COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

2014 AUG 28 PM 1:20

STATE OF WASHINGTON

STATE OF WASHINGTON
BY DEPUTY

STATE OF WASHINGTON Respondent, v. HARVEY MADDUX (your name) Appellant.	)	No. 46108-1-II STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW FROM DEFENDANTS MOTIONS AND THE COURTS RECORD AND UNDER RAP 2.5 A(3)

I, HARVEY MADDUX, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

THE INFORMATION CHARGING THE DEFENDANT FAILED TO SET OUT FACTS SUFFICIENT TO SHOW THE SPECIFIC INTENT ELEMENT FOR THE REASONABLE APPREHENSION FORM OF ASSAULT. THE DEFENDANT WAS THUS UNAWARE OF THE ELEMENTS, ACTS AND REQUISITE STATE OF MIND THAT WOULD HAVE HAD TO BE PERFORMED TO CONSTITUTE THE ALLEGED CRIME.

CONTINUED: SEE ATTACHED

*STATEMENTS 1+2 ARE CONTINUED. THE OTHER STATEMENTS FOLLOW CHRONOLOGICALLY.

Additional Ground 2

DEFENDANTS ATTORNEY NEGLECTED TO INFORM HIM OF THE ACTS, ELEMENTS AND REQUISITE STATE OF MIND THAT HAD TO BE PERFORMED TO CONSTITUTE THE CRIME. ATTORNEY DIDNT SEEM TO HAVE THE INTEREST OR PATIENCE TO HEAR THE DEFENDANT THROUGH. ATTORNEY CONVINCED DEFENDANT THAT A WEAPON AND APPREHENSION WAS ALL THAT WAS NEEDED FOR A CONVICTION. THERE WAS NO LAW LIBRARY OR LEGAL INFORMATION SYSTEM AVAILABLE AVAILABLE TO VERIFY OR AUTHENTICATE THE INFORMATION, WHICH ENDED UP BEING FALSE.

If there are additional grounds, a brief summary is attached to this statement. CONTINUED: SEE ATTACHED

Date: 8-26-14

Signature: Harvey Maddux

Form 23

#1 CONTINUED:

"IN A PROSECUTION FOR FIRST DEGREE ASSAULT UNDER RCW 9A.36.011 THE STATE MUST PROVE BOTH, (1) THE STATUTORY MENS REA OF INTENT TO INFLICT GREAT BODILY HARM AND (2) THE MENTAL STATE FOR THE APPLICABLE COMMON LAW MEANS OF COMMITTING ASSAULT" 'THE MENTAL STATE FOR THE REASONABLE APPREHENSION FORM OF ASSAULT IS INTENT TO CREATE APPREHENSION OF HARM'"

STATE V. ELMI 138 WN APP 306 (2007)

"A DEFENDANT DOES NOT UNDERSTAND THE NATURE OF THE CHARGE UNLESS AT A MINIMUM, HE IS AWARE OF THE ACTS AND MENTAL STATE WHICH CONSTITUTES A CRIME."

STATE V. RIDGLEY 141 WN APP 771 (2007)

"THE ACCUSED, IN CRIMINAL PROSECUTIONS HAS A CONSTITUTIONAL RIGHT TO BE APPRISED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM, WASH CONST., ART 1 § 22. THIS CAN ONLY BE MADE KNOWN BY SETTING FORTH IN THE INDICTMENT OR INFORMATION EVERY FACT CONSTITUTING AN ELEMENT OF THE OFFENSE CHARGED. THIS DOCTRINE IS ELEMENTRY AND OF UNIVERSAL APPLICATION AND IS FOUNDED ON

THE PLAINEST PRINCIPLE OF JUSTICE."

STATE V. PETERSON 133 WN 2d 885, 888 (1997)

THE COURT STATES THAT 'THE MENTAL STATE FOR THE REASONABLE APPREHENSION FORM OF ASSAULT' IS AN ELEMENT OF THE DEFENDANTS CHARGE THAT WOULD HAVE TO BE PROVED FOR A CONVICTION BUT, IT'S NOT MENTIONED IN THE INFORMATION. THIS MAY NOT BE THE CASE REGARDING AN ASSAULT IN WHICH SOMEONE WAS INJURED BUT IT IS THE CASE IN THE CASE AT BAR.

#2 CONTINUED

THE DEFENDANT WAS PREJUDICED BY HIS ATTORNEYS PERFORMANCE BECAUSE, HAD IT NOT BEEN FOR HIS COUNSELS PERFORMANCE, HE WOULD HAVE DEMANDED A JURY TRIAL.

"DURING PLEA BARGAINING, COUNSEL HAS A DUTY TO ASSIST THE DEFENDANT 'ACTUALLY AND SUBSTANTIALLY IN DETERMING TO PLEA.'"

STATE V. STOWE 71 WN APP 182 (1993)

PLEASE NOTE THAT THE INFORMATION DEFENDANTS FIRST COUNSEL DOCUMENTED ON RECORD IS COMMUNICATION AFTER THE FACT. THERE ISN'T

ANY RELEVANT DOCUMENTATION OF COMMUNICATION BEFORE THE FACT BECAUSE THERE WASNT ANY. COMMUNICATION BEFORE THE FACT WOULD BE THE ONLY RELEVANT COMMUNICATION TO AUTHENTICATE ACTUAL AND SUBSTANTIAL ASSISTANCE IN DETERMINING TO PLEA. HAD THERE OF BEEN SOME, IT WOULD HAVE BEEN ENTERED.

MISSING PAGES.

#3

THERE WAS NO WRITTEN STATEMENT ACCORDING TO CrR 4.2(g) TO SATISFY THE REQUIREMENT OF CrR4.2(d) THAT A TRIAL COURT DETERMINE THAT A DEFENDANTS GUILTY PLEA IS MADE WITH AN UNDERSTANDING OF THE NATURE OF THE CHARGE. ELEMENTS OF SECOND DEGREE ASSAULT WERE NOT SPECIFICALLY ENUMERATED ON THE RECORD WHEN THE PLEA WAS MADE. THERE WAS NO INQUIRY BY THE JUDGE REGARDING THE ACTS OR REQUISITE STATE OF MIND THAT WOULD HAVE HAD TO OF BEEN PRESENT TO CONSTITUTE THE CRIME.

#4

ABUSE OF DISCRETION; RCW 9.94A.411(1)(H)(I) GIVES A PROSECUTOR THE DISCRETION NOT TO CHARGE AN ACCUSED IN AN ASSAULT CHARGE

WHERE NO ONE IS HURT. THE CASE AT BAR DEALS WITH AN INCIDENT IN WHICH THERE IS NO VERBAL THREAT, NO ONE WAS HURT, THE WEAPON IN QUESTION WAS A KNIFE WITH A BLADE 3 INCHES OR LESS AND THE DEFENDANT COULDN'T TOUCH THE VICTOM UNDER THE CIRCUMSTANCES BECAUSE THE VICTOM WAS LOCKED IN A TRUCK WITH THE ABILITY TO DRIVE OFF AND DID IN FACT DRIVE OFF.

"THE PROSECUTORS OPTIONS ARE GOVERNED BY HIS ABILITY TO MEET REQUIREMENTS OF PROOF RATHER THAN SOLELY HIS OWN DISCRETION"

STATE V. CANADY 69 WN 2d 886

EVEN IN LIGHT OF THIS, THE PROSECUTOR USED HIS DISCRETION TO CHARGE THE DEFENDANT WITH AN EXTREME AND HENIOUS OFFENSE WHICH INCLUDES THE SPECIFIC INTENT OF KILLING A HUMAN BEING AND COMPARABLE TO ATTEMPTED MURDER.

"FIRST DEGREE ASSAULT REQUIRES SPECIFIC INTENT TO KILL A HUMAN BEING"

STATE V. LOWHER 22 WN 2d 497

NEWER LANGUAGE SOUNDS CLEANER BUT IT

MEANS THE SAME THING

"THE STATUTORY MENS REA OF INTENT TO INFLICT GREAT BODILY HARM."

STATE V. ELMI 138 WN APP 306, 315 (2007)

"THE TERM "GREAT BODILY HARM" IS DEFINED AS, BODILY INJURY WHICH CREATES A PROBABILITY OF DEATH..."

RCW 9A.04.110

#5

EQUAL PROTECTION; RCW. 9.94A.411(1)(H)(I), ALLOWS THE PROSECUTER TO CHARGE DEFENDANTS THAT ARE SIMILARLY SITUATED UNDER THE SAME CIRCUMSTANCES, WITH NOTHING, A MISDEMEANOR OR A FELONY. THIS RCW. IN CONJUNCTION WITH THE CASE AT BAR IS VIOLATIVE OF THE DEFENDANTS EQUAL PROTECTION RIGHTS. THE FOURTEENTH AMENDMENT PROHIBITS THE STATE TO:

"DENY ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS"

U.S. AMEND XIV

"ALL PERSONS SIMILARLY SITUATED SHOULD BE

TREATED ALIKE"
CITY OF CLABURNE, TEX V. CLABURNE LIVING CENTER
473 U.S. 432, 439 (1985)

"A STATUTE WHICH PRESCRIBES DIFFERENT PUNISHMENTS OR DIFFERENT DEGREES OF PUNISHMENT FOR SAME ACT COMMITTED UNDER SAME CIRCUMSTANCES BY PERSONS IN LIKE SITUATIONS IS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION AND OF THE PROVISION OF THE STATE CONSTITUTION RELATING TO PRIVILEGES AND IMMUNITIES." . . . 'THE MAJORITY SAYS: 'THIS SEEMS TO BE A PRETTY CLEAR INDICATION THAT THE LEGISLATURE THEREBY INTENDED TO INVEST IN PROSECUTING OFFICIALS THE DISCRETION TO CHARGE AS FOR EITHER A GROSS MISDEMEANOR OR A FELONY. THE RESULT, AN UNCONSTITUTIONAL ACT.' . . ."

OLSEN V. DELMORE 48 WN 2d 545, 552 (1958)

#6

AN UNFOUNDED PRESUMPTION WAS MADE REGARDING THE STATUTORY ELEMENT OF SPECIFIC INTENT WHICH IS UNCONSTITUTIONAL AND CAN BE RAISED THE FIRST TIME ON APPEAL HOWEVER, A PRESUMPTION FOR SPECIFIC INTENT WAS DISCUSSED IN

DEFENDANTS 4.2 MOTION.

THE STATE HAS CONVICTED THE DEFENDANT ON AN ACT THAT DIDNT HURT ANYONE WHILE ACCUSING THE DEFENDANT OF HAVING A DEADLY WEAPON HE DIDNT HAVE UNDER CIRCUMSTANCES WHERE THE DEFENDANT COULDNT EVEN TOUCH THE VICTOM AND MADE NO VERBAL THREAT AND FROM THIS SCENERIO CAME UP WITH A PRESUMPTION FOR THE SPECIFIC INTENT NEEDED FOR FIRST OR SECOND DEGREE ASSAULT.

"

CRIMINAL STATUTORY PRESUMPTION MUST BE REGARDED AS "IRRATIONAL" OR "ARBITRARY" AND HENCE UNCONSTITUTIONAL UNLESS IT CAN AT LEAST BE SAID WITH SUBSTANTIAL ASSURANCE THAT PRESUMED FACT IS MORE LIKELY THAN NOT TO FLOW FROM PROVED FACT ON WHICH IT IS MADE TO DEPEND.

LEARY V. U.S. 89 S.CT. 1532 (1969)

THE PROVEN FACT THAT WOULD GIVE SUBSTANTIAL ASSURANCE HAS TO BE MORE THAN THE ACT ITSELF. THE FACT HAS TO PROVE THAT THE ACT WAS DONE WITH SPECIFIC INTENT.

"

WHERE THE INTENT WHICH IS AN ELEMENT OF THE CRIME RELATES TO A GREATER CRIME

THAN THAT ACCOMPLISHED, THE INTENT IS NOT PRESUMED FROM THE ACT DONE. AN ASSAULT IN THE FIRST DEGREE IS A CRIME WHICH CONSISTS OF AN ACT COMBINED WITH A SPECIFIC INTENT, HENCE THE INTENT IS JUST AS MUCH AN ELEMENT OF THE CRIME AS IS THE ACT OF ASSAULT. THE APPLICABLE RULE IS THAT, WHERE A SPECIFIC INTENT IS AN ELEMENT OF A CRIME, THE SPECIFIC INTENT MUST BE PROVED AS AN INDEPENDANT FACT AND CANNOT BE PRESUMED FROM THE COMMISSION OF THE UNLAWFUL ACT."

STATE V. LOWTHER 22 WN 2d 497 (1945)

SECOND DEGREE ASSAULT IS THE SAME

"THE CRIME OF SECOND DEGREE ASSAULT INCLUDES SPECIFIC INTENT."

STATE V. WELSH 8 WN. APP 719 (1973)
STATE V. GOMEZ 3 WN. APP 763 (1970)

"SPECIFIC INTENT IS DEFINED AS INTENT TO PRODUCE A SPECIFIC RESULT, AS OPPOSED TO INTENT TO DO THE PHYSICAL ACT THAT PRODUCES THE RESULT..."

STATE V. ELMI 166. WN 2d 209 (2007)

"IT IS SOMETIMES STATED THAT THIS TYPE OF ASSAULT IS COMMITTED BY AN ACT (OR UNLAWFULL ACT) WHICH REASONABLY CAUSES ANOTHER TO FEAR IMMEDIATE BODILY HARM. THIS STATEMENT IS NOT QUITE ACCURATE HOWEVER, FOR ONE CANNOT... COMMITT A CRIMINAL ASSAULT BY NEGLIGENTLY OR EVEN RECKLESSLY OR ILLEGALLY ACTING IN SUCH A WAY... AS TO CAUSE ANOTHER PERSON TO BECOME APPREHENSIVE."

STATE V. AUSTIN 59 WN APP 186, 193 (1990)
STATE V. KRUP 36 WN APP 454, 458-59 (1984)
SEE ALSO STATE V. BYRD 72 WN. APP 777 (1994)
REVIEW ID AT 125 WN 2d 707 (1995)

#7

THERE WAS NO FACTUAL BASIS FOR A DEADLY WEAPON NOR DOES THE STATE HAVE A CASE SUPPORTED BY SUFFICIENT EVIDENCE TO WARRANT SUBMISSION TO THE JURY OR TRIER OF FACT FOR THE RENDITION OF A GUILTY VERDICT. CONVICTING THE DEFENDANT ON AN ALFORD PLEA IN LIGHT OF THIS WOULD MANIFEST AN INJUSTICE. NO FACTUAL BASIS AND INSUFFICIENT EVIDENCE ARE SYNONYMOUS AND TO ALLOW THE DEFEN-

DANIS CONVICTION TO STAND WITHOUT THE EVIDENCE NECESSARY TO CONVINCE A TRIER OF FACT BEYOND A REASONABLE DOUBT OF THE EXISTANCE OF EVERY ELEMENT OF THE OFFENSE IS A CONSTITUTIONAL DUE PROCESS ISSUE ABLE TO BE BROUGHT UP FIRST TIME ON APPEAL UNDER R.A.P. 2.5 A (3) HOWEVER THIS WAS THOROUGHLY ARGUED IN THE DEFENDANTS 4.2 MOTIONS.

"DUE PROCESS REQUIRES THAT NO PERSON BE MADE TO SUFFER THE ONUS OF A CRIMINAL CONVICTION EXCEPT UPON SUFFICIENT PROOF, DEFINED AS EVIDENCE NECESSARY TO CONVINCE A TRIER OF FACT BEYOND REASONABLE DOUBT OF THE EXISTANCE OF EVERY ELEMENT OF THE OFFENSE."

JACKSON V. VIRGINIA 443 U.S. 307 (1979)

IN STATE V. ZUMWALT THE ACCUSED ENTERED A PLEA TO A DEADLY WEAPON ENHANCEMENT. BEFORE SENTENCING HE SOUGHT TO REVOKE HIS PLEA ARGUING THAT THE FACTS WERE INSUFFICIENT TO ESTABLISH THAT THE POCKET KNIFE USED MET EITHER OF THE STATUTORY DEFINITIONS OF A DEADLY WEAPON, I.E., THAT THE KNIFE WAS OVER 3 INCHES OR USED IN A MANNER

LIKELY TO CAUSE DEATH. AS STATED IN THE DEFENDANTS MOTION AT BAR, "THREE INCHES ISNT A DEADLY WEAPON BY LAW, THIS REALLY ISNT RELEVANT IN THIS CASE HOWEVER AS;

"THE TEST IS WHETHER THE KNIFE WAS CAPABLE OF INFLICTING LIFE THREATENING INJURIES UNDER THE CIRCUMSTANCES OF ITS USE."

STATE V THOMPSON 88 WN 2d 546 (1977)
STATE V. COBB 22 WN APP 221 (1978)

THE COURT AND DEFENDANTS FIRST ATTORNEY WENT ON AND ON ABOUT A BLADE BEING LESS THAN 3 INCHES AND TOTALLY IGNORED THE SECOND STATUTORY DEFINITION, APPLICABLE IN THE CASE AT BAR, THAT THE WEAPON WAS USED IN A WAY THAT WAS LIKELY TO PRODUCE OR COULD HAVE EASILY AND READILY PRODUCED DEATH.

THE RCW IN THE DEFENDANTS 1° ASSAULT INFORMATION USED TO ACCUSE HIM IS 9.94A.602. THAT RCW WAS RECODIFIED IN 2009 TO RCW 9.94A.825

"A DEADLY WEAPON IS AN IMPLEMENT OR INSTRUMENT WHICH HAS THE CAPACITY

TO INFLICT DEATH AND FROM THE MANNER IN WHICH IT IS USED IS LIKELY TO PRODUCE OR MAY EASILY AND READILY PRODUCE DEATH"

RCW 9.94A.825

STATE V. SKJOLD 2013 WN APP LEXIS 2456

THE COURT IGNORED THE VERY THING IT WOULD HAVE TO DETERMINE TO EXCEPT A PLEA INVOLVING A DEADLY WEAPON. A DEADLY WEAPON IS AN ELEMENT IN THIS CASE NECESSARY TO CONVICT THE DEFENDANT FOR FIRST OR SECOND DEGREE ASSAULT.

IN THE CONTEXT OF EXCEPTING A PLEA REGARDING A DEADLY WEAPON:

"

THE STATE MUST PROVE THAT THE KNIFE HAD THE CAPACITY TO CAUSE THE VICTIMS DEATH AND WAS USED IN A WAY THAT WAS LIKELY TO PRODUCE OR COULD HAVE EASILY AND READILY PRODUCED DEATH. . . . WHETHER A KNIFE SHORTER THAN 3 INCHES IS A DEADLY WEAPON IS A QUESTION OF FACT TO BE DETERMINED BY ITS CAPACITY TO INFLICT DEATH AND THE MANNER IN WHICH IT WAS USED. RELEVENT TO THIS DETERMINATION ARE THE DEFENDANTS INTENT AND PRESENT ABILITY, THE DEGREE OF FORCE USED, THE

PART OF THE BODY TO WHICH THE WEAPON WAS APPLIED AND THE INJURIES INFLICTED. STATE V. THOMPSON 88 WASH 2d 546, 548-49. . . (1977)"

STATE V. ZUMWALT 901 P.2d 319, 323 (1995)

THE STATE AGREED AND STATED:

"

ONCE THE TRIAL COURT LEARNED THAT THE KNIFE WAS SHORTER THAN 3 INCHES AND THEREFORE NOT A DEADLY WEAPON PER SE, IT SHOULD HAVE WITHDRAWN THE PLEA BECAUSE THERE WERE NOT FACTS IN THE RECORD OF THE PLEA HEARING TO SUPPORT THE CONCLUSION THAT ZUMWALT USED THE KNIFE IN A MANNER LIKELY TO CAUSE THE VICTIMS DEATH

ID AT 324

USING A WEAPON IN A MANNER LIKELY TO CAUSE THE VICTIMS DEATH IS AT ISSUE AT BAR AND A FACTUAL BASIS FOR THIS DETERMINATION DOES NOT EXIST IN LIGHT OF THE CIRCUMSTANCES AT BAR BECAUSE THE VICTOM WAS LOCKED IN A TRUCK UNABLE TO BE SO MUCH AS TOUCHED. IF THE DEFENDANT WASNT LIKELY TO TOUCH HIM THEN HE MOST DEFINATELY WASNT LIKELY TO CAUSE THE VICTOMS DEATH.

IT WOULD NOT BE IN THE INTEREST OF JUSTICE TO CONVICT THE DEFENDANT OF AN ALFORD PLEA AND DEPRIVE HIM OF A JURY TRIAL.

IN THE CASE AT BAR, THE DEFENDANT HIT THE VICTIMS WINDOW WITH HIS HAND, ASKED HIM A QUESTION, TRIED THE DOOR HANDLE TO LOOK IN THE TRUCK. VICTIM RESPONDED AGGRESSIVELY. WITH A NON PER-SE WEAPON IN HIS HAND, THE DEFENDANT BANGED ON THE WINDOW. THE VICTIM THOUGHT THE WINDOW MIGHT BREAK AND THAT THE DEFENDANT HELD THE WEAPON IN A THREATENING MANNER. THE DEGREE OF FORCE USED DIDNT BREAK THE WINDOW. VICTIM DROVE OFF, PARKED AND THEN GOT OUT AND FOLLOWED THE DEFENDANT. WHEN THE DEFENDANT WAS AT THE VICTIMS TRUCK THE VICTIM WAS LOCKED IN THE TRUCK. THE DEFENDANT COULDNT HAVE TOUCHED THE VICTIM UNDER THE CIRCUMSTANCES EVEN HAD HE WANTED TO. THE VICTIM AND THE POLICE BOTH KNEW THIS. THE QUESTION THAT THE ARRESTING OFFICER, MR RAMIREZ ASKED THAT SHOWS THIS WAS; "AND WHAT DID YOU FEEL HE WAS GOING TO DO IF HE GOT INTO THE TRUCK?"

THE VICTIM DIDNT KNOW EXACTLY BUT THE "IF" IS IN QUESTION AT BAR.

AS IN HIS MOTION, THE DEFENDANT ASKS THE COURT AGAIN, HOW WAS THE DEFENDANT LIKELY TO INFLICT BODILY HARM UNDER THE CIRCUMSTANCES WHEN HE COULDNT EVEN TOUCH THE VICTOM UNDER THE CIRCUMSTANCES?

MINUS THE "IF" OR ANY SUPPOSITIONS, THE FACTS SHOW THE DEFENDANT HAD A NON PER SE WEAPON ON THE OTHER SIDE OF A LOCKED DOOR COMPLETELY INCAPABLE OF MAKING CONTACT WITH THE VICTOM AND IN ORDER TO MERIT FIRST DEGREE ASSAULT OR ANY ASSAULT WITH A DEADLY WEAPON THERE WOULD HAVE TO BE FACTS TO SHOW THAT THE DEFENDANT ASSAULTED THE VICTOM BY A MEANS LIKELY TO PRODUCE DEATH. WITHOUT THESE FACTS YOU HAVE A MISDEMEANOR IF YOU HAVE ANYTHING.

"

9A.36.011(1)(A)... ASSAULTS ANOTHER BY MEANS LIKELY TO PRODUCE GREAT BODILY HARM OR DEATH... THE USE OF MEANS LIKELY TO CREATE A PROBABILITY OF DEATH IS NO DIFFERENT THAN THE MEANS LIKELY TO PRODUCE DEATH."

STATE V. LAICO 97 WN APP 759, 764 (1999)

IF THE STATE IS ALLOWED TO PROSECUTE WITH AN "IF", (A SUPPOSITION) AND AN "IF" BEING A CONJUNCTION THAT CAN BRING INTO QUESTION A HUNDRED CONDITIONS THAT DIDNT EXIST, THEN THEY CAN INVENT ANY CHARGE THEY WANT, "SUPPOSING THAT..."

THE VICTOM WAS LOCKED IN HIS TRUCK AND WAS ABLE TO DRIVE OFF. IN ORDER FOR THE DEFENDANT TO BE GUILTY OF ASSAULT HE WOULD HAVE HAD TO OF BEEN SUFFICIENTLY CLOSE ENOUGH TO ASSAULT THE VICTOM.

"ONE WOULD BE GUILTY OF ASSAULT IF HE RAISED HIS HAND IN ANGER WITH AN APPARENT PURPOSE TO STRIKE AND SUFFICIENCY NEAR TO ENABLE THE PURPOSE TO BE CARRIED INTO EFFECT."

STATE V. RUSH 14 WN 2d 138 (1942)

THE DEFENDANT OBVIOUSLY WASNT SUFFICIENTLY CLOSE ENOUGH FOR THE PURPOSE OF AN ASSAULT WITH THE VICTOM LOCKED IN A TRUCK AND ABLE TO DRIVE OFF.

THE CIRCUMSTANCES AT BAR ALSO DETERMINE WHETHER THE DEFENDANT HAD A DEADLY WEAPON. A NON PER SE WEAPON IS DETERMINED DEADLY BY WHETHER "AS USED" IT WAS ACTUALLY READILY

CAPABLE OF PRODUCING BODILY HARM.

"THE CRIME ITSELF ENCOMPASSES THE USED OR THREATEND TO BE USED LANGUAGE OF R.C.W. 9A.04.110(6), BUT THE ISSUE MUST STILL BE RESOLVED WHETHER THE WEAPON "AS USED" WAS "READILY CAPABLE OF CAUSING... SUBSTANTIAL BODILY HARM" BECOMES A QUESTION OF FACT. SEE, STATE V. SORENSON 6 WN APP 269... ALTHOUGH WE AGREE WITH THE STATE THAT WE MUST LOOK... FOR THE DEFINITION... PUTTING SOMEONE IN APPREHENSION, THIS DOES NOT ANSWER THE QUESTION... WAS IT SECOND DEGREE ASSAULT OR FOURTH DEGREE ASSAULT? IT IS CERTAINLY LOGICAL THAT THE LEGISLATURE MAY HAVE INTENDED TO RESERVE THE MORE {828 P 2d 35} SEVERE CLASS B FELONY TO THOSE WHO ASSAULT WITH A DEADLY WEAPON, A WEAPON THAT IS ACTUALLY READILY CAPABLE OF PRODUCING BODILY HARM, RESERVING THE APPEARANTLY CAPABLE FOR GROSS MISDEMEANOR STATUS"

STATE V. CARLSON 65 WN APP 153 (1992).

THE COURT SAYS, CAPABLE OF "NOT CAPABLE" IF THIS IS NOT TO BE CONFUSED WITH ITS INHERENT CAPACITY.

"THE GLASS HAD THE INHERENT CAPACITY... THE FOCUS OF OUR INQUIRY IS WHETHER THE GLASS, IN THE MANNER IN WHICH IT IS USED, WAS CAPABLE OF CAUSING SUBSTANTIAL INJURY. VIEWING THE FACTS... SHILLING HIT HIM IN THE HEAD WITH THE GLASS... SUFFICIENT TO SUPPORT DETERMINATION... GLASS HAD READILY CAPABILITY. STATE V. SHILLING 77 WN APP 166 (1995)

IF A PERSON GOES TO THE ZOO AND VISITS THE SNAKE EXHIBIT THE INHERENTLY DEADLY SNAKE IN THE TERRARIUM IS NOT IN FACT DEADLY TO THE PERSON UNDER THE CIRCUMSTANCES BECAUSE THE SNAKE IS BEHIND GLASS AND NOT ABLE TO TOUCH THE PERSON. THE PERSON CAN'T SUE THE ZOO BASED ON A SUPPOSITION THAT "IF" A SNAKE GOT OUT IT COULD BITE HIM. BUT THAT'S EXACTLY WHAT THE STATE HAS DONE IN THIS CASE.

"THE TEST IS WHETHER THE KNIFE (OR ANY HOM NON PERSE WEAPON) WAS CAPABLE OF INFLICTING LIFE THREATENING INJURIES UNDER THE CIRCUMSTANCES OF ITS USE"

- STATE V. THOMPSON 88 WN 2d 546 (1977)
STATE V. COBB 22 WN APP 231 (1978)

#9

THE COURT NEGLECTED IT DUTY TO PROTECT THE DEFENDANTS CONSTITUTIONAL RIGHTS WHEN HE BROUGHT GRIEVANCES TO THE TRIAL COURT REGARDING VIOLATIONS OF HIS CONSTITUTIONAL RIGHTS THE COURTS DIDNT DENY THE VIOLATIONS THEY SIMPLY STATED THAT THEY COULDN'T DO ANYTHING REGARDING HIS CIVIL RIGHTS. THE RIGHTS WERE CONNECTED TO HIS CHARGES AS THEY WERE BEING VIOLATED IN THE JAIL WHERE HE WAS BEING HELD FOR THE COURT THE JUDGE STATED THAT HE KNEW HE WAS PUTTING THE DEFENDANT IN A "CATCH 22" BY PUTTING HIM BACK IN JAIL. THIS IS ON RECORD IN DEFENDANTS MOTION FOR EXONERATION FOR VIOLATION OF HIS DUE PROCESS AND THE COURTS MINUTES AND THE ORDER DENY DEFENDANTS MOTION WITH THE STATEMENT "WE CAN DO NOTHING UNDER CIVIL RIGHTS."

"ACCESS TO THE COURTS" TO WHICH PRISONERS ARE CONSTITUTIONALY ENTITLED ENCOMPASSES ALL MEANS A DEFENDANT OF PETITIONER MIGHT REQUIRE TO GET A FAIR HEARING FROM JUDICIARY ON ALL CHARGES BROUGHT AGAINST

HIM OR GRIEVANCES ALLEGED BY HIM"
GILMORE V. LYNCH, 319 F. SUPP 105 (N.D. CAL. 1970)
AFF'D SUB NOM YOUNGER V. GILMORE 404 U.S. 15 (1971)

THIS WOULD BE AN EMPTY RIGHT IF THE COURT CAN'T DO ANYTHING.

DATED THIS 26TH DAY OF AUGUST 2014

RESPECTFULLY SUBMITTED

HARVEY MADDUX

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT ON 8-26-14, I DEPOSITED IN THE U.S. MAIL A PROPERLY STAMPED AND ADDRESSED ENVELOPE DIRECTED TO THE FOLLOWING ADDRESSES, A COPY OF DEFENDANTS "STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW" REGARDING NO. 46108-1-II.

CLERK OF THE COURT
COURT OF APPEALS, DIV. II
950 BROADWAY STE 300
TACOMA, WA 98402-3694

JOHN A. HAYS
ATTORNEY AT LAW
1402 BROADWAY
LONGVIEW, WA 98632

FILED
COURT OF APPEALS
DIVISION II
2014 AUG 29 PM 1:20
STATE OF WASHINGTON
BY _____ DEPUTY

HARVEY MADDUX

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II
2014 SEP 25 PM 1:03
STATE OF WASHINGTON
BY DEPUTY

STATE OF WASHINGTON RESPONDANT	NO. 46108
VS.	MOTION: AMENDED INFORMATION.
HARVEY MADDUX APPELLANT	

THE APPELLANT REQUESTS THAT THE COURT CONSIDER THE FOLLOWING INFORMATION WHEN ADDRESSING APPELLANTS STATEMENT FOR ADDITIONAL GROUNDS GROUNDS #7, REGARDING NO FACTUAL BASIS FOR A DEADLY WEAPON.

IT WAS STATED THAT THE VICTIM WAS LOCKED IN A TRUCK. HOWEVER, THE APPELLANT WANTS TO NOTE THAT THE WINDOWS WERE ROLLED UP AND APPELLANT WAS ON THE OUTSIDE OF THE PASSENGERS SIDE OF THE TRUCK

RESPECTFULLY SUBMITTED

DATED THIS 21ST DAY OF SEPTEMBER 2014

APPELLANT, HARVEY MADDUX

CERTIFICATE OF MAILING

FILED
COURT OF APPEALS
DIVISION II
2014 SEP 25 PM 1:02
STATE OF WASHINGTON
BY DEPUTY

I HEREBY CERTIFY THAT ON 9-21-14, I DEPOSITED IN THE U.S. MAIL, A PROPERLY STAMPED AND ADDRESSED ENVELOPE DIRECTED TO THE FOLLOWING ADDRESSES, A COPY OF A, MOTION: AMENDED INFORMATION, REGARDING NO. 46108-1-II.

CLERK OF THE COURT
COURT OF APPEALS, DIV II
950 BROADWAY STE 300
TACOMA, WA 98402-3694

JOHN A. HAYS
ATTORNEY AT LAW
1402 BROADWAY
LONGVIEW, WA 98632

HARVEY MADDUX

FILED
COURT OF APPEALS
DIVISION II
2014 SEP 25 PM 1:02
STATE OF WASHINGTON
BY
DEPUTY

HARVEY MADDUX #908861
MONROE CORRECTIONS COMPLEX
PO BOX 777-WSR, D435U
MONROE, WA 98272

9-21-14

COURT CLERK
COURT OF APPEALS DIV II
950 BROADWAY, STE, 300
TACOMA, WA 98402-3694

DEAR CLERK

HELLO. ENCLOSED PLEASE FIND A MOTION: AMENDED INFORMATION FOR THE COURT CONSIDERATION.

THANK YOU

SINCERELY
Harvey Maddux
HARVEY MADDUX