

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

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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

JICOREY BRADFORD,

Petitioner.

NO. 47750-5-II

STATE'S RESPONSE TO
PERSONAL RESTRAINT PETITION

A. ISSUES PERTAINING TO DISCRETIONARY REVIEW

1. Should the petition be dismissed as successive for failing to prove the interests of justice would be advanced by repeated review of the reformulated claims of ineffective assistance of counsel grounded in instructional error?

2. Should the petition also be summarily dismissed as inadequately presented for review when it only contains conclusory allegations of error predicated on citations to unexplained authority?

3. Is dismissal further warranted on the merits since petitioner's reformulated instructional error claims fail to establish a fundamental defect resulting in a complete miscarriage of justice?

1 B. STATUS OF PETITIONER

2 Petitioner is restrained pursuant to a judgment made final by Mandate December 10,
3 2014, in Pierce County Cause No. 11-1-04125-7. Appx. A-C. Sentence was initially imposed
4 following petitioner's convictions for drive-by shooting, firearm enhanced first degree assault
5 against victim Dandre Long, unlawful possession of a firearm (a crime defendant conceded he
6 was guilty of), and possession of a stolen firearm. Appx.B at 1¹, 5. A second charge of firearm
7 enhanced first degree assault against victim Kerry Edwards ended in mistrial. Appx.B at 1, 5-6.

8 The shooting underlying petitioner's convictions occurred October 7, 2011. Appx.B at 1.
9 Someone fired several bullets into a Chevy Caprice occupied by Long and Edwards from a car
10 petitioner occupied with co-defendant James Grey. *Id.* at 1-2. Either petitioner or Grey got out
11 of the car and fired more shots into the Caprice, for a total of at least thirteen. *Id.* at 2. One
12 bullet lodged in the back of the driver's headrest and another was recovered from the back seat.
13 *Id.* Petitioner and Grey crashed into an embankment while trying to flee. *Id.* Police found
14 petitioner sitting in the car by himself. *Id.* A gun later matched to the ammunition discharged at
15 the scene was found on the ground nearby. *Id.* Petitioner told police he was the only shooter, but
16 claimed it was a self-defense response to Edwards pointing a gun at him and Grey. *Id.* Grey was
17 arrested thereafter. *Id.*

18
19 Petitioner proceeded to a joint trial with Grey. *Id.* Both advanced a theory of self-
20 defense, claiming petitioner only fired at the Caprice after Edwards pointed a gun at them. *Id.* at
21 3. Although Edwards identified petitioner as the shooter to police, Edwards claimed Grey was
22 the shooter at trial. *Id.* at 4. Edwards and Long both testified they were unarmed when the
23

24
25 ¹ Citations to Appx.B page numbers refer to this Court's numbering at the bottom of its decision from petitioner's direct appeal and do not count the Mandate, which is treated as a cover page so citations will correspond with the decision's page numbers.

1 shooting occurred. *Id.* The jury was comprehensively exposed to Edwards' alleged incentive to
2 lie about being armed to retain a favorable plea agreement that would be breached by his
3 possession of a firearm. *Id.* Several other witnesses saw or heard the shooting; however, none
4 were able to identify the shooter. *Id.* at 5.

5 The direct appeal raised several challenges to petitioner's convictions. Petitioner raised
6 instructional error based on the trial court's failure to give a self-defense instruction as to the
7 drive-by shooting charge, which was analyzed by Division I of this Court as raising an
8 ineffective assistance of counsel claim. *Id.* at 6-7. Petitioner asserted there was insufficient
9 evidence to support his possession of a stolen firearm conviction. *Id.* at 13-14. In a Statement of
10 Additional Grounds, petitioner alleged ineffective assistance of counsel predicated on error in
11 the wording of his self-defense instruction. He also alleged an erroneous deprivation of inferior
12 degree offense instructions as to the assault counts. *Id.* at 14-15. The Court reversed petitioner's
13 drive-by shooting conviction for ineffective assistance of counsel and reversed the possession of
14 a stolen firearm conviction as inadequately supported, but found petitioner's other claims of
15 counsel's ineffective handling of the instructions to be meritless. *Id.* at 15. Review was
16 terminated by Mandate on December 10, 2014. Appx.B. Petitioner's collateral attack of the
17 underlying judgment was filed within RCW 10.73.090's one year time limit on or about July 22,
18 2015.

19
20 C. ARGUMENT

21 Personal restraint procedure has its origins in the State's *habeas corpus* remedy,
22 guaranteed by article 4, section 4, of the State Constitution. A personal restraint petition, like a
23 petition for a writ of *habeas corpus*, is not a substitute for an appeal. *In re Pers. Restraint of*
24 *Hagler*, 97 Wn.2d 818, 823-824, 650 P.2d 1103 (1982). Collateral relief undermines the
25

1 principles of finality of litigation, degrades the prominence of the trial, and sometimes costs
2 society the right to punish admitted offenders. *Id.*; *In re Pers. Restraint of Woods*, 154 Wn.2d
3 400, 409, 114 P.3d 607 (2005). These significant costs require collateral relief to be limited in
4 the state as well as federal courts. *Id.*

5 In this collateral action, petitioner must show constitutional error resulted in actual
6 prejudice. Mere assertions are insufficient to demonstrate actual prejudice. The rule
7 constitutional errors must be shown to be harmless beyond a reasonable doubt has no
8 application in the context of personal restraint petitions. *In re Pers. Restraint of Mercer*, 108
9 Wn.2d 714, 718-721, 741 P.2d 559 (1987); *Hagler*, 97 Wn.2d at 825; *Woods*, 154 Wn.2d 409.
10 A petitioner must show "a fundamental defect which inherently results in a complete
11 miscarriage of justice" to obtain collateral relief from an alleged nonconstitutional error. *In re*
12 *Pers. Restraint of Cook*, 114 Wn.2d 802, 812 792 P.2d 506 (1990); *Woods*, 154 Wn.2d 409.
13 This is a higher standard than the constitutional standard of actual prejudice. *Cook*, at 810.
14 Any inferences must be drawn in favor of the validity of the judgment and sentence and not
15 against it. *Hagler*, 97 Wn.2d at 825-826. "This high threshold requirement is necessary to
16 preserve the societal interest in finality, economy, and integrity of the trial process. It also
17 recognizes the petitioner ... had an opportunity to obtain judicial review by appeal." *Woods*,
18 154 Wn.2d at 409.

19 The petition must include a statement of facts upon which the claim of unlawful
20 restraint is based and the evidence available to support the factual allegations. RP 16.7(a)(2);
21 *Petition of Williams*, 111 Wn.2d 353, 759 P.2d 436 (1988). Claims must be supported by
22 affidavits stating particular facts, certified documents, certified transcripts, and the like.
23 *Williams*, 111 Wn.2d at 364; *see also In re Per. Restraint of Connick*, 144 Wn.2d 442, 28
24 P.3d 729 (2001). "If [a] petitioner's allegations are based on matters outside the existing record,
25 the petitioner must demonstrate ... he has competent, admissible evidence to establish the facts

1 that entitle him to relief." *Connick*, 144 Wn.2d at 451. Reviewing courts have three options in
2 evaluating personal restraint petitions:

- 3 1. If a petitioner fails to meet the threshold burden of showing actual
4 prejudice from constitutional error or a fundamental defect resulting in a
5 miscarriage of justice, the petition must be dismissed;
- 6 2. If a petitioner makes at least a prima facie showing of actual prejudice,
7 but the merits of the contentions cannot be determined solely on the
8 record, the court should remand for a full hearing on the merits or for a
9 reference hearing pursuant to RAP 16.11(a) and RAP 16.12;
- 10 3. If the court is convinced a petitioner has proven actual prejudicial error
11 arising from constitutional error or a fundamental defect resulting in a
12 miscarriage of justice, the court should grant the personal restraint
13 petition without remanding the cause for further hearing.

14 *In re Pers. Restraint of Hews*, 99 Wn.2d 80, 88, 660 P.2d 263. A petition must be dismissed
15 when the petitioner fails to provide sufficient evidence to support his claim. *Williams*, 111
16 Wn.2d at 364.

- 17 1. THE PETITION SHOULD BE DISMISSED AS SUCCESSIVE FOR IT
18 REFORMULATES THE PREVIOUSLY REJECTED ALLEGATIONS
19 OF INEFFECTIVE ASSISTANCE OF COUNSEL GROUNDED IN
20 INSTRUCTIONAL ERROR.

21 "A claim rejected on its merits on direct appeal will not be reconsidered in a subsequent
22 personal restraint petition unless the petitioner shows ... the ends of justice would be served
23 thereby." *In re Pers. Restraint of Jeffries*, 114 Wn.2d 485, 487-88, 789 P.2d 731 (1990)
24 (citing *In re Pers. Restraint of Taylor*, 105 Wn.2d 683, 687, 717 P.2d 755 (1986)). "Simply
25 'revising' a previously rejected legal argument ... neither creates a 'new' claim nor constitutes
good cause to reconsider the original claim.... '[I]dential grounds may often be proved by
different factual allegations. So also, identical grounds may be supported by different legal
arguments ... or be couched in different language ... or vary in immaterial respects." *Id.* at 487
(quoting *Sanders v. United States*, 373 U.S. 1, 16, 83 S. Ct. 1068 (1963)); *In re Pers.*
Restraint of Lord, 123 Wn.2d 296, 329-30, 868 P.2d 835 (1994). "A personal restraint petition

1 is not meant to be a forum for relitigation of issues already considered on direct appeal, but
2 rather is reserved for consideration of fundamental errors which actually prejudiced the
3 prisoner." *Lord*, at 329 (citing *In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 453-54, 853
4 P.2d 424 (1993)).

5 The Court of Appeals affirmed petitioner's convictions after rejecting the merits of the
6 claim his trial counsel was ineffective for failing to procure a more favorable self-defense
7 instruction, as well as the contention inferior degree offense instructions should have been
8 given. Petitioner now reformulates the former as an attack on the first-aggressor component of
9 the trial court's instructions on Washington's self-defense law, and simply repeats the latter. Yet
10 he has not clearly alleged, let alone proved, the interests of justice would be served by this
11 Court expending additional resources to review another permutation of those already rejected
12 claims. The interests of justice are only served by repetitive review of rejected legal issues
13 when there has been some intervening change in the law or some other recognized impediment
14 that prevented the petitioner from raising a crucial point or argument in the prior application. *In*
15 *re Pers. Restraint of Stenson*, 142 Wn.2d 710, 720, 16 P.3d 1 (2001) (quoting *In re Pers.*
16 *Restraint of Gentry*, 137 Wn.2d 378, 388, 972 P.2d 1250 (1999) (Gentry II)). A petitioner may
17 not avoid this requirement "merely by supporting a previous ground for relief with different
18 factual allegations or with different legal arguments." *In re Pers. Restraint of Davis*, 152 Wn.2d
19 647, 671, 101 P.3d 1 (2004)("For example, [a] defendant may not recast the same issue as an
20 ineffective assistance of counsel claim"). Nor will the significant interests in finality of
21 judgment or judicial economy tolerate piecemeal appellate review of the jury instructions given
22 in a particular case. *E.g. Jeffries*, 114 Wn.2d at 492; *In re Pers. Restraint of Becker*, 143
23 Wn.2d 491, 496, 20 P.3d 409 (2001). Petitioner's successive claims should be summarily
24 dismissed.

1 2. THE PETITION SHOULD ALSO BE DISMISSED AS
2 INADEQUATELY PRESENTED FOR REVIEW BECAUSE IT
3 ONLY CONTAINS CONCLUSORY ALLEGATIONS OF ERROR
4 PREDICATED ON CITATIONS TO UNEXPLAINED AUTHORITY.

5 Personal restraint claims must be supported by affidavits stating particular facts,
6 certified documents, certified transcripts, and the like. RP 16.7(a)(2); *Williams*, 111 Wn.2d at
7 353, 364; *see also Connick*, 144 Wn.2d at 445. Arguments which are not supported by
8 meaningful analysis or citation to the record should not be considered. *Cowiche Canyon*
9 *Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments not supported by
10 authority); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990) (insufficiently argued claims);
11 *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (issues unsupported
12 by adequate argument and authority); *State v. Camarillo*, 54 Wn.App. 821, 829, 776 P.2d 176
13 (1989) (no references to the record), *aff'd*, 115 Wn.2d 60, 794 P.2d 850 (1990); *In re Discpl.*
14 *Proceeding against Whitney*, 155 Wn.2d 451, 467, 120 P.3d 550 (2005)(citing *Matter of Estate*
15 *of Lint*, 135 Wn.2d 518, 532, 957 P.2d 755 (1998)(declining to scour the record and construct
16 arguments); RAP 10.3(a).

17 Petitioner attempts to advance reformulated and repeated claims through several
18 citations to cases and statutes without any effort to explain how they support those claims. He
19 simply cites them, then encourages the Court to consider them, ostensibly hoping the Court will
20 cobble them into a means to the extraordinary end he hopes to achieve. It is similarly unfair to
21 impose upon the State to analyze the assortment of unexplained authority (roughly consisting of
22 113 pages of annotated text addressing 29 issues), guess at petitioner's purpose for its inclusion,
23 surmise from it arguments a similarly situated petitioner might make, and refute any
24 connections the State may perceive, but petitioner never made and perhaps would not have
25 made had he perceived them as well.

 For example, the petition includes no discussion of the applicable standard of review in
a collateral attack, much less explains how the burden safeguarding the extraordinary relief

1 requested has been overcome. Aside from *In re Pers. Restraint of Maxfield*, 133 Wn.2d 332,
2 945 P.2d 196 (1997), which petitioner cites without pinpoint reference or comment, all the cases
3 relied upon appear to be from direct appeals which would not normally address the issues raised
4 in the context of collateral review. There is consequently no concrete assertion of purported
5 entitlement to collateral relief for the State to meet without deciding for itself whether
6 constitutional or nonconstitutional instructional error is being alleged, selecting the
7 corresponding burden of proof, and responding with a potentially superfluous survey of all the
8 ways in which the State can conceive of the petition failing to overcome it. In this way the State
9 would be shouldering burdens the law imposes on petitioner.

10 He likewise failed to attach certified copies of the relevant record or cite pertinent
11 portions of the transcript. The latter omission is particularly problematic as it improperly calls
12 upon the Court, and State, to scour the record—a second time—to confirm or refute the factual
13 contentions about defense counsel's conduct in requesting or omitting instructions as well as to
14 assess whether those decisions were so wanting of any arguable strategic or tactical value as to
15 be constitutionally deficient in a way which worked outcome determinative prejudice in light of
16 all the evidence adduced and other instructions given at trial. Putting aside the burden collateral
17 attack placed on petitioner to support his claims, the footer in his insubstantial brief indicates he
18 was not wholly, if at all, without assistance of counsel in its creation. The absence of anything
19 capable of being generously characterized as a good faith attempt at meaningful application of
20 the cited authority to the issues raised in the petition warrants its dismissal.

21 3. DISMISSAL ON THE MERITS IS FURTHER WARRANTED SINCE
22 PETITIONER FAILED TO PROVE THE CLAIMED INSTRUCTIONAL
23 ERRORS RESULTED IN A COMPLETE MISCARRIAGE OF JUSTICE
24 IN A CASE WHERE HE ADMITTED TO FIRING MULTIPLE
25 BULLETS INTO AN OCCUPIED VEHICLE AS IT TRAVELED
DOWN A RESIDENTIAL STREET.

A petitioner raising constitutional error must show the error caused actual and
substantial prejudice. *Davis*, 152 Wn.2d at 671-72. Actual prejudice must be proved by a

1 preponderance of the evidence. *Id.* at 672, n.21 (citing *Hews*, 99 Wn.2d at 89). The
2 Washington Supreme Court rejects the proposition constitutional errors incapable of being
3 considered harmless on direct appeal will be presumed prejudicial in a collateral attack. *Id.* at
4 672, n.23 (citing *In re Pers. Restraint of St. Pierre*, 118 Wn.2d 321, 328, 823 P.2d 492
5 (1992)). "A stricter standard governs ... consideration of nonconstitutional arguments raised in
6 a personal restraint petition ... [where appellate courts] determine whether the petitioner ...
7 established ... the claimed error is 'a fundamental defect resulting in a complete miscarriage of
8 justice.'" *In re Pers. Restraint of Schreiber*, ___ Wn.App. ___, ___ P.3d ___ (2015)(40553-9-
9 II; 2015 WL 4542424)(citing *In re Pers. Restraint of Yates*, 177 Wn.2d 1, 18, 296 P.3d 872
10 (2013)). This heightened standard of review rightly promotes finality when the petitioner had
11 previous *opportunities* for judicial review. *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 132,
12 267 P.3d 324 (2011). "Relief by way of a collateral challenge ... is extraordinary" *Coats*,
13 173 Wn.2d at 132.

14 Petitioner claims he was erroneously deprived an inferior degree offense instruction for
15 first degree assault. He also alleges his jury should not have received the first-aggressor
16 component of the trial court's instructions on Washington's self-defense law. Neither issue is of
17 constitutional magnitude because the presence or absence of such instructions does not reduce
18 the State's burden of proof. *See State v. O'Hara*, 167 Wn.2d 91, 100-01, 217 P.3d 756
19 (2009)(citing *State v. Kwan Fai Mak*, 105 Wn.2d 692, 745-49, 718 P.2d 407 (1986); *State v.*
20 *Scott*, 110 Wn.2d 682, 690-91, 217 P.3d 756 (2009)). Petitioner must therefore prove it was a
21 fundamental defect to omit the former and include the latter. Beyond that, he must establish
22 such a defect resulted in a complete miscarriage of justice. Even a review of the abridged record
23 cited by the decision in petitioner's direct appeal reveals his inability to achieve either
24 prerequisite for the relief requested.

1 At trial defendant admitted to being the person who fired two or three bullets into a car
2 occupied by two people. Appx.B at 1. He then exited his vehicle and fired more bullets into the
3 victims' car. *Id.* at 2. He fired at least 13 bullets before he was through. *Id.* at 2. One of those
4 bullets lodged in the back of the driver's headrest. *Id.* Another was recovered from the back seat.
5 *Id.* One of the victims testified petitioner opened fire without provocation, and did so a second
6 time moments later. *Id.* at 4. The other victim testified the shootings followed a "brief
7 encounter" at a nearby apartment building. *Id.* at 4. Both defendants characterized the encounter
8 as marked by hostile words on the part of the victims. *Id.* 4-5. Defendant explained his decision
9 to twice open fire on the victims as a defensive reaction to one of them pointing a gun at him.
10 *Id.* The entire case against defendant was narrowed by both parties to the issue of whether
11 petitioner's self-defense claim was credible in light of the victims' account of being unarmed. *Id.*
12 at 3.

- 13 a. Defendant has neither alleged nor proved the
14 absence of an inferior degree offense instruction for
15 first degree assault was a fundamental defect
16 resulting in a complete miscarriage of justice.

17 The right to an inferior degree offense instruction derives from statute. *See* RCW
18 10.61.003; *State v. Fernandez-Medina*, 141 Wn.2d 448, 454, 6 P.3d 1150 (2000). An
19 instruction on an inferior degree offense should not be given unless: (1) the statutes for both the
20 charged offense as well as the proposed inferior degree offense proscribe but one offense; (2)
21 the information charges an offense divided into degrees, and the proposed offense is an inferior
22 degree of the charged offense; and (3) there is evidence the defendant only committed the
23 inferior offense. *Id.*

24 The legal prong of the *Fernandez-Medina* test is unquestionably satisfied among the
25 degrees of assault as each proscribes the crime of assault. *See State v. Forster*, 91 Wn.2d 466,
472, 589 P.2d 798 (1979). The decreasing quantum of culpability and bodily injury at issue as
one moves down the degrees from first to second degree assault calls for withholding inferior

1 degree instructions when the facts at issue are incapable satisfying second degree assault to the
2 exclusion of first degree assault. Conviction for first degree assault at issue in petitioner's case
3 required proof that with the intent to inflict great bodily harm, defendant assaulted another with
4 a firearm. Appx.E (Inst.6); RCW 9A.36.011(a). A person acts intentionally when acting with
5 the objective or purpose to accomplish a result constituting a crime. Appx.E (Inst.7); RCW
6 9A.08.010(1)(a). "Great bodily harm" means bodily injury that creates a probability of death, or
7 that causes significant serious permanent disfigurement, or that causes a significant permanent
8 loss or impairment of the function of any bodily part or organ. Appx.E (Inst. 8); RCW
9 9A.04.110(4)(c). There are numerous ways to commit second degree assault. Petitioner does
10 not identify which version he perceives the facts of his case support. One can only assume the
11 petition is directed at RCW 9A.36.021(1)(c)(assaults another with a deadly weapon).

12 Petitioner has not shown a fundamental defect in the absence of an instruction on second
13 degree assault that worked a complete miscarriage of justice. Entitlement to an inferior degree
14 instruction requires a more particularized factual showing than required for other jury
15 instructions since the evidence must raise an inference only the inferior degree offense was
16 committed to the exclusion of the charged offense. *Forster*, 91 Wn.2d at 455. The facts of
17 petitioner's crime did not clearly support an inference only the inferior crime of second degree
18 assault occurred to the exclusion of first degree assault. "Our case law is clear ... the evidence
19 must affirmatively establish the defendant's theory of the case—it is not enough that the jury
20 might disbelieve the evidence pointing to guilt." *Fernandez-Medina*, 141 Wn.2d at 454-
21 55(citing *State v. Fowler*, 114 Wn.2d 59, 67, 785 P.2d 808 (1990), *overruled on other grounds*
22 by *State v. Blair*, 117 Wn.2d 479, 816 P.2d 718 (1991)). The *mens rea* for first degree assault is
23 the specific intent to inflict great bodily harm. "Specific intent" is defined as intent to produce a
24 specific result, as opposed to intent to do the physical act that produces the result. *State v. Elmi*,
25 166 Wn.2d 209, 215, 207 P.3d 439 (2009). Petitioner fired at least two several-bullet volleys

1 into a car he knew to be occupied by two people. The lethality of petitioner's aim placed one of
2 those bullets into the back of the driver's headrest, another into the back seat. These facts are not
3 consistent with *only* a general intent to assault by placing the occupants in apprehension of fear
4 with a firearm to the exclusion of the impossible to disregard inference petitioner very
5 specifically intended those bullets to inflict great bodily harm or death. *E.g.*, *State v.*
6 *Salamanca*, 69 Wn. App. 817, 826-27, 851 P.2d 1242 (1993). Petitioner fired what could be
7 reasonably interpreted as kill shots into a car carrying two people he claims appeared poised to
8 use deadly force on him. He has not directed this Court to any evidence suggesting that show of
9 lethal force was only intended to be a fear inducing deterrent. Even if that highly improbable
10 inference was accepted as plausible, it is not apparent how a rational-fact finder could further
11 infer petitioner only intended as much to the exclusion of an intent to inflict great bodily harm.

12 Petitioner's theory of self-defense was predicated on convincing the jury the lethal force
13 he used was necessary under the circumstances, for the firing of at least 13 bullets into an
14 occupied car in the course of two volleys separated by time could not be legally characterized as
15 self-defense if that degree of force was unreasonable under the circumstances. Appx.E (Inst.26).
16 A decision to refrain from drawing the jury's attention away from petitioner's theory of self-
17 defense by arguing first and second degree assault in the alternative is also easily characterized
18 as sound strategy. "[M]any trial advocacy experts recommend ... attorneys eschew alternative
19 arguments before a jury, which may view the presentation of an alternative argument as a sign
20 ... the attorney believes ... [the] first argument is weak." *State v. Carson*, __ Wn.2d __, __
21 P.3d __ (Sept. 17, 2015; No.90308-5; 2015 WL 5455671, 7). It is with this consideration in
22 mind the Supreme Court recognizes the legitimacy of sometimes risky all-or-nothing
23 approaches. *Id.* (citing *State v. Grier*, 171 Wn.2d 17, 42, 246 P.3d 1260 (2011)). Such strategic
24 decisions cannot even be characterized as error under the standard applied a defense attorney's
25 conduct, let alone rise to the level of a miscarriage of justice causing fundamental defect.

1 At trial, both parties understood it was petitioner's reason for repeatedly pulling the
2 trigger that was at issue, not the specific harm intended once he resorted to deadly force. A jury
3 fully apprised of petitioner's account of the shooting, as well as the reasons to scrutinize his
4 victims' countervailing descriptions of the incident, determined petitioner's claim of self-defense
5 was not credible either because the jury disbelieved petitioner's claims about the victims'
6 conduct or perceived the undisputed force petitioner responded with was unreasonable under the
7 circumstances he described. The level of injury petitioner subjectively hoped his bullets would
8 inflict was irrelevant to both those outcome determinative considerations. Petitioner has not
9 proved a fundamental defect resulting in a complete miscarriage of justice, so his collateral
10 attack should be dismissed.

11 b. Defendant has neither alleged nor proved the
12 inclusion of a first-aggressor instruction was a
13 fundamental defect resulting in a complete
14 miscarriage of justice.

15 "[A] defendant whose aggression provokes the contact eliminates the right of self-
16 defense. A first-aggressor instruction is proper when the record shows that the defendant is
17 involved in wrongful or unlawful conduct before the charged assault occurred and provocation
18 by the defendant is therefore an appropriate basis for the trial court to give the instruction." *In*
19 *re Davis*, 151 Wn. App. 331, 338, 211 P.3d 1055, 1059 (2009)(citing *State v. Douglas*, 128 Wn.
20 App. 555, 562-63, 116 P.3d 1012 (2005)(*abrogated on other grounds by In re Crace*, 174
21 Wn.2d 835, 280 P.3d 1102 (2012)). For instance, an aggressor instruction is appropriate where
22 the evidence supports that the defendant made the first move by drawing a weapon. *State v.*
23 *Riley*, 137 Wn.2d 904, 909, 976 P.2d 624 (1999). This is true even where the evidence is
24 conflicting as to whether the defendant's conduct precipitated a fight. *Id.* at 90 (citing *State v.*
25 *Davis*, 119 Wn.2d 657, 666, 835 P.2d 1039 (1992)). Reviewing courts defer to the trier of fact
on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence.

1 *State v. Thomas*, 150 Wn.2d 821, 875, 83 P.3d 970 (2004) (citing *State v. Cord*, 103 Wn.2d
2 361, 367, 693 P.2d 81 (1985)).

3 Petitioner's jury received the following instruction on the first-aggressor component of
4 Washington's self-defense law:

5 No person may, by any intentional act reasonably likely to provoke a belligerent
6 response, create a necessity for acting in self-defense or defense of another and
7 thereupon use, offer or attempt to use force upon or toward another person.
8 Therefore, if you find beyond a reasonable doubt that the defendant was the
9 aggressor, and that defendant's acts and conduct provoked or commenced the
10 fight, then self-defense or defense of another is not available as a defense.

11 Appx. E (Inst. 19).

12 Petitioner's claim there was no evidence to support the giving of an aggressor instruction
13 appears to be based on his failure to appreciate the instruction-supporting import of his victims'
14 testimony. As provided in the Court's decision, victim Edwards testified petitioner's co-
15 defendant started shooting at them without provocation. Appx.B at 4. Edwards initially
16 identified petitioner as the shooter from a photo montage, and petitioner has never disputed his
17 identity as such. *Id.* at 3. Victim Long testified someone got out of a car and started shooting at
18 him and Edwards after a "brief encounter" with some men in an apartment complex. *Id.* at 4.
19 These facts are nearly identical to the ones that supported the issuance of an aggressor
20 instruction in *Riley*, where, the instruction was properly given despite "testimony to the
21 contrary, [because] there was evidence Riley drew his gun first and aimed it at [the victim]."
22 *Riley*, 137 Wn.2d at 909. The inability to further comment on the supporting testimony stems
23 from petitioner's failure to produce or cite the relevant record, providing additional cause for
24 dismissal.

25 Petitioner also apparently fails to appreciate it is not enough for him to prove it was error
to give the aggressor instruction. Assuming that position is less obviously untenable, he must
further prove the instruction's presence among the other instructions was a fundamental defect

1 resulting in a miscarriage of justice. This higher burden could not be met even if the yet to be
2 perfected record could be shown incapable of supporting the instruction. The aggressor
3 instruction given at petitioner's trial was an accurate statement of that component of
4 Washington's self-defense law. Appx.E (Inst. 19); *Riley*, 137 Wn.2d at 908 (citing Washington
5 Pattern Jury Instructions; Criminal 16.04). The instruction must be considered with the court's
6 other instructions as a whole. *State v. Refsnes*, 14 Wn.2d 569, 572, 128 P.2d 773 (1942). This
7 means the burden to prove petitioner was the first aggressor fell to the State, which was
8 accurately assigned the burden to prove first degree assault, and disprove petitioner's claims of
9 self-defense, beyond a reasonable doubt. Appx.E (Inst. 12-13, 16). The aggressor instruction
10 was also given with the other corresponding components of Washington's self-defense law such
11 as the petitioner's entitlement to act on appearance in defending himself or another as well as his
12 ability to stand his ground given the absence of a duty to retreat. Appx.E (Inst. 17-18).
13 Petitioner's jury must be presumed to have followed those instructions. *State v. Jamerson*, 74
14 Wn.2d 146, 148, 443 P.2d 654 (1968). As a result, the absence of factual support for the
15 aggressor instruction would have compelled the jury to find the State failed to disprove self-
16 defense on that basis and look to whether the State met its burden through other means. The
17 absence of a demonstrated fundamental defect resulting in a miscarriage of justice warrants
18 dismissal.
19

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

1 D. CONCLUSION

2 The State's response to grounds 1-2 of the petition, applies with equal force to grounds
3 3-4, which do nothing more than repeat the same claims of error in even vaguer terms; all of
4 which should be dismissed as they culminate into a petition that is successive, inadequately
5 presented for review, and meritless.

6 RESPECTFULLY SUBMITTED: September 29th, 2015.

7 MARK LINDQUIST
8 Pierce County
9 Prosecuting Attorney

10 
11 JASON RUYF
12 Deputy Prosecuting Attorney
13 WSB #38725

13 Certificate of Service:

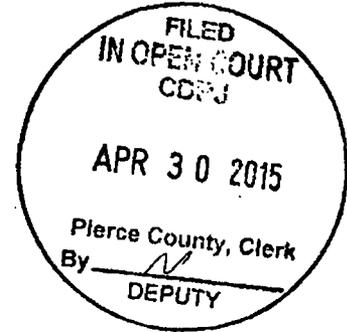
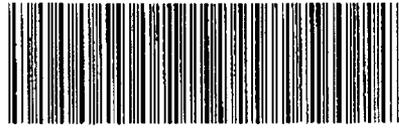
14 The undersigned certifies that on this day she delivered by U.S. mail
15 to petitioner true and correct copies of the document to which this
16 certificate is attached. This statement is certified to be true and
17 correct under penalty of perjury of the laws of the State of Washington.

Signed at Tacoma, Washington, on the date below.

16 9-29-15 
17 Date Signature

APPENDIX “A”

Judgment and Sentence



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 11-1-04125-7

vs.

JICOREY RICCARDO BRADFORD,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

ASH 1^o and UPFA 2^o

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

X 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 4-30-15

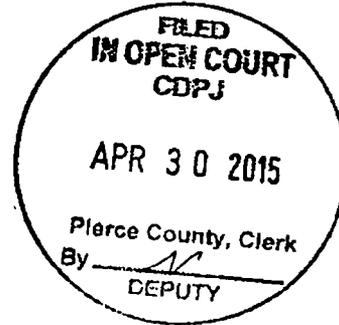
By direction of the Honorable

Jerry Costello
JUDGE

KEVIN STOCK JERRY T. COSTELLO
CLERK

By: [Signature]
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF
APR 30 2015
Date _____ By [Signature] Deputy



STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

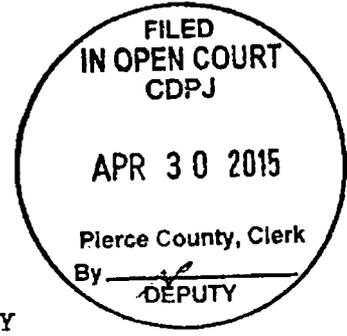
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____.

KEVIN STOCK, Clerk

By: _____ Deputy

am





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 11-1-04125-7

vs

JICOREY RICCARDO BRADFORD

Defendant.

SID: WA21142736
 DOB: 10/17/1981

JUDGMENT AND SENTENCE (FJS)
 Prison
 RCW 9.94A.712/9.94A.507 Prison Confinement
 Jail One Year or Less
 First-Time Offender
 Special Sexual Offender Sentencing Alternative
 Special Drug Offender Sentencing Alternative
 Alternative to Confinement (ATC)
 Clerk's Action Required, para 4.5 (SDOSA),
 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
 Juvenile Decline Mandatory Discretionary

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 05/24/12 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a)	FASE	10/07/11	LAKEWOOD PD 112800879
IV	UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE (GGG10)	9.41.040(2)(a)	NONE	10/07/11	LAKEWOOD PD 112800879

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Ham, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Amended Information

- A special verdict/finding for use of firearm was returned on Count(s) I RCW 9.94A.602, 9.94A.533.
 Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
 Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	CARRYING WEAPON WITHOUT PERMIT	06-24-2002	LOWER KITTITAS DISTRICT CT	06-15-2002	A	MISD
2	DWLS 3		LAKEWOOD MUNI COURT	09-22-2002	A	MISD
3	DWLS 3		TACOMA MUNICIPAL COURT	11-28-2007	A	MISD
4	DWLS 3		LAKEWOOD MUNI. COURT	04-29-2011	A	MISD
5	UPCS - COCAINE	12-16-2002	SUPERIOR CT - PIERCE CTY	08-06-2002	A	NV
6	ATTEMPTED POSSESSION OF FIREARM	10-21-2005	MOORINGSPORT, LA	06-24-2005	A	
7	UPFA 2ND DEG	08-09-2010	SUPERIOR CT - PIERCE CTY	07-07-2010	A	NV

- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	3	XII	120-160 MOS	60 MOS	180-220 MOS	LIFE
IV	3	VII	4-12 MOS	NONE	4-12 MOS	10 YRS

- 2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:
 within below the standard range for Count(s) _____
 above the standard range for Count(s) _____
 The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
 Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.
 Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the

JUDGMENT AND SENTENCE (JS)

defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein RCW 9.94A.753.

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

[] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9A.1010.

The court considered the following factors:

the defendant's criminal history.

[] whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

evidence of the defendant's propensity for violence that would likely endanger persons.

[] other: _____

The court decided the defendant should [] should not register as a felony firearm offender.

III. JUDGMENT

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

3.2 [] The court **DISMISSES** Counts _____ [] The defendant is found **NOT GUILTY** of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTNRJN \$ _____ Restitution to: _____

\$ _____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ _____ Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 800.⁰⁰ TOTAL

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 3 of 10

The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor.

is scheduled for _____

RESTITUTION. Order Attached

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ per cell per month commencing 03/11/15. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

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

COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**

The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

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

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

[Redacted]

4.4a [] All property is hereby forfeited

[] Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b **BOND IS HEREBY EXONERATED**

4.5 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>180</u> months on Count	<u>I</u>	_____ months on Count	_____
<u>12</u> months on Count	<u>IV</u>	_____ months on Count	_____
_____ months on Count	_____	_____ months on Count	_____

Actual number of months of total confinement ordered is: 180 months
(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.
CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: To be

determined by Department of Corrections

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

The defendant shall be on community custody for:

Count(s) I 36 months for Serious Violent Offenses

Count(s) _____ 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

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

consume no alcohol.

have no contact with: Victims

[] remain [] within [] outside of a specified geographical boundary, to wit: _____

[] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

[] participate in the following crime-related treatment or counseling services: _____

[] undergo an evaluation for treatment for [] domestic violence [] substance abuse

[] mental health [] anger management and fully comply with all recommended treatment.

comply with the following crime-related prohibitions: per CCO

[] Other conditions:

per CCO

[] For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an

emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

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

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

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

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

5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials). JB

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 **OTHER:** per CEO

DONE in Open Court and in the presence of the defendant this date: 4-30-15

JUDGE

Print name

Jerry T. Costello
JERRY T. COSTELLO

[Signature]

Deputy Prosecuting Attorney

Print name: J. Curtis

WSB # 36345

Attorney for Defendant

Print name: Pat Quill

WSB # 6831

[Signature]

Defendant

Print name: _____

FILED
IN OPEN COURT
CDPJ

APR 30 2015

Pierce County, Clerk
By [Signature]
DEPUTY

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: _____

1
2 **CERTIFICATE OF CLERK**

3 CAUSE NUMBER of this case: 11-1-04125-7

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

5 WITNESS my hand and seal of the said Superior Court affixed this date: _____

6 Clerk of said County and State, by: _____, Deputy Clerk

7
8
9 **IDENTIFICATION OF COURT REPORTER**

10 **NATASHA SEMAGO**

11 Court Reporter

Case Name Jicorey Bradford Cause No. 11-1-04125-7
D.O.B.: 10-17-81

"Felony Firearm Offender Registration" Attachment: Registration for Felony Firearm Offenders (If required, attach to the judgment and sentence.)

1. General Applicability and Requirements: The defendant is required to register because this crime involves a felony firearm offense as defined in RCW 9.41.010, and, after considering statutory factors, the court decided the defendant must register.

If the defendant resides in this state, the defendant must personally register with the county sheriff for the county of the defendant's residence, whether or not the defendant has a fixed residence.

The defendant must register with the county sheriff within 48-hours after the date:

- (a) of release from custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility for this offense; or
- (b) the court imposes the defendant's sentence, if the defendant receives a sentence that does not include confinement.

2. Register on Every 12-month Anniversary: The defendant must register with the county sheriff not later than 20 days after each 12-month anniversary of the date the defendant is first required to register as described in paragraph 1, above.

If the defendant is confined in any correctional institution, state institution or facility, or health care facility throughout the 20-day period after each 12-month anniversary, the defendant must personally appear before the county sheriff not later than 48-hours after release to verify and update, as appropriate, the defendant's registration.

3. Change of Residence within State: If the defendant changes residence and the new residence address is in this state, the defendant must register with the sheriff of the county of the defendant's residence address not later than 48 hours after the change of address. If the defendant changes residence within a county, the defendant must update the current registration.

4. Length of Duty to Register: The defendant must continue to register for four years from the date the defendant is first required to register, as described in paragraph 1, above.

Date: 4-30-15


Defendant's Signature

VOTING RIGHTS STATEMENT

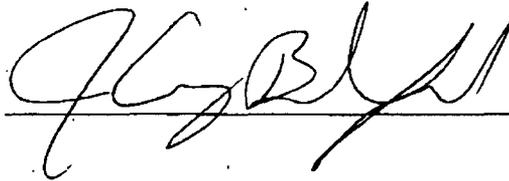
RCW 10.64.140: After conviction of a felony, or entry of a plea of guilty to a felony, your right to vote is immediately revoked and any existing voter registration is cancelled. Pursuant to RCW 29A.08.520 after you have completed all periods of incarceration imposed as a sentence, and after all community custody is completed and you are discharged by the Department of Corrections, your voting rights are automatically restored on a provisional basis. You must then reregister to be permitted to vote.

Failure to pay legal financial obligations, or comply with an agreed upon payment plan for those obligations, can result in your provisional voting right being revoked by the court.

Your right to vote may be fully restored by a) A certificate of discharge issued by the sentencing court, RCW 9.9A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is either provisionally or fully restored is a class C felony, RCW 92A.84.660.

I acknowledge receipt and understanding of this information:

Defendant's signature: _____



0019
649
5/11/2015

IDENTIFICATION OF DEFENDANT

SID No. WA21142736
(If no SID take fingerprint card for State Patrol)

Date of Birth 10/17/1981

FBI No. 5208XB0

Local ID No. CHRI#20022192045

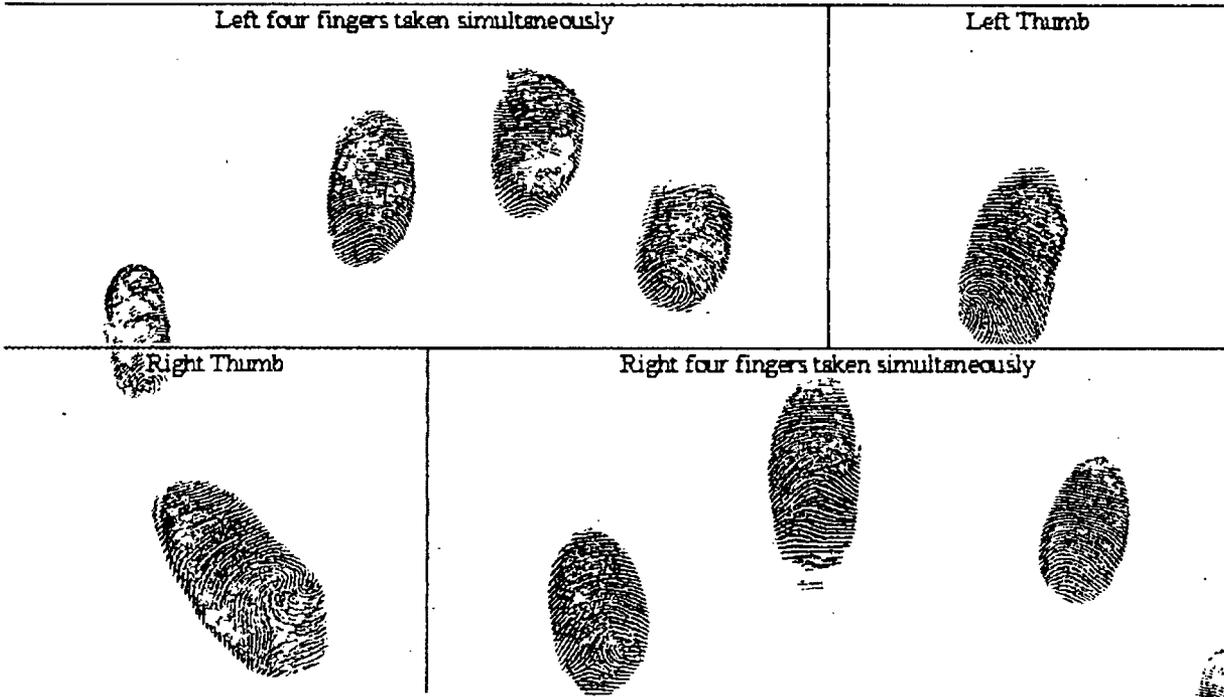
PCN No. 541335731

Other

Alias name, SSN, DOB: _____

Race:					Ethnicity:		Sex:
<input type="checkbox"/> Asian/Pacific Islander	<input checked="" type="checkbox"/> Black/African-American	<input type="checkbox"/> Caucasian	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Male			
<input type="checkbox"/> Native American	<input type="checkbox"/> Other: _____		<input checked="" type="checkbox"/> Non-Hispanic	<input type="checkbox"/> Female			

FINGERPRINTS

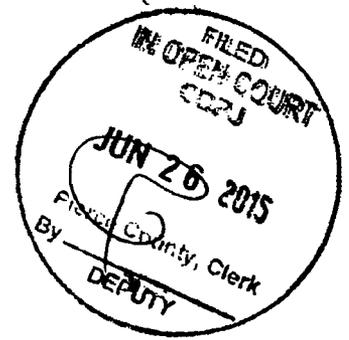


I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, _____ Dated: 4-30-15

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: _____

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
28



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 11-1-04125-7

vs.

JICOREY RICCARDO BRADFORD,

MOTION AND ORDER CORRECTING
JUDGMENT AND SENTENCE

Defendant. **CLERKS ACTION REQUIRED**

THIS MATTER coming on regularly for hearing before the above-entitled court on the Motion of the Deputy Prosecuting Attorney for Pierce County, Washington, for an order correcting Judgment and Sentence heretofore granted the above-named defendant on April 30, 2015, pursuant to defendant's plea of guilty to the charge(s) of ASSAULT IN THE FIRST DEGREE; UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE, as follows:

- 1) That page 1 of the Judgment and Sentence, 2.1 reflects Assault in the First Degree as Count I and should note Assault in the First Degree as Count II;
- 2) That page 2 of the Judgment and Sentence, 2.3, reflects sentencing data for Count I and should note sentencing data for Count II;
- 3) That page 5 of the Judgment and Sentence, 4.5, reflects confinement for Count I and should note confinement for Count II;

1
2 4) That page 6 of the Judgment and Sentence, 4.6, reflects community custody for
3 Count I and should note community custody for Count II;

4 5) That all other terms and conditions of the Judgment and Sentence are to remain in full
5 force and effect as if set forth in full herein; and the court being in all things duly advised, Now,
6 Therefore, It is hereby

7 ORDERED, ADJUDGED and DECREED that the Judgment and Sentence granted the
8 defendant on April 30, 2015, be and the same is hereby corrected as follows:
9

10 1) Page 1 of the Judgment and Sentence, 2.1 is corrected as follows:

11 a) Assault in the First Degree as Count I is deleted; and

12 b) Assault in the First Degree as Count II is inserted in its stead

13 2) Page 2 of the Judgment and Sentence, 2.3 is corrected as follows:

14 a) Count I is deleted; and

15 b) Count II is inserted in its stead

16 3) Page 5 of the Judgment and Sentence, 4.5 is corrected as follows:

17 a) Count I is deleted; and

18 b) Count II is inserted in its stead

19 4) Page 6 of the Judgment and Sentence, 2.3 is corrected as follows:

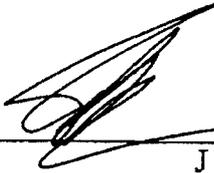
20 a) Count I is deleted; and

21 b) Count II is inserted in its stead

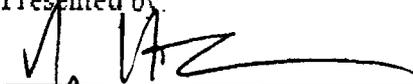
22 5) All other terms and conditions of the original Judgment and Sentence shall remain in
23 full force and effect as if set forth in full herein. IT IS FURTHER
24
25
26
27
28

1
2 ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment
3 filed on April 30, 2015 so that any one obtaining a certified copy of the judgment will also obtain
4 a copy of this order.

5 DONE IN OPEN COURT this 26th day in June, 2015. NUNC PRO TUNC to April 30,
6 2015.

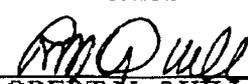
7
8 
JUDGE

9 Presented by:

10 
11 JAMES H CURTIS
12 Deputy Prosecuting Attorney
13 WSB# 36845

14 Frank E. Cuthbertson

15 Approved as to form and Notice
16 Of Presentation Waived:

17 
18 ROBERT M. QUILLIAN
19 Attorney for Defendant
20 WSB# 6836

21
22
23
24
25
26
27
28
ajm

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 24 day of September, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Sep 24, 2015 8:02 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: FFE064AE-F20F-6452-DD3D9E423E13C642.

This document contains 18 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “B”

Mandate



11-1-04125-7 43790796 MNDCA 12-15-14

Case Number: 11-1-04125-7 Date: September 24, 2015
SerialID: FFE06421-F20F-6452-DAA4A2AB93C9D04E
Certified By: Kevin Stock Pierce County Clerk, Washington

3 OF THE STATE OF WASHINGTON DIVISION I

STATE OF WASHINGTON,
Respondent,

v.

JICOREY RICCARDO BRADFORD and
JAMES EARL GREY,

Appellants.

No. 71056-7-I

MANDATE

Pierce County

Superior Court No. 11-1-04125-7

Court Action Required

IN COUNTY FILED
CLERK'S OFFICE
A.M. DEC 12 2014 P.M.
PIERCE COUNTY WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

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

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on March 24, 2014, became the decision terminating review of this court in the above entitled case on December 10, 2014. An order denying a petition for review was entered in the Supreme Court on November 5, 2014. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

c: Jennifer Sweigert
Thomas Kummerow
Brian Wasankari
Hon. John McCarthy

Court Action Required: The sentencing court or criminal presiding judge is to place this matter on the next available motion calendar for action consistent with the opinion.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 10th day of December, 2014.

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

0114
4604
12/16/2014

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON

2014 MAR 24 AM 9:19

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 71056-7-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
JICOREY RICCARDO BRADFORD and)	
JAMES EARL GRAY,)	UNPUBLISHED OPINION
)	
Appellants.)	FILED: March 24, 2014

BECKER, J. — Codefendants JiCorey Bradford and James Gray were convicted of drive-by shooting and other charges arising from a hostile encounter with two men in Tacoma. We reverse both appellants' convictions for drive-by shooting because of ineffective assistance of counsel. Because the evidence was insufficient, we also reverse Bradford's conviction for possession of a stolen firearm.

The shootings occurred on the afternoon of October 7, 2011, near an apartment complex where Bradford's brother lived. According to testimony at trial, two or three shots were fired into a Chevy Caprice occupied by Dandre Long and Kerry Edwards. The shots came from another car occupied by defendants Bradford and Gray. The cars then sped off in different directions but

0115

4604

12/16/2014

No. 71056-7-1/2

soon met up again. Either Bradford or Gray got out and fired more shots into the Caprice.

Edwards and Long left the scene; it was some time later that they contacted the police. Bradford and Gray attempted to leave, but their car crashed into an embankment near a fire station. Police soon arrived and found Bradford sitting in the car when they arrived. Gray ran away and was not arrested until sometime later.

Near Bradford on the ground, police found a gun that was later matched to shells found in the Caprice or near the locations of the shootings. At least 13 shots had been fired at the Caprice. One bullet was found lodged in the back of the driver's headrest and another was recovered from the back seat.

As he was being transported to the police station, Bradford identified a photograph of Gray as the person who was with him during the shooting. Bradford told police it was he, not Gray, who fired the shots. Bradford maintained he fired in self-defense because Edwards had pointed a gun at him and Gray from the outset.

The information alleged that Bradford and Gray acted as accomplices in the shootings. On May 14, 2012, a joint trial began with Bradford and Gray as codefendants. Each of them was charged with one count of first degree assault with a firearm against Edwards, one count of first degree assault with a firearm against Long, one count of drive-by shooting, and one count of possession of a stolen firearm. In addition, Bradford was charged with second degree unlawful

No. 71056-7-I/3

possession of a firearm, and Gray was charged with first degree unlawful possession of a firearm. The trial court dismissed charges of cocaine possession.

The trial was challenging because the four participants gave differing accounts of what happened. According to the defendants, Bradford was the shooter. Edwards identified Gray as the shooter at trial. Edwards had earlier identified Bradford as the shooter when police showed him a photo montage.

The defendants' theory was that they should be acquitted of the shooting charges on the ground of self-defense because Bradford fired at the Caprice only after Edwards pointed a gun at them. Edwards and Long testified that neither of them had a gun. Edwards, the State's chief witness, admitted that he had recently pleaded guilty to 12 or 14 felonies. All but two of the charges against him had been dismissed in exchange for his testimony against gang members in other cases, and he had served 1 year in prison instead of 30. Edwards testified that his felony convictions prevented him from possessing firearms and he would face a 30-year sentence if he were found to have violated his plea deal by possessing a firearm.

The State's theory was that no one in the Caprice had a gun, and accordingly, there could be no finding of self-defense. In closing arguments, both sides agreed that the central issue was whether Edwards had a gun. Edwards denied it, and the defense impeached him with a witness who said Edwards had recently threatened her with a gun.

No. 71056-7-1/4

Edwards testified that the other car pulled up next to the Caprice as he and Long were driving away from an apartment building. Edwards testified that neither he nor Long said anything to the defendants. He said Gray started shooting and as he and Long drove away, they heard the back window burst. He testified that he looked back and saw Gray standing in the middle of the street, saw him fire four or five shots, and then heard more shots hit the Caprice as he ducked down. Edwards said Gray started shooting again when the two cars met for the second time, and he heard six or seven more shots hit the car. Edwards testified he saw Bradford in the passenger seat of Gray's car before the first shots but did not see Bradford at all during the second round of shooting.

Long testified that he knew Gray but did not see him on the day of the incident. Long denied seeing Bradford. He recalled having a brief encounter with some men at the apartment complex. Then, he said, someone got out of a car and started shooting. He thought different people were involved in the second shooting.

Bradford testified that he and Gray were stopped near the apartment building when the Caprice pulled up, hostile words were spoken by its occupants, and the passenger (Edwards) leaned forward and pointed a gun at him. Bradford testified that he reacted by reaching under his seat, pulling out his gun, and firing two or three times from inside the car. He said both cars drove off, but then the Caprice suddenly reappeared, passed them, and spun out in front of them, cutting them off. Bradford said he saw Edwards holding a gun out the window.

No. 71056-7-I/5

He testified that when he saw the gun, he reacted on instinct and fired once or twice from inside the car, but feeling he was in the direct line of fire, he got out of the car and ran toward the back for cover, firing at the other car as he ran.

Bradford testified that Gray never possessed the gun and had not known there was a gun in the car.

Gray testified that he recognized Long when he saw him in the Caprice and that Long was verbally aggressive. He said he noticed Bradford was ducking down like he was trying to hide from someone with a gun. Then Bradford pulled a gun out from under his seat and fired two shots, the first one from within the car and the second one after he had gotten out of the car.

Gray said Bradford got back in the driver's seat and drove off, then Long's car appeared again and cut them off. He said Bradford ducked and got out of the car. Gray said he heard shots and moved to the driver's seat because he was scared and wanted to leave. Then, he said, Bradford got into the passenger seat and they took off. Gray lost control of the car and crashed it. Gray testified that he ran away and hid in a tree for several hours before going home.

There were several other witnesses who saw or heard some of the shots. None of them identified the shooter.

On May 24, 2012, the jury rendered its verdict. Bradford was convicted of drive-by shooting, first degree assault with a firearm against Long, unlawful possession of a firearm (a crime he conceded he was guilty of), and possession of a stolen firearm. The jury could not reach a decision as to the count charging

No. 71056-7-1/6

Bradford with first degree assault against Edwards.

Gray was convicted only of drive-by shooting and unlawful possession of a firearm. Gray was found not guilty of the two counts of first degree assault and not guilty of possession of a stolen firearm.

Bradford and Gray filed separate appeals. The appeals have been consolidated. Gray has submitted a joinder in coappellant Bradford's arguments. See RAP 10.1(g)(2).

SELF-DEFENSE INSTRUCTION

Bradford's defense centered on his claim that he fired only in self-defense when he saw Edwards pointing a gun. The trial court gave a standard self-defense instruction. By the terms of the first paragraph, the self-defense instruction applied only to the charges of first degree assault. "It is a defense to a charge of assault in the first degree that the force used was lawful as defined in this instruction."

Bradford contends the trial court erred by failing to instruct the jury that self-defense was an available defense for the drive-by shooting charge. There was no objection to the instruction below. Bradford contends, however, that the alleged error may be raised for the first time on appeal as manifest constitutional error. He also claims ineffective assistance of counsel.

Appellate courts analyze unpreserved claims of error involving self-defense instructions on a case-by-case basis to assess whether the claimed error is manifest constitutional error. State v. O'Hara, 167 Wn.2d 91, 104, 217

No. 71056-7-1/7

P.3d 756 (2009). O'Hara applies because instruction 16 was not, on its face, erroneous. It did not relieve the State of its burden to disprove that Bradford acted in self-defense. See O'Hara, 167 Wn.2d at 108. The instruction was modeled after WPIC 17.02, which has been upheld as a correct instruction on the law of self-defense. See State v. Prado, 144 Wn. App. 227, 247-48, 181 P.3d 901 (2008). The problem is not that the instruction erroneously stated the law of self-defense. The problem is that it did not make self-defense applicable to the charges of drive-by shooting. Accordingly, we do not find manifest constitutional error. The issue is more appropriately addressed in the context of ineffective assistance of counsel. See State v. Woods, 138 Wn. App. 191, 197, 156 P.3d 309 (2007).

To prevail on a claim of ineffective assistance, Bradford must show that (1) his attorney's representation was deficient and (2) he was prejudiced. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). An ineffective assistance claim is reviewed de novo because it presents mixed questions of law and fact. State v. A.N.J., 168 Wn.2d 91, 109, 225 P.3d 956 (2010). Counsel is ineffective when counsel's conduct could not have been a legitimate strategic or tactical choice. Woods, 138 Wn. App. at 197.

Under RCW 9A.36.045(1), a person is guilty of drive-by shooting when he recklessly discharges a firearm in a manner which creates substantial risk of death or serious physical injury to another person, "and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used

0121
4604
12/16/2014

0122
4604
12/16/2014

to transport the shooter or the firearm, or both, to the scene of the discharge.”

The State does not dispute that self-defense is available as a defense to a charge of drive-by shooting. The State does not identify a strategic reason why defense counsel would want the jury to be instructed on self-defense as to the assault charges but not the drive-by shooting charge. Self-defense was Bradford’s only defense, as he admitted to being the shooter. The conduct underlying the drive-by shooting was the same as the conduct underlying the first degree assault charges. Counsel argued the assault and drive-by shooting charges would rise or fall together, depending on whether the jury believed Edwards had a gun. We conclude the first prong of the Strickland test is met. Counsel for Bradford was ineffective for failing to ensure that the self-defense instruction applied to the drive-by shooting charge as well as the assault charges. The same is true of counsel for Gray, who has joined in Bradford’s argument on appeal. To convict Gray of drive-by shooting, the jury must have concluded he was either the shooter (as the State claimed) or an accomplice to Bradford.

The second prong of the test is demonstrating prejudice. A defendant shows prejudice where there is a reasonable probability that the result of the trial would have been different absent the challenged conduct. Strickland, 466 U.S. at 694.

The State contends Bradford cannot show prejudice because “there is reason to question” whether there was sufficient evidence to justify a self-defense instruction. In particular, the State argues the jury could not have found

No. 71056-7-1/9

that Bradford subjectively feared he was in imminent danger or that he exercised no more force than was reasonably necessary. This argument is unconvincing. A self-defense instruction must be given if there is “any evidence” the person acted in self-defense. State v. Adams, 31 Wn. App. 393, 395, 641 P.2d 1207 (1982). Bradford’s testimony provided such evidence. The trial court did give a self-defense instruction pertaining to the charges of first degree assault, presumably recognizing there was sufficient evidence of self-defense.

Bradford argues that the prejudice of counsel’s error is demonstrated by the jury’s inability to reach a verdict on the charge that he committed first degree assault against Edwards. The suggestion is that if some jurors found Bradford was justified in shooting at Edwards, likely they would have also found he was justified in firing shots from the car he was in or the area near it—if instructed that self-defense applied to the drive-by shooting charges.

All jurors acquitted Gray of both assaults, so they most likely agreed Bradford was the shooter. All jurors convicted Bradford of assaulting Long. All jurors convicted both defendants of drive-by shooting. Possibly, the jury’s inability to agree that Bradford assaulted Edwards means that at least some jurors found that Edwards had a gun and Bradford acted in self-defense as to Edwards. If so, the jury’s decision to convict both defendants of drive-by shooting possibly means they found that the shooting at some point ceased to be justified by self-defense and was then simply reckless as to other persons in the vicinity. The problem is that nothing in the record demonstrates a single

0123
4604
12/16/2014

0124
4604
12/16/2014

coherent rationale for the verdicts. The State did not walk the jurors through the instructions and verdict form in closing argument. The prosecutor left the complex task of relating the instructions to the facts completely up to the jury: "In many cases, I talk about instructions, and in this case I am not going to. I said I was going to be exceedingly short. And frankly, I am finished. Your decision."

If some jurors believed that at least some of Bradford's shots were fired in self-defense, there is a reasonable possibility the same jurors would have found the drive-by shooting justified by self-defense if they had been given an instruction that permitted them to do so. We conclude that the failure of both defense counsel to ensure that the self-defense instruction applied to drive-by shooting as well as to assault was both deficient performance and prejudicial. As a result, Bradford's and Gray's convictions for drive-by shooting must be reversed.

SUFFICIENCY OF THE EVIDENCE

Bradford and Gray both argue the State presented insufficient evidence for a rational jury to find them guilty of certain counts. Where a criminal defendant challenges the sufficiency of the evidence, this court reviews the evidence in the light most favorable to the State to determine if any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all of the inferences that can reasonably be drawn therefrom. Salinas, 119 Wn.2d at 201. "Determinations of credibility are for the

fact finder and are not reviewable on appeal.” State v. Brockob, 159 Wn.2d 311, 336, 150 P.3d 59 (2006), quoting State v. Hughes, 154 Wn.2d 118, 152, 110 P.3d 192 (2005).

Gray's Conviction for Drive-by Shooting

Gray claims there was insufficient evidence to convict him of drive-by shooting. If so, he would be entitled to have the charge dismissed instead of simply having the conviction reversed for ineffective assistance as discussed above.

Gray and Bradford testified that Bradford did the shooting and Gray did not know Bradford had a gun in his car until Bradford brandished it. The only person who identified Gray as a shooter was Edwards. Gray argues that Edwards' testimony was too self-contradictory and ambivalent to prove that he fired the gun.

This court defers to the jury on issues of credibility. Gray cites no authority holding that the testimony of a witness must be internally consistent. The jurors could have chosen to believe those portions of Edwards' testimony in which he identified Gray as the shooter. Even if they did not, the jurors did not have to find that Gray was the actual shooter in order to convict him of drive-by shooting. The jury was instructed on accomplice liability. If the jury found that only Bradford fired shots, it nevertheless could have also found that Gray became an accomplice to Bradford by standing by with the car while Bradford got out of the car and fired shots. Gray's conduct could fairly be seen as waiting for

0125
4604
12/16/2014

Bradford to finish shooting in order to help him get away. Thus, we reject Gray's challenge to the sufficiency of the evidence to support the conviction for drive-by shooting.

Gray's Conviction for Unlawful Possession of a Firearm

Because of prior felony convictions, Gray could not possess a firearm. Knowing possession is an essential element of the charge. State v. Anderson, 141 Wn.2d 357, 366, 5 P.3d 1247 (2000). Possession may be actual or constructive. State v. Echeverria, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997). A jury can find a defendant constructively possessed a firearm if the defendant has dominion and control over it or over the premises where the firearm was found. Echeverria, 85 Wn. App. at 783. A vehicle qualifies as "premises" for purposes of this inquiry. State v. Mathews, 4 Wn. App. 653, 656, 484 P.2d 942 (1971). Close proximity alone is not enough to establish constructive possession; other facts must enable the trier of fact to infer dominion and control. State v. Spruell, 57 Wn. App. 383, 388-89, 788 P.2d 21 (1990). The totality of the circumstances must be considered. State v. Collins, 76 Wn. App. 496, 501, 886 P.2d 243, review denied, 126 Wn.2d 1016 (1995).

Gray and Bradford testified that Gray did not know Bradford had a gun and Bradford was the only person who fired it. But as discussed above, the jury could have believed Edwards' testimony that Gray was the shooter. If the jury concluded Gray fired the gun, he obviously possessed it.

Alternatively, the jury may have believed that although Gray was not the

0126
4604
12/16/2014

shooter, he remained in the car even after Bradford got out and then, when Bradford got back in, Gray drove the getaway vehicle with Bradford inside, all the time knowing there was a firearm inside the car.

Under either scenario, there was sufficient evidence for a reasonable jury to find that Gray knowingly possessed a firearm.

Bradford's Conviction for Possession of a Stolen Firearm

The jury was instructed that the State had to prove, among other things, that Bradford possessed, carried, delivered, sold or was in control of a stolen firearm, and "acted with knowledge that the firearm had been stolen."

Bradford stipulated that he knew he was not permitted to possess a firearm because of his prior felonies. He admitted he was guilty of unlawful possession of a firearm. He does not dispute that the firearm he had in his possession was stolen. He contends, however, that there was insufficient evidence that he knew it was stolen.

Bradford testified that he acquired the gun in August 2011. He said he needed the gun for protection because someone had threatened to shoot him in an unrelated dispute over a woman. He testified that a man he met at a gas station had a gun in his car and offered to sell it for \$250, and he decided to buy it. Bradford testified that he checked the gun's serial number, and because it was not scratched off, he assumed the gun was not stolen.

Bare possession of stolen property is not enough to justify a conviction. But possession of recently stolen property in connection with other evidence

No. 71056-7-1/14

tending to show guilt is sufficient to show knowledge. State v. McPhee, 156 Wn. App. 44, 62, 230 P.3d 284, review denied, 169 Wn.2d 1028 (2010); see also State v. Couet, 71 Wn.2d 773, 776, 430 P.2d 974 (1967) (evidence is sufficient if the defendant gives a false or improbable explanation for possessing the stolen property). The State contends there was sufficient evidence of knowledge under McPhee and Couet because the gun used by Bradford was recently stolen and Bradford's explanation about how he came to be in possession of it was improbable.

The gun owner testified at the May 2012 trial that his gun had been stolen from his home in Graham perhaps as early as 2008, or at least a "couple years ago." A "couple years ago" would have been around May 2010, more than a year before Bradford admitted acquiring it or when the shooting occurred in October 2011. The lapse of time was too great to prove that the gun had been "recently" stolen. Compare McPhee (two days) and Couet (several weeks). And Bradford's explanation about how and where he acquired the gun was not inherently improbable. We conclude there was insufficient evidence of the essential element of knowledge.

Statements of Additional Grounds

Bradford and Gray submitted separate statements of additional grounds pursuant to RAP 10.10. Neither warrants further review. Bradford's statement alleges ineffective assistance of counsel with respect to the wording of the self-defense instruction, and he also asserts there should have been instructions on

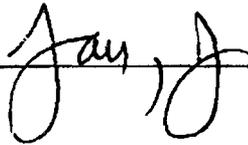
0128
4904
12/16/2014

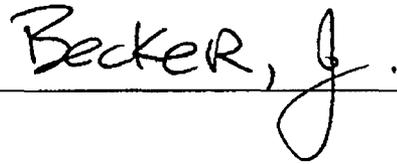
No. 71056-7-1/15

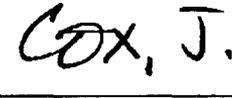
lesser included offenses of the assault charges. The statement raises no possibility that the latter claims are meritorious. Gray's statement challenges the adequacy of Edwards' identification of him as the shooter. This claim was adequately covered by appellate counsel.

The drive-by shooting convictions of Bradford and Gray are reversed due to ineffective assistance of counsel. Bradford's conviction for possession of a stolen firearm is reversed for insufficiency of the evidence. Gray's conviction for unlawful possession of a firearm is affirmed. Both cases are remanded for further proceedings not inconsistent with this opinion.

WE CONCUR:







0129
4604
12/16/2014

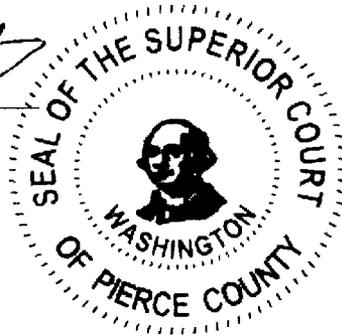
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 24 day of September, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Sep 24, 2015 8:02 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: FFE06421-F20F-6452-DAA4A2AB93C9D04E.

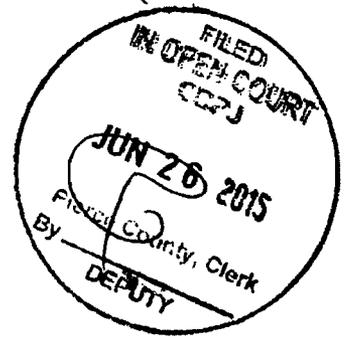
This document contains 16 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “C”

Motion and Order



11-1-04125-7 44972326 ORCJS 07-10-15



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 11-1-04125-7

vs.

JICOREY RICCARDO BRADFORD,

MOTION AND ORDER CORRECTING
JUDGMENT AND SENTENCE

Defendant. **CLERKS ACTION REQUIRED**

THIS MATTER coming on regularly for hearing before the above-entitled court on the Motion of the Deputy Prosecuting Attorney for Pierce County, Washington, for an order correcting Judgment and Sentence heretofore granted the above-named defendant on April 30, 2015, pursuant to defendant's plea of guilty to the charge(s) of ASSAULT IN THE FIRST DEGREE; UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE, as follows:

- 1) That page 1 of the Judgment and Sentence, 2.1 reflects Assault in the First Degree as Count I and should note Assault in the First Degree as Count II;
- 2) That page 2 of the Judgment and Sentence, 2.3, reflects sentencing data for Count I and should note sentencing data for Count II;
- 3) That page 3 of the Judgment and Sentence, 4.5, reflects confinement for Count I and should note confinement for Count II;

1
2 4) That page 6 of the Judgment and Sentence, 4.6, reflects community custody for
3 Count I and should note community custody for Count II;

4 5) That all other terms and conditions of the Judgment and Sentence are to remain in full
5 force and effect as if set forth in full herein; and the court being in all things duly advised, Now,
6 Therefore, It is hereby

7 ORDERED, ADJUDGED and DECREED that the Judgment and Sentence granted the
8 defendant on April 30, 2015, be and the same is hereby corrected as follows:
9

10 1) Page 1 of the Judgment and Sentence, 2.1 is corrected as follows:

- 11 a) Assault in the First Degree as Count I is deleted; and
12 b) Assault in the First Degree as Count II is inserted in its stead

13 2) Page 2 of the Judgment and Sentence, 2.3 is corrected as follows:

- 14 a) Count I is deleted; and
15 b) Count II is inserted in its stead

16 3) Page 5 of the Judgment and Sentence, 4.5 is corrected as follows:

- 17 a) Count I is deleted; and
18 b) Count II is inserted in its stead

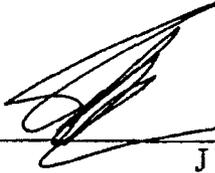
19 4) Page 6 of the Judgment and Sentence, 2.3 is corrected as follows:

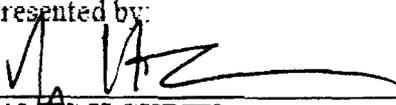
- 20 a) Count I is deleted; and
21 b) Count II is inserted in its stead

22 5) All other terms and conditions of the original Judgment and Sentence shall remain in
23 full force and effect as if set forth in full herein. IT IS FURTHER
24
25
26
27
28

1
2 ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment
3 filed on April 30, 2015 so that any one obtaining a certified copy of the judgment will also obtain
4 a copy of this order.

5 DONE IN OPEN COURT this 26th day in June, 2015. NUNC PRO TUNC to April 30,
6 2015.

7
8 
9 _____
10 JUDGE

11 Presented by:
12 
13 _____
14 JAMES H CURTIS
15 Deputy Prosecuting Attorney
16 WSB# 36845

17 Frank E. Cuthbertson

18 Approved as to form and Notice
19 Of Presentation Waived:
20 
21 _____
22 ROBERT M. QUILLIAN
23 Attorney for Defendant
24 WSB# 6836

25
26
27
28
ajm

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 24 day of September, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Sep 24, 2015 8:02 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: FFE0D6A2-110A-9BE2-A99047E2C5037CAC.

This document contains 3 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “D”

Defendant’s Statement of Additional Grounds

NO. 43681-7-II

In The Court of Appeals Of The State of Washington
Division Two

State of Washington
Respondent,

v.

LICOREY R Bradford
Appellant.

FILED
COURT OF APPEALS
DIVISION II
2013 MAR 29 PM 2:19
STATE OF WASHINGTON
DEPUTY

Statement Of Additional Grounds For Review

Licorey R. Bradford # 850561
Appellant

Stafford Creek Correctional Center

191 Constantine Way

Aberdeen, Wa. 98520

CERTIFICATE OF SERVICE

I certify that I mailed

1 copies of SAG
to J. Sullivan, S. Arnold
& R. Washburne
4/11/13 SH
Date Signed

Appellant Bradford was denied his U.S. constitutional 6th Amendment right, right to "effective assistance of counsel". Appellant's attorney failed to meet the required "effective assistance of counsel's" requirements, when, counsel failed to request a "lesser included" offense instruction to counts I & II, assault in the first degree. Donald, 31 Wash. App. 484, 643 P.2d 465 (04-05-1982) (The crime of assault in the first degree necessarily includes the lesser crime of assault in the second degree). Grier, 150 Wn. App. 619, 208 P.3d 1221 (2009) (asserted without supporting evidence, that her attorney did not explain the option of including first & second degree manslaughter instructions. The Court of Appeals requested additional briefing as to whether the failure to request lesser included instructions constituted "ineffective assistance of counsel". The Court of Appeals subsequently reversed defendant's conviction on "ineffective assistance" grounds, holding that defense counsel's failure to request "lesser included" instructions indeed amounted to ineffective assistance).

Appellant's attorney also failed to meet the "effective assistance" standard, when counsel failed to inform, explain or consult with Bradford, the "all" or "nothing" approach and or the advantages or the disadvantages of the "all" or "nothing" tactic. Smith, 154 Wn. App. 272, 278 P.3d 1262 (2009) (holding that all or nothing strategy was not a legitimate trial tactic where defense counsel did not present sufficient evidence to support acquittal); Breitung, 155 Wn. App. 626, 230 P.3d 614 (2010) *fn. 6 (applying 3-part Ward test and finding all or nothing strategy unreasonable risky where evidence fell short of proving greater crime but could not support an acquittal). Grace, 157 Wn. App. 81, 109, 236 P.3d 914 (2010) (finding all or nothing strategy to be a unreasonable trial tactic in light of the disparity in potential sentences for the lesser & greater offenses).

The defenses are the same on both the "greater" & "lesser" offenses. The theory at trial was lawful "self-defense" and "defense of another". These are complete defenses to both, "first & second degree assault. R.C.W. 9A.1.270 (3)(c) states: "any person acting for the purpose of protecting himself or herself against the case of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person";. With that being stated and the

continual consistency of Appellant stating that Edwards pointed a firearm at him, his passenger and in the direction of his vehicle and persons altogether, Bradford fearing for his life, safety and well-being, he fired his own firearm in a "self-defense" lawful standard only. The whole trial with-in its self is the claim of "self-defense" sits solely and squarely on the assertion of Bradford's pointed a firearm at him. And with the evidence of the claim not producing that firearm due to the largely time gap placed between the time of the incident and the time of Edwards contacting the Lakewood Police Dept. Edwards & Long had ample time and opportunity to discard or firearm with-in need to. Edwards faces a 30 year sentence if caught with a firearm gives strong motive to discard a firearm. Minutes after the incident, Long drove to a near-by "thrift store" the B; I, only after passing the Lakewood Police Dept. Edwards and Long met with someone who was only obviously awaiting their arrival, do to the still photos obtained from the surveillance at B; I, neither he nor Long claim to have remembered coming in-contact with that individual at all. Given the developments at trial the evidence produced, it was objectively unreasonable to rely on such a strategy, at all.

W.P.T.C. 18.02 "Necessity - Defense" states firmly: "Necessity is a defense to a charge of (Fill in the blank if): 1) the defendant reasonably believed the commission of the crime was necessary to avoid or minimize a harm; and 2) the harm sought to be avoided was greater than the harm resulting from a violation of the law; and 3) the threatened harm was not brought about by the defendant; and 4) no reasonable legal alternative existed. The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty (as to this charge). B.F.W. 9A.04.120 (2) (When a crime has been proven against a person and there exists a reasonable doubt as to which of two or more degrees that person is guilty, he shall be convicted only of the lower degree). Long stated in "direct" by prosecutor Greer that, he and Edwards left the Apts. and had been gone 3 to 5 minutes before returning "to see what's up with those dudes that was looking at them funny".

IRP 294. Also on cross by Atty. Underwood he stated the something in slightly different words. IRP 317. With those two statements, the alleged victim's was the aggressor's from the start of this whole incident, once they left and come back only to confront Bradford and Gray for an unexplainable reason and then pointing a firearm at them to finish the confrontation.

Victim was aggressor - The victim's reputation for gun's violence is admissible when the defendant alleges self-defense. Shows that knowledge of victim's reputation for gun's violence contributed his apprehension. State v. Cloud, this evidence is also admissible to support the inference that the victim was the aggressor. Self-Defense 3304 - 1 B Wash. 1) State v. Hanton 94, Wn. 2d 129, 133, 614 P.2d 1280, 1282 (1980) Reasonable man's standard of care. 2) State v. Milbradt 68 Wn. 2d 684 (1966) State v. Nyland 47 Wn. 2d 240 (1955) Against Assault. 3) State v. Heath 35 Wn. App. 269, 666 P.2d 922 (1983) State v. Hawkins 89 Wash. 449, 455, 154 P. 827, 829 (1916) An aggressor or person who provokes the conflict or without taking first blow. 4) State v. Griffith 91 Wn. 2d 572, 575, 589 P. 2d 799, 802 (1979) Threatened with death or personal injury.

* 4 Elements * State v. LaFaber 128 Wn. 2d 896, 913 P. 2d 369 (1996) State v. Jones 121 Wn. 2d 220, 241-42, 850 P. 2d 445, 506 (1993) Imminent - ready to take place - danger. Danger - State v. Therault 95 Wn. 2d 385, 390, 622, 1240, 1244 (1980) Force - State v. Griffith 33, Wn. App. 741, 657 P. 2d 800 (1983) Aggressor - State v. Craig 82 Wn. 2d 777, 783, 514 P. 2d 151, 155 (1978) State v. Rodrigues 21 Wn. 2d 667, 668, 152 P. 2d 970, 971 (1944). If the jury had believed Appellant acted lawfully, then he would have been acquitted of both the greater & lesser offenses. If the jury did not believe appellant acted lawfully and doubted his claim of "self-defense" and a "lesser included" offense was available, then it's highly possible that appellant Bradford would've been convicted only of the "lesser included" offense, second degree assault. Due to the fact that the jury convicted Bradford of first degree assault on count II, but declared it's self "deadlocked" as to count I, assault in the first degree, appellant's counsel should have put in a motion to "dismiss" count I with prejudice due to jury's silence.

Ward, 125 Wn. App. @ 251 (finding that jury's inquiry during deliberation's suggested reasonable

probability that jury would have selected lesser offense, if given). Pittman, 134 Wn. App. @ 390 (applying 3-part Ward test and finding "reasonable likelihood" that jury would have convicted of "lesser offense" if given the opportunity). Under the Workman test, a defendant is entitled to an instruction on a lesser included offense if: 1) each element of the lesser offense is necessarily included in the charged offense; and 2) the evidence in the case supports an inference that the defendant committed only the lesser crime. Gamble, 137 Wn. App. 892, 905, 155 P.3d 962 (2007) (citing Workman, 90 Wn. 2d 443, 447-48, 584 P.2d 382 (1978)).

Brazzel, 491 F.

3d 976, 983 n.7 9th Cir. (6-22-2007). As early as 1898, the Supreme Court announced that jury silence is tantamount to acquittal, explaining: where a jury, although convicting as to some, are silent as to other counts in an indictment and are discharged without the consent of the accused... the effect of such discharge is equivalent to acquittal; Selvester v. United States, 170 U.S. 262, 289 (1898). Brazzel, 491 F. 3d 976, 983 n.7 (9th cir. 6-22-2007) *fn.

46 - American Court have held with uniformity that where a defendant is charged with two offenses, neither of which is a lesser offense included within the other, and has been found guilty on one but not on the second he cannot be tried again on the second even though he secures reversal of the conviction and even though the two offenses are related offenses charged in the same indictment. The Washington Supreme Court recently decided two cases with factual circumstances more closely related to Brazzel's. In State v. Linton, 132, P.3d 127 (Wash. 2006), which failed to garner a majority opinion, the lead opinion held: "where a unable to agree instruction is used which allows the jury to move on to a lesser included offense when it acquits or is unable to agree on the greater charge, and the jury does move on without entering a verdict, the jury will necessarily remain silent on the greater offense. Under the implied acquittal doctrine then, the judge would have held to conclude that the jury implicitly acquitted Linton of first degree assault". Id. @ 133. Only several months later, the court changed course and in State v. Ervin, 147 P. 3d 567 (Wash. 2006) held that where an unable to agree instruction is given, the blank verdict form's [on the greater offense] indicate, that the jury was unable to agree. Id. @ 572. The court permitted retrial for the greater

offense. Id. @ 573. yet, in a puzzling footnote, the court stated: "This is not to decide, however, that the jury's inability to agree on the greater charge is the equivalent of a mistrial on those charges. Unable to agree instructions instruct the jury to end deliberations on a greater charge and move on to a lesser charge once disagreement on the greater has been established."

With-in these circumstances, I can see no legitimate reason to fail to request a "lesser included" offense instruction, a motion to dismiss with prejudice count I, due to the "deadlock" to the assault in the first degree, or put forth a motion under the implied acquittal doctrine, due to the jury's silence as to "Count I" assault in the first degree. The all or nothing strategy exposed Appellant to substantial risk that the jury would convict on the only option presented, two counts of "first degree assault" in counts I & II.

Conclusion

Bradford was denied his right to effective assistance of counsel, when his counsel failed to request a "lesser included offense" instruction to either count's I or II, of first degree assault. Appellant's "due process" of the 4th, 5th and 16th Amendment was also violated do to the fact that Bradford addressed the court on May 5, 2012 and explained to the court, the differences he was having with his counsel. Appellant asked for a 14 day time extension to obtain private counsel, do to those issues and differences between him and his counsel. Appellant also stated that he felt counsel's performance at that time before trial was questionable, confidence was not what was expected and motives was not clear to be representing Appellant at that time. On those notes the court judge refused Appellant's request. The Right to "effective assistance" of counsel is surely guaranteed through the U.S. Constitution and under the 4th, 5th Amendment's by way of the 16th Amendment. Bradford request his convictions for count II, assault in the 1st degree, count III, drive-by shooting and count IV poss. of stolen firearms all be reversed and count I assault in the first degree be dismissal with extreme prejudice, do to the jury's silence and "deadlock" as to that charge and remand for a new trial and resentencing.

Dated this 25th day of March 2013
Respectfully Submitted, J. Corey R. Bradford (J. R. Bradford)

APPENDIX “E”

Court's Instructions to the Jury

Case Number: 11-1-04125-7 Date: September 24, 2015
SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E
Certified By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOCOREY RICCARDO BRADFORD, ✓

JAMES EARL GRAY,

Defendant.

CAUSE NO. 11-1-04125-7 ✓
11-1-04126-5

COURT'S INSTRUCTIONS TO THE JURY

DATED this 22ND day of May, 2012.

John A. McCarthy JUDGE

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, stipulations, and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the judicial assistant and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict. Do not speculate whether the evidence would have favored one party or the other.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value

of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

INSTRUCTION NO. 2

The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 3

Each defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence.

INSTRUCTION NO. 4

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

Case Number: 11-1-04125-7 Date: September 24, 2015

SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 5

A separate crime is charged in each count. You must separately decide each count charged against each defendant. Your verdict on one count as to one defendant should not control your verdict on any other count or as to any other defendant.

5/29/2012 17546 110156

Case Number: 11-1-04125-7 Date: September 24, 2015

SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 6

A person commits the crime of assault in the first degree when, with intent to inflict great bodily harm, he or she assaults another with a firearm.

5/29/2012 17546 170157

Case Number: 11-1-04125-7 Date: September 24, 2015

SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 7

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime

5/29/2012 17546 110158

Case Number: 11-1-04125-7 Date: September 24, 2015

SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 8

Great bodily harm means bodily injury that creates a probability of death, or that causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

INSTRUCTION NO. 9

An assault is an intentional touching shooting of another person that is harmful or offensive regardless of whether any physical injury is done to the person. A shooting is offensive if the shooting would offend an ordinary person who is not unduly sensitive.

An assault is also an act done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

5/29/2012 17546 110160

Case Number: 11-1-04125-7 Date: September 24, 2015

SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 16

A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

INSTRUCTION NO. 11

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

INSTRUCTION NO. 12

To convict the defendant Jicorey Bradford of the crime of assault in the first degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant or an accomplice assaulted Kerry Edwards;
- (2) That the assault was committed with a firearm;
- (3) That the defendant or an accomplice acted with intent to inflict great bodily harm; and
- (4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 13

To convict the defendant Jicorey Bradford of the crime of assault in the first degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant or an accomplice assaulted Dandre Long;
- (2) That the assault was committed with a firearm;
- (3) That the defendant or an accomplice acted with intent to inflict great bodily harm; and
- (4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 14

To convict the defendant James Gray of the crime of assault in the first degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 7th day of October, 2011, the defendant or an accomplice assaulted Kerry Edwards;

(2) That the assault was committed with a firearm;

(3) That the defendant acted with intent to inflict great bodily harm; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 15

To convict the defendant James Gray of the crime of assault in the first degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant or an accomplice assaulted Dandre Long;
- (2) That the assault was committed with a firearm;
- (3) That the defendant or an accomplice acted with intent to inflict great bodily harm; and
- (4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 16

It is a defense to a charge of assault in the first degree that the force used was lawful as defined in this instruction.

The use of force upon or toward the person of another is lawful when used by a person who reasonably believes that he is about to be injured in preventing or attempting to prevent an offense against the person, and when the force is not more than is necessary.

The person using the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of the incident.

The State has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty as to this charge.

INSTRUCTION NO. 17

A person is entitled to act on appearances in defending himself or another, if he believes in good faith and on reasonable grounds that he or another is in actual danger of great personal injury, although it afterwards might develop that the person was mistaken as to the extent of the danger. Actual danger is not necessary for the use of force to be lawful.

INSTRUCTION NO. 18

It is lawful for a person who is in a place where that person has a right to be and who has reasonable grounds for believing that he is being attacked to stand his ground and defend against such attack by the use of lawful force.

The law does not impose a duty to retreat. Notwithstanding the requirement that lawful force be "not more than is necessary," the law does not impose a duty to retreat. Retreat should not be considered by you as a "reasonably effective alternative."

INSTRUCTION NO. 19

No person may, by any intentional act reasonably likely to provoke a belligerent response, create a necessity for acting in self defense or defense of another and thereupon use, offer or attempt to use force upon or toward another person. Therefore, if you find beyond a reasonable doubt that the defendant was the aggressor, and that defendant's acts and conduct provoked or commenced the fight, then self-defense or defense of another is not available as a defense.

INSTRUCTION NO. 26

Necessary means that, under the circumstances as they reasonably appeared to the actor at the time, (1) no reasonably effective alternative to the use of force appeared to exist and (2) the amount of force used was reasonable to effect the lawful purpose intended.

Case Number: 11-1-04125-7 Date: September 24, 2015

SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 21

A person commits the crime of drive-by shooting when he or she recklessly discharges a firearm in a manner that creates a substantial risk of death or serious physical injury to another person and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge.

INSTRUCTION NO. 22

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and this disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation.

When recklessness as to a particular result or fact is required to establish an element of a crime, the element is also established if a person acts intentionally or knowingly as to that result or fact.

Case Number: 11-1-04125-7 Date: September 24, 2015

SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E

Certified By Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 23

A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct. This inference is not binding upon you and it is for you to determine what weight, if any, such inference shall be given.

5/29/2012 17548 110174

Case Number: 11-1-04125-7 Date: September 24, 2015

SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 24

Physical injury means physical pain or injury, illness or an impairment of physical
condition

INSTRUCTION NO. 25

To convict the defendant Jicorey Bradford of the crime of drive-by shooting as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant or an accomplice recklessly discharged a firearm;
- (2) That the discharge created a substantial risk of death or serious physical injury to another person,
- (3) That the discharge was either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge; and
- (4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 26

To convict the defendant James Gray of the crime of drive-by shooting as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant or an accomplice recklessly discharged a firearm;
- (2) That the discharge created a substantial risk of death or serious physical injury to another person;
- (3) That the discharge was either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge; and
- (4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Case Number: 11-1-04125-7 Date: September 24, 2015

SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 27

A person commits the crime of unlawful possession of a firearm in the second degree when he or she knowingly has a firearm in his or her possession or control and he or she has previously been convicted of a felony.

INSTRUCTION NO. 28

Possession means having a firearm in one's custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.

Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.

In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant had the immediate ability to take actual possession of the item, whether the defendant had the capacity to exclude others from possession of the item, and whether the defendant had dominion and control over the premises where the item was located. No single one of these factors necessarily controls your decision.

INSTRUCTION NO. 29

A person knows or acts knowingly or with knowledge with respect to a fact, circumstance or result when he or she is aware of that fact, circumstance or result. It is not necessary that the person know that the fact, circumstance or result is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.

INSTRUCTION NO. 30

To convict the defendant Jicorey Bradford of the crime of unlawful possession of a firearm in the second degree as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 7th day of October, 2011 the defendant knowingly had a firearm in his possession or control;

(2) That the defendant had previously been convicted of a felony; and

(3) That the possession or control of the firearm occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Case Number: 11-1-04125-7 Date: September 24, 2015
SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 31

A person commits the crime of unlawful possession of a firearm in the first degree when he has previously been convicted of a serious offense and knowingly owns or has in his possession or control any firearm.

INSTRUCTION NO. 32

To convict the defendant James Gray of the crime of unlawful possession of a firearm in the first degree as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant knowingly had a firearm in his possession or control;
- (2) That the defendant had previously been convicted of a serious offense; and
- (3) That the possession or control of the firearm occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Case Number: 11-1-04125-7 Date: September 24, 2015
SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 33

A person commits the crime of possessing a stolen firearm when he or she possesses, carries, delivers, sells, or is in control of a stolen firearm.

Possessing a stolen firearm means knowingly to receive, retain, possess, conceal, or dispose of a stolen firearm knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

5/29/2012 17546 110184

Case Number: 11-1-04125-7 Date: September 24, 2015

SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 34

Stolen means obtained by theft.

INSTRUCTION NO. 35

To convict the defendant Jicorey Bradford of the crime of possessing a stolen firearm as charged in Count V, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant possessed, carried, delivered, sold or was in control of a stolen firearm;
- (2) That the defendant acted with knowledge that the firearm had been stolen;
- (3) That the defendant withheld or appropriated the firearm to the use of someone other than the true owner or person entitled thereto; and
- (4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 31

To convict the defendant James Gray of the crime of possessing a stolen firearm as charged in Count V, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant possessed, carried, delivered, sold or was in control of a stolen firearm;
- (2) That the defendant acted with knowledge that the firearm had been stolen;
- (3) That the defendant withheld or appropriated the firearm to the use of someone other than the true owner or person entitled thereto; and
- (4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

Case Number: 11-1-04125-7 Date: September 24, 2015

SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 37

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

INSTRUCTION NO. 38

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the judicial assistant. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and the verdict forms for recording your verdicts. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Case Number: 11-1-04125-7 Date: September 24, 2015

SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E

Certified By: Kevin Stock Pierce County Clerk, Washington

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form(s) to express your decision. The presiding juror must sign the verdict forms and notify the judicial assistant. The judicial assistant will bring you into court to declare your verdicts.

INSTRUCTION NO. 39

You will also be given special verdict forms for the crime of assault in the first degree. If you find the defendant not guilty of this crime, do not use the special verdict form for that count. If you find the defendant guilty of this crime, you will then use the special verdict forms. In order to answer the special verdict forms "yes," all twelve of you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you do not unanimously agree that the answer is "yes" then the presiding juror should sign the section of the special verdict form indicating that the answer has been intentionally left blank.

INSTRUCTION NO. 46

For purposes of a special verdict, the State must prove beyond a reasonable doubt that the defendant was armed with a firearm at the time of the commission of the crime in Counts I and/or II.

A person is armed with a firearm if, at the time of the commission of the crime, the firearm is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the firearm and the defendant or an accomplice. The State must also prove beyond a reasonable doubt that there was a connection between the firearm and the crime. In determining whether these connections existed, you should consider, among other factors, the nature of the crime and the circumstances surrounding the commission of the crime, including the location of the firearm at the time of the crime.

If one participant in a crime is armed with a firearm, all accomplices to that participant are deemed to be so armed, even if only one firearm is involved.

A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 24 day of September, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.
Dated: Sep 24, 2015 8:02 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: FFE0D932-110A-9BE2-A9BDBF68AC286A6E.

This document contains 44 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

PIERCE COUNTY PROSECUTOR

September 29, 2015 - 2:19 PM

Transmittal Letter

Document Uploaded: 8-prp2-477505-Response.pdf

Case Name: PRP OF BRADFORD

Court of Appeals Case Number: 47750-5

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: Therese M Kahn - Email: tnichol@co.pierce.wa.us

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

wayne@hesterlawgroup.com