

Q Mm hmm. Mm hmm. So after that, um, were you homeless all the way up until, uh, you got arrested or were there other things that happened in between?

A Uh, we were homeless since then. I, yeah, we, I met his mom. His mom likes me. Met his older brother Kelly.

Q Mm hmm.

A And he likes me. And...yeah, we just became basically like family.

Q Were you and Tommy pretty tight?

A Yeah, we're, we're close.

Q Can you think of anybody else in the world that you were tighter with than Tommy?

A Well, there...there is this...she was my case worker, Kelly, but she's in Germany. I told her basically almost all my secrets that...

Q Mm hmm.

A ...I never even told anyone.

Q Yeah.

A But, yeah, she's in Germany for four years. So...

Q Okay. Anybody else?

A No.

Q So...

- A Just basically me and Tommy.
- Q Yeah. Okay. And, um, Tommy said a cou-, four or five years ago that he would always watch your back? Is, is that what he said, something like that?
- A Yeah. That he always has my back.
- Q Okay. And in the time after that, did he follow through with that, uh, promise?
- A Well, it's basically, I always had his back, because he was too drunk to do anything.
- Q Yeah. Okay. All right. But, I guess, did he always stay loyal to you?
- A Yeah, he was, he was loyal.
- Q Okay. And did you always stay loyal to him?
- A Yes.
- Q Okay. To this day?
- A Yeah.
- Q Okay. Um,...and then how about Bryan? You said you met Bryan about a year ago?
- A No. I met Bryan about four years ago.
- Q Four years ago. Okay. Um,...how'd you get to know him?
- A Well, from apartments through CYS. And, um, I, my, um,...roommate, Faryth (sounds like), he was friends, he's friends with Bryan. That's when I met, um, Bryan.
- Q Mmm. So, um, but I mean, how did you get, how did you come to know him? Uh,...I,...
- A He was always at the apartments.
- Q Oh.
- A Almost every day. So...
- Q Oh.
- A ...he was basically living there (unintelligible).
- Q What did you think of him then?
- A I was just...all right. It was mostly just people that...they brought over that's all right and

there's...some people I didn't really care for.

Q Mm hmm. So, um,...uh,...after you got to know Bryan, uh, how much time did you spend with him? You know, after that and the four years, uh,...

A Um,...

Q ...since then?

A It was about like...um, one night I became homeless.

Q Yeah.

A That's when we started spending more and more time. Because he was out living in, I think, Tenino.

Q Mm hmm.

A And he was locked up.

Q So you said about two years ago you and Tommy became homeless. Is that right?

A Yes.

Q Okay. And so how soon after you and Tommy became homeless did the two of you join up with Bryan then?

A About like...not even four months.

Q Oh. And after that, was it the three of you together?

A Yes. And for some, for some time, then Tommy got arrested.

Q Oh.

A And he got out again. Then he got arrested again. And...it, it was mainly just me and Bryan.

Q Mm hmm.

A Most of the time.

Q Okay. So when Tommy was in jail and you, it was just you and Bryan, how did you and Bryan get along during those times?

A We had our ups and downs. And like who doesn't, I mean...

Q Uh, can you think of some of the reasons why you and Bryan would have problems

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sometimes?

A Uh, I don't even know why. It's just...probably...I don't even remember why, really.

Q No?

A It's just stupid...

Q What do you think of Bryan as a person?

A I mean, he, he does have a kind heart. But,...when he's not drinking.

Q Uh huh.

A It's when he does drink, he does get a little...violent. Because I had to break up a fight with him and Tommy before. And he almost, um, even at, um, had Tommy's mom, he, they'd gotten almost a fight, I had to get in the middle of it.

Q Between Bryan and Tommy?

A Yeah. At, at the mom's.

Q Did you ever see Bryan violent toward others, besides Tommy?

A Um,...yeah. Um,...I forgot this guy's name. But, he spilled beer on my coat, and Bryan got pissed at him and kind of threw him.

Q Mm hmm.

A It was right in front of Jake's.

Q Yeah. Well, um,...when this thing happened to Scott Cover, um, that you talked about, with that night, you know, I just want to talk to you a little bit about that. If that's okay. Um,...you said that Tommy came over to the campsite where you were at. Is that right?

A Yes.

Q Uh, that, that's the first that you heard about anything going on?

A Yeah, it was Tommy (sounds like).

Q Okay. So, um, what did Tommy tell you?

A That, it just...being like punks (sounds like) to him and to Bryan, that they pushed him in the fire. He had a burnt mark on his pants. It's, it's a good burnt mark.

Q Mm hmm.

THURSTON COUNTY PROSECUTOR

June 08, 2012 - 9:59 AM

Transmittal Letter

Document Uploaded: prp2-429268-Response.pdf

Case Name:

Court of Appeals Case Number: 42926-8

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

- Designation of Clerk's Papers Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: ____
- Answer/Reply to Motion: ____
- Brief: ____
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: _____

Comments:

No Comments were entered.

Sender Name: Caroline Jones - Email: jonescm@co.thurston.wa.us

A And...

Q So part of Tommy's pants were burned.

A Yes.

Q And so he's telling you that who did that?

A He, he said there was three people, and he, and Scottie's one of them and...Snuffy, Scuffy...one of them, that, that was...the second one.

Q Mm hmm. So it was Scott, Scottie and Snuffy or Scuffy.

A And David. Which is Pops.

Q Mm hmm.

A It's the other one.

Q Okay.

A And...he told me that...what happened, they wouldn't let Bryan go. They pushed him in the tire and he was trying to get up. But, he couldn't.

Q Why were they doing that?

A I don't know.

Q What, what did Tommy say about that?

A He didn't, he doesn't even know. He was, he was...just shitfaced off his mind.

Q Mm hmm. Okay. So Tommy told you that that...they were doing that to Bryan though.

A Yes.

Q Okay. And then how did, how did they end up pushing Tommy into the fire? How did he, what'd he tell you about that?

A Um,... he said he started to get in a fight and they all ganged up on him.

Q Oh, okay.

A Started with one person, then they all ganged up on him.

Q Mm hmm. Okay. They meaning who?

- A All of those three I was telling.
- Q Yeah. Okay. So Tommy's telling you these things while you're with him in the camp. Is that right?
- A Yes.
- Q Okay. And so... Tommy's got his pants burned and he's just been attacked. And so was he angry about that?
- A Uh, yeah, he was a little, uh,...
- Q Okay.
- A ...pissed.
- Q Okay. What did Tommy want you to do?
- A He actually wanted me to...to...he wanted me to get Bryan, but also beat him up (sounds like).
- Q Sure.
- A And it...what any brother would do. But,...
- Q Yeah. Yeah.
- A I told him to stay here, I'll be right back. I'm, I'm going to get Bryan.
- Q Mm hmm.
- A He goes, no, I'm coming with you. But, when he turned away, I was already gone.
- Q Mm hmm. Okay.
- A And he just stayed at the tent.
- Q So Tommy wanted you to...once again, watch his back or help him out by beating this guys up. And, and also get Bryan.
- A Yes.
- Q And so didn't Tommy want to come with you to...be there for you, too?
- A Yeah. But, I, I told him no.
- Q Okay. So you end up going by yourself?

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- A Yeah. I went by myself. And I left him there.
- Q Okay. So when you got to this camp that you were headed, and you knew where to go?
- A Yeah.
- Q Okay. When you got to this camp, uh, what's the first thing you remember seeing that was happening there as you walked in?
- A Bryan had the baseball bat and hitting Scott with the legs (sounds like).
- Q Mm hmm.
- A But, it didn't look like he was actually really hitting him that hard. Just like...taps and...
- Q Well, now, uh, was this, were you right, was this happening right there in front of you? Or was this a little distance away from you when you first saw this happening?
- A It was a little distance away.
- Q Okay. All right. And this is, is there any light there where that, it was taking place?
- A They had a little fire there.
- Q Okay. Other than that, any other light...
- A No.
- Q ...besides the fire? Okay. Uh, were these, was, uh,...Bryan hitting Scottie right next to the camp fire, or was it a little distance away from the campfire or...?
- A Just a little distance. Right where the trail ends, right by their tent.
- Q Okay. So that was a little distance away from the campfire.
- A Yeah.
- Q Okay. So, so not in an area that was well lit.
- A No.
- Q Okay. And, um,...but you saw Bryan using that bat and the area that he was hitting him, Scottie, was in the legs.
- A Yes.
- Q Okay. And so that's the first thing you saw. What's, what's the first thing you did when

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you saw that?

A I just kept walking, uh, toward him.

Q Okay.

A And Pop...but Tommy told me first that Bryan was...on acid.

Q Mm hmm. Okay.

A So I never dealt with anyone that was on acid. So I didn't know how...he would react.

Q Okay. So you walked up quickly or slowly?

A Slowly.

Q Yeah, okay. I understand. So, uh, as you walked up, what was happening...as you got closer?

A Um, he just kept hitting him and said that he, he wanted his coat, wanted his coat.

Q So when you say he, Bryan kept hitting Scottie?

A Yeah.

Q Okay. With the bat?

A Yes.

Q Okay. Still in the legs area?

A Yes.

Q Okay. And what was Bryan saying as he kept hitting him?

A I want my coat. I...

Q Mm hmm.

A ...I want my coat that my grandma gave me.

Q Mm hmm.

A His Carhart.

Q Mm hmm.

A And...

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Q So, uh, what happened next as you walked up?

A I went around Bryan, and when the bat went like this, I grabbed it.

Q Oh. Okay. How did Bryan react to you grabbing the bat?

A He was, he was shocked. I, he spunned around quick. And he saw who it was and...just (unintelligible) like that and that's when Scott said anything but a baseball bat, anything but a baseball bat.

Q Okay. And had Scottie been saying anything as you walked up and, and Bryan was hitting him?

A Uh, he said I'm sorry and...

Q Mm hmm.

A Uh, uh, I wasn't doing anything.

Q Mm hmm. Okay. Uh, well, how did his voice sound as he was, uh, being hit?

A Kinda high, but...

Q Mm hmm.

A ...than normal, that he has.

Q Mm hmm. Mm hmm. So after you took the bat, um, what's the next thing that happened?

A Uh, that's when Pops jumped out of the tent and said what, what the hell are you doing, and grabbed the baseball bat from me.

Q Mm hmm. Okay. Did you fight over the bat with him, or did you let Pops have it?

A No, I,...basically let go of it.

Q Okay.

A When he grabbed it.

Q All right. And, um, so then what's the next thing that happened?

A Pops told, asked me to help take, um, Scottie in the tent.

Q Mm hmm.

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A We picked him up. Scottie was...he was moving his legs just fine. But,...yeah, he was just drunk. And, um,...

Q Well, but Pops wanted you to help him get, help him get Scottie into the tent.

A Yes.

Q Okay. And so, and, and you did do that.

A Yes.

Q So the two of you had to help Scottie into the tent?

A Yes.

Q Okay. He couldn't do it on his own, then, Scottie. He needed two people to help him?

A Well, yeah, he was drunk.

Q Mm hmm. Okay. And you helped him by, help, kinda what...what did you do to help him get into the tent?

A Basically just...he just put an arm over me and that, that was it.

Q So you sort of half dragged him to the tent?

A No, he was walking. I, I didn't carry his weight. I just kind of balanced him.

Q Okay. But, he, he had his arm around you, did he?

A Yeah. He had his arms around both of us.

Q Right.

A And he was...(unintelligible)...

Q He had his arm around you and he had his...uh, his arm around Pops.

A Yeah.

Q And you sort of...walked him over to the tent.

A Yeah.

Q Okay. All right. And then what'd you do when you got him to the tent?

A Kinda just dropped him down at the door and he scooted in, and that's when Sam I Am

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woke up, he goes hey, what's going on. Get, getting Scottie in, in bed.

Q Mm hmm.

A Went oh, okay.

Q Okay. And then, uh, how did you get the, the bat back from Pops?

A I just asked it back from him.

Q Mm. Did Pops have anything else to say about what had just happened?

A No. He, he told me to get out of the camp.

Q Yeah. How was Pops toward you? Was he, uh, a little bit angry toward you?

A Yeah.

Q Oh. Okay. Um,...and so, uh, what did you do at that point then, when Pops got angry...

A I just asked for the baseball bat, and I grabbed, I took it and I left.

Q Okay. And what did Bryan...

A Me and Bryan (sounds like).

Q What did Bryan do when you left?

A Uh, Bryan went with me.

Q Okay. And as you walk back, what was Bryan telling you about what had just happened?

A He was just going off on the acid trip.

Q But, what was he saying about what had just happened?

A He doesn't even remember what was happening. He goes what, what was happening.

Q Mm hmm.

A I told him. And he I don't remember that.

Q Mm hmm. Okay. So then, um, then that's pretty much the way it was, as the two of you walked back to the, uh, your camp?

A Yes.

Q So then when you got back to your camp, where was, um, Tommy then?

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A He, he was sitting down at the table.

Q Mm hmm.

A Just...half asleep. Uh, and he hear, he heard somebody and he jumped up.

Q Mm hmm.

A And fell again.

Q Mm hmm.

A But, (unintelligible) looks like you're back already, huh. I told you to, he goes, I told you to wait for me. I, I'd be there to grab him, too.

Q Mm hmm.

A I,...said I, I didn't need you to do that. I was just going to go over there and get Bryan and we'd come back.

Q Mm hmm.

A That's what I did.

Q Did Tommy not want to know what happened?

A Yeah, I told him nothing happened. Just...

Q Okay. Um,...was there any talk then about, um,...uh, Scottie or, uh, what to do about Scottie?

A No. Because the next day, um, Pops told us that Scottie got up...in the morning, checked himself in. He walked to the hospital and checked himself in.

Q Pops told you the next morning this?

A Yes.

Q Where was that?

A Um, um, on the west side, by McDonald's.

Q So, um,...after that happened, um,...did you have any more conversation with, uh, Tommy or Bryan about what had taken place that night with Scottie? Did they talk about it some more with you after that?

A Well, Bryan kept asking me what, what happened. What happened. Because he doesn't,

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he didn't remember. And I kept telling him.

Q Mm hmm. What about Tommy? What'd he have to say about what had happened?

A Nothing much. He was, he, he could barely remember what was going on. He kept me asking me well when did this happen.

Q Mm hmm. Okay. So, um,...sometime thereafter, and you say it was, um,...close in time to when...uh, Norm and, um,...Pops died, a police officer came by, Henry came to the camp there where you were at?

A Officer Henry, um, he came by I think, uh, 10:30 or 10.

Q That, that, you think that's about what time it was?

A Yeah. I, the next day after their death.

Q Um, I'm not talking about that. I'm talking about the time before their deaths that, uh, Officer Henry came over to, um, to the camp there and, um, got the bat from you?

A Oh. I was there, um, yeah. That was like...three, four days ago.

Q Three or four days before the...

A Yeah.

Q ...deaths? Is that what you mean?

A Yes.

Q Now could it have been sooner than that, closer than that, or is, what's your best recollection of how close to...

A Maybe four.

Q ...the timing...

A Four days.

Q That's what you recall?

A Yes.

Q Okay. This bat, um, that had been used by Bryan to hit Scottie?

A Yes.

Q Um, after you brought it back to the camp, where was it between that time and when

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Officer Henry came?

A We just threw it right between our two tents.

Q Mm hmm.

A And that's when...then when Officer Henry cal-, came and he saw the bat just laying right between the two tents, he picked it up.

Q Mm hmm.

A Asked me if he could take it. Yeah, just take it.

Q Okay.

A Because he said it was used in a,...a crime.

Q A crime against who?

A He didn't say who.

Q Mm hmm. But, did you know?

A Yeah. So I just yeah, go ahead, take it.

Q Mm hmm. Okay. So, uh, Officer Henry didn't use the name Scott Cover?

A No.

Q But, you knew that that's what he was investigating.

A He said someone got beat up with the bat.

Q Okay. And that told you that he was investigating Scott Cover, or what happened to Scott Cover.

A Yeah.

Q Okay. So, um,...when he left, how soon after that did you get together with, um, Bryan and Tommy?

A Like a couple hours.

Q Mm hmm. And, uh, when you got together with them, did you tell them about what happened to the bat?

A Yeah, I told them, um, Officer Henry came and took the baseball bat.

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Q Okay. And did you tell them why Officer Henry wan-, had wanted the bat?

A Yeah. Yes.

Q Okay. So what was, uh, Bryan's reaction to that?

A Kind of like oh.

Q Oh.

A What else is there to do.

Q Oh. That was his only reaction was oh, what...

A Well, yeah. Because he, he barely remembers, because he was...

Q Uh huh.

A He thought he just maybe...like well, from the story I told him, just broke, like fractured a bone.

Q Mm hmm. Okay. He thought maybe he had fractured...

A Yeah.

Q ...Scottie's bone.

A That's it.

Q Yeah. And now here's a police officer investigating that action. So what was Bryan's reaction to the fact that the police are looking into that?

A He was kind of scared. But,...but with all the rumors from, from the people, um, um, off the streets, they said that his throat was smashed, his jaw was dislocated, both, all, almost all of his ribs were broken. You know.

Q Oh, these were things that were being said about what had happened to Scottie?

A Yeah.

Q Oh, okay. So, um,...Bryan was, you say, a little scared about the police looking into this.

A Yeah. This, um, we met a guy, um, that Bryan knew and trusted. And he said, uh, because he knows, um, he knew Scottie.

Q Mm hmm.

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A And he said no, he just had his, um,...legs, one of his legs broke, I think the other one might've been fractured, he said.

Q Mm hmm.

A And, uh, like the jaw...the jaw was broken, a broken nose, that's it.

Q That's quite a bit, isn't it?

A Yeah, it is. But...

Q So, what was it that Bryan was saying to you that, you know, um,...expressed his fear? What, how was he expressing his fear about all this, his concern about it?

A He didn't really express...things. He kind of...most of the time he blew them off and...let's go do this or let's go do that.

Q Okay. Well, what did he do or say that let you know that he was a little scared about the police looking into this?

A Just the look on his face.

Q Mm hmm. Okay. I see. I got ya. Well, what about Tommy, what was Tommy's reaction to hearing that the police were investigating this?

A Tommy had...Tommy had no worries, because he, he knew he wasn't there.

Q Mm hmm.

A And he didn't beat up no one with the baseball bat.

Q Okay. That was his reaction?

A Yeah, he...said he didn't beat up no one with the baseball bat. So...he did feel sorry for the guy, though.

Q How long after that, you know, when you first let them know about the police being...investigating this, how long after that, uh, did the three of you go looking for who told?

A Maybe a day.

Q Mm hmm. Okay. Um,...and so...how did that happen? Whose idea was it to go looking for who told?

A I think it was just group.

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Q The three of you?

A Yeah.

Q Okay. Well, then how did it happen with the three of you then? How did you all come to decide that?

A I think it was me that I said who snitched.

Q Mm hmm.

A Who, who said anything.

Q All right. So you asked a question. You're kind of...

A I was the one...

Q ...wanting...

A ...that asked the question.

Q Okay.

A I didn't think it would like resolve in...(unintelligible) go (unintelligible) for something. I just...who said this.

Q Okay. You asked that question. And so...but, Chris, I'm still asking you, how did, how did it come to be that the three of you decided to go do this? How did that decision get made? Uh, you've indicated that you brought up the subject of well, who snitched. And so what then was talked about amongst the three of you that caused you to go?

A Most of the time it's not a group decision. One, one, if one has a idea...most of the time I won't ask. I will just follow them.

Q Okay. But, I'm asking you, you said you were wondering who snitched. How did it turn out that the three of you went looking for somebody? How did that happen?

A We saw a group of, uh, other people and we just asked.

Q All right. But, I'm, I'm asking you, how did you, three of you decide to do that? See what I'm, you understand what I'm asking you?

A Not really. Because I'm...

Q Okay.

A ...giving you the same...

Q All right.

A One person tells, asks who, who said Juan (sounds like).

Q Mm hmm.

A Most of the time I'm not with that group, because I don't like being around groups.

Q Right.

A So...and...

Q So you, you've, you've indicated that you brought up the subject of who snitched. Do you recall anything else being said amongst the three of you that led you to look for the person who did it?

A No.

Q Nothing. Okay. And so...just because you brought up the subject of who snitched, the three of you went looking for that person. Is that what you're saying?

A Yeah.

Q Okay. They just followed along with what you decided to do. You wanted to find out who snitched?

A I just...I just asked. I, it was...I didn't want to find the person. I just asked who, and like who was it. Just a curious thought. That's all it was.

Q Okay. And based on that curious thought, the three of you went and contacted some people to find out.

A Yeah.

Q And who did you contact first?

A I think the first person was Jeff.

Q Mm hmm. Okay. And Jeff, was he with somebody at the time?

A Yeah, he was with Vicky.

Q Mm hmm. And where were they when you first contacted them?

A Um,...when we first contacted them was in front of Grocery Outlet.

Q Mm hmm. And so, um, and what were they doing? Were they just standing...

A Just walking.

Q Okay. And so, uh, were the three of you together, you and, uh, ... Bryan and Tommy at this time?

A Yes.

Q Okay. So how did it come to be that you started talking to them? I mean, if they're walking along and you're walking along, how did it, how did you end up talking?

A Um, I think it might've been Tommy that asked them a question.

Q Mm hmm. What did he ask him?

A Uh, I don't know.

Q You don't remember?

A No. I, I don't know. Jeff doesn't like me. Half of the people that they're friends with don't like me.

Q Okay. But, what my question is...

A So, uh, so I stay my distance.

Q Oh, okay. I gotcha. You, so you're saying you didn't hear what Tommy asked them?

A Yes.

Q Okay. How far away were you from where they were?

A About like fifty feet. Fifty, sixty.

Q Okay. Well, how do you know what they were talking about then?

A I don't. I just saw Tommy approach them.

Q Okay. But, didn't you just tell, tell me that Jeff was the first person that was asked about...

A Yeah.

Q ...who snitched?

A (unintelligible) what everyone like sa-, Sam I Am is the only one that talks to me. He goes, yeah, they talked to Jeff. Then they talked to, talked to him. And Sam I Am was the second.

Q Okay.

A But, there's only so many people. There's, there's I think like three that was it.

Q Mm hmm. Well, do you, did you hear anything of what was said to Jeff when he was first contacted?

A No.

Q So how do you know that the conversation concerned who snitched? How do you know that?

A I don't know. All I heard was I don't know and I don't care. And Jeff stormed off mad.

Q Who said I don't know and I don't care?

A Jeff.

Q And so how, how do you know that he was...when he said that he was talking about...

A Tommy came back and told me.

Q Okay. What did Tommy tell, come back and tell you?

A That basically he asked him who snitched on...my little brother. And...that's when...um,...that's when, um, he just...got mad.

Q Mm hmm. Mm hmm. Okay. So what did Tommy tell you that Jeff had said?

A That he doesn't want anything to do with it. He doesn't know and he doesn't care.

Q Okay.

A And he doesn't want to know.

Q Okay. So, uh, did Jeff leave at that point then? I mean...

A Yeah.

Q ...well actually...

A He did...

Q ...before Tommy said that to you. But,...

A Yes.

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Q Okay.

A He stormed off.

Q Yeah. So then the next person that would, you guys asked was who?

A Um, Sam I am.

Q Okay. How long after you had contacted Jeff did you make contact with Sam I am to ask this?

A About like five minutes.

Q So, um, what happened in the meantime? Jeff walked off. And then you guys did what that led you to contact Sam?

A Sam I am's standing at the corner of the...um,...that pizza place up there by Grocery Outlet. Um,...what's it called?

Q It, uh, same side of the street?

A Yeah.

Q (?) Apollo's.

A Huh?

Q Apollo's?

A Yeah, Apollo's.

Q (Powers): Oh, Apollo's, okay.

A Yeah, he, he always stands at that corner right there.

Q Mm hmm.

A And we saw him, we just walked up to him. Say hey, hey what's up. And we just asked him. And he said he doesn't know who snitched. And he said prob-, it's probably more likely Pops.

Q Mm hmm.

A Because he's been talking to the cops lately.

Q Oh. Okay. Who was asking Sam, uh, the questions at that time?

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A Uh, I think...think it was Tom.

Q Mm hmm.

A But, then it stopped and Bryan took over.

Q Mm hmm. Okay. And, uh, what you've told us, is that pretty much what Sam had to say, that he didn't know, but thought it might've been Pops?

A Yes.

Q And he, I think you also indicated that he said that Pops had been talking to the police.

A Yes.

Q Okay. So, um, after you talked to Sam, did the three of you talk about what Sam had told you and the fact that he'd mentioned Pops?

A Yes.

Q And, and what was said amongst the three of you about that?

A (No verbal response).

Q What'd Tommy have to say about that?

A (unintelligible) he goes, um, Pops is the only one that actually talked to the cops, and they fit, they gave our description and that stuff (sounds like). And our full description, who was who and our names.

Q Mm hmm.

A And...Tom, the only one that they couldn't match is, was Tommy. Because Pops just met him.

Q Yeah. So, uh, this is what Tommy's, Tommy's saying? What you just described is the things that Tommy was saying?

A Yeah.

Q Okay. So did Tommy come to some conclusion from these things?

A (No verbal response).

Q And what was that?

A (No verbal response).

Q You're, you're saying yes, you're...

A That...

Q ...nodding your...

A Pop...

Q ...head yes.

A Pop is, um, snitch.

Q Okay. Pops' a snitch. Uh, what'd Bryan think about that? Did Bryan disagree with that or did Bryan think that was probably true?

A Bryan thought it was true, too.

Q Okay. How about yourself, how did you feel based on what you'd heard?

A Uh, it's probably true, too.

Q Okay. So...now that the three of you had the idea that it was probably Pops, what's the next thing that you did?

A Was, was, um, I think the next, it was, we went back to our camp and slept. And the next day, and that's when...was it the next day? Or...we went behind the taco truck.

Q Okay.

A To our, start talking in the group.

Q Okay. And so...

A With those other people.

Q Chris, it sounds like you're a little unsure about whether it was the next day or, or not.

A Because I, I don't really, remember it's been like almost eight months now.

Q I understand. Could it have been the same day?

A Uh, no. I don't think it was the same day.

Q Okay. Um,...whichever it was, you recall that the three of you went to this place behind the taco truck?

A Yes.

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Q Okay. And who, who was there at that place?

A There was Mark, um, Jeff, Vicky, ...uh,...

Q Jeff was there?

A Yes.

Q Okay.

A And Gina. Pops, Sam I Am, ...and Norm.

Q Okay. All right.

A And us three.

Q Mm hmm. Okay. When you first walked back there, if you can just tell me step by step, what happened as you first walked back there, what's the first thing that happened, what's the next thing that happened.

A Well, we first saw them, started walking. Then...um,...it was Bryan that saw Norm. And he introduced Norm to Tommy.

Q Mm hmm.

A And they were discussing. And Norm says yeah, I've been out for a couple days now again and...it's been Pops that snitched on you guys.

Q Who said that?

A Um, Norm did.

Q And he was talking to who when he said it?

A To Bryan and Tommy.

Q Oh, okay.

A Because, um, he said...Pops is the one that, because they were like best, best friends.

Q Mm hmm.

A And it's...

Q How, how did the subject come up about the snitch at that time? I mean, why would Norm know to even start talking about it? Somebody must've said something to him.

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A Yes.

Q Who, who said something to him at that time?

A I don't remember who it was. But,...it was brought up. It was...because you could say one thing and the whole...downtown...the west side of Olympia would know about it.

Q Yeah, okay.

A Um,...

Q All right.

A And they said...yeah, I know who it was. It, it was Pops.

Q And this is Norm that was saying it?

A Yes.

Q Okay. And go ahead. What, what happened next?

A And that's when he saw...Bryan and Tommy saw Nor-, not Norm, but Pops over there talking to the group. So they went over there, started discussing that. And Pops started getting mad. And he said man, I don't care who said it, I'm not a snitch. I never once talked to the cop.

Q Mm hmm.

A And...everyone else goes yeah, you, you, you talked to the cops.

Q Mm hmm. Who was it that approached Pops and, and talked to him about this?

A They were both...it was Tommy and...

Q Bryan?

A Yeah.

Q Okay. And so, um,...how did they talk to Pops about this? I mean, were they...a little angry toward him?

A They were kind of a little pissed. But, they, they kept it calm.

Q Mm hmm.

A They were, they were calm.

Q Yeah.

A But, you, you know they were mad.

Q Okay. All right.

A But, um, yeah that...an everyone said yeah, you did talk to the cops. And he go...well, that, that was for something else. That was about Crazy Tara (sounds like) and...

Q Mm hmm.

A Just get the whole...he was trying to blame it on Crazy Tara, like when he was actually talking about us.

Q Yeah. Okay. So, uh, how long did they talk to Pops about this?

A Maybe a half an hour.

Q A half an hour?

A Yeah.

Q That's a long time. Uh, would you agree with that? It's a long time.

A Yeah. It is a long time.

Q So you think it was that long? Or maybe...maybe not or...what, what's your best...

A Well...

Q ...sense of that?

A I, I think it might've been a half an hour, because...because, um, that's when Bryan came out and he introduced me to Norm.

Q Mm hmm. Yeah. So what all was being said in this half hour? Because that's, that's, that's quite a...

A I was standing at a distance away.

Q Oh. Did you hear any more talk than what you described about, uh, Pops being a snitch?

A Um, not really.

Q Okay. Well, where in all of this did you...end up kicking the TV?

A I was right, right there and just...the TV, I was standing right in front of the TV as they

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were talking. I was just in my own world and,...just do-do-doo, just...

Q Well, um, you've indicated they were a little upset, a little angry. Weren't you also?

A Yeah, I was a little mad. But,...

Q Okay. Well, you know, when people kick things, they often do that in anger. And so was that something that you did in anger, were you just kicking the TV to...let your anger out a little bit?

A Yeah. I did...I'm, I'm bipolar. I have mood swings. And it comes and goes.

Q Yeah.

A I was, I do have a split personality.

Q Yeah. But, I'm just asking you, Chris, was it, was it that you were angry and so you...

A No, I wasn't angry. I was, I was in my own world. When I'm in my own world, that's...a happy place (unintelligible).

Q Mm hmm. Well, they were talking to Pops, uh, about him being a snitch at the time that you kicked the TV?

A Yeah.

Q Yeah? Okay. Um,...so if people were sit-, were, were there, uh, watching Pops being talked to about snitching, they would also, then seeing you kicking the TV...

A Yeah.

Q ...at the same time. Okay. Um,...and was this the same day that, uh, then that night you guys went over to Pops' tent.

A Yes.

Q Okay.

A It was that night.

Q That night. All right. So between the time that you were there at, uh, behind the taco truck, and the time that, uh, you went over to Pops' campsite that day, um, how much time we talking about?

A It was, we were at the taco truck maybe like...6:30.

Q Early evening?

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A Yeah.

Q Okay. And, um,...

A And we didn't get to Pops' camp until like one...

Q Mm hmm.

A In the morning.

Q Okay. All right. In the meantime, you know, between the, the...time behind the tru-, taco truck and going over there, what all did the three of you do?

A We just basically walk around.

Q What'd you talk about?

A Just off the wall, like Eddie Murphy Raw. We just joke around.

Q Okay. Well, how much of that talk was about Pops?

A Maybe like five minutes worth, that was it.

Q Well, who was, who was talking about Pops as you walked around?

A I don't remember who it was. And...I just...

Q Well, what was said about him in the time that you talked about him?

A It was just that yeah, he was a snitch and...

Q Mm hmm.

A Says, yeah, I thought so.

Q Any discussion at that time about what to do about it?

A No.

Q Any discussion about how anybody felt about Pops because he did that?

A Not really.

Q Yeah.

A I mean, they were, they still liked Pops. They just...

Q So, uh, how long did you guys walk around after you had, uh, been back there with Pops?

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A We, we left them, so...I don't know...we, I think we went to the bowling alley actually. And Grocery Outlet. Because Bryan spanged (sounds like) to get more beer.

Q Mm hmm.

A And he didn't make anything.

Q And I'm just asking you, Chris, for an approximation. I know you can't be exact. But, how, about how long do you think you might've walked around together, the three of you, before you went back to your campsite?

A See, we went back to our campsite...I, I think we got there maybe at 12:00.

Q Okay. So you were walking around...

A Um, about...let's see five, seven, eight...maybe five to six hours.

Q Five to six hours.

A Yeah, that we spent...

Q All right.

A ...in town.

Q Mm hmm. And out of the five to six hours, it's your recollection you spent five minutes talking about Pops?

A Yeah.

Q Then you got back to your campsite about midnight?

A Yeah, about midnight.

Q Okay. So when you got back to your campsite, uh, what was going on at that point in time?

A Uh, we turned on the radio and the CD player, listened to music for a while. Um, just cracking jokes. Um,...then they, that's, I went to bed. I was still like half asleep, half awake.

Q Okay. Now in the time that you, from the time you first got to the campsite to when you went to bed, in that time period, how much time of that was spent talking about Pops?

A Maybe a half an hour.

Q Half an hour talking about Pops?

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- A Maybe.
- Q Okay. And, um, what was Norm saying about Pops at that time?
- A Norm was at Pops' tent. I don't know what he was talking about. Norm wasn't at our tent.
- Q Who was at your tent?
- A Me, Bryan, and Tommy.
- Q Oh, Tom, I'm sorry, Norm. Okay. I'm, I'm sorry, talking about Tommy.
- Q (Lane): (unintelligible).
- Q (Powers): Thanks for...yeah. Thanks for correcting me, Chris. I'm talking about Tommy. What was Tommy saying, uh, during that half hour about, about Pops?
- A Uh, just, I can't believe he was a snitch, man. All the things he'd done for you guys and...that's when Bryan just want things heavy done (sounds like). And we worked for him, we, we, I've always busted trees for his fireplace, I never really got anything. He threw like two lighters in my face.
- Q Mm hmm.
- A I mean, it was in the fire and it blew them up in Bryan's face.
- Q So who was talking about the things that, um, that had been done for Pops?
- A Uh, Bryan.
- Q Bryan was talking about all the things he'd done for Pops.
- A Yeah.
- Q Okay. And so, uh, what else was being said about the fact that Pops was a snitch?
- A Um,...(unintelligible) um that he found out that Scuffy burned, um, Bryan's Carhart coat that his grandma gave him. His grandma died in a fire. That's what Bryan said.
- Q Bryan said. And who is Scuffy?
- A Um,...if I had a picture I could show you. He's the guy in the...you seen in, uh, the guy in the black jacket, uh, the musta-, the goatee. He wore all black, and he was in the picture of, um,...
- Q (Lane): when they talked to all the people on the street?

A Yeah. He was...

Q (Costello): (unintelligible)...

A ...the last one.

Q What's, is there anything distinctive about him? I mean, is there anything weird or odd that isn't, not anybody else would have that you can recall?

A He would just wear pure black, um, earrings, nose ring.

Q Nose ring.

A Yeah.

Q Goatee with a nose ring.

A Yes.

Q Dark hair, light hair?

A Uh, black hair.

Q Okay. Okay.

Q (Powers): so Bryan was saying that Scuffy had burned his coat?

A Yeah.

Q And so what was that to do with Pops?

A Uh, Bryan mentioned that that was that night with, um, Scottie.

Q Oh. Then this same night that, um,...

A Yeah.

Q ...Scottie got, uh, got hit.

A Yes.

Q Mm. Okay. So, um, but what was talked about that? I mean, that fact that, uh, you know, the police are looking into this and, and Pops has talked about it. What, what would, were, uh, Tommy and Bryan saying about that?

A (No verbal response).

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- Q I mean, what...was there any concern about that? You know, about what was gonna happen?
- A Not really. Just...I thought Scuffy left (sounds like). Because I haven't seen him for days.
- Q Mm hmm.
- A For almost a week. So I thought he left.
- Q Okay. But,...as far as this, I'm talking about this half hour that you guys were talking about Pops, you know, after you got back to the campsite and talking about can't believe, you know, that he would do this after all the things that were done for him. Um,...what was said about what to do about it?
- A It wasn't really said. And that's when...Br-, um, I forgot who it was. I think it was Bryan that went up, he woke me up and said let's go.
- Q Okay. Now I'm talking about before you went to bed. Things that were being said before you went to bed. Because I'll get to that. You know, before you went to bed and they're, you know, this, this...
- A Before we went to bed, before I started going to bed, we were just all joking around. I was laying in bed when they were talking about this.
- Q Oh, I gotcha. Okay. So it's Bryan and Tommy talking about...
- A Yeah.
- Q ...uh,...
- A They were the two talking back and forth.
- Q And you, you were in bed...
- A I was half a-, half asleep.
- Q Okay. And where were they in relation to you that you could hear this?
- A Um, right in front of the tents. If the tent's right here, and the table's just right here.
- Q Mm hmm. Okay. And so it was maybe a half hour before you were able, you fell off to sleep that, uh, you heard things being said.
- A Yes.
- Q Okay. And other than the fact that they were talking about, you know, how, um, surprised they were that Pops would do this, what else do you recall being said by either Bryan or

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Tommy about it?

A Not much. I dosed off right in the middle of it.

Q Okay. Any other details though you can recall that were said?

A No. That's when Bryan just started waking me up and said we're leaving.

Q Okay. And when Bryan woke you up, what did he tell you was gonna happen?

A Nothing really. He said...let's go. I'm where we going? Oh, you'll find out. Didn't, that's when Tommy was already...out by the main road. And when we walked out, they took a, they hanged a, a right. And that's when I knew we were going to Pops' camp.

Q Okay.

A Because left is town and right's Pops' camp.

Q I see. Yeah. And so as you walked along, um, what was Tommy, uh, well, first of all, when you left, did Tommy say anything about where you were going?

A Tommy didn't say anything. I go so we're going to our camp, um, Pops' camp to...what, beat them up? Tommy goes, uh, I don't know if it was Tommy or Bryan, but one of them said yeah.

Q Mm hmm. Okay. And, uh, and then you left?

A Yeah, we, we were already walking.

Q Gotcha. Okay. This is something that was said as you were walking?

A Yeah.

Q Okay. What else did you talk about as you were walking?

A Bryan said the best way to get rid of a body is to burn it and...

Q Mm hmm.

A I thought he was just joking.

Q Right. Okay. How did that come up? What was...what...

A Um,...

Q ...was being said at the time?

A It's just that Pops was a snitch and...

Q Mm hmm.

A ...and he goes yeah, back in my military days and...when I was a marine, the best way to get rid of a body is to burn it.

Q Mm hmm.

A Because there's no evidence.

Q Okay. And, uh,...when Bryan said that, did Tommy have anything to say about that?

A No. Tommy was, he was too drunk.

Q Okay. So nobody said anything when that statement was made?

A I was just like whatever...

Q Mm hmm.

A ...kind of thing, he...I, we thought we were, he was just joking.

Q So Bryan, uh, say anything further about that, other than what you just said? Did he add anything to that?

A No.

Q Okay. So what's the next thing you start talking about then if...if...

A Well, it was mainly quiet there.

Q Mm hmm. Yeah. Uh, well what other things did you talk about? Maybe not right at that moment, but as you walked along and, um,...what, what else do you recall talking about?

A I don't, I don't remember.

Q Okay. All right. So, uh, you went, walked out to the, uh, main road, turned right,...and then went over to this other little access road, dirt road?

A Yes.

Q Okay. And then turned right again?

A Uh, we turned, when we got at Pops' camp...

Q Before...

A ...or I mean, turned down...

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Q From the main road...

A Or...

Q ...to get down to the access.

A Yeah. We turned right.

Q Uh huh. Okay. And then headed down there to Pops' camp.

A Yeah.

Q Okay. And, um,...you, I know you don't remember the things that you talked about, other than what you've just said. Is that right?

A Yes.

Q But, was there talk, were you talking amongst each other as you walked along?

A I,...

Q Or were you just...

A I think so.

Q Okay. All right. Um,...and, uh, when you go to the campsite, um,...you said who was in front, who was second, who was third?

A Bryan was first, I was second, and Tommy was third.

Q Mm hmm. And did you stop for a moment to watch what was going on in the campsite? Or did you, when you got there, did you just proceed right down the trail?

A I just kept going until I got to Pops' tent. And...

Q Okay.

A ...that's when Tommy cut in front of me and was, he yelled out Pops' name and told him to come out here. And Pops came out and sat in the chair.

Q Okay. Chris, let me stop you for a second. Because I want to take this kind of step by step.

A Step, okay.

Q So the three of you walked into the area where the tent was. Is that right?

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A Mm hmm.

Q And then you've indicated that Tommy, he was behind you initially but he walked in front of you?

A Yeah.

Q Okay. And so who was the first of the three of you to say anything? Was it Tommy?

A Yes.

Q Okay. And he, he yelled out what?

A Um, Pops' name.

Q Okay. And, uh, at that point in time, did Bryan yell out anything? Or was Tommy the only one that yelled something?

A Um, I think Bryan yelled out anyone else who's here, and that's when...Norm answered.

Q Okay. So, uh, when Pops answered and then Norm answered, uh, who, did somebody come out of the tent?

A Uh, Pops did.

Q Okay. And as Pops came out of the tent, where were the three of you in relation to the front of the tent?

A Um, Tommy was in front, right in front of the tent. I was on the side of the tent.

Q Mm hmm.

A And Bryan, he was in behind of the tent.

Q Okay. And when Pops came out, uh, what's the first thing that was said or done?

A Um, Tommy asked him why'd you, why'd you snitch.

Q Mm hmm.

A And that's when, um, Pops sat down and he goes, I got, I already told you I am not, I didn't snitch. And Tommy hit him.

Q Now you said Tom, uh, Pops sat down?

A Yeah. He sat in (unintelligible) chair.

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- Q Oh, okay. He sat down in a chair.
- A Yeah.
- Q Well, where was the chair in relation to the...
- A Um,...
- Q ...front of the tent?
- A See, there's the tent.
- Q Right.
- A Tommy was right here, I was on the side.
- Q Mm hmm.
- A It was over here.
- Q Okay. A little bit to the side of the entrance?
- A Yes.
- Q Okay. And when Pops sat down, um, and said that, Tommy hit him where?
- A On the, um, left side of the face.
- Q Mm. Um, so was it like a punch, closed fist...kind of a hit or...?
- A I don't, I think it was a closed fist. I'm not sure.
- Q Okay.
- A But, he, he didn't hit him that hard. Because his head barely even moved.
- Q Mm hmm.
- A Just went like this. And that's when Tommy fell down.
- Q Okay. Tommy hit him, uh, and did Tommy say anything as he hit him?
- A Uh, I can't...you, you know you are the snitch.
- Q Yeah. And so, uh, when that happened, uh, was Norm still in the tent, or had he come outside?
- A Uh, at the, at that time...I, at that time, I think he was still in the tent.

Q Okay.

A It's when I hit Pops, Norm came out.

Q Okay. Um,...so after Tommy hit Pops and fell down, um, what's the very next thing that happened? Did Pops say something?

A Yeah, he told us get the f-, get...Tommy, get the F out of here.

Q Mm hmm.

A And that's when I hit Pops.

Q Okay. And how did you hit Pops?

A Just basically the same way, um, Tommy did. Just swung.

Q With your fist.

A Yeah.

Q Okay. And, uh, where did you hit him in the, with your fist?

A I hit him on the cheek right in here.

Q Okay. And, uh, how many times did you hit him?

A Maybe four or five.

Q Okay. And as you hit him those four or five times, uh, was he still seated in the chair? Or did he fall off?

A Yes. No. He was still seated.

Q Okay.

A That's when I got him in the sleeper, we fell over.

Q Okay. So as you hit him those four or five times, uh, what he was doing in reaction to that? Was he just...

A Uh, he just co-, he covered up his face and said I'm, I am sorry.

Q Okay. All right. Um,...and, and at what point in time then would, did Norm step out? Was it...

A When I got him in a sleeper.

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Q Oh, okay. Well, now, Chris you, you had told us earlier that, uh, when Pops was denying, you know, when he was out there saying I told you I didn't do this, that Norm said well, yes, you did.

A Yeah.

Q Well, so, but you said now that Norm came out of the tent after you got the sleeper hold on him. Um, when did he, when did Norm say that...to Pops, yes, you did?

A At...behind the taco truck.

Q Okay. But, at the...didn't you say earlier that at the campsite there when Pops was denying that he had been...

A No.

Q ...the snitch, he was...

A He was denying behind, behind the taco truck.

Q Okay. All right. So Norm didn't say that at the, at the campsite.

A No. When Norm came out, he...what the hell...what's going on. And that's when he saw Bryan and go hey...

Q Okay.

A What's up.

Q So after you hit, uh, Pops in the face four or five times, uh, what happened then? What's the next thing that happened?

A I got him in the sleeper.

Q Okay. And was he still seated at that point in time?

A At the time, yes.

Q Mm hmm. So how did you get him in the sleeper? How did you move...

A I just...

Q ...in relation...

A ...went around him...

Q Mm hmm.

A ...and the sleeper

Q Which, which arm did you use to do this?

A My right.

Q Your right arm? And, uh, when you grabbed him with your right arm, uh, di-, ho-, what part of your arm did you have up against his throat?

A My right.

Q But, I mean, what part of the, your right arm did you have up against his throat?

A Um, my...

Q Okay.

A ...elbow...

Q You're, you're pointing to the elbow area that...

A Yeah.

Q The inside part of the elbow?

A (No verbal response).

Q Okay. So you had that pressed up against his throat?

A (No verbal response).

Q You gotta say yes or no.

A Yes.

Q Okay.

A It was more actually more underneath his jaw.

Q Underneath his jaw. Okay. And so, um, what kind of pressure were you using after you got your arm against him that way?

A I (unintelligible), just like squeeze hard for a little bit, then I let go.

Q Mm hmm. Okay. Now you say something happened with Pops as he was sitting there when you grabbed him that? Was he, did he remain seated or did he...

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A Uh, he fell over.

Q Okay.

A We both fell over.

Q All right. Um, how did that happen? How did...

A I lost...

Q ...you both...

A ...my balance. I was still hanging onto him.

Q All right. So when you fell over, how did you end up on the ground?

A On my back.

Q And with Pops, and how, how was Pops in relation to you then?

A It, he was on the, on my stomach.

Q He fell on top of you?

A Yes.

Q All right. And did you still have your arm around him the way that you just described?

A Yes.

Q All right. So it, it hadn't, um,...

A But it moved a little bit, um,...

Q Okay.

A ...I put it forward.

Q But, otherwise, it was still...

A Yes.

Q ...you still had it around him that way.

A Yes.

Q Okay. And were you still, uh, pressing your arm against him?

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A Yes.

Q Squeezing him?

A (No verbal response).

Q Yes?

A Yes.

Q Okay. So as he, as you landed on the ground and as he landed on top of you, you continued to squeeze his neck.

A Yes.

Q Okay. And, um, was he, as he landed on top of you, was he trying to say anything?

A Uh, he wasn't saying anything. He...

Q Well, well...if he wasn't saying anything, what was he doing, Chris?

A He was grabbing my arm and try-...

Q Okay.

A He was trying to break free.

Q The arm that you had around his, uh, neck, was the arm that they were gra-, uh, that Pops was grabbing?

A Yeah.

Q Okay. Was he using both hands to grab hold of it?

A Um, no. He was using one.

Q Okay.

A And the other one was trying to break this one free.

Q He was trying to break your other arm free?

A Yeah. Because I locked it in like this.

Q Okay. Now you've used the gesture, and of course this is all being recorded. So, uh, you said that you had your right arm so that the inside of your elbow was pressed up and underneath his chin...

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A Yes.

Q ...against his neck. Right?

A Then my...

Q And you...

A ...left arm to brace it.

Q Your left arm was bracing your right arm.

A Yes.

Q To help give you further greater force.

A No, not greater force. Just to lock it in place.

Q Okay. All right. And so the left arm was pressed against the outer part of the right, uh, forearm? Would that be correct?

A (No verbal response).

Q As I'm....

A Uh, on my wrist.

Q Uh, okay. The left arm...

A Like this.

Q ...was pressed against...

A The wrist.

Q ...the right wrist...to lock the arm in place.

A Yes. So it couldn't be break, broke free.

Q Okay. So if Pops tried to get your arm away from his throat, he wouldn't be able to. Because you had it locked in.

A Yes.

Q Okay. And so, um, he had one arm grabbing for the arm around your throat, and the other arm grabbing for the left arm that was, you were using as a brace.

A Yes.

Q Okay. Uh, was he able to get either arm loose from around him?

A A little bit. Yes, he did.

Q Okay. And, um, when he did that...

A That's when Bryan kicked him in the face.

Q I see. Okay. Did Bryan say anything at that point in time, or as this was happening? Could you...

A Uh, when he kicked him in the face, he just said you snitch.

Q Okay. All right. So when Bryan was able to, to, when Bryan did that, kicked him in the face that way, did that allow you to be able to re-enforce the, your, your hold on him?

A Well, yes.

Q Okay. Um, and then what happened?

A Uh, then he kicked him again underneath the jaw line.

Q Okay. So he kicked him twice.

A Yes.

Q All right. Um, and did he say anything else...

A No.

Q ...other than you snitch when he did that?

A (No verbal response).

Q Okay. And, um,...after the second time that he kicked him in the face, um, and at the time...or at the time that he was kicking him in the face, were you continuing to squeeze against his neck?

A Um, squeeze and then I let go, squeeze and let go.

Q Okay.

A It wasn't, I didn't have him in the choke lock, choke lock...

Q Mm hmm.

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- A ...for the re-, for the whole time.
- Q Mm hmm. I understand. And so then, how, what's the next thing that happened after he...
- A That's when...
- Q ...Bryan had kicked him twice and you were...
- A That's where...
- Q ...doing this as you described?
- A After that, Bryan went after Norm.
- Q Okay. What was happening with Pops after Bryan kicked him twice?
- A Uh, (unintelligible).
- Q Yeah. I mean, what, he, he's kicked Pops twice. You got your arm around him. What's the next thing that happened with regard to Pops?
- A He was still, he, he...went back at trying to break it free.
- Q Mm hmm. And what happened?
- A And he passed out.
- Q Okay. All right. So at some point, as you're doing what you described, uh, with your arm around his neck, did he just, I mean, he's, and he's trying to pull it away, did he just release his arms from the, his...cease his efforts, you know....
- A Yeah.
- Q ...basically fall unconscious?
- A Yes.
- Q Okay. And, um, it was at that point that you stopped?
- A Yeah.
- Q Okay. Because you knew that he was...unconscious.
- A Yeah. Out.
- Q Out. Okay. And so, um,...what'd you do? Because he's on top of you now. So what did

you do at that point?

A Try and get up.

Q Mm hmm.

A Was trying to push him off.

Q Okay. Well, you say try to, but were you able to...

A Yeah.

Q ...push him off?

A He, he was like 210.

Q Yeah.

A And I'm 135 at the time.

Q Mm hmm.

A So that's...all dead weight on top of you and that's...

Q Mm hmm. Okay. So, um, were you able to get out from under this dead weight...

A Yes.

Q ...at that point in time? Okay. And then when you did that, uh, how, how was Pops there on the ground?

A Just still.

Q Okay.

A He, he was snoring.

Q You, you say snoring. You talking about making...

A Yeah. When you...

Q ...making noises like...

A Yeah.

Q ...people make...

A Snoring.

Q ...like when they're sleeping?

A Yeah.

Q Um,...did you get up at that point when you got go-, you know, out from under him? Did you get up on your feet?

A Yeah, I got up.

Q Okay.

A To my feet.

Q At that point in time, can you recall, Chris, what was happening around you? You know, now you're in a position to kind of see what's going on, uh, can you recall at that point what, what was happening?

A At that point, um, Pop...not Pops, but Norm was already over on the, by the tent. He wasn't behind the tent anymore.

Q Okay. Now...I know you talked about the fact that Norm had gone behind the tent. Um, and could you explain, Chris, if you were doing all this with Pops as you've talked about, you know, how is it that you're able to know that he went behind the tent, um,...

A Because I looked to my side and actually saw Bryan and Tommy...go behind the tent.

Q Okay. So even though you were doing all this, uh, choking with Pops, you were still able to pay a little bit of attention to what was happening to Norm?

A Yeah.

Q Okay.

A I quick glance over.

Q Okay. And what is it that you saw while you were choking Pops? Uh, with regard to Norm? What, what did you see during that time?

A Um, uh, that Bryan and Tommy left. That's all I saw.

Q But, you saw Norm go someplace? You saw Norm go to the back of the tent?

A Yeah. He got, ran to the back.

Q Okay.

A That's when they chased him.

- Q Okay.
- A Tommy tried to...chased him. But, he was...more everywhere.
- Q Mm hmm. So the first one to be after, uh, Norm was who?
- A Bryan.
- Q Okay. And then Tommy was behind him?
- A Yes.
- Q Okay. Because he was...so intoxicated, he was having more difficulty getting back there.
- A Yes.
- Q Okay. And what did you hear, uh, could you see them behind the tent, once they got back there?
- A No. I couldn't see...(coughing)...
- Q You okay, Chris? You want...
- A yeah, I'm all right.
- Q Um, could, well, could you hear what was going on?
- A I heard, um,...Norm said no, I'm not going to snitch, I'm not going to snitch. I won't tell. I'm not a snitch.
- Q Mm hmm. Okay. And, uh, what was Bryan saying back there?
- A I, I couldn't hear Bryan.
- Q Oh, okay. Could you hear whether Bryan was saying anything? You know, like hear his voice at all?
- A No. I mean, I didn't hear anything from Bryan.
- Q Okay. Did you hear any other noises back there? Other than those things being said by Norm?
- A Well, besides Tommy saying Ow.
- Q Mm hmm.
- A And I heard the bush move. Tommy just yelled out, oh, I need help. I need help. Uh, I

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don't know where I'm at. I'm, I, I've, I just fell.

Q Mm hmm. Okay. So, um, ... what else did you, what else do you recall happening as they were back there and you could hear some things?

A That was it.

Q That was, okay.

A Tommy, he... I think he got, when he got up, he came walking. And, um, by the front of our tent. Not our tent, but Pops' tent.

Q Mm hmm.

A Where I was at.

Q Okay.

A And that's when Norm came, coming back, he said man, I'm not going to snitch. I'm not like that.

Q Okay. Now at this point, when Norm came back out to the front area of the tent, were you standing up, uh, after having, uh, choked Pops to unconsciousness?

A Yeah. I was trying to drag Pops back to the tent.

Q Okay. But, before you dragged Pops to the tent, did, I mean, when you first stood up, uh, after you had choked him, what was happening at that point in time?

A They were still behind the tent.

Q Okay.

A That's when Tommy was coming back.

Q Oh. And so, um, ... while they were behind the tent, did you do anything with Pops? While they were still back there, did you do anything with Pops' body?

A No, I just left it until Tommy started walking (sounds like). And I was trying to, then I grabbed, um, Pops' body and started dragging him to the tent.

Q Mm hmm. Okay. How did you grab hold of Pops' body to do that?

A Underneath his arm. From his, um, from the back.

Q And, and were you standing in front of his head grabbing...

A From the back. In the back of his head lifting...

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Q Mm hmm. Lifting him from the back of his head?

A Yeah.

Q Under the arms?

A Yeah, from underneath the arms.

Q Now was Pops bloodied as a result?

A No.

Q You didn't see any blood?

A No.

Q Well...

A There was no blood.

Q From the four or five punches in the face you gave him, there was no blood?

A No. You don't...hit him in the cheek.

Q Well, how about the...getting kicked in the head twice, no blood from that either?

A I didn't see any blood.

Q At any time, in regard to Pops' body, did you see any blood?

A No.

Q Um, other than the, the embers, you know, that were the leftovers of this fire, was there any light out there?

A Not really, no.

Q Okay. Um,...and so...and this is not an area that's next, that's close to the street. Right? I mean, it's quite, it's...

A Well, he...

Q ...quite a ways away.

A ...you have the lights from, um, Safeway and all the stores around there that have lights on.

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- Q Mm hmm. If he's lying, if Pops is lying on the ground and you're standing up, are you saying that it was light enough to be able to see, um, how he looked?
- A No. It was when I grabbed him from under his arms, when I put his fä-, my face down there by his. I didn't see no blood.
- Q Well, you dragged his body, uh, to the tent for what purpose then?
- A Because it was starting to snow. It's the day... March, and it started raining, snow.
- Q Okay. And so you were, and so you were gonna what? You were trying to be nice to him... at that point? Or what?
- A I wasn't gonna leave him out in the rain.
- Q Um,...he was not brought into the tent, though, was he?
- A No, he wasn't.
- Q So you just brought him to the front of the tent.
- A Yeah.
- Q Did you put him partially in the tent?
- A I just had him next to the tent (sounds like).
- Q Mm hmm. Why did you choose to do that, as opposed to just dragging him into the tent?
- A Because I couldn't do it all the way in.
- Q Mm hmm.
- A I have a bad back.
- Q Okay.
- A And that's...
- Q Did...
- A That's on record and...
- Q Sure. Well, did anybody help you drag the body to the tent?
- A Um, Pops?

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Q Yeah.

A No.

Q Okay. So, you've mentioned that Norm came back around to the front of the tent.

A Yes.

Q Was this before or after you dragged Pops body to the front of the tent?

A It was...kind of before.

Q Before you dragged him?

A Yeah.

Q Oh. Okay. Well, let me talk, ask you about that then. Um,...when Norm came to the front of the tent, what happened at that point, as far as Norm was concerned?

A As I was saying, Norm came out. Tommy was in the lead, in front. Norm came (unintelligible) and goes I'm not a snitch, I'm not a snitch.

Q Mm-hmm. What kind of voice was he speaking in when he said that?

A Sounded kind of scared.

Q Mm-hmm. Okay. And what happened when he said that?

A That's when Tom grabbed him and did, I think it was like a leg sweep.

Q A leg sweep?

A Yeah.

Q Could you explain what that is, Chris, because I'm not quite understanding what...

A A leg sweep is, um,...you grab a person and you kick their legs out from underneath them.

Q Oh.

A So they (unintelligible)....

Q I see. Okay. And that causes the person to...

A Lose their balance and fall on their back.

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- Q Oh, okay. All right. So, um, is that what Tommy did?
- A Yeah. But, he kind of went down with him, too.
- Q Mm hmm. Okay. And, uh, as he brought him down to the ground, um, how did Tommy end up with, in, in relation to Norm? I mean, well, first of all, how did Norm end up, end up on the ground? Did he end up on his back, or his side, or how...
- A He's, uh, on his back
- Q On his back. Because, that's kind of what happens, I guess, when this...
- A Kind of...
- Q ...sweep takes place.
- A ...grab, leg sweep, and falls on his back.
- Q Sure. So how did Norm, uh, how did, uh, Tommy end up in regard to Norm then? How was he positioned and, and Norm?
- A Uh, he was on his side, uh, he got on top of him and hit him a couple times, you're not going to snitch on my brother, are you.
- Q Mm hmm. And how did he hit him?
- A It was more...as a fall hit (sounds like). He was...he, he couldn't sit up. I think he nicked him more, mainly.
- Q Oh, I mean, what, what, what part of Tommy's body was he using to hit Norm?
- A Uh, he was trying to hit him with his fist.
- Q His fist, okay. And what part of Norm's body was he striking with his fist?
- A Uh, the face.
- Q Okay. And as he was doing that, he was saying,...uh, what to Norm?
- A You're not going to snitch on my brother, are you?
- Q Okay. And what was Norm responding to that?
- A Oh, no.
- Q Okay. All right. So then, uh, this is all happening before you drag Pops' body to the tent?

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A Yeah.

Q Okay. Everything you described so far?

A Yes.

Q Okay. Um, so as... Tommy's got Norm on the ground this way and he's striking him in the face, what's, what's the next thing that Tommy did then after he struck him?

A Nothing. He basically just hold him there. And that's when Bryan came.

Q Well, how was he holding him?

A Just hold him down to the ground. His, um, hands on top of his chest.

Q His, well, he, Tommy had his hands on Norm's chest?

A Yeah. On top and just holding him down.

Q Now, my recollection is that Norm is one big guy.

A Tom's 230.

Q Uh huh.

A And Norm's only, what...240, 250?

Q Well, what was Norm doing to try to get up from this position? What, what actions was he taking?

A He wasn't really trying to do anything. He was more just talking, saying no, man, I'm not going to snitch.

Q Okay. So Norm wasn't trying to get up?

A Yeah.

Q Okay. And so Tommy was just kind of lying on his stomach, pre-, had his hands on his stomach and Norm was just laying there. Is that...does that sound right?

A Yeah.

Q And so then what happened?

A Bryan came over and...I, I don't...remember what really Bryan did.

Q What, well, how was he positioned, uh, when he did whatever he did? When, how was

Bryan positioned?

A He was hunched over, but I don't know if...I don't know if Tommy knocked him out, knocked out, um, Norm or Bryan did.

Q Okay. Now when you say knocked out, you mean rendered Tom, um, Norm unconscious. Is that...

A Yes.

Q ...what you're referring to? Okay. So you don't know how that happened.

A No, I don't.

Q Okay. Um, because you couldn't see what was happening, is that the reason or...?

A I, that's when I started dragging Pops over by the tent.

Q I see. Okay. So you weren't looking over there at that time.

A Right.

Q Is that correct?

A Right.

Q Okay. And then once you got done dragging, uh, Pops' body to the tent, uh, did you then look over and see what was going on?

A Um, Tommy was trying to drag Norm over by the, by our tent, too.

Q Was he unconscious by that time?

A Norm?

Q Yes.

A Yes.

Q Okay. So somehow...at some point, during the time you were dragging Pops' body to the tent, Norm was rendered unconscious.

A Yes.

Q Okay. Um,...and at the point in time you next paid attention to what was taking place, uh, Tommy was trying to drag Norm's body, just like you had done with Pops.

A Yes.

Q And how is Norm dragging the body?

A (No verbal response).

Q Trying to.

A No, Po-, um, Tommy?

Q Tommy, I'm sorry.

A Tommy was...

Q How is Tommy trying to drag Norm's body?

A By his hands.

Q With what...

A By his arms.

Q ...holding...

A With his arms.

Q Holding what part of...Norm's body?

A His hands.

Q Oh, his hands.

A Yeah, by his arms. He was trying to pull him by his arms.

Q Trying to drag him head first toward the tent? Or...

A Yeah, head first.

Q Okay.

A That's when, when asked, he asked me to help him. So I tried to grab him. And I, I couldn't help him.

Q How did you...

A So it took uh, all three of us.

Q How did you grab Norm to help?

A By one of his arms and by his belt.

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- Q Okay. And then Tommy at that point had a hold of what?
- A Same way that I did.
- Q Okay. I gotcha. And then that wasn't working either?
- A No.
- Q So what did Bryan do to help?
- A He grabbed in front of the belt and started scooting.
- Q And with the three of you, uh, holding him that way, were you able to drag him over?
- A Yeah.
- Q Okay. And, uh, ...during the time you dragged him over, uh, are you saying that you heard something from Norm? Some sound or...
- A Yeah. Norm was snoring. And so was Pops.
- Q So as they were laying be-, by the front of the tent there, uh, one kind of next to the other, more or less, would that be accurate? Is that how they ended up?
- A Well, they were like...three feet apart at the time.
- Q Yeah. Okay. And, um, Pops is snoring and Norm is snoring.
- A Yes.
- Q And they're just kind of snoring. Laying there snoring.
- A Yeah.
- Q And then, uh, what's the next thing that you can recall happening?
- A Well, when we got done with that, Tommy asked for a cigarette. He asked me for a cigarette. And I said I don't have one. We asked Bryan. Bryan didn't say anything. And we saw a light, I saw the tent start on fire.
- Q Well, where, and where was Bryan positioned...
- A He was...
- Q ...at that point?
- A ...standing right in front of the tent.

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Q When you say in front of the tent, do you, I mean, you got the opening of the tent, then you got the, the either side of the tent, you know what I'm saying, as far as the, the front of the tent encompasses kind of all of that.

A Yeah.

Q So where in, when you say in front of the tent, where do you mean?

A He's from right...

Q In front...

A ...in front of the doorway.

Q Right in front of the doorway?

A Yeah.

Q Okay. Wasn't that where the bodies were?

A Yeah.

Q So where was Bryan standing in relation to the bodies then?

A Right between them.

Q Okay. And, um,...what did you see him doing?

A I, I didn't see him if he lit the tent or not, but the tent started on fire.

Q What, what part of the tent started to...burn?

A On the left side.

Q Left side of the...

A Left side of the door.

Q Of the opening?

A Yes.

Q Okay. Right by the bodies.

A Yeah.

Q Okay. Weren't the bodies a little, little bit inside the tent? Didn't you said that at least

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their heads were inside the tent?

A The heads were.

Q Okay. So the, the fire started right by their heads?

A Um, yeah. But, it died out a little.

Q Okay. Well, but you're saying that the fire started right by their heads.

A Yeah.

Q Okay. And so the fire started to...to burn...the tent. Didn't it?

A Yeah, it burned like maybe a inch and then it died out.

Q Well,...Chris, you know, when you gave your statement to...Detective Costello, I've got a transcript of it. And at one point in your statement you said about this fire, you said because you just, I could feel the heat.

A No.

Q Chris...

A When he said...when he asked me...

Q Excuse me, Chris...

A When he said it...

Q Chris...stop for a second. I want you think very carefully about what you're saying, Chris. Because you're here to tell the truth.

Q (Lane): He's gonna explain it.

Q (Powers): I, I'm asking you to explain it.

A I,...

Q But, before you start saying anything, I want you to think a second about what you're gonna say. Because you told us previously that you could feel the heat. So go ahead and explain that.

A (unintelligible) saying, before he even tape recorded, he was asking me all these questions. I was saying if you were knocked out, you could feel the heat coming off and you will be able to wake up.

Q And that's the reason you said the words because you just, "I could feel the heat" this is

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your explanation, Chris?

A I was half dazed, too.

Q Okay, Chris. I believe you described the situation where Bryan took something, a lighter most likely, and lit fire to a tent. And the tent started to burn. Is that what you're saying?

A I didn't see him lit the tent on fire.

Q But, the tent started to burn.

A Yeah.

Q And you're saying that it burned an inch and went out.

A Burnt probably a inch and it died out.

Q So it was not, there was no fire anymore.

A Well...

Q Is that what you're saying?

A Exactly.

Q (Costello): Chris, the way I recall our conversation, prior to the, (unintelligible) uh, being turned on, several months as we've agreed upon, several months ago, was that you thought that the f-, you thought that the, I, I don't recall it being that the fire went out. I, I recall you telling me that you thought the fire was going to go out. And that there were little beads of fire going out like when you light something like that, like a piece of newspaper, I think you referred to it as. And you thought it was gonna go out. But, you never told me it went out.

A Yeah, it did.

Q Okay.

A But, I never...

Q But, that's not...

A ...even mentioned...

Q ...that's not (unintelligible)...

A ...anything about newspaper.

Q Okay. That's not reflected, that's not what's reflected in this, in, in the recorded

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statement.

A Hm mm.

Q And my recollection is different than that as well. Prior to the recording. So...I think the issue is whether or not the fire was out. I mean, it really doesn't matter whether or not it was a big huge fire or a little tiny fire. What you told us two days after it happened or a day after it happened is that it was a little tiny fire.

A And it, and it died out. It went out.

Q Okay.

Q (Powers): Chris, let me read something to you. And this is from the transcript of the prior statement you gave. The question is asked... "the tent got lit on fire. Did you know that it was on fire when you left?" Your answer: "just a little bit. But, I didn't think it would catch. Just like when, um, you first light something, then it goes like, kinda like goes...like, kinda like big, but it dies out."

A It was on fire. It died out. So I, so he said so you did know it was on fire when you left. Yeah, it was on fire. I didn't, I didn't know it was on fire. It, but it died out when I left.

Q (Costello): Okay. Here's what I have, uh, here's what, what I read, Chris, is... "let me ask you this. Did anybody suggest or did anybody make any attempt to put the fire out?" "No," is your answer. "My question is, did anyone call the police or the fire department?" and your answer is "No. Because it wasn't really on fire. It was dying out."

A It died out, yeah.

Q It was dying out. Now, this is a day after it happened, Chris. If it, if it was dying out, that's what you said. It was dying out. Not it died out. It died out and it was out, that, that's a terminal thing. That's a done thing. It is gone, done, dead, fire's out. But, what you said was "it was dying out."

A Hmm.

Q And that's before you mentioned that you could feel the heat. You. I. "I could feel the heat."

Q (Powers): Chris, this is your opportunity to tell the truth.

A I am.

Q After this fire died out...what's the next thing that happened?

A We left. Me and Tommy left.

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Q Well, you and Tommy left.

A And Bryan.

Q And Bryan, okay. Before you left, did you have any discussion of what had just taken place?

A No. We discussed not to talk about it, so we didn't talk about it.

Q Was there any discussion of what Bryan had just done in setting fire to the tent?

A No.

Q Did Bryan make any further effort to light fire to the tent?

A No.

Q So he lit the tent, it burned an inch, it went out, and he didn't do anything else.

A I don't even know if he lit the tent.

Q Okay.

A I didn't see him light the tent.

Q He didn't say anything about having lit the tent?

A No.

Q There was no discussion about the fact that the tent had just been lit on fire?

A (No verbal response).

Q Nobody said anything about that?

A I, we didn't think of it at the time. It went, it started, it died out.

Q Okay. So the subject of the fact that this tire, this tent had just...suddenly had fire put to it, was not mentioned by anybody. Is that...

A Well, Tommy...

Q ...what you're saying?

A ...asked for a cigarette. I said I don't have one. I thought Bryan might've. I thought Bryan might've dropped the (unintelligible) from the cigarette, (unintelligible) the ember (sounds like). Drop the cigarette, it causes fire, especially on nylon.

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[End of Transcript]

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

STATE OF WASHINGTON,)
)
 Plaintiff,)
) NO. 08-1-00586-4
 vs.)
)
 CHRISTOPHER JAY DURGA,)
)
 Defendant.)

COPY

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on October 21, 2008, the
above-entitled and numbered cause came on for change of
plea hearing before the HONORABLE ANNE HIRSCH, judge of
Thurston County Superior Court, Olympia, Washington.

Cheri L. Davidson
Official Court Reporter
Thurston County Superior Court
Olympia, Washington 98502
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A P P E A R A N C E S

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For the Plaintiff: JAMES C. POWERS
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For the Defendant: CHARLES W. LANE, IV
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OCTOBER 21, 2008

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MR. TUNHEIM: Next, Your Honor, item number one on the add-on calendar, State versus Christopher Durga. Mr. Powers is here for the State; Mr. Lane for the defendant. He is in custody.

MR. LANE: Good afternoon, Your Honor.

THE COURT: Good afternoon.

Can you tell me your name, please?

THE DEFENDANT: Christopher Durga.

THE COURT: Okay, Mr. Durga. Are you ready to proceed?

THE DEFENDANT: Yes.

THE COURT: Are you ready to proceed?

MR. LANE: May I approach?

THE COURT: You may.

Mr. Durga, I have been handed up some paperwork in your case. I am going to take a few minutes and go over it with you. First of all, it looks like the State handed up a second amended information.

Mr. Lane, did you receive that?

MR. LANE: Yes, Your Honor. We have just received a copy of the second amended information. We acknowledge receipt, and my client acknowledges receipt of that amended information. At this time we waive a

1 formal reading of the amended information and further
2 advisement or rights, and we will be entering a plea of
3 guilty to both counts as listed in the second amended
4 information. We have tendered to the Court a statement
5 along with the attached plea agreement.

6 MR. POWERS: Your Honor, that is the original
7 plea agreement signed by the parties, and we would ask
8 that be attached to and incorporated by reference in the
9 defendant's statement of guilt on plea.

10 THE COURT: Just for the record, prior to
11 coming onto the bench I was provided a copy of the plea
12 agreement by counsel, and I did review it before I came
13 on the bench.

14 Okay. Mr. Durga, I am going to take a couple
15 minutes and go over the paperwork I have been handed up.
16 First of all, the prosecutor's statement of your
17 criminal history indicates that at least up till this
18 point you have no criminal history for sentencing
19 purposes. Is that your understanding?

20 THE DEFENDANT: Yes.

21 THE COURT: Mr. Lane, you as well?

22 MR. LANE: Yes, Your Honor.

23 THE COURT: And Mr. Lane, have you also gone
24 over -- let me back up a minute.

25 Mr. Durga, the plea agreement I was handed up looks

1 to me to have your signature on it. Is that your
2 signature?

3 THE DEFENDANT: Yes.

4 THE COURT: Did you get a chance to go over
5 your plea agreement carefully with Mr. Lane?

6 THE DEFENDANT: Yes.

7 THE COURT: You went over each of the terms of
8 it carefully with him?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you get a chance to ask him
11 all your questions?

12 THE DEFENDANT: Yes, I did.

13 THE COURT: And it looks to me as if there are
14 some, oh, changes, some cross-outs here, which, Mr.
15 Lane, they are all initialed. That indicates to me that
16 you did go over it and you made some changes that
17 everybody agreed to.

18 MR. LANE: Yes, Your Honor. Just for
19 clarification purposes, basically what was changed was I
20 believe the language indicated a taped statement, but
21 just to make sure that everybody was on the same page
22 and it was clear, we just put I believe recorded
23 statement because actually it wasn't taped, it was
24 digitally recorded, so that's really all that makes
25 reference to.

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THE COURT: And it looks to me as if Mr. Powers, Mr. Lane, and Mr. Durga all initialed each of those changes. That was my review of it as well was that was what the change was.

MR. LANE: Correct.

MR. POWERS: Yes, Your Honor.

And whenever the Court finds it appropriate, although I do not see the need to go through each and every aspect of the plea agreement as long as the Court is satisfied that the defendant has acknowledged having reviewed that completely with his counsel and understands it completely, there are certain parts of it that I would ask to specify on the record having to do with the penalties that this defendant faces under the agreement.

THE COURT: Okay. I will give you an opportunity to do that before I make a decision about taking the plea.

Mr. Durga, I have also been handed up a Statement of Defendant on Plea of Guilty to two counts of murder in the second degree as set forth in the second amended information. Is that your signature on the back page of the guilty plea statement?

THE DEFENDANT: Yes.

THE COURT: And you went over this carefully

1 with Mr. Lane as well?

2 THE DEFENDANT: Yes.

3 THE COURT: And did you get a chance to review
4 all of the evidence and the case against you with Mr.
5 Lane?

6 THE DEFENDANT: Yes, I did.

7 THE COURT: And was Mr. Lane able to answer
8 all of your questions for you?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Pardon me?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. Mr. Lane, you went over
13 with Mr. Durga the elements of the charges?

14 MR. LANE: Yes, Your Honor, all the discovery,
15 everything was thoroughly reviewed with my client.

16 THE COURT: Mr. Durga, do you understand if I
17 accept your guilty pleas to these two charges in the
18 second amended information you are going to be giving up
19 all of the legal rights you have gone over with Mr. Lane
20 that are written in your paperwork? That includes the
21 right to appeal any sentence the Court later gives you
22 provided it is in the standard range.

23 THE DEFENDANT: Yes, I do.

24 THE COURT: And just for the record, I am
25 going to go over the standard range with you here. On

1 Count I with an offender score of zero the standard
2 range is 123 months to 220 months in custody. There is
3 a 24- to 48-month community custody range, and the
4 maximum term and fine is life imprisonment and \$50,000.
5 It is the same on Count II. Do you understand that,
6 sir?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: In addition, there is a \$500 crime
9 victim assessment, there is a \$100 cost to collect a DNA
10 sample, there are other fines and fees that the Court
11 will impose as part of your sentence, and you are going
12 to have to comply with all your sentence requirements,
13 including the financial ones. Do you understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Mr. Powers, I think I am going to
16 have you take a moment right now and highlight if you
17 will for Mr. Durga and for the Court any terms of the
18 plea agreement that the State is wanting the Court to
19 pay particular attention to.

20 MR. POWERS: I will, Your Honor. I'd indicate
21 that under this plea agreement this defendant is
22 required to enter the pleas he is entering today, if the
23 Court accepts them. He is also required to provide
24 statements in various contexts over to the investigating
25 officers, prosecutors, to defense counsel on related

1 cases, those being of Bryan Eke and Tommy Crow, who are
2 listed as co-defendants in the second amended
3 information, and that he also provide at any trial
4 involving either of those co-defendants truthful
5 testimony with regard to his knowledge of matters
6 relevant to those charges faced by those individuals.

7 The State has agreed that if all of these
8 responsibilities of Mr. Durga under the agreement are
9 met that at the time of sentencing -- we would be asking
10 that sentencing be postponed until after any trials have
11 occurred with regard to those co-defendants, that the
12 State would recommend looking at a sentence range of
13 123 months to 220, as the Court has indicated, and,
14 recognizing that it is required under law that the
15 penalties for Count I and Count II run consecutive to
16 each other because these are serious violent offenses
17 and recognizing that a zero offender score would apply
18 to both Count I and Count II in determining those
19 consecutive sentences, regarding the range of 123 to
20 220 months the State would recommend on Count I
21 132 months in prison and we'd recommend on Count II also
22 132 months in prison to run consecutive to 132 in Count
23 I. That would be a total of 264 months or 22 years, and
24 there would be a required community custody period
25 ranging from 24 to 48 months.

1 Of course there are financial obligations that the
2 Court has referred to. Specifically what the State
3 would be recommending would be court costs, \$200, crime
4 victim's assessment of \$500, DNA fee of \$100, and any
5 restitution requested from the survivors of the two
6 victims.

7 Your Honor, the agreement also indicates that there
8 is -- there are potential penalties should this
9 defendant fail to comply with the obligations in the
10 agreement. The agreement specifies that it would not be
11 up to the State whether there had been a material breach
12 of the agreement but, rather, that the Court would be
13 asked to make that determination by a preponderance of
14 the evidence. The agreement does indicate that if the
15 Court found by a preponderance of the evidence that the
16 defendant had failed to comply with this agreement in
17 terms of either the, well, any of the requirements,
18 including truthful testimony in court proceedings and
19 interviews pursuant to the agreement, that the State
20 would thereby be freed by terms of the agreement to
21 recommend sentences up to the maximum within the
22 standard sentence range for each of these counts, and
23 the maximum for Count I would be 220 months and the
24 maximum for Count II would also be 220 months, and the
25 potential would be for those to be served consecutively;

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in fact, they would have to be if that was imposed by the Court.

That again would only apply if there was found to be a material breach by the Court, but the defendant would be held by his pleas of guilty he's entering today. I think that's a very important point, to make sure this defendant understands he would be held to those pleas but the State would not be held to its recommendation because of his choice to materially breach the agreement.

Those are the things that I ask that the Court have the defendant make very clear on the record that he is aware of, understands, and is willing to abide by.

THE COURT: Thank you, Mr. Powers.

Mr. Durga, I am going to take a few moments and go over those specifics, and, just starting again to clarify, you did read the plea agreement over with Mr. Lane?

THE DEFENDANT: Yes.

THE COURT: Did he read it to you or did you read it yourself?

THE DEFENDANT: I read it.

THE COURT: Yourself and Mr. Lane, you read it with him?

MR. LANE: Yes, Your Honor. He read it, then

1 we reviewed it to make sure that he understood it, and
2 if he had any questions, then I would answer any
3 questions that he had.

4 THE COURT: Did Mr. Durga have any questions
5 for you?

6 MR. LANE: A couple. I don't remember
7 specifically what they were. I think there were a
8 couple.

9 THE COURT: Mr. Durga, you asked Mr. Lane all
10 of the questions you wanted to ask him?

11 THE DEFENDANT: Yeah.

12 THE COURT: And he answered them all for you?

13 THE DEFENDANT: Yes.

14 THE COURT: And do you understand that part of
15 your plea agreement today, if I accept it, is that you
16 are going to make statements, truthful statements, to
17 law enforcement, to the State, the prosecutor, and to
18 your attorney regarding your co-defendants and the
19 allegations in this case? Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that one of your
22 requirements under the agreement is to testify
23 truthfully at trial?

24 THE DEFENDANT: Yes.

25 THE COURT: And did you go over and listen

1 just now when Mr. Powers went through what the State
2 would recommend to the Court in the event of your
3 truthful testimony and your truthful statements to law
4 enforcement?

5 THE DEFENDANT: Yes.

6 THE COURT: You understand that the terms --
7 I'm sorry. Did you say something besides yes?

8 MR. LANE: No.

9 THE COURT: You understand the sentence that
10 the State is going to be recommending if you comply with
11 your requirements under the plea agreement?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: And you understand that you are
14 not going to be bound by that recommendation in the
15 event that a court later determines you failed to comply
16 with your requirements?

17 THE DEFENDANT: Yes, I do, Your Honor.

18 THE COURT: And do you understand that it is
19 not up to the State or your attorney or you to decide
20 what the penalty is going to be, whether you comply with
21 your agreement or whether you don't?

22 THE DEFENDANT: Yes.

23 THE COURT: It is going to be up to the
24 sentencing court. Do you understand that?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: And you understand the sentencing
2 court does not have to take anybody's plea agreements
3 and doesn't have to accept the offer that the State gave
4 to you. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: And do you understand the Court is
7 free to give you any sentence in the standard range up
8 to the maximum and you are not going to get to appeal
9 that if I take your plea today? Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: And did Mr. Lane go over with you
12 what a strike offense means?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that if I accept
15 your guilty pleas today this is going to be a strike and
16 if you are sentenced to two more strikes you will be
17 sentenced to life imprisonment without the possibility
18 of parole? Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Have you had a chance to talk
21 carefully with Mr. Lane about that, sir, and ask him all
22 your questions?

23 THE DEFENDANT: Yes.

24 MR. LANE: And that was one of the questions
25 that he had, Your Honor, to make sure, as I have already

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explained to him, that this was only one strike. I explained how the accumulation of strikes occurs.

THE COURT: Okay. And did you also go over with Mr. Lane, sir, that these sentences, that the terms will be consecutive sentences?

THE DEFENDANT: Yes.

THE COURT: And that means one after the other. Do you understand what that means?

THE DEFENDANT: Yes, I do.

THE COURT: I want to be clear again, even if the Court accepts your guilty pleas today, the sentencing court does not have to take anybody's sentencing recommendations. Do you understand that the Court is not gonna be bound by that recommendation?

THE DEFENDANT: Yes.

THE COURT: And you understand the Court can sentence you up to your maximum and you are not going to get to appeal that?

THE DEFENDANT: Yep.

THE COURT: If you are not a citizen your plea could be grounds for deportation or denial of entry to the country. You are going to lose your voting rights and your right to own or possess firearms if I take your plea. Do you understand that?

THE DEFENDANT: Yes.

1 THE COURT: Did Mr. Lane go over the
2 requirements that you will be under if the Court takes
3 your plea and you are serving your community custody
4 time after your custody time? Do you understand your
5 requirements that you are going to have under community
6 custody?

7 THE DEFENDANT: Yes.

8 THE COURT: Did you want to talk?

9 MR. LANE: No.

10 THE COURT: How do you plead then to Count --

11 MR. POWERS: I'm sorry.

12 THE COURT: Oh, I am sorry, Mr. Powers. Was
13 there something else?

14 MR. POWERS: I apologize for not stating this
15 previously.

16 THE COURT: Go ahead.

17 MR. POWERS: I do think it would be
18 appropriate to also inform this defendant that the
19 release time is not determined by the Court but is
20 determined by the institution in which he serves his
21 penalties. However, since these are serious violent
22 offenses, under any sentence imposed by the Court the
23 maximum that could be given to him in the way of earned
24 early release time would be a maximum of 15 percent. I
25 would ask that the defendant acknowledge his

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understanding of that limitation of any earned early release that the institution might provide.

THE COURT: That you, Mr. Powers.

Mr. Durga?

THE DEFENDANT: Yes, I do.

THE COURT: You understand that?

THE DEFENDANT: (Nods affirmatively.)

THE COURT: And did you talk to Mr. Lane about that earlier as well?

THE DEFENDANT: Yes.

THE COURT: Okay. Mr. Powers, anything else?

MR. POWERS: That's all. Thank you. I appreciate it.

THE COURT: Mr. Lane, anything else?

MR. LANE: No, Your Honor.

THE COURT: Mr. Durga, how then do you plead to Count I in the second amended information, murder in the ---

MR. POWERS: Excuse me, Your Honor. I'm sorry.

THE COURT: Go ahead.

MR. POWERS: I'm just reminding myself of this. Actually I want to restate that because I'm reminded of the fact that now, as opposed to previously, because these are Class A felonies, the aggregate earned

1 early release time that he can obtain on these offenses
2 is no more than ten percent.

3 THE COURT: Mr. Lane, is that the figure you
4 used with Mr. Durga?

5 MR. LANE: No, actually I believe it was 15.

6 THE COURT: Take a minute and talk to him.

7 (Discussion off the record.)

8 MR. LANE: No questions.

9 THE COURT: No questions for your lawyer about
10 that?

11 THE DEFENDANT: (Shakes head negatively.)

12 THE COURT: Again you reviewed the concept of
13 earned early release time with Mr. Lane earlier?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Powers, anything else?

16 MR. POWERS: No, I believe that's it.

17 THE COURT: Mr. Lane?

18 MR. LANE: No.

19 THE COURT: Mr. Durga, how then do you plead
20 to Count I in the second amended information, murder in
21 the second degree, guilty or not guilty?

22 THE DEFENDANT: Guilty, guilty.

23 THE COURT: And how do you plead to Count II
24 in the second amended information, murder in the second
25 degree, guilty or not guilty?

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THE DEFENDANT: Guilty.

THE COURT: Are you making each of these pleas of your own free will?

THE DEFENDANT: Yes.

THE COURT: Anybody threaten to hurt you or make you any promises other than the plea offer to get you to plead guilty?

THE DEFENDANT: No.

THE COURT: Your written statement says that rather than making a written statement I agree --

(Cell phone ringing.)

THE COURT: Anyone else who has their phones on can turn them off right now as well.

Your written statement says "Instead of making a statement I agree the Court may review the police reports and/or statement of probable cause supplied by the probable cause to establish a factual basis for the plea." I am going to take a minute and look at the probable cause statement.

Would you rather do that orally, Mr. Powers?

MR. POWERS: I am gonna request that the Court review the probable cause, but I would also ask that the Court allow me to supplement that statement with additional facts that the State believes could be proved at trial.

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THE COURT: Okay. Mr. Lane, are you going to have any objection to that?

MR. LANE: No, I've had actually an opportunity to review Mr. Powers' notes.

THE COURT: Okay. Mr. Powers, go ahead.

MR. POWERS: Yes, Your Honor. Had these matters proceeded to trial on these charges as well as the charge of arson in the second degree, which was part of the first amended information as well as certain claimed aggravating factors which were part of the first amended information, including that these crimes were committed with deliberate cruelty and also that, with regard to Count I, David Miller, that Mr. Miller was a good samaritan, at the time of this offense was acting as a good samaritan, the following, the State believes, would be evidence that could have been presented at that trial with regard to those original charges and that is on the evening of March 6th and 7th of 2008 there was an assault that occurred of an individual by the name of Scott Cover - C-O-V-E-R - that resulted in serious injuries to Mr. Cover, including multiple fractures, and that David Miller, the victim in Count I, was a witness to the assault that took place resulting in those injuries and that on March 18th, 2008, Mr. Miller, having arranged to be arrested by police on a warrant

1 which was outstanding for him, informed police about
2 what he had witnessed, implicated Bryan Eke and also Mr.
3 Durga in that assault, and also referred to a bat which
4 had been used as a weapon to commit the assault.

5 With that information the testimony would be from
6 Officer Henry of the Olympia Police Department that on
7 March 27th, 2008, having obtained that information from
8 Mr. Miller, Officer Henry observed Mr. Durga, this
9 defendant, and followed him to a campsite where it was
10 known that Mr. Durga was staying as a transient in
11 Olympia and at that campsite seized a bat which he
12 observed, believing it could be the weapon that was used
13 in the assault described by Mr. Miller, and, knowing
14 that there were these assaults that had occurred on Mr.
15 Cover, and also mentioned to Mr. Durga at that time,
16 without referring to the source of that information,
17 that information had been received that Mr. Durga was
18 implicated in the assault on Scott Cover.

19 Later that day - I'm referring to March 27, 2008 -
20 evidence from witnesses would be that this defendant and
21 two other persons, Bryan Eke and Tommy Crow, went to
22 contact an individual by the name of Jeffrey Simmons to
23 confront Mr. Simmons as to whether he was the person who
24 had revealed to police the fact of the involvement of
25 Mr. Durga and others in the assault on Mr. Cover and

1 that Mr. Simmons would testify that he was confronted in
2 this matter and denied that he was the one that had done
3 this.

4 There would be testimony also from other persons,
5 Mr. Urbach, for example, that shortly thereafter Mr.
6 Miller himself, David Miller, was contacted by the three
7 individuals, Mr. Durga, Mr. Crow, and Mr. Eke, and at
8 that time they also confronted Mr. Miller with the
9 possibility that he was the source of the information to
10 the police, that he was essentially the snitch so to
11 speak, and that very angry statements were made at that
12 time in the course of the confrontation with Mr. Miller,
13 that Mr. Miller denied this but that as a result of all
14 the information that had been obtained by the three
15 individuals, as acknowledged by Mr. Durga in his
16 statement, the conclusion was Mr. Miller was the source
17 of that information, as in fact he was.

18 Late that night, on March 27th, 2008, or in the
19 early morning of March 28, 2008, a decision was reached,
20 as Mr. Durga has acknowledged with his statement, that
21 the three of these individuals, who were at that point
22 in time in their own campsite, would go from their
23 campsite to the known campsite location of David Miller
24 and confront him about the fact that he was the source
25 of this information with the intent to silence Mr.

1 Miller, and it was known that Mr. Miller would have
2 someone with him because that was the pattern, for Mr.
3 Miller to always have someone there at his campsite with
4 him, although it was not known precisely who that would
5 be; that these three individuals then went to that
6 campsite and found both Mr. Miller, David Miller, and
7 Norman Peterson located at the campsite.

8 Based upon Mr. Durga's acknowledgment there would
9 be evidence that all three individuals involved, Mr.
10 Crow, Mr. Eke, Mr. Durga, assaulted David Miller at that
11 location. There would also be DNA evidence indicating
12 the blood of Mr. David Miller on the clothing of Bryan
13 Eke and also the blood of David Miller on this
14 defendant's, Mr. Durga's, pants. Mr. Durga has admitted
15 that he is the one who used a sleeper hold, that is, to
16 place his right arm underneath the chin of David Miller
17 and use his other arm to press the right arm against his
18 neck on both sides, to compress his neck so as to cut
19 off his breathing, and that in this fashion he rendered
20 him unconscious in the course of this assault taking
21 place, and so at the very least the actions acknowledged
22 by Mr. Durga amount to assault in the second degree by
23 strangulation since strangulation is defined in much
24 that same manner.

25 The acknowledgment of Mr. Durga is also that he

1 dragged the body of David Miller after it was
2 unconscious to the front of the tent there at the
3 campsite, and it is his claim that Mr. Miller was still
4 breathing at that time. Evidence would be presented at
5 the trial that through an autopsy conducted by a
6 pathologist in this case, Dr. Lacsina, that
7 determination was made that Mr. Miller died of external
8 neck compression and this was either from a choke hold,
9 as Mr. Durga himself had described administering, or by
10 manual strangulation.

11 The charge of murder in the second degree in Count
12 I refers to David Miller, and that charge alleges either
13 that this defendant committed this murder intentionally
14 or that he committed an assault, felony assault, which
15 would be assault second degree, by strangulation and in
16 the course of that assault caused the death of Mr.
17 Miller. It is the belief of the State that the evidence
18 would be sufficient to show, given the overall events
19 that I am describing here that took place at the scene,
20 that what took place here was an intentional killing of
21 Mr. Miller because he was the source of the information
22 about the prior assault that was done by means of the
23 compression that I've described but at the very least
24 was the commission of the felony assault, assault in the
25 second degree, and that due to the physical evidence of

1 autopsy is clearly the cause of the death of Mr. Miller.

2 Mr. Durga is alleged to be an accomplice to the
3 death of Norman Peterson. The allegation is the three
4 individuals went to this location to act in concert,
5 that their purpose was to silence Mr. Miller but in the
6 process would need to silence anyone else who was with
7 him as well by necessity given their intent, and that by
8 Mr. Durga taking the lead in this instance and
9 assaulting Mr. Miller in the way I've described that
10 freed up the other two individuals to focus their
11 attention on the other person, the other victim present,
12 Norman Peterson, to subdue him and ultimately cause his
13 death.

14 In the statement of Mr. Durga that has been
15 provided he indicates that Mr. Crow was the person
16 initially responsible for causing Mr. Peterson to be
17 brought to the ground and brought under control. Mr.
18 Durga has indicated that he was dragging Mr. Miller's
19 body to the tent at the time when other assaults
20 occurred upon Mr. Peterson and did not observe what they
21 were but then when he looked over at Mr. Peterson, Mr.
22 Peterson was unconscious.

23 Physical evidence that could be provided at trial
24 would show that Mr. Peterson was the result of blunt
25 force injuries to the left leg and ankle, his left

1 tibia, his left fibula, and his tarsal bones were all
2 fractured, and the assault was so serious as to all but
3 separate his foot from his leg.

4 As to Mr. Peterson's state of unconsciousness, the
5 autopsy results with regard to Mr. Peterson by again Dr.
6 Lacsina again show Mr. Peterson died from external neck
7 compression, probably manual strangulation. Therefore,
8 this evidence would show Mr. Durga is a participant as
9 an accomplice in the acts causing the death of Mr.
10 Peterson.

11 It is again alleged in Count II with regard to Mr.
12 Peterson, again as an accomplice, that Mr. Durga is
13 guilty of intentional murder in the second degree, that
14 in fact the intent of the actions involved here in that
15 both individuals were strangled, both individuals died
16 as a result of strangulation, that these were acts of
17 intentional murder, but at the very least that the act
18 of strangulation of Mr. Peterson which caused his death
19 was again an assault second degree, felony assault, that
20 Mr. Durga is an accomplice to that assault and therefore
21 a participant in that crime and that that assault was
22 what caused Mr. Peterson's death and therefore murder in
23 the second degree on that basis.

24 Mr. Durga has alleged that Mr. Peterson's body was
25 also dragged to the tent, and in fact the physical

1 evidence is that both bodies were located basically side
2 by side together at the front of the tent. That's where
3 they were found, but before that ever happened the tent
4 was set on fire and those bodies were burned. The
5 autopsies of both victims clearly confirmed that the
6 fire that burned these bodies was not the cause of their
7 death based upon various indicators that the autopsy
8 revealed. Indication was given by Mr. Durga in the
9 statement that both individuals were still breathing at
10 the point in time they were dragged to the tent.
11 Nevertheless, the physical evidence would show that they
12 were dead at the time those bodies were burned.

13 There would also be evidence that the tent was set
14 on fire after both those individuals had been dragged to
15 the tent and that both victims were burned in this
16 fashion. The State believes that evidence of this sort
17 would be a basis not only with regard to the crimes
18 themselves but to show the aggravating factor of
19 deliberate cruelty, the evidence that Mr. Miller had
20 allowed himself to be arrested on a warrant. There
21 would be testimony -- there would have been testimony
22 from Mr. Stroman, who indicated that he was a transient
23 who spent time with Mr. Miller, that Mr. Stroman knew
24 that Mr. Miller was the only witness to what had taken
25 place to Mr. Cover, the assault on Mr. Cover; that Mr.

1 Stroman had suggested to Mr. Miller that he should find
2 a way to inform the police about what had happened
3 because of the danger to others about what had happened
4 out there because of Mr. Durga and the others associated
5 with him; that Mr. Miller chose the method of being
6 arrested on the bench warrant in order to be able to go
7 to the police and let the police know what was taking
8 place and that Mr. Miller told the police these
9 individuals had to be stopped or someone would be killed
10 and Mr. Miller expressed his own fear for his own safety
11 with regard to these individuals. The State believes
12 that would be evidence of an aggravating factor that Mr.
13 Miller had chosen to act as a good samaritan, even to
14 bring about his own arrest in order to let police know
15 about the danger to other transients in the area due to
16 the danger of these individuals at that point in time.
17 Of course this evidence would also support the charge of
18 arson in the second degree, which was part of the
19 original charges.

20 The State therefore believes, based on all of this,
21 that there would have been evidence to support the
22 crimes to which Mr. Durga has now admitted his guilt and
23 also that this would be evidence which could have
24 supported other crimes and aggravating factors which
25 could have resulted in additional penalties which are

1 part of what Mr. Durga is avoiding by reason of this
2 plea agreement.

3 THE COURT: Thank you, Mr. Powers.

4 Mr. Lane, anything to add to that supplementing of
5 the probable cause statement?

6 MR. LANE: No, Your Honor.

7 THE COURT: And just for the record, because I
8 can't recall exactly where I left off, Mr. Durga,
9 earlier I believe I asked you, and I am going to ask you
10 again, did you read the guilty plea statement yourself?

11 THE DEFENDANT: Yes.

12 THE COURT: And you read that while Mr. Lane
13 was with you?

14 THE DEFENDANT: Yes.

15 THE COURT: And Mr. Lane, do you believe your
16 client understood the guilty plea statement and the plea
17 agreement?

18 MR. LANE: Yes, Your Honor.

19 THE COURT: Mr. Durga, do you have any
20 questions for me before I take your plea?

21 THE DEFENDANT: No.

22 THE COURT: I am going to find that your
23 guilty pleas are knowingly, intelligently, and
24 voluntarily made, that you understand the charges and
25 the consequences of each of your pleas. For each of

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them I am finding a factual basis based on the probable cause statement and the supplementing by counsel just now, and I am going to find that you are guilty as charged.

Mr. Durga, you have the right to a speedy sentencing within 40 working days of today's date.

Do counsel have a date for sentencing?

MR. POWERS: I don't know that we have a written one, but I assume --

MR. LANE: I can provide one, Your Honor. Basically the sentencing date I think is still up in the air at this point due to the co-defendants awaiting trial.

THE COURT: Well, if you want to have a 3.2 order I will sign that with a date or not.

Just for the record, the Court is incorporating the terms of the plea agreement into the statement on plea of guilty.

(Proceedings were concluded.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

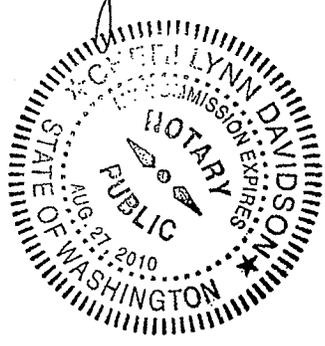
I, Cheri L. Davidson, Notary Public, in and for the State of Washington, residing at Olympia, do hereby certify:

That the annexed and foregoing Verbatim Report of Proceedings was reported by me and reduced to typewriting by computer-aided transcription;

That said transcript is a full, true, and correct transcript of the proceedings heard before Judge Anne Hirsch on the 21st day of October, 2008 at the Thurston County Courthouse, Olympia, Washington;

That I am not a relative or employee of counsel or to either of the parties herein or otherwise interested in said proceedings.

WITNESS MY HAND AND OFFICIAL SEAL THIS 28th day of July, 2009.



Cheri Davidson
Notary Public, in and for the State of Washington, residing at Olympia.

APPENDIX I

Olympia Police Department

Case # 08-2501

Suspect

Date of Statement: 01-30-2009

Victim

Time of Statement: 1632

Witness

Name of Person Being Interviewed: Anthony James McKague

Date of Birth: 12-24-1983

Address: 17340 Sergeant Rd #8

Rochester WA 98579

360-858-7162

Interviewing Officer/Detective: Detective Sam Costello

Location of Interview: Thurston County Sheriff's Office

Also present Mr. Carl Hack, attorney

Mr. Jim Powers, Thurston County Prosecuting Attorney

Mr. Don Smith, Thurston County Deputy Prosecuting Attorney

1 Q Okay. This'll be the statement of Anthony J McKague. It will be with relation to the
2 Olympia Police Department case number 2008-2501, which is a homicide case. The date
3 today is January 30th, 2009. The time is 4:32 PM. Statement's being recorded at the
4 Thurston County Sheriff's Office facility. Present in the room are Mr. McKague and
5 myself, Sam Costello with the Olympia Police Department, um, Mr. Carl Hack, uh,
6 private attorney, um, Mr. Jim Powers with the Prosecuting Attorney's Office, and, uh,
7 Deputy Prosecutor Don Smith, also with the Thurston County Prosecutor's Office.
8 Everybody in the room, uh, and let's start with Mr. McKague, this statement's being
9 recorded. Is that with everyone's consent?

10 A Yes, sir.

11 Q Okay. Uh, Mr. Hack?

12 A Carl, yeah, yes.

13 Q Uh, Mr. Powers?

14 A Jim Powers, yes. It's with my permission.

15 Q Mr. Smith?

16 A Yes.

17 Q Okay. Um, and obviously with my consent. Uh,...Mr. McKague, can you please, uh,
18 state your name and spell it?

19 A Anthony James McKague, ANTHONY Jame...JAMES, uh, MCKAGUE.

20 Q Okay. And, uh, what's your date of birth?

21 A 12-24-1983.

1 Q And your address.

2 A Um, 17340 Sergeant Road, uh, number 8, uh, Rochester Washington 98579.

3 Q Okay. And a contact phone number for you?

4 A Uh, 360-858-7162.

5 Q Okay. And because I, uh, I think I forgot, the time if I didn't mention it, is 1633 on the
6 30th of January. Um, now you did some writing...

7 A You're speaking loud enough, right?

8 Q ...some...yes, yeah. This thing's really sensitive. So, yeah. Uh, it's more important to
9 enunciate than it is to speak...

10 A Okay.

11 Q ...loudly. So...um,...we spoke before the, the recording was turned on. And we were all
12 present when that happened. Would you agree with that?

13 A Yes.

14 Q Okay. And you completed some writing, uh, examples here on these papers that I have in
15 front of me. Is that correct?

16 A Yes.

17 Q Okay. And the instruments that I have here marked, those are the things you used to
18 complete those examples.

19 A Yes.

20 Q Is that right? Okay. Uh, and before any of that occurred, do you remember me reading
21 you your Miranda warnings?

22 A Yes.

23 Q Okay. And so what I'm gonna do is just for the purposes of the recording, I'm gonna
24 advise you of those again. Okay? And just to be clear, uh, after I read you your Miranda
25 warnings, all of this that, that we did beforehand was with your consent. Is that correct?

26 A Yes, sir.

27 Q And that of your attorney. Is that right?

28 A Yeah.

1 Q Okay. You have the right to remain silent. Anything you say can be used against you in a
2 court of law. You have the right at this time to an attorney of your own choosing and to
3 have him or her present before and during questioning or the making of any statements. If
4 you cannot afford an attorney, you are entitled to have one appointed for you by the court
5 without cost to you, and to have him or her present before and during questioning or the
6 making of any statement. You have the right to exercise any of the above rights at any
7 time before or during any questioning and the making of any statements. Do you
8 understand each of these rights as I've explained them to you?

9 A Yes.

10 Q Okay. Uh, the next part I'll read to you. I have read or have had read to me the above
11 explanation of my constitutional rights and I understand them. I have decided not to
12 exercise these rights at this time. Any statements are made by me freely, voluntarily and
13 without threats or promise of any kind. Do you understand that?

14 A Yes.

15 Q Okay. Having these rights in mind, do you wish to talk to me now?

16 A Yes.

17 Q Okay. And is that with everybody, your, I want to make sure your attorney is on board
18 with that as well. Is that correct, Mr. Hack?

19 A Uh, that's correct. Uh, the promise, of course, is, you know per the agreement that we've
20 signed.

21 Q Okay. All right. So what we're talking about is, uh, we talked ear-, just briefly here about
22 these writing examples. And so what I'd like to do is ju-, to begin with, is just start out
23 and maybe you can explain to us how these came about, how these notes came about, um,
24 if you'd explain where you were, who you were talking to, who you were dealing with,
25 and how you accomplished the writing itself.

26 A Okay.

27 Q Um, and then we'll ask you some questions to clarify.

28 A All right. Well, uh, first, um, how I became of, of this is, um, me and Brian was next door
29 in, um, maximum, which is E tank. And I ended up going to the little, going to the
30 meeting room (sounds like), going back go to the hole, and he went to the hole, within
31 one of those times.

32 Q And hole is segregation?

33 A Segregation, H tank.

34 Q Okay.

1 A And, uh, he, the first letter that I got from him, I was in, uh, 11 house, and he was in 10
2 house. He was the only one in, uh, 10 house, and I was the only one in 11 house. And, uh,
3 I, I, I would get these sandwiches, uh, or we would get our trays that would have
4 sandwich baggies. And I'd rip them in half to make it like a sheet of paper, because in the
5 hole we're not allowed to have papers or pencils. And I was able to, uh, swindle in, uh,
6 little piece of lead, like I showed you, that's how I wrote the stuff. Uh, and, uh, I'd send
7 over a fishing line and, uh,... fishing line (unintelligible) long string with, with a ketchup
8 packet at the end of it. And I'd send it over to him like that whenever we were locked
9 down (sounds like). Uh, and we'd write back and forth. Uh, then when we do get four
10 hours out, I would slip, I would write down whatever I wanted to say and slip it
11 underneath the door and I'd watch him write it down, he'd slip it underneath the door and
12 we'd go back and forth that way. Um, that's when we had our hours out. And, uh, go like
13 that back and forth for all day. You know, it's quite boring. Not allowed any books or
14 nothing in there. So, uh, I got like two or three, I can't remember how many exactly of
15 them. But, uh, I went back to the regular tank. And I ended up coming back to the hole,
16 and he was still in there. He was in there for like adseg (sounds like) or P.C or who
17 knows what, I don't know. But, uh, they moved him from, uh, 10 house to the last house,
18 which is 13 house, and that's a single man cell, not a double bunk bed cell. And, uh, I had
19 a celly then. And, uh, but, uh, I didn't really want my celly to know what was going on.
20 So I wrote, I wrote...the stuff out on, uh, I was able to, uh, bring in regular paper this
21 time. And, uh,...right before that, I seen Carl Hack and, uh,...or no. I seen, uh, not Carl
22 Hack, but, uh, I seen, uh,...what's his name. He, he says I have some information or
23 whatever. And I told him no, I don't, not right now. But, my uncle does. And, uh,...

24 Q What, are you talking about an attorney?

25 A Yeah.

26 Q So was it an attorney that was representing you?

27 A No. It was attorney representing, uh,...uh, Eke.

28 Q Okay.

29 A And, uh,...

30 Q And, and so that attorney contacted you?

31 A Yeah.

32 Q Okay.

33 A And, uh,...I told him no, I don't, but my uncle does. So, uh, my uncle talked to him, gave
34 him what, what he had or whatever, you know.

35 Q And who's your uncle?

1 A Jay McKague.

2 Q Okay.

3 A And, uh, that's a whole different business. So that happened when I was ech-, I go back
4 (sounds like). And, uh, I wrote a couple more letters to, uh, uh...Brian and, uh, I slide it
5 underneath the door, and he'd slide it back, and we'd write back and forth and stuff. And,
6 uh,...I ended up talking to Mr. Hack about if there's anything we can do with these or
7 what, what, what the deal was. And we went from there. And we talked back...because
8 when, I was in the hole quite a bit. And people would go around and sometimes there'd
9 be only me and Brian. Right? And that's when we could speak freely. And we spoke
10 freely sometimes, you know. But,...

11 Q Verbally.

12 A Yeah, verbally.

13 Q Okay.

14 A Uh, but most of the time it was on paper, because we didn't want other people to hear our
15 business.

16 Q In the hole.

17 A In the hole.

18 Q Okay. So, um,...let's just start from the beginning. Uh, can you explain this, okay. So
19 you're not supposed to have lead in the hole, and you're not supposed to have paper.

20 A No.

21 Q Okay. So when you completed these exemplars, can you tell me about...and when you
22 were writing on these pieces of paper, can you tell me about the way that you took the
23 lead out? I watched you do it. But, I just want to explain it for the recording.

24 A I mean, I could use my teeth or I could do it with my fingernails and snap the pencil lead
25 off, take it out of it.

26 Q Okay. So you, but, but essentially you're just using a little tiny piece of lead.

27 A Yes.

28 Q Okay.

29 A So I could give back the original pencil to the officers when our, uh, hours is out.

30 Q Okay. And do you ever do another, do you ever do, use anything else?

- 1 A I mean, I could use a piece of paper to hold up there and to make it more steadier than my
2 fingers (sounds like).
- 3 Q Okay. But, the bottom line is, you're not using a conventional pencil or any kind of
4 normal writing tool.
- 5 A No.
- 6 Q Okay. So, and you're, and you're sometimes writing on wax paper that sandwiches come
7 in.
- 8 A Yeah.
- 9 Q And sometimes it's regular paper.
- 10 A Yeah.
- 11 Q Depending on the circumstance.
- 12 A (No verbal response).
- 13 Q Okay. Um,...do you remember the timeframe that we're talking about?
- 14 A Um,...last time I went to the hole was December 25th. I was only in, uh,...uh,...out of the
15 hole for three weeks. So three weeks before the 25th. Uh,...which was, uh,...so about the
16 10th or 11th of December was one of the written things. And probably, uh,...a month
17 before that maybe. I don't know, well, less than a month. Probably three weeks or two
18 weeks before that.
- 19 Q And so...
- 20 A (unintelligible)...
- 21 Q ...did all of the writ-...
- 22 A ...three or four times.
- 23 Q Did all of the writing occur in the hole?.
- 24 A Uh,...
- 25 Q Or was...
- 26 A ...yes. All in H tank. The hole.
- 27 Q So, so none of it occurred in maximum.
- 28 A No.

- 1 Q Okay.
- 2 A Like I said, I'm real sec-, real secretive about my stuff. I don't people to overhear.
- 3 Q Sure. So is it common, in your experience, is it common to, for people to exchange notes
4 while they're in, in the segregation unit?
- 5 A Well, I mean, not here at the jail personally. Uh, unless, unless...you don't want people
6 to overhear, then you would. Just so people...don't know what your business is. But, I
7 know I was doing a lot of it at prison. Uh, because things happen in prison.
- 8 Q Right.
- 9 A More than it does in jail.
- 10 Q I understand.
- 11 A So that's where I got the pencil lead from.
- 12 Q Okay. So, uh, were you communicating with anyone else in the, uh, while you were in
13 segregation, other than Brian?
- 14 A As companionship or as...far as this goes?
- 15 Q In general. Just...
- 16 A Uh,...
- 17 Q ...all said.
- 18 A I mean, yeah. I had a celly and whatever.
- 19 Q Okay. But, writing...
- 20 A (unintelligible)
- 21 Q ...as far as writing back and forth.
- 22 A No. Just...
- 23 Q Just Mr. Eke.
- 24 A Just Mr. Eke.
- 25 Q Okay. Um,...so, uh, these notes that I'm looking at, how, was that a day, each one of
26 these things a day in, I mean, did it take a day to go back and forth with...
- 27 A Day or...

- 1 Q ...each of these?
- 2 A ...two days.
- 3 Q Okay.
- 4 A Three at the max.
- 5 Q So there's, these things are, are compiled over a lengthy period of time, or re-, relatively
6 lengthy...
- 7 A Yeah.
- 8 Q ...period of time? Okay. Um, and so...how did you know what Mr. Eke was here for?
- 9 A Because, uh, there's a guy named Tommy. And, because I was originally in, uh,...uh,
10 medium with their brother, uh, supposedly brother, Christopher. And, uh,...
- 11 Q Do you know his last name?
- 12 A Durga.
- 13 Q Okay.
- 14 A And, uh, he wouldn't really talk much about it. You know, I really didn't care at the time.
15 You know. Uh, got in trouble, went to the hole, got out, went to maximum. That's where
16 Crow and, uh,...uh, um, Brian Eke was. And, you know, they were always talking shit
17 back and forth, right. And they had their little people writing (sounds like) letters and...I
18 didn't want any part of that. You know. Everybody was talking shit about everybody
19 running letters (sounds like) at that time. And, uh,...well...I, I mainly, uh, I mainly just
20 talked to him about his, the, I mean, they talk, you know. And I'd overhear the little stuff.
21 And that's how I got to know a little bit about their case. And, uh, then the little bit that
22 Tommy said when Brian went to the hole, or adseg or BC or whatever it is. And he told
23 me a little bit of what happened. Then I went by that. And when I went to the hole, uh,
24 Brian knew me pretty good then.
- 25 Q Okay
- 26 A Because we spent a couple months together, you know. And he was just, we were mostly
27 making a companionship.
- 28 Q I understand.
- 29 A And we talked. And he just talked and talked and talked. And stuff just came out more
30 and more and more.
- 31 Q Okay. So let me, let me go from, uh, did, did you ever speak specifically with Mr. Durga
32 about any...anything with relation to these, these crimes that were committed?

- 1 A A little bit. He would tell me a little bit. But,...
- 2 Q Do you remember what he told you?
- 3 A Uh, yeah.
- 4 Q Could you tell me?
- 5 A Yeah. I can.
- 6 Q Okay.
- 7 A Uh,...
- 8 Q Go ahead.
- 9 A I didn't, I know he said, uh, that he went there because Brian...or not Brian...that one of
10 the times Brian was hitting him with a bat or something, the guys in the back...and dude
11 went to the hospital. But, the reason why they hit him with the bat is because, uh, Crow,
12 uh, Tommy Crow, uh, was, uh,...getting in a fight with them, with that same dude, and
13 he kept pushing the fire or whatever, and it burned his leg or something. Then a month
14 later or something, uh,...uh, they pretty much went over there and beat them up
15 and...that's when that whole incident...
- 16 Q Who beat them up?
- 17 A Uh,...uh, Christopher and, uh, Tommy.
- 18 Q Okay.
- 19 A And, uh,...Crow toppled over or something, uh, he got him in a choke hold and that's
20 when he...then that's when Crow went up and kicked him in the face. And then went
21 after the other dude, because the other dude was just standing there...shocked, I guess.
22 And, uh,...
- 23 Q Yeah. So... uh, did Mr. Durga tell you that all three of them were involved in it?
- 24 A Yeah.
- 25 Q And, uh,...
- 26 A But, that, that they...Chris was saying that they only went there to beat them up. Uh, but
27 as they were going over there, uh,...Brian was getting all weirded out, saying how he was
28 in the...I think the military for...and...Army or Marines or something, he was in the
29 Desert Storm. And that how they got rid of bodies was to burn them up or something. Uh,
30 and he said that's a good way to get rid of bodies or something.
- 31 Q Eke...

- 1 A That's...
- 2 Q ...said that?
- 3 A No. Chris said that's what Brian was talking about as they were going over to their, to the
4 people that they were beating up campsite.
- 5 Q Did he say anything about Crow?
- 6 A Just why...what happened to him like, uh, a while before that, how he burned his leg and
7 everything and...
- 8 Q I don't know anything about that. Can you help, I mean, help me out a little bit?
- 9 A Okay. Uh,...what I know of, of what I was told of was that, uh,...uh, Tommy, uh, was,
10 uh,...got in an argument with, uh, the guy who went to the hospital. Uh,...I can't
11 remember his name, Scott or something.
- 12 Q Okay.
- 13 A Uh,...and they got in an argument. He ended up getting pushed up in the fire. And he was
14 too drunk to do anything about it. So they went back to the place.
- 15 Q Okay. So it was Tommy and Scott that got in a fight.
- 16 A Yeah.
- 17 Q Okay.
- 18 A I believe that's what...that dude is.
- 19 Q Yeah, that's okay. So that's your recollection of the conversation.
- 20 A Yeah.
- 21 Q Okay. Uh, and so then a month passes. And...that's when they go back over there
22 and....this other thing happens.
- 23 A Yeah.
- 24 Q Okay. And all three of them were involved in it.
- 25 A Yes.
- 26 Q Okay. And that's Mr.Durga. That's Durga.
- 27 A Durga was telling me this. Yes.

- 1 Q And you also talked to Eke about it.
- 2 A Yes.
- 3 Q And what did he tell you?
- 4 A He says he...well, he's, he...I'll be straight out, he, he lies a lot. Uh,...
- 5 Q Okay.
- 6 A ...straight out lies about little stupid stuff really. Um, gets kind of annoying after a while.
7 But, what he...he gave me like two or three stories (unintelligible).
- 8 Q This...
- 9 A I, but I,...
- 10 Q ...this is you guys talking.
- 11 A Yeah. This is us talking...
- 12 Q Okay.
- 13 A ...when we had the chance. He told me that, uh, when they first went over there, that he,
14 he never touched them or whatever, or...or whatever. He just lit the tent on fire, because
15 he was pissed off. He was pissed off at them for stealing his stuff, because he'd seen
16 some of his stuff in there. Inside the tent or whatever. And he confronted them about it.
17 Then another time he told me that, uh,...he just went over there to help them out. That he,
18 he just wanted to go over there to talk to them. And that's it. Uh,...then another time he,
19 he was just trying to find out who, uh, who stole his stuff so he could get it all back.
- 20 Q Okay.
- 21 A Um,...
- 22 Q All right. And so that's the verbal conversation you had with him.
- 23 A Yes.
- 24 Q Okay. And so did he ever admit to his own involvement in anything there?
- 25 A Yeah.
- 26 Q Okay. So he, did he, what did he tell you he did specifically over there?
- 27 A Um, he, he said, uh,...he was watching them all beat them up and stuff. This one thing,
28 he, he's...one story he gave me. Uh, he said he walked over there, he saw them beat them
29 up, and he flipped out and, uh, he says he, he hit the...not Pops, but the other guy, he hit

1 the other guy a couple times. And just because that guy stole his stuff or whatnot. And he
2 went over to, uh,...the tent and lit the tent on fire. Uh,...but he says that there was
3 nobody in it at that time, and that he walked off. He was the first one to walk off.
4 Uh,...then the other time, he, uh, he, uh, he said he, he...remembers seeing it, uh, after he
5 lit it. He seen it go up on flames and the two guys were laying there right inside...the
6 front of the tent. And I was like well, how, how did you see them in front of the tent? I
7 mean, were they, were they inside the tent? Because I'm thinking it's, it's just a regular
8 old tent, you know. But, he didn't tell me that there's a porch part...type, type nylon stuff
9 over it. And he said they were in there laying together. And he thinks that's how they
10 caught on fire. And that he seen the mattress and something else caught on fire inside the
11 tent. And that's when he took off.

12 Q Okay. So he saw the tent...in flames with people under it, and he left.

13 A Yeah.

14 Q That what he told you?

15 A Yeah.

16 Q Okay.

17 A And he drew me a picture right there.

18 Q Oh, so that's...

19 A That...

20 Q Okay. Okay. But...

21 A That's when we had that conversation was...

22 Q Okay.

23 A ...right there when he (unintelligible) that out.

24 Q All right. Just for the record, uh, Deputy Prosecutor Smith stepped out of the room. Um,
25 and now we'll continue. Okay. So, this is...what I want to talk about now, uh, and just
26 kind of go in order. Did you ever talk to, uh, Tommy Crow about any of this?

27 A Yeah.

28 Q And what did he say?

29 A Uh, he says he gots nothing to hide, that he didn't have no, uh, recognition of what's
30 going on, that he was too drunk, and that yeah, he did beat up, uh, Norm, or he was
31 throwing punches at Norm and chasing, uh, or no, he beat up Pops first, and he started
32 chasing Norm around. Uh, and that, uh,...he, he left as Durga was still there. And, uh,

1 and, uh, Brian was still there. And Durga came like a minute or so, however long, minute
2 came, and, uh, Durga came up by Crow and...while Crow was taking a piss, and then
3 went back to their camp. Well, like five, six minutes later, that's when, uh, Tommy, uh,
4 came over. Or, or not Tommy, but, uh, Brian came over. And they looked back, uh,
5 Tommy looks back and he sees like he didn't, he sees, uh, him shuffling his feet or
6 whatever. He thought that was kind of weird. But, he didn't think nothing of it. Uh, and
7 he went back and the next thing he knows is that...cops or something were asking a lot of
8 questions about it or...or there was a big bunch of cops around there asking...you know.

9 Q Mm hmm.

10 A So...

11 Q Okay. So he admitted to you, uh, I want to make sure I understand. He admitted to you
12 that he, he beat up, uh, not Pops, but the other guy.

13 A No. He beat up Pops after...

14 Q He hit Pops at first, and then he beat up, and then he was...

15 A And then he was...

16 Q ...chasing him...

17 A ...chasing him around and beating up the other guy.

18 Q Okay.

19 A Um, Norm, I believe.

20 Q Okay.

21 A Is his name.

22 Q All right. Did he ever, did he ever mention that he knew that either of them was dead?

23 A No. He said he didn't...see, the...he didn't know none of that. He, he took off before any
24 of the thing happened, he said.

25 Q And he didn't know how they died then.

26 A No.

27 Q Okay.

28 A I mean, he didn't know until the next day when everybody was talking about it.

29 Q I understand.

1 A The cops or...

2 Q Okay. And so then, let's move to that you go to the hole after you've had these
3 conversations with all three of them.

4 A Yeah.

5 Q Because all three of them are in ma-, have been maximum...

6 A Yeah.

7 Q ...in and out of maximum at different times. Right?

8 A Yeah.

9 Q With you in there.

10 A No. No. Chris is in medium.

11 Q Okay.

12 A Where I am at now.

13 Q Okay.

14 A And, uh, Tommy is in max.

15 Q Okay.

16 A Which is red.

17 Q Right.

18 A And, uh, Brian was also in max until they moved him, because they weren't supposed to
19 be together.

20 Q I gotcha.

21 A And that's when they placed him in H tank. And that, and I went to...uh, the hole quite a
22 few times for...uh, little stupid stuff.

23 Q Okay. So at, at different times, you were in the presence of all three of them...

24 A Yes.

25 Q ...at different times.

26 A Yes.

1 Q Okay. And so, at, uh, when Mr. Eke and Mr. Crow were in the same place, were they
2 communicating with each other?

3 A Yeah, they have. They was.

4 Q And, uh, do you, were you present when they, when those two communicated about this
5 case?

6 A Yeah, a little bit.

7 Q Okay.

8 A Uh,...

9 Q Do you remember what they talked about?

10 A Just that it, they were just talking shit back and forth.

11 Q Like?

12 A Like, uh, how can you have that dude write letters for you or something, you know that's
13 all bullshit. Or, or something like that. Uh,...

14 Q Their relationship...

15 A ...stuff like that.

16 Q ...is it good or bad?

17 A It's bad.

18 Q Okay. All right.

19 A They hate each other.

20 Q Okay. And they were in different cells, so they were never out at the same time.

21 A No.

22 Q Okay.

23 A They were never out at the same time.

24 Q So they're talking to each other through the door.

25 A Yeah.

1 Q Okay. And so then, uh, this timeframe that we've, that we found, December 10th or 11th,
2 and then maybe a month before that, give or take, you and Brian Eke were in the hole
3 together. Is that correct?

4 A Yes.

5 Q Okay. And that's when these letters that, that we now have, that's when you were passing
6 these back and forth.

7 A Yes.

8 Q Is that right? Okay. And so you were just, this, what we see written here is a continuation
9 of the, the verbal conversations that you'd had with him prior to that.

10 A Yes.

11 Q In a different part of the jail.

12 A Yes.

13 Q Okay. And do you remember the content, without looking at it, do you remember the
14 content of these, these...

15 A Not word for word.

16 Q ...letters?

17 A But, I know a lot of it.

18 Q Okay. And who started this between you and, and Mr. Eke?

19 A (No verbal response).

20 Q This correspondence?

21 A It's actually both a mutual thing. Uh,...I, I believe he did it. Because he was asking me
22 what, uh, Tommy was saying, talk-, talking about behind his back over there.

23 Q Okay.

24 A Uh,...stuff like that.

25 Q All right. So it was it...his intent was to gather a little bit of information. And your intent
26 was to...what, make a friend?

27 A Yeah, at the time. Then I started thinking about it, then I was like oh, well, maybe I could
28 do something with this.

- 1 Q Okay.
- 2 A So...
- 3 Q That's fair. Um,...and then you guys had these conversations that we see listed here. Is
4 that correct?
- 5 A Yes.
- 6 Q Okay. Um,...and these things that we have here, are they different, are they different
7 correspondence? Or are they just one big chain letter? Are they, what I mean by chain
8 letter is that...uh, like you wrote something and he wrote something and you wrote
9 something, he wrote something...is this all one big thing?
- 10 A No. I, I would write something, right, just ask him question.
- 11 Q Mm hmm.
- 12 A And I'd send it over. And he'd write something and send it on over.
- 13 Q Okay. All right. Okay.
- 14 A But, it wasn't all at one time. It...uh, maybe one or two days, or maybe three days...
- 15 Q And do you remember...
- 16 A ...(unintelligible).
- 17 Q ...roughly, just in your own mind, how many different letters back and forth you guys,
18 you guys...
- 19 A Oh, seven, around there. Give or take.
- 20 Q Okay. Seven and all of them were a page or two or three long?
- 21 A Yeah.
- 22 Q Okay.
- 23 A A page.
- 24 Q Or...and so, to your recollection, are all of those notes included in what you gave to Mr.
25 Hack?
- 26 A Yeah. Those are all of them.
- 27 Q Okay. And so you were the last person to be in possession of it all the time.

1 A Yeah. Because what Hack had.

2 Q No, no, no. What I'm saying is...Mr. Eke doesn't have any of these letters, does he?

3 A No. He has none of them.

4 Q You were the...

5 A I,...

6 Q ...last person to be...

7 A Yeah.

8 Q ...from the end of the letter.

9 A I,...I got them all.

10 Q Okay. All right. Uh,...Mr. Powers?

11

12 Q (Powers): Um,...Anthony, uh,...you mentioned Mr. Durga as being the first of the three
13 that you ever had a conversation with about all this?

14 A No. It was...well, yeah. With this.

15 Q Mm hmm.

16 A But, the first of the three I actually even talked to was, uh,...uh, Brian and, uh, Crow.

17 Q Okay. So, uh, you had met them first?

18 A Yeah, I met them first, then I'm at the medium tank.

19 Q Mm hmm.

20 A Because I started out in max.

21 Q Mm hmm.

22 A Then I went to medium, but I didn't know nothing of their case, you know. I just knew
23 they were here for murder and bla-bla-blah, whatever. You know, I didn't even care at
24 that time. But, uh, I went to medium, and that's when, uh, Durga said a little bit, of yeah,
25 I'm here for this and that, and my brother's next door and,...he, he, we were talking. I, I
26 had a little bit of commissary, you know. And, uh, I, I'd share with him. He's a good kid,
27 you know. And, uh, he would, uh, he'd be like yeah, I'm here, we, we just got into a little
28 bit of a conversation. But, I wasn't really trying to find out. I mean, he gave a little bit,

- 1 and he kept on talking about it, and asked me for...uh, advice and stuff. And...that's how
2 that went about.
- 3 Q So, uh, before that, when you had first met, um, Mr. Eke and Mr. Crow, you didn't have
4 any conversations with them at that time about what they'd done.
- 5 A No. Not...not really, no.
- 6 Q Okay. Um, then...excuse me. When you went into, um,...uh, well, when you were in
7 medium and you've had these conversations with Mr. Durga, can you give a timeframe to
8 that at all, even approximately?
- 9 A Yeah, I can. Um,...I was in, I was in maximum for twenty days, or twenty-two days after
10 I got locked up. So, I believe I got locked up the 18th...I believe the 18th.
- 11 Q Of what month?
- 12 A July.
- 13 Q July of last year. Okay.
- 14 A And, uh, so I was there for...about...two months, three months, uh,...I didn't really get
15 to...start to knowing him until like a month after being there, until we actually got to
16 know each other. So...I'd say...the month after August.
- 17 Q So September you think, uh, was when you...
- 18 A Yeah.
- 19 Q ...had, uh, conversations with Mr. Durga?
- 20 A Yeah.
- 21 Q Okay. And, um, after that, you ended up in the hole?
- 22 A Yes.
- 23 Q And then you went to maximum again.
- 24 A Maximum again.
- 25 Q Okay. When you went back to maximum, which of these guys was still in maximum at
26 that time?
- 27 A Um,...uh, uh, Tommy Crow.
- 28 Q Okay. Um,...

1 A But, before that, before that, I, I went to the, uh, the hole for, uh, two days. But, they
2 didn't put me in the hole. They put me in max, which is, um, they put me on adseg in the
3 max for ta-, two days.

4 Q Mm hmm.

5 A And Crow and Tommy was still there.

6 Q Okay.

7 A Then I was placed back in medium, because I found not guilty.

8 Q Mm hmm.

9 A But, sometime after that, they were separated, because some conflict of interest or
10 something. But,...

11 Q Okay.

12 A I don't know.

13 Q So, um, there was a point when you went into, uh, maximum again from medium...

14 A Yeah.

15 Q ...and both of them were still in there.

16 A Yeah.

17 Q But, you didn't have any contact with them at that time?

18 A No. No. I, uh, ...I was mostly sleeping or talking to one of my friends that was next door
19 to him (sounds like).

20 Q Okay. But, then when you came back to maximum the next time, Tommy Crow was the
21 only one of the two there?

22 A Yes.

23 Q Okay. And so, um, when you were back in maximum with only Tommy Crow, did you,
24 is that when you had some conversations with him about what he did or what others did?

25 A Yes.

26 Q Okay. How did you communicate with him during that time?

27 A (No verbal response).

- 1 Q Was it when you would be, were you, would you be both out of your cells?
- 2 A No, no. Uh,...see Tommy Crow's is on adseg. And I was in regular maximum in red.
- 3 Q Mm hmm.
- 4 A And red gets two hours out. And, uh, the adsegs only gets one hour out.
- 5 Q Mm hmm.
- 6 A But, the adsegs is never with the reds.
- 7 Q Okay. So you were never out when he was out.
- 8 A No. And I would talk through the doorway, right here (sounds like). I mean, the door's
9 right here, and I was just talking to him.
- 10 Q Uh, are you talking about when you're out?
- 11 A Yeah.
- 12 Q Okay. So you would be out and...
- 13 A Or when he's out...
- 14 Q Or, or...
- 15 A ...he would (unintelligible).
- 16 Q Okay. So when you or he were out, the other would be in a cell.
- 17 A Yeah.
- 18 Q But, you'd still be able to communicate.
- 19 A Oh, yeah.
- 20 Q Okay.
- 21 A As clearly as me and you are talking right now.
- 22 Q So, uh, would you have an opportunity to talk with him every day?
- 23 A Yeah.
- 24 Q Okay. And, um,...uh,...just go back to where you talked about, um, what he told you.
25 (unintelligible) right here. Um,...and Tommy I'm talking about.
- 26 A Okay.

- 1 Q Um,...you said that, um, he told you about, uh, the time that they went over and, uh,
2 these guys ended up getting killed. He, he told you about that night?
- 3 A Yeah.
- 4 Q Okay. Uh, did he...tell you about an earlier incident about this Scott guy? Did he talk
5 about that at all?
- 6 A Yes.
- 7 Q Okay. What did he tell you about what happened with this Scott guy?
- 8 A He said that they, uh, that they were getting drunk and they got in an argument or
9 something. He got pushed in the fire.
- 10 Q He meaning...Tommy?
- 11 A Tommy got pushed in the fire.
- 12 Q Mm hmm.
- 13 A And he got burned a little bit on his leg.
- 14 Q Mm hmm.
- 15 A Uh,...
- 16 Q And did he say what happened after that?
- 17 A No.
- 18 Q Okay.
- 19 A Well, I mean, yeah. He said that, uh, he said that, uh, um,...Brian was over there beating
20 him up with a baseball bat, or something like that.
- 21 Q Brian beating who up with a baseball bat?
- 22 A Uh,...Scott.
- 23 Q Scott, okay.
- 24 A And he was at the camp. But, Chris went over there to the camp, all right...
- 25 Q Mm hmm.
- 26 A ...and he seen Brian with the baseball bat hitting Scott.
- 27 Q Mm hmm.

1 A And, uh,...uh, Christopher grabbed the bat from him or something.

2 Q Mm hmm.

3 A And that's when Pops came out...oh, sorry. That's when, uh, Pops came out "what's
4 going on," bla-bla-blah.

5 Q Mm hmm.

6 A Uh, threw (unintelligible) in...

7 Q Mm hmm.

8 A Uh, I guess Chris gave him the bat or something. And that's like...couple minutes after
9 that, that's when Tommy came over and seen what happened or whatever.

10 Q Mm hmm.

11 A And he, and they all three left, went back to their camp.

12 Q Okay.

13 A And, uh,...Scott went to the hospital or whatever and...uh,...some assault that they got,
14 or had warrants out, or they went to jail for this one or something.

15 Q So now getting, uh, to this later time, where they talked about what happened that
16 resulted in these guys dying.

17 A Okay.

18 Q Um, talking about Tommy, what Tommy told you about that. Um, and this is him talking
19 to you when you're in the cell and he's out, or when you're out and he's in the cell?

20 A Yes.

21 Q Okay. Uh, is anybody else present when you guys were talking about these things that
22 you can recall?

23 A Well, I mean, there...there's like five or six of us that would come out. But, if any of
24 them is really paying attention to what we're saying or can understand what we're saying,
25 I don't know. I can't...

26 Q And, and thanks, Anthony. That's exactly what I was asking. I was wondering if any of
27 those other people was a part of the conversation.

28 A No, they were not a part of the conversation. But, who knows if they were...down way
29 over there listening to our conversation.

- 1 Q So now, as to what Tommy told you about this, um,...this was said in a number of
2 conversations or just one conversation?
- 3 A A number of conversations. Because he,...he would talk about it, you know.
- 4 Q And he...
- 5 A He, he felt confident in, uh, trusting me.
- 6 Q And so would he give you bits and pieces of it in separate conversations? Or would he
7 discuss the same thing over and over again in separate conversations?
- 8 A A little bit of both.
- 9 Q Okay. And then so putting it all together, in terms of what he told you, uh, I just want to
10 go back over it a little bit again. You said that he talked about being drunk that night?
- 11 A Yeah.
- 12 Q Okay.
- 13 A Shit faced is the exact words.
- 14 Q Did he say anything about how he and others ended up over where these guys got hurt?
- 15 A Yeah. He, I, I believe so. He was, he was, he was...I believe it was him that said it. But,
16 uh,...he, he was talking about, uh,...about going and confronting them or something that,
17 uh,...and that they were talking about going over there, uh, to either talk or to fight them
18 or something.
- 19 Q Mm hmm.
- 20 A That's, all three of them, uh, Brian, Chris, and, uh,...Tommy.
- 21 Q Mm hmm.
- 22 A And that's when they went over there, all three of them.
- 23 Q Mm hmm.
- 24 A And they had a little bit of conversation on their way to there. Uh,...
- 25 Q Did...okay.
- 26 A ...or at least Brian was talking about this, the little weird incident about how they, uh,
27 light people's bodies on fire to get rid of all the evidence inside the Desert Storm.
- 28 Q Mm hmm. Now this is what Tommy's telling you?

1 A Yeah.

2 Q Okay. And so I, you're clear that what I'm asking now is just what Tommy told you.

3 A Yes.

4 Q You understand?

5 A Just what Tommy is saying.

6 Q Okay. So Tommy told you about Brian discussing this with him, about the bodies, how
7 they would burn them that way?

8 A Yes.

9 Q And was this on the way to the...

10 A To the camp.

11 Q ...(unintelligible).

12 A To Pops' camp.

13 Q Okay.

14 A Because I guess they had a camp...uh, down farther. Farther down.

15 Q Mm hmm. Okay. And did Tommy say anything about why they wanted to confront these
16 guys?

17 A Uh, about snitching. Uh, I believe so. About that, that assault, uh,...then Brian
18 said...that's what Tommy said. But, Brian said it was because they stole their stuff and
19 because that they were snitches.

20 Q I understand. And so we'll get to what Brian said.

21 A Okay.

22 Q Try and keep it separate, but,...

23 A Okay.

24 Q So...

25 A But, Tommy said because, uh, uh, Pops snitched and the other guy snitched.

26 Q Okay.

1 A And he also said that there was a guy there, which is Scott. I, or not Scott. But, Norm, uh,
2 was going back and forth telling them all this stuff, that he seen everything happen.
3 That's how they became, uh,...over there. Because Norm came over there to their camp
4 to, uh, um,...Tommy's camp, and he was talking to them. Then he went back over to
5 Pops' camp, that's when they came over.

6 Q Did, uh, Tommy say what Norm told him when he came, when Norm came to Tommy's
7 camp?

8 A Just that he went to that, uh, uh,...Scott went to the, uh, hospital and that Pops was
9 talking to the cops about it.

10 Q So, um,...as far as what happened when they got there to Pops' camp, um,...what
11 did...what kind of, uh,...how to say this but,...did Tommy give you an idea of what
12 happened first, second, third? Did he talk about it like that? Or did he just say about
13 things that happened during all this?

14 A Things about happened.

15 Q Okay.

16 A And, uh,...like, like he'd tell me little...little things that stuck under his brain. But, he'd
17 also give me the full story, you know.

18 Q Mm hmm. Okay. Well,...what do you understand that the full story to be, based on what
19 Tommy told you?

20 A Okay. Based on what Tommy said is that they went over there to go beat him up, because
21 he snitched on, uh, Chris. And...and, uh, them, you know. Uh, but mainly because of
22 Chris, because Chris is Tommy's brother.

23 Q Mm hmm.

24 A Or step brother, or foster brother, I don't know. But, he calls him his brother. And, uh,
25 they went over there to beat them up. And that was the whole thing. Uh, and...Tommy, I
26 guess, swung on Pops while he was in the chair, hit him and flopped over and...

27 Q Who...

28 A ...landed in the bushes.

29 Q Who flopped over?

30 A Tommy.

31 Q Tommy flopped over...

32 A Yeah.

- 1 Q ...after he hit Pops.
- 2 A Yeah. After he hit Pops and fell into the bushes and, uh, he was all drunk and stuff. And
3 that's when, uh, Chris came over and started, uh, socking him up and got him in a choke
4 hold and, uh, Tommy came and kicked him in the face. And went...then he started
5 chasing, uh, Norm around the tent. And, uh, he kinda did like a swoop kick or something,
6 got him down to the ground and started hitting him. And, uh,...knocked him out or
7 whatever. Used, used...I think it was a chair, I think he said, or something...something to
8 that fact, to hit him with. Uh, and after the whole incident, they drug the bader-, bodies
9 over to the thing like it shows on that picture.
- 10 Q Mm hmm.
- 11 A And, uh,...after that, uh, Chris was doing something to, uh,...uh, Pops, because where,
12 where they were find (sounds like) was kind of underneath the little, uh,...uh, porch
13 thing, the nylon tent porch thing. And so when he knocked him out, it was just right
14 there. And he started walking off, because he had to go take a piss or...he had to use the
15 restroom.
- 16 Q Who started walking off?
- 17 A Tommy.
- 18 Q Okay.
- 19 A I'm talking about just Tommy right here.
- 20 Q Okay (sounds like).
- 21 A And, uh, this time, uh, he doesn't know what happens to them. He was going toward the
22 back to the camp. Because he did what he wanted to do.
- 23 Q Mm hmm.
- 24 A Uh, Chris drug, uh, Pops over to the tent, uh, for some odd reason. Uh,...I don't know, I,
25 I believe, uh,...he said he came back after he took the piss and helped Chris, uh, drug
26 Pops over to the tent to get him out from underneath the rain or...or snow or whatever.
- 27 Q Mm hmm.
- 28 A Uh, I believe that's what he said. But,...
- 29 Q Mm hmm.
- 30 A Uh, but I know, I know this much for sure, they, they said that they started walking off.
31 And next thing you know, uh,...that you see, uh, uh,...Brian shuffling his feet, talking
32 about how to get rid of tracks in crime scenes (sounds like) or whatever. They go back to
33 the camp and pass out, because he was too drunk to...

1 Q Now, you said that Tommy talked about forcing Norm to the ground. And then he did
2 something to make him unconscious?

3 A No. That wasn't...that wasn't, or that...yeah. He, he, he was hitting him or whatever.
4 And he knocked him out.

5 Q Mm hmm. Okay.

6 A Uh, after he'd done chased him around.

7 Q Okay. Yeah.

8 A Or, yeah.

9 Q But, before he knocked him out, he got him down to the ground somehow?

10 A Yeah. A, like a swinging swoop kick, or sweep...

11 Q Oh.

12 A ...whatever you call it.

13 Q A sweep.

14 A Yeah.

15 Q A sweep kick, okay. Um, and it was after he did the sweep kick that he knocked
16 him...out.

17 A Then he started just hitting him.

18 Q Okay. And then you said something about he hitting...he said, Tommy told you that he
19 hit Norm with some object.

20 A Yes.

21 Q Uh, what...

22 A Uh,...

23 Q What kind of object was it?

24 A Uh,...

25 Q If you can recall.

26 A ...I believe a chair. But, I, I don't know. He says he didn't. But, that's what I got from
27 Chris.

1 Q Oh, okay. Well...

2 A Or, or from Brian. Is, is that he used a chair. Uh, Brian, Brian said he used a chair or
3 something. Because his bone was all out hanging out or something.

4 Q Mm hmm.

5 A (unintelligible)

6 Q But, what did Norm say he did? Did he talk about...

7 A You mean Tommy?

8 Q I'm sorry.

9 A You mean Tommy?

10 Q Tommy. Yeah, Tommy.

11 A Okay. Tommy just said he just beat him up with his fists.

12 Q Okay. Um...

13 A Fists and feet.

14 Q Mm hmm.

15 A Other words just fist (unintelligible).

16 Q Okay. So then, according to what Tommy said, after he, uh, knocked Norm out with his
17 fist, then Tommy got up and, uh, Chris was doing something with Pops. Is that right?

18 A Yes.

19 Q Okay.

20 A And, uh, he, they drugged him over to the tent.

21 Q Mm hmm.

22 A And he walked off. And, uh, to use the restroom or, or to go back to his tent.

23 Q Okay.

24 A And that's when, uh, Chris came up right behind him after they did that. And, but, uh,
25 Brian was still back over there. They didn't even know what Brian was doing.

26 Q Mm hmm.

- 1 A Uh, and they went back to the camp and passed out.
- 2 Q Now did Tommy, uh, say anything about what Brian was doing while these things were
3 happening?
- 4 A Um,...he said he believed he was, uh, helping them beat them up and stuff. Then he
5 went, he disappeared behind the tent.
- 6 Q Okay.
- 7 A Out of sight.
- 8 Q When you say...when you say he was helping him beat him up, you talking about Brian?
9 That Tommy said Brian was helping him beat him up?
- 10 A Yeah. Uh, to make sure that if in case if they needed help or...
- 11 Q Mm hmm.
- 12 A ...whatever.
- 13 Q Okay. Uh,...did he say anything more specific about how Brian was helping to beat them
14 up?
- 15 A Uh, not really.
- 16 Q Okay.
- 17 A Uh, I don't know if he said he...he punched him once or kicked him, as he had Norm on
18 the ground.
- 19 Q Mm hmm.
- 20 A But, I believe he said he kicked him a couple times.
- 21 Q So, uh, Brian kicked Norm while Tommy had Norm on the ground.
- 22 A Yeah.
- 23 Q Okay.
- 24 A Wrestling around on the ground, you know, and, and Brian comes and kicks him.
- 25 Q Okay. So now, um, is that pretty much, uh, as complete as you can recall of the things
26 that Tommy told you...
- 27 A Of what Tommy told me, yes.

- 1 Q Okay. All right. So, um,...you then had the opportunity after that to speak with, uh,
2 Brian...
- 3 A Yes.
- 4 Q ...uh, about what happened?
- 5 A Yes.
- 6 Q Okay. So the things you talked about with Brian occurred after you talked about things
7 with Tommy.
- 8 A Yes.
- 9 Q And the things you talked about with Tommy were after you had talked about things with
10 Chris.
- 11 A Yes.
- 12 Q Okay.
- 13 A Exactly.
- 14 Q Okay. So, you mentioned now when we were last talking about where you were, that you
15 were in maximum with Chris. And...
- 16 A No. I was in medium with Chris.
- 17 Q Yeah. And, I'm sorry. You were in medium with Chris, and then maximum with Tommy.
- 18 A Yes.
- 19 Q And that's how Tommy was able to tell you things.
- 20 A Yes.
- 21 Q Um, how then did you end up in a position to talk to Brian?
- 22 A Uh, because, well...I kind of, uh, get in trouble every now and then. Uh,...I
23 have...problems sometimes, you know.
- 24 Q Yeah.
- 25 A And I ended up going to the hole. And, uh,...I, I talked to Brian, you know, as a
26 companionship level. And, uh,...I'd tell him what I've heard, what Tommy told me and
27 what Chris told me. And just, just being, uh, a friend, you know.
- 28 Q Mm hmm.

1 A Trying, trying to just have a conversation, pass by the time.

2 Q How would you be able to converse with Brian verbally, converse with Brian in the hole?

3 A Just yell...yell through the door.

4 Q Mm hmm.

5 A Or, or when I'm out (unintelligible) just talk to him, verbally.

6 Q Okay. So sometimes you would yell things back and forth?

7 A Yeah.

8 Q Wouldn't the, uh, guards, wouldn't they be concerned about that...

9 A No.

10 Q ...if you did that?

11 A No. It's like, okay, here's my room. Right?

12 Q Okay.

13 A And then there's...then there's the dayroom right there. Then there's another door. You
14 know, it's, it's not like they can hear us.

15 Q Oh, okay.

16 A But, they, they don't even give a shit, really.

17 Q Okay. Uh, so some of it would be yelling back and forth when each of you were in your
18 cells.

19 A Yes.

20 Q But, other times it would be one of you out, the other one in his cell, and you'd talk that
21 way.

22 A Yes.

23 Q Okay. So now, um, if we could just, just want to be sure I understand what Brian told
24 you, as opposed to what Tommy told you happened, um,...and I'm wondering if Brian
25 ever talked to you about this Scott guy or what happened to him earlier.

26 A Uh, yeah. He...he said a couple things. That he was on, uh, uh, acid or something. And,
27 and...uh,...Chris told me he was all...doped up or whatever, uh, meth...

- 1 Q Mm hmm.
- 2 A Meth amphetamines, and that he did acid also and mixed the two and drunk (sounds like).
3 Uh, but, uh,...Brian said he blacked out and didn't know what happened. But, he believes
4 that he didn't do nothing. That it was all Chris.
- 5 Q So really that's all he could tell you about Scott, because he said he blacked out and
6 didn't remember?
- 7 A Yeah.
- 8 Q Okay. So then getting to what happened to, uh, Pops and Norm. Um,...again, uh,...when
9 you talked to Brian about this...verbally talked to him.
- 10 A Okay, verbally.
- 11 Q Uh, um, about it, uh, was this in a, a series of conversations, a number of conversations?
- 12 A Yes, it was.
- 13 Q Okay.
- 14 A Uh, probably two or three days at a time.
- 15 Q Mm hmm.
- 16 A For however long I'm there. Uh, the most I've done was six days. But, I've been there
17 like three times.
- 18 Q There's, we talk about this, uh, being in the hole and talking to him. And did that occur
19 where you talked to Brian about all this, one time during the hole, or more than one time
20 that you were in the hole with him?
- 21 A Uh,...more than one time.
- 22 Q More than one. Okay. Uh, and did...you ended up back in maximum at one time when
23 Brian was back there as well, or, or no?
- 24 A Yeah. Well, I went to medium.
- 25 Q Mm hmm.
- 26 A And, uh, I got a three minor write up. But, I ended up beating it, because one of the
27 minors was bogus. And I went there for like two days until my hearing. But, they, they
28 were both in there. Uh, and they were having some problem with this dude named Aaron
29 Adams (sounds like) going back and forth to him.
- 30 Q Who, when you say they were both in there...who, first of all, who are they?

- 1 A Uh, Tommy and Brian.
- 2 Q Okay. And when you say back in there, you talking about maximum.
- 3 A The max (unintelligible).
- 4 Q Okay.
- 5 A E, uh,...E tank.
- 6 Q E tank. Okay. So at this point in time, they're having trouble with, uh, this guy Adams?
- 7 A Some, yeah. Because he's going back and forth, doing some bullshit.
- 8 Q How did you know about that? How did you find out about that?
- 9 A Well, it's not about finding about it. It's, you can hear them...
- 10 Q Oh.
- 11 A ...um, yelling and screaming back and forth.
- 12 Q Oh.
- 13 A And talking shit to Aaron Adams, too. And he's...it's just a big issue, you know.
- 14 Q I see.
- 15 A Just screaming, being loud. So...
- 16 Q So you're, you're hearing all three of those people yelling back and forth at each other?
- 17 A Yeah.
- 18 Q And what kind of things were you hearing being yelled back and forth, if you can
19 remember.
- 20 A Um, just about, uh, writing a note to Brian or something. Uh,...and about him snitching
21 on another guy in the tank that has nothing to do with this.
- 22 Q Mm hmm.
- 23 A Uh, stuff like that.
- 24 Q Okay. So, um,...that time when you got back to maximum, uh, did you have any
25 conversations with Brian that time?
- 26 A No, I didn't. Nor, nor Tommy. Because I was only in there for like two days. And I
27 wasn't really, I was just trying to get in and out.

1 Q Okay.

2 A Uh,...

3 Q And then aft-...

4 A ...and then I went back to medium.

5 Q Okay. And then after that, did you ever...

6 A But...

7 Q ...have a chance to be in maximum at a time that you could talk to Brian?

8 A No. Not in max, no.

9 Q Okay.

10 A Because he, he was placed out of there.

11 Q Mm hmm.

12 A Uh, he was placed in the hole on adseg or P.C or whatever.

13 Q So all of the times that you were able to talk to Brian, were they all the, verbally, I'm
14 talking,...all, were all those times in the hole?

15 A Yeah. Besides the little bit that when I first got in the max.

16 Q Okay.

17 A But, I, I didn't talk nothing about the case, though.

18 Q Mm hmm.

19 A Uh, everything about the case that we talked about was in the hole.

20 Q Okay. Anthony, can you give any kind of timeframe...uh, that would cover those times in
21 the hole that you had a chance to talk to Brian verbally about all this?

22 A Yes. I got, I got...write ups the...that says all the dates and times, uh,...

23 Q Okay.

24 A But, it...but going by my memory...

25 Q Mm hmm.

26 A ...um,...the month, month after August.

1 Q Mm hmm.

2 A And the month after that.

3 Q Okay. September, October?

4 A Yeah.

5 Q Okay.

6 A Yeah, and the end of...the 11th month.

7 Q Oh, in November as well?

8 A Yeah. The end of the 11th month. Because I got out like the 3rd of December.

9 Q Mm hmm.

10 A And I went back to the, uh, maximum.

11 Q Okay.

12 A 3rd or 13th. I think it was 13th. 3rd.

13 Q So again, uh, just thinking about what Brian told you verbally these different times that
14 you talked...

15 A Mm hmm.

16 Q ...and, uh, what he told you about what happened to Pops and Norm, if you could, just
17 like you did just a moment ago with ta-, uh, Tommy, just put together all the things you
18 can recall being said at various times.

19 A Okay, yeah. We, we talked quite a few times.

20 Q Mm hmm.

21 A But, the overall picture that I got from him...

22 Q Okay.

23 A ...was that...uh,...that, that Tommy got in a conflict or whatever. And Pops supposedly
24 told on them. So they, and Norm came over and told them. And they went over to, uh,
25 the, uh,...uh, Pops' tent. I don't know Pops' real name.

26 Q Okay.

27 A Um, but, uh,...

- 1 Q And they, who, who did Brian say they were that went over to Pops' tent?
- 2 A Uh, it was, uh, Brian, Tommy and Chris. And they went over there and he seen Chris...or
3 he seen Brian sock, uh, the older guy, Pops, because he was in the chair. And, uh,...he,
4 they both fell over. And, uh,...
- 5 Q Let, let me stop you for a second, uh, Anthony. So we're talking about what Brian told
6 you?
- 7 A Yes.
- 8 Q Okay. So Brian saw somebody sock Pops?
- 9 A Yeah.
- 10 Q Who...
- 11 A Saw Tommy sock Pops.
- 12 Q Saw, so, okay. So Tommy socked Pops.
- 13 A Yeah.
- 14 Q Uh, go ahead. I'm sorry. What...
- 15 A Then...
- 16 Q ...happened then?
- 17 A Then he, then he seen, uh, Chris, uh, started throwing them at him and Tommy running
18 around the...thing.
- 19 Q Well...
- 20 A He said he was...
- 21 Q ...what, what was Chris doing, according to Brian?
- 22 A Uh, socking, uh, uh, Pops.
- 23 Q Okay.
- 24 A And he got him in a choke hold. And he said that's when he went around the tent, and he
25 lit it on fire. And he said at first it went out. And then, then he did it again. And lit it and
26 that's when it actually caught.
- 27 Q And this is Brian you're talking...

- 1 A This is what Brian said.
- 2 Q Okay. So Brian told you that Brian, he went around to the back of the tent...
- 3 A Yeah.
- 4 Q ...to try to set...
- 5 A Not the back, but around the corner.
- 6 Q Oh, okay.
- 7 A Where they couldn't...because the chair was over here. And the tent's like this. So they
8 came over here. He came over here.
- 9 Q And you just, with your hands, because this is all being recorded, you've just shown us
10 where, uh, a tent was positioned with one hand. And then you put another hand kind of
11 close to that, and said there was a chair there?
- 12 A Yeah.
- 13 Q And so, uh, the, the position you understood the chair to be, was that, uh, close to the
14 front of the tent, the side of the tent, or, or what?
- 15 A Oh, well...
- 16 Q Or do you know?
- 17 A ...this is, I'm, I'm just going by what I'm hearing.
- 18 Q That, that's what I'm asking.
- 19 A But, when I,...
- 20 Q What Brian told you.
- 21 A When I picture in my brain, uh, he was telling me it was off to the side, not directly on
22 the side, but in front on (unintelligible) side, that's when, uh, they socked him and they
23 fell in the bushes over there.
- 24 Q Okay.
- 25 A And he went around the opposite corner and started lighting the tent on fire.
- 26 Q Brian did.
- 27 A Brian did.

- 1 Q Okay.
- 2 A Yes.
- 3 Q So then you said that Brian had some trouble getting it lit.
- 4 A Yes.
- 5 Q Okay. Uh, so then go ahead. What did Brian talk about happening here after that?
- 6 A And he said he heard all, heard them shuffling or doing whatever. And he left.
- 7 Q Mm hmm.
- 8 A And that was it.
- 9 Q Okay.
- 10 A And he didn't know what happened. But, he said he looked back and he seen it catching
11 on fire. But, he also...uh, that was one story.
- 12 Q Yep.
- 13 A Right?
- 14 Q Mm hmm.
- 15 A But, um, the only difference from the second story he gave me was that he seen them
16 dragging the two bodies to the...uh, front of the tent, when he lit the fire. And it, like he
17 said it caught, then it went out. Then he lit it again. And, uh, as he was leaving, he
18 seen...he, he said a mattress or something...mattress and some stuff inside the tent
19 catching on fire, the actual insides of the, the stuff on fire.
- 20 Q Mm hmm.
- 21 A And he said, uh, it really caught on fire when the bodies caught on fire.
- 22 Q Mm hmm.
- 23 A He, he assumes.
- 24 Q Okay.
- 25 A Uh, that's when it actually caught. He said that's when it really started blazing...hard.
26 And that's when he said he was walking down...afterwards.
- 27 Q So now you've talked about two different stories that Brian told you.

1 A Yes.

2 Q Okay.

3 A Like I said, he, he lies quite...quite a bit. And he changes stories alot.

4 Q Did you ever confront him with the fact that he was telling you one story that wasn't the
5 same as another story he told you?

6 A Well, I mean, I'd, I'd ask him,...uh, question after question, you know. Because...uh,
7 like I said, he, he gives probably two stories in, in what we writ-, wrote, too.

8 Q Mm hmm.

9 A But, uh, I, I was just...making a conversation, you know. Uh,...but, yeah, I'd ask him,
10 uh, well, what did you do over here, I thought you did this, you know. But, I wouldn't out
11 right hey, you're lying.

12 Q Okay.

13 A You know. I wouldn't do that.

14 Q Okay.

15 A Because, like I said, we had a companionship going on. And friendship level to, uh, talk
16 to pass by our time. And I didn't want to ruin that.

17 Q Okay. So now you've told about two stories, uh, uh, that Brian said about what happened.

18 A Yes.

19 Q Uh, did he ever tell you any other stories, or any other details about...that what happened,
20 uh,...?

21 A Well...like I said, we didn't have much time to talk, because there's other people in there.

22 Q Mm hmm.

23 A It was mostly wr-...writing. And when I got all in writing is right there.

24 Q Okay.

25 A Uh,...

26 Q Okay. So you, you don't...but that's my question. I'm just asking whether you recall any
27 other details that he...

- 1 A Uh, he said that he didn't hit him. Uh, that he didn't do nothing. He was just there.
2 He...he said he was there to, uh, help him out or something. That he was not there for
3 any reason. Then another story he said he was there because they stole his stuff, and they
4 were...trying to confront him about his stuff being stolen, that his...I believe his grandma
5 gave him, before she died, or something.
- 6 Q Mm hmm. Okay. So he also gave you two different stories about why he was even there.
- 7 A Yes.
- 8 Q Did he tell you about how he found out that they had some of his grandmother's stuff?
- 9 A He said that they stole it.
- 10 Q Okay.
- 11 A All right. Any explicit detail, I don't know. But, they stole it.
- 12 Q Now, um,...that's the verbal stuff that Brian said to you.
- 13 A Yes.
- 14 Q Okay. And then, um, you've talked about how you started writing to each other to pass
15 time in the hole.
- 16 A Yes.
- 17 Q Uh,...um, and....how is it that you had um, were you allowed to have a lead, uh, pencils
18 in the hole?
- 19 A Only when we're on for our hour out. And that's when I'd break the pencil lead and
20 sneak a piece of paper in my cell.
- 21 Q Okay. Um,...so when you were out...
- 22 A But, we just had sandwich baggies that I'd get from lunch.
- 23 Q When you were out, where would you be that you would have access to a pencil?
- 24 A In the dayroom.
- 25 Q (unintelligible)
- 26 A Which is right outside our doors.
- 27 Q Okay. They have some pencils there that you can get at?
- 28 A Well, you can get them.

- 1 Q Mm hmm.
- 2 A Out of your little property bins (sounds like) that they got.
- 3 Q And then when you go back into your cell, what are you supposed to do with the pencil,
4 if you've got one?
- 5 A You're supposed to turn it in.
- 6 Q Okay.
- 7 A Because they keep track of what you bring in.
- 8 Q Mm hmm. And so you couldn't very well take a pencil back to your, uh, cell, because
9 they'd know that.
- 10 A Yes.
- 11 Q So instead of taking the pencil back, you would break the lead off and then secretly take
12 just the lead back.
- 13 A Yes.
- 14 Q Okay.
- 15 A And, uh, when the lead gets super small, uh, I'd just roll up a piece of paper like an
16 imitation of a pencil size to keep it a little stability so I can actually write.
- 17 Q Mm hmm.
- 18 A Without it just not being able to write.
- 19 Q Mm hmm.
- 20 A Because sometimes I'd have long fingernails and it's hard to grasp.
- 21 Q Yeah. Now, do you know how, uh, Mr. Eke got whatever he used to write with?
- 22 A I know one time, uh, I had a couple leads. And I sent him over one of my, uh, rolled up
23 paper pencil leads, you know. And I'd sent him one over one time. That was for the
24 regular pieces of paper...
- 25 Q Mm hmm.
- 26 A ...that I sent him over. And he said, oh, this is neat.
- 27 Q Mm hmm.

- 1 A So, uh,...but the other time, I don't know how he used the lead.
- 2 Q Okay. Um,...and you thought, you, your recollection is that was, he was the first to think
3 about this idea of writing back and forth?
- 4 A Yes. Because he, I, I believe he wanted to know what they were talking about over there.
- 5 Q Mm hmm.
- 6 A Over in E tank.
- 7 Q Okay.
- 8 A Uh, Tommy and Aaron Adams.
- 9 Q So when he first, uh,...sent something over to you, uh,...
- 10 A I sent, I sent something over to him first.
- 11 Q Oh, oh. I see.
- 12 A But, we were in verbal when the first thing came up. And I thought better of it, and I was
13 like maybe you don't want to, uh, say this out loud, so that...I'm gonna send something
14 over to you. So I wrote something, uh, I believe it was on one of those sandwich baggies,
15 and I sent it over.
- 16 Q What was the first thing you ever wrote to him about?
- 17 A Uh,...
- 18 Q If you remember.
- 19 A I really can't remember.
- 20 Q Okay
- 21 A But, I know it was something about his case, and...uh, I, I'll be able to point it out
22 though.
- 23 Q Oh.
- 24 A Uh,...
- 25 Q The first thing you ever wrote to him is...
- 26 A Yeah.
- 27 Q ...part of this, of what we have here?

- 1 A Yes. It is. Uh, I believe the first thing I wrote to him was a front and back. I believe that's
2 the only paper that has a front and back that I wrote on actually. And it's a sandwich bag.
- 3 Q (unintelligible) really hard to read (Hack?).
- 4 A Yes, it is.
- 5 Q I'm gonna...I'm looking at the, the sandwich bag...I'm looking at some sheets
6 of...uh,...uh, material here. And I'm gonna pull those out, so we can kind of go over
7 those. Um, as we talk. Um, the things that I'm holding here Anthony, are these the
8 sandwich bags you're talking about that you wrote on?
- 9 A Yes.
- 10 Q Okay. And I only see one...let me make sure...
- 11 A (whispering) There might be two. (unintelligible) front and back.
- 12 Q Oh, okay. There's two that are front and back. So let, let me give these two you.
- 13 A It's the shittier one.
- 14 Q (unintelligible) make sure.
- 15 A Yeah, this one right here.
- 16 Q Okay. So, um,...let's, uh, let me take a look at this for, uh, I'm gonna...
- 17 A Can't really read what I said. But, you can read what he said though.
- 18 Q On one side of this one it's the, the first words at the top are "I didn't beat up nobody."
19 That's at the top of that one.
- 20 A Yes.
- 21 Q That's, okay. And, um,...on the other side, it's, it's...difficult to see what it says there.
22 Um, are you able to see what those first words are at the top of that other side?
- 23 A "You know I got..." "you know I got something stating they're...confused and," or
24 something, I don't know.
- 25 Q Mm hmm.
- 26 A Uh, "I don't..." I can read the right part, but I can't read the left part.
- 27 Q Okay. The, the part on that side is what you wrote?
- 28 A Yes.

- 1 Q And, and so is this the first communication that you made to Mr. Eke in writing?
- 2 A Yes.
- 3 Q Okay. So all this writing back and forth, it's all started with this first communication that
4 we're looking at right now.
- 5 A Yes. Uh, I talked to Crow a little bit. He said that...well, I put two and two together to
6 ask him some questions. And I just went on from there. Every time we wrote, I had more
7 and more and more. But, uh, that piece of paper there, I believe was the second article
8 that we wrote. Yes.
- 9 Q This?
- 10 A Yes. And as you can see, it's clearly written. Uh,...
- 11 Q So this one is on the back of what's, uh, a form that's called Thurston County Jail and
12 then it says at the top Ijent (sounds like) Inmates Only. All others need to use the standard
13 order form.
- 14 A Yes, sir.
- 15 Q And on that back of that is some writing. And that's the, the next...um, method you use
16 to communicate with...
- 17 A Yes.
- 18 QMr. Eke?
- 19 A Because I only had one...one of these. But, I noticed I had a whole bunch of these. So I
20 could use all these. But, I noticed that the back was getting all sloppy, and...I thought
21 maybe it wouldn't work or whatever.
- 22 Q Okay.
- 23 A You know. So I started writing on this until I ran out of paper.
- 24 Q And on this one, this back, uh,...at the very top, uh, what are the first words there at the
25 top?
- 26 A "If you want me to help you get off, I need to know what to say. I'm very smart. I know
27 how to finesse a lawyer."
- 28 Q Whose writing is that?
- 29 A That is mine.

- 1 Q Okay. And then there's, uh, a bunch of writing ne-, below that, uh, above a line that goes
2 across the page.
- 3 A Yes.
- 4 Q And, uh, so the rest of that lighting, uh, wr-, the rest of that writing above the line, whose
5 writing is that?
- 6 A Here?
- 7 Q No.
- 8 A Or over there?
- 9 Q The, the writing...
- 10 A That's, that's...
- 11 Q ...uh, above the line.
- 12 A ...Brian Eke's. That's Brian Eke's.
- 13 Q Okay. Then there's some writing immediately below the line. Uh, and it starts with "I
14 know that part."
- 15 A (unintelligible)
- 16 Q And whose writing is that?
- 17 A That is mine.
- 18 Q Okay. So how many lines down is it your writing?
- 19 A Three.
- 20 Q Okay.
- 21 A Two, three (whispering). Three and a partial, uh, "like a fool..."
- 22 Q "Like a fool" is the end of your writing?
- 23 A Yes.
- 24 Q Okay. Now the rest of what's written on that page below the words "like a fool" who
25 wrote that?
- 26 A That's Brian Eke's.

- 1 Q Okay. And, um, how is it that you know that Brian wrote those things that you indicate
2 are his writing?
- 3 A Because he's the only one in that cell. And I'd fish to him.
- 4 Q Okay.
- 5 A And it'd go back and forth. And these ones I, ...or some of them, I don't know which one
6 in particular, but I know I'd hand him a sheet of paper with something written on it. And
7 he'd write it, and I'd actually watch him with my own two eyes as he's writing it. And he
8 slipped it back underneath the door, and then go back and forth for an hour.
- 9 Q Okay. So it sounds like, uh, Anthony, you're telling me two ways that you knew it's
10 Brian writing this stuff. Uh, one is that you're the only two people in there.
- 11 A Yes.
- 12 Q Would that be correct?
- 13 A Uh,...
- 14 Q In, in the hole.
- 15 A We're, we're not, no, no. Not in the hole.
- 16 Q Oh, okay.
- 17 A There's other dudes...on this side.
- 18 Q Uh huh.
- 19 A Right? But, like I said, he's in ten, I'm in eleven. Then there's twelve and thirteen.
- 20 Q Okay.
- 21 A And he's the only one on this side. And I'd fish the line over to him, it'd go straight into
22 his cell.
- 23 Q Mm hmm.
- 24 A Uh, ...and I can, uh, tie the paper up to it, and he'd pull it, it'd go up in his cell. He'd
25 write whatever, tie it up to the line, and I'd pull it back.
- 26 Q I see. Okay. So the message came from the cell that he was in.
- 27 A Yes.
- 28 Q And you know that.

1 A Yes. I know that for sure.

2 Q Okay.

3 A And he was the only one in that cell.

4 Q Okay. And then the other way that you know it's, it's his writing is that you actually at
5 times saw him actually do the writing.

6 A Yes, I did.

7 Q Okay. And, and when you...excuse me. And when you talk about these two ways that
8 you know it's his writing, are you talking about all these sandwich, uh,...bag writings
9 that we have here on the table?

10 A Sandwich bag writings and this. And...

11 Q And also this writing on...

12 A ...and those.

13 Q ...the back of the form?

14 A Yes.

15 Q Okay. Uh, is that also this...

16 A That, those, those ones...are, are right...

17 Q Let me give you the, what you're looking at is some other documents.

18 A It's a copy of my, of what I have.

19 Q Uh huh.

20 A It's not the originals.

21 Q Yeah. Okay.

22 A But, yeah, those are the same things.

23 Q These other writings, and now I'm, I'm pointing to some, uh,...well, let's get the
24 originals. Because that's...what we should be using. Uh, Anthony, I'm, I'm
25 gonna...gonna use the original ones, uh,...I'm gonna put just...I'm gonna put these back,
26 just so we don't get these confused with these.

27 A Okay.

- 1 Q For now. I've got...three pieces of lined paper here. White lined paper. I'm gonna ask
2 you...um,...if there's any kind of order...
- 3 A Okay.
- 4 Q ...to these pieces of paper with regard to your communications with Mr. Eke.
- 5 A The, this was the last one. Because...I don't know why it was. But, I think that was the
6 last one...
- 7 Q And the paper you're...
- 8 A Because I told him, uh,...no. I think that was the second one. And this...we'll put this
9 over here (sounds like). First, second, third.
- 10 Q So the, the paper you have on top, uh, the, the page on the, the side on, that we have on
11 top begins "I just got done talking..." uh, on the first one?
- 12 A Yeah.
- 13 Q Okay.
- 14 A Because that's, I, I remember talking to Woodrow, and he was talking about, uh, getting
15 some...I told him to get some information for my uncle. And that's when I came back to
16 the, uh,...so it might've been this other set that was the first one. But, I know I came from
17 Woodrow. And that's how I started that page right there.
- 18 Q Mm hmm. Okay.
- 19 A But, uh,...
- 20 Q The other side of the pa-, the other side of that paper beings "How did they leave them in
21 the tent." And so, um,...you, you're still thinking that that's the first...
- 22 A Yes. I believe that's the first one.
- 23 Q First one? Okay.
- 24 A Well, I mean, that's the first page, I know for sure.
- 25 Q Okay. So let me ask you about these pages. Uh, these three pages that we're looking at
26 now, the lot-, white lined paper, uh, pages to identify them. Um, are these all writings that
27 took place between you and Mr. Eke again in the hole though?
- 28 A Yes. And at this time, we were the only ones in there.
- 29 Q Okay.

- 1 A Uh, in the whole hole, uh, period.
- 2 Q So you're anticipating my question of how you, how you might know that Mr. Eke
3 wrote...
- 4 A Yes.
- 5 Q ...on these pages. And it, it had to be him if it wasn't you.
- 6 A Yes. Exactly.
- 7 Q Okay. Um,...how did you get the paper that was used here?
- 8 A Uh, like I said, we'd get our hour out, and we're allowed paper and pencil.
- 9 Q Mm hmm.
- 10 A And, uh, couple sheets, I, well, uh, folded up and put it down my pants. And with the
11 pencil lead, I just threw it down on the floor someplace I knew where it was at. So when
12 the officer would come and look, there's no paper or pencil. So that's how I got that.
- 13 Q Okay. So you would end up with the, this, this lined paper in your cell. And then you'd
14 have, again, the lead from the pencils. Is that right?
- 15 A Yes.
- 16 Q Okay. So then, um,...I just want to go through these. And I'll start with, uh, this first one
17 we've been talking about. Uh, I'll start with the side that begins how, at the top, "how did
18 they leave them in the tent." And, uh, I want to ask you to, uh, tell me how, who, uh,
19 wrote the first part of what's on that page.
- 20 A Okay. Two, three, four, five, six, seven (whispering). The first seven lines...
- 21 Q Mm hmm.
- 22 A ...is mine.
- 23 Q Okay.
- 24 A Then the rest of that front page is his.
- 25 Q Okay. And this is a, a page...
- 26 A Or wait, let me see that. Okay. Actually, let me take that back. First seven lines is mine.
27 Then he drew a little picture and it has two lines underneath it. Then the next thing is
28 mine all the way till right here. And he put that.
- 29 Q Okay. So now next to the picture there's two lines, uh, with...there are two, um,...

- 1 A Underlined lines.
- 2 Q Underlined lines, yeah, thanks. Uh, one is "don't know how he died," and the other is
3 "nothing was said afterward." And who wrote those?
- 4 A Brian did.
- 5 Q Okay. And then there's a section that begins "we didn't talk about it..."
- 6 A That was him.
- 7 Q Okay. And then the next line after that begins "why did they drag them over there..." and
8 is that you?
- 9 A Yes.
- 10 Q Okay.
- 11 A Because I was asking him how they drag them, why did they drag them over under here,
12 not just leave them where they were beat up, you know.
- 13 Q Okay.
- 14 A I was, I, I figured probably they had a, uh,...something ahead (sounds like) why they
15 dragged them over there.
- 16 Q Okay.
- 17 A You know.
- 18 Q And then, uh, the lines that follow, going all the way down to the words "you could see"
19 are all those lines your writing?
- 20 A Yes.
- 21 Q Okay. The line a-, the line after that says "I don't know why..." and who wrote that?
- 22 A Uh, Brian did.
- 23 Q Mm hmm. And then the next, the rest of that page, at the bottom of the page, is, is
24 that...whose writing is that?
- 25 A That's Brian's.
- 26 Q Okay. Now I'm gonna turn that page over. And when we turn it over, at the top the words
27 that being are "I just got done talking with Woodrow." Uh, and, uh, I believe you
28 indicated that that's your writing?

- 1 A Yes, sir.
- 2 Q Okay. How many lines down is it your writing?
- 3 A Eight.
- 4 Q Okay.
- 5 A And it ends with "the way they did." (sounds like).
- 6 Q Okay. And then after that, there's a little bit of a space. Is that right?
- 7 A Yes, sir.
- 8 Q And then, uh, whose writing is it that follows after that?
- 9 A That's Brian's.
- 10 Q Okay. And that begins with "they didn't steal from me."
- 11 A Yes.
- 12 Q All right. And how far down does his writing go?
- 13 A Uh...I don't know. (Counting). Fourteen lines.
- 14 Q Okay. And what's the end of his writing?
- 15 A Uh,...
- 16 Q What, what are, what are the words that you see here?
- 17 A "Went into the camp fire."
- 18 Q Okay. Now after tho-, that line that says, uh, "went into the camp fire," uh, there's some
19 more at the bottom. And who wrote that?
- 20 A I did.
- 21 Q Okay.
- 22 A And then there's that little bit right there. But, he didn't finish it. Oh, wait, wait, wait.
23 That was, that was the last one.
- 24 Q This, this is the last one?
- 25 A Yeah, or the middle. Yeah. That's not the first one...
- 26 Q Okay.

- 1 A ...that I, I written. Because I remember that part, because he didn't finish it, because
2 officers was coming, coming in.
- 3 Q Okay. So the part that you wrote begins with what words there at the bottom?
- 4 A At the bottom?
- 5 Q No, the...
- 6 A Oh.
- 7 Q ..what...
- 8 A Okay.
- 9 Qwhat's are the first words...
- 10 A If... "if you did kill him initially...."
- 11 Q Okay. Those are the...
- 12 A And then...
- 13 Q ...first of your words.
- 14 A And mine was "till the very end." At the end.
- 15 Q Okay. That's where yours ends?
- 16 A Yeah.
- 17 Q And then the words that follow after that are what?
- 18 A "No. And I,..."
- 19 Q All right. And whose writing is that?
- 20 A That's Brian's.
- 21 Q And you're saying that that's what he was un-, un-, unable to finish?
- 22 A Yes.
- 23 Q And for what reason?
- 24 A Because the officers was coming in.
- 25 Q Okay. Now at the top of that page, you make mention of attorney Richard Woodrow.

- 1 A Yes.
- 2 Q And, uh,...you say you had some contact with Mr. Woodrow?
- 3 A Yes.
- 4 Q And was it about...uh, he wasn't, and, and just to be real clear about this, when we're
5 talking about the contact you had with Mr. Woodrow, he was not representing you as
6 your attorney?
- 7 A No.
- 8 Q Okay. Uh, did he ever represent you as your attorney?
- 9 A Never.
- 10 Q Okay.
- 11 A Not once in my whole entire life.
- 12 Q Okay. So, um, in you're having some contact with Mr. Woodrow, how did that come
13 about? How, how did you have contact with him?
- 14 A Uh,...I think it was because of Brian. I think Brian told him that I had something...for
15 him.
- 16 Q And so, uh, who initiated this contact? You or Mr. Woodrow?
- 17 A Uh,...
- 18 Q Who's the one who first, you know, spoke to who-, to whom?
- 19 A He came by and we went in and talked.
- 20 Q Okay. And, uh, what was he asking you about?
- 21 A He was asking me about some, uh, letters that I had for him. If I can, uh, uh,...pretty
22 much, uh, he heard that I had some letters. And that it would probably be a benefit to him
23 to get. And, uh, at the time, uh, me and my uncle was in the same...uh,...unit. And, uh, I
24 was like I don't. But, you might want to talk to my uncle.
- 25 Q Mm hmm.
- 26 A And so he went and talked to my uncle, and my uncle gave him what, what he had.
- 27 Q Now the letters that he was, Mr. Woodrow was asking you about, did you know what he
28 was talking about?

- 1 A What do you mean? (sounds like).
- 2 Q Well, when he said letters that he was asking about some letters, did you know about any
3 such letters?
- 4 A Yes, I did.
- 5 Q What kind, what letters are these?
- 6 A It's what, uh,...Christopher had. Because, uh,...Tommy would write some letters out.
7 And whoever would go to the medium tank from maximum, he'd send the letters to. Or
8 send the letters with.
- 9 Q Mm hmm.
- 10 A Uh,...and Chris would read them and put them inside these envelopes. And...
- 11 Q I see. So is, is this a way that, uh,...
- 12 A They communicated.
- 13 Q Okay.
- 14 A Tommy and Chris would communicate.
- 15 Q Okay. Even though they were in separate tanks and weren't supposed to be able to
16 communicate.
- 17 A Exactly.
- 18 Q This is, this was a way they could do it.
- 19 A Yes.
- 20 Q And they would use another prisoner as their means of doing that?
- 21 A Yes.
- 22 Q Okay.
- 23 A A third party.
- 24 Q Mm hmm. So, uh, you understood that these were letters between Tommy Crow and
25 Chris Durga that Mr. Woodrow was asking you about.
- 26 A Yes.
- 27 Q Okay. All right. Uh,...and, uh, how do you know that he ended up with those letters?

- 1 A Because I, I took over one.
- 2 Q Oh, you took one to...
- 3 A Well, I was supposed to take over one. And he written them all out. But, uh, I wasn't
4 able to go get it. So he gave it to this guy named, uh, uh,...oh,...Harbedoff is his last
5 name.
- 6 Q Harbedoff?
- 7 A Yeah. Arthur Harbedoff.
- 8 Q Okay.
- 9 A And he took it over to Chris. Because me and, uh, Harbedoff came over at the same time.
10 See, I was stuck down on the bottom tier.
- 11 Q Mm hmm.
- 12 A But, Harbedoff was up on the second tier and he grabbed that from Tommy Crow. And as
13 soon as we went in, we went straight to go see Chris. And then I told him what...I told
14 Chris what Tommy said. And Tommy said to just say the truth. All right. And then, uh,
15 Harbedoff gave him the letter right in front of me.
- 16 Q Okay. But, um,...but you never actually ended up with any of the letters.
- 17 A No.
- 18 Q Yeah. But, you...
- 19 A But, my uncle did.
- 20 Q Your uncle did. And so how do you know that your uncle ended up giving those letters to
21 Mr. Woodrow?
- 22 A Because...well, I mean, I don't know one hundred percent. But,...
- 23 Q But,...
- 24 A Like I said, me and my uncle was in the same tank. And he said oh, my...uh, my lawyer
25 Woodrow came to see me. And I, and that's...
- 26 Q Okay. So Mr....your uncle is represented by Mr. Woodrow?
- 27 A Yes, he is.
- 28 Q Okay. I don't want to ask anything more about that. Let's leave that alone. Um,...okay.
29 So let's go back to these, these letters that we were...excuse me, these communications

1 we were talking about. We talked about this page that, um, uh, and we discussed both
2 sides of the page and who wrote what. I'm gonna put that aside for a moment. I'm gonna
3 go onto the next page. And the next page that, uh, ...good thinking. I'll just indicate Mr.
4 McKague, uh, prevented me from putting the paper over the recorder, which was a very
5 smart thing to do. I, I appreciate that. Uh, so, um, Mr. McKague, looking at this next
6 piece of paper, uh, it begins with the words "wasn't the tent already on fire." And, uh, as
7 to that, uh, sheet of paper, uh, whose writing is it at the top of the page?

8 A That's mine on the top, and it ends "at their campsite."

9 Q Okay. "their campsite." So that's gonna be one, two, three, four, five, six, seven, eight,
10 nine, ten. Does that look right?

11 A Yes.

12 Q Okay. Then below that there is some writing.

13 A Yes.

14 Q On that same page. Who wrote that?

15 A Uh, ...Brian did. And he started first writing it on the floor, and you can see how it's all
16 sloppy at first.

17 Q Mm hmm.

18 A And then he used a book on top.

19 Q And how do you know that, that's how he did it?

20 A Because this one right here, I actually watched him write.

21 Q I see.

22 A Because I gave him one of my little pencil leads with the little piece of paper that was
23 wrapped around it.

24 Q Mm hmm. Okay. So the, all of the writing that you attribute to Mr. Eke on this page was
25 writing you saw him do?

26 A Yes.

27 Q Okay.

28 A With my own two eyes.

29 Q At the very bottom, there's some references to manslaughter and arson. Uh, with some
30 numbers next to it. Uh, do you recall whose writing that is?

- 1 A That is mine.
- 2 Q Okay.
- 3 A Because we were talking about, uh,...some charges and how much time they carried.
- 4 Q Mm hmm.
- 5 A Well, I had the sentencing guidelines and I looked them up, uh, looked them up for him
6 and I wrote that down.
- 7 Q Oh, so, okay. So that was to let him know about that?
- 8 A Yeah.
- 9 Q Okay. Uh, there's nothing on the back side of that page. Now I'm gonna put that aside
10 and go to the third page, uh, which only has writing on one side. And at the very top of
11 that page it says "I flush everything I write." Uh, whose writing, uh, is that?
- 12 A That is mine.
- 13 Q Okay. And, uh, how, how far down does your writing go on the top of that page?
- 14 A Well, it ends at, uh, "stuff back or what." And that's, uh,...nine lines.
- 15 Q Okay. And below that, uh, there's a space and then some other writing. And whose
16 writing follows, uh, uh, below the words "stuff back or what?"
- 17 A That's his...uh, right here.
- 18 Q Mm hmm.
- 19 A Four lines. That's his right there on the next one.
- 20 Q And that begins "they weren't...sad."
- 21 A Yeah.
- 22 Q Okay.
- 23 A And that's his again.
- 24 Q And that, those words begin "no, I got nothing".
- 25 A Yeah.
- 26 Q Okay.
- 27 A That's his again right here.

1 Q And that's, those are words beginning "I'm" uh,... "I'm not no murderer."

2 A Yeah.

3 Q Okay.

4 A And...and that's his again.

5 Q And those are the words begin "I wish I could wake up."

6 A Yes.

7 Q Okay. So from what...

8 A So pretty much this is just mine right here, and the rest is his.

9 Q Right. And so what you said is that the first nine lines at the top of the page are yours.
10 And all the writing below that is his.

11 A Yes.

12 Q Um,...just, just...because you were able to remember the details of the last one, I'm just
13 wondering if you recall anything about how this was written. Did you see this written?

14 A I remember ha-...no, I don't.

15 Q Okay.

16 A But, I know how I got it to him. I slipped him the paper underneath his door.

17 Q Mm hmm.

18 A And then I, I had to lock down. And I fished my line to him.

19 Q Mm hmm.

20 A And he wrote it up and sent it back to me.

21 Q Okay. All right. Um,...(long pause) Anthony, um, you've talked about, uh, how Mr.
22 Crow and Mr. Eke didn't like each other, and they would talk shit to each other, you
23 know, sometimes when you were present.

24 A Yes.

25 Q Uh, and by that, I assume you mean angry words, uh, thrown back and forth.

26 A Yes.

- 1 Q Did either one of them ever talk to you about the other? You know, where, where Mr.
2 Eke would talk to you about Mr. Crow, or Mr. Crow would talk to you about Mr. Eke?
- 3 A Yeah.
- 4 Q Okay.
- 5 A That's pretty much what it was all about.
- 6 Q What do you mean by that's pretty much what it was all about?
- 7 A I mean, when...I mean...they were always talking shit about each other.
- 8 Q Mm hmm.
- 9 A And when I did talk to them, they're all...all like yeah, that mother fucker, you know,...
- 10 Q Mm hmm.
- 11 A And they'd go on about him and then about their story. And, uh,...
- 12 Q Mm hmm.
- 13 A ...of what happened, uh, what they should do or...take the blame, because...whoever did
14 it, did it. Or whoever didn't do, didn't do that...(sounds like) or whatever, you know.
15 And, uh, talking about how they should man up and...whatever. Or how they're doing
16 sneaky shit to each other. Um, so pretty much what I'm saying is that, yeah, most of the
17 time, every, every time I talked to them, or most of the time is, they talk shit about one
18 another.
- 19 Q Mm hmm.
- 20 A That's all pretty much (unintelligible) do now.
- 21 Q So, let's start with Mr. Crow. What, what do you recall, what are the things that you can
22 recall that Mr. Crow said about Mr. Eke?
- 23 A He was talking about something that, uh,...he would have a guy named Adams would go
24 to him and, uh, write letters or whatever. And uh, Brian was trying to get some letters
25 from Adams guy. But, Adams guy wouldn't give it to him or whatever...
- 26 Q Mm hmm.
- 27 A I guess. And so they were both pissed off about that. Uh,...
- 28 Q So Tommy would write letters to Adams or...?
- 29 A No, no. Uh,...Brian and, uh, Adams would write letters.

1 Q Oh, okay.

2 A And he would, he would go to, uh, uh, Tommy and say I got these, bla-bla-blah, and ask
3 him a bunch of questions.

4 Q Oh.

5 A And then he would go to Brian and ask about, a bunch of questions to him or whatever.
6 Uh, but both of them weren't really telling him nothing, really.

7 Q Mm hmm.

8 A Uh, but they were always talking...he was talking about how that it was, uh,...excuse my
9 language, but that was bitch shit how he would, uh, send somebody out to do his mission
10 work (sounds like).

11 Q Who, who would say that?

12 A Brian. Or not Brian. My, uh, I'm sorry. Uh, Tommy.

13 Q Tommy. Okay. What else did Tommy have to say about, uh, Brian Eke?

14 A Uh, just that how, how he, uh, got him in this situation in the first place. And, uh, if, if
15 they, if he wasn't just so out there, he, they would've just looked at just a little bit of a
16 time, you know. And not so much time. Uh,...

17 Q Did, did he ever explain what he meant by Brian got him out, got him into this...

18 A Well, it was pretty much all because of Brian why they're here. Because Brian lit the tire
19 on fire.

20 Q Mm hmm.

21 A That that was not their intentions. Because all he wanted to do was beat them up, and that
22 was it. Uh, and I 'm talking about all Tommy, uh, wanted to do, Tommy and, uh, Chris
23 wanted to do was beat them up.

24 Q Mm hmm.

25 A And if it wasn't for, uh, Brian, they wouldn't be in this mess.

26 Q I see. Okay.

27 A So...

28 Q Any, anything else?

29 A No.

- 1 Q Okay. Let's go to Mr. Eke then. What do you recall Mr. Eke saying about Tommy?
- 2 A Oh, how they're trying to cook him, how they're both, uh, uh,...planning, talking to each
3 other. Or how, how Chris and, uh, uh,...how Chris and, uh, Tommy would talk to each
4 other.
- 5 Q Mm hmm.
- 6 A And, uh,...that they're planning against him...
- 7 Q Uh huh.
- 8 A ...to get him in trouble.
- 9 Q (unintelligible)
- 10 A Stuff like that.
- 11 Q Uh huh. Um,...anything else about Tommy, other than the fact that he and Chris were
12 kind of trying to plot against Brian?
- 13 A Uh, just stupid stuff, you know.
- 14 Q Mm hmm.
- 15 A Uh, that it was all them, that he didn't do none of it. All he did was lit the tent on fire.
- 16 Q Okay. I, I see in this, uh, one of the sheets of, uh, paper back and forth that you talked
17 about, and this is the one that has the picture on it.
- 18 A Yeah.
- 19 Q You said that, uh, Brian drew...that. Um, there was some things you said that, uh,
20 Brian...wrote on the bottom of this page. And one of them I'm looking at is underlined
21 here. And it's next to the last thing. It says "they had it planned." And that, that's in
22 response to a question that you asked him?
- 23 A Yes.
- 24 Q Okay. And is the question up here, uh,...?
- 25 A I believe it should be right here.
- 26 Q Oh, here.
- 27 A If it's down here.
- 28 Q Okay.

1 A Um,...

2 Q Is that it here?

3 A Yes, that, that's it right there.

4 Q So...

5 A "do you know if they had it all planned out, or was it the spur of the moment."

6 Q Mm hmm. And so he responded to you that they had it planned.

7 A Yes.

8 Q Do you recall, um, Brian ever talking anything more about that, about what this planning
9 was...that, that was done?

10 A Uh,...that he left before I, I don't know. Just, just right there.

11 Q Yeah, I mean...

12 A Uh,...

13 Q Apart from what's written...

14 A I mean, I mean...Brian was saying that he went over there, uh, because, uh, they'd stolen
15 some stuff.

16 Q Mm hmm.

17 A Uh, and he wanted to confront them about that, or that he wanted to go out there to help
18 them out, to help, uh, Scott...or whoever, out, uh,...

19 Q Scott or...?

20 A Or not Scott. But, uh, Norm and Pops.

21 Q Mm hmm.

22 A But, why would he help them out if they stole his stuff?

23 Q Mm hmm.

24 A I, I, that doesn't make sense.

25 Q It, it wasn't consistent, I, yeah.

26 A Uh,...

1 Q But, but then what...was he telling you about this planning that the other guys were
2 doing? Did he talk about any more of that when...

3 A No. He didn't give me no details or nothing.

4 Q Okay.

5 A And I left it to...to that. I mean...

6 Q Mm hmm. Yeah. Okay. All right.

7 A Uh, but I, I do know one thing that they were, they were talking about. He was, he was
8 talking about how, uh, he was in the, uh, Desert Storm, and that the best way to get rid of
9 bodies is to burn them. And, uh, Tommy and Chris said that is what he said. He said
10 something to that fact right before they did that.

11 Q Mm hmm.

12 A So...

13 Q Tommy and Chris both told you that, uh, Brian said that?

14 A Yes.

15 Q Oh.

16 A Right bef-, and he's also saying this, but he's not relating it to...what he did. He was just
17 saying that in a different conversation we had.

18 Q Who, who...who are you talking about?

19 A Brian, Brian said this in a conversation that we had, because he was talking about he was
20 in the military. I'm talking about my dad was in the military, you know.

21 Q Uh huh.

22 A About being in Desert Storm.

23 Q Yeah.

24 A In '93 or something. And he's talking about being in there, too. And he's giving me these
25 little memories that he had of it. He said that.

26 Q Okay.

27 A So...

1 Q Let's, I'm gonna take that...so Brian was talking to you about how Brian had been in the
2 military?

3 A Yes.

4 Q Oh.

5 A And that how he, uh, how they, how he or they or whoever he was with, would burn up
6 bodies to get rid of all the evidence. And he said that's the best way to go about getting
7 rid of bodies. And I remember what Tommy and Chris told me about how he was talking
8 about the same thing...as he was just telling me, right before they were going to go beat
9 them guys up.

10 Q So how did you...uh, do you recall how you ended up talking about that with Brian
11 concerning, you know, when he was in the military?

12 A Yeah. Because, uh, I was talking about how me, me being a Navy kid, because my dad
13 was in the Navy for...

14 Q Yeah.

15 A ...like fourteen years...eleven months. And he got booted out for being over weight.
16 And, uh, I believe he said he was, uh, booted out because he...got some
17 mental...something. I, I don't know.

18 Q Mm hmm.

19 A Um,...but I, I do know he was talking about being in the military and...

20 Q So that got...

21 A ...um,...

22 Q ...him talking about his military experience.

23 A Yes.

24 Q Is that what you're saying?

25 A Yes. That's what I'm saying.

26 Q And so, uh,...he told you stories about when he was in the military?

27 A Yes.

28 Q Uh huh. Did he say...where, where he was at in the military, where he was stationed at
29 or where he was involved in?

- 1 A I don't remember espe-, specifics, but I mean, I could always give guesses. But, guesses
2 don't mean nothing.
- 3 Q Okay. But I was just asking what you remember he said.
- 4 A Yeah.
- 5 Q Yeah. So he never talked about whether he was involved in a conflict some place, or
6 whether he was, uh, stationed a certain place or anything like that?
- 7 A Oh, I mean, he...uh,...he did say he was...that they would go to a village or something,
8 and burn bodies or something, that's the best way to get rid of bodies. Uh, that's...what
9 the, I assumed...uh, what they, what he said, you know.
- 10 Q Let me ask you this, Anthony. Just, if you can go back and think about what he said about
11 that, and just...as close as you can to recalling all that he said about that, if you could just
12 repeat it back and, and...how did he start talking about bodies and what did he say about
13 it, as best you can remember, if you could just kind of relate the conversation that he said
14 to you back as, as much as you can.
- 15 A Okay. Um, like I said, I was talking about my dad being in the military. And, uh, uh, my
16 dad give, telling me about these little, little stories of himself going through, uh, like
17 these water bombs...mine, water mines or whatever they're called. And, uh, stuff like
18 that. You know, just...going back and forth. And I told him about my target cruise
19 (sounds like) and how I shot all of these guns. And he's like oh, yeah, I shot all those
20 guns, too. And, and, uh, how he, he was a...uh,...expert at something, uh, like an
21 infantryman. And, uh, that he would, he would, uh, take whole villages and just burn
22 them up. Uh, and that they were starting to call him baby killer, or something. But, if I'm
23 right, uh, the people that they called baby killers was the Vietnam War.
- 24 Q Mm hmm.
- 25 A Not the Desert Storm.
- 26 Q Mm hmm.
- 27 A Uh,...
- 28 Q But, this is what he said.
- 29 A This is what he's saying.
- 30 Q Yeah.
- 31 A Uh, but like I said, he's a liar, and...or he lied about so many things that...
- 32 Q Yeah.

1 A ...he made up stories.

2 Q Yeah.

3 A Uh,...

4 Q But...

5 A If I did this, he did this much better.

6 Q Uh huh.

7 A Or something.

8 Q So whether it's true or not, but if you could just relate, what did, what did he say though?

9 A Oh, he, he was, he was talking about how, uh, he would go to a bunch of villages and,
10 his, his buddies would, uh, just, uh, execute people and how he would, uh, be alone with
11 it and how he was one of the major people that would burn, burn bodies in the village or
12 whatever.

13 Q Okay.

14 A That's the best way to get rid of bodies.

15 Q Okay.

16 A It's because it, it...there'd be nothing there afterwards.

17 Q So no evidence then.

18 A Yeah.

19 Q I see. Okay. Um,...and of course, that reminded you of what Tommy and Chris had told
20 you about his...

21 A Yes.

22 Q What he had said.

23 A Yes.

24 Q Did you ever mention to him the fact that they had said that about him?

25 A Not really. But, I, I just put two and two together. You know.

26 Q Okay. But, you...

27 A I mean, why would he say that right before they're going to go do a crime.

- 1 Q Right.
- 2 A Uh, because like Tommy and...and Chris said that was kind of weird. And they didn't
3 say nothing to that fact.
- 4 Q Mm hmm.
- 5 A Uh, they were there just to go do their own little business. And Brian was just a tagalong.
- 6 Q Uh huh. Yeah. Okay. All right, Anthony. That's all I have. Uh, um,...Sam?
- 7
- 8 Q (Costello): nope, I have no, no...nothing else.
- 9
- 10 Q (Powers): I appreciate you very much. This has taken a long time. Uh, but, uh, and
11 you've really searched your memory to try to be as, uh, accurate as you can. I can tell that
12 from the way that you answer questions. So I, I appreciate that very much.
- 13 A Okay. Thank you.
- 14 Q Uh, so, uh, we'll go ahead.
- 15
- 16 Q (Costello): Do, do you have anything you want to add to this statement that we haven't
17 talked about?
- 18 A Uh,...I don't think we talked about Chris, what he said, or whatever.
- 19 Q (Powers): Yeah, maybe if you could give us some more detail on that.
- 20 A Uh, or we did talk a little bit.
- 21 Q Okay.
- 22 A But, uh,...uh,...one thing that sticks out in mind, uh, I don't...I know I read in the paper,
23 because, uh, Brian showed me the...uh,...uh,...discovery part, about what Chris said.
24 Uh,...and I asked Chris about it, and he, he was like, he felt the...heat to his face or
25 something when Brian was lighting the tent on fire. But, he, he said it went out or
26 something. And that's when he left. And he didn't know if Brian set it back on fire.
- 27 Q This, this is what Chris told you?
- 28 A Uh, Chris, what Chris told me and what the paper...

- 1 Q Mm hmm.
- 2 A ...came up.
- 3 Q Mm hmm. So, uh,...you saw something that Brian showed you and then talked to Chris?
- 4 A Yes. I, uh, talked to, uh, Brian about it, too. But, Chris, too.
- 5 Q Mm hmm.
- 6 A I talked to both of them about it. But, Chris said the fire went out. That's when he walked
7 off.
- 8 Q Okay.
- 9 A Uh, then Brian said, uh,...but he was talking about the, it burning, like he felt the heat on
10 his face from the wind blowing or something.
- 11 Q Mm hmm.
- 12 A And he looked over and he seen the little sparks of the thing going out, the fire going out.
13 That's when he walked off. And...that's what Chris said. Okay, now what I got from
14 Brian is when he lit it on, he, he lit a fire and it went out, and it went back on fire. And
15 that's when he...did what he did and left.
- 16 Q And so was, when Brian showed you this, was he trying to make a point about
17 Chris...when he showed you about this discovery about Chris, was he...uh,...
- 18 A That's, that's what I was figuring. But, I, I don't know.
- 19 Q Yeah.
- 20 A I didn't make sense of that.
- 21 Q I see.
- 22 A Uh,...
- 23 Q Okay.
- 24 A But, that just stuck out in brain for some reason.
- 25 Q Yeah. Okay.
- 26 A So...
- 27 Q Okay. Anything else that...

1 A No.

2 Q ...we haven't asked you about?

3 A No.

4 Q Okay.

5

6 Q (Costello): okay. The date's the same, January 30th, 2009. The time is now 6:06 PM. And
7 this will be the end of the recording.

8

9 [End of Transcript]

10 SAC:LTS/LP

11 REVIEWED BY: 

APPENDIX J

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

STATE OF WASHINGTON,

vs.
TOMMY CROW,

Petitioner,

Respondent.

COURT OF APPEALS NO. 42926-8-II

SUPERIOR COURT NO. 08-1-00585-6

DECLARATION OF JAMES C. POWERS RE
APPENDIX E

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

James C. Powers declares and affirms:

I am a Deputy Prosecuting Attorney for Thurston County, Washington. I represented the Plaintiff, State of Washington, during pre-trial proceedings and through the trial of the above-entitled cause, State v. Tommy Crow, Thurston County Superior Court Cause No.08-1-00585-6. Pages 5-7 of Appendix E to the State's Response regarding the Defendant's Personal Restraint Petition in Court of Appeals No. 42926-8-II consists of a 2-9-09 report from Olympia Police Department Sam Costello, which was provided to the prosecution in State v. Crow, and which was provided in discovery to Ronald Sergi, the attorney for the defendant in that cause. Pages 5-7 of Appendix E consists of an accurate and complete copy of that report. As noted in the report, it summarizes steps which were taken to obtain handwriting samples from Crow's co-defendant, Bryan Eke, pursuant to a court order granted by the Thurston County Superior Court at my request.

Pages 8-9 of Appendix E consists of a 2-17-09 report submitted by Documents Examiner Joe Upton concerning his analysis of certain handwritten documents in order to determine if he could render an expert

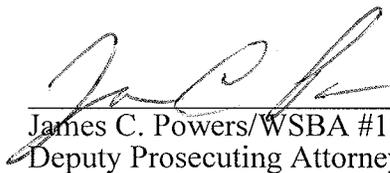
1 opinion concerning whether Bryan Eke or Anthony McKague had written all or portions of the writing on
2 those documents. This report was also provided as discovery to attorney Ronald Sergi for purposes of his
3 representation of Tommy Crow. Pages 8-9 of Appendix E constitute an accurate and complete copy of the
4 report itself, which was received from Joe Upton. The conclusion of the report was that Upton could not
5 determine what involvement, if any, either Bryan Eke or Anthony McKague may have had in the writing of
6 any of the questioned documents.

7 Pages 10 – 27 of Appendix E are the attachments which were included in the report of Joe Upton
8 when it was provided to the Thurston County Office of Prosecuting Attorney. Pages 10-27 are accurate and
9 complete copies of those attachments. Page 10 is a version of some of what was written on the questioned
10 documents, typed out by Detective Sam Costello, so that the those contents could be presented to Anthony
11 McKague and Bryan Eke to be copied during the obtaining of handwriting samples without showing either
12 the actual questioned documents.

13 Pages 11-14 of Appendix E consist of the questioned documents which were provided to Joe Upton
14 for analysis. Pages 15-21 are the known writings received from Anthony McKague which were used by Mr.
15 Upton for comparison. Pages 15-27 are the known writings of Bryan Eke which were used by Mr. Upton for
16 his analysis.

17 I certify (or declare) under penalty of perjury under the laws of the State of Washington that the
18 foregoing is true and correct to the best of my knowledge

19 DATED and signed this 4th day of June , 2012, in Olympia, Washington

20 
James C. Powers/WSBA #12791
Deputy Prosecuting Attorney

APPENDIX K

APPENDIX L

APPENDIX M

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

STATE OF WASHINGTON,

vs.
TOMMY CROW,

Petitioner,

Respondent.

COURT OF APPEALS NO. 42926-8-II
SUPERIOR COURT NO. 08-1-00585-6
DECLARATION OF JAMES C. POWERS RE
DISCOVERY

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

James C. Powers declares and affirms:

I am a Deputy Prosecuting Attorney for Thurston County, Washington. I represented the Plaintiff, State of Washington, during pre-trial proceedings and through the trial of the above-entitled cause, State v. Tommy Crow, Thurston County Superior Court Cause No.08-1-00585-6.

In the above cause, defendant Tommy Crow was initially represented by attorney (now Thurston County District Court Judge) Samuel Meyer. However, Mr. Meyer was also counsel for a defendant named Aaron Adams. During the pendency of Crow's case, Adams provided Meyer with handwritten notes purportedly written by Brian Eke, a co-defendant of Tommy Crow. It was Adams' wish to seek leniency from the prosecution by providing Eke's writings. As a result, Meyer's responsibilities to defendant Adams required that he withdraw from Crowe's representation.

A hearing was held on November 12, 2008 in regard to this matter. Meyer was present seeking permission to withdraw from Crow's case. Ronald Sergi was present as proposed new counsel for Crow. The court allowed the proposed substitution of counsel in Crow's case. The court asked Mr. Sergi specifically about his obtaining the discovery from Mr. Meyer. Sergi responded that he would be picking up that discovery that same morning. 11-12-08 Hearing RP at 3-8.

1 In a Personal Restraint Petition in Court of Appeals Cause No. 42926-8-II, the defendant has claimed
2 that his trial counsel, Ronald Sergi, never received as discovery the purported writings of Eke offered by
3 Adams through Meyer. The only apparent basis for this claim is a letter from Ronald Sergi to Mr. Crow
4 attached to Crow's Personal Restraint Petition as Exhibit 5. It should be noted that in the letter, dated
5 February 29, 2011, Sergi never claims there was a failure to provide him discovery of the writings, just that
6 he does not have them at the time of the letter to provide to Crow. Nevertheless, the defendant seeks to have
7 the appellate court assume the reason for Sergi's inability to provide those writing is that he never received
8 discovery of them.

9 Obviously, Sergi knew of the writings because that was the reason he came into the case to substitute
10 for Mr. Meyer. Since Meyer was the one who was given the writings to provide to the State, he obviously
11 would have had them to provide to Sergi as part of the transfer of discovery. If Sergi had not received those
12 writings for some reason, he would have had plenty of notice to request them from the State, and make an
13 issue if they were not provided. However, none of that happened, undoubtedly because he was provided
14 those writings in the transfer of discovery from one defense counsel to the other that was noted in the record.

15 Further evidence that this is correct can be found in the trial record in this case. At one point in the
16 trial, Mr. Sergi informed the court that he had interviewed Aaron Adams concerning testimony he might
17 offer. Sergi stated that testimony from Adams would not assist the defendant, and in fact might help the
18 State's case instead. Therefore, against his client's wishes, he was choosing not to call Adams as a witness.
19 Trial RP at 1253. Thus, clearly defense counsel did have discovery concerning the claims being made by
20 Adams.

21 Shortly after Ronald Sergi entered the case as counsel for Mr. Crow, an attorney named Karl Hack
22 contacted me on behalf of his client, Anthony McKague. It was also McKague's claim that he had
23 exchanged writings with Bryan Eke, and that he wished to offer those to the State through Mr. Hack in
24 exchange for a more lenient plea offer. A written plea agreement was signed by the State and by Anthony
25 McKague and his counsel. Pursuant to that agreement, the writings were offered to the State, and Mr.
26 McKague was interviewed concerning those writings on January 30, 2009. That interview was recorded, and
a copy of the transcript was later provided to Ronald Sergi as Mr. Crow's attorney. Sergi then utilized that
transcript during his cross-examination of Anthony McKague at Crow's trial. Trial RP at 1242-1244. Pages
43 to 59 of that interview with McKague contained a detailed recitation by McKague of the specific wording

1 of those writings, including McKague's claim of which writings were his and which were written by Eke.
2 Thus, it is clear that Sergi had notice of the writings and most of the content of those writings.

3 Nevertheless, in his Personal Restraint Petition, defendant Crow has claimed a failure of discovery,
4 alleging that the writings provided by McKague were not provided by the State to attorney Sergi. Again, the
5 only basis for this claim is the 2-29-11 letter from Sergi which does not assert a failure of discovery, only
6 stating that Sergi is not able to supply copies at that point to Crow. Given the contents of the interview with
7 McKague that was provided to Mr. Sergi, it would certainly be strange that he would have known so much
8 about these writings, and yet would not have made it an issue if he had not been provided copies. I have a
9 recollection of making copies of those writings specifically to provide to Mr. Sergi at the same time I made
10 copies to provide to Mr. Eke's attorney. Moreover, I believe the record evidences the fact that Mr. Sergi
11 was provided copies of the writings.

12 During the cross examination of Bryan Eke, Sergi questioned Eke about his written communications
13 with Anthony McKague. In the context of asking Eke about those communications, Defense Exhibit 141
14 was shown to Eke. The witness noted that the exhibit consisted of a bunch of writing on a piece of paper.
15 Eke was asked if that was his handwriting, but Eke denied that it was. The exhibit was not offered into
16 evidence. Trial RP at 1080-1081. I have since checked with the Thurston County Clerk and learned that
17 Exhibit 141 was destroyed by the Clerk's Office after the initial appeal in this case. While I cannot recall
18 which page of writing from the ones provided by McKague was utilized by defense counsel at that point as
19 Exhibit 141, that exhibit had to have been one of those pages of writings, since there were no other writings
20 in this case involving purported communications between Eke and McKague. Since defense counsel offered
21 one of those writings as an exhibit, he clearly had received copies of those writings in discovery.

22 It should also be noted that in cross-examining Anthony McKague, defense counsel spent a
23 considerable portion of that cross-examination questioning McKague about the notes that Eke had written to
24 McKague. Trial RP 1245-1252. Since attorney Sergi clearly knew about the writings between Eke and
25 McKague, and intended to cross-examine McKague about them, it is inconceivable he would have failed to
26 make an issue about it before trial had he not been given copies of those writings. However, no such issue
was raised because he did have copies.

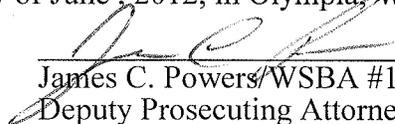
Finally, the defendant contends in his Personal Restraint Petition that Mr. Sergi was not provided a
copy of Joe Upton's report concerning the handwriting analysis of the writings provided by Anthony

1 McKague. That analysis had been conducted by Upton to determine whether an expert opinion could be
2 arrived at as to which writings were those of McKague and which had been written by Eke. The report
3 concluded that no such determination could be made, and so the report added nothing to the case. (See
4 Appendix E to the State's Response to Crow's Personal Restraint Petition.)

5 I have a personal recollection of making a copy of that report to go to Mr. Sergi as discovery, and so
6 believe he was provided that report as discovery. In Sergi's letter to Mr. Crow, he states that he did not
7 receive such a report, but talks about it as if it is something that would have been generated by the defense.
8 While Mr. Sergi may not remember the report, this is not very surprising, as the report was of no
9 consequence. In any event, the report cannot be reasonably described as material to the case, since the
expert's conclusion was that no conclusion could be reached one way or the other.

10 I certify (or declare) under penalty of perjury under the laws of the State of Washington that the
11 foregoing is true and correct to the best of my knowledge

12 DATED and signed this 4th day of June, 2012, in Olympia, Washington

13 
James C. Powers/WSBA #12791
Deputy Prosecuting Attorney

APPENDIX N

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	NO. 08-1-00586-4
vs.)	
)	
CHRISTOPHER JAY DURGA,)	
)	
Defendant.)	

COPY

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on March 26, 2009, the
above-entitled and numbered cause came on for sentencing
before the HONORABLE CHRISTINE A. POMEROY, judge of
Thurston County Superior Court, Olympia, Washington.

Cheri L. Davidson
Official Court Reporter
Thurston County Superior Court
Olympia, Washington 98502
(360)786-5569
davidscc@co.thurston.wa.us

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A P P E A R A N C E S

For the Plaintiff: JAMES C. POWERS
Senior Deputy Prosecuting Attorney
Thurston County Prosecutor's Office
2000 Lakeridge Drive SW
Olympia, WA 98502

For the Defendant: CHARLES W. LANE, IV
Attorney at Law
1800 Cooper Pt. Rd. SW, Bldg. 3
Olympia, WA 98502-1179

Also Present: KIM CARROLL, Victim Advocate

1 MARCH 26, 2009

2 * * * * *

3 (The following was transcribed
4 from an audio recording of
5 proceedings.)

6 MR. POWERS: Next, Your Honor, I know the
7 Court has a number of lengthy matters on this calendar,
8 but it would be the State's request that we proceed with
9 the sentencing hearing of Christopher Durga first.

10 THE COURT: Yes. Mr. Powers, Mr. Lane, Mr.
11 Durga, have a seat. Whichever you prefer, sir.

12 MR. LANE: Good morning, Your Honor. Charles
13 Lane on behalf of Mr. Durga.

14 THE COURT: I'll have to ask you to step back.
15 We have to get the file.

16 MR. LANE: That's fine.

17 THE COURT: I don't have the file.

18 (Other matters were heard.)

19 THE COURT: We are on the Durga case. We do
20 have it punched in. We will now proceed.

21 On behalf of the State it's Mr. Powers, on behalf
22 of the defense it's Mr. Lane, and Mr. Durga is present.

23 Mr. Powers, I'll let you go first.

24 MR. POWERS: Yes, Your Honor. We are here for
25 sentencing. I'm gonna speak from back here, with the
Court's permission, so I can use the microphone.

1 Apparently that's necessary to be picked up on the
2 record under this system?

3 THE COURT: It is.

4 MR. POWERS: And so let me indicate to the
5 Court that where we are in this case at the present time
6 is that Mr. Durga has entered two pleas of guilty to
7 Count I and Count II of murder in the second degree.
8 These pleas were entered pursuant to a plea agreement, a
9 lengthy plea agreement which was filed with the Court
10 along with the Statement of Defendant on Plea of Guilty.

11 One of those requirements under the plea agreement
12 was that Mr. Durga be prepared to testify at the trials
13 of his co-defendants. Both of those cases have been
14 resolved at the present time, and so we are now in a
15 position to proceed with sentencing in this matter.

16 There is one preliminary matter, however, I believe
17 we need to address and that is in December, early
18 December of 2008, Mr. Durga, already having entered his
19 pleas of guilty and those having been accepted by the
20 Court at a prior point in time and the matter having
21 been set over for sentencing because of the pending
22 trials of the co-defendants, there was filed with the
23 Court, although I never received notice of it at the
24 time, a motion to withdraw guilty plea which my
25 understanding is that Mr. Durga chose to file without

1 consultation with his attorney.

2 I became aware of this some time later, and it was
3 expressed to me that that was not a meaningful motion,
4 that that was not something that Mr. Durga truly wished
5 to pursue, and so it has not been addressed between that
6 point of time and now, but certainly it has to be
7 addressed I think before we proceed further with this
8 hearing.

9 THE COURT: Mr. Durga, are you now -- I do
10 have before me the December 8th motion to withdraw your
11 guilty plea. You are withdrawing that motion, sir?

12 MR. LANE: I could probably better answer
13 that, Your Honor.

14 Your Honor, Mr. Durga had filed that pro se without
15 my knowledge. Some time went by before it was even
16 brought to my attention. I did go down and speak with
17 him about that, and it was my understanding at the time
18 of that conversation that we would not be pursuing that
19 motion.

20 THE COURT: And I need to hear that on the
21 record, sir. Are you pursuing that motion?

22 THE DEFENDANT: No.

23 THE COURT: You're asking me to disregard this
24 motion; is that correct?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay. Then I would like an order
2 to that effect, that based on the record before me Mr.
3 Lane and Mr. Durga are asking me -- asking to withdraw
4 basically the motion to withdraw the plea; is that
5 correct?

6 MR. LANE: That's correct, Your Honor. It was
7 never formally noted from my understanding.

8 THE COURT: Is that correct?

9 MR. POWERS: Yes, that's fine.

10 THE COURT: Is that sufficient?

11 MR. POWERS: I think the Court's suggestion is
12 a good one. I would suggest that we be given the chance
13 at the end of this hearing to prepare an order that we
14 can present to the Court as soon as it's written up and
15 will express essentially what's been said to the Court
16 at this time.

17 THE COURT: Okay. I will sign an order to
18 that effect, that Mr. Durga in open court with his
19 counsel has asked me leave to withdraw the motion to
20 withdraw guilty plea and I have accepted it.

21 MR. LANE: Thank you, Your Honor.

22 THE COURT: And it will be allowed to be
23 withdrawn.

24 Is that correct, Mr. Durga?

25 THE DEFENDANT: Yes.

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THE COURT: All right. With that in mind, let's go forward on the sentencing.

MR. POWERS: Yes, Your Honor.

Mr. Durga now stands guilty, as I said, of two counts of murder in the second degree; Count I refers to the death of David Miller, Count II referring to the death of Norman Peterson.

With regard to the death of David Miller, as was expressed at the time of Mr. Durga's change of plea hearing, Mr. Durga has given statements acknowledging the fact that he was responsible for strangling David Miller. The medical evidence shows that Mr. Miller's death was caused by strangulation. The evidence overall shows that Mr. Miller and Mr. Peterson both died by strangulation and after they were dead their bodies were burned at the location off of the Harrison Boulevard campsite, a transient campsite where both of these gentlemen were at that point in time when they were attacked by this defendant and two others.

It was the State's theory of this case, as acknowledged by Mr. Durga in his pleas, that Mr. Durga acted in concert with two others to assault both of these individuals. Mr. Durga caused the death specifically of Mr. Miller by his own actions, but that was facilitated by the actions of the two others, and

1 then Mr. Durga was an accomplice to their actions which
2 resulted in the death of Mr. Peterson.

3 Your Honor, the State's recommendation here of
4 course is based upon the specifics of the plea agreement
5 that we made with Mr. Durga and which was entered into
6 at the time of his change of pleas. That plea agreement
7 calls for recommendations -- well, first of all, let me
8 remind the Court - I'm sure the Court doesn't need to be
9 reminded but just so I can put this on the record -
10 we're dealing here with two serious violent offenses.
11 Therefore, under the Sentencing Reform Act the procedure
12 for sentencing is a little different from normally
13 because you don't have concurrent sentences for those
14 convictions which come before the Court at the same time
15 for sentencing. You have consecutive sentences. In
16 this case or in any case the procedure is to take the
17 first of those serious violent offenses, determine what
18 the offender score is based on any priors or any other
19 factors which would affect the sentencing score, and
20 then determine a sentence on that basis. Then for the
21 next count that's gonna be consecutive to the first the
22 procedure is then to use an offender score of zero
23 because of the consecutive sentences.

24 However, in Mr. Durga's case he has no criminal
25 history that's applicable to the standard sentencing

1 range and therefore with Count I, as we begin the
2 process of making recommendations, he has a zero
3 offender score for that count and of course he has
4 therefore also a zero offender score for Count II, so
5 consecutive sentences are recommended here, both with
6 Count I and Count II having zero offender scores.

7 Now, as a result of that the standard sentence
8 range for each one of these counts is 123 months to
9 220 months, and the State's recommendation for each of
10 these counts is for 132 months. Now, because these are
11 consecutive of course they get added together, and that
12 results in a total of 264 months, which translates into
13 22 years in prison. That is the recommendation of the
14 State, Your Honor, with regard to Mr. Durga.

15 We are asking that in addition to that Mr. Durga be
16 required to have no contact with a number of individuals
17 who provided evidence in this case. These are persons
18 who all testified at the trial of a co-defendant
19 recently, but they are also persons whose evidence was
20 potentially usable against Mr. Durga as well. I will
21 name those individuals, Your Honor, and ask that the
22 Court include those in the judgment and sentence, that
23 there be no contact for life with these individuals.

24 Just so the Court has a sense of how I determined
25 who to include in this, I have included all those

1 persons who testified at the trial of the co-defendant
2 who did not testify in an official capacity, and those
3 persons would be as follows: Bryan Dana Eke, date of
4 birth 4/28/74; Anthony James McKague - that's
5 M-C-K-A-G-U-E - date of birth 12/24/83; Mark Urbach -
6 U-R-B-A-C-H - date of birth 11/13/63; Jeffrey T.
7 Simmons - S-I-M-M-O-N-S - date of birth 3/30/61; Scott
8 Cover - C-O-V-E-R - date of birth 8/23/61; Terrance
9 Stroman - S-T-R-O-M-A-N - date of birth 10/10/61; Justin
10 Van Horn, date of birth 9/26/76; Karen A. Schaeffer -
11 S-C-H-A-E-F-F-E-R - date of birth 12/1/61; and Sam
12 Willie, Jr. - Willie is W-I-L-L-I-E - date of birth
13 12/1/59.

14 Your Honor, further the State asks that the Court
15 impose community custody in these cases. Both of these
16 counts have a community custody range from 24 to
17 48 months. We'd ask that be a part of each sentence in
18 this cause.

19 With regard to financial obligations, the State
20 does not ask that anything more than standard
21 obligations be imposed, that being \$500 crime victim's
22 assessment, \$200 court costs, hundred dollar DNA
23 collection fee. We do ask that restitution, however, be
24 reserved for a later hearing if necessary because I'm
25 not in a position to make a final determination in that

1 regard for purposes of the recommendation to the Court.

2 Your Honor, Mr. Durga in the State's view has
3 complied with the terms of his plea agreement, those
4 terms being expressed in the written agreement that was
5 indicated as having been attached and made part of the
6 court record. Based upon his compliance, we ask that
7 the Court adopt what has been recommended by the State.

8 Thank you.

9 Oh, Your Honor, before I finish I would just
10 indicate that there are a number of persons present on
11 behalf of families of the victims. They would wish to
12 address the Court for purposes of sentencing. I'd just
13 ask that the Court give them the opportunity to do so at
14 whatever point the Court feels is appropriate.

15 THE COURT: Thank you. Would this be a good
16 time?

17 I'm gonna ask you to step over then to Officer
18 Phillips and Officer Caldwell.

19 MS. FRANK: Good morning, Your Honor. My name
20 is Candace Frank.

21 I want to first begin by saying that I spent
22 27 years with Dave Miller. I can attest to the good
23 person that he was. We all loved him. He raised two
24 sons. He was very dedicated to his job and to his
25 family, and with that I would like to say that I

1 submitted a copy of my statement which was read at the
2 sentencing of Tommy Lee Crow, which I believe you have,
3 and I feel that it's profoundly important as a record of
4 my victim impact statement and as a prerequisite in the
5 case of Christopher Durga.

6 My focus today is to emphasize the mentality of
7 this predator who I believe has been genetically
8 predisposed as he obviously follows in his father's
9 footsteps as a cold-blooded killer. It's pretty
10 apparent that Christopher Durga is seriously lacking
11 necessary human elements and should by no means be
12 permitted to walk freely in our society. He lacks
13 respect, he has no remorse for his actions, and he has
14 no hesitation in taking lives.

15 This was not a random act. This was premeditated
16 as on March 27th of 2008 he drew that line in the dirt.
17 His own words on that day were directed at Dave Miller,
18 who was referred to as Pops, saying -- and forgive me
19 for saying this, but, quote, he said I'm going to F you
20 up. He and his partners then conspired to go into
21 Dave's camp to harass and assault him. Before they left
22 their camp, however, they had already decided to burn
23 him to cover up any evidence. What was not stated in
24 their testimony was whether they intended to strangle
25 him first; I don't think so. Durga clearly stated Pops

1 was snoring when he placed him face down in the fire.

2 Unfortunately, an offer was made to testify against
3 his brother, co-conspirator Tommy Lee Crow. He failed
4 to do that. Guaranteed, he must now obviously be
5 gloating the offer of the 22 years for not just one life
6 but two. There needs to be more time added to his
7 sentence. A lifetime would not even be enough to
8 satisfy the sins he committed. Please, Your Honor,
9 sentence this man to the fullest extent so that we can
10 all sleep safely at night knowing that justice has been
11 served.

12 Thank you.

13 MS. MILLER: Your Honor, if I may start off by
14 explaining, I'm Pamela Miller, Patrick Miller's, Dave's
15 youngest son, other half. I'm here today on behalf of
16 his sons because they felt it better they not be in the
17 same room as the man who brutally killed their father in
18 fear of what their actions might be.

19 Pat and I have two young children. Our youngest, a
20 son, who was born one day before Dave's birthday this
21 year, and our daughter will never get to meet their
22 loving grandfather. We were robbed of this opportunity
23 by the scum that stands before you in this courtroom
24 today. Pat and I must live the rest of our lives with
25 the huge regret that a son should never have known of

1 this pain.

2 Dave was a loving person, most of all a loving
3 father. He may have done some small dirty deeds through
4 his life, but under no circumstance did he deserve to
5 have his life ended the way it was as he was acting to
6 protect those he thought of as his other family. He
7 felt he was doing the right thing coming forward about
8 the brutal beating of a friend. He stuck his neck out
9 to help and protect another human being. For his life
10 to have been taken for this act of courageousness is the
11 act of a sadistic coward. To fear the actions of a
12 person so much as to take his life is the act of a pure
13 coward.

14 We feel, even though there has been a plea that
15 took place to lessen the sentence, that Christopher
16 Durga should receive the most time that you're allowed
17 to give him as we have no doubt in our minds that he is
18 more than capable of doing unspeakable actions once he
19 is set free to roam the streets.

20 Thank you.

21 UNIDENTIFIED SPEAKER: Good morning, Your
22 Honor. I'm gonna start out -- I'm Norman Peterson's
23 oldest sister. And, you know, I have all the normal
24 things that goes along with part of -- when part of you
25 is ripped away from you. It's been hard to live with

1 the fact that you'll never see or touch or feel them
2 again because of a person that is so selfish and evil.
3 I wish I could change it and have my brother back, but I
4 can't. I know that I will feel the pain Norman and
5 David suffered the rest of my life.

6 I know that a plea deal was made, but in my heart
7 it's not enough. The murder of my brother Norm and his
8 friend David was vicious and very cruel. Christopher
9 Durga has no consideration for life at all. The longer
10 we keep him in jail society will be a safer place.

11 Your Honor, I ask you to keep us safe from him.
12 Please give him the longest sentence possible.

13 Thank you.

14 MS. PETERSON: Good morning. I'm Ann
15 Peterson, and I'm the youngest sister of Norman, and I'm
16 glad you were spared the two weeks of trial that we
17 witnessed.

18 This man pled guilty to cruel and senseless
19 murders. This man does not deserve a sentence of
20 22 years. The crime speaks loudly of his complete
21 disregard for humans. Why would we contemplate
22 releasing this man after 22 years? He is not fit or
23 appropriate to be among society. Please go beyond
24 22 years of incarceration and keep society safer for
25 longer.

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Thank you.

MR. MILLER: Good morning. Your Honor, my name is Mike Miller. I'm one of Dave Miller's older brothers.

MS. MILLER: Good morning, Your Honor. I'm Karen Miller, Dave Miller's sister-in-law. Your Honor, my brother-in-law Dave Miller, known as Pops, was a good man with a heart of gold, acted as a good samaritan, as well as Norm Peterson acted as a good samaritan. It's biblical. It states it in the book of Luke, 10:25, about being that good samaritan, Your Honor.

This was such a violent, brutal, heinous crime that no one should have to die like this. The defendant Durga's behavior on the witness stand was unacceptable. He's a blatant liar and a cold-blooded murderer, Your Honor. He's evil and unemotional to any kind of life. He's a threat to society, and he's unfit to live in society.

As the defendant Durga claims, he has his brother's back? Well, Your Honor, we are here today to say we have our brother's back to stand in his honor and for his rights so justice may be served. And it's also biblical, Your Honor, in Matthew 25:38, an eye for an eye and a tooth for a tooth, and in Matthew 26:52 it states you kill with a sword you perish with a sword,

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but, unfortunately once again, that's not going to happen here.

Your Honor, you are the one that has to make that decision here today, and I ask -- I beg the Court not to have any mercy on the defendant Durga as he did not have any mercy on Pops or Norm. So please, Your Honor, I ask that you hand down the maximum sentence you can or make Durga so feeble and so old when he gets released, if he gets released. If you don't, Your Honor, he will kill and he will murder again and again and again, and next time, Your Honor, it could be our children.

Thank you.

THE COURT: Thank you, Ms. Miller.

MS. CARROLL: That's all.

THE COURT: Thank you, Ms. Carroll.

Mr. Durga, come on up.

MR. LANE: Thank you, Your Honor.

Your Honor, although I can appreciate the pain and anguish that the families of these victims are going through right now, they have only had an opportunity to have contact with Mr. Durga through the hour or two he spent on the witness stand. I've had an opportunity over the last several months to, I feel, get to know Mr. Durga pretty well through my representation of him, and I see a different person than they see.

1 Who stands before you today, Your Honor, is
2 somebody that prior to this incident had no criminal
3 history. The facts of this case are difficult to
4 comprehend in the sense of him coming before you with no
5 criminal history. The underlying assault of Scotty
6 Cover, which is the reason that this whole incident
7 supposedly took place, my client was not even involved
8 in. Out of a sense of loyalty for street brothers as
9 you can call them and a sense of rules that are lived by
10 on the street as opposed to the rest of society he
11 stands before you today.

12 I don't believe they went over there that night
13 with the intention of killing these two people. I
14 believe that that happened by accident in the sense
15 that, similar to the Scotty Cover incident involving
16 rules that they live by in the street, that of
17 assaulting who they perceived to be a snitch. I don't
18 see it being more than that. You know, in strangulation
19 cases there's a fine line between actually strangling
20 somebody and then strangling somebody to death. I think
21 that is what happened here. I think Mr. Durga has shown
22 remorse. He understands this situation today as far as
23 what sentence could be eventually handed down to him.

24 I would ask the Court to follow the recommendation
25 that has been made by the prosecutor. It is a case that

1 we worked long and hard on to try to get a resolution
2 that was both obviously beneficial to my client - that's
3 my job - but also in helping the State in this case
4 because without Mr. Durga the State's cases against Mr.
5 Eke and Mr. Crow would have been a lot more difficult.
6 He was the catalyst in the sense that helped resolve
7 those other two cases. I would ask the Court to take
8 that into consideration.

9 THE COURT: Mr. Durga, is there anything you
10 want to say?

11 THE DEFENDANT: No, Your Honor except I'm
12 sorry for what happened, for their loss.

13 THE COURT: In reviewing the facts of this
14 case and understanding your complicity in this case and
15 understanding the plea bargain, it is the opinion of the
16 Court this was a pretty heinous, a suffering,
17 unbelievable suffering, an assault, strangulation.
18 There was a person, if I understand the facts right, a
19 person put into the fire and then stepped on and then
20 put in a sleeping bag in a tent and they made a fire, so
21 there were two burnings. That's my understanding.

22 Mr. Powers, is that not true?

23 MR. POWERS: That was the testimony of Mr.
24 Eke, Your Honor. It was denied by Mr. Durga, so I want
25 the Court to be clear, Mr. Durga did not admit to the

1 placing of the bodies into the camp fire, facing down
2 into the camp fire. Mr. Durga's testimony was that he
3 strangled Mr. Miller then dragged him to the tent. He
4 did not admit to being involved in the burning of the
5 bodies, but that certainly was the evidence of the
6 nature of the dispute that occurred right afterwards
7 with regard to both defendants, and so certainly the
8 burning of the bodies occurred after the strangulation
9 of Mr. Miller and Mr. Durga's involvement as an
10 accomplice in the death of Mr. Peterson.

11 The one thing, however, that was very much
12 contested in the trial was the claim by Mr. Eke, the
13 other co-defendant, that before that happened each of
14 these victims was placed, one by Mr. Durga, one by Mr.
15 Crow, face down into the camp fire essentially with the
16 idea of torturing them in that way.

17 I also just want to make sure the record is clear
18 -- I think I have that responsibility under the plea
19 agreement. I want to make sure that the Court
20 understands that the medical evidence in this case was
21 that Mr. Miller and Mr. Peterson were both dead at the
22 time that they were placed in any kind of fire situation
23 because of the lack of any inhalation of carbon monoxide
24 or cyanide in their lungs which showed that they could
25 not have been alive at that point.

1 THE COURT: I want to be sure I understand
2 you, and I think that is important.

3 MR. LANE: And I think that's important, Your
4 Honor. It's a difficult point to make but I think it
5 still needs to be made that what can appear to be very
6 cruel and unusual activity in a sense is -- well, they
7 were already dead as far as the fire incident.

8 THE COURT: Mr. Durga, I looked up your birth
9 date. You're 23 years old. Even by the recommendation
10 you will be a middle-aged man by the time you get out.

11 It is the opinion of the Court that this was a
12 particularly heinous crime, that these codes or street
13 codes or snitches -- there is one code and that is thou
14 shall not kill. That's the code. Any question on your
15 part?

16 THE DEFENDANT: No.

17 THE COURT: I sentence you to 170 months on
18 each one consecutive. I reject the plea bargain. I
19 believe that this murder was done with deliberate
20 cruelty to the victims, although I have to say to the
21 victims' families, who have cried out for the maximum
22 penalty, I cannot do that. This is a young person with
23 no criminal history. I go above it to 170 months
24 consecutive. I believe that the strangulation and that
25 this -- even given his testimony, the strangling without

1 the fire situation, it demands more than 22 years in
2 prison. It does not demand the top range because of his
3 age and because of his lack of criminal history.

4 As far as the financial -- it will be consecutive.
5 There will be \$100 DNA, \$200 filing fee, \$500 crime
6 victim. Restitution will be reserved, and I will ask
7 that you have no contact with all witnesses that the
8 prosecutor wants.

9 MR. LANE: Your Honor, he does want to request
10 that the Court consider not having a no contact order
11 placed with Mr. McKague and Mr. Crow, although I don't
12 believe the State is requesting one with Mr. Crow.

13 MR. POWERS: I did not request one of Mr.
14 Crow, Your Honor. I understand that it would be the
15 mutual request of both of them to be able to have
16 contact if they wish.

17 Mr. McKague testified in this case on behalf of the
18 State. His testimony countered to some extent things
19 that Mr. Durga was asserting, and he testified about
20 things that Mr. Crow had been asserting. Absent some
21 request of Mr. McKague to have contact with Mr. Crow and
22 Mr. Durga, I think it's important that we include him.

23 THE COURT: I'm gonna include him, and then
24 I'm gonna ask the prosecutor if there is a request by
25 Mr. McKague and if there is I can modify that one

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provision.

MR. LANE: Thank you, Your Honor.

THE COURT: Thank you. Have a seat.

(Other matters were heard.)

THE COURT: Mr. Lane, I will give him, pursuant to *State v. Falen*, credit for time served.

MR. LANE: Thank you, Your Honor.

THE COURT: I am not -- I did not put any court-appointed counsel fees, did I? I don't believe I did. He's in prison for so long.

(Pause in proceedings.)

THE COURT: Mr. Durga, before yourself and counsel I'm signing the judgment and sentence which outlines what I've said in open court.

Counsel, let's go on to a different matter.

(Proceedings were concluded.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I, Cheri L. Davidson, Notary Public, in and for the State of Washington, residing at Olympia, do hereby certify:

That the annexed and foregoing Verbatim Report of Proceedings was reported by me from an audio recording and reduced to typewriting by computer-aided transcription;

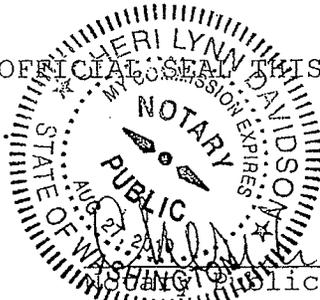
That said transcript is a full, true, and correct transcript, to the best of my ability, of the taped proceedings heard before Judge Christine A. Pomeroy on the 26th day of March, 2009 at the Thurston County Courthouse, Olympia, Washington;

That I am not a relative or employee of counsel or to either of the parties herein or otherwise interested in said proceedings.

WITNESS MY HAND AND OFFICIAL SEAL THIS

28th day of

July, 2009.



Cheri L. Davidson
Notary Public, in and for the State of Washington, residing at Olympia.

APPENDIX O

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

COURT OF APPEALS NO. 42926-8-II

7 STATE OF WASHINGTON,

Petitioner,

SUPERIOR COURT NO. 08-1-00585-6

8 vs.

DECLARATION OF JAMES C. POWERS RE
APPENDIX I

9 TOMMY CROW,

10 Respondent.

11 STATE OF WASHINGTON)

12 COUNTY OF THURSTON)

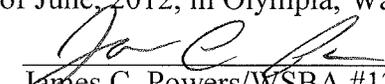
ss.

13 James C. Powers declares and affirms:

14 I am a Deputy Prosecuting Attorney for Thurston County, Washington. I represented the Plaintiff,
15 State of Washington, during pre-trial proceedings and through the trial of the above-entitled cause, State v.
16 Tommy Crow, Thurston County Superior Court Cause No.08-1-00585-6. Appendix I to the State's
17 Response regarding the Defendant's Personal Restraint Petition in Court of Appeals No. 42926-8-II consists
18 of a 70-page transcription of an interview of witness Anthony McKague conducted by Olympia Police
19 Detective Sam Costello on January 30, 2009. The copy of this transcription in Appendix I is a complete and
20 accurate copy of that transcription as received by the Thurston County Prosecuting Attorney's Office from
21 the Olympia Police Department. I was present during that entire interview. This transcript is a complete and
22 accurate record of that interview.

23 I certify (or declare) under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct to the best of my knowledge

24 DATED and signed this 5th day of June, 2012, in Olympia, Washington

25 
26 James C. Powers/WSBA #12791
Deputy Prosecuting Attorney

APPENDIX P

1 Costello. Durga cannot claim any coercion from the prosecutor as to that interview as I had no contact with
2 Durga at that time. The plea agreement I reached with Durga's attorney, Charles Lane, was not arrived at
3 until October 9, 2008, and so I had no contact with Durga himself prior to 10-9-08. Nevertheless, in the 3-
4 28-08 interview, Durga did not give a description of events even remotely similar to that which he has
5 asserted in his 12-31-11 Declaration.

6 In the 3-28-08 interview, Durga stated that on the prior evening he and Tom Crowe and Bryan Eke
7 had gone to talk to "Pops" (David Miller), and that when Pops did not admit or deny that he had been talking
8 to the cops, Durga punched him. (See Appendix F at 8.) A little later in the interview, Durga clarified what
9 had occurred at that point. He acknowledged that when they first contacted Pops, Crowe hit Pops and then
10 Durga stepped in. (See Appendix F at 16-17.) Durga also acknowledged that Crowe, Durga and Eke went
11 over to Pops' camp to beat him up. (See Appendix F at 20.) At no time in the interview did Durga claim
12 that Crowe had left Pops' camp prior to Pops being assaulted.

13 In the written plea agreement reached by the parties on October 9, 2008, Durga was not required to
14 testify concerning any particular version of events. Rather, he was required to provide complete and truthful
15 information concerning, among other matters, the deaths of Miller and Peterson. He was required to provide
16 this truthful information during recorded interviews with prosecutors and police. The State would then rely
17 upon the information provided to constitute what would be expected from Durga as truthful testimony at the
18 trial of a co-defendant. See Appendix A to the State's Response to Crowe's Personal Restraint Petition.
19 Thus, Durga was free to provide the version he has now provided in the 12-31-2011 Declaration, but he did
20 not do so.

21 Appendix G to the State's Response to Crowe's Personal Restraint Petition contains the entire
22 transcript of the recorded interview with Durga conducted on October 15, 2008, pursuant to the October 9,
23 2008 plea agreement. Durga's attorney, Charles Lane, was present during that interview. At no time during
24 that interview was Durga pressured to present a particular version of events. At the start of the interview,
25 Durga was simply advised to be truthful during the interview. Nevertheless, Durga stated during that
26 interview that a group decision was made by Crowe, Eke, and Durga to go to Pops' camp and confront Pops.
The three went to the camp to assault Pops. Durga stated that when they arrived, Crowe hit Pops and that
was when Durga stepped in. (See Appendix G at 21-23.)

1 A little later in the interview, Durga further explained that when they arrived at Pops' camp, Crowe
2 accused Pops of being a snitch and they engaged in an argument. Then Crow hit Pops, and at that point
3 Durga stepped in and started hitting Pops. According to Durga, Peterson then went behind the tent, followed
4 immediately by Eke, and then followed by Crowe. When Peterson came back into view, he stated that he
5 would not be a snitch, but Crowe grabbed hold of him, hit him a couple of times, and threw him to the
6 ground. (See Appendix G at 27-28.)

7 Still later in the interview, Durga again spoke about the point in time that Pops was first confronted
8 that night. He stated that when he, Crow, and Eke arrived at Pops' camp, Crowe yelled out Pops' name.
9 Pops came out of his tent, and at that point Crowe was in front of Durga and Eke. Crowe demanded to know
10 why Pops had snitched. When Pops denied this, Crowe struck Pops on the left side of the face. Pops then
11 told them to get out, at which point Durga hit Pops and put him in the sleeper hold. (See Appendix G at 81-
12 84.) At no time during the interview did Durga ever mention Crowe leaving the camp with Peterson or
13 leaving the camp prior to David Miller (Pops) being assaulted and killed.

14 On October 21, 2008, Durga entered guilty pleas to two counts of murder in the second degree. (See
15 Appendix H to the State's Response to Crowe's Personal Restraint Petition.) The written plea agreement
16 was filed with the court at that time along with Durga's statement on plea of guilty. Durga acknowledged he
17 had reviewed the plea agreement carefully with his attorney. 10-21-08 Hearing RP at 5. Again it was
18 stressed that the plea agreement simply required Durga to be truthful in his testimony, as opposed to
19 testifying in accordance with a particular version of events, and that it would be the Court's decision as to
20 whether a material breach of the agreement had occurred. 10-21-08 Hearing RP at 8-11. Durga specifically
21 acknowledged his understanding of those points of the agreement. 10-21-08 Hearing RP at 12-13. Durga
22 acknowledged he was making his guilty pleas of his own free will and that no one had made him any threats
23 or promises other than what was in the plea agreement to get him to plead guilty. 10-21-08 Hearing RP at
24 19.

25 Shortly before the trial began in State v. Crow, I met briefly with Christopher Durga one more time to
26 explain the questions I would address to him at the trial. While Durga expressed reluctance at having to
testify against his friend Tommy Crowe, and claimed a difficulty remembering details he had provided in
previous interviews, he otherwise maintained the same version of events as he had in the past. Durga did not
claim any of the details he has now come forward with in the 12-31-2011 Declaration.

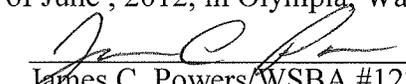
1 Throughout the period leading to Durga's testimony at Crowe's trial, and for some time thereafter to
2 the point of Durga's sentencing, Durga continued to be represented by defense counsel Charles Lane. Had
3 the defendant felt any concern about coercion in this matter, he need only have let his attorney know about
4 that in order to address it. Mister Lane did acknowledge to me just before the start of Crowe's trial that he
5 had discussed with Durga the testimony that Durga would be offering at trial, but did not suggest that Durga
6 had mentioned any new version of events relating to the death of David Miller or Norman Peterson.

7 At Crowe's trial, Durga was not hesitant to change details of the story he had previously told. For
8 example, after having repeatedly stated that Crowe had hit Pops before Durga first hit Pops, now Durga
9 testified that Crowe had swung at Pops but missed. Trial RP at 1140-1143. He also added for the first time
10 that Bryan Eke and Norm Peterson left the camp for about five minutes just before Miller was assaulted.
11 However, his testimony was that Crowe was present throughout the assault on Miller. Trial RP at 1140-
12 1148.

13 Durga did file a motion to withdraw his guilty pleas on December 8, 2008. Apparently, it was filed
14 by Durga himself without the knowledge of his attorney. No reason was stated in the motion as the basis to
15 withdraw the guilty pleas. On March 26, 2009, after the completion of Crowe's trial, Durga's case came
16 before the Honorable Judge Christine Pomeroy for sentencing. (See Appendix N to the State's Response to
17 Crowe's Personal Restraint Petition.) Charles Lane addressed Durga's motion to withdraw guilty pleas,
18 stated he had learned about it after the fact, and now having discussed the matter with his client indicated
19 that Durga wished to withdraw that motion. Durga agreed that was his request. 3-26-09 RP in Cause 08-1-
20 00586-4 at 4-5. Thus, clearly Durga knew how to raise a concern about any coercion he was being
21 subjected to if he wished to do so, but no such claim was ever made.

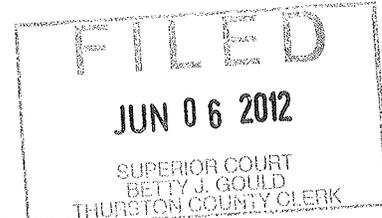
22 I certify (or declare) under penalty of perjury under the laws of the State of Washington that the
23 foregoing is true and correct to the best of my knowledge

24 DATED and signed this 5th day of June, 2012, in Olympia, Washington

25 
26 James C. Powers/WSBA #12791
Deputy Prosecuting Attorney

APPENDIX Q

Mr. Powers



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

STATE OF WASHINGTON
Plaintiff,

vs.

Tommy Crow,
Defendant.

) COA No. 42926-8-II

) Thurston County Cause No.
) 08-1-00585-6

) DECLARATION OF RONALD E. SERGI
) DEFENDANT'S TRIAL ATTORNEY

DECLARATION

I am Ronald E. Sergi, Attorney at Law, I was the attorney appointed to represent the above named defendant in the above referenced cause at the trial level. I make this declaration of my own personal knowledge, the files and records contained therein and from my own file maintained from this case.

I was appointed to represent the defendant after another attorney had already been appointed but was required/allowed to withdraw because of a conflict. I was given all discovery material possessed by the previous attorney and supplemental discovery as it became available from the Prosecuting Attorney's Office while this case worked its way toward trial. I know I was provided with all the discovery material the State possessed or acquired during the pendency of the trial.

I received a correspondence from the defendant sometime in February 2011 requesting certain material, specifically hand writing expert reports and/or letters written between inmates of

Declaration of Ronald E. Sergi

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1 the Thurston County jail involving any of the following
2 individuals; Aaron Adams, Anthony McKague or Brian Eke.

3 I responded to the defendant's correspondence on February
4 29, 2011 advising the defendant that this office did not have any
5 material or correspondence purportedly written by either Adams,
6 McKague or Eke, nor did this office have any hand writing expert
7 reports generated in this case.

8 My response was based on reviewing what material this office
9 still maintained on the defendant's case. This file was not
10 complete as some of it was destroyed once the defendant's appeals
11 were exhausted. In my response, I advised the defendant that this
12 office did not generate, nor did I believe the prior counsel
13 generated a handwriting expert report. Apparently I was confused
14 as to the nature of the defendant's request thinking the
15 defendant was requesting a report from a defense expert. For
16 which there was none.

17 Upon reviewing the transcripts of the trial and other file
18 material it seems clear that I was aware of the writings between
19 the jailhouse inmates and of the report generated by Mr. Upton.
20 The only way I would have had this knowledge in order to cross
21 examine the State's witnesses on the subject and whether or not
22 to call Mr. Adams as a witness, was to have been provided the
23 material.

24 At the time of the correspondence with the defendant, dated
25 February 29, 2011, I no longer had the all the material from the
26 file this office maintained or received from the State. I never
27 suggested or intended to convey that I had not received complete
28 discovery in this case.

29 Declaration of Ronald E. Sergi

Ronald E. Sergi
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Olympia, Washington 98501
(360) 352-5802
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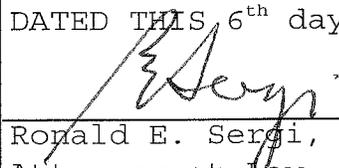
1 I know the State provided everything to the defense as
2 mandated, I have handled several criminal matters with the Deputy
3 Prosecutor who handled this matter and have no question that the
4 defense was provided all material. Further, my review of the
5 transcripts indicate the defense did have knowledge of the intra-
6 jailhouse communications, therefore the defense must have been
7 provided the communications and the handwriting expert's report
8 from the State.

9 This office was not able to meet the defendant's request nor
10 did I think I had an obligation to meet his request. However, I
11 responded in a brief manner after looking at what this office
12 still maintained as a file. I did not locate the material the
13 defendant requested and advised the defendant as such. Also, I
14 had the impression the defendant was requesting something the
15 defense generated not something from the prosecution which is
16 where the handwriting expert's report was generated from.

17 Once again, I believe the defense was provided with all
18 discovery material generated from the investigation of the
19 initial crime and from any follow up investigations involving
20 intra-jailhouse communications and any reports generated from
21 those investigations including any handwriting expert reports.

22 I certify under penalty of perjury under the laws of the
23 State of Washington that the foregoing is true and correct to the
24 best of my knowledge.

25 DATED THIS 6th day of June 2012.

26 
27 _____
28 Ronald E. Sergi, WSBA 19670
29 Attorney at Law

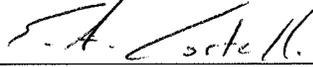
30 Declaration of Ronald E. Sergi

Ronald E. Sergi
Attorney At Law
6207 St. Andrews St.
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(360) 352-5802
r_sergi@comcast.net

APPENDIX R

of Washington, that the above is true and correct.

Signed this 7th day of June, 2012, in Olympia, Washington.



S. A. Costello
Sergeant, Olympia Police Department

THURSTON COUNTY PROSECUTOR

June 08, 2012 - 9:59 AM

Transmittal Letter

Document Uploaded: prp2-429268-Response~2.pdf

Case Name:

Court of Appeals Case Number: 42926-8

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

- Designation of Clerk's Papers Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: ____
- Answer/Reply to Motion: ____
- Brief: ____
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: _____

Comments:

No Comments were entered.

Sender Name: Caroline Jones - Email: jonescm@co.thurston.wa.us