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COURT OF APPEALS  
DIVISION II

2014 JUN 19 PM 1:36

STATE OF WASHINGTON  
No. 44926-9

BY

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

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IN RE PERSONAL RESTRAINT PETITION OF:

BRADLEY PULLEY KILLIAN III.

PETITIONER.

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PETITIONER'S REPLY BRIEF TO STATE'S RESPONSE  
TO PERSONAL RESTRAINT PETITION

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Bradley P. Killian Pro Se  
#966656-J-A-23  
Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay, WA 98326

A. STATEMENT OF FACTS  
IN REPLY

The trial court found Killian guilty of Assault in the Second Degree, Felony Harassment, Misdemeanor Harassment, and Assault in the Fourth Degree, which all stemmed from Domestic Violence incident that occurred over a three day period.

At sentencing the court sentenced Killian to consecutive sentences that violates the double jeopardy clause. As argued in the Personal Restraint Petition the felony harassment should have been vacated because it is consistent with the elements found in the assault conviction.

Also, the court failed to conduct a same criminal conduct analysis on Killian's prior convictions for First Degree Assault, and Assault in the Second Degree, that involved one victim on the same date and same time. By not conducting the required analysis the court improperly propelled Killian's offender score out of the zero to nine points scale.

B. ARGUMENT IN REPLY

As predicted the State has not provided no meaningful argument or case law to support its position that double jeopardy did not attach to Killian's convictions.

First and foremost, for the State to claim that Killian has tossed "naked castings into the constitutional sea" is nonsensical for the following reason:

1.

REPLY TO STATE'S RESPONSE

Similar to Killian's case Johnson, was charged with five criminal acts in five separate counts. 1) count of Second Degree Assault by Strangulation, 1) count of Second Degree Assault by intent of insulting another, 1) count of Second Degree Assault with a Deadly Weapon, 1) count of **Felony Harassment**, and 1) count of Unlawful Imprisonment, which all occurred over a three day period. Yet the court vacated the **felony harassment** on double jeopardy grounds. State v. Johnson, 172 Wn.App 112, 297 P.3d 710 (Div 1 2012).

The same should have occurred here but the court failed to adhere to what the statute mandates. See State v. Leming, 133 Wn.App. 875, 138 P.3d 1095 (Div 2 2006)( Defendant was unlawfully placed in double jeopardy when the jury convicted him of both felony harassment and second degree assault because the felony harassment conviction was incidental to the second degree conviction, to prove felony harassment, the State had to prove that defendant threatened to kill victim and (2) that she feared he would carry out the threat, and to prove second degree assault, the State had to prove that defendant assaulted victim by intending to place her in fear that he would carry out his threat to kill her.)

The above is the exact reasoning Killian applied to his argument, however, the State would like this Court to overlook this courts previous decision in Leming, and argue that the reason why the elements of harassment, felony harassment, assault 4 and second

degree assault are not consistent is the acts are separate and distinct involving different facts. State's Response at pages 6-7.

As Killian have shown the Leming, and Johnson, courts highly disagree, otherwise the courts would have accepted the State's arguments and not granted the double jeopardy claim. Because Johnson, and Leming, controls this court should conclude that Killian's conviction's of felony harassment, harassment, and assault 4 violate the double jeopardy clause of the United States and Washington State Constitutions.

Further, the State also contends that because the SRA do not score misdemeanor convictions Killian has no standing to argue double jeopardy or offender score calculations. State's Response at page 10.

This contention is also incorrect for the following; (Avoidance of Double Jeopardy prohibitions of multiple punishments will be satisfied only where each offense charged contains at least one element that differs from the other, as charged, here malicious harassment and simple assault 4 fail the test) State v. Lynch, 93 Wn.App. 716, 970 P.2d 769 (1999). Thus Killian's conviction's for misdemeanor harassment and assault 4 should also be vacated on double jeopardy grounds.

Same Evidence Test

When a defendant is convicted for violating one statute

multiple times, the same evidence test will never be satisfied. As previously mentioned, the same evidence test asks whether the convicted offenses are the same in law and in fact. Two convictions for violating the same statute will always be the same in law, but they will never be the same in fact. In charging two violations of the same statute, the prosecutor will always attempt to distinguish the two charges by dividing the evidence supporting each charge into distinct segments. As is the case here.

See Michelle A. Leslie. Note, State v. Grayson; Clouding the Already Murky Waters of Unit of Prosecution Analysis in Wisconsin 1993 Wis.L.Rev. 811, 824 (Making this same point to illustrate that the "identical in law and in fact" analysis is not useful in the unit of prosecution context). See also State v. Adel, 136 Wn.2d 629, 965 P.2d 1072). Also State v. O'Cain, 169 Wn.App. 228, 279 P.3d 926 (2012)(Convicted of assault in the second degree, felony harassment, tampering with a witness and assault in the fourth degree. Felony Harassment vacated on remand).

#### Same Criminal Conduct

In 1996 Killian, was convicted of Assault in the First Degree, and Assault in the Second Degree, which involved the same victim, and at the same place and time. Cause Number 96-1-00387-7. See attached Plea Agreement App. A.

While the judgment and sentence do not state that the

the crimes encompassed the same criminal conduct for scoring as one offense, it is clear that the crimes were of the same criminal conduct where the court ran the convictions concurrently. [I]f this was not the case the present court surely would have struck Killian out as a Persistent Offender because the Prosecutor would have contended that the 96 convictions were separate convictions. See RP 8/2/2012, Pg. 3-4 attached as App. C. to the PRP showing the court and the State engaged in the discussion of striking Killian out pursuant to the 96 convictions.

The issue presented in the personal restraint petition is whether the current sentencing court abused its discretion when it did not conduct a same criminal conduct analysis.

Former RCW 9.94A.360, Provides; prior adult offenses which were found under RCW 9.94A.400 to encompass the same criminal conduct shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently whether those offenses shall be counted as one offense or as separate offenses, and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. See RCW 9.94A.589(1)(a)

Even [i]f the court did not find that the 1996 convictions were of same criminal conduct, by failing to check the box on the

judgment and sentence despite the State's contention to the contrary, the current sentencing court was authorized to exercise its discretion regardless of whether it found that the offenses constituted the same criminal conduct. Indeed, the sentencing court recognized that the prior convictions constituted one offense, for determining Killian's status as a persistent offender.

Division Two of the Court of Appeals also analyzed former RCW 9.94A.360 recodified as RCW 9.94A.589 and reached a result consistent with Killian's argument. See In re Holmes, 69 Wn.App. 282, 848 P.2d 754 (When a sentencing court in an earlier proceeding failed to determine whether two (2) or more offenses encompassed the same criminal conduct under RCW 9.94A.360, a sentencing court in a later proceeding must make that determination before it can compute the defendant's offender score and sentence the defendant on the present offense).

Here, it is clear in this case that the sentencing court of Pierce County failed to follow case law, and in its disregard for the appeals court opinion it directed Killian to take the issue up with this court, when Killian adamantly objected to the court's abuse of discretion, when it erroneously miscalculated his points. See Killian's objection attached to PRP App. C. RP 5/17/ 2013 Pg. 18-19, RP 4/19/2013 Pg. 1-4.

See State v. Lara, 66 Wn.App.at 931; State v. Hartley,

41 Wn.App. at 669; State v. Pittman, 54 Wn.App. at 64; State v. McGraw, 127 Wn.2d 281, 898 P.2d 838 (1995); State v. Bolar, 129 Wn.2d 362, 917 P.2d 125 (1996)(the trial court miscalculated the defendant's offender score by counting four (4) prior convictions for which sentences were served concurrently as separate offenses).

Because the trial court herein imposed an erroneous sentence and since the error has now been discovered, the court has both the power and the duty to correct it. Here, due to double jeopardy attaching to the current convictions, Killian is entitled to relief of vacating the felony harassment, misdemeanor harassment, and fourth degree assault, which would then result in recalculating his offender score. Also this court should remand for re-sentencing to determine "same criminal conduct" of Killian's prior 1996 convictions. Thus Killian is entitled to relief under 16.4(c)(2). See In re Carle, 93 Wn.2d at 31, 604 P.2d 1293 (1980).

Finally

[I]f Killian's argument was misplaced as the State contends it was in an effort to make the point of judicial error by the trial court, as Killian have shown above. Furthermore, "Pro Se litigants pleadings are to be construed liberally and held to less stringent standards than formal pleadings drafted by lawyers: if the court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal

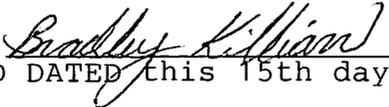
authority, confusion of legal theories, poor syntax and sentence construction, or litigants unfamiliarity with pleading requirements." Hains v. Kerner, 404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594 (1972); Boag v. MacDougall, 454 U.S. 364, 70 L.Ed.2d 551, 102 S.Ct. 700 (1982); U.S. Sanchez, 88 F.3d 1243 (D.C. Cir. 1996)("Court's will go to particular pains to protect Pro Se litigants against consequences of technical errors if injustice would otherwise result.") See also Tally v. Lane, 13 F.3d 1031 (7th Cir. 1994).

C. CONCLUSION AND  
PRAYER FOR RELIEF

Because Killian has provided this court with proof of his prior convictions involving the same victim, where the crime occurred on the same date and time, the State's argument fails on page 12. of its response. And because Killian has provided this court with the correct case law on double jeopardy and how the cases are similar to Killian's case, this court should reject the State's argument that double jeopardy does not attach when in fact it does.

Moreover, this Court should grant Killian's PRP and remand back to Pierce County Superior Court to be resentenced to the correct offender score of 3 points respectably.

Respectfully submitted,

  
SIGNED AND DATED this 15th day of June, 2014.

APP. A.

APPENDIX A. PLEA AGREEMENT AND JUDGMENT AND SENTENCE

3 15 1492 0097  
SUPERIOR COURT OF WASHINGTON  
FOR PIERCE COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

vs.

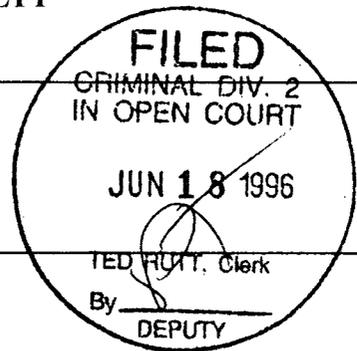
Bradley Killian

Defendant.

NO. 96-1-00387-7

STATEMENT OF DEFENDANT ON  
PLEA OF GUILTY

PN \_\_\_\_\_



JUN 18 1996

- 1. My true name is Bradley Killian
- 2. My age is 26
- 3. I went through the 12<sup>th</sup> grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:  
I have the right to be represented by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Melanie MacDonald & Steven Gant

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

- (a) The right to a speedy trial 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 have witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty.
- (f) The right to appeal a determination of guilt after a trial.

6. I am charged with the following: \_\_\_\_\_

Count I Assault 1<sup>o</sup>

Elements: on January 27, 1996 in Pierce Co did unlawfully & with intent to inflict great bodily harm, assault Melissa Potts with a deadly weapon

Maximum Penalty life 50,000 Standard Range 120-160 MRS DOC

Coun# II Assault 2°

Elements: on Jan. 27, 1996 did unlawfully assault  
Melissa Potts with a deadly weapon

Maximum Penalty 10 yrs \$20,000 Standard Range 13-17 mos.

Count III

Elements:

Maximum Penalty Standard Range

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

- (a) The standard sentencing range is based on the crime I am pleading guilty to and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes juvenile court convictions as follows: convictions for sex offenses, any class A juvenile felony only if I was 15 or older at the time the juvenile offense was committed, any class B and C juvenile felony convictions only if I was 15 or older at the time the juvenile offense was committed and I was less than 23 years old when I committed the crime to which I am now pleading guilty.
- (b) The prosecuting attorney's statement of my criminal history for sentencing is as follows:

1990 WPC8

Unless I attach a different statement, I agree that the prosecuting attorney's statement is correct and complete. 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.

- (c) 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 crime is binding on me. I cannot change my mind even if additional criminal history is discovered and even though the standard sentencing range and the prosecuting attorney's recommendation increase.

(d) In addition to sentencing me to confinement within the standard range, the judge will order me to pay \$100 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration up to \$50 per day. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(e) The prosecuting attorney will make the following recommendations to the judge:

160 mos DOC credit 133 days served  
(Defense to argue for low end) (120)  
17 mos Ct II concurrent

\$ 100,000

Rest. LOC, No Use/Possession of Alcohol, Drugs or firearms  
No contact w/ Melissa Potts

24 mos. Comm. placement w/ ~~Maddie~~ 5 standard conditions  
Defense shall not argue "same course of conduct"

[ ] The prosecuting attorney will make the recommendations set forth in the plea agreement which is incorporated herein by reference.

(f) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard sentencing range unless the judge finds substantial and compelling reasons not to do so. If the judge goes above or below the standard sentence range, either I or the State can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence.

(g) I understand that 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.

8. IF ANY OF THE FOLLOWING BOXED PARAGRAPHS DO NOT APPLY THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

<p>(a) 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(20). This sentence could include as much as 90 days' confinement 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, and to maintain law abiding behavior.</p>	
<p>(b) I am being sentenced for two or more violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.</p>	
<p>(c) The crime of <u>Assault 1<sup>o</sup></u> has a mandatory minimum sentence of at least <u>5</u> years of total confinement. The law does not allow any reduction of this sentence.</p>	

(d) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge.	
(e) In addition to confinement, the judge will sentence me to community placement for at least one year. During the period of community placement I will be under the supervision of the Department of Corrections and I will have restrictions placed on my activities.	ly
(f) Because this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis.	u
(g) Because this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.	
(h) Because this crime involves a sex offense, I will be required to register with the sheriff of the county of the state of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release. If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 10 days of establishing my new residence. If I change my residence to a new county within this state, I must register with the sheriff of the new county and notify the sheriff of the county where I last registered, both within 10 days of establishing my new residence.	

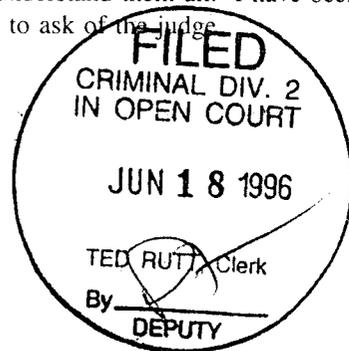
9. I plead guilty to the crime(s) of Assault 1° ; Assault 2°  
 as charged in the amended information. I have received a copy of the information.

- 10. I make this plea freely and voluntarily.
- 11. No one has threatened any harm to me or to any other person to cause me to enter this plea.
- 12. No person has made any promises of any kind to cause me to enter this plea except as set forth in this statement.
- 13. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement:

On January 27, 1996 in Pierce Co. I  
came home after drinking. I was drunk and  
didn't feel like arguing. we got into a fight and  
I had a gun on me. I tried to take the gun out and set  
it down and it went off. But I have reviewed the evidence  
and believe if this went to trial I could be found  
guilty and I plead guilty to take advantage of the  
State's recommendation.

X Bradley Lillian

- 14. Pursuant to RCW 10.73.090 and 10.73.100, I understand that my right to file any kind of post sentence challenge to the conviction or the sentence may be limited to one year.
- 15. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. 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 of the judge.



Bradley Killian  
Defendant

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

[Signature] 16802  
Attorney for Defendant

[Signature]  
Deputy Prosecuting Attorney

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:

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

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: June 18, 1996

[Signature]  
Judge  
**DONALD H. THOMPSON**

\*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 this entire document 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 this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Interpreter

FILED  
IN COUNTY CLERK'S OFFICE  
A.M. JAN 29 1996 P.M.  
PIERCE COUNTY, WASHINGTON  
TED F. T. COUNTY CLERK  
BY DEPUTY

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

STATE OF WASHINGTON,  
Plaintiff,  
vs.  
BRADLEY PULLEY KILLIAN,  
Defendant.

CAUSE NO. 96 1 00387 7  
INFORMATION

DOB: 10-03-69 B/M  
SS#: 536-74-8629 SID#: WA14280909 DOL#: UNKNOWN

I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse BRADLEY PULLEY KILLIAN of the crime of ASSAULT IN THE FIRST DEGREE, committed as follows:

That BRADLEY PULLEY KILLIAN, in Pierce County, Washington, on or about the 27th day of January, 1996, did unlawfully and feloniously with intent to inflict great bodily harm, assault Melissa Potts with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death, contrary to RCW 9A.36.011(1)(a), that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370, and against the peace and dignity of the State of Washington.

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COUNT II

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse BRADLEY PULLEY KILLIAN of the crime of ASSAULT IN THE SECOND DEGREE, a crime of the same or similar character, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That BRADLEY PULLEY KILLIAN, in Pierce County, Washington, on or about the 27th day of January, 1996, did unlawfully and feloniously assault Melissa Potts with a deadly weapon, to-wit: handgun, contrary to RCW 9A.36.021(1)(c), that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370, and against the peace and dignity of the State of Washington.

COUNT III

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse BRADLEY PULLEY KILLIAN of the crime of ASSAULT IN THE FOURTH DEGREE, a crime of the same or similar character, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That BRADLEY PULLEY KILLIAN, in Pierce County, Washington, on or about the 27th day of January, 1996, did unlawfully assault Melissa

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Potts, contrary to RCW 9A.36.041(1), and against the peace and dignity of the State of Washington.

COUNT IV

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse BRADLEY PULLEY KILLIAN of the crime of ASSAULT IN THE FOURTH DEGREE, a crime of the same or similar character, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That BRADLEY PULLEY KILLIAN, in Pierce County, Washington, on or about the 27th day of January, 1996, did unlawfully assault Melissa Potts, contrary to RCW 9A.36.041(1), and against the peace and dignity of the State of Washington.

DATED this 29th day of January, 1996.

City Case  
WA02703

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

sg

By:   
W. STEPHEN GREGORICH  
Deputy Prosecuting Attorney  
WSB #5642

**FILED**  
IN COUNTY CLERK'S OFFICE

A.M. JUN 18 1996 P.M.

MADE COUNTY WAS WASH  
THE COUNTY CLERK  
BY \_\_\_\_\_ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JUN 18 1996

STATE OF WASHINGTON,  
Plaintiff,

CAUSE NO. 96-1-00387-7  
STATEMENT OF DEFENDANT ON  
PLEA OF GUILT ADDENDUM

vs.

Bradley Pulley Killian  
Defendant.

I have been informed and fully understand that:

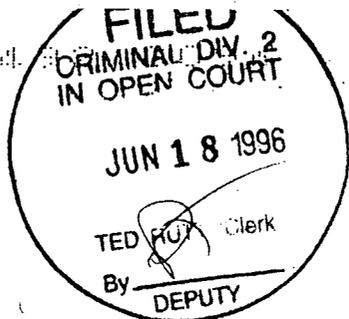
[DEFENDANT TO INITIAL BOXES BELOW]

[  ] This offense is a *most serious offense* as defined by RCW 9.94A.030(21), 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.

[  ] 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. RCW 9.41.047(1)

6/18/96  
DATE  
Kapree  
DEPUTY PROSECUTING ATTORNEY

Bradley P. Killian  
DEFENDANT  
M #16802  
ATTORNEY FOR DEFENDANT



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

STATE OF WASHINGTON, )  
)  
Plaintiff, )  
)  
vs. )  
)  
Bradley Palley Killian )  
)  
)  
Defendant. )

JUN 18 1996

NO. 96-1-00387-7

PROSECUTOR'S STATEMENT  
REGARDING AMENDED INFORMATION

The State requests the Court to consider accepting a plea to the filing of an Amended Information pursuant to RCW 9.94A.090 for the following reasons: The amended information dismisses counts III + IV which are gross misdemeanors (both assault 4°); it also eliminates the deadly weapon enhancement (firearm). While it is clear that the victim was shot by a gun the defense has indicated an intent to argue diminished capacity (intoxication & psychological) and "same course of conduct" argument if the case were tried. If they were successful with either argument the def's sentencing range would be significantly reduced. The state will be asking for the high end (160 mos.) the def. the low end (20 mos). The def. shall not argue "same course of conduct" under this disposition.

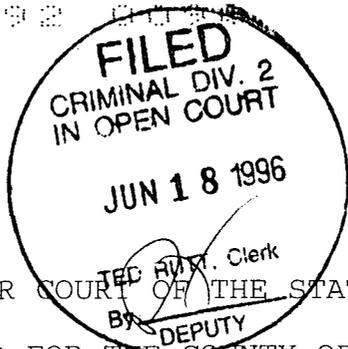
There is no victim \_\_\_\_\_.

The victim has been notified of the amended information.

The victim has been not notified of the amended information

Date 6-17-96

[Signature]  
DEPUTY PROSECUTING ATTORNEY



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

JUN 18 1996

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
BRADLEY PULLEY KILLIAN,  
  
Defendant.

CAUSE NO. 96-1-00387-7  
  
AMENDED INFORMATION

I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse BRADLEY PULLEY KILLIAN of the crime of ASSAULT IN THE FIRST DEGREE, committed as follows:

That BRADLEY PULLEY KILLIAN, in Pierce County, Washington, on or about the 27th day of January, 1996, did unlawfully and feloniously with intent to inflict great bodily harm, assault Melissa Potts with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death, contrary to RCW 9A.36.011(1)(a), and against the peace and dignity of the State of Washington.

AND IN THE ALTERNATIVE

I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse BRADLEY PULLEY KILLIAN of the crime of ASSAULT IN THE FIRST DEGREE, committed as follows:

That BRADLEY PULLEY KILLIAN, in Pierce County, Washington, on or about the 27th day of January, 1996, did unlawfully and feloniously

ORIGINAL

with intent to inflict great bodily harm, assault Melissa Potts and  
inflict great bodily harm, contrary to RCW 9A.36.011(1)(c), and  
against the peace and dignity of the State of Washington.

COUNT II

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do  
accuse BRADLEY PULLEY KILLIAN of the crime of ASSAULT IN THE SECOND  
DEGREE, a crime of the same or similar character, and/or so closely  
connected in respect to time, place and occasion that it would be  
difficult to separate proof of one charge from proof of the others,  
committed as follows:

That BRADLEY PULLEY KILLIAN, in Pierce County, Washington, on or  
about the 27th day of January, 1996, did unlawfully and feloniously  
under circumstances not amounting to assault in the first degree,  
assault Melissa Potts with a deadly weapon, to-wit: handgun, contrary  
to RCW 9A.36.021(1)(c), and against the peace and dignity of the State  
of Washington.

DATED this 18<sup>th</sup> day of June, 1996.

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

jld

By: Kawyne A. Lund  
KAWYNE A. LUND  
Deputy Prosecuting Attorney  
WSB #19614



96 1 00387 7

1  
2 that she shot herself.

3 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
4 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

5 DATED: January 29, 1996.  
6 PLACE: TACOMA, WASHINGTON

7   
8 W. STEPHEN GREGORICH, WSB# 5642

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AFFIDAVIT FOR DETERMINATION  
OF PROBABLE CAUSE - 2

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

STATE OF WASHINGTON,

Plaintiff,

vs.

BRADLEY PULLEY KILLIAN,

Defendant.

DOB: 10/30/69  
SID NO.: WA14280909  
LOCAL ID:

CAUSE NO. 96-1-00387-7

JUDGMENT AND SENTENCE  
(FELONY/OVER ONE YEAR)

JUL 30 1996

I. HEARING

- 1.1 A sentencing hearing in this case was held on 7/30/96.
- 1.2 The defendant, the defendant's lawyer, MELANIE MacDONALD, and the deputy prosecuting attorney, KAWYNE A. LUND, were present.

II. FINDINGS

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

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on June 18, 1996 by  
 plea     jury-verdict     bench trial of:

Count No.: I  
 Crime: ASSAULT IN THE FIRST DEGREE, Charge Code: (E23/E25)  
 RCW: 9A.36.011(1)(a) and 9A.36.011(1)(c)  
 Date of Crime: 1/27/96  
 Incident No.: TPD 96 027 0152

Count No.: II  
 Crime: ASSAULT IN THE SECOND DEGREE, Charge Code: (E28)  
 RCW: 9A.36.021(1)(c)  
 Date of Crime: 1/27/96  
 Incident No.: SAME

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

JUDGMENT AND SENTENCE  
FELONY / OVER ONE YEAR

ENTERED  
JUDGMENT #

96-9-06471-9

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

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

<u>CRIME</u>	<u>DATE OF SENTENCING</u>	<u>SENTENCING COUNTY/STATE</u>	<u>DATE OF CRIME</u>	<u>ADULT OR JUV.</u>	<u>CRIME TYPE</u>	<u>CRIME ENHANCEMENT</u>
ASLT 2	OTHER CURRENT			ADULT		
UPCS	5/3/90 (PROB. VIO. 7/92)		3/30/90	ADULT	NV	

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

2.3 SENTENCING DATA:

	<u>Offender Score</u>	<u>Serious Level</u>	<u>Standard Range(SR)</u>	<u>Enhancement</u>	<u>Maximum Term</u>
Count I:	3	XII	120-160 mos		LIFE
Count II:	3	IV	13-17 mos		10yrs/\$20,000

- Additional current offense sentencing data is attached in Appendix 2.3.

JUDGMENT AND SENTENCE  
 FELONY / OVER ONE YEAR - 2

2.4 EXCEPTIONAL SENTENCE:

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

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

2.5 RECOMMENDED AGREEMENTS:

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

HIGH END 160 MOS COUNT I CONCURRENT WITH 17 MOS COUNT II

2.6 RESTITUTION:

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

[X] Restitution should be ordered. A hearing is set for 9/24/96 @ 9:00 AM - Bejn

[ ] Extraordinary circumstances exist that make restitution inappropriate. The extraordinary circumstances are set forth in Appendix 2.5. (C. Graves present) J. Thompson

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

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

- [ ] no legal financial obligations.
[X] the following legal financial obligations:
[X] crime victim's compensation fees.

JUDGMENT AND SENTENCE
FELONY / OVER ONE YEAR - 3

FINGERPRINTS

Right Hand  
Fingerprint(s) of: BRADLEY PULLEY KILLIAN, Cause #96-1-00387-7

Attested by: \_\_\_\_\_ CLERK

By: DEPUTY CLERK \_\_\_\_\_ Date: \_\_\_\_\_

CERTIFICATE

OFFENDER IDENTIFICATION

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

State I.D. #WA14280909

Date of Birth 10/30/69

Sex MALE

Race BLACK

Dated: July 30, 1996

ORI \_\_\_\_\_

Richard Krook  
CLERK

OCA \_\_\_\_\_

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

OIN \_\_\_\_\_

DOA \_\_\_\_\_

