

NO. 47042-0-II

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

STATE OF WASHINGTON, Respondent

v.

JOSE MIGUEL GASTEAZORO-PANIAGUA, Petitioner

CLARK COUNTY SUPERIOR COURT CAUSE NO. 10-1-00004-6

RESPONSE TO PERSONAL RESTRAINT PETITION

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

Aaron T. Bartlett, WSBA #39710
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

TABLE OF CONTENTS

A.	IDENTITY OF RESPONDENT AND AUTHORITY FOR RESTRAINT.....	1
B.	ISSUES FOR REVIEW.....	1
C.	STATEMENT OF THE CASE.....	1
D.	ARGUMENTS WHY PETITION SHOULD BE DISMISSED.....	7
I.	THE STATE DISCLOSED ALL EXCULPATORY EVIDENCE TO MR. GASTEAZORO-PANIAGUA.....	9
a.	The State disclosed Mr. Jacobsen’s criminal history to Mr. Gasteazoro-Paniagua as evidenced by the State’s Motions in Limine, the State’s supplemental briefing on Mr. Jacobsen’s criminal history, a certified copy of his juvenile adjudication and disposition, and the report of proceedings.....	11
b.	The facts underlying Mr. Jacobsen’s pending Murder and Robbery charges were (1) not exculpatory or impeaching; (2) not suppressed by the State; and (3) not material or admissible.....	16
II.	THE STATE DID NOT IMPROPERLY VOUCH FOR MR. JACOBSEN.....	22
III.	INEFFECTIVE ASSISTANCE.....	27
a.	Deficient Performance.....	28
b.	Prejudice.....	32
E.	CONCLUSION.....	33

TABLE OF AUTHORITIES

Cases

<i>Davis v. Alaska</i> , 415 U.S. 308 (1974).....	17
<i>Grant v. Lockett</i> , 709 F.3d 224 (3rd Cir. 2013).....	17
<i>In re Benn</i> , 134 Wn.2d 868, 952 P.2d 116 (1998).....	10
<i>In re Coats</i> , 173 Wn.2d 123, 267 P.3d 324 (2011).....	7
<i>In re Cook</i> , 114 Wn.2d 802, 792 P.2d 506 (1990).....	7, 8
<i>In re Davis</i> , 152 Wn.2d 647, 101 P.3d 1 (2004).....	29
<i>In re Hagler</i> , 97 Wn.2d 818, 650 P.2d 1103 (1982).....	7
<i>In re Hews</i> , 99 Wn.2d 80, 660 P.2d 263 (1983).....	8
<i>In re Pirtle</i> , 136 Wn.2d 467, 965 P.2d 593 (1998).....	29
<i>In re Reise</i> , 146 Wn.App 772, 192 P.3d 949 (2008).....	8
<i>In re Rice</i> , 118 Wn.2d 876, 828 P.2d 1086 (1992).....	8
<i>In re Yates</i> , 177 Wn.2d 1, 296 P.3d 872 (2013).....	7, 8
<i>State v. Adams</i> , 91 Wn.2d 86, 586 P.2d 1168 (1978).....	27
<i>State v. Garrett</i> , 124 Wn.2d 504, 881 P.2d 185 (1994).....	28
<i>State v. Greer</i> , 171 Wn.2d 17, 246 P.3d 1260 (2011).....	32
<i>State v. Gregory</i> , 158 Wn.2d 759, 147 P.3d 1201 (2006) <i>rev'd on other grounds State v. W.R., Jr.</i> , 181 Wn.2d 757, 336 P.3d 1134 (2014).....	11
<i>State v. Grier</i> , 171 Wn.2d 17, 246 P.3d 1260 (2011).....	27, 28
<i>State v. Hassan</i> , 151 Wn.App. 209, 211 P.3d 441 (2009).....	28
<i>State v. Ish</i> , 170 Wn.2d 190, 241 P.3d 389 (2010).....	22, 23, 25, 26
<i>State v. Knutson</i> , 121 Wn.2d 766, 854 P.2d 617 (1993).....	11
<i>State v. Kyлло</i> , 166 Wn.2d 856, 215 P.3d 177 (2009).....	28, 32
<i>State v. Lord</i> , 161 Wn.2d 276, 165 P.3d 1251 (2007).....	10, 18, 21
<i>State v. Mullen</i> , 171 Wn.2d 881, 259 P.3d 158 (2011).....	9, 10, 18, 21
<i>State v. Reichenbach</i> , 153 Wn.2d 126, 101 P.3d 80 (2004).....	28
<i>State v. Smith</i> , 162 Wn.App. 833, 262 P.3d 72 (2011).....	23, 25, 26
<i>State v. Stockman</i> , 70 Wn.2d 941, 425 P.2d 898 (1967).....	29
<i>State v. Thomas</i> , 150 Wn.2d 821, 83 P.3d 970 (2004).....	10
<i>State v. Thomas</i> , 71 Wn.2d 470, 429 P.2d 231 (1967).....	27
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).....	27, 32
<i>Strickler v. Greene</i> , 527 U.S. 263, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999).....	9

Rules

ER 609 14, 15
RAP 16.7(a)(2)(i)..... 8

A. **IDENTITY OF RESPONDENT AND AUTHORITY FOR RESTRAINT**

The State of Washington is the Respondent in this matter. The defendant is restrained by the judgment and sentence entered by the Clark County Superior Court on August 11, 2010, under cause number 10-1-00004-6.

B. **ISSUES FOR REVIEW**

Whether the State failed to disclose exculpatory evidence?

Whether the State improperly vouched for a witness?

Whether Mr. Gasteazoro-Paniagua received the effective assistance of counsel?

C. **STATEMENT OF THE CASE**

On December 30, 2009, Jose Muro was working in the back room of the Bi-Lo market on Highway 99 in Clark County, Washington. RP 731. At approximately 10:00 p.m., a man walked into the store, headed directly to the back, and started shooting at Muro. RP 735. The first shot hit Muro in the shoulder. The second shot hit Muro in the stomach. The third shot hit Muro in the shoulder again and sent him falling to the

ground. When Muro was on the floor, he was shot in the head. The final shot went through Muro's hand. RP 735-36.

Muro was rushed to the hospital where he was in surgery until the following night. RP 1531. The shot to Muro's head went through his skull and out the back of his head. RP 838. Muro spent the next eight days in the hospital. RP 790. Muro's head was stapled shut. RP 837-38. He sustained a broken shoulder, a broken arm, and a broken finger. One of his knuckles was completely shot off. RP 741.

Clark County Sheriff's Office "CCSO" Detectives Rick Buckner and Detective Lindsey Schultz talked to Muro the night after the shooting, immediately after he came out of surgery. RP 1531. Muro was hooked up to a series of tubes and, according to Detective Buckner, was in "pretty bad shape." RP 1531. Muro told Detective Buckner and Detective Schultz that his best friend, "Neeka," was the person who shot him last night at Bi-Lo. RP 1537-38. Jose Gastiazoro-Paniagua, the defendant, was known to all of his friends and family as "Neeka." RP 704-05. Detective Buckner asked Muro if he was sure Neeka shot him. Muro said he was sure. RP 1537-38.

Trial commenced on June 14, 2010. RP 71. For the next two weeks, the State presented more than twenty witnesses who testified to the

defendant's motive, means, and opportunity to shoot Jose Muro, with the intent to kill him.

The State called a number Muro's friends and family members who also knew the defendant. Each witness testified that, approximately one week before the shooting, Muro and the defendant had a falling-out in their close friendship. RP 702,758-60, 781, 783. Muro had a brother named "Johnny." Johnny's girlfriend was named Nichole. Johnny and Nichole recently had a baby together. RP 758. The defendant was also close friends with Johnny. RP 756. Just before Christmas of 2009, Muro learned the defendant was having an affair with Nichole. RP 702, 783, 781, 758-60. Muro viewed this affair as a betrayal against him and his family. RP 760. Muro and the defendant had heated exchanges over the phone during the following week. RP 786. Muro and the defendant also testified to this set of facts. RP 722-725, 1840-41.

Jose Muro testified he and his brother had been good friends with the defendant for nearly ten years. RP 720, 726. Muro testified he found out about the defendant's affair with Nichole just before Christmas of 2009. RP 725. Muro was angry about the affair. He felt the defendant "did [his] brother wrong." RP 722. He exchanged words with the defendant. RP 725.

Muro testified, on the night of December 30, 2009, he received a phone message from the defendant and called him back. RP 730. The defendant's cell phone records confirmed he made this call to Muro. RP 1685, 1687. The defendant wanted to get a drink with Muro. Muro told him he could not get a drink because he was working. RP7 31-32. Muro testified that the defendant knew he worked at Bi-Lo and he would have known where he worked within the store in the back. RP 732.

The jury viewed surveillance video from Bi-Lo from the night of the shooting. RP 558; Ex. 22. Although the video was "grainy," it clearly depicted a man walk into the store immediately before the time of the shooting, walk-out, and then walk in again and head directly to the back of the store. The man had the general physique of the defendant and he was wearing a dark hooded sweatshirt with the hood up. RP 558, 594, 601.

Officers located a wallet and a cell phone on the defendant's person at the time of his arrest. The wallet contained an identification card for "Jose Roman Lopez," from Nevada. RP 1679-80; Ex. 17. The cell phone contained a photograph of the defendant holding a hand gun. RP 1176-77, 1198; Ex. 173. CCSO conducted a forensic examination of the cell phone pursuant to a search warrant and discovered the photo was taken two weeks before Muro was shot. RP 1165, 1176, 1189.

Frank Bulgar testified as a ballistics expert for the State. RP 1195. Bulgar testified the gun that the defendant was holding in the cell phone photograph was a Springfield Armory X-D bi-tone model handgun. RP 1198. Bulgar testified these hand guns utilize .40 caliber and .45 caliber bullets. RP 1201. Bulgar said he had no doubt that the gun the defendant was holding in the photograph was real. RP 1200.

CCSO Detective Kevin Schmidt testified he recovered eight .45 caliber bullet casings from around and under the cooler at Bi-Lo where Muro was shot. RP 474-75, 451; Ex. No. 48-55, 150-152. CCSO deputies took custody of the bullet fragments that were removed from Muro's body during surgery which were consistent with the recovered bullet casings. RP 296, 347; Ex. 46-48.

Dionisio Ibanez is the father of the defendant's girlfriend, Melissa Ibanez. RP 1058. Dionisio testified, just before New Year's of 2009, he saw the defendant loading a gun at his daughter's apartment in Vancouver, Washington. RP 1058, 1060, 1068. Dionisio recognized the gun as being a .45 caliber gun. RP 1069. The defendant told Dionisio he recently bought the gun. RP 1070.

The defendant testified that the night of the shooting December 30, 2009, he was having dinner at a Chinese restaurant in Portland, Oregon. RP 1850. He could not recall the name of the restaurant or the time he was

eating. RP 1850-51. He said he was planning to go to Reno, Nevada, that night but changed his mind and went to Wilsonville, Oregon, instead. RP 1850-53. The defendant said, five days later, he took his friend, “Smokey’s” car to Yakima. RP 1861. He did not think Smokey would want his car back. RP 1862-63.

The defendant’s good friend, Garold “Trent” Jacobson, also testified at trial. RP 1410. Jacobson had known the defendant for more than twelve years. RP 1410-11. Jacobson and the defendant were housed in the same cell block at the Clark County Jail while the defendant was pending trial. RP 1413. Jacobson said the defendant confided in him about shooting Muro and the events that led up to the shooting. RP 1424-1443.

Jacobson was pending trial on a separate case for acting as an accomplice to murder in the first degree and three counts robbery in the first degree. RP 1446. Jacobson entered into a cooperation agreement with the State to provide truthful testimony against the six co-defendants in his pending case. RP 1446-47. As part of the cooperation agreement, Jacobson also agreed to provide truthful testimony against the defendant in this case. RP 1446-47. In exchange, the State would agree to recommend a plea to three counts of robbery in the first degree with a deadly weapon enhancement on Jacobson’s pending case and a 120 month sentence. RP 1448, 1475; Ex. 257 – Cooperation Agreement.

The State will provide additional facts pertaining to the issues the defendant raises in the argument section of this Response Brief.

D. ARGUMENTS WHY PETITION SHOULD BE DISMISSED

A personal restraint petition is not a substitute for a direct appeal. *In re Hagler*, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). A personal restraint petitioner must prove either a constitutional error that caused actual and substantial prejudice or a nonconstitutional error that caused a complete miscarriage of justice. *In re Coats*, 173 Wn.2d 123, 132, 267 P.3d 324 (2011); *In re Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). Moreover, because a personal restraint petition is not a second bite at a direct appeal, “new issues must meet a heightened showing before a court will grant relief.” *In re Yates*, 177 Wn.2d 1, 17, 296 P.3d 872, 880 (2013); *Coats*, 173 Wn.2d at 132 (holding that relief “by way of a collateral challenge to a conviction is extraordinary, and the petitioner must meet a high standard before this court will disturb an otherwise settled judgment”) (citation omitted). Moreover, the petitioner “must make these heightened showings by a preponderance of the evidence.” *Yates*, 177 Wn.2d at 17.

In evaluating personal restraint petitions, the Court can: (1) dismiss the petition if the petitioner fails to make a prima facie showing of

constitutional or nonconstitutional error; (2) remand for a full hearing if the petitioner makes a prima facie showing but the merits of the contentions cannot be determined solely from the record; or (3) grant the personal restraint petition without further hearing if the petitioner has proven actual and substantial prejudice or a complete miscarriage of justice. *Cook*, 114 Wn.2d at 810-11; *In re Hews*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983). A petitioner's bare assertions and self-serving statements are insufficient to justify a reference hearing, let alone to establish actual and substantial prejudice or a complete miscarriage of justice. *Yates*, 177 Wn.2d at 18; *See also In re Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992); *In re Reise*, 146 Wn.App 772, 780, 192 P.3d 949 (2008); RAP 16.7(a)(2)(i). Moreover, for "matters outside the existing record, the petitioner must demonstrate that he has competent, admissible evidence to establish the facts that entitle him to relief; if the evidence is based on knowledge in the possession of others, the petitioner may either present their affidavits or present evidence to corroborate what the petitioner believes they will reveal if subpoenaed. *Yates*, 177 Wn.2d at 18 (internal quotations omitted). This corroboration "must be more than mere speculation or conjecture." *Id.* (citation omitted).

I. **THE STATE DISCLOSED ALL EXCULPATORY EVIDENCE TO MR. GASTEAZORO-PANIAGUA**

To establish a *Brady* violation a defendant must “demonstrate the existence of each of three necessary elements: “[1] The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; [2] that evidence must have been suppressed by the State, either willfully or inadvertently; and [(3)] prejudice must have ensued.” *State v. Mullen*, 171 Wn.2d 881, 895, 259 P.3d 158 (2011) (alterations in original) (quoting *Strickler v. Greene*, 527 U.S. 263, 281-82, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999)). If a defendant fails to demonstrate any one element, his *Brady* claim fails. *Strickler*, 527 U.S. at 281-82.

Under the second element, where “a defendant has enough information to be able to ascertain the supposed *Brady* material on his own, there is no suppression by the government.” *Mullen*, 171 Wn.2d at 896 (citation omitted), 902 (stating “there is no *Brady* violation when a defendant possessed the information that he claims was withheld or where he possesses the salient facts regarding the existence of the [evidence] that he claims [was] withheld”) (alterations in original) (citation omitted). Furthermore, since “suppression by the Government is a necessary element of a *Brady* claim, if the means of obtaining the exculpatory

evidence has been provided to the defense, the *Brady* claim fails.” *Id.* (citation omitted). Simply put, evidence that could have been discovered but for a lack of due diligence by the defense is not a *Brady* violation. *Id.* at 896, 902-03; *State v. Lord*, 161 Wn.2d 276, 293, 165 P.3d 1251 (2007); *In re Benn*, 134 Wn.2d 868, 916-18, 952 P.2d 116 (1998). Thus, when the State provides the defense pretrial opportunities to interview its witnesses about the matters at issue it “satisfie[s] any *Brady* obligations with respect to the contents of [those witnesses’] testimony.” *Mullen*, 171 Wn.2d at 898-899.

The third element, whether prejudice ensued, requires the defendant to bear the burden of showing a reasonable probability that the result of the proceeding would have been different if the State had disclosed the evidence to the defense. *State v. Thomas*, 150 Wn.2d 821, 850, 83 P.3d 970 (2004). Moreover, in assessing whether prejudice ensued, reviewing courts must consider the admissibility of the alleged, undisclosed evidence. *Mullen*, 171 Wn.2d at 897, 893-94. This requirement makes sense because if the undisclosed evidence is “neither admissible nor likely to lead to admissible evidence it is unlikely that

disclosure of the evidence could affect the outcome of a proceeding.” *State v. Knutson*, 121 Wn.2d 766, 773, 854 P.2d 617 (1993); *State v. Gregory*, 158 Wn.2d 759, 797-98, 147 P.3d 1201 (2006) *rev’d on other grounds* *State v. W.R., Jr.*, 181 Wn.2d 757, 336 P.3d 1134 (2014).

- a. **The State disclosed Mr. Jacobsen’s criminal history to Mr. Gasteazoro-Paniagua as evidenced by the State’s Motions in Limine, the State’s supplemental briefing on Mr. Jacobsen’s criminal history, a certified copy of his juvenile adjudication and disposition, and the report of proceedings.**

Here, Mr. Gasteazoro-Paniagua, in his Statement of the Case under a heading titled “The State’s Efforts to Hide the Truth About Jacobsen,” asserts that the State “failed to disclose . . . [Mr. Jacobsen’s] prior convictions.” Br. of Pet. at 5, 7. The prior convictions that were undisclosed, according to Mr. Gasteazoro-Paniagua, were “prior felony convictions, which included Taking a Motor Vehicle, Bail Jumping, and a prior Second-Degree Assault.” Br. of Pet. at 7. Mr. Gasteazoro-Paniagua claims this allegation is supported by trial counsel’s declaration and by the report of proceedings wherein trial counsel sought to impeach Mr. Jacobsen, “but only with a juvenile conviction” and not the undisclosed felony convictions.¹ Br. of Pet. at 7.

¹ As explained below the juvenile conviction is for Taking a Motor Vehicle and is one of the felony convictions Mr. Gasteazoro-Paniagua claims was not disclosed to him at the trial level.

The declaration of trial counsel, Charles Buckley WSBA #9048,
states:

7. I wanted to impeach Mr. Jacobsen with his prior crimes to show he was dishonest.

8. I was not informed that Mr. Jacobsen had been convicted of Taking a Motor Vehicle, Assault in the Second Degree, and Bail Jumping.

Dec. of Charles Buckley. Mr. Buckley signed his declaration, and above his signature he stated in all capital letters “I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.”

Id. A cursory review of the relevant trial record and documents filed with the trial court, however, shows that those statements are false.

Furthermore, matters outside of the trial record confirm the falsity of those portions of the declaration.

On or about June 1, 2010, the trial prosecutor, Kasey Vu, provided Mr. Buckley with a document titled “Criminal History of Garold Trent Jacobsen” that contained the names of all of Mr. Jacobsen’s convictions, their case numbers, the dates of the offenses, and the sentencing dates. Appendix A – Declaration of Kasey T. Vu; Appendix A2.² That Mr. Buckley received this document is substantially bolstered by email

² This document was created for the purpose of providing it to defense counsel.

correspondence between Mr. Vu and Mr. Buckley in which, on June 1, 2010, Mr. Vu informs Mr. Buckley that “Jacobsen’s criminal history and the search warrants and affidavit for the cell phone stuff will be available after 1:30 today.” Appendix B. Similarly, on June 2, 2010, Mr. Buckley emails Mr. Vu to confirm that they “are meeting at 1:30 today to go over witnesses [sic] criminal history” and Mr. Vu responds that the proposal “is fine.” Appendix B.

In addition, on June 11, 2010, the State filed its pre-trial motions in limine. CP 108-110, attached as Appendix C. This document was faxed to Mr. Buckley that same day. Appendix D. The State’s fourth motion in limine was to:

prohibit any mention that a witness, Garold Trent Jacobsen, has been convicted of any crimes. Jacobsen has misdemeanor convictions for driving with a suspended license, Bail Jumping, and Negligent Driving in the First Degree. He also has a felony adjudication for Taking a Motor Vehicle Without Permission as a juvenile in May 2000. Finally, he has a felony conviction for Assault in the Second Degree. With the exception of the Taking Mother [sic] Vehicle, none of these crimes is admissible for impeachment under ER 609. . . . With respect to the Taking Motor Vehicle adjudication, the crime was committed on November 4, 1999, and Jacobsen was sentenced on May 25, 2000. Jacobsen was a juvenile at the time. . . .

Appendix C at 2. On June 14, 2010, the trial court heard argument on the State’s motions in limine, and, in particular, on the State’s motion as it pertained to Mr. Jacobsen’s criminal history. RP 124-28.

During that argument, Mr. Buckley specifically mentioned Mr. Jacobsen's Taking a Motor Vehicle conviction, that it occurred in 2000, and stated "I only have the . . . paperwork showing the conviction and it was in 2000 in May." RP 124-26. Though Mr. Vu would provide a certified copy of Mr. Jacobsen's adjudication and disposition to the trial court and Mr. Buckley to clear up whether 10 years had passed under ER 609, the court deferred its ruling on the admissibility of that conviction until a later date. RP 127-28, 177-78. Notably, when the trial court asked Mr. Buckley if he planned on using Mr. Jacobsen's other convictions, Mr. Buckley responded "No." RP 128.

On June 22, 2010, the State filed a supplemental memorandum regarding Mr. Jacobsen's Taking a Motor Vehicle conviction titled "State's Memorandum of Law Concerning the Admissibility of a Witness' [sic] Prior Juvenile Adjudications for Impeachment." CP 137-144, attached as Appendix E. That memorandum contained a copy of Mr. Jacobsen's disposition as well as the original information to which he pled. *Id.* That same day, the parties readdressed the admissibility of Mr. Jacobsen's conviction. RP 1258-1263. The trial court ultimately concluded the conviction was outside of 10 years and inadmissible, and asked "[d]oes anybody really think a juvenile conviction from ten years ago is going to

make a difference to the jury?” RP 1262-63. Mr. Buckley responded to the trial court’s question with a simple “No.” RP 1262.

Finally, just before Mr. Jacobsen testified, the trial court inquired with Mr. Buckley as to whether he had any additional information that he wanted the court to consider regarding the trial court’s ruling on Mr. Jacobsen’s Taking a Motor Vehicle conviction. RP 1408. Mr. Buckley responded by stating that he was not objecting to the court’s ruling and agreed the conviction “was excluded under the rule [(ER 609)].” RP 1408-09.

As is evident, based on the above and the attached documentation, Mr. Buckley’s declaration wherein he asserts the State failed to inform him of Mr. Jacobsen’s criminal history is false and misleading. Mr. Buckley knew of Mr. Jacobsen’s criminal history, was provided that history by the State, and did not attempt to impeach Mr. Jacobsen with any of his other past convictions. This latter fact is unsurprising as Mr. Jacobsen could not have been impeached to show he was dishonest by way of his prior convictions for misdemeanor Bail Jumping and Assault in the Second Degree, which both occurred in 2002.

Similarly unmistakable, is the fact that Mr. Gasteazoro-Paniagua’s current counsel failed to adequately review the record and trial documents or fact-check Mr. Buckley’s Declaration before accusing Mr. Vu of

making “Efforts to Hide the Truth About Jacobsen.” Br. of Pet. at 5. Ultimately, Mr. Gasteazoro-Paniagua has failed to establish a *Brady* violation because the State provided Mr. Buckley with Mr. Jacobsen’s criminal history.

b. The facts underlying Mr. Jacobsen’s pending Murder and Robbery charges were (1) not exculpatory or impeaching; (2) not suppressed by the State; and (3) not material or admissible.

Here, under the same heading, “The State’s Efforts to Hide the Truth About Jacobsen,” Mr. Gasteazoro-Paniagua notes that the State did not disclose the police reports detailing Mr. Jacobsen’s crimes to Mr. Buckley and that Mr. Buckley made no specific request for them. Br. of Pet. at 6. Mr. Gasteazoro-Paniagua summarizes those crimes and states that the jury “did not hear any of these facts.” Br. of Pet. at 7. Further, Mr. Gasteazoro-Paniagua argues that “because the State did not disclose and defense counsel did not discover the underlying facts, Jacobsen was not confronted with the truth.” Br. of Pet. at 8. Mr. Gasteazoro-Paniagua then claims that because of this the “jury was denied the ability to accurately assess Jacobsen’s bias, interest and true motivation for testifying against” him. Br. of Pet. 8.

The specific facts of Mr. Jacobsen's crimes were not exculpatory or impeaching.

Nothing about the facts underlying the crimes for which Mr. Jacobsen was charged exculpated Mr. Gasteazoro-Paniagua or could be used to impeach Mr. Jacobsen, and Mr. Gasteazoro-Paniagua fails to identify the specific facts by which Mr. Jacobsen could have been impeached. Listing the facts of the crime and asserting, in general, those facts could somehow be used to evaluate Mr. Jacobsen's credibility or impeach him is insufficient. No refuge for Mr. Gasteazoro-Paniagua's claim can be found in Mr. Buckley's declaration, which is equally bereft of a suggestion as to what specific facts are actually impeaching. Mr. Buckley's declaration states: "5. If I had known the specific facts of Mr. Jacobsen's crime, I would have definitely impeached him with those facts." Dec. of Charles Buckley. The questions of what specific facts and how he "would have definitely impeached him" remain unaddressed and unanswered by Mr. Gasteazoro-Paniagua and Mr. Buckley.

Moreover, the cases cited by Mr. Gasteazoro-Paniagua are inapposite as *Grant v. Lockett*, 709 F.3d 224 (3rd Cir. 2013) dealt with the impeachment of an informant through his prior convictions and parole status and *Davis v. Alaska*, 415 U.S. 308 (1974) involved the probationary status of a prosecution witness. Importantly, neither stands for the

proposition that the underlying facts of prior convictions or underlying facts as to how one become a parolee or probationer is the type of evidence that is admissible as impeaching or must be disclosed, nor did either find a *Brady* violation. As a result, neither supports Mr. Gasteazoro-Paniagua's claim that the specific facts of Mr. Jacobsen's underlying, pending crimes are necessarily exculpatory or impeaching and his *Brady* claim must fail.

The State did not suppress any evidence.

As noted above, since "suppression by the Government is a necessary element of a *Brady* claim, if the means of obtaining the exculpatory evidence has been provided to the defense, the *Brady* claim fails." *Mullen*, 171 Wn.2d at 896, 902 (citation omitted). Simply put, evidence that could have been discovered but for a lack of due diligence by the defense is not a *Brady* violation. *Id.* at 896, 902-03; *Lord*, 161 Wn.2d at 293. Moreover, when the State provides the defense pretrial opportunities to interview its witnesses about the matters at issue it "satisfie[s] any *Brady* obligations with respect to the contents of [those witnesses'] testimony." *Mullen*, 171 Wn.2d at 898-899.

Here, Mr. Vu informed Mr. Buckley that a written cooperation agreement was reached with Mr. Jacobsen on May 28, 2010, and Mr. Vu provided a copy of that cooperation agreement to Mr. Buckley on or about

June 1, 2010. Appendix A; Appendix B. That agreement indicated that Mr. Jacobsen was currently charged with the crime of Murder in the First Degree and three counts of Robbery in the First Degree, each with a firearm enhancement. CP 138-149 – attached as Appendix G; Appendix A. Mr. Buckley was also aware that, as charged, Mr. Jacobsen was facing between 610 to 733 months in prison. Appendix A; Appendix G. Mr. Buckley knew that pursuant to the cooperation agreement, Mr. Jacobsen would be pleading to three counts of Robbery in the First Degree with one Deadly Weapon Enhancement, and stipulating to a sentence of 126 months in prison. Appendix A; Appendix G.

Moreover, Mr. Vu was working on setting up an interview for Mr. Buckley with Mr. Jacobsen as early as June 1, 2010. Appendix A; Appendix B. That interview took place on June 3, 2010, and was attended by Mr. Buckley and his investigator. Appendix A; Appendix B. The interview lasted well over an hour, was audio-recorded, from which a transcript was later created, and both Mr. Buckley and his investigator questioned Mr. Jacobsen about his motive for cooperating with the State and the benefits he was receiving in exchange for his cooperation. Appendix A. Mr. Buckley declares that he “did not conduct an independent investigation into the facts of Mr. Jacobsen’s crimes” and that this “was complicated by the position taken by Mr. Jacobsen’s attorney

when I tried to ask questions about his case during our defense interview.” Dec. of Charles Buckley. Mr. Buckley, however, once again fails to provide any evidence to support the claim “that he [(Mr. Buckley)] tried to ask questions about his case during our defense interview” and that Mr. Jacobsen’s counsel in some way “complicated” this endeavor despite the fact that the interview was recorded and transcribed. Appendix A. And once again there is a startling lack of specificity in the declaration regarding what endeavors were made in the interview to learn of the specific facts of Mr. Jacobsen’s case considering the allegation that the State was making efforts to hide the “truth” about Mr. Jacobsen.

Furthermore, the crimes with which Mr. Jacobsen was charged were the subject of significant local news coverage. In the three months prior to Mr. Gasteazoro-Paniagua’s trial, the local newspaper printed no less than eight articles about the crimes, many of which contained specific facts about the crimes, two of which were specifically about Mr. Jacobsen, and one of which was about his specific role in the crimes. Appendix F – Articles from “The Columbian.” In sum, the State (1) provided the means of obtaining the allegedly, exculpatory evidence to the defense; and (2) provided the defense the pretrial opportunity to interview Mr. Jacobsen about the matters at issue. Thus, when combined with the fact that the specific facts surrounding Mr. Jacobsen’s crimes were well-publicized, it

was only Mr. Buckley's lack of due diligence that prevented his discovery of the alleged impeaching evidence if he, in fact, did not know about the facts about which he now complains he was ignorant.³ Accordingly, Mr. Buckley's lack of due diligence defeats Mr. Gasteazoro-Paniagua's *Brady* claim. *Mullen*, 171 Wn.2d at 896, 902-03; *Lord*, 161 Wn.2d at 293.

No prejudice ensued.

Mr. Gasteazoro-Paniagua bears the burden of establishing prejudice by showing a reasonable probability that the result of the proceeding would have been different if the State had disclosed the evidence to the defense. In order to do this, he must demonstrate the evidence was itself admissible or would lead to admissible evidence. But, as argued above, neither Mr. Gasteazoro nor Mr. Buckley provide any real theory of admissibility. Rather, there is just mere assertion that "the jury was denied the ability to accurately assess Jacobsen's bias, interest, and true motivation for testifying . . ." and that "I [(Mr. Buckley)] would have definitely impeached him with those facts." Br. of Pet. at 8; Dec. of

³ In "Defense's Response to State's Response to Defendant's Motion for New Trial," which was filed on July 14, 2010, Mr. Buckley expounds upon the information he had, prior to trial, about Mr. Jacobsen's involvement in the crimes for which he was charged, and claims that new information that came to light is "contrary to the information that he [(Mr. Jacobsen)] gave at his initial interview with [the defense investigator] with regard to his participation in the homicide." CP 167-171 – Attached as Appendix H; *See also* RP 2061-63. How this new information could contradict the old information about which Mr. Buckley now declares he was unaware of is bewildering.

Charles Buckley. Mr. Jacobsen's bias, interest, and/or motivation for testifying are pretty straightforward: he was charged with extremely serious crimes and was looking at between 610 to 733 months in prison and by agreeing to testify against his co-defendants and Mr. Gasteazoro-Paniagua he was looking at serving only 126 months. Nothing about his specific role in the crimes for which he was charged or the specific facts of those crimes illuminates or impeaches, and Mr. Gasteazoro-Paniagua fails to advance a convincing argument otherwise. That evidence was inadmissible and had it been disclosed, even assuming it was not, there is not a reasonable possibility that the proceeding would have been different. Thus, his *Brady* violation claim fails on this element as well.

II. THE STATE DID NOT IMPROPERLY VOUCH FOR MR. JACOBSEN.

“Improper vouching generally occurs (1) if the prosecutor expresses his or her personal belief as to the veracity of the witness or (2) if the prosecutor indicates that evidence not presented at trial supports the witness's testimony.” *State v. Ish*, 170 Wn.2d 190, 196, 241 P.3d 389 (2010) (citation omitted). Vouching is improper because “[w]hether a witness has testified truthfully is entirely for the jury to determine.” *Id.* Consequently, evidence that a “witness has agreed to testify truthfully . . .

should not be admitted as part of the State's case in chief." *Id.* at 198. Thus, the prosecutor in *Ish* improperly vouched for the cooperating witness when he asked him: "[w]ith regard to exchanging testimony in this case, what type of testimony?" and the informant answered "[t]ruthful testimony." *Id.* at 194.

That said, "where 'there is little doubt' that the defendant will attack the veracity of a State's witness during cross-examination, for example, the State is entitled to engage in preemptive questioning of its witness on direct to 'take the sting' out of the inevitable damaging cross-examination." *State v. Smith*, 162 Wn.App. 833, 850, 262 P.3d 72 (2011) (quoting *Ish*, 170 Wn.2d at 199 n. 10). Nonetheless, "[if] the agreement contains provisions requiring the witness to give truthful testimony, the State is entitled to point out this fact on redirect if the defendant has previously attacked the witness's credibility." *Ish*, 170 Wn.2d at 199.

Here, prior to Mr. Jacobsen's testimony, the parties discussed the vouching issue. RP 1353-56. In seeking to clarify the court's ruling, Mr. Vu stated the following: "So just – just so I'm clear, when Mr. Jacobsen testifies, after he is impeached by the Defense, which I have no doubt he – he will be, the State can ask him about the agreement . . ." and "For example, after he has been impeached by Mr. Buckley, on redirect I'm going to ask him, okay, what his agreement is with the State in terms of

testifying in this case. . . .” RP 1354-55. Ultimately, the trial court ruled that the State could not elicit that the agreement required Mr. Jacobsen to testify truthfully, but it could ask him whether “he’s testifying truthfully or not.” RP 1353-56.

During Mr. Vu’s direct examination of Mr. Jacobsen, the following exchange took place:

Q: Now, you said that – that you’re – obviously you’re in trouble.

A: Yes.

Q: Okay. What kind of trouble?

A: I’m facing an accomplice to first degree murder and three counts of rob one.

Q: Okay. And in return for your testimony, if you will, in this case, what are you expecting?

A: I have a – a plea agreement with the State.

RP 1446. In further discussing the plea or cooperation agreement the following exchange took place:

Q: Okay. What other matters are you assisting the State on?

A: My case.

Q: Your case?

A: Yes.

Q: In – in relation to what?

A: I have, I believe, five or six other co-defendants.

Q: Okay. And your agreement is to do what?

A: To tell the truth there as well.

Q: Against your co-defendants?

A: Yes

Q: And what are you getting in return for your cooperation?

A: A lowered sentence

RP 1447.

Mr. Vu did not improperly vouch for Mr. Jacobsen because he did not ask Mr. Jacobsen on direct examination if part of the agreement was to testify truthfully nor did he ask a question like the prosecutor in *Ish* who asked, “with regard to exchanging testimony in this case, what type of testimony.” *Ish*, 170 Wn.2d at 198; *See also Smith*, 162 Wn.App. at 77 (reproducing portions of State’s direct examination, which included questions such as: “[a]nd was it, basically, your understanding that you had an ongoing duty to provide truthful information in connection with this case?”). Mr. Vu simply asked Mr. Jacobsen what his agreement was with respect to his pending case and did not highlight Mr. Jacobsen’s answer. RP 1447.

Moreover, just as Mr. Vu predicted, Mr. Buckley began his cross examination of Mr. Jacobsen by attacking his credibility and did so by

highlighting Mr. Jacobsen's pending charges and the fact that he was looking at more than 60 years in prison. RP 1448-49. Consequently, even if Mr. Vu's question of Mr. Jacobsen constituted vouching, it was the type "of preemptive questioning of its witness on direct to 'take the sting' out of the inevitable damaging cross-examination" approved of in *Smith*, 162 Wn.App. at 850 (quoting *Ish*, 170 Wn.2d at 199 n. 10). Moreover, Mr. Vu's questioning of Mr. Jacobsen on redirect examination regarding the requirement that he testify truthfully was explicitly described as proper by *Ish*, 170 Wn.2d at 199.

Assuming arguendo that Mr. Vu's question ran afoul of *Ish*'s prescriptions regarding vouching, any error was harmless. Mr. Gasteazoro-Paniagua bears the burden of showing there is a substantial likelihood the error affected the jury's verdict and he cannot. Mr. Jacobsen's credibility was not built upon a single question and answer during his direct examination, but upon his knowledge of information that would have only been available to him if Mr. Gasteazoro-Paniagua had actually confessed to him and because the information he provided was corroborated by the police investigation into the shooting. Plus, Mr. Gasteazoro-Paniagua had the motive, means, and opportunity to commit the crime. When combined with the video, Mr. Gasteazoro-Paniagua's flight, and lack of credibility, Mr. Jacobsen's credibility was bolstered far

more by the evidence than Mr. Vu's singular question on direct examination that elicited Mr. Jacobsen's agreement to testify truthfully. There is no reasonable possibility that any vouching affected the jury's verdict.

III. INEFFECTIVE ASSISTANCE

A defendant has the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-86, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). That said, a defendant is not guaranteed successful assistance of counsel. *State v. Adams*, 91 Wn.2d 86, 90, 586 P.2d 1168 (1978). The defendant must make two showings in order to demonstrate ineffective assistance: (1) that counsel's performance was deficient and (2) that counsel's ineffective representation resulted in prejudice. *Strickland*, 466 U.S. at 687. A court reviews the entire record when considering an allegation of ineffective assistance. *State v. Thomas*, 71 Wn.2d 470, 471, 429 P.2d 231 (1967). Moreover, a "fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *State v. Grier*, 171 Wn.2d 17, 34, 246 P.3d 1260 (2011) (quoting *Strickland*, 466 U.S. at 689).

a. Deficient Performance

The analysis of whether a defendant's counsel's performance was deficient starts from the "strong presumption that counsel's performance was reasonable." *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009); *State v. Hassan*, 151 Wn.App. 209, 217, 211 P.3d 441 (2009) ("Judicial scrutiny of counsel's performance must be highly deferential.") (quotation and citation omitted). Thus, "given the deference afforded to decisions of defense counsel in the course of representation" the "threshold for the deficient performance prong is high." *Grier*, 171 Wn.2d at 33. This threshold is especially high when assessing a counsel's trial performance because "[w]hen counsel's conduct can be characterized as legitimate trial strategy or tactics, performance is not deficient." *Id.* (quoting *Kylo*, 166 Wn.2d at 863); *State v. Garrett*, 124 Wn.2d 504, 520, 881 P.2d 185 (1994) ("[T]his court will not find ineffective assistance of counsel if the actions of counsel complained of go to the theory of the case or to trial tactics." (internal quotation omitted)). On the other hand, a defendant "can rebut the presumption of reasonable performance by demonstrating that 'there is no conceivable legitimate tactic explaining counsel's'" decision. *Id.* (quoting *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004)).

Cross-examination is an area of trial strategy or trial tactics that reviewing courts are loath to second guess because “[t]he extent of cross-examination is something a lawyer must decide quickly and in the heat of the conflict.” *In re Davis*, 152 Wn.2d 647, 720, 101 P.3d 1 (2004) (quoting *State v. Stockman*, 70 Wn.2d 941, 945, 425 P.2d 898 (1967)). Unsurprisingly then, our Supreme Court has held that “even a lame cross-examination will seldom, if ever, amount to a Sixth Amendment violation.” *In re Pirtle*, 136 Wn.2d 467, 489, 965 P.2d 593 (1998) (citation omitted). Thus, courts generally “entrust cross-examination techniques . . . to the professional discretion of counsel.” *Davis*, 152 Wn.2d at 720.

Here, Mr. Gasteazoro-Paniagua argues that Mr. Buckley was ineffective because he engaged in a deficient cross-examination of Mr. Jacobsen, failed to discover the specific facts underlying the crimes for which Mr. Jacobsen was charged, for agreeing not to call Mr. Jacobsen a “liar” in closing argument, and for not objecting to the “vouching” during Mr. Jacobsen’s direct examination. *See generally* Br. of Pet. Each of these arguments fails.⁴

Cross-examination.

With regard to Mr. Buckley’s cross-examination of Mr. Jacobsen, it cannot be considered constitutionally deficient just because there were a

⁴ It should be noted, that the trial court made sure to tell Mr. Buckley that it thought that he “did an excellent job in defending [his] client, I’ll say that.” RP 2072.

couple answers that in retrospect can be considered harmful. Mr. Gasteazoro-Paniagua claims that Mr. Buckley's questioning of Mr. Jacobsen allowed Mr. Jacobsen to characterize him (Mr. Gasteazoro-Paniagua) as a violent, dangerous man. Even assuming that the jury did not already have that impression of Mr. Gasteazoro-Paniagua, the elicitation of this information can still be fairly characterized as a reasonable trial tactic as it provides an alternative basis by which to suggest Mr. Jacobsen is being untruthful: having already been identified as a "snitch" Mr. Jacobsen must do whatever it takes, including lie, to make sure that the person against whom he was provided incriminating information stays in jail. In other words, that Mr. Jacobsen was testifying, in part, because he feared Mr. Gasteazoro-Paniagua does not redound to the benefit of his credibility.

Investigation into Mr. Jacobsen's crimes and failure to object to the alleged vouching.

These arguments have essentially been addressed above. Regardless of what investigation Mr. Buckley actually undertook into Mr. Jacobsen's pending crimes, the specific facts of those crimes were not going to be admissible. Thus, if Mr. Buckley chose not to investigate these facts, his decision was not deficient.

With regard to vouching, because Mr. Buckley had already addressed the vouching issue with the trial court prior to Mr. Jacobsen's testimony, he had preserved that objection for appeal. Most importantly, however, because vouching did not occur, he did not have a basis to object. Nonetheless, he may have chosen not to highlight the information in front of the jury if he considered it damaging. Moreover, it does not look particularly good for an attorney to object to a witness explaining he is telling the truth. Mr. Buckley's decision not object was correct legally and strategically and cannot constitute deficient performance.

The decision not call Mr. Jacobsen a "liar" in closing argument.

Mr. Gasteazoro-Paniagua describes this decision as an "[i]nexplorable [a]greement to a [l]imitation on [c]losing" and claims that it constituted an unreasonable limitation on Mr. Buckley's ability to attack Mr. Jacobsen's credibility in closing. Br. of Pet. 7, 15-16. While Mr. Buckley may have chosen to not directly call Mr. Jacobsen a "liar," he aggressively attacked his credibility during closing argument and said that he ratted on his friend and would "do whatever it takes to get outta here [(jail)]." RP 1983-86. His performance cannot be considered deficient because he chose to attack Mr. Jacobsen's credibility without calling him a "liar."

b. Prejudice

In order to prove that deficient performance prejudiced the defense, the defendant must show that “counsel’s errors were so serious as to deprive [him] of a fair trial. . . .” *State v. Greer*, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011) (quoting *Strickland*, 466 U.S. at 687). In other words, “the defendant must establish that ‘there is a reasonable probability that, but for counsel’s deficient performance, the outcome of the proceedings would have been different.’” *Id.* at 34 (quoting *Kyllo*, 166 Wn.2d at 862). “In assessing prejudice, ‘a court should presume, absent challenge to the judgment on grounds of evidentiary insufficiency, that the judge or jury acted according to the law’ and must ‘exclude the possibility of arbitrariness, whimsy, caprice, nullification and the like.’” *Id.* (quoting *Strickland*, 466 U.S. at 694–95). Moreover, when juries return guilty verdicts reviewing courts “must presume” that those juries actually found the defendants “guilty beyond a reasonable doubt” of those charges. *Id.* at 41.

Assuming Mr. Buckley was deficient in the ways Mr. Gasteazoro-Paniagua alleges, he still cannot show those errors were so serious as to deprive him of a fair trial. The trial transcript is over 2,000 pages long, there were multitudes of witnesses, hundreds of exhibits, and handfuls of motions; there is no reasonable probability that what Mr. Gasteazoro-

Paniagua now characterizes as deficient performance could have changed the outcome of the proceedings

E. **CONCLUSION**

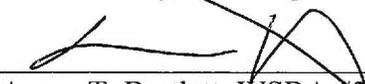
Based on the above arguments the defendant's personal restraint petition should be dismissed.

DATED this 10th day of July, 2015.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By:



Aaron T. Bartlett, WSBA #99710
Deputy Prosecuting Attorney

APPENDIX – A

STATE OF WASHINGTON)

: ss

COUNTY OF CLARK)

I, Kasey T. Vu, am over 18 years of age, and am competent to make this declaration.

1. I was the Deputy Prosecuting Attorney assigned to handle the case of State of Washington v. Jose Miguel Gastearozo-Paniagua, Clark County Superior Court case number 10-1-0004-6, where Jose Gastearozo-Paniagua was charged with Attempted Murder in the First Degree with a firearm enhancement, and Unlawful Possession of a Firearm in the First Degree.

2. I was the trial attorney for the State, and handled all pretrial matters, trial, and sentencing in this case.

3. Attorney Charles Buckley was the defense attorney assigned to represent Jose Gastearozo-Paniagua, and handled all pretrial matters, trial, and sentencing in this case.

4. While the case was pending, counsel for Garold Trent Jacobsen approached me and proposed a cooperation agreement, where Mr. Jacobsen would provide testimony against the other co-defendants in his own case, as well as against Mr. Gastearozo-Paniagua. Mr. Jacobsen was charged as an accomplice with five other co-defendants with Murder in the First Degree and 3 counts of Robbery in the First Degree.

5. The cooperation agreement with Mr. Jacobsen was finalized and signed on May 28, 2010. A copy of the cooperation agreement was provided to Mr. Buckley on or about June 1, 2010.

6. I also prepared a document titled "Criminal History of Garold Trent Jacobsen", listing all of the criminal convictions for Mr. Jacobsen known to the Prosecutor's Office at the time (as listed above). The document lists the crimes, county/state/cause numbers, dates of crime, and dates of sentencing. My review of my case file and correspondence with Mr. Buckley indicates I provided this document to Mr. Buckley on or about June 1, 2010.

7. At the request of the defense, I arranged for Mr. Buckley and his investigator, Steve Teply, to conduct an interview with Mr. Jacobsen. The defense interview took place on June 3, 2010 at the Cowlitz County Jail, where Mr. Jacobsen was housed. In

attendance were myself, Mr. Buckley, Mr. Teply, Mr. Jacobsen, and counsel for Mr. Jacobsen. The interview was audio-recorded, and a transcript was later created.

8. The defense interview of Mr. Jacobsen lasted well over an hour, during which both Mr. Buckley and Mr. Teply questioned Mr. Jacobsen about the information he claimed Mr. Gastearozo-Paniagua told him, the circumstances surrounding how he obtained this information, his motive for cooperating with the State, and the benefits he was receiving in exchange for his cooperation.

9. On June 11, 2010, I filed the State's Pretrial Motions in Limine with the trial court, and also had my assistant fax it to Mr. Buckley's office. We received confirmation that Mr. Buckley's office received the State's Pretrial Motions in Limine.

10. The State's Pretrial Motions in Limine contained seven points or issues that required the trial court to rule on. Point number four (4) dealt with the admissibility of Mr. Jacobsen's criminal convictions for impeachment purposes, including misdemeanors driving with a suspended license, Bail Jumping, Negligent Driving in the First Degree, and a juvenile felony adjudication for Taking Motor Vehicle Without Permission from May 2000, and an adult felony conviction for Assault in the Second Degree.

11. The trial court conducted pretrial motions, including a Criminal Rule (CrR 3.5) Hearing, and Motions in Limine the morning of June 14, 2010. Trial began on the afternoon of June 14, 2010.

12. During the pretrial hearing to deal with Motions in Limine, Mr. Buckley acknowledged and agreed that other than the Taking Motor Vehicle conviction, none of Mr. Jacobsen's other convictions were admissible for impeachment.

13. The trial court initially reserved ruling on the admissibility of the Taking Motor Vehicle adjudication, pending clarification on the whether 10 years had passed since Mr. Jacobsen was released from confinement for that juvenile adjudication.

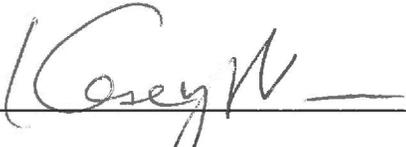
14. After I provided a court-certified copy of Mr. Jacobsen's adjudication paperwork for this crime on the afternoon of June 14, 2010, showing that more than 10 years had elapsed, the trial court ruled that Mr. Jacobsen's May 2000 adjudication for the crime of Taking Motor Vehicle Without Permission was inadmissible for impeachment. Mr. Buckley argued extensively that the four days of community service that Mr. Jacobsen received as part of his sentence equated to confinement, and hence 10 years had not elapsed.

15. On June 22, 2010, I filed and served a copy on Mr. Buckley the State's Memorandum of Law Concerning the Admissibility of a Witness' Prior Juvenile Adjudications for Impeachment, addressing the inadmissibility of Mr. Jacobsen's juvenile Taking Motor Vehicle adjudication. The memorandum was written by John Fairgrieve, a fellow Deputy Prosecutor from my office.

16. Later that day, just prior to the testimony of Mr. Jacobsen, the trial court reiterated the court's ruling that Mr. Jacobsen's juvenile adjudication for Taking Motor Vehicle was excluded. Mr. Buckley agreed with the court that it was excluded.

CERTIFICATION: I declare and certify under penalty of perjury under the laws of the State of Washington that the preceding is true and correct to the best of my knowledge.

Executed at Vancouver, Washington, this 8th day of July, 2015.



Kasey T. Vu, WSBA #31528

Senior Deputy Prosecuting Attorney

APPENDIX – A2

1
2
3
4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

5 STATE OF WASHINGTON,
6 Plaintiff,
7 v.
8 JOSE MIGUEL GASTEAZORO-PANIAGUA,
Defendant.

No. 10-1-00004-6

CRIMINAL HISTORY OF GAROLD TRENT
JACOBSEN

9
10 To the best of the knowledge of the Prosecuting Attorney's Office, Garold Trent Jacobsen has
the following prior criminal convictions:

11

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE
TAKING MOTOR VEHICLE WITHOUT PERMISSION	CLARK/WA 00-8-00598-4	11/4/1999	5/25/2000
DRIVING WHILE SUSPENDED 3	CLARK/WA 36642	3/29/2002	5/29/2002
DRIVING WHILE SUSPENDED 3	CLARK/WA 48298A	8/13/2002	10/30/2002
BAIL JUMPING	CLARK/WA 11203	9/11/2002	10/30/2002
ASSAULT 2	CLARK/WA 02-1-00957-3	4/2/2002	3/31/2003
NEGLIGENT DRIVING 1	CLARK/WA 6941	9/5/2004	10/26/2004

12
13
14
15
16
17
18
19
20

21 DATED this _____ day of June 2010.

22
23
24 _____
Kasey T Vu, WSBA#31528
Deputy Prosecuting Attorney

25
26
27
28
29 CRIMINAL HISTORY

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

APPENDIX – B

Vu, Kasey

From: Vu, Kasey
Sent: Tuesday, June 01, 2010 1:02 PM
To: 'Chuck Buckley'
Subject: RE: Nica trial

Mr. Buckley,

I apologize, I was in court this morning.

Detective Smith's report was available for pick on Friday. Mr. Bulgar did not write a report on the gun. You also should have the audio recording, cooperation agreement with Jacobsen, and State's MTC as of this email. Jacobsen's criminal history and the search warrants and affidavit for the cell phone stuff will be available after 1:30 today. You should already have the data from the cell phone companies (previously provided); this additional paperwork is simply supporting documentation for that data.

We can attempt to schedule an interview with Jacobsen after court tomorrow morning. Can you please clarify what "jail records" on Jacobsen you are referring to?

Thanks.

Kasey

From: Chuck Buckley [<mailto:cbuckley@cbuckleylaw.com>]
Sent: Monday, May 31, 2010 2:14 PM
To: Vu, Kasey
Subject: RE: Nica trial

Mr. Vu

I would like to have the audio tape and the paperwork first thing tuesday morning. Given the late notice it is apparent that I will need to interview this witness before trial. Perhaps we can do it on Wednesday morning after the court rules on your motion for continuance. Also I will be asking the court to have jail records on Mr. Jacobsen since he has been in jail.

I have also been informed that we do not have any report from Mr. Smith which you indicated would be ready on Wednesday of last week. Is there a report? Also it is my understanding that your so-call expert on the firearm did not prepare a report. If I am mistaken I have not recieved any report.

Finally, my client is not interested in a continuing the trial date. I would like to have any brief on your motion for a continuance provided to my office on Tuesday also. That will give me some opportunity to respond.

C. Buckley

From: Vu, Kasey [<mailto:Kasey.Vu@clark.wa.gov>]
Sent: Friday, May 28, 2010 6:15 PM
To: Chuck Buckley
Subject: Nica trial

Mr Buckley,

I am sure you are aware by now that the case was called ready yesterday afternoon, and that the issue regarding a continuance will be brought in front of Judge Johnson on Wed 6/2 at 9 am. At that time, my understanding is that Judge Johnson will hear arguments and either grant a continuance, or we proceed to trial.

Since yesterday afternoon, the State has discovered a new witness who we did not know existed, and had not been available to either side. His name is Garold Trent Jacobsen, a family friend of your client and an inmate who shared the same pod as your client in our jail. Mr. Jacobsen has provided information to the State that incriminates your client in this case, ie your client admitted to him about going to Bi-Lo and shooting the victim. He provided details. The State will provide a copy of the audio recording, the written agreement Mr Jacobsen has with the State, and his criminal history Tue morning (after the Holiday weekend). Obviously, the State intends on calling Mr Jacobsen as a witness at trial.

Congratulations on the new addition to your family! Enjoy the sunshine where you are; it's still raining here.

Have a good weekend.

Kasey

This e-mail and related attachments and any response may be subject to public disclosure under state law.

Vu, Kasey

From: Vu, Kasey
Sent: Wednesday, June 02, 2010 12:04 PM
To: 'Chuck Buckley'
Subject: RE: schedule

Mr Buckley,

Can we bump the interview with Det Smith to 3 pm tomorrow? He has another commitment elsewhere, and wants to make sure he has enough travel time to make our appointment. Everything else is fine. Thanks.

Kasey

From: Chuck Buckley [<mailto:cbuckley@cbuckleylaw.com>]
Sent: Wednesday, June 02, 2010 11:02 AM
To: Vu, Kasey
Subject: schedule

Mr. Vu

I am sending this to confirm that we are meeting at 1:30 today to go over witnesses criminal history. Tomorrow we are going to Cowlitz county to interview Jacobsen at 9:30. Also we are to interview Det. Smith at 1:30 tomorrow. If this is not your understanding let me know.

C. Buckley

APPENDIX – C

3

FILED

2018 JUN 11 PM 3: 38

Sherry W. Parker, Clerk
Clark County

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

STATE OF WASHINGTON,

Plaintiff,

v.

JOSE MIGUEL GASTEAZORO-PANIAGUA,

Defendant.

No.10-1-00004-6

STATE'S MOTION TO ADMIT DEFENDANT'S
POST-ARREST STATEMENTS TO THE
POLICE PURSUANT TO CrR 3.5

And

STATE'S PRE-TRIAL MOTIONS IN LIMINE

COMES NOW the State of Washington, represented by its Deputy Prosecuting Attorney, Kasey T. Vu, makes the following Motion to Admit Defendant's Post-Arrest Statements to the Police Pursuant to CrR 3.5, and pre-trial Motions in Limine:

1. To admit statements made by the Defendant to the police after his arrest. CrR 3.5. Specifically, the State seeks to admit certain statements that the Defendant made to CCSO Detectives Lindsay Schultz and Rick Buckner after his arrest in Yakima. Prior to asking the Defendant any questions about his involvement in the case, the detectives advised the Defendant of his Constitutional Rights pursuant to Miranda. The Defendant acknowledged his rights, and agreed to speak with the detectives. The Defendant did not appear confused nor displayed any confusion about his rights. The detectives made no threats or promises to induce the Defendant to speak with them. In fact, the Defendant even agreed for the interview to be

STATE'S PRE-TRIAL MOTIONS IN LIMINE - 1

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

108

1 audio-recorded. The totality of the circumstances surrounding the post-arrest statements that
2 the Defendant made to Detectives Schultz and Buckner show by a preponderance that the
3 Defendant made these statements voluntarily, not under coercion, and are admissible.

4 2. To allow the State to impeach the defendant with certain of his prior convictions if he
5 chooses to testify, and his testimony contradicts his prior criminal convictions, or if he elicits
6 testimony of his exculpatory hearsay statements to other witnesses through either direct or
7 cross examination. ER 806.

8 3. To prohibit the Defense from referring to any prior arrests, convictions, other criminal
9 history of the victim, Jose Muro, or any alleged street gang affiliation or activities, or opinion on
10 Muro's reputation. There is no evidence that Jose Muro was associated with any street gangs,
11 or that the incidents in this case related to any gang activities. Such information is not relevant
12 under ERs 401 and 402, and even if so its probative value is substantially outweighed by the
13 danger of unfair prejudice under ER 403.

14 4. To prohibit any mention that a witness, Garold Trent Jacobsen, has been convicted of
15 any crimes. Jacobsen has misdemeanor convictions for driving with a suspended license, Bail
16 Jumping, and Negligent Driving in the First Degree. He also has a felony adjudication for
17 Taking Motor Vehicle Without Permission as a juvenile in May 2000. Finally, he has a felony
18 conviction for Assault in the Second Degree. With the exception of the Taking Mother Vehicle,
19 none of these crimes is admissible for impeachment under ER 609. Further, any relevance of
20 this evidence is outweighed by the danger of unfair prejudice. ER 401, 402, 403. With respect
21 to the Taking Motor Vehicle adjudication, the crime was committed on November 4, 1999 and
22 Jacobsen was sentenced on May 25, 2000. Jacobsen was a juvenile at the time, and this
23 adjudication is not admissible for impeachment, unless the court makes a finding that it is
24 necessary for a fair determination of guilt or innocence. ER 609(d). In addition, more than ten
25
26
27

1 years has passed since this adjudication, and consequently the crime is no longer admissible
2 for impeachment under ER 609(b).

3 5. To prohibit the Defense from referring to or inquiring about any prior arrest, criminal
4 convictions, or criminal history of any witnesses unless the witness's prior criminal conviction(s)
5 fall under a recognized exception in the Rules of Evidence. ERs 404(b), 608, 609.

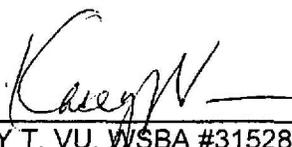
6 6. To exclude any allegations of "prosecutorial misconduct" or "motions for dismissal" in
7 the presence of the jury. Such allegations confuse the issues and mislead the jury. ERs 403
8 103(c).

9 7. To exclude witnesses. ER 615. However, the State reserves the right to have CCSO
10 Detective Lindsay Schultz (the primary investigating officer in this case), remain at counsel table
11 during trial.

12
13 If the Defendant intends to offer argument or evidence that the State has asked to be
14 excluded or prohibited, the State requests that the court require the Defendant make an Offer of
15 Proof outside of the presence of the jury.

16
17 DATED this 11th day of June, 2010.

18
19 ARTHUR D. CURTIS
20 Prosecuting Attorney

21
22 
23 KASEY T. VU, WSBA #31528
24 Deputy Prosecuting Attorney

APPENDIX – D

Transmission Report

Date/Time
Local ID 1
Local ID 2

06-11-2010
360 397 2270

01:24:26 p.m.

Transmit Header Text
Local Name 1
Local Name 2

CLARK COUNTY DRUG UNIT
CLARK COUNTY JUVENILE DIVISION

This document : Confirmed
(reduced sample and details below)
Document size : 8.5"x11"

1	COPY	
2	JUN 11 2010	
3	ORIGINAL FILED	
4		
5	IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON	
6	IN AND FOR THE COUNTY OF CLARK	
7		
8	STATE OF WASHINGTON, Plaintiff, v. JOSE MIGUEL GASTEAZORO-PANIAGUA, Defendant.	No.10-1-00004-6 STATE'S MOTION TO ADMIT DEFENDANT'S POST-ARREST STATEMENTS TO THE POLICE PURSUANT TO CrR 3.5 And STATE'S PRE-TRIAL MOTIONS IN LIMINE
9		
10		
11		
12		
13		
14		
15		
16	COMES NOW the State of Washington, represented by its Deputy Prosecuting Attorney,	
17	Kasey T. Vu, makes the following Motion to Admit Defendant's Post-Arrest Statements to the	
18	Police Pursuant to CrR 3.5, and pre-trial Motions in Limine:	
19	1. To admit statements made by the Defendant to the police after his arrest. CrR 3.5.	
20	Specifically, the State seeks to admit certain statements that the Defendant made to CCSO	
21	Detectives Lindsay Schultz and Rick Buckner after his arrest in Yakima. Prior to asking the	
22	Defendant any questions about his involvement in the case, the detectives advised the	
23	Defendant of his Constitutional Rights pursuant to <u>Miranda</u> . The Defendant acknowledged his	
24	rights, and agreed to speak with the detectives. The Defendant did not appear confused nor	
25	displayed any confusion about his rights. The detectives made no threats or promises to induce	
26	the Defendant to speak with them. In fact, the Defendant even agreed for the interview to be	
27		
	STATE'S PRE-TRIAL MOTIONS IN LIMINE - 1	CLARK COUNTY PROSECUTING ATTORNEY 1200 FRANKLIN STREET • PO BOX 5000 VANCOUVER, WASHINGTON 98666-5000 (360) 397-2281 (OFFICE) (360) 397-2230 (FAX)

Total Pages Scanned : 3

Total Pages Confirmed : 3

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	144	3606932430	01:23:13 p.m. 06-11-2010	00:00:42	3/3	1	EC	HS	CP26400

Abbreviations:

HS: Host send
HR: Host receive
WS: Waiting send

PL: Polled local
PR: Polled remote
MS: Mailbox save

MP: Mailbox print
CP: Completed
FA: Fail

TU: Terminated by user
TS: Terminated by system
RP: Report

G3: Group 3
EC: Error Correct

APPENDIX – E

orig

8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

JUN 22 2010

8:48

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.

JOSE MIGUEL GASTEAZORO-
PANIAGUA,

Defendant.

No. 10-1-00004-6

STATE'S MEMORANDUM OF LAW
CONCERNING THE ADMISSIBILITY
OF A WITNESS' PRIOR JUVENILE
ADJUDICATIONS FOR
IMPEACHMENT

COMES NOW the State of Washington, represented by its deputy prosecuting attorney John Fairgrieve, to inform the court of the law applicable to the issue of the admissibility of a witness' juvenile adjudications for impeachment.

I. Facts Relevant to this Motion

Garold Trent Jacobson will be called as a witness for the prosecution. He is testifying pursuant to a cooperation agreement where, in return for truthful testimony in this trial and possibly others, the State has agreed to allow him to plead guilty to three counts of robbery in the first degree in a case unrelated to the instant matter and to recommend a sentence of 126 months in prison.

Jacobson was adjudicated on May 25, 2000 as a juvenile for the crime of taking a motor vehicle without the owner's permission, RCW 9A.56.070(1). He received five

Truthful testimony memorandum - 1

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

137

1 days of detention with credit for one day served. The remaining four days was
2 converted to 32 hours of community service, to which 16 additional hours of community
3 service were added, for a total of 48 hours of community service. See Exhibit 1.
4

5 II. Argument

6
7 ER 609, Impeachment by Evidence of Conviction of Crime, provides the following
8 in pertinent part:

9 Rule 609. Impeachment by evidence of conviction of crime

10
11 (a) **General rule** For the purpose of attacking the credibility
12 of a witness in a criminal or civil case, evidence that the
13 witness has been convicted of a crime shall be admitted if
14 elicited from the witness or established by public record
15 during examination of the witness but only if the crime (1) was
16 punishable by death or imprisonment in excess of 1 year
17 under the law under which the witness was convicted, and
18 the court determines that the probative value of admitting this
19 evidence outweighs the prejudice to the party against whom
20 the evidence is offered, or (2) involved dishonesty or false
21 statement, regardless of the punishment.

22 (b) **Time limit** Evidence of a conviction under this rule is not
23 admissible if a period of more than 10 years has elapsed
24 since the date of the conviction or of the release of the
25 witness from the confinement imposed for that conviction,
26 whichever is the later date, unless the court determines, in
27 the interests of justice, that the probative value of the
conviction supported by specific facts and circumstances
substantially outweighs its prejudicial effect. However,
evidence of a conviction more than 10 years old as calculated
herein, is not admissible unless the proponent gives to the
adverse party sufficient advance written notice of intent to use
such evidence to provide the adverse party with a fair
opportunity to contest the use of such evidence.

1 (d) **Juvenile adjudications** Evidence of juvenile
2 adjudications is generally not admissible under this rule. The
3 court may, however, in a criminal case allow evidence of a
4 finding of guilt in a juvenile offense proceeding of a witness
5 other than the accused if conviction of the offense would be
6 admissible to attack the credibility of an adult and the court is
7 satisfied that admission in evidence is necessary for a fair
8 determination of the issue of guilt or innocence.

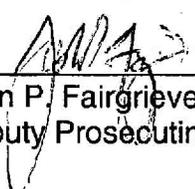
9 Few cases have addressed the issue of the admissibility of a witness' prior
10 juvenile adjudications for impeachment. However, the principal case in this area
11 establishes the following guideline: In the absence of any indication of special reasons
12 favoring admissibility of a witness' prior juvenile adjudications, the general rule is that
13 the adjudications are inadmissible. *State v. Gerard*, 36 Wn. App. 7, 12, 671 P. 2d 286
14 (1983), review denied, 100 Wn. 2d 1035 (1984). In *Gerard* the defendant sought to
15 impeach a juvenile witness with one or more of his prior juvenile adjudications. The trial
16 court summarily denied the defendant's request, and after he was convicted the
17 defendant appealed. In affirming Gerard's conviction the court of appeals noted that
18 "[b]ecause ER 609(d) requires a positive showing that the prior juvenile record is
19 necessary to determine guilt, a record of balancing is less important." The court went
20 on to observe that: "Gerard did not give any reasons for admissibility beyond general
21 impeachment of the witness' credibility. The evidence of a prior conviction would be of
22 dubious value to a defendant in a bench trial. The burden was on Gerard to present
23 reasons other than impeachment to demonstrate that the evidence was "necessary for a
24 fair determination." The trial court did not abuse its discretion." *Gerard* at 12 citing *State*
25 *ex rel. Carroll v. Junker*, 79 Wn.2d 12, 20, 482 P.2d 775 (1971). *Accord, State v.*
26 *Scherner*, 153 Wn. App. 621, 656, 225 P.3d 248, review granted, *State v. Scherner*,

1 2010 Wash. LEXIS 480 (Wash., June 1, 2010)(“Likewise, ER 609(d) provides that the
2 trial court may admit a witness's juvenile adjudication only if it is necessary for a fair
3 determination of the issue of guilt or innocence”).

4 In the instant case the defendant's request to use Jacobson's prior juvenile
5 adjudication for taking a motor vehicle without owner's permission (TMVWOP) for
6 impeachment fails for two reasons. First, even though TMVWOP is a crime involving
7 dishonesty (see *State v. Trepanier*, 71 Wn. App. 372, 858 p. 2d 511 (1993)) the
8 conviction is more than ten years old, thus failing to meet the test under ER 609(b).
9 Second, it is clear that the defendant's objective for offering the adjudication is simply to
10 impeach the credibility of Jacobson. However, *Gerard, supra*, stands for the proposition
11 that in the absence of any other reason beyond general impeachment, juvenile
12 adjudications remain inadmissible. The defendant has failed to meet his burden of
13 proving any other reason for admitting Jacobson's juvenile adjudication, and thus it
14 remains inadmissible.
15
16
17
18

19 Dated this 21st day of June, 2010.

22 Arthur D. Curtis
23 Prosecuting Attorney

24 
25 _____
26 John P. Fairgrieve, WSBA #23107
27 Deputy Prosecuting Attorney

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
JUVENILE DIVISION IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON vs.)

Harold Brent Jacobson III)
DOB: 11-16-82)

SCOMIS NO. 00-8-00298-4
JUVIS NO. 474875R40

ORDER OF DISPOSITION-COMMUNITY SUPERVISION

I. HEARING

THIS MATTER having come on for hearing this 2 day of May 2000, the youth being represented personally and by and through his/her attorney, and the State being represented by it's Deputy Prosecuting Attorney, the youth having previously

Entered valid plea(s) of guilty to [] been convicted at trial of

Count <u>1</u>	R <u>40</u>	Charging <u>Def. with Veh. up</u>	Committed on or about <u>November 9, 1995</u>
Count _____	R _____	Charging _____	Committed on or about _____
Count _____	R _____	Charging _____	Committed on or about _____
Count _____	R _____	Charging _____	Committed on or about _____

II. FINDINGS

THE COURT having afforded each counsel the right to speak, having asked the above youth if he/she wished to make a statement on his/her behalf, having considered any mitigating and aggravating factors, and the case record to date, the Court finds that the youth is guilty of the above charge(s).

III. ORDER

NOW, THEREFORE, the Court orders the youth to consecutive terms of community supervision

6 months, Count 1 R 040 _____ months, Count _____ R _____
_____ months, Count _____ R _____ _____ months, Count _____ R _____

Juvenile Court jurisdiction is extended beyond the juvenile's eighteenth birthday

WHILE ON SUPERVISION, the youth shall abide by the following conditions and directives.

A. LAW: The youth shall not violate any federal, state, or local laws of this or any other jurisdiction, nor shall he/she be in the company of any person known to him/her to be doing or having done so

B. DETENTION SENTENCE: 5 days total (_____ Ct I, _____ Ct II, _____ Ct III, _____ Ct IV)

1. Beginning _____, 19____
2. Credit for one days served.
3. Work credit 4 days are converted to 32 hours of community service/work crew
4. _____ Work/School release is authorized

FILED

MAY 25 2000

JeAnne McBride, Clerk, Clark Co.

C. COMMUNITY SERVICE: 16 hours to be performed

1. Detention credit of _____ hours community service
- 2 TOTAL COMMUNITY SERVICE ORDERED UNDER DIRECTIVES B AND C ABOVE
48 HOURS

D. TREATMENT: The youth shall attend and successfully complete a counseling, therapy, or information program as directed by his/her parent or probation counselor

E. EDUCATION: The youth shall enroll in and attend an educational/vocational program, and comply with the mandatory school attendance provisions of 28 A 225 RCW Suspension or expulsion from such program may be deemed a violation of community supervision and your probation officer will notify the school of this requirement

F. RESIDENCE: The youth shall live at a residence approved by his/her probation counselor, shall abide by all reasonable written rules of the residence and shall not move unless given prior permission to move by the court or his/her probation counselor, and shall spend every night at his Court approved residence unless given permission otherwise by his/her probation officer and/or parent

Distribution: WHITE-Court GREEN-Probation YELLOW-Youth PINK-Pros. Attorney GOLD-Counsel

Exhibit 1

G. FINANCIAL DIRECTIVE: The youth shall pay the following to the Clark County Clerk

- 1 A \$ fine is imposed
- 2 A \$ 1000 fee for the Crime Victim's Fund
- 3. Restitution in an amount to be determined by the Probation Counselor If the Probation Counselor and the respondent cannot agree on an amount, the matter may be set for hearing
- 4 Restitution on all counts listed in the information filed

H. ASSOCIATION: The youth shall not associate with any person on probation or parole, nor shall he/she voluntarily associate with or communicate with his/her co-respondent, or with _____

I. YOU ARE TO HAVE NO CONTACT WHATSOEVER WITH THE VICTIM(S) _____

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 10.99 RCW AND WILL SUBJECT A VIOLATOR TO ARREST. ANY ASSAULT OR RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS ORDER IS A FELONY.

J. While under community supervision, the youth shall be under the charge of a probation counselor of the Clark County Superior Court Juvenile Department and shall follow the conditions in this order and any other written rules as directed by the Probation counselor The youth shall fully and truthfully report to such probation counselor at such times and places as directed.

K. Supervision shall be transferred to _____

L. ADDITIONAL CONDITIONS/DIRECTIVES: _____

M. COUNT(S) _____ **is/are dismissed with/without prejudice.**

DONE IN OPEN COURT and in the presence of the above-named youth this 25th day of May, 2002

APPROVED AS TO FORM:

[Signature]
Deputy Prosecuting Attorney

[Signature]
Defense Attorney
12911

[Signature]
SUPERIOR COURT JUDGE/COMMISSIONER

I HAVE RECEIVED A COPY OF THIS ORDER. I UNDERSTAND IT AND HAVE NO FURTHER QUESTIONS TO ASK OF THE COURT.

[Signature]
Youth

Parent _____

TO THE YOUTH WHO IS SUBJECT TO THIS ORDER

You have certain rights regarding your record. Please read the other side of this Order where such information is provided
In Reference to: _____

ORDER OF DISPOSITION - Page 2 of 2
(JuCR 7 12, RCW 13 40 130-160, 180, 185, 190)

Distribution: WHITE-Court GREEN-Probation YELLOW-Youth PINK-Pros. Attorney GOLD-Counsel
I attest that I saw the same youth who appeared in Court on this document affix his/her thumbprints hereto
JOANNE McBRIDE, SUPERIOR COURT CLERK

By [Signature]
Special Deputy

12/99 JPA04b



Right Thumb





STATE OF WASHINGTON } ss.
COUNTY OF CLATSOP }

I, Sherry W. Parker, County Clerk and Clerk of the Superior Court of Clark County, Washington, DO HEREBY CERTIFY that this document, consisting of 2 page(s), is a true and correct copy of the original now on file and of record in my office and, as County Clerk, I am the legal custodian thereof.

Signed and sealed at Vancouver, Washington this date:

5/10/10
Sherry W. Parker, County Clerk

By [Signature] Deputy

SUPERIOR COURT FOR CLARK COUNTY, WASHINGTON

JUVENILE

STATE OF WASHINGTON,
Plaintiff,

JUVIS NO. 474875 R040

SCOMIS NO. 00-8-00598-4

vs.

INFORMATION

FILED

MAY 25 2000

Jovette McBride, Clerk, Clark Co.

GAROLD TRENT JACOBSEN, III,
Respondent,
dob: 11-16-82

COMES NOW the Prosecuting Attorney in and for Clark County, State of Washington, and does by this Information, inform the Court that the above-named respondent is guilty of the offense(s) committed as follows, to-wit.

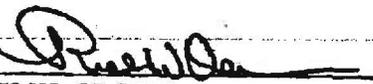
COUNT I:

That he, GAROLD TRENT JACOBSEN, III, in the County of Clark, State of Washington, on or about the 4th day of November, 1999, did intentionally and without the permission of RODNEY FRY, the owner or person entitled to the possession thereof, take and drive away a motor vehicle, to-wit: one 1974 Mercury, bearing Washington license number 731KCO, or, with knowledge that such motor vehicle had been unlawfully taken, did voluntarily ride in or upon such motor vehicle, in violation of RCW 9A.56.070(1), contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Washington.

May 25, 2000

ARTHUR D. CURTIS
Prosecuting Attorney

Ct. I TMVOP

By: 
RICK W. OLSON
Deputy Prosecuting Attorney
WSB #14810

HT 5'10"
WT.: 200 LBS.
HR.: BLACK
EYES: BROWN
RACE: CAUCASIAN

APPENDIX – F

<http://www.columbian.com/news/2010/apr/16/arrest-made-in-gunshot-slaying-of-minnehaha-man/> (April 16, 2010)

<http://www.columbian.com/news/2010/apr/20/another-arrest-in-homicide-case/> (April 20, 2010)

<http://www.columbian.com/news/2010/apr/22/third-suspect-arrested-in-home-invasion-slaying/> (April 22, 2010)

<http://www.columbian.com/news/2010/apr/28/fourth-suspect-arrested-in-connection-to-slaying-c/> (April 28, 2010)

<http://www.columbian.com/news/2010/apr/29/fifth-person-arrested-in-december-homicide-case/> (April 29, 2010) (Garold Jacobsen)

<http://www.columbian.com/news/2010/may/01/four-suspects-in-home-invasion-robbery-killing-ple/> (May, 01, 2010)

<http://www.columbian.com/news/2010/may/03/sixth-homicide-suspect-appears-in-court/> (May 3, 2010)

<http://www.columbian.com/news/2010/may/13/two-suspects-in-home-invasion-killing-plead-not-gu/> (May 13, 2010) (Garold Jacobsen)

Arrest made in shotgun slaying of Minnehaha man

More arrests possible, police say

By **John Branton**, Columbian Staff Reporter

Published: April 16, 2010, 6:06 PM

0



(http://media.columbian.com/img/photos/2010/04/17/Douglas_Alan_Marquis.jpg)

Douglas Alan Marquis, 23, of Vancouver, was arrested April 16, 2010, on suspicion of murder in connection with the death of Charles N. Moore of Minnehaha on Dec. 13, 2009.

Vancouver police today arrested a 23-year-old man in the shooting death of Charles N. Moore late last year at his home in the 5300 block of St. James Road, in the Minnehaha area.



Douglas Alan Marquis of Vancouver was taken to the Clark County Jail on suspicion of first-degree murder, first-degree robbery, unlawful possession of a firearm and unlawful imprisonment, according to a bulletin from the Vancouver Police Department.

The case surfaced about 11 p.m. on Dec. 13, when officers rushed to Moore's home after learning of a robbery with shots fired. Moore, 46, was found at the scene, dead of a shotgun wound to the chest, officials said.

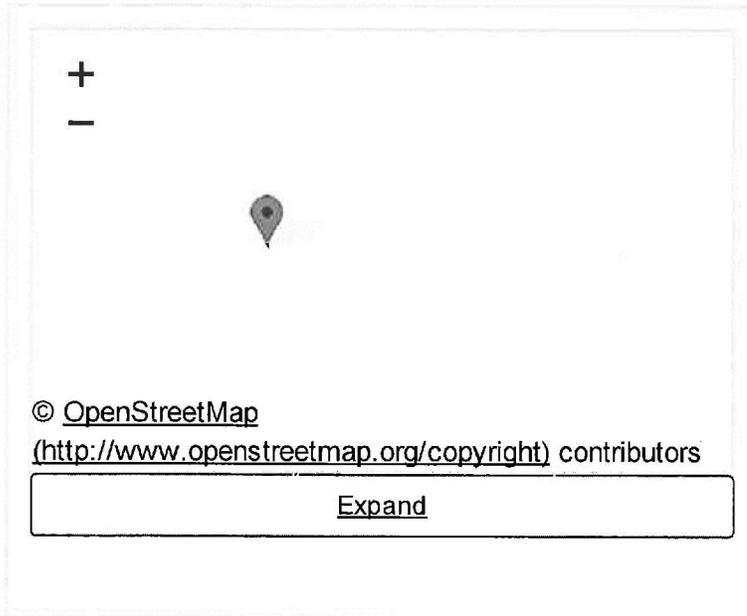
A complex investigation followed, with detectives from the Major Crimes Unit probing leads and forensic evidence found at the scene.

At one point, Moore's family members appeared at a press conference, expressing their grief, expressing confusion about why he was slain and appealing for those with information to contact police.

"My dad was just an average person, trying to live the best he could," his daughter, Victoria Maul, said in the press conference early last month. "He was a really nice guy. He had a lot of friends and family, and he didn't really do anything wrong.

"I don't think there was anyone out there who didn't like him," she added.

(Multnomah County Sheriff's Office)



“He didn’t own anything the average person didn’t own, so there was no financial gain for whoever killed him.”

Detective Lawrence Zapata, the lead investigator, agreed: “He led a very modest life. He owned nothing that was newer, per se.”

“Just not having him there is terrible for all of us,” Maul added in the press conference. “I dearly miss him.”

Before the press conference, Crime Stoppers had offered a reward of up to \$1,000 and detectives received valuable tips from that, police said.

Detectives “followed up on all the tips and leads that were developed,” police spokeswoman Kim Kapp said Friday afternoon.

Soon after the slaying, police said they were looking for two to five men wearing masks and dark clothing.

Kapp said Friday that several people were involved in the alleged robbery and detectives may arrest more suspects in

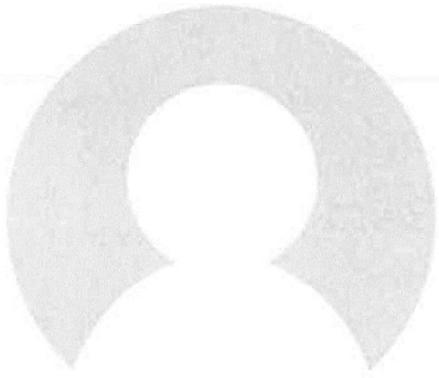
the case.

Marquis is alleged to have been the one who shot Moore, Kapp said.

Detectives still have not revealed what the alleged robbers were seeking, Kapp said.

“I’m sure the detectives are glad to have some degree of closure for the family, in view of the length of the investigation,” Kapp said.

John Branton: 360-735-4513 or john.branton@columbian.com (<mailto:john.branton@columbian.com>).



[John Branton \(/staff/john-branton/\)](/staff/john-branton/)

Columbian Staff Reporter

[360-735-4513](tel:360-735-4513)

[Send an Email \(mailto:john.branton@columbian.com\)](mailto:john.branton@columbian.com)

More Like This



[Community guidelines \(/guidelines/\)](/guidelines/)

[BLOGS \(HTTP://BLOGS.COLUMBIAN.COM\)](http://blogs.columbian.com)



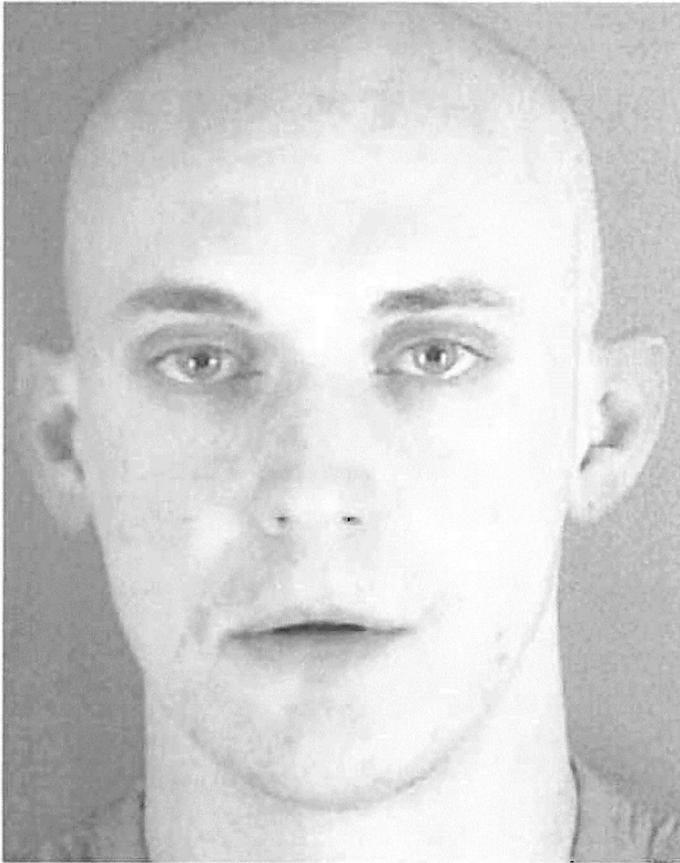
Second man arrested in home-invasion slaying

Vancouver man allegedly hit victim's roommate with gun

By **Laura McVicker**, Columbian staff writer

Published: April 20, 2010, 1:56 PM

0



<http://media.columbian.com/img/photos/2010/04/20/20100420-135257-pic-495465976.jpg>

Caleb E. Soucy
(Vancouver Police Department)

A second suspect has been arrested in connection with the home-invasion robbery and slaying of Charles N. Moore.



Caleb Eugene Soucy, 28, of Vancouver made a first appearance in Clark County Superior Court on Tuesday on suspicion of being an accomplice to first-degree murder, three counts of first-degree robbery, first-degree assault and unlawful imprisonment.

Superior Court Judge Roger Bennett set bail at \$1 million and appointed attorney Mike Foister to represent him.

Prosecutors allege Soucy was one of the masked men who accompanied slaying suspect Douglas Alan Marquis to Moore's home in the 5300 block of Northeast St. James Road last Dec. 13. Marquis is accused of fatally shooting Moore, while two or three masked men are suspected of robbing and ransacking the home, where two of the victim's roommates also were present.

Marquis was arrested Friday on suspicion of murder, 0 among other charges.

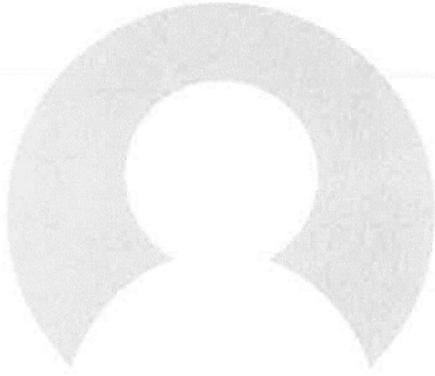
Court records indicate one of the roommates was pistol-whipped by one of the intruders — alleged to be Soucy — when he didn't answer a question appropriately.

Prosecutors allege the same anonymous witnesses who reported Marquis bragged about the killing afterward also implicated Soucy in the crime. One of the witnesses reported seeing Soucy enter Moore's home and detain the roommate in a back room, according to court documents.

"Witness No. 7 stated they saw Caleb flee Charlie Moore's (home) moments after Charlie was killed," according to a probable cause affidavit filed by Vancouver police Detective Lawrence Zapata.

In addition, cell phone records — which reportedly showed Marquis was in the area of Moore's home at the time of the killing — showed Soucy was in the area, too, according to court records.

Both Soucy and Marquis will be arraigned Friday.



Laura McVicker (/staff/laura-mcvicker/)

Columbian staff writer

☎ 360-735-4516

✉ [Send an Email \(mailto:laura.mcvicker@columbian.com\)](mailto:laura.mcvicker@columbian.com)

More Like This



[Community guidelines \(/guidelines/\)](/guidelines/)

BLOGS (HTTP://BLOGS.COLUMBIAN.COM)



Third suspect arrested in home-invasion slaying

Woman, 23, suspected of being getaway driver

By **Laura McVicker**, Columbian staff writer

Published: April 22, 2010, 10:50 AM

0

A third suspect has been arrested in connection with the home-invasion robbery and slaying of Charles N. Moore last December.



Minna R. Long, 23, of Vancouver made her first appearance Thursday morning in Clark County Superior Court on suspicion of first-degree murder as an accomplice and three counts of first-degree robbery.

Superior Court Judge Barbara Johnson set her bail at \$1 million.

Long will be arraigned April 30 with Douglas Marquis, 22, and Caleb Soucy, 28, both of Vancouver.

Marquis is accused of fatally shooting Moore Dec. 13 at his home in the 5300 block of Northeast St. James Road, while two or three masked intruders are suspected of robbing and ransacking the home.

Soucy — alleged to be one of those intruders — is accused of pistol-whipping one of Moore's roommates during the event, according to court documents.

Prior convictions

Long was arrested on a warrant by Vancouver police detectives at a residence in Brush Prairie on Wednesday.

The warrant alleges Long, who is Soucy's girlfriend, was the getaway driver following the alleged slaying.

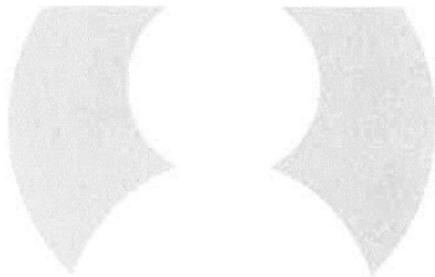
An anonymous witness told investigators Long was seen driving her maroon Jeep the wrong way on St. James Road before pulling in front of Moore's house. Then the witness saw Marquis and Soucy jump into Long's Jeep following the alleged slaying. The driver made make a U-turn and sped away, court records indicate.

Long, a Clark College student, has several prior convictions, including a robbery conviction relating to a 2006 home-invasion robbery in which she was accused of serving as a getaway driver, according to court records. She served a 45-month sentence.

Clark County Deputy Prosecutor Kasey Vu said Thursday there's a possibility of more arrests.

Laura McVicker: 360-735-4516 or laura.mcvicker@columbian.com.

[Laura McVicker \(/staff/laura-mcvicker/\)](/staff/laura-mcvicker/)



Columbian staff writer

☎ 360-735-4516

✉ [Send an Email \(mailto:laura.mcvicker@columbian.com\)](mailto:laura.mcvicker@columbian.com)

More Like This



[Community guidelines \(/guidelines/\)](/guidelines/)

[BLOGS \(HTTP://BLOGS.COLUMBIAN.COM\)](http://blogs.columbian.com)



Fourth suspect arrested in connection to slaying case

By **Laura McVicker**, Columbian staff writer

Published: April 28, 2010, 10:07 AM

0

A fourth suspect has been arrested in connection to the robbery and slaying of Charles N. Moore in December.



Joshua B. McAlexander, 30, made his first appearance Wednesday on suspicion of three counts of first-degree robbery.

Clark County Superior Court Judge Diane Woolard set bail at \$500,000 and appointed attorney Clark Fridley to represent him.

Deputy Prosecutor Kasey Vu subsequently filed paperwork alleging there also was probable cause for McAlexander to be held in jail on suspicion of first-degree murder as an accomplice.

A tip led Vancouver police officers to McAlexander. A witness told police a man with bullet holes tattooed on his forehead was involved in the Dec. 13 home-invasion and fatal shooting of Moore at his home in the 5300 block of Northeast St. James road, according to court papers. A total of four or five masked intruders are believed to have entered the home.

McAlexander, currently an inmate at the Clark County Jail for a probation violation, fit that description. Upon questioning, McAlexander allegedly told police he was present during the shooting but didn't take anything, according to court papers.

Court papers indicate he went on to say he was in the house for a prolonged period of time and when he left, the alleged shooter, Douglas Marquis, had a shopping bag of stolen goods.

Three other suspects — Marquis, 22, Caleb Soucy and the alleged getaway driver, Minna Long, 23 — have been arrested as the investigation progresses.

Court records said "items of value" belonging to Moore were taken — though they weren't specified — and a roommate's antique item also was stolen.

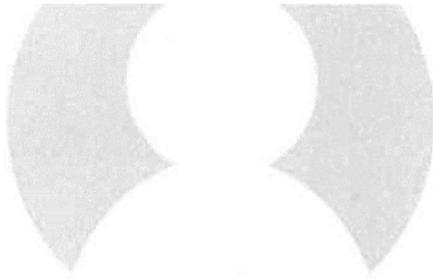
An exact motive hasn't been revealed.

Vu described the investigation Wednesday as still ongoing, with the possibility of more arrests.

The four suspects will be arraigned Friday.

[Laura McVicker \(/staff/laura-mcvicker/\)](/staff/laura-mcvicker/)





Columbian staff writer

☎ 360-735-4516

✉ [Send an Email \(mailto:laura.mcvicker@columbian.com\)](mailto:laura.mcvicker@columbian.com)

More Like This



[Community guidelines \(/guidelines/\)](/guidelines/)

[BLOGS \(HTTP://BLOGS.COLUMBIAN.COM\)](http://blogs.columbian.com)



Fifth person arrested in December robbery-slaying

By **Laura McVicker**, Columbian staff writer

Published: April 29, 2010, 9:49 AM

0

Police have arrested a fifth person in connection with the home-invasion robbery and slaying of a Vancouver man.



Garold T. Jacobsen, 27, made his first appearance Thursday in Clark County Superior Court on suspicion of first-degree murder as an accomplice and three counts of first-degree robbery.

Judge John Nichols set bail at \$1 million.

Jacobsen, who lives in the Vancouver area, is alleged to have been among a group of masked intruders who entered Charles N. Moore's home on Dec. 13 in the 5300 block of Northeast St. James Road. Undisclosed items were taken and Moore, 46, was shot in the chest and killed.

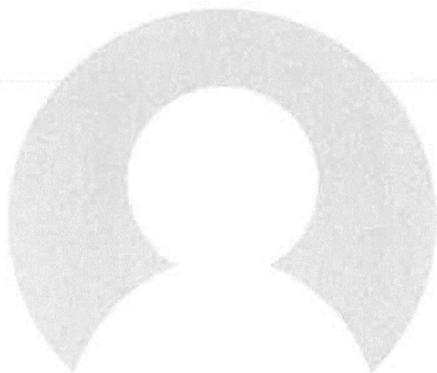
Moore's two roommates told police the assailants ransacked the home. Court records don't reveal what was stolen or a motive for the killing.

It wasn't clear from investigators if Moore even knew his assailants.

Douglas Marquis, 22, was arrested as the suspected shooter after allegedly bragging to people about the killing afterward. Several anonymous witnesses also pointed investigators to alleged accomplices Caleb Soucy, 28; Minna Long, 23; and Joshua McAlexander, 30.

Marquis, Soucy, Long and McAlexander will be arraigned today. Jacobsen will be arraigned May 13.

Deputy Prosecutor Kasey Vu on Thursday described the investigation as ongoing, with the possibility of even more arrests.



Laura McVicker (/staff/laura-mcvicker/)

Columbian staff writer

📞 360-735-4516

✉ [Send an Email \(mailto:laura.mcvicker@columbian.com\)](mailto:laura.mcvicker@columbian.com)

More Like This



[Community guidelines](#)
[\(/guidelines/\)](#)

[BLOGS \(HTTP://BLOGS.COLUMBIAN.COM\)](http://blogs.columbian.com)



Four suspects in home-invasion robbery, killing plead not guilty

Another suspect to be arraigned May 13; sixth suspect arrested Friday



(<http://media.columbian.com/img/croppedphotos/2010/05/01/960697.jpg>)

Joshua McAlexander, a suspect in the killing of Charles N. Moore, pleaded not guilty Friday to murder and robbery charges (Vivian Johnson)

By **Laura McVicker**, Columbian staff writer

Published: May 1, 2010, 6:00 AM

0



<http://media.columbian.com/img/photos/2010/04/30/20100430-190331-pic-175588728.jpg>

Douglas Marquis

Four people suspected in a home-invasion killing of a Vancouver man pleaded not guilty Friday in Clark County Superior Court to murder and robbery charges.



Meanwhile, a fifth suspect is due back in court May 13 for arraignment and a sixth suspect was arrested Friday.

The suspects appeared in connection to the Dec. 13 homicide of 46-year-old Charles N. Moore at his home in the Minnehaha area.

Douglas A. Marquis, 22, is suspected of shooting Moore. Joshua B. McAlexander, 30, Caleb E. Soucy, 28, and Minna R. Long, 23, are charged with first-degree murder as accomplices.

They are alleged to have accompanied Marquis to the home when the killing occurred, charging documents state.

McAlexander appeared in court first and entered his not-guilty plea to first-degree murder and three counts of first-degree robbery.

Later in the afternoon, Long — the alleged getaway driver — and Marquis and Soucy pleaded not guilty to the same charges. Soucy and Marquis also face a charge of unlawful possession of a firearm.

Trial for all four suspects was set for June 21.

The suspects, who are all from Vancouver or don't have listed addresses, remain in the Clark County Jail on \$1 million bail.

A fifth suspect, Garold T. Jacobsen, 27, was arrested Wednesday. He will be arraigned May 13.

A sixth suspect, Cathleen M. Potter, 46, was arrested Friday and will make a first appearance in court Monday, said Senior Deputy Prosecutor John Fairgrieve.

Friday afternoon, Potter was being held in jail on suspicion of first-degree murder, first-degree robbery and first-degree burglary.

Fairgrieve said Potter was not part of the group who invaded Moore's home. But her arrest "related to the conduct of the other individuals," he said, declining further comment.

Authorities have remained mum about the investigation, not revealing what items were taken from Moore's house in the 5300 block of Northeast St. James Road or a motive.

Moore, a longtime resident of the area, was disabled and lived on a fixed income. He died of a shotgun blast to the chest after a group of robbers came to his home about 11 p.m. on a Sunday.

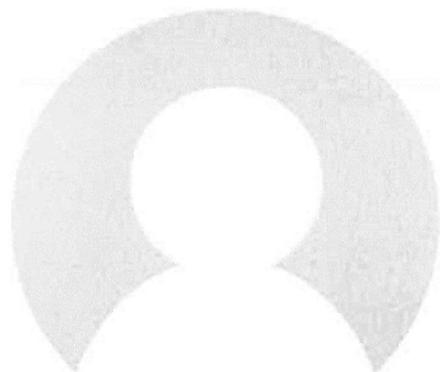
Outside court Friday, Moore's daughter, Victoria Maul, said she'd never heard of any of the suspects and couldn't say whether her father knew them.

Asked whether she was relieved arrests were made, Maul said: "It's something I really don't know how to feel about it."

Fairgrieve said he doesn't expect any more arrests.

"Some aspects are continuing, but the majority of the investigation has been concluded," he said.

Laura McVicker: 360-735-4516 or laura.mcvicker@columbian.com (mailto:laura.mcvicker@columbian.com).



Laura McVicker (/staff/laura-mcvicker/)

Columbian staff writer

☎ 360-735-4516

✉ [Send an Email \(mailto:laura.mcvicker@columbian.com\)](mailto:laura.mcvicker@columbian.com)

More Like This



[Community guidelines \(/guidelines/\)](/guidelines/)

[BLOGS \(HTTP://BLOGS.COLUMBIAN.COM\)](http://blogs.columbian.com)



Sixth slaying suspect appears in court



(<http://media.columbian.com/img/croppedphotos/2010/05/03/20100503-102722-pic-342988083.jpg>)

Cathleen M. Potter, 46, of Camas made her first appearance in Clark County Superior Court in connection to the December homicide of Charles N. Moore. ([Steven Lane \(/staff/steven-lane/\)/The Columbian](#))

By **Laura McVicker**, Columbian staff writer

Published: May 3, 2010, 10:29 AM

Updated: May 3, 2010, 4:02 PM

0

Cathleen M. Potter made her first appearance Monday in Clark County Superior Court in connection with the December robbery and slaying of Vancouver resident Charles N. Moore.



Superior Court Judge John Nichols set bail at \$1 million for Potter, 46, and appointed attorney Tom Phelan to represent her.

The Camas woman is being held in the Clark County Jail on suspicion of first-degree murder, first-degree robbery and first-degree burglary.

Prosecutors have not revealed how Potter is connected to the slaying, saying only that her actions are "related to the conduct of the other individuals." Prosecutors believe she wasn't part of the group who invaded Moore's home.

The killing happened Dec. 13 at Moore's home in the 5300 block of Northeast St. James Road. One of the four or five masked intruders who entered Moore's home shot him in the chest. The others ransacked the place, police said.

Two of Moore's roommate were present during the killing. After Moore was shot, the female roommate said she was forced to sit in the room where he lay dead.

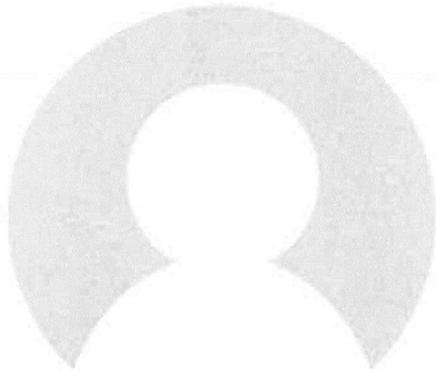
The other roommate said he was pistol-whipped by one of the intruders when he didn't answer a question appropriately, according to court documents.

Undisclosed items were taken. A motive wasn't revealed and it's unknown whether the suspects even knew Moore.

Five people, including the suspected shooter, Douglas A. Marquis, 22, have been arrested in connection with the robbery and killing.

Also facing charges are Caleb E. Soucy, 28; Joshua B. McAlexander, 30; Garold T. Jacobsen, 27; and Minna R. Long, 23. The three men are accused of accompanying Marquis to Moore's home; Long is alleged to be the getaway driver.

Potter will be arraigned May 13



Laura McVicker (/staff/laura-mcvicker/)

Columbian staff writer

📞 360-735-4516

✉ [Send an Email \(mailto:laura.mcvicker@columbian.com\)](mailto:laura.mcvicker@columbian.com)

More Like This



[Community guidelines \(/guidelines/\)](/guidelines/)

[BLOGS \(HTTP://BLOGS.COLUMBIAN.COM\)](http://blogs.columbian.com)



Man pleads not guilty in home-invasion killing

He, another suspect appear in court; judge will decide if all 6 will go to trial together



(<http://media.columbian.com/img/photos/2010/05/13/20100513-174637-pic-850442173.jpg>)

Cathleen Potter

By Laura McVicker, Columbian staff writer

Published: May 13, 2010, 9:41 PM

0

One of six people charged in connection with the home-invasion killing of Charles N. Moore pleaded not guilty to murder and robbery Thursday in Clark County Superior Court. Meanwhile, a second suspect appeared but asked the judge to postpone her arraignment.

Judge Roger Bennett set a trial date of June 21 for Garold T. Jacobsen, 27, of Vancouver and Cathleen M. Potter, 46, of Camas.

Potter's attorney, Tom Phelan, wanted to delay Potter's arraignment so he could set a separate trial date.

But Bennett said he'd take up that issue at a June 1 hearing: whether the defendants will proceed to trial together or be tried separately.

The same goes for the other four defendants — Douglas A. Marquis, Caleb E. Soucy, Minna R. Long and Joshua B. McAlexander. They all have the same trial date, but that could change.

"There's a lot of work to be done" in the investigation and preparing for trial, Bennett said.



<http://media.columbian.com/img/photos/2010/05/13/20100513-174637-pic-502899961.jpg>

Garold Jacobsen

Charges relate to the robbery and slaying of Moore, 46, on Dec. 13 at his home in the 5300 block of Northeast St.

James Road. Four or five masked intruders entered the home, when one of them, Marquis, allegedly shot Moore in the chest. The others ransacked the place, police said.

Two of Moore's roommates were present during the killing and held against their will, police said.

Undisclosed items were taken. A motive wasn't revealed, and it's unknown whether the suspects even knew Moore.

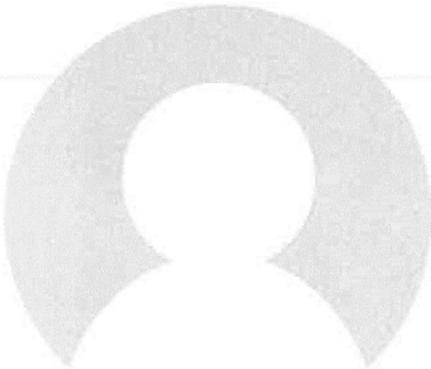
Potter, charged with second-degree murder as an accomplice, allegedly provided details to the group that led them to Moore's home, said Deputy Prosecutor Kasey Vu. She wasn't present during the event, said Vu, who declined to offer further details.

Jacobsen, charged with first-degree murder and three counts of first-degree robbery as an accomplice, allegedly was the lookout person. However, Jacobsen's attorney, Bob Yoseph,

told the judge: "He may or may not have been in the house when the shot was fired."

Vu added that Jacobsen also momentarily stepped inside and is believed to have taken part in the robbery.

Laura McVicker: 360-735-4516 or laura.mcvicker@columbian.com (<mailto:laura.mcvicker@columbian.com>).



Laura McVicker (/staff/laura-mcvicker/)

Columbian staff writer

📞 360-735-4516

✉ [Send an Email \(mailto:laura.mcvicker@columbian.com\)](mailto:laura.mcvicker@columbian.com)

More Like This



[Community guidelines](#)
[\(/guidelines/\)](#)

[BLOGS \(HTTP://BLOGS.COLUMBIAN.COM\)](http://blogs.columbian.com)



APPENDIX – G

12

Wing

FILED
JUN 22 2010 8:48
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.

JOSE MIGUEL GASTEAZORO-
PANIAGUA,
Defendant.

No. 10-1-00004-6

STATE'S MEMORANDUM OF LAW
CONCERNING THE ADMISSIBILITY
OF TRUTHFULNESS PROVISIONS OF
PLEA AGREEMENTS AT TRIAL

COMES NOW the State of Washington, represented by its deputy prosecuting attorney John Fairgrieve, to inform the court of the law applicable to the issue of the admissibility of truthfulness provisions in a plea agreement between a witness and the State during a criminal trial.

I. Facts Relevant to this Issue

In an information filed on April 29, 2010 in Clark County Superior Court Garold Trent Jacobson was charged with multiple felonies, including murder in the first degree, for his alleged involvement in a home invasion robbery that occurred on December 13, 2009. See Exhibit 1. On May 28, 2010 he signed a cooperation agreement wherein he agreed, among other things, to "provide complete and truthful testimony at any hearing

138
WF

1 or trial in the matters listed in Section 2 of this agreement.” The instant case is one of
2 those listed in section 2. See Exhibit 2, p. 2. The agreement also contains the following
3 provision: “The parties stipulate the defendant will be in breach of this agreement if the
4 defendant makes any statement at any interview, hearing or trial that is not completely
5 truthful.” *Id. at p. 3.* The defendant has moved the court to redact the foregoing
6 provisions from Jacobson’s Cooperation Agreement prior to it being referred to or
7 offered as evidence in this case. The defendant has also moved to strike the next to last
8 paragraph from Section 2 of the Cooperation Agreement discussing the use of
9 polygraph examinations to verify the truthfulness of the defendant’s statements. The
10 State does not oppose the redaction of this paragraph.

11 12 II. Argument

13
14 1. The two provisions of Jacobson’s Cooperation Agreement requiring that he
15 testify truthfully should not be redacted from the agreement. Doing so will potentially
16 mislead the jury as to the context of Jacobson’s testimony.

17 In a case filed in May of this year, Division I of the Court of Appeals addressed
18 the issue of the admissibility of a provision that a witness “testify truthfully” in a plea
19 agreement. In *State v. Coleman*, 155 Wn. App. 951 (2010) the defendant was charged
20 with robbery in the first degree and other crimes. At trial Coleman’s co-defendant, Sean
21 Phillips, testified. The trial court admitted Phillip’s plea agreement which contained the
22 phrase: “The defendant’s most important obligation pursuant to this agreement is to
23 testify truthfully.” It continued, stating that: “In the event that the defendant “is deceptive,
24 untruthful, [or] incomplete,” the State could terminate the agreement.” The prosecutor
25 asked Phillips questions about the plea agreement on direct examination and Phillips
26 testified about his obligations and the sentence he had received as a result of the plea
27

1 agreement. He also testified that Coleman procured a gun for him and drove him to the
2 location of the robbery. Coleman was convicted of the robbery and other charges.

3 *Coleman* at 956.

4 On appeal Coleman argued that the prosecutor at trial committed misconduct by
5 admitting a plea agreement with a witness for the State that contained a truthfulness
6 provision or by examining the witness about the agreement. The Court of Appeals
7 disagreed, and in doing so discussed what it stated are the two leading cases in the
8 State of Washington addressing the admissibility of truthfulness provisions in plea
9 agreements; *State v. Green*, 119 Wn. App. 15, 79 P. 3d 460 (2003) and *State v. Ish*,
10 150 Wn. App. 775, 208 P. 3d 1281 (2009)(review granted by, in part *State v. Ish*, 167
11 Wn.2d 1005, 220 P.3d 783 (2009)). In applying *Green* and *Ish* to the facts in *Coleman*
12 the Court of Appeals stated the following:
13
14

15
16
17 We do not find *Ish* at odds with *Green*. While following *Ish*'s
18 reasoning, we agree with the *Green* court that irrelevant and
19 prejudicial statements should be redacted from immunity or
20 plea agreements upon request. We also acknowledge that
21 under certain circumstances, such as those in *Green*,
22 statements requiring the witness to "testify truthfully" might
23 be construed as vouching. In *Green*, the requirement that
24 the witness testify truthfully was admitted in the context that
25 the State knew the witness's testimony and entered the
26 agreement to "secure" it. But the circumstances regarding
27 the agreement in *Ish* were different. There, the trial court
redacted an irrelevant and prejudicial provision so that the
witness's promise to testify truthfully stood alone, not in the
context of the State's intent.

Similarly here, there was no declaration of the State's intent
in entering the agreement. There were no aspects of the
agreement that implicated Coleman's guilt. As in *Ish*, the
only statements in contention were that Phillips testify

1 truthfully at trial. We find that under the circumstances here,
2 the agreement merely set the context for Phillip's testimony.
3 *Coleman* at 958-959.

4 *State v. Ish, supra*, involved an allegation that the defendant beat his girlfriend to
5 death. Ish was convicted and appealed, alleging among other things that the prosecutor
6 committed misconduct by vouching for an informant's credibility. At trial the prosecution
7 called a witness, David Otterson, a former cellmate of Ish's, to testify to about
8 statements Ish allegedly made to him about the killing. *Ish* at 781. The State wanted to
9 show that in his plea agreement Otterson promised to testify truthfully. "The trial court
10 ruled that the State could not vouch for the truth of Otterson's testimony, but that the
11 term could be "point[ed] out" because "[o]therwise, the defense will be dangling the
12 possibility that the State has an agreement that says, 'You can lie as much as you want
13 to. We just want you to get up there and testify.'" *Id.* In rejecting the Ish's argument that
14 the prosecutor committed misconduct, the Court of Appeals stated:
15
16
17
18

19 While it is improper for a prosecutor to vouch for the
20 credibility of a witness, no prejudicial error arises unless
21 counsel clearly and unmistakably expresses a personal
22 opinion as opposed to arguing an inference from the
23 evidence. *State v. Warren*, 165 Wn.2d 17, 30, 195 P.3d 940
24 (2008) (citing *State v. Brett*, 126 Wn.2d 136, 175, 892 P.2d
25 29 (1995)), *cert. denied*, 129 S. Ct. 2007 (2009). No such
26 opinion was apparent here.

27 The circumstances here are similar to those in *State v.*
Kirkman, 159 Wn.2d 918, 925, 155 P.3d 125 (2007), a child
rape case where a detective testified that before he
interviewed the victim, he elicited the victim's promise to tell
the truth. On appeal, the defendant argued that the officer
had vouched for the victim's credibility. Although the issue in

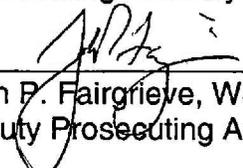
1 error at all, not the possible level of harm: “[the detective’s]
2 testimony is simply an account of the interview protocol he
3 used to obtain [the victim’s] statement.” *Kirkman*, 159 Wn.2d
4 at 931. Thus, the testimony “merely provided the necessary
5 context that enabled the jury to assess the reasonableness
6 of the ... responses.” *Kirkman*, 159 Wn.2d at 931 (alteration
7 in original) (quoting *State v. Demery*, 144 Wn.2d 753, 764,
8 30 P.3d 1278 (2001)). Similarly here, the testimony that
9 Otterson’s plea agreement required him to testify truthfully
10 merely set the context for the jury to evaluate his testimony.
11 The trial court did not abuse its discretion in admitting that
12 evidence.

13 *Ish* at 786-87.

14 In the instant case the Cooperation Agreement simply requires that Jacobson
15 “provide complete and truthful testimony at any hearing or trial in the matters listed in
16 Section 2 of this agreement.” It is factually closer to *Coleman* and *Ish, supra*, than
17 *Green, supra*, and it does not contain language similar to that the court in *Green* found
18 objectionable, specifically that “the intent of the agreement was to “secure the true and
19 accurate testimony” of the cooperating witness. *Green* at 24. Consequently, the
20 defendant’s motion to redact the provisions relating to truthful testimony in Jacobson’s
21 Cooperation Agreement should be denied.

22 Dated this 21st day of June, 2010.

23
24 Arthur D. Curtis
25 Prosecuting Attorney

26 
27 John P. Fairgrieve, WSBA #23107
Deputy Prosecuting Attorney

COPY

APR 29 2010

ORIGINAL FILED

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

STATE OF WASHINGTON,

Plaintiff,

v.

DOUGLAS ALLEN MARQUIS

and

CALEB EUGENE SOUCY

and

MINNA REBECCA LONG

and

JOSHUA BLU MCALEXANDER

and

GAROLD TRENT JACOBSEN

Defendant.

AMENDED INFORMATION

No. 10-1-00596-0

No. 10-1-00597-8

No. 10-1-00607-9

INFORMATION

No. 10-1-00667-2

No. 10-1-00669-9
(VPD 09-23361)

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 - MURDER IN THE FIRST DEGREE - 9A.08.020(3) /9A.32.030(1)(c)

That they, MINNA REBECCA LONG and DOUGLAS ALLEN MARQUIS and GAROLD TRENT JACOBSEN and CALEB EUGENE SOUCY and JOSHUA BLU MCALEXANDER, together and each of them, in the County of Clark, State of Washington, on or about December 13, 2009, did commit or attempt to commit the crime of burglary in the first degree, and in the course of or in furtherance of such crime or in immediate flight therefrom, the Defendant, or another participant, caused the death of a person other than one of the participants, to-wit: Charles Moore; contrary to Revised Code of Washington 9A.32.030(1)(c) and/or was an accomplice to said crime pursuant to RCW 9A.08.020.

And further, that the defendant, or an accomplice, did commit the foregoing offense while armed with a firearm as that term is employed and defined in RCW 9.94A.825 and RCW 9.94A.533(3), to-wit: a shotgun.

This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(29), RCW 9.94A.030(34), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

INFORMATION - 1
JJ

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

Exhibit 1

1
2 **COUNT 02 - ROBBERY IN THE FIRST DEGREE - 9A.08.020(3) /9A.56.190/9A.56.200(1)(a)(i)**
3 That they, MINNA REBECCA LONG and DOUGLAS ALLEN MARQUIS and GAROLD TRENT
4 JACOBSEN and CALEB EUGENE SOUCY and JOSHUA BLU MCALEXANDER, together and each
5 of them, in the County of Clark, State of Washington, on or about December 13, 2009, with intent to
6 commit theft, did unlawfully take personal property that the Defendant did not own from the person or
7 in the presence of Charles Moore, against such person's will, by use or threatened use of immediate
8 force, violence, or fear of injury to said person or the property of said person or the person or
9 property of another, and in the commission of said crime or in immediate flight therefrom, the
10 Defendant was armed with a deadly weapon, to-wit: a shotgun; contrary to Revised Code of
11 Washington 9A.56.200(1)(a)(i), 9A.56.190 and/or was an accomplice to said crime pursuant to RCW
12 9A.08.020.

13 And further, that the defendant, or an accomplice, did commit the foregoing offense while armed with
14 a firearm as that term is employed and defined in RCW 9.94A.825 and RCW 9.94A.533(3), to-wit: a
15 shotgun.

16 This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act (RCW
17 9.94A.030(29), RCW 9.94A.030(34), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

18 **COUNT 03 - ROBBERY IN THE FIRST DEGREE - 9A.08.020(3) /9A.56.190/9A.56.200(1)(a)(i)**
19 That they, MINNA REBECCA LONG and DOUGLAS ALLEN MARQUIS and GAROLD TRENT
20 JACOBSEN and CALEB EUGENE SOUCY and JOSHUA BLU MCALEXANDER, together and each
21 of them, in the County of Clark, State of Washington, on or about December 13, 2009, with intent to
22 commit theft, did unlawfully take personal property that the Defendant did not own from the person or
23 in the presence of Arlene M. Stokes, against such person's will, by use or threatened use of
24 immediate force, violence, or fear of injury to said person or the property of said person or the
25 person or property of another, and in the commission of said crime or in immediate flight therefrom,
26 the Defendant was armed with a deadly weapon, to-wit: a shotgun; contrary to Revised Code of
27 Washington 9A.56.200(1)(a)(i), 9A.56.190 and/or was an accomplice to said crime pursuant to RCW
28 9A.08.020.

29 And further, that the defendant, or an accomplice, did commit the foregoing offense while armed with
a firearm as that term is employed and defined in RCW 9.94A.825 and RCW 9.94A.533(3), to-wit: a
shotgun.

This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act (RCW
9.94A.030(29), RCW 9.94A.030(34), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

**COUNT 04 - ROBBERY IN THE FIRST DEGREE - 9A.08.020(3)
/9A.56.190/9A.56.200(1)(a)(ii)/9A.56.200(1)(a)(iii)**

That they, MINNA REBECCA LONG and DOUGLAS ALLEN MARQUIS and GAROLD TRENT
JACOBSEN and CALEB EUGENE SOUCY and JOSHUA BLU MCALEXANDER, together and each
of them, in the County of Clark, State of Washington, on or about December 13, 2009, with intent to
commit theft, did unlawfully take personal property that the Defendant did not own from the person or
in the presence of Alan S. Klein, 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 or in immediate flight therefrom, the
Defendant inflicted bodily injury upon Alan S. Klein; contrary to Revised Code of Washington
9A.56.200(1)(a)(iii), 9A.56.190 and/or was an accomplice to said crime pursuant to RCW 9A.08.020.

1 And further, that the defendant, or an accomplice, did commit the foregoing offense while armed with
2 a firearm as that term is employed and defined in RCW 9.94A.825 and RCW 9.94A.533(3), to-wit: a
3 shotgun.

4 And further, that the defendant, or an accomplice, did commit the foregoing offense while armed with
5 a firearm as that term is employed and defined in RCW 9.94A.825 and RCW 9.94A.533(3), to-wit: a
6 pistol.

7 This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act (RCW
8 9.94A.030(29), RCW 9.94A.030(34), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

9 **COUNT 05 - UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE -**
10 **9.41.040(2)(a)**

11 That he, DOUGLAS ALLEN MARQUIS, in the County of Clark, State of Washington, on or about
12 December 13, 2009, after having previously been convicted in the State of Washington or
13 elsewhere, of the crime of Theft in the First Degree, in 05-8-01005-9, a juvenile offense in Clark
14 County, Washington, and Identity Theft in the Second Degree, in Clark County Cause number 07-1-
15 01108-1, and TMWOP in the Second Degree, under Clark County Washington number 08-1-
16 00732-4, did knowingly own or have in his possession or control a firearm, to-wit: a shotgun,
17 contrary to Revised Code of Washington RCW 9.41.040(2)(a)(i).

18 **COUNT 06 - UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE -**
19 **9.41.040(2)(a)**

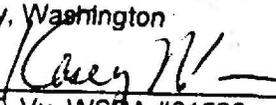
20 That he, CALEB EUGENE SOUCY, in the County of Clark, State of Washington, on or about
21 December 13, 2009, after having previously been convicted in the State of Washington or
22 elsewhere, of the crime of Unlawful Possession of a Firearm in the Second Degree, in Clark County
23 Juvenile Cause number 99-8-00046-9, Unlawful Possession of a Firearm in the Second Degree,
24 Possession of a Controlled Substance- Methamphetamine in Clark County Cause number 04-1-
25 01372-1, and Bail Jumping on B or C Felony and Possession of a Controlled Substance-
26 Methamphetamine (2 counts) in Clark County Cause number 07-1-00203-1, did knowingly own or
27 have in his possession or control a firearm, to-wit: a pistol, contrary to Revised Code of Washington
28 RCW 9.41.040(2)(a)(i).

29 **COUNT 07 - UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE -**
9.41.040(2)(a)

That he, CALEB EUGENE SOUCY, in the County of Clark, State of Washington, on or about
December 13, 2009, after having previously been convicted in the State of Washington or
elsewhere, of the crime of Unlawful Possession of a Firearm in the Second Degree, in Clark County
Juvenile Cause number 99-8-00046-9, Unlawful Possession of a Firearm in the Second Degree,
Possession of a Controlled Substance- Methamphetamine in Clark County Cause number 04-1-
01372-1, and Bail Jumping on B or C Felony and Possession of a Controlled Substance-
Methamphetamine (2 counts) in Clark County Cause number 07-1-00203-1, did knowingly own or
have in his possession or control a firearm, to-wit: a revolver, contrary to Revised Code of
Washington RCW 9.41.040(2)(a)(i).

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

Date: April 29, 2010

BY: 
Kasey T. Vu, WSBA #31528
Deputy Prosecuting Attorney

INFORMATION - 3

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

DEFENDANT: DOUGLAS ALLEN MARQUIS			
RACE: W	SEX: M	DOB: 12/25/1987	
DOL: MARQUDA133R5 WA		SID: WA22347992	
HGT: 510	WGT: 160	EYES: GRN	HAIR: BRO
WA DOC: 308832		FBI: 860945EC0	
LAST KNOWN ADDRESS(ES):			

DEFENDANT: CALEB EUGENE SOUCY			
RACE: W	SEX: M	DOB: 8/27/1981	
DOL: SOUCY-CE-197N7 WA		SID: WA18511803	
HGT: 600	WGT: 170	EYES: HAZ	HAIR: XXX
WA DOC: 876801		FBI: 654353EC7	
LAST KNOWN ADDRESS(ES):			
HOME - 17009 SE 17TH WY, VANCOUVER WA			

DEFENDANT: MINNA REBECCA LONG			
RACE: W	SEX: F	DOB: 12/15/1986	
DOL: LONG*-MR-143RN WA		SID: WA22776758	
HGT: 502	WGT: 130	EYES: BLU	HAIR: BRO
WA DOC: 302538		FBI: 6413JC6	
LAST KNOWN ADDRESS(ES):			

DEFENDANT: JOSHUA BLU MCALEXANDER			
RACE: W	SEX: M	DOB: 5/16/1979	
DOL: MCALE-JB-218KW WA		SID: WA23213619	
HGT: 601	WGT: 180	EYES: BRO	HAIR: BRO
WA DOC: 893996		FBI: 116840JB7	
LAST KNOWN ADDRESS(ES):			

DEFENDANT: GAROLD TRENT JACOBSEN			
RACE: W	SEX: M	DOB: 11/16/1982	
DOL: JACOB-GT-180QW WA		SID: WA19854135	
HGT: 511	WGT: 205	EYES: BRO	HAIR: BRO
WA DOC:		FBI: 315146WB5	
LAST KNOWN ADDRESS(ES):			
HOME - 11712 NE 15TH ST, VANCOUVER WA			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

STATE OF WASHINGTON,

Plaintiff,

v.

GAROLD TRENT JACOBSEN,

Defendant.

No. 10-1-00669-9

COOPERATION AGREEMENT

**SECTION 1
CHARGES**

Garold Trent Jacobsen is currently charged with the crimes of Murder in the first Degree and three counts Robbery in the First Degree, each with a Firearm Enhancement. Garold Trent Jacobsen shall be referred to as Defendant in this cooperation agreement.

If the Defendant is convicted as charged in this matter, Defendant's standard sentencing range will be 610 to 733 months in prison.

**SECTION 2
DEFENDANT'S AGREEMENT**

The Defendant agrees to cooperate with the State in the prosecution of the following cases:

State of Washington v. Jose Gasteazoro-Paniagua, Cause No. 10-1-00004-6

State of Washington v. Douglas Marquis, Cause No. 10-1-00596-0

State of Washington v. Caleb Soucy, Cause No. 10-1-00597-8

Exhibit 2

1 State of Washington v. Minna Long, Cause No. 10-1-00607-9

2 State of Washington v. Joshua Blu McAlexander, Cause No. 10-1-00667-2

3 State of Washington v. Cathleen Potter, Cause No. 10-1-00714-8

4
5 The Defendant agrees to provide complete and truthful testimony at any hearing or trial in the matters listed in Section 2 of this agreement.

6 The Defendant agrees to make himself available for any interview at the request of
7 Deputy Prosecuting Attorneys Kasey Vu, John Fairgrieve, or any other Deputy Prosecuting
8 Attorney assigned to any of the matters listed at Section 2 of this agreement and give full and
9 truthful answers to any questions asked of Defendant at any interview.

10 The Defendant agrees to submit to ^{private} polygraph examinations at the request of the State to
11 verify the truthfulness of Defendant's statements. The Defendant agrees to submit to such
12 examination at whatever time the State requests and the Defendant agrees to submit to multiple
13 polygraph examinations if the State requests multiple examinations.

14 After meeting the conditions listed in this section, the Defendant agrees to plead guilty to
15 amended charges of three counts of Robbery in the First Degree with one Deadly Weapon
16 Enhancement, and stipulate to a sentence of 126 months in prison.

17
18
19
20
21
22
23
24
25
26
27

**SECTION 3
STATE'S AGREEMENT**

In exchange for the Defendant's cooperation as listed above in SECTION 2 of this agreement, the State agrees to do the following:

After the defendant completes all conditions listed in section 2, Defendant's Agreement, the State will amend the charges against the defendant and file three counts of Robbery in the First Degree with one Deadly Weapon Enhancement, and at the sentencing hearing on the amended charges, the State will recommend a sentence of 126 months in prison.

**SECTION 4
BREACH OF AGREEMENT**

In the event the Defendant breaches this agreement, the Defendant agrees the State will be allowed to proceed against the Defendant on the original charges or any additional charges the State chooses to file. If the Defendant breaches this agreement, the Defendant agrees the State can use any statements the Defendant makes pursuant to this cooperation agreement

1 against the Defendant in a prosecution of the Defendant, including any statement the defendant
2 made in negotiation of this agreement including a recorded "free talk".

3 The parties stipulate the defendant will be in breach of this agreement if the defendant
4 makes any statement at any interview, hearing, or trial that is not completely truthful.

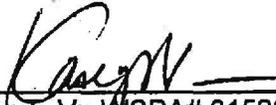
5 ~~The parties stipulate that in any motion to find the defendant breached this agreement,
6 the results of any polygraph examination the defendant takes pursuant to this agreement would
7 be admissible for the purpose of determining whether the defendant breached this agreement
8 by making any untruthful statement.~~ 59
97

9 The Defendant stipulates and agrees he will be in breach of this agreement if he fails to
10 comply with all terms listed in section 2 (Defendant's Agreement) of this cooperation agreement.

11 **SECTION 5**
12 **CONFIRMATION**

13 The parties hereby confirm that this cooperation agreement, consisting of 3 pages,
14 contains all agreements between the State of Washington and Garold Trent Jacobsen.

15 Dated, this 28th day of May, 2010

16 
17 Kasey T. Vu WSBA# 31528
18 Deputy Prosecuting Attorney

19 
20 Garold Trent Jacobsen
21 Defendant

22 
23 J. R. Yoseph WSBA# 8627
24 Attorney for Defendant

25 Witnessed:
26 
27 EDWARD L. SWARBERLY, WSBA 8727

APPENDIX – H

FILED

2010 JUL 14 PM 3:49

Sherry W. Parker, Clerk
Clark County

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,)	
)	NO. 10-1-00004-6
Plaintiff,)	
vs.)	DEFENSE'S RESPONSE TO
)	STATE'S RESPONSE TO
JOSE GASTEAZORO-PANIAGUA,)	DEFENDANT'S MOTION FOR
)	NEW TRIAL
Defendant.)	
)	

COMES NOW Charles H. Buckley, Jr. representing the defendant, JOSE GASTEAZORO-PANIAGUA, and respectfully submits this response to the State's Response to Defendant's Motion for New Trial.

ISSUE

I. Did Detective O'Dell Make a Comment Regarding the Guilt of the Defendant

Detective O'Dell identifying Mr. Gasteazoro was a comment regarding the guilt of Mr. Gasteazoro. It is clear that Detective O'Dell identifying the person in the black hoodie as Mr. Gasteazoro clearly was a comment regarding Mr. Gasteazoro and his participation at the scene. Since the of the State's case revolved around the person in the black hoodie

DEFENSE'S RESPONSE TO
STATE'S RESPONSE TO
DEFENDANT'S MOTION FOR
NEW TRIAL

Page 1 of 5

167

1 being the shooter of the victim it is clear that by commenting that that person was in fact
2 was Mr. Gasteazoro even though he had no actual knowledge of the person, clearly was a
3 comment on the guilt of the defendant.

4 **II. Prosecutorial Misconduct**

5 As to the prosecutorial misconduct it is clear that the Prosecutor violated his duty to
6 the defense in failing to provide the information and evidence which they were testing in the
7 DNA matter in a reasonable and timely manner. Their failure to so provide it in such a
8 manner was in violation of CrR 4.71 sec III (iv).

9 **III. State's allegation of mischaracterization of prosecutorial misconduct**

10 The State's allegation that the defense mischaracterized evidentiary issues as
11 prosecutorial misconduct regarding Julia Venegas is without merit. A conversation, weeks
12 before the trial began, with Mr. Vu by Mr. Buckley as to what Ms. Venegas was going to
13 testify to which would be relevant to the proceedings. When confronted in regards to what
14 she was going to testify to Mr. Vu specifically shrugged his shoulders and indicated he
15 would think about it. At that time it was clear that the State's agents, Detective Buckner
16 and Detective Schultz, had in fact reinterview Ms. Venegas after she had been arrested for
17 domestic violence. She was being held on an ICE hold based upon her alien status. As a
18 result of that contact, the information which Mr. Vu attempted to elicit from Ms. Venegas at
19 trial was that the victim knew who shot him and was going to identify Mr. Gasteazoro.
20 Further, the detectives interviewed her and did not tape record the interview. Further, they
21 did not provide that information in any police reports to the defense even though that was
22
23
24

25 DEFENSE'S RESPONSE TO
26 STATE'S RESPONSE TO
DEFENDANT'S MOTION FOR
NEW TRIAL
Page 2 of 5

1 critical evidence which had been requested by the defense. Then by acquiring a “get out of
2 jail free” card through immigrations, they bought and paid for her testimony in essence.

3 The defense was not made aware of the deal with immigration or what negotiations were
4 conducted which clearly benefited Ms. Venegas until after the trial started.

5 Finally, Mr. Vu’s failure to inquire of victim, Mr. Muro, as to whether or not he had
6 spoken to Ms. Venegas as to that subject matter and further failure to follow-up on it
7 violated the ER 617 in terms of the procedures which should have been used at trial. That,
8 in and of itself denied the victim and therefore the defense the opportunity to inquire as to
9 what the conditions were at the time the comment was made or if it was made. The fact that
10 Ms. Venegas had pending domestic violence charges against her and the victim was Mr.
11 Muro clearly would have been relevant to inquiry by the defense during the trial. The
12 violation by Mr. Vu of Rule CrR 4.71(i) was substantial in prejudicing the defendant.

13 The allowance of Ms. Venegas to testify that Mr. Muro knew who shot him
14 substantiated the testimony of the detectives. While it was for the limited purpose of
15 impeachment of Mr. Muro, it is clear that such impeachment testimony could have been
16 misconstrued and used as substitutive evidence by the jury in convicting Mr. Gasteazoro.
17 Especially in a case where the State had no direct evidence of Mr. Gasteazoro’s
18 participation in the criminal endeavor except those statements and Mr. Jacobsen’s
19 testimony.
20
21
22

23 **IV. New Evidence**

24 Finally, the Defense requests the Court for a new trial based upon newly discovered

25 DEFENSE’S RESPONSE TO
26 STATE’S RESPONSE TO
DEFENDANT’S MOTION FOR
NEW TRIAL

Page 3 of 5

1 evidence. Mr. Teply has acquired additional information regarding the State's primary
2 witness against Mr. Gasteazoro, Mr. Jacobsen. It appears that in subsequent interviews by
3 detectives of Mr. Jacobsen, as to his limited participation in the murder case he has pending;
4 has significantly increased from having a peripheral role and being an accomplice to being
5 one of the conspirators. Mr. Teply has been informed and has indicated to counsel that in a
6 subsequent interview with Mr. Jacobsen, post trial, he has altered his story as to his
7 participation in the crime he is being charged with. That participation indicates that he was
8 much more involved in the criminal endeavor than was known before. This is contrary to
9 the information that he gave at his initial interview with Mr. Teply with regard to his
10 participation in the homicide. There is information that when Mr. Jacobsen went to the
11 scene of the crime he was armed with a weapon. Further he was involved in taking property
12 and the murder of the victim. That information would have been subject to cross
13 examination by the defense had it been known at the time of the trial and clearly would have
14 been impeachment evidence which could have diminished Mr. Jacobsen's creditability with
15 the jury. While it is unknown when Mr. Jacobsen changed his story with regard to his
16 participation in the murder he is being charged with, It is clear that that information, had it
17 been known to the defense, would have been proper impeachment evidence to inquire into.

20 The very fact that Mr. Jacobsen was the primary witness against Mr. Gasteazoro and
21 his was the only direct testimony that Mr. Gasteazoro was in fact involved in the shooting of
22 Mr. Muro is significant.

24 "In order to establish prosecutorial misconduct, the defense "must show that the

25 DEFENSE'S RESPONSE TO
26 STATE'S RESPONSE TO
DEFENDANT'S MOTION FOR
NEW TRIAL
Page 4 of 5

1 prosecutor's conduct was improper and prejudices his rights to a fair trial" State v.
2 Dhalival, 150 Wn 2d 559 79 Pacific 3d 432 (2003). Prejudice is established where
3 there is "a substantial likelihood that the instances of misconduct affected the jury's
4 verdict."

5 "In determining whether the misconduct warrants reversal we consider its
6 prejudicial nature and its cumulative effect. State v. Suarezb, 72 Wn App 359, 864
7 P 2d 426 (1994); State v. Boehning, 127 Wn App 511 (2005).

8 In the present case it is clear that the State might argue that one instance of
9 misconduct is not sufficient to support a motion for a new trial, it is a cumulative effect of
10 the numerous issues raised by the defense in this particular case which leads one to
11 reasonably believe that overall there is a substantial likelihood that such misconduct
12 prejudiced the defendant's right to a fair trial. See State v. Belgarde, 110 Wn 2d 504, 508,
13 755 P 2d 174 (1998); State v. Fisher, 165 Wn 2d 727 202 P 3d 957 (2009).

14 DATED this 14 day of July, 2010.

15
16
17
18 
19 _____
20 Charles H. Buckley, Jr., WSB # 9048
21 *Attorney for Defendant*

22
23
24
25 DEFENSE'S RESPONSE TO
26 STATE'S RESPONSE TO
DEFENDANT'S MOTION FOR
NEW TRIAL
Page 5 of 5

Charles H. Buckley, Jr.
Attorney at Law
1409 Franklin Street, Suite 204 • Vancouver, WA 98660
(360) 693-2421 • FAX (360) 693-2430
cbuckley@cbuckleylaw.com

CLARK COUNTY PROSECUTOR

July 10, 2015 - 2:42 PM

Transmittal Letter

Document Uploaded: 5-prp2-470420-Response.pdf

Case Name: State v. Jose Gasteazoro-Paniagua

Court of Appeals Case Number: 47042-0

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

- Designation of Clerk's Papers Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: _____
- Answer/Reply to Motion: _____
- Brief: _____
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: _____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: _____

Comments:

No Comments were entered.

Sender Name: Abby Rowland - Email: abby.rowland@clark.wa.gov

A copy of this document has been emailed to the following addresses:

JeffreyErwinEllis@gmail.com

ReneeAsept@gmail.com