

NO. 43389-3-II

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

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STATE OF WASHINGTON, Respondent

v.

ALBERT JAMAAL YOUNGBLOOD, Petitioner

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

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RESPONSE TO PERSONAL RESTRAINT PETITION

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A. IDENTITY OF RESPONDENT AND AUTHORITY FOR RESTRAINT

The State of Washington is the Respondent in this matter. Mr. Youngblood (hereafter, "the defendant") is restrained under the authority of the judgment and sentence entered by the Superior Court of Clark County for Count One: Robbery in the First Degree, Count Two: Kidnapping in the First Degree, Count Three: Kidnapping in the First Degree, and Count Four: Attempting to Elude a Pursuing Police Vehicle, under cause number 08-1-00819-3. *See* Appendix A.

B. ISSUE PRESENTED

- I. WHETHER THE COURT SHOULD DISMISS THE DEFENDANT'S PETITION BECAUSE THIS ISSUE HAS ALREADY BEEN LITIGATED AND THE INTERESTS OF JUSTICE DO NOT REQUIRE RE-LITIGATION?

C. STATEMENT OF THE CASE

I. FACTUAL HISTORY

On May 21, 2008, at 5:00 a.m., two men wearing hats with eyeholes cut in them entered a Shari's Restaurant in Vancouver, Washington. The men ordered Javier Rivera and Roberta Damewood (two of the restaurant's employees) to move from the kitchen area to another part of the restaurant where the mops were kept. The men then ordered Rivera and Damewood to lie on the floor. Rivera and Damewood

remained on the floor for five to ten minutes. Meanwhile, one of the men told Regina Bridges, a third restaurant employee, to open the cash register. The man was wearing white gardening gloves with blue piping. After Bridges opened the cash register, the man pulled money from the register and put the money in his pocket. The two men then fled the restaurant in a black Lincoln town car that had been idling in the parking lot. 911 was immediately called.

Vancouver Police Department (“VPD”) Officer Neil Martin located the black Lincoln town car travelling northbound on Interstate-5. Several other police units initiated a pursuit of the vehicle. The town car temporarily fled the freeway and entered an adjacent parking lot. Clark County Sheriff’s Office (“CCSO”) Deputy Thomas Yoder was awaiting the car in the parking lot. He identified Samuel Ferguson as the driver of the vehicle. As the car left the parking lot, Deputy Yoder observed an object being thrown from the vehicle, which was later identified as a gun wrapped inside a gray hat with eyeholes cut in it.

Officers set up a spike strip on the highway, which the Lincoln town car eventually ran over. The car went through three red lights, hit a traffic median, and then came to a stop. Deputy Yoder saw three males get out of the car and run down the street. CCSO Deputy Jeremy Koch seized John Fitzpatrick after he fled the vehicle. VPD Officer Tim

Deisher seized the defendant, Albert Youngblood. At the time of his arrest, the defendant had on his person a black hat with eyeholes cut in it. The defendant also had a roll of coins on him. Ferguson was found hiding behind a couch on the porch of an adjacent house. Inside the abandoned town car, police officers found a pair of white gloves with blue piping and a roll of pennies.

## II. PROCEDURAL HISTORY

The defendant was charged by Information as a co-defendant with Samuel Eugene Ferguson and John Lanell Fitzpatrick. *See* Appendix B. The defendants were charged with Count One: Robbery in the First Degree, Count Two: Kidnapping in the First Degree, Count Three: Kidnapping in the First Degree, and Count Four: Attempting to Elude a Pursuing Police Vehicle. *See* Appendix B. Regina M. Bridges was the named victim for Count One: Robbery in the First Degree. Roberta A. Damewood was the named victim for Count Two: Kidnapping in the First Degree. Javier C. Rivera was the named victim for Count Three: Kidnapping in the First Degree. *See* Appendix B.

The defendant filed a timely appeal. In his appeal, the defendant alleged, among his other assignments of error, that the evidence was insufficient to convict him of both robbery and kidnapping because the

kidnapping counts were incidental to and necessary for the robbery. The defendant also argued that these counts merged.

The Court of Appeals found each of the defendant's claims were without merit and affirmed his convictions and sentence. *See* Appendix C. This personal restraint petition followed.

D. ARGUMENT AS TO WHY PETITION SHOULD BE DISMISSED

I. THE COURT SHOULD DISMISS THIS PETITION BECAUSE THE DEFENDANT'S SUFFICIENCY OF EVIDENCE CLAIM HAS ALREADY BEEN LITIGATED AND THE INTERESTS OF JUSTICE DO NOT REQUIRE RE-LITIGATION.

The sole claim raised by the defendant in his Petition is that the State failed to present sufficient evidence in support of his kidnapping convictions because any restraint was "merely incidental" to the robbery. *See* Personal Restraint Petition ("Petition") at p. 4-5. The defendant relies primarily on *State v. Korum* to support his claim. *Id.*, citing 120 Wn. App. 686, 86 P.3d 166 (2004), *rev'd on other grounds*, 157 Wn.2d 614, 141 P.3d 13 (2006). The defendant acknowledges that he previously raised the same sufficiency of evidence claim in his direct appeal. *Id.*, at p. 5. However, the defendant argues the Court of Appeals for Division One did not address his sufficiency of evidence challenge; rather, he argues the court addressed only his merger challenge. *Id.*, at p.7. In addition, the defendant argues the court ignored "established Division II case law"

because it relied only on *State v. Louis*, 155 Wn.2d 563, 571, 120 P.3d 936 (2005) to reach its decision. *Id.*, at p. 5-7. Consequently, the defendant argues he is not barred from re-raising his claim of insufficient evidence in a subsequent collateral attack. *Id.*, at p. 7. For the reasons set forth below, the defendant's argument is without merit and his Petition should be dismissed.

A personal restraint petition is an extraordinary remedy that is designed to address fundamental legal defects that lead to restraints on an individual's freedom. *See In re Hagler*, 97 Wn.2d 818, 825-26, 650 P.2d 1103 (1982). A personal restraint petition ("PRP") "is not a substitute for a direct appeal and the availability of collateral relief through a PRP is limited." *In re Pers. Restraint of Carter*, 172 Wn.2d 917, 922, 263 P.3d 1241 (2011). In order to prevail in a PRP on a claim of constitutional error, the petitioner must be able to demonstrate "actual prejudice." *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 298-99, 88 P.3d 390 (2004). To prevail on a claim of non-constitutional error, the petitioner must be able to demonstrate a "fundamental defect that inherently results in a complete miscarriage of justice." *Id.* The petitioner bears the burden of proving error by a preponderance of the evidence. *In re Cook*, 114 Wn.2d 814, 792 P.2d 506 (1990).

A petitioner may not renew issues in a personal restraint petition that were raised and rejected on direct appeal. *In re Lord*, 123 Wn.2d 296, 303, 868 P.2d 835, *cert. denied*, 513 U.S. 849 (1994). An issue is considered raised and rejected on direct appeal if the same ground presented in the petition was determined adversely to the petitioner on appeal, and the prior determination was on the merits. *In re Taylor*, 105 Wn.2d 683, 687, 717 P.2d 755 (1986).

A petitioner should only be permitted to re-litigate an issue that was raised and rejected on direct appeal if the petitioner can demonstrate the interests of justice require re-litigation. *In re Davis*, 152 Wn.2d 647, 670-671, 101 P.3d 1 (2004); *see also In re Gentry*, 137 Wn.2d 378, 388, 972 P.2d 1250 (1999). In order to demonstrate the interests of justice require re-litigation of an issue, the petitioner must show an intervening change in the law or provide other justification for why he or she failed to raise a crucial point, as to a particular issue, when the matter was on appeal. *In re Stenson*, 142 Wn.2d 710, 720, 16 P.3d 1 (2001); Washington Rule of Appellate Procedure (“RAP”) 16.4(c).

The court reviews challenges to the sufficiency of the evidence by viewing the evidence in the light most favorable to the State. *State v. Brown*, 162 Wn.2d 422, 428, 173 P.3d 245 (2007). Evidence is sufficient if any rational trier of fact could have found the elements of the charged

offense beyond a reasonable doubt. *Id.* A claim of insufficiency admits the truth of the State's evidence as well as all reasonable inferences that can be drawn from it. *Id.*

To establish the offense of first degree kidnapping, the State must prove the defendant intentionally abducted another person with intent: ... (b) [t]o facilitate commission of any felony or flight thereafter..." RCW 9A.40.020. "'Abduct' means to restrain a person by either (a) secreting or holding him in a place where he is not likely to be found or (b) using or threatening to use deadly force."<sup>1</sup> RCW 9A.40.010(2). "[T]he mere incidental restraint and movement of [a] victim during the course of another crime" is insufficient to establish a separate crime of kidnapping when the movement and restraint had "no independent purpose or injury." *State v. Brett*, 126 Wn.2d 136, 166, 892 P.2d 29 (1995); *see also Korum*, 120 Wn. App., at 701. For example, in *Korum*, the defendants entered a residence where seven people were located, pointed a gun at them, bound them with duct tape, and proceeded to rob them. *Korum*, at 691. The defendants attempted to free the victims when the robbery was complete. *Id.*, at 691-92. On review, the court found the kidnappings had no independent purpose or injury because they occurred only

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<sup>1</sup> The definition of "abduction" "does not require movement or asportation of the victims." *State v. Vladovic*, 99 Wn.2d 413, 418, *fn* 1, 662 P.2d 853 (1983).

contemporaneously with the robberies and because the victims were not secreted to a location where they were unlikely to be found. *Id.*, at 707, *fn* 19. Therefore, the court held the evidence was insufficient to support separate convictions for kidnapping because the kidnappings were “merely incidental to the robberies.” *Id.*, at 701, 707, *fn* 19.

However, whether kidnapping is incidental to the commission of another crime is a fact-specific determination. *State v. Elmore*, 154 Wn. App. 885, 901, 228 P.3d 760, *review denied*, 169 Wn.2d 1018, 238 P.3d 502 (2010); *see also Vladovic*, 99 Wn.2d 413. For example, in *Vladovic*, the defendants tied-up five laboratory employees and then went through their wallets. *Vladovic*, at 415-16. One employee, Mr. Jensen, later discovered that \$12.00 was missing from his wallet. *Id.* The State charged Vladovic with one count of first degree robbery for stealing \$12.00 from Mr. Jensen’s wallet. *Id.* The State charged Vladovic with four counts of kidnapping for his restraint of the four other victims, not including Mr. Jensen. *Id.* On review, the court found “the restraint of the four employees was a separate act from the robbery of Mr. Jensen.” *Id.*, at 421-22, 424 (stating “[b]ecause the injuries of the robbery and kidnapping involved separate people, they clearly created separate injuries”). Therefore, the court held the evidence was sufficient to support the

kidnapping convictions because the kidnappings were not merely incidental to the robbery. *Id.*

The *Korum* court cited to *Vladovic* as a case that was factually distinguishable from its case because the victim of the robbery in *Vladovic* was different from the victims of the kidnappings. *Korum*, at 704. The *Korum* court stated

[t]he majority in *Vladovic* found that the kidnappings in that case were not incidental to the robberies. We note, however, that the State in that case did not charge *Vladovic* with both robbing and kidnapping the same victims. Rather, the State elected to charge only one or the other crime.

- *Id.*

Here, the victims of the kidnappings (Roberta A. Damewood and Javier C. Rivera) were different from the victim of the robbery (Regina M. Bridges). Therefore, the restraint of Ms. Damewood and Mr. Rivera was a separate act from the robbery of Ms. Bridges. Consequently, pursuant to the Court's holding in *Vladovic*, the kidnappings were not merely incidental to the robbery and the evidence was sufficient for a rational trier of fact to find the defendant guilty of two counts of kidnapping in the first degree.

Contrary to the defendant's assertion in his Petition, the Court of Appeals for Division One properly reviewed the defendant's sufficiency

of evidence claim on the merits. First, the court acknowledged that the defendant was relying on *Korum* to support his claim. *See* Appendix C, at 9, *citing* 120 Wn. App. 686. Next, the court found the facts in the defendant's case were distinguishable from *Korum* because, unlike in *Korum*, the victims of the kidnappings were different from the victim of the robbery. *See* Appendix C, at 10, *fn* 5. The court noted that, under similar facts, the Washington Supreme Court rejected the same argument in *State v. Vladovic*. *Id.*, *citing* 99 Wn.2d 413. Consequently, the court rejected the defendant's sufficiency of evidence claim.<sup>2</sup>

The decision of Division One in this case was consistent with the decision of Division Two in *State v. Ferguson* (the companion case for one of the co-defendants). 164 Wn. App. 370, 264 P.3d 575 (2011). *Ferguson* similarly argued that the evidence was insufficient to support his kidnapping convictions because the kidnappings were merely incidental to the robbery. *Ferguson*, 164 Wn. App. at 18. Division Two disagreed, holding the evidence was sufficient to support *Ferguson*'s convictions for kidnapping because "[I]ike *Vladovic*, the State charged one crime per victim and each incident involved different victims." *Id.*, at 21-22.

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<sup>2</sup> The court did not reject the defendant's sufficiency of evidence claim based on *State v. Louis*. Rather, the court reviewed and rejected the defendant's merger claim based on the Washington Supreme Court's holding in *Louis*. *See* Appendix C, at 9-10, *citing* 155 Wn.2d 563, 571, 120 P.3d 936 (2005) (holding kidnapping and robbery did not merge because proof of one is not necessary to prove the other).

Because the Court of Appeals for Division One reviewed the defendant's sufficiency of evidence claim on the merits, the issue raised by the defendant in his Petition has already been litigated. In addition, the defendant cannot show the interests of justice require re-litigation of this issue because the decision of Division One is consistent with the previous decision of the Washington Supreme Court in *Vladovic* and because the decision of Division One is consistent with the decision of this court in *Korum* and in *Ferguson*.<sup>3</sup> The defendant cites to no intervening change in the law and he raises no new arguments that were not raised in his direct appeal. Consequently, the defendant's Petition should be dismissed.

In the alternative, *assuming arguendo*, this court finds the defendant's sufficiency of evidence claim was not previously reviewed and rejected on the merits, the defendant's Petition should nevertheless be dismissed. This is the case because, pursuant to the Court's holding in *Vladovic*, the evidence was sufficient to support separate convictions for two counts of kidnapping when the victims of the kidnappings were different from the victim of the robbery. Therefore, the defendant cannot meet his burden of demonstrating constitutional error resulting in actual

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<sup>3</sup> Neither *In re. Pers. Restraint of Bybee* nor *State v. Green* are controlling in the defendant's case because, in both cases, the victims of the robberies were the same as the victims of the kidnappings. See Petition at p. 5, *citing Bybee*, 142 Wn. App. 260, 175 P.3d 589 (2007); *Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980).

prejudice or non-constitutional error resulting in a complete miscarriage of justice.

E. CONCLUSION

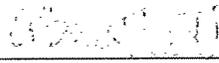
For each of the foregoing reasons, the defendant's Petition should be dismissed.

DATED this 4 day of October, 2012.

Respectfully submitted:

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By:

  
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## **APPENDIX A**

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James Kirkham Jr

S3

C.S.F.

FILED

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

Superior Court of Washington  
County of Clark

State of Washington, Plaintiff,

No. 08-1-00819-3

vs.

Felony Judgment and Sentence --

ALBERT JAMAAL YOUNGBLOOD,  
Defendant.

Prison  
(FJS)

09-9-05811-2

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

Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2,  
5.3, 5.5 and 5.7

Defendant Used Motor Vehicle

I. Hearing

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

II. Findings

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

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon

guilty plea  jury-verdict 5/21/2009  bench trial :

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

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

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

Additional current offenses are attached in Appendix 2.1a

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

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

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P

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

	<b>Crime</b>	<b>Cause Number</b>	<b>Court (county &amp; state)</b>
1.			

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

## 2.2 Criminal History (RCW 9.94A.525):

	<b>Crime</b>	<b>Date of Crime</b>	<b>Date of Sentence</b>	<b>Sentencing Court (County &amp; State)</b>	<b>A or J Adult, Juv</b>	<b>Type of Crime</b>
1	See attached criminal history					

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

### 2.3 Sentencing Data

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

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

Additional current offense sentencing data is attached in Appendix 2.3.

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

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

within  below the standard range for Count(s) \_\_\_\_\_

above the standard range for Count(s) \_\_\_\_\_

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

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

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

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

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

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

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

### III. Judgment

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

3.2  The court **dismisses** Counts \_\_\_\_\_ in the charging document.

### IV. Sentence and Order

*It is ordered*

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

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

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

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

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

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

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

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

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_.

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

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

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

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

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

Count 01 36 months  
Count 02 36 months  
Count 03 36 months  
Count 04 / months

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

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

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

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.720. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody.

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

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

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

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

<u>JASS CODE</u>		
<del>RTV RJN</del>	<del>\$160.00</del>	<del>Restitution to SHARIS (\$160.00)</del>
		<del>(Name and Address address may be withheld and provided confidentially to Clerk of the Court's office.)</del>
PCT	\$ 500.00	Victim assessment
		RCW 7.68.035



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

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

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

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

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

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

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

**4.6 Other:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

## V. Notices and Signatures

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

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

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

**5.4 Community Custody Violation.**

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

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

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

5.6 Reserved

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

**5.8 Persistent Offense Notice**

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

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

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

Deputy Prosecuting Attorney  
WSBA No. 25172  
Print Name: Anthony F. Golik

Attorney for Defendant  
WSBA No. 36612  
Print Name: James Doyle Kirkham  
Jr

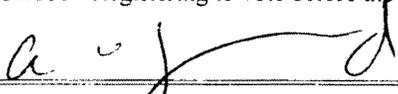
Judge/Print Name: John E. Nichols  
Defendant/  
Print Name: ALBERT JAMAAL  
YOUNGBLOOD

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

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

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

Defendant's signature: \_\_\_\_\_



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

Interpreter signature/Print name: \_\_\_\_\_

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

**Witness** my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_.

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

**Identification of the Defendant**

ALBERT JAMAAL YOUNGBLOOD

08-1-00819-3

SID No: WA24538465

Date of Birth: 8/12/1981

(If no SID take fingerprint card for State Patrol)

FBI No. 284617CB9

Local ID No. 193316

PCN No. \_\_\_\_\_

Other \_\_\_\_\_

Alias name, DOB:

**Race:** B

**Ethnicity:**

**Sex:** M

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

Clerk of the Court, Deputy Clerk,

Dated:

8-7-09

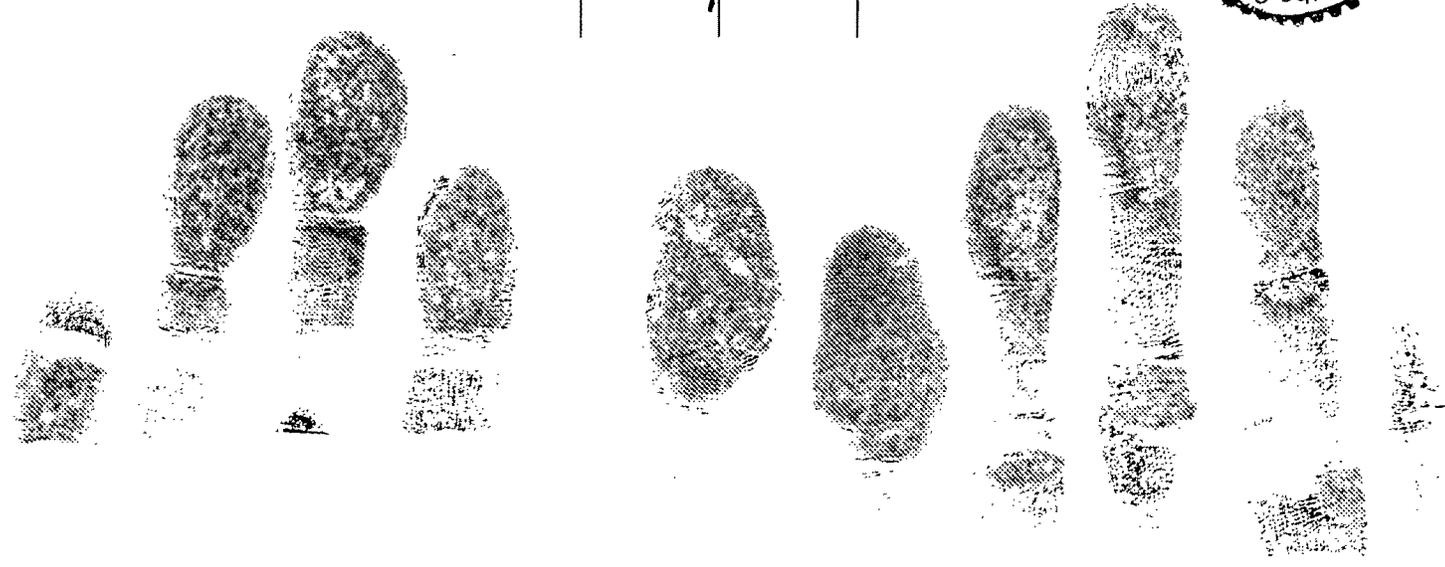
**The defendant's signature:**

Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

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

NO. 08-1-00819-3

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

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

**GREETING:**

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

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

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

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

COUNT	CRIME	TERM
01	ROBBERY IN THE FIRST DEGREE	155 <i>Days</i> <i>Months</i>

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

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

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

The defendant has credit for 443 days served.

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

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable

*[Handwritten Signature]*

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

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

By: *[Handwritten Signature]*  
Deputy



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

STATE OF WASHINGTON,  
Plaintiff,

No. 08-1-00819-3

v.  
ALBERT JAMAAL YOUNGBLOOD,  
Defendant

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

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

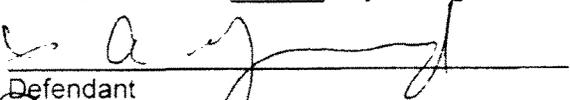
CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
GIVING FALSE NAME, ADDRESS, OR BIRTHDATE TO LAW ENFORCEMENT OFFICER	FULTON/GA UNKNOWN	2/5/2007		0
WILLFUL OBSTRUCTION OF LAW ENFORCEMENT OFFICERS BY USE OF THREATS OR VIOLENCE	FULTON/GA UNKNOWN	2/5/2007		0
RAPE	FULTON/GA UNKNOWN	2/5/2007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

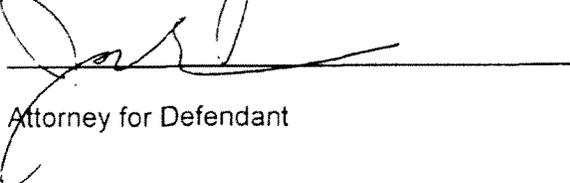
Same course of conduct

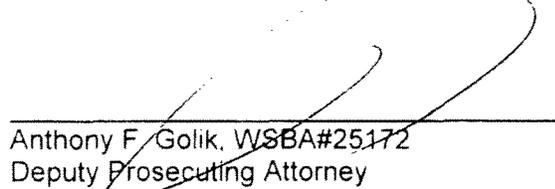
The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

DATED this 7 day of August, 2009.

Total = 2 points for Criminal History

  
Defendant

  
Attorney for Defendant

  
Anthony F. Golik, WSBA#25172  
Deputy Prosecuting Attorney

## **APPENDIX B**

3

New

**FILED**

**MAY 27 2008**

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

SAMUEL EUGENE FERGUSON III

and

ALBERT JAMAAL YOUNGBLOOD

and

JOHN LANELL FITZPATRICK

Defendant.

**INFORMATION**

No. 08-1-00818-5

No. 08-1-00819-3

No. 08-1-00820-7

(VPD 08-9714)

(WSP 08-6308)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

**COUNT 01 - ROBBERY IN THE FIRST DEGREE - 9A.08.020(3)**

**/9A.56.190/9A.56.200/9A.56.200(1)(a)(i)**

That they, SAMUEL EUGENE FERGUSON III and ALBERT JAMAAL YOUNGBLOOD and JOHN LANELL FITZPATRICK, as a principal or an accomplice, in the County of Clark, State of Washington, on or about May 21, 2008, with intent to commit theft, did unlawfully take personal property that the Defendant did not own from the person or in the presence of Regina M. Bridges, against such person's will, by use or threatened use of immediate force, violence, or fear of injury to said person or the property of said person or the person or property of another, and in the commission of said crime and in immediate flight there from, the Defendant was armed with a deadly weapon, to-wit: a semi-automatic pistol; contrary to Revised Code of Washington 9A.56.200(1)(a)(i) (Laws of 2002, ch. 85, 1) and 9A.56.190.

And further, that the defendant did commit the foregoing offense while armed with a firearm as that term is employed and defined in RCW 9 94A.602 and RCW 9 94A 533(3), to-wit: a semi-automatic pistol.

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9 94A 030(29) RCW 9 94A 030(33), RCW 9 94A 505(2)(a)(v) and RCW 9 94A 570)

**COUNT 02 - KIDNAPPING IN THE FIRST DEGREE - 9A.08.020(3) /9A.40.020/9A.40.020(1)(b)**

That they, SAMUEL EUGENE FERGUSON III and ALBERT JAMAAL YOUNGBLOOD and JOHN LANELL FITZPATRICK, as a principal or an accomplice, in the County of Clark, State of Washington, on or about May 21, 2008, did intentionally abduct another person, to-wit: Roberta A. Damewood, with intent to facilitate the commission of any felony or flight thereafter contrary to Revised Code of Washington 9A.40.020(1)(b).

INFORMATION - 1

||

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

3

1  
2 And further, that the defendant did commit the foregoing offense while armed with a firearm as that term is employed and defined in RCW 9.94A.602 and RCW 9.94A.533(3), to-wit: a semi-automatic pistol.

3 This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW  
4 9.94A.030(29), RCW 9.94A.030(33), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

5 **COUNT 03 - KIDNAPPING IN THE FIRST DEGREE - 9A.08.020(3) /9A.40.020/9A.40.020(1)(b)**

6 That they, SAMUEL EUGENE FERGUSON III and ALBERT JAMAAL YOUNGBLOOD and JOHN  
7 LANELL FITZPATRICK, as a principal or an accomplice, in the County of Clark, State of Washington, on  
8 or about May 21, 2008, did intentionally abduct another person, to-wit: Javier C. Rivera, with intent to  
facilitate the commission of any felony or flight thereafter; contrary to Revised Code of Washington  
9A.40.020(1)(b).

9 And further, that the defendant did commit the foregoing offense while armed with a firearm as that term is  
employed and defined in RCW 9.94A.602 and RCW 9.94A.533(3), to-wit: a semi-automatic pistol.

10 This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW  
11 9.94A.030(29), RCW 9.94A.030(33), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

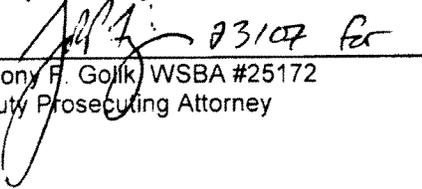
12 **COUNT 04 - ATTEMPTING TO ELUDE A PURSUING POLICE VEHICLE - 9A.08.020(3) /46.61.024(1)**

13 That they, SAMUEL EUGENE FERGUSON III and ALBERT JAMAAL YOUNGBLOOD and JOHN  
14 LANELL FITZPATRICK, as a principal or an accomplice, in the County of Clark, State of Washington, on  
15 or about May 21, 2008, as a driver of a motor vehicle, did willfully fail or refuse to immediately bring his or  
16 her vehicle to a stop and did drive his or her vehicle in a reckless manner while attempting to elude a  
17 pursuing police vehicle, after having been given a visual or audible signal to bring the vehicle to a stop,  
said signal having been given by hand, voice, emergency light, or siren by a uniformed police officer  
whose vehicle was equipped with lights and sirens; contrary to Revised Code of Washington  
46.61.024(1)(Laws of 2003, ch. 101, 1).

18 And further, that the defendant did commit the foregoing offense while armed with a firearm as that term  
is employed and defined in RCW 9.94A.602 and RCW 9.94A.533(3), to-wit: a semi-automatic pistol.

19  
20 ARTHUR D. CURTIS  
Prosecuting Attorney in and for  
Clark County, Washington

21 Date: May 27, 2008

22 BY:  03/07 for  
Anthony F. Gajik WSBA #25172  
23 Deputy Prosecuting Attorney  
24  
25  
26  
27  
28  
29

<b>DEFENDANT: SAMUEL EUGENE FERGUSON III</b>			
<b>RACE: B</b>	<b>SEX: M</b>	<b>DOB: 10/30/1974</b>	
<b>DOL:</b>		<b>SID: WA24538309</b>	
<b>HGT: 508</b>	<b>WGT: 175</b>	<b>EYES: BRO</b>	<b>HAIR: BLK</b>
<b>WA DOC:</b>		<b>FBI: 955380WA1</b>	
<b>LAST KNOWN ADDRESS(ES):</b>			
HOME - 228 NE 170TH ST, GRESHAM OR			

<b>DEFENDANT: ALBERT JAMAAL YOUNGBLOOD</b>			
<b>RACE: B</b>	<b>SEX: M</b>	<b>DOB: 8/12/1981</b>	
<b>DOL:</b>		<b>SID: WA24538465</b>	
<b>HGT: 511</b>	<b>WGT: 170</b>	<b>EYES: BRO</b>	<b>HAIR: BLK</b>
<b>WA DOC:</b>		<b>FBI: 284617CB9</b>	
<b>LAST KNOWN ADDRESS(ES):</b>			
HOME - 4632 N D ST, SANBERNADINO CA			

<b>DEFENDANT: JOHN LANELL FITZPATRICK</b>			
<b>RACE: B</b>	<b>SEX: M</b>	<b>DOB: 9/1/1971</b>	
<b>DOL: FITZP-JL-292OA WA</b>		<b>SID: WA24538376</b>	
<b>HGT: 510</b>	<b>WGT: 230</b>	<b>EYES: BRO</b>	<b>HAIR: BLK</b>
<b>WA DOC:</b>		<b>FBI: 994602LA7</b>	
<b>LAST KNOWN ADDRESS(ES):</b>			
HOME - 9011 BENTON DR, VANCOUVER WA 98662			

## **APPENDIX C**



2 of 3 DOCUMENTS

THE STATE OF WASHINGTON, *Respondent*, v. SAMUEL EUGENE FERGUSON III, *Defendant*, ALBERT JAMAAL YOUNGBLOOD, *Appellant*.

NO. 66637-1-I

COURT OF APPEALS OF WASHINGTON, DIVISION ONE

2011 Wash. App. LEXIS 1276

April 25, 2011, Oral Argument  
May 31, 2011, Filed

**NOTICE:** RULES OF THE WASHINGTON COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE WASHINGTON RULES OF COURT.

**SUBSEQUENT HISTORY:** Reported at *State v. Ferguson*, 162 Wn. App. 1008, 2011 Wash. App. LEXIS 1316 (2011)

**PRIOR HISTORY:** [\*1]

Appeal from Clark Superior Court. Docket No: 08-1-00819-3. Judgment or order under review. Date filed: 08/07/2009. Judge signing: Honorable John F Nichols.

*State v. Fitzpatrick*, 159 Wn. App. 1022, 2011 Wash. App. LEXIS 126 (2011)

**COUNSEL:** Peter B. Tiller, The Tiller Law Firm, Centralia, WA, for Appellant(s).

*Camara Banfield*, Clark County Prosecuting Attorney's Offi, Vancouver, WA, for Respondent(s).

**JUDGES:** AUTHOR: Linda Lau, J. WE CONCUR: Ann Schindler, J., Ronald Cox, J.

**OPINION BY:** Linda Lau

**OPINION**

¶1 LAU, J. -- A jury convicted Albert Youngblood of first degree robbery and eluding a pursuing police vehicle but failed to agree on two counts of first degree kidnapping. The State refiled the first degree kidnapping charges, and a jury convicted him on both counts. Youngblood appeals, arguing: (1) insufficient evidence to support the kidnapping convictions, (2) improper jury

discharge procedures violate double jeopardy, (3) no objection to evidence of fear constitutes ineffective assistance of counsel, and (4) insufficient evidence to support his eluding conviction. Because sufficient evidence supports his convictions, the court properly discharged the jury, and defense counsel's conduct was neither deficient or prejudicial. We affirm Youngblood's convictions.

**FACTS**<sup>1</sup>

1 The State accepted Youngblood's [\*2] recitation of the facts.

¶2 On May 27, 2008, the State jointly charged Albert Youngblood, Samuel Ferguson, and John Fitzpatrick with one count of first degree robbery, two counts of first degree kidnapping, and one count of attempting to elude a pursuing police vehicle.<sup>2</sup> The State also charged them with committing each offense while armed with a semi-automatic pistol under RCW 9.94A.602 and RCW 9.94A.533(3). Youngblood's, Ferguson's, and Fitzpatrick's cases were joined for trial.

2 The robbery victim was Regina Bridges, while the two kidnapping counts named two separate victims: Roberta Damewood (count 2) and Javier Rivera (count 3).

¶3 Trial began on February 9, 2009, and closing remarks occurred on February 18. On the afternoon of February 20, 2009, the jury sent the court a question--"If we are unable to come to an agreement on a portion of the charges, while agreeing on other portions, what do we do?" After conferring with the parties, the court answered the question--"You will be brought back into the courtroom for further instructions. In the meantime, con-

tinue to deliberate while the parties are notified." When the jury returned to the courtroom, the following colloquy occurred:

THE COURT: [\*3] ...

We're at a very serious stage of the proceedings as you can well imagine. And in response to your question, I have an additional instruction to give your question and ask you. And it's going to be directed to the attention of the foreperson and you're only supposed to answer pursuant to the question I ask and it's going to be a yes or no answer; okay?

Now I'll read the entirety to you. I've called you back into the courtroom to find out whether you have a reasonable probability of reaching a verdict.

First, a word of caution. Because you are in the process of deliberating, it is essential that you give no indication about how the deliberations are going. You must not make any remark in that courtroom that may adversely affect the rights of either party or may in any way disclose your opinion of this case or the opinions of members of the jury.

I'm going to ask your presiding juror if there's a reasonable probability of the jury reaching a verdict within a reasonable time. The presiding juror must restrict her answer to yes or no when I ask this question and must not say anything else.

Okay. So the question is: "Is there a reasonable probability of the jury reaching their verdict [\*4] within a reasonable time, as to all the counts, as regarding all the Defendants?"

JURY FOREPERSON: No.

THE COURT. Okay. And is there a reasonable probability of the jury reaching a verdict within a reasonable time as to any of the counts?

JURY FOREPERSON: Yes

8 Report of Proceedings (RP) (Feb. 20, 2009) at 1128-29. The court sent the jury back into the jury room to complete the verdict forms on the counts it had agreed on and then called them out again.

THE COURT: Okay, you may be seated. The jurors are all present. And again I ask the foreperson do you have--reached a verdict on some counts?

JURY FOREPERSON: We have.

THE COURT: And have you signed those verdict forms related to those counts you have agreed upon?

JURY FOREPERSON: Yes.

THE COURT: And you have not been able to reach an agreement on the remaining counts?

JURY FOREPERSON: Correct.

THE COURT: Okay. If you will hand the verdict forms to the bailiff.

8 RP (Feb. 20, 2009) at 1130-31

¶4 The court accepted the jury's guilty verdicts on the first degree robbery and attempting to elude a police vehicle counts.<sup>3</sup> The court then excused the jury, saying, "Okay. With that I do want to thank sincerely the dedication and the work done by the jurors [\*5] in reaching this determination. I respect that. You are now discharged." 8 RP (Feb. 20, 2009) at 1134. The verdict forms for the kidnapping counts were left blank.

<sup>3</sup> The court had previously dismissed the firearm enhancement regarding the charge of attempting to elude a police vehicle at the conclusion of the State's case in chief.

¶5 The State refiled the kidnapping charges against Youngblood and Ferguson,<sup>4</sup> and a second trial was held in May 2009. On May 22, 2009, a jury convicted Youngblood of two counts of first degree kidnapping and found he was armed with a firearm when he committed them.

<sup>4</sup> Fitzpatrick entered an *Alford* plea to the kidnapping charges. *State v. Fitzpatrick*, noted at 159 *Wn. App.* 1022, 2011 WL 198762, 2011 *Wash. App. LEXIS 98* *State v. Alford*, 25 *Wn. App.* 661, 611 P.2d 1268 (1980).

¶6 At the first trial, witnesses testified to the following facts: Two men wearing hats with eyeholes cut in them entered a Shari's Restaurant in Vancouver, Washington at about 5 AM on May 21, 2008. The men directed two restaurant employees, Javier Rivera and Roberta Damewood, to move from the kitchen area to another part of the restaurant where the mops were kept and for them to lie on the floor. Damewood testified that

[\*6] she did not see a gun. After five to ten minutes, when it was quiet, Damewood was able to call 911 on her cell phone. Rivera also testified that he did not see a gun.

¶7 One of the men told Shari's employee Regina Bridges to open the cash register till. She stated that he was wearing a "hoody" over a grayish stocking cap with eyeholes cut in it and that he pointed a handgun at her. She testified that she saw another man wearing a hoody and a cap pulled over his face with eyeholes in it and that he was standing behind Rivera holding a gun. After Bridges opened the till, the man took money from it, put it in his pocket, and both men left. Bridges stated that the man who had her open the till was wearing white, cotton knit, gardening gloves with blue piping. Jason Godsil and his wife walked into the restaurant as the two men ran out the door. Godsil had seen a black Lincoln town car idling in the parking lot by the door as he entered the restaurant. Bridges called 911 to report the robbery.

¶8 While traveling southbound on Interstate 205 at 4:58 AM, Neil Martin of the Vancouver Police Department saw a black Lincoln town car going northbound on the interstate. Deputy Thomas Yoder and several other [\*7] police units followed the car. After Deputy Yoder activated his overhead lights, the town car exited the freeway and went into a shopping plaza parking lot and turned around. Detective Thomas Mitchum was standing with his gun drawn in the area between the parking lot and the roadway and was able to see the driver, whom he identified as Ferguson. The car did not stop but went around the police car, which Det. Mitchum described as being parked in a semiroadblock. After the car left the parking lot, Deputy Yoder saw an object tossed from the car that was later identified as a gun wrapped inside a gray hat with eyeholes cut in it.

¶9 The car then reentered the freeway heading northbound and increased its speed to 100 or 110 MPH with several units following it. The car eventually hit a spike strip deployed by officers, exited the highway, and several of its tires degraded and broke up. The car went through three red lights, hit a traffic median, and came to a stop. Deputy Yoder saw three males get out of the car and run down the street. Fitzpatrick was taken into custody by Deputy Jeremy Koch, who stated that Fitzpatrick was breathing hard. Youngblood was arrested by Officer Tim Deisher and [\*8] was found with a black hat with eyeholes cut in it and money in his pocket. Police found a roll of coins under him after he was arrested. Youngblood was determined to be a possible contributor of DNA (deoxyribonucleic acid) found on the black hat. Police found Ferguson behind a couch on the porch of a house. Inside the town car, police found a pair of white gloves with blue piping and a roll of pennies.

¶10 At the second trial, witness testimony was materially the same as the first trial with one notable exception--Rivera testified that one of the perpetrators had a gun with him. When defense counsel asked Rivera about his prior inconsistent testimony, Rivera conceded that he was untruthful during the first trial because he "was afraid"

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

9 RP (May 19, 2009) at 1247, 1256. He acknowledged that no one had threatened him or family members since he testified at the first [\*9] trial.

#### ANALYSIS

##### *Sufficiency of the Evidence--Merger*

¶11 Youngblood first argues that "the first degree kidnapping counts were incidental to the robbery and no separate conviction may be imposed and enforced." Appellant's Br. at 17. He therefore maintains that because the kidnappings were done solely to facilitate the robbery and were not independent crimes, insufficient evidence exists to sustain the kidnapping convictions.

¶12 Youngblood relies on *State v. Korum*, 120 Wn. App. 686, 86 P.3d 166 (2004). There, the State charged the defendant with several kidnapping charges stemming from a conspiracy to rob drug dealers in a series of home invasions. *Korum*, 120 Wn. App. at 689. The perpetrators restrained the victims with duct tape while searching the homes and stealing drugs, money, and other valuables. *Korum*, 120 Wn. App. at 690-92. The court determined that this restraint of the victims did not constitute separate kidnappings. "We hold as a matter of law that the kidnappings here were incidental to the robberies ... ." *Korum*, 120 Wn. App. at 707 (footnote omitted)

¶13 But in *State v. Louis*, 155 Wn.2d 563, 571, 120 P.3d 936 (2005), the court held that first degree kidnapping, even when incidental [\*10] to a first degree robbery, does not merge with a robbery conviction. In *Louis*, while robbing a jewelry store, the defendant bound the two owners' hands and feet, covered their eyes and mouths with duct tape, and forced them into a bathroom. The jury convicted him of one count of first degree kid-

napping and one count of first degree robbery for each victim.

¶14 On appeal, Louis argued that his convictions for kidnapping and robbery merged because the kidnappings were simultaneous and incidental to the robbery. The court determined the crimes do not merge because proof of one is not necessary to prove the other. It reasoned that proof of kidnapping is not necessary to prove first degree robbery, and proof of first degree kidnapping requires only the intent to commit robbery, not the completion of robbery. *Louis*, 155 Wn.2d at 571. Because *Louis* controls, Youngblood's convictions for first degree kidnapping and first degree robbery do not merge.<sup>5</sup>

<sup>5</sup> Furthermore, the victims of the kidnappings in this case were different from the victim of the robbery. Under similar facts, the court rejected this same argument in *State v. Vladovic*, 99 Wn.2d 413, 424, 662 P.2d 853 (1983). We likewise reject it [\*11] here.

#### Mistrial

¶15 Youngblood next contends that his robbery conviction violates his constitutional right not to be twice put in jeopardy for the same offense. The State counters that the court properly discharged the jury based on deadlock and there is therefore no double jeopardy violation. "The double jeopardy clause of the Fifth Amendment protects the criminal defendant from repeated prosecutions for the same offense." *State v. Juarez*, 115 Wn. App. 881, 886, 64 P.3d 83 (2003). It also protects the right of the defendant to be tried by the jury he selected. *State v. Jones*, 97 Wn.2d 159, 162, 641 P.2d 708 (1982) (citing *\*Arizona v. Washington*, 434 U.S. 497, 503 n.11, 98 S. Ct. 824, 54 L. Ed. 2d 717 (1978)).

¶16 When a trial court grants a mistrial without the defendant's consent and after jeopardy has attached, retrial is barred by double jeopardy principles unless the mistrial was justified by manifest necessity. *Juarez*, 115 Wn. App. at 889. Manifest necessity exists when "'extraordinary and striking'" circumstances clearly indicate that substantial justice cannot be obtained without discontinuing the trial. *Juarez*, 115 Wn. App. at 889 (quoting *State v. Jones*, 97 Wn.2d 159, 163, 641 P.2d 708 (1982)).

¶17 When [\*12] a jury acknowledges, through its presiding juror and on its own accord, that it is deadlocked, there is a factual basis sufficient to constitute the "extraordinary and striking" circumstance necessary to justify discharge. *Jones*, 97 Wn.2d at 164. Other factors a trial court should consider include the length of deliberations in light of the length of trial and the volume and complexity of the evidence. *State v. Kirk*, 64 Wn. App.

788, 793, 828 P.2d 1128. We accord great deference to a trial court's decision to discharge a jury due to deadlock. *See Jones*, 97 Wn.2d at 163.

¶18 Here, the jury sent a question to the court during its deliberation indicating it was unable to reach a verdict on some of the charges: "If we are unable to come to an agreement on a portion of the charges, while agreeing on other portions, what do we do?" The court summoned the jury and the parties into the court room and asked the presiding juror whether "there [was] reasonable probability of the jury reaching their verdict within a reasonable time, as to all the counts, as regarding all the Defendants?" 8 RP (Feb. 20, 2009) at 1129. The presiding juror replied, "No." 8 RP (Feb. 20, 2009) at 1129. These facts establish [\*13] extraordinary and striking circumstances sufficient for the court to exercise its discretion to discharge the jury. *See Jones*, 97 Wn.2d at 164.

¶19 Nevertheless, Youngblood argues that the discharge was improper because the court failed to (1) poll the jurors individually to determine if they agreed with the presiding juror's claim of jury deadlock, (2) "weigh[ ] the minimal 'relevant considerations' prior to discharging the jury,"<sup>6</sup> (3) make discharge findings, (4) formally declare a mistrial on the record, and (5) obtain his consent to discharge the jury. Youngblood's arguments are not persuasive in light of the deference accorded to the trial court.

<sup>6</sup> Appellant's Br. at 22. Relevant considerations include the length of the trial and deliberations, along with the complexity of the issues and evidence.

¶20 Division Two of this court held that "the court has the discretion to rely on the representations of the foreman ... ." *State v. Dykstra*, 33 Wn. App. 648, 652, 656 P.2d 1137 (1983). That is precisely what the trial court did here. Before polling the presiding juror, the court cautioned the jury in accordance with WPIC 4.70<sup>7</sup> not to make any remark that may adversely affect the parties. It [\*14] then instructed the presiding juror to answer "yes" or "no" to its specific and limited questions. The court asked the presiding juror whether there was a reasonable probability that the jury could reach a decision on the kidnapping counts within a reasonable time. The presiding juror answered, "No." The court also asked the parties whether they wanted "any further [jury] polling." In response, the State and Ferguson's counsel declined. Youngblood's counsel did not respond to this question. Under these circumstances, the court properly exercised its discretion to rely on the presiding juror's statement in determining to discharge the jury. *See Dykstra*, 33 Wn. App. at 652.

7 The WPIC committee "Notes for use" to WPIC 4.70, probability of verdict, suggests the use of this instruction "when the jury is brought back into the courtroom during deliberations either because the jury has indicated that it may be deadlocked or the judge is contemplating the possible discharge of the jury as a deadlocked jury."

¶21 Contrary to Youngblood's assertion, the court is not obligated to consider on the record the length of deliberations, length of trial, and complexity of the issues in rendering its decision [\*15] to declare a mistrial when a jury is deadlocked. Instead, "[i]n exercising that discretion, the judge *should* consider the length of time the jury had been deliberating in light of the length of the trial and the volume and complexity of the evidence." *Jones*, 97 Wn.2d at 164 (emphasis added) (citing *State v. Boogaard*, 90 Wn.2d 733, 739, 585 P.2d 789 (1978)). And we concluded, "There are no particular procedures that the court *must* follow in determining the probability of the jury reaching an agreement." *State v. Barnes*, 85 Wn. App. 638, 657, 932 P.2d 669 (1997) (emphasis added).

8 Youngblood cites to no case authority suggesting these considerations are mandatory rather than discretionary.

¶22 Here, the jury announced of its own accord that it was deadlocked. After the court summoned the jury and all parties into the courtroom, the presiding juror confirmed that the jury could not reach a verdict on the kidnapping charges. The court acted well within its discretion when it relied on the presiding juror's representation that the jury was truly deadlocked. In exercising this considerable discretion, it was not required to conduct a more detailed inquiry on the record. *See Barnes*, 85 Wn. App. at 657.

¶23 While [\*16] it is true the court never expressly declared a mistrial or made oral findings before discharging the jury, "the trial court was not required to expressly find 'manifest necessity.' it is clear that the record must adequately disclose some basis upon which the court determines that the jury necessarily must be discharged." *State ex rel. Charles v. Bellingham Mun. Court*, 26 Wn. App. 144, 149, 612 P.2d 427 (1980). But as discussed above, the presiding juror's responses to the court's WPIC 4.70 inquiry provide a sufficient basis on which to discharge the jury. Following discharge, the court also filed its written findings in a "Memorandum of Disposition" that "[d]efendant convicted of Rob[b]ery I and attempt to elude. Jury hung on kidnap charges. Defendant to be held without bail." Youngblood and his counsel signed the disposition order without objection.

¶24 We turn to Youngblood's next contention that "neither [he] nor his attorney gave consent for discharge of the first jury in this case." Appellant's Br. at 22. *CrR 6.10*, discharge of jury, provides, "The jury may be discharged by the court on consent of both parties or when it appears that there is no reasonable probability of their reaching [\*17] agreement." (Emphasis added.) Under this rule, Youngblood's consent to discharge is not required because the presiding juror answered, "No" when the court asked her if there was a reasonable probability of the jury reaching an agreement within a reasonable time. And as discussed above, this is a reasonable basis on which to discharge the jury.

#### *Ineffective Assistance of Counsel*

¶25 Youngblood next argues that his trial counsel was ineffective because "Mr. Youngblood's attorney failed to object when Mr. Rivera testified at the second trial that he was afraid for the safety of his family." Appellant's Br. at 23-24. He claims this evidence prejudiced him because it allowed the jury to speculate that he or a family member "created fear in Mr. Rivera." Appellant's Br. at 28. The State counters that defense counsel first introduced this allegedly prejudicial testimony and that there were tactical reasons for so doing.

¶26 To establish ineffective assistance of counsel, Youngblood must show both deficient performance and resulting prejudice. *\*Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Counsel's performance is deficient if it falls below an objective standard [\*18] of reasonableness based on a consideration of all the circumstances. *State v. Stenson*, 132 Wn.2d 668, 705-06, 940 P.2d 1239 (1997). There is a strong presumption of effective representation. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Matters that go to trial strategy or tactics do not show deficient performance, and Youngblood bears the burden of establishing there were no legitimate strategic or tactical reasons behind his attorney's choices. *State v. Rainey*, 107 Wn. App. 129, 135-36, 28 P.3d 10 (2001). Where a decision not to object to proffered evidence constitutes "a valid tactical decision, [it] cannot provide the basis for an ineffective assistance claim." *State v. Alvarado*, 89 Wn. App. 543, 553, 949 P.2d 831 (1998). To prove prejudice, Youngblood must show that but for counsel's deficient performance, there is a reasonable probability the outcome of the proceedings would have been different. *McFarland*, 127 Wn.2d at 335.

¶27 Youngblood contends his trial counsel was ineffective for failing to object to the witness's testimony about fear elicited on the State's redirect examination.

[THE STATE]: Why were you afraid, Javier?

[RIVERA]: Because in my country, if you [\*19] come to a court like this one, like what I'm doing right now, you risk a lot.

[THE STATE]: What do you mean, Javier?

[RIVERA]: Because you don't know if the person you're testifying against you --

[FEGUSON'S COUNSEL]: Objection.

[RIVERA]: -- they --

[FEGUSON'S COUNSEL]: Foundation. Personal knowledge. What's he testifying from, what somebody told him?

[THE STATE]: Asking him why he --

THE COURT: Why he.

[THE STATE]: -- feels fearful.

THE COURT: Overrule the objection.

[THE STATE]: Thank you.

[THE COURT]: Go ahead.

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

9 RP (May 19, 2009) at 1255-56.

¶28 Although Youngblood's counsel never objected to this evidence, codefendant Ferguson's counsel did object. But the trial court overruled the objection and allowed the witness to explain the basis of his fear. Where a claim of ineffective assistance of counsel rests on trial counsel's failure to object, a defendant must show that [\*20] an objection would likely have been sustained." *State v. Fortun-Cebada*, 158 Wn. App. 158, 172, 241 P.3d 800 (2010). And Youngblood did not assign error to the court's evidence ruling. Here, even if defense counsel had timely objected, Youngblood fails to show the court would have sustained the objection.

9 Our review of the record shows Rivera's fear was highly relevant to explain why his testimony changed about seeing a gun between the first and second trial. And defense counsel used the evidence to undermine the witness's credibility.

#### *Sufficiency of the Evidence--Attempting to Elude*

¶29 Youngblood next argues that insufficient evidence supports his conviction for attempting to elude a police officer based on accomplice liability. The State responds, "The defense took no exceptions to the proposed [jury] instructions," on accomplice liability and any error was invited and "not ... properly preserved for purposes of appeal." Resp't's Br. at 21.

¶30 "In reviewing the sufficiency of the evidence in a criminal case, the question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond [\*21] a reasonable doubt." *State v. Hagler*, 74 Wn. App. 232, 234-35, 872 P.2d 85 (1994). A reviewing court interprets all reasonable inferences from the evidence in favor of the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201. And circumstantial evidence is as probative as direct evidence. *State v. Moles*, 130 Wn. App. 461, 465, 123 P.3d 132 (2005).

¶31 To prove attempting to elude a pursuing police vehicle, the State must prove that the defendant was the "driver of a motor vehicle who willfully fail[ed] or refuse[d] to immediately bring his ... vehicle to a stop and who [drove] his ... vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop ... ." *RCW 46.61.024(1)*. "Attempt to elude," as used in *RCW 46.61.024*, is given its ordinary meaning of "try" to elude and is unrelated to criminal attempt; thus, there is no requirement that the State prove intent to elude. *State v. Gallegos*, 73 Wn. App. 644, 650, 871 P.2d 621 (1994).

¶32 Under [\*22] *RCW 9A 08.020(3)(a)(i)-(ii)*, an accomplice is one who, "[w]ith knowledge that it will promote or facilitate the commission of the crime ... encourages ... or aids" another person in committing a crime. In other words, an accomplice associates himself with the venture and takes some action to help make it successful. *In re Welfare of Wilson*, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979). In particular, the evidence must show that the accomplice aided in the planning or commission of the crime and that he had knowledge of the crime. *State v. Trout*, 125 Wn. App. 403, 410, 105 P.3d 69 (2005). Where criminal liability is predicated on ac-

accomplice liability, the State must prove only that the accomplice had general knowledge of his coparticipant's substantive crime, not that the accomplice had specific knowledge of the elements of the coparticipant's crime. *State v. Rice*, 102 Wn.2d 120, 125, 683 P.2d 199 (1984).

¶33 But mere presence of the defendant, without aiding the principal, despite knowledge of the ongoing criminal activity, is not sufficient to establish accomplice liability. *State v. Parker*, 60 Wn. App. 719, 724-25, 808 P.2d 1241 (1991). Rather, the State must prove that the defendant was [\*23] ready to assist the principal in the crime and that he shared in the criminal intent of the principal, thus "demonstrating a community of unlawful purpose at the time the act was committed." *State v. Castro*, 32 Wn. App. 359, 364, 648 P.2d 483 (1982); see also *State v. Rotunno*, 93 Wn.2d 931, 933, 631 P.2d 951 (1981); *Wilson*, 91 Wn.2d at 491.

¶34 Here, Youngblood asserts that the evidence is insufficient to show that he acted to solicit, command, encourage, or request that the driver (Ferguson) keep going and not stop for the pursuing police. Viewed in the light most favorable to the State, the evidence supports a reasonable inference that Youngblood had knowledge of and aided in the planning of the robbery, the getaway, and the consequent attempt to elude police.

¶35 Witnesses testified that two males robbed Shari's Restaurant. Youngblood was arrested with wadded up dollar bills and rolls of coins in his pockets. Youngblood clearly knew that the idling black town car, driven by Ferguson, was waiting outside to flee after the robbery. After he pocketed the money, he and Fitzpatrick ran out of the restaurant and got into the town car, which Ferguson drove out of the Shari's parking lot toward [\*24] the freeway.

¶36 Once on the freeway, police signaled the town car to stop, but it exited the freeway. One of the three men in the town car threw a handgun and a cap with cut-out eyeholes from the town car driver's side window. Then the town car evaded a police blockade, returned to the freeway without ever stopping, and drove erratically at speeds up to 110 MPH, still failing to stop after a spike strip punctured all of its tires. When the town car finally became stuck on a median, Fitzpatrick, Youngblood, and Ferguson ran on foot from the car and from the police.

¶37 Both Youngblood's actions in the restaurant and Ferguson's actions in driving the getaway town car were actions that in concert helped the robbery "succeed." *State v. Alford*, 25 Wn. App. 661, 666, 611 P.2d 1268 (1980). Youngblood and Ferguson were engaged together, not only in the ongoing robbery, but also in attempt-

ing to avoid detection and capture following the robbery. They worked in concert with a "community of unlawful purpose" from the time of the robbery through their joint attempt to elude police. See *contra Castro*, 32 Wn. App. at 364 (no "community of unlawful purpose," no evidence of shared criminal intent of principal, [\*25] and no accomplice culpability of witness who slept during murder and refused to share proceeds of robbery).

¶38 In addition, evidence of flight is admissible as tending to show guilt. *State v. Bruton*, 66 Wn.2d 111, 112, 401 P.2d 340 (1965). But the evidence must be sufficient to create a reasonable and substantive inference that the defendant's departure from the scene was an instinctive or impulsive reaction to a consciousness of guilt or that the flight was a deliberate effort to evade arrest and prosecution. *Bruton*, 66 Wn.2d at 112-14. Here, Youngblood not only fled from the robbery but also fled from the town car after it stopped. His continuing flight showed his complicity in both the robbery and the getaway, which involved attempting to elude the police. A "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Hugler*, 74 Wn. App. at 234-35.

#### *Statement of Additional Grounds (SAG)*

¶39 Youngblood raises a number of additional arguments in his SAG. He argues that his counsel was ineffective "in failing to request a jury instruction for the lesser-included offense of unlawful imprisonment." SAG at 10 (capitalization omitted). But Youngblood fails [\*26] to articulate any argument for how this allegedly deficient performance prejudiced him. He has thus failed to establish "a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different." *McFarland*, 127 Wn.2d at 335. Relying on *State v. Recuenco*, 163 Wn.2d 428, 437, 180 P.3d 1276 (2008), Youngblood also argues that there was insufficient evidence to support his firearm enhancement because there was no evidence that the gun was operable. But Division Two of this court specifically rejected this argument because the portion of *Recuenco* on which Youngblood relies "was not part of *Recuenco's* holding and is nonbinding dicta." *State v. Raleigh*, 157 Wn. App. 728, 735, 238 P.3d 1211 (2010). Youngblood's remaining arguments are either duplicative of his appellate brief, not supported by the record, without merit, or were not raised at trial.

¶40 We affirm Youngblood's judgment and sentence.

COX and SCHINDLER, II, concur.

20

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

STATE OF WASHINGTON,	)	No. 66637-1-I
	)	
Respondent,	)	MANDATE
	)	
v.	)	Clark County
	)	
SAMUEL EUGENE FERGUSON III	)	Superior Court No. 08-1-00819-3
and	)	
Defendant,	)	
	)	
ALBERT JAMAAL YOUNGBLOOD,	)	
	)	
Appellant.	)	
	)	

FILED  
 2011 NOV -3 PM 12:54  
 SCOTT G. WEBER, CLERK  
 CLARK COUNTY

**THE STATE OF WASHINGTON TO:** The Superior Court of the State of Washington in and for Clark County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on May 31, 2011, became the decision terminating review of this court in the above entitled case on October 21, 2011. An order denying a petition for review was entered in the Supreme Court on September 27, 2011. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

168  
H

c: Peter Tiller  
Camara Banfield  
Hon. John Nichols



**IN TESTIMONY WHEREOF**, I have hereunto set my hand  
and affixed the seal of said Court at Seattle, this 21st day  
of October, 2011.

A handwritten signature in black ink, appearing to read "Richard D. Johnson", is written over the printed name below.

**RICHARD D. JOHNSON**  
Court Administrator/Clerk of the Court of Appeals,  
State of Washington, Division I.

# CLARK COUNTY PROSECUTOR

October 02, 2012 - 1:48 PM

## Transmittal Letter

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Court of Appeals Case Number: 43389-3

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- Reply to Response to Personal Restraint Petition
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