

No. 49412-4-II

COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

NATHEN RYAN TERAULT,

Appellant.

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On Appeal from the Pierce County Superior Court  
Cause No. 15-1-03228-5  
The Honorable Edmund Murphy, Judge

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OPENING BRIEF OF APPELLANT

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## **I. ASSIGNMENTS OF ERROR**

1. The trial court erred when it accepted Nathen Terault's guilty plea without adequately determining whether he understood the nature of the charge to which he was pleading.
2. The trial court erred when it accepted Nathen Terault's guilty plea without determining whether there was an adequate factual basis to support the plea.

## **II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR**

1. Where the plea statement did not recite the elements the State must prove to convict Nathen Ryan Terault of premeditated first degree murder, and where the court failed to determine if Terault understood the elements of the crime, did the trial court err when it found that Terault understood the nature of the charge and when it accepted his plea to premeditated first degree murder? (Assignment of Error 1)
2. Where Nathen Terault's statement of guilt did not admit facts that would establish all the elements of the charged crime, and where the trial court failed to determine whether there was a factual basis to support Terault's plea, did the trial court err when it accepted Terault's guilty plea to premeditated first degree murder? (Assignment of Error 2)

### III. STATEMENT OF THE CASE

The State charged Nathen Ryan Terault with one count of premeditated first degree murder (RCW 9A.32.030), one count of first degree robbery (RCW 9A.56.190, .200), thirteen counts of first degree assault (RCW 9A.36.011), one count of attempting to elude (RCW 46.61.024), and one count of first degree unlawful possession of a firearm (RCW 9.41.040). (CP 1-8) The State alleged that Terault was armed with a firearm when he committed the assault and robbery offenses, potentially subjecting him to 15 firearm sentence enhancements (RCW 9.94A.530, .533). (CP 1-8)

According to the probable cause declaration filed with the Information, the incident began when police attempted to initiate a traffic stop on a speeding vehicle. (CP 9-10) The driver, Terault, abandoned his vehicle and fled on foot. (CP 9-10) A short time later, a citizen observed Terault walking from Robert Johnson's vehicle towards Johnson as Johnson ran away. The defendant raised a firearm and fired two shots at Johnson, who later died as a result of his injuries. (CP 9-10) Terault then went to a nearby residence where he confronted the homeowner at gunpoint, demanded her car keys, and sped away in her SUV. (CP 9-10) As he fled, Terault fired at neighbors who had come outside to see

what the commotion was about, fired at another occupied vehicle, and fired at pursuing police vehicles. (CP 9-10)

Terault agreed to plead guilty to an Amended Information charging one count of premeditated first degree murder, one count of first degree robbery, and five counts of second degree assault. (CP 19-22, 25-34) The Information also attached general deadly weapon sentence enhancements to three of the assault charges. (CP 19-22) When asked in his Statement of Defendant on Plea of Guilty to list what he did to make him guilty of the crimes, Terault writes:

On August 11, 2015, in Pierce County, WA, I did the following:

1. Unlawfully and feloniously, with premeditated intent to cause the death of another person, I caused the death of Richard Johnson, a human being;
2. I stole personal property from Beverly Vesey by the use and threatened use of of immediate force to obtain the property. I was armed with a deadly weapon[;]
4. I intentionally assaulted Kathleen Stevens-Barrer, A.B. and J.D. with a deadly weapon. I was armed with a deadly weapon other than a firearm. This is a subsequent DWSE[;]
7. I intentionally assaulted Kim Vesey and L.V. with a deadly weapon. I was armed with a weapon other than a firearm. This is a subsequent DWSE[;]
9. I intentionally assaulted Jonathon Waller and Micah Wilson with a deadly weapon. I was armed with a deadly weapon other than a firearm. This is a subsequent DWSE[;]
11. I intentionally assaulted Janice Cughan, Deborah

Raymer and Jacob Ashworth with a deadly weapon[;]  
13. I intentionally assaulted Robert Higdon and  
Marlene Higdon with a deadly weapon.

(CP 33)

The trial court accepted Terault's plea as intelligent and voluntary, but did not discuss the elements of the crimes or the factual basis to support his plea. (08/11/16 RP 4-11)<sup>1</sup> The court imposed a standard range sentence totaling 620 months of confinement. (CP 42; 08/11/16 RP 65-66) The trial court ordered Terault to pay only mandatory legal financial obligations. (CP 40; 08/11/16 RP 66) Terault timely appealed. (CP 242)

#### **IV. ARGUMENT & AUTHORITIES**

Washington's court rules set forth the requirements for the acceptance of a guilty plea:

The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

CrR 4.2(d). A guilty plea is invalid if it is made without "an understanding of the nature of the charge." CrR 4.2(d). And a guilty plea is not truly voluntary "unless the defendant possesses

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<sup>1</sup> The transcripts will be referred to by the date of the proceeding.

an understanding of the law in relation to the facts.” In re PRP of Keene, 95 Wn.2d 203, 209, 622 P.2d 360 (1980) (quoting McCarthy v. United States, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969)). “At a minimum, ‘the defendant would need to be aware of the acts and the requisite state of mind in which they must be performed to constitute a crime.” State v. Osborne, 102 Wn.2d 87, 93, 684 P.2d 683 (1984) (quoting Keene, 95 Wn.2d at 207).

Due process also requires that a guilty plea be knowing, intelligent and voluntary. In re PRP of Hews, 108 Wn.2d 579, 590, 741 P.2d 983 (1987); Henderson v. Morgan, 426 U.S. 637, 644-45, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976). “Real notice of the nature of the charge is ‘the first and most universally recognized requirement of due process.” Osborne, 102 Wn.2d at 92-93 (quoting Henderson, 426 U.S. at 645). The defendant must understand that his alleged criminal conduct satisfies the elements of the offense. State v. R.L.D., 132 Wn. App. 699, 705, 133 P.3d 505 (2006). “Without an accurate understanding of the relation of the facts to the law, a defendant is unable to evaluate the strength of the State’s case and thus make a knowing and intelligent guilty plea.” R.L.D., 132 Wn. App. at 705-06.

In this case, the record does not establish that Terault understood the nature of the crime of premeditated murder, or the facts the State would have to prove for a jury to find him guilty. “Premeditation” means “the deliberate formation of and reflection upon the intent to take a human life.” State v. Robtoy, 98 Wn.2d 30, 43, 653 P.2d 284 (1982). Stated another way, premeditation, “involves the mental process of thinking over beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short, after which the intent to kill is formed.” State v. Bingham, 40 Wn. App. 553, 555, 699 P.2d 262 (1985) (citing State v. Brooks, 97 Wn.2d 873, 651 P.2d 217 (1982)). However, it must involve more than a moment in point of time. RCW 9A.32.020(1). Furthermore, “the State is required to prove both intent and premeditation, which are not synonymous.” State v. Sargent, 40 Wn. App. 340, 352, 698 P.2d 598 (1985).

Thus, to convict Terault at trial, the State would have to produce sufficient evidence for a jury to conclude that Terault not only acted with an intent to cause the death of Richard Johnson, but that he formed a *premeditated* intent to cause the death of Richard Johnson. But there is nothing in the record to show that Terault understood this requirement. Terault simply provides a

conclusory statement that that he acted “with premeditated intent to cause the death of another person[.]” (CP 73)

At the plea hearing, the trial court did not inquire into whether Terault understood these essential elements. The only discussion about the elements or factual basis for the crimes occurred when the trial court read Terault’s statement of guilt set forth above, and asked if that was Terault’s statement. (08/11/16 RP 9-11) Terault answered with a simple “Yes.” (08/11/16 RP 10)

Neither the defense attorney, nor the prosecutor, nor the judge recited any additional facts or explained the requirements or meaning of the essential elements of premeditated murder. And the trial court never made a finding that a factual basis existed to establish the element of premeditation.

Simply reciting Terault’s bare-bones factual statement, and Terault’s one word response acknowledging the statement, does not show that Terault truly understood the nature of the allegations, and the elements the State was required to establish before he could be convicted of the charged offense. See State v. S.M., 100 Wn. App. 401, 415, 996 P.2d 1111 (2000) (the defendant’s “simple ‘yes’ response to the court’s oral question about the meaning of sexual intercourse” is not adequate).

Accordingly, “the record does not affirmatively show” that Terault “understood the law in relation to the facts or entered the plea intelligently and voluntarily,” and the trial court erred when it accepted Terault’s guilty plea. S.M., 100 Wn. App. at 415. And the State cannot meet its burden on appeal of proving the plea’s validity. See State v. Knotek, 136 Wn. App. 412, 423, 149 P.3d 676 (2006).

An involuntary guilty plea produces a manifest injustice and due process requires that the defendant be permitted to withdraw the plea. In re PRP of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004). When a defendant pleads guilty pursuant to a plea agreement, the agreement is indivisible if the charges were made at the same time, described in one document, and accepted in a single proceeding. State v. Turley, 149 Wn.2d 395, 400, 69 P.3d 338 (2003). When a defendant shows manifest injustice as to one charge in an indivisible plea agreement, he may move to withdraw the entire agreement. Turley, 149 Wn.2d at 400. Here, the plea agreement is indivisible because the charges were made at the same time, described in one document, and accepted in a single proceeding. (CP 19-22, 23-24, 25-34; 08/11/16 RP 2-3, 9-12) The State resolved the case through a guilty plea and Terault benefited

by the dismissal of several charges and firearm sentence enhancements. Thus, Terault must be allowed to withdraw his guilty plea to all of the charges.

**V. CONCLUSION**

The trial court failed to comply with CrR 4.2 or with due process standards because it did not ensure that Terault understood the full nature of the charge of premeditated murder, or the facts necessary to prove this charge. And the trial court failed to ensure that there was an adequate factual basis to support the plea. Terault's convictions should therefore be vacated and his case remanded to the trial court for a new plea hearing.

DATED: February 20, 2017



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STEPHANIE C. CUNNINGHAM WSB #26436  
Attorney for Nathen Ryan Terault

**CERTIFICATE OF MAILING**

I certify that on 02/20/2017, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Nathen R. Terault, DOC# 874503, Washington State Penitentiary, 1313 N 13th Ave., Walla Walla, WA 99362.



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STEPHANIE C. CUNNINGHAM, WSBA #26436

# CUNNINGHAM LAW OFFICE

**February 20, 2017 - 1:40 PM**

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