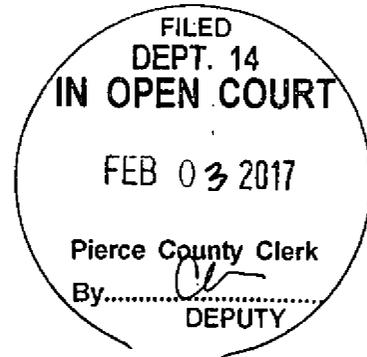


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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff,

vs.

HARRIS, JONATHAN DANIEL,
Defendant.

Cause No: 15-1-02431-2

**ORDER ON DEFENDANT'S MOTION FOR
RELIEF FROM JUDGMENT AND
SENTENCE**

CLERK'S ACTION REQUIRED

THIS MATTER came before the undersigned Judge of the above-entitled Court upon review of the Defendant's Motion for Relief from Judgment/Request for Factual Hearing and Supporting Declaration filed on January 12, 2017. After reviewing the Defendant's written pleadings, the Court now enters the following order pursuant to CrR 7.8(c)(2):

A. IT IS HEREBY ORDERED that this petition is transferred to the Court of Appeals, Division II, to be considered as a personal restraint petition. The petition is being transferred because:

it appears to be time-barred under RCW 10.73.090;

is not time-barred under RCW 10.73.090, but is untimely under CrR 7.8(a) and therefore would be denied as an untimely motion in the trial court; or

is not time barred but does not meet the criteria under CrR 7.8 (c)(2) to allow the court to retain jurisdiction for a decision on the merits.

If box "A" above is checked, the Pierce County Superior Court Clerk shall forward a copy of this order as well as the defendant's pleadings identified above, to the Court of Appeals.

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B. [] IT IS HEREBY ORDERED that this court will retain consideration of the motion because the following conditions have been met: 1) the petition is not barred by the one year time bar in RCW 10.73.090, and either:

- [] the defendant has made a substantial showing that he or she is entitled to relief; or
- [] the resolution of the motion will require a factual hearing.

IT IS FURTHERED ORDERED that the defendant's motion shall be heard on its merits.

The State is directed to:

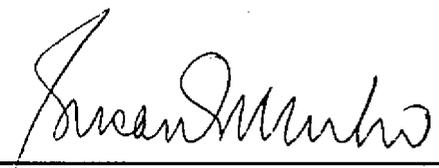
[] file a response by _____ . After reviewing the response, the Court will determine whether this case will be transferred to the Court of Appeals, or if a hearing shall be scheduled.

[] appear and show cause why the defendant's motion should not be granted. That hearing shall be held on _____ at _____ a.m. / p.m.

[] As the defendant is in custody at the Department of Corrections, the State is further directed to arrange for defendant's transport for that hearing.

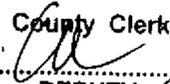
If box "B" above is checked, the clerk is directed to send a copy of this Order to the Appellate Division of the Pierce County Prosecutor's Office.

DATED this 3rd day of February, 2017.



JUDGE SUSAN K. SERKO

cc: John H. Hill, III
Timothy Lewis, DPA

FILED
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IN OPEN COURT
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Pierce County Clerk
By  DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

State of Washington

Plaintiff

February 13, 2017

vs.

No.: 15-1-02431-2

JONATHAN DANIEL HARRIS

Court of Appeals No.:

Defendant

CLERK'S PAPERS PER
REQUEST OF APPELLANT
TO THE
COURT OF APPEALS,
DIVISION II

HONORABLE SUSAN K. SERKO
Trial Judge

1
2
3 **SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

4 State of Washington

Plaintiff

February 13, 2017

5 vs.

No.: 15-1-02431-2

6 JONATHAN DANIEL HARRIS

Court of Appeals No.:

7 Defendant

8 CLERK'S PAPERS PER
9 REQUEST OF APPELLANT
10 TO THE
11 COURT OF APPEALS,
DIVISION II

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KEVIN STOCK
COUNTY CLERK
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JONATHAN DANIEL HARRIS,

Defendant.

NO. 15-1-02431-2

**MOTION FOR RELIEF FROM
JUDGMENT/REQUEST FOR
FACTUAL HEARING AND
SUPPORTING DECLARATION**

MOTION

COMES NOW John H. Hill, III, attorney for Defendant, JONATHAN D. HARRIS, and moves the Court pursuant to CrR 7.8 for relief from the Judgment and Sentence herein dated October 31, 2016. Specifically, this motion is pursuant to CrR 7.8 (b) (1), (2), (4) and (5). This motion is supported by the following declaration of facts and errors pertaining to guilty findings to Counts II and III of the Second Amended Information without legally required factual bases, resulting in the Court utilizing an erroneous and prejudicious SRA Offender Score and Standard Sentencing Range. The materials, pleadings, etc. referred to herein and/or attached hereto are incorporated in support of this motion as though fully set forth herein.

MOTION FOR RELIEF FROM JUDGMENT/
REQUEST FOR FACTUAL HEARING AND
SUPPORTING DECLARATION - 1

LAW OFFICE OF JOHN H. HILL, III
WSBA #5663
2703 N. 31st Street
Tacoma, Washington 98407
253.318.3336

1 After entering the plea, the Defendant was allowed to represent himself at his request
2 and Mr. Quigley and Mr. Katayama were allowed to withdraw. The Defendant moved *pro se*
3 to withdraw his pleas of guilty which motion was orally denied after a hearing. The
4 Defendant then requested new counsel be appointed to assist him. John H. Hill was appointed
5 and began review and investigation, hiring a seasoned homicide investigator and a mitigation
6 writer/investigator. All proceedings were put on hold pending a court ordered 15-day
7 competency evaluation at Western State Hospital. The Defendant was determined competent
8 on a Friday afternoon and the Court set sentencing for the following Monday morning.
9

10 The defense investigation was completed during the weekend prior to sentencing and
11 showed that the multiple fractures revealed during autopsy were not supported by evidence
12 of 'stomping'. Instead, forensic evidence supports the cause of multiple fractures to be
13 consistent to the Defendant's description of events to his defense team, i.e., a single blow
14 from the Defendant's fist, a hard fall to the back of the victim's head, attempted resuscitation,
15 and the manner in which the victim's remains were disposed of closely following death. The
16 defense stands ready to prove this at an evidentiary hearing through exhibits and other
17 testimony of the Defendant, testimony of an experienced homicide detective regarding
18 evidence pertaining to the scene and site where the victim's remains were discovered, and
19 testimony from the Pierce County Medical Examiner regarding forensic evidence previously
20 unknown to him. Some of this evidence has been outlined in previous pleadings and
21 incorporated herein as though fully set forth. *See attached:* Exhibit Records (e-Filed 10-31-
22 16); Defendant's Sentencing Memorandum (e-Filed 10-28-16); Declaration in Support of
23 Facts Re: Sentencing (e-Filed 10-31-16); Mitigation Package (e-Filed 10-28-16); and
24
25
26

MOTION FOR RELIEF FROM JUDGMENT/
REQUEST FOR FACTUAL HEARING AND
SUPPORTING DECLARATION - 3

LAW OFFICE OF JOHN H. HILL, III
WSBA #5663
2703 N. 31st Street
Tacoma, Washington 98407
253.318.3336

1 Defense Argument Re: Determination of SRA Offender Score And Standard Range (e-Filed
2 10-28-16).

3 The defense asserts that an adequate factual evidentiary hearing is necessary both to
4 determine the merits of this motion and for adequate appellate review regarding the
5 constitutionality and legal validity of 1) the Defendant's plea of guilty, and 2) the validity of
6 contriving and fixing an SRA offender score and standard sentencing range by plea
7 agreement without a proper factual basis required pursuant to Washington CrR 4.2 and case
8 law as set forth in attached pleadings.
9

10 The Court has not yet signed Findings of Fact and Conclusions of Law regarding the
11 Defendant's *pro se* motion to withdraw his plea of guilty. The allegations therein seem
12 related to the assertions of facts and law pertaining to this motion and could be consolidated
13 at a hearing for final entry.
14

15 The Defendant and his prior attorneys, if necessary, will testify that the Defendant
16 was not made aware of the above described evidence relevant to determining pre-meditation
17 or the lack thereof and therefore could not and was not taken into consideration regarding
18 whether the totality of evidence would probably convict him of the greater charge of Murder
19 in the First Degree at the time of his plea to fictitious charges. Instead the Defendant was
20 aggressively advised by his defense team that his story was inconsistent with the forensic
21 evidence described by the medical examiner, together with the resulting inferences of
22 'stomping'. The new evidence will demonstrate that said multiple injuries (bone fractures)
23 were not the cause of death but in fact occurred after death and are not an appropriate basis
24 for determining mental state relevant to acts occurring before the victim's death. This new
25 evidence calls into question whether the State could prove the greater charge of Murder in
26

MOTION FOR RELIEF FROM JUDGMENT/
REQUEST FOR FACTUAL HEARING AND
SUPPORTING DECLARATION - 4

LAW OFFICE OF JOHN H. HILL, III
WSBA #5663
2703 N. 31st Street
Tacoma, Washington 98407
253.318.3336

1 the First Degree by premeditation and that the Defendant was inadequately aware of material
2 forensic evidence. In essence, the Defendant was unaware of forensic evidence that
3 dramatically changes the inferences previously made from multiple bone fractures, and
4 credibly support what the Defendant had consistently and insistently made known to his
5 defense team from the beginning of his being charged to the current date. Had this
6 information been known to the Defendant, his attorneys, or the Court there could be no
7 ‘factual basis’ for the fictitious counts as required by law. If the true evidence does not
8 support an evidentiary basis for believing he would probably be convicted of the greater
9 charge of Murder by premeditation, there can be no “factual basis” constitutionally and
10 legally necessary in law to support the contrived and fictitious crimes in Counts II and III or
11 the resulting altered SRA offender score and range. The forensic evidence relied on to
12 support premeditation turns out to be incomplete and inconsistent with more determinative
13 evidence regarding proof of mental state that was unknown and not of record at the time of
14 guilty plea. The plea was not legally knowing. The plea was not legally voluntary. If the
15 plea to Counts II and III are legally invalid, then a manifest and obvious injustice has
16 occurred in that the Court improperly placed the Defendant’s offender score for Murder in
17 the Second as a 7, instead of his true score of 4, and imposed a high-end sentence outside the
18 proper SRA sentencing range – much to his prejudice.

19
20
21
22 The Defendant had consistently told his defense team that he did not strike the victim
23 multiple times. His attorney repeatedly told him his story was inconsistent with the evidence
24 and aggressively emphasized the Defendant’s conviction was inevitable based on the medical
25 examiner’s report. But now we know that the Defendant’s version is more wholly
26 reconcilable to newly revealed forensic facts. Importantly, the Defendant’s explanation was

MOTION FOR RELIEF FROM JUDGMENT/
REQUEST FOR FACTUAL HEARING AND
SUPPORTING DECLARATION - 5

LAW OFFICE OF JOHN H. HILL, III
WSBA #5663
2703 N. 31st Street
Tacoma, Washington 98407
253.318.3336

1 made to his defense team prior to the time multiple injuries became the basis for the amended
2 charge of Murder in the First Degree and has been consistently and insistenty maintained by
3 him at all times since and up to the present. Evidence anticipated to be shown at a hearing by
4 the Pierce County Medical Examiner, the forensic homicide detective, and others will clearly
5 and convincingly demonstrate these facts to be obviously true.

7 The Defendant's plea was based on an inadequate, incomplete investigation and
8 resulting false speculation, and inadmissible inferences that his attorneys incorrectly advised
9 him would surely result in his conviction of Murder in the First Degree. These facts, together
10 with the history of the Defendant's serious mental disabilities as outlined in his mitigation
11 report (see attached), caused him to acquiesce to a plea based on facts not in his own words
12 but in legalese written by the prosecuting attorney. This is how people with such disabilities
13 get by when confronted by authority. This is the Defendant's history and habit throughout his
14 life – to acquiesce to what he does not understand when it is obvious that is what all the
15 authority figures around him obviously expect if not demand from his perspective.

17 The defense asks that the Defendant be sentenced in accordance with the fundamental
18 principles of the Washington Sentencing Reform Act – not a contrived, false, made up, and
19 unsupported criminal history. The defense requests a factual evidentiary hearing to correct
20 manifest injustice and prejudice imposed against him in the judgment and sentence
21 previously entered herein.

23 **SUMMARY**

24 The defense requests the granting of an evidentiary hearing anticipated by CrR 7.8
25 (c)(3). At the hearing, the defense will show that:

26 A. That the Defendant relayed to his initial defense attorneys that:

MOTION FOR RELIEF FROM JUDGMENT/
REQUEST FOR FACTUAL HEARING AND
SUPPORTING DECLARATION - 6

LAW OFFICE OF JOHN H. HILL, III
WSBA #5663
2703 N. 31st Street
Tacoma, Washington 98407
253.318.3336

- 1 1) The Defendant struck the victim with his fist to the victim's face one
2 time. That she fell hitting the back of her head and he believed her to
3 be unconscious. Shortly thereafter, he attempted to administer
4 resuscitation efforts by compressing her chest repeatedly with the heel
5 of his hand;
6
7 2) That upon realizing she had died, he wrapped her remains in a tarp and
8 placed her in his truck. The bed of his truck is 4-5' high; and
9
10 3) That he drove to the location where the victim was ultimately found.
11 While standing in the bed of his truck with one foot on his raised
12 wheel well, heaved the tarp and its contents up and out of the truck as
13 far as he could (having experience throwing large double-stringed
14 bales of hay) and believes the tarp landed laterally some 15-20' away
15 from the truck and then dropping down a steep hill to a rocky bottom.

16 B. That former Tacoma Police Department Homicide Investigator, David
17 Antonson, will testify to circumstances discovered at the scene where the
18 victim was located. This will include the fact that the 'drop' from the truck to
19 where the victim was located was unobstructed, that the road dropped off at
20 roughly a 45° angle, and that the elemental calculation of the location of the
21 victim's body would indicate she dropped 15'-20' vertically onto large rocks
22 contained in photographs. (See attached). Together with the Defendant's
23 version, this is consistent with the victim falling an estimated 15'-20' or the
24 equivalent of a 2-2½ story drop from a building onto large rocks as will be
25 shown in FBI photographs, and former TPD Detective David Antonson's
26

1 testimony and attachments. None of this was shown or known to the
2 Defendant prior to the time of his plea.

3 C. That counsel believes from his interview of the Pierce County Medical
4 Examiner that the medical examiner will testify that the multiple fractures
5 discovered on the victim are consistent with the Defendant's version and
6 evidence now known. The medical examiner was unaware of such evidence
7 at the time of autopsy. Further, it is expected he will testify that no testing or
8 comparison was done to substantiate a possible 'stomping' theory and that any
9 statement regarding such was not offered or intended to be an opinion
10 regarding the cause of the victim's death but merely a possible means of blunt
11 trauma injuries.
12

13
14 The State's attorney indicated to defense counsel prior to sentencing that they did not
15 specifically allege stomping and could not prove it as the cause of death. This was not
16 conceded to defense attorneys prior to the Defendant's plea.

17 D. Newly discovered evidence, excusable neglect, or irregularity in causing the
18 Defendant to be materially misinformed regarding the facts bearing on the
19 ability to provide premeditated murder, resulted in his acquiesced plea to
20 fictitious Counts II and III to be unknowing and not voluntary and therefore
21 without the factual basis required by law.
22

23 The Defendant asks the Court for the ability to make an appropriate record and for
24 relief from the Judgment And Sentence resulting from incorrect and invalid
25 determination of SRA offender Scoring and range. The Defendant therefore requests
26

1 relief in the form of resentencing pursuant to his correct Sentencing Reform Act
2 sentencing range.

3 I, John H. Hill, III, declare under penalty of perjury under the laws of the state of
4 Washington that the foregoing is true and correct.

5 DATED this 11th day of January 2017 at Tacoma, Washington.

6
7 s/John H. Hill, III
8 JOHN H. HILL, III, WSBA#5663
9 Attorney for Defendant

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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff,

Cause No. 15-1-02431-2

vs.

EXHIBIT RECORD

HARRIS, JONATHAN DANIEL,
Defendant.

ALL HERE 10-31-2016

P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn			Date	Rec'd by Clerk's Office
D	1	Report from Antonson Investigations, Dave Antonson, Investigator, including photographs (pages total)	Yes	No	Admitted			10/31/16	X

ANTONSON INVESTIGATIONS

WA St. Bus License # 602-519-743

3800 "A" Bridgeport Way W, #471

University Place, WA 98466

cell- 253-219-5607

NAME of File:Jonathan Harris

Pierce County Cause Number:

My interruption of FBI Photo images taken on August 3, 2015 by FBI Agent Daniel Read during the recovery of Nicole White.

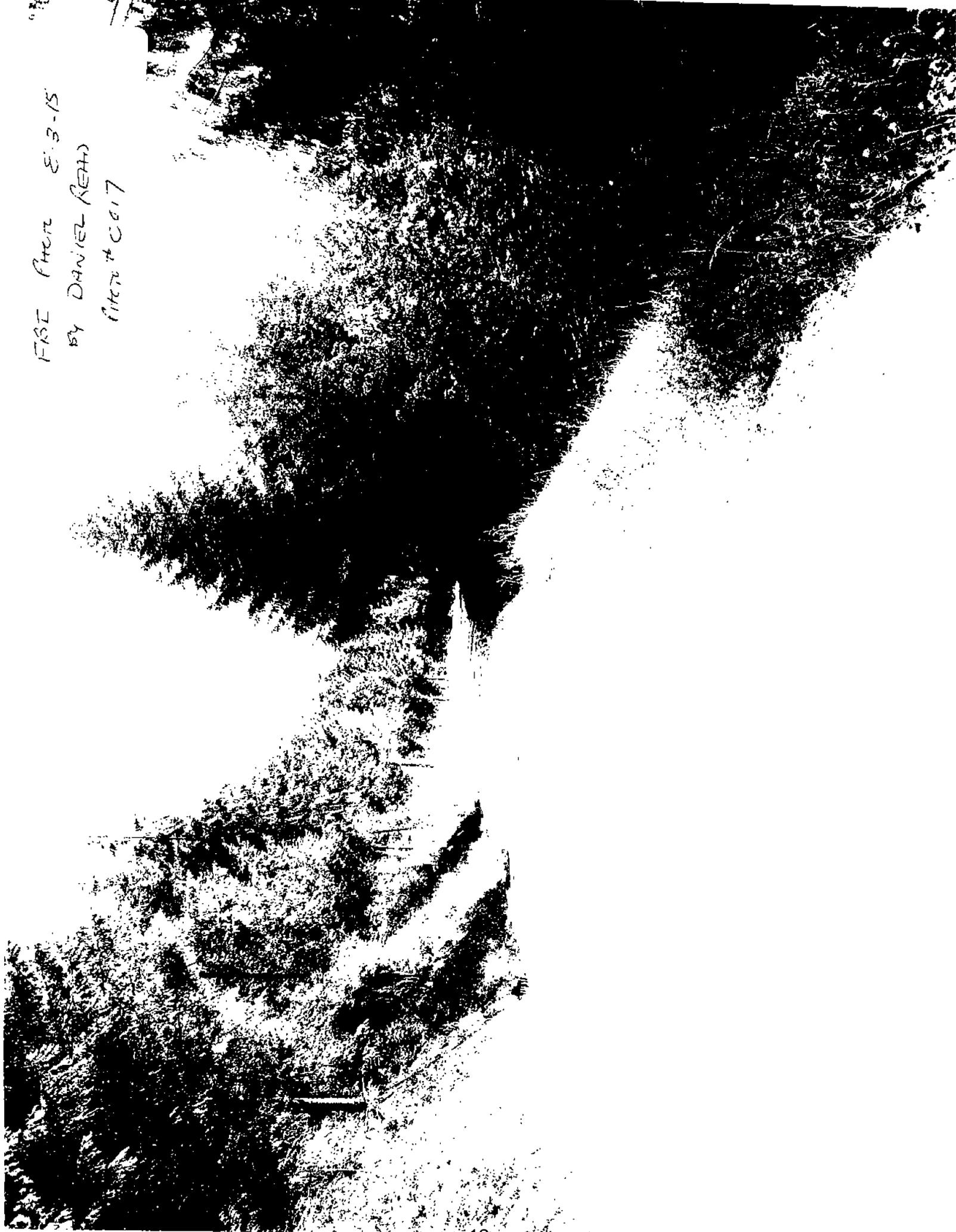
Photo Number	Description
0017	View is west on private road. Red rope in roadway used to assist in removal of Nichole White from over the hillside (right side). This photo also shows how the road was cut into the hill side
0136	Show the sharp angle of the hill side. Large rocks are observed
0067	Resting area. I believe the photo was taken sideways on the hill side. Many rocks are visible
0138	Final stop
0152	Same photo as 0138 taken after the body was removed showing that rocks were under the tarp

10-30-15

Dave Antonson

Investigator

FBI Photo E-3-15
BY DANIEL REED
APR 4 2017



FBI PHOTO 8-13-15
BY DANIEL REARD
PHOTO # 136



FBI PHOTO 8-3-15
BY DANIEL REARD
PHOTO # 0067



FBI PHOTO 8-3-15
BY DANIEL READ
PHOTO # 138





FBI PHOTO 3-3-15
by Dennis Reed
PHOT # C152

October 28 2016 11:16 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-1-02431-2

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

STATE OF WASHINGTON,

Plaintiff,

vs.

JONATHAN DANIEL HARRIS,

Defendant.

NO. 15-1-02431-2

**DEFENDANT'S SENTENCING
MEMORANDUM**

INTRODUCTION

The following is provided to address issues that are anticipated for sentencing in this matter.

I. The State Is Limited To Providing Information To This Court For Sentencing That Is Admitted In The Plea Agreement Or Admitted, Acknowledged Or Proven.

Under 9.94A.530(2), a SRA Sentencing Court may rely on no more information than is admitted in the Plea Agreement, or admitted, acknowledged or proved in a trial or at the time of sentencing. The defense asserts that the Plea Agreement herein limits the State from making supplemental assertions of fact regarding the crime(s) pled to herein than is contained in the Plea Agreement. If the State intends to prove additional facts pertaining to the crime(s) pled to that are relevant to sentencing, the Sentencing Court must schedule a sentencing evidentiary hearing with

1 witness lists and notice of any supplemental facts intended to be proved and relied on for
2 sentencing.

3 Under the ‘real facts’ doctrine of the SRA sentencing in Washington, it is well settled that
4 a sentencing court may not impose a sentence based on elements of additional or more serious
5 crime(s) that the State is not charging. St. v. Wakefield, 130 Wn.2d 464, 475, 476; 925 P.2d 183
6 (1996); St. v. Johnson, 124 Wash.2d 57, 873 P.2d 514 (1994); St. v. Elza, 87 Wash.App. 336,
7 343, 941 P.2d 728 (1997). The general purpose of this ‘real facts’ doctrine is to limit sentencing
8 decisions to facts that are acknowledged, proved or pleaded. St. v. Houf, 120 Wash.2d 327, 841
9 P.2d 42 (1992). RCW 9.94A.535(3).

11 A sentencing proceeding under the SRA is not an appropriate vehicle for the prosecution
12 to submit extraneous, unproven, hearsay, or otherwise inadmissible comments or emotional
13 appeals to a sentencing court. Here, the State has agreed that the facts relevant to the crime herein
14 are contained in the Plea Agreement. The State is restricted to these facts for sentencing, and the
15 State is required to prove any other assertions of fact relevant to sentencing that are disputed by
16 the defense. St v. Ammons, 105 Wash.2d 175, 713 P.2d 719 (1986).

18 **II. The Defense Specifically Disputes And Does Not Acknowledge That The**
19 **Deceased Was ‘Stomped’.**

20 The State and media coverage regarding this case have fostered the horrifying image that
21 all of the injuries to the deceased victim, Nicole White, as described in reports issued by the Pierce
22 County Medical Examiner’s Office were the result of the Defendant ‘stomping’ of Ms. White.
23 The insinuation or inferences regarding stomping are not true. It did not happen. The defense
24 disputes such inferences and has not and does not acknowledge or acquiesce to any sentencing
25 based in any way on such assertions.

26 While it is indisputable that Ms. White’s various injuries were the result of ‘post mortem’

1 blunt force trauma, the Medical Examiner's report so opines. What the report does not say and
2 what the Medical Examiner's Office has not and is not willing to render, is an opinion on what
3 the instrumentality of the blunt force traumas are. They don't offer such an opinion because they
4 cannot. Instead, the State is expected to rely on a hearsay statement from a detective present at
5 the forensic examination (and not contained in the forensic examiner's formal written report) that
6 one possible form of blunt force trauma is 'stomping'.
7

8 While the defense does not dispute the various injuries to the victim resulting from the
9 trauma, the defense believes and can produce compelling evidence that several fractures were, in
10 fact, the result of distinctly separate causes or instrumentalities causing the varying levels of bone
11 fracture injuries.

12 In other words, Ms. White's tragic death was not the result of a continuous and relentless
13 'stomping' causing all of the injuries evidence by various bone fractures described in the Medical
14 Examiner's report(s). In fact, the bone fractures resulted from differing 'blunt force traumas' that
15 were 'perimortem' – i.e., 1) frontal facial fractures caused by defendant violently assaulting Ms.
16 White with his closed hand one or possibly two times; 2) other cranial injuries potentially the
17 result of the victim falling down or striking of a hard surface upon being struck by the defendant
18 – e.g., the floor, a large glass ashtray, hard furniture edge; 3) unintended sternum and rib fractures
19 caused by defendant's attempt to resuscitate Ms. White by performing chest compressions; 4)
20 other unintended fractures potentially caused upon defendant's lifting of the victim into his
21 heightened truck bed and tool box and riding a considerable distance against hard objects over
22 harsh road surfaces in a very stiff riding four-wheel drive truck; and 5) other unintended fractures
23 likely caused by how the defendant removed the victim from his truck – throwing the victim up
24 and out headlong from a height 5-10 feet off the ground down a very steep, hard grade embedded
25
26

1 with large rocks.

2 On October 21, 2016, Pierce County Medical Examiner Dr. Thomas B. Clark was
3 interviewed by defendant's counsel and investigator David Antonson (former TPD Homicide
4 Detective). The purpose of this interview was to expand on Dr. Clark's examination and report
5 pertaining to the victim. Dr. Clark clarified and informed us:

- 6 1) There is a wide variety of instruments and causes of blunt force trauma;
- 7 2) In this case, the instrument of the blunt force trauma was not determined. There was
8 no actual comparison or analysis of specific instrumentalities or causes done. Dr.
9 Clark informed us that there was no real possibility of doing such a comparison due
10 to the condition the remains of the deceased.
- 11 3) Dr. Clark was not willing to opine that the traumas to Ms. White were due to
12 'stomping'.
- 13 4) Dr. Clark states that the various fractures could be caused by differing and multiple
14 causes – specifically, including the potential instrumentalities listed on page 3, lines
15 12-26. Blunt force trauma is fact specific.

15 The mere suggestion of the possibility of 'stomping' does not prove or establish a fact that a
16 sentencing court may rely on for sentencing. The State carries the burden of proof. It is not
17 proven. It is not true.

18 **III. The Hearsay Statement Of A Detective Re: Alleged 'Stomping' Is**
19 **Inadmissible. The Forensic Examiner's Alleged Statement Re: Stomping Is**
20 **Not Admissible Under ER 702. Both Statements Are Specifically Objected**
21 **To And Disputed By The Defense.**

21 The information included in the State's Declaration in Support of Probable Cause Re:
22 'Stomping' of the Victim is without adequate factual foundation was made without necessary
23 medical, or scientific comparison and analysis with defendant's feet or shoes or other potential
24 instrumentalities to the injuries at issue. Further, the statement is not an opinion that the blunt
25 force trauma was caused by 'stomping' – but only that it was one possibility for creating blunt
26 force trauma. The solicited statement is not specific to the defendant or supported by a

1 comparative analysis accepted in the forensic examiner community.

2 The statement at issue should be excluded from fact finding because it engages in
3 speculation; it does not meet Washington's Frye requirements for opinion evidence and on
4 methodology accepted in this professional community. St. v. Copeland, 130 Wash.2d 244 (1996);
5 and the opinion has since been clarified by the Pierce County Medical Examiner as not offered to
6 show that the injuries or death at issue resulted from the defendant 'stomping' the victim and is
7 therefore not relevant to the Sentencing Court's actions.
8

9 **CONCLUSION**

10 The defendant disputes that he 'stomped' the victim. The Defendant objects to opinion
11 evidence offered by the State regarding 'stomping'. The State is limited to evidence at sentencing
12 regarding facts of the crime to those contained in the Plea Agreement
13

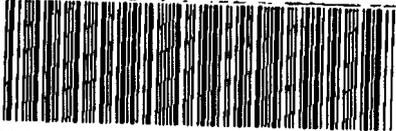
14 RESPECTFULLY SUBMITTED this 28th day of October 2016.

15 s/John H. Hill, III
16 _____
17 JOHN H. HILL, III, WSBA#5663
18 Attorney for Defendant
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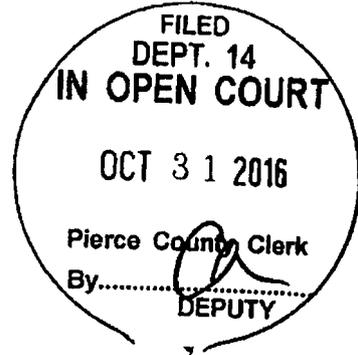
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JONATHAN DANIEL HARRIS,

Defendant

) NO. 15-1-02431-2

) DECLARATION IN SUPPORT OF FACTS
) RE: SENTENCING

The declarant, John H. Hill, makes the following statements in support of factual determinations relevant to the Sentencing Court in this matter. The statements are made as true and accurate under penalty of the laws of the State of Washington.

I have reviewed the information provided to me as discovery, have spoken to prior legal counsel and investigative staff, and extensively to the defendant Jonathan Daniel Harris.

The following is a summary of some of the information that has been consistently relayed to me by the parties described above:

The defendant made contact with Nicole White by text in the early evening hours of June 6, 2015, to determine whether she would like to "hang out" with him at "Jeepers" Tavern. She agreed and drove to the defendant's resident about 10:00 p.m. to pick him up. On the way to

DECLARATION IN SUPPORT OF FACTS RE: SENTENCING - 1

1 Jeepers, she indicated she had to be at work early and they agreed she could sleep at the
2 defendant's residence instead of returning to Orting that night. She had brought an overnight bag
3 with a change of clothing. Their relationship was not intimate and there was no insinuation or
4 suggestion by either that such was anticipated that evening. At no time did sexual contact enter
5 into their relationship in any way.
6

7 The initial contact between them was made by Nicole through a social contact app where
8 they both had profiles. They were somewhat acquainted in that they both frequented various
9 nearby taverns in their vicinity.
10

11 They went to Jeepers and consumed alcohol. The defendant had previously consumed
12 alcohol, i.e, some bourbon whiskey his mother had left at the residence where Jonathan was
13 living with her. He had also consumed various prescription drugs at the house, i.e. lorazepam,
14 vicodin, flexoral, and perhaps methocabemol. All of these drugs interact with alcohol in a
15 manner that can impair thinking or reactions. The defendant drank beer and mixed drinks for
16 approximately four hours at Jeepers. The defendant drank more bourbon after they got to his
17 residence.
18

19 Jonathan recalls that at some point he and Nicole had a disagreement or what might be
20 called an argument. His memory is not clear regarding the nature of the argument but thinks it
21 may have been over incidents at the tavern, or perhaps also about his dogs' behavior in bringing
22 bloody rabbit parts into the house and their reactions to that. At some point the discussion had a
23 physical component and he recalls her grabbing or pushing at him and that he reacted by
24 "hitting" or "punching" her. He recalls her falling down and hitting her head hard on an object
25 and the floor. He believed her to be unconscious but fairly soon he became concerned for her
26 and attempted resuscitation by repeatedly compressing her chest with the heels of his hands.
27
28

1 To the defendant's shock, he determined Nicole was not breathing and realized she had
2 died. The defendant became frightened and panicked and attempted to conceal what had
3 happened.

4 He wrapped Nicole in a plastic tarp and canvas painter cloth. He then transferred her to
5 his truck bed and then into a toolbox container with other various hard objects. He subsequently
6 drove the truck to the hillside where Nicole was later located by police.

7 The defendant estimates the truck bed of his "lifted" truck with 37" wheels/tires to
8 approach 5' off the ground. He lifted the "tarp" out of the toolbox and tossed it headlong, while
9 standing in his truck bed and on the wheel well, as hard as he could down the steep grade.
10 Photos of this area will be provided to the Court and demonstrate the deceased dropped 15 to 20
11 feet onto large rocks.

12 The defendant has displayed tears, grief, sadness and sorrow about Nicole White's death.
13 He cannot conceive of a motive regarding why he struck her with such horrific results.

14 On October 21, 2016, Pierce County Medical Examiner Thomas Clark was interviewed
15 by myself and investigator David Antonson (former TPD homicide detective). The purpose of
16 this interview was to expand on his explanation and report pertaining to Nicole White. Dr. Clark
17 informed us:

- 18 1) There was evidence (varying degrees of bone fractures) of a number of blunt force
19 trauma injuries to Nicole White.
- 20 2) There can be a wide variety of "instrumentalities" that cause blunt force trauma.
- 21 3) In Nicole's case, the instrument of blunt force trauma was not determined. There
22 were no actual comparisons or analysis of specific or potential instrumentalities
23

1 performed. Dr. Clark believed there was no real possibility of doing such a
2 comparison due to the deceased remains.

3 4) Dr. Clark was not willing to opine that the traumas to Ms. White were due to
4 stomping.

5
6 5) Dr. Clark stated that the various fractures or blunt force traumas indicated could be
7 caused by differing and multiple causes or instrumentalities. Such include:

8 a. Efforts at resuscitation are commonly responsible for injuries like those
9 reported regarding Ms. White's sternum and rib area, and consistent with
10 defendant's description in that regard.

11
12 b. One blunt force blow can directly result in related other injuries – i.e. a blow
13 causing one to fall on or hit another hard blunt object, eg. the floor or other
14 hard object as was described as happening to Nicole White.

15
16 c. Injuries consistent with the circumstances described by the defendant
17 regarding disposal of Ms. White's body and the rocky topography
18 photographed and described by FBI documents and photographs, and
19 information provided by former detective Antonson.

20
21 Further the declarant sayeth not.

22
23 Dated this 30th day of October, 2016, at
24 Tacoma, Washington.

25
26 _____
27 John H. Hill III
28 WSBA No. 5663
2703 N. 31st Street
Tacoma, WA 98407

October 28 2016 12:06 PM

KEVIN STOCK
COUNTY CLERK
NO: 15-1-02431-2

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

STATE OF WASHINGTON

V.

JONATHAN HARRIS

Defendant.

CAUSE NO. 15-1-02431-2

MITIGATION PACKAGE

MITIGATION PACKAGE

Department of Assigned Counsel
949 Market Street, Suite 334
Tacoma, Washington 98402-3696
Telephone: (253) 798-6062



Austrung Investigations
Post Office Box 961
Gig Harbor, WA 98335
253 858-7579

Mitigation Package
State v Jonathan Daniel Harris
- m/n. et. -
Cause no. 15-1-02431-2

Jack Hill Attorney / Investigator Nancy Austrung
10/9/2016

Mitigation Report Robert Jonathan Harris
(Cause number 15-1-02431-2)

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Mitigation report pages 1 –11

-The following exhibits are from records received and reviewed for this report.

Exhibit # 1	School Records
Exhibit # 2	Rand Harris Sr. Court Documents
Exhibit # 3	Dr. Molli Wilson Records
Exhibit # 4	Dr. Fay Records
Exhibit # 5	Rainier Behavioral Records
Exhibit # 6	Sound Family Medical Records
Exhibit # 7	Cause # 08-1-04067-6
Exhibit # 8	Plea documents

MITIGATING FACTORS

- Trauma
- Parental abuse
- Maternal abandonment
- Exposure to domestic violence
- Sexual abuse
- Major depressive affective disorder
- Learning disability
- PTSD
- Alcohol and drug abuse

PERSONAL AND SOCIAL HISTORY

Jonathan Daniel Harris who is called Jon by his friends and family is the youngest of two sons born to Rand and Leslie Harris April 24, 1986. Leslie had gestational diabetes during her third trimester which resulted in Jon's excessive birth weight (macrosomia). Jon weighed thirteen (13) pounds when he was born and continued to grow rapidly during his childhood.

- There is evidence that high birth weight may lead to complications later in life (Barker et al)
- Macrosomia can cause increased risk of health problems such as metabolic syndrome during childhood (Leddy et al 2008).

Jon had recurring upper respiratory and ear infections as a baby. When he turned two, a neighbor pointed out that Jon couldn't hear well. Jon had surgery to correct the hearing problem. During surgery, a nerve to Jon's eye was nicked causing one of his eyes to turn in. Jonathon had a second surgery to correct the eye problem but had to begin wearing glasses before he even entered school. Due to Jon's hearing problem his speech was delayed. He had speech therapy for years to correct the problem. The combination of Jon's size, his speech problem and having to wear glasses as a small child made Jon a target for ridicule something that continued into his teens (**Interview with Rand Harris Sr. & Marie Page**).

TRAUMA, DOMESTIC VIOLENCE AND ABUSE

The Harris family was living in Ravensdale Washington when Jon was not quite five years old. A neighbor, Sharon Phillips, who was Jon's babysitter, recalls that Leslie Harris came to the Phillip's home crying and asking for help. Leslie told Phillips she was afraid of her husband Rand who followed Leslie to the Phillips' home. Phillips' husband told Rand if he didn't leave they'd call the police (**See Phillips interview**).

Rand Harris Sr. was an abusive alcoholic who is described by Jon's older brother Rand Jr. as "...a monster who hit us all over the place." Jon recalls being repeatedly hit in the head by his father.

Leslie separated from her husband taking their oldest son Rand Jr. but leaving Jon with his abusive alcoholic father. The couple reunited briefly but Rand's abuse never stopped. Leslie finally divorced Rand Sr. again leaving Jon with his abusive father.

According to Leslie, Rand Sr. made visitations with Jon difficult. Rand Sr. states that Leslie would say she was coming to get Jon but would fail to show up, breaking Jon's heart. When visits were arranged they were done under the supervision of police. Fighting and blame between the two adults regarding Jon went on for years according to family friend Shantelle Deutch (**See Deutch interview**).

SCHOOL YEARS AND SEXUAL ABUSE

When Jon was about ten years he had a teen neighbor, Jake Nichols, as a babysitter. Jake who was about seven years older and Jake's friend Ricky Haulet sexually abused Jon. Jon was traumatized and humiliated. He didn't want to tell his father about the abuse for fear he'd be beaten. His father, who was a former Marine, had strong feelings about gays. Jon states he's not gay but he knew his father would not see it that way. His mother had abandoned him and he had nowhere to turn for help.

Jon had recurring headaches, problems with memory, and struggled to keep up in school. He was diagnosed with a learning disability for which he was given an Individualized Education Program (IEP). The only verification the school district has of Jon's IEP status is a computer generated document and a letter written to Jon 5/20/15 advising him that the records would be destroyed (**Exhibit # 1-30, 31**)

Leslie Gnagy kept one copy of his IEP from 2003 when Jon attended Tahoma Senior High School. It is attached as **Exhibit #1-1through29**). The IEP disclosed that when Jon was in the 11th grade, his math skills were at a 4th grade level and his reading was equivalent to a 5th grade level (**Exhibit #1 -4**). Regarding his behavior, it is noted that Jon's behavior did not impede his learning or that of others (**Exhibit 1- 12**)

Rand Sr. continued to drink heavily. He had relationships with other women who also experienced Rand's abuse. Pierce County Cause # 96-2-13691-9 is a protection order involving his new wife Deborah Harris (**See Exhibit # 2- 1**). King County superior court cause # 07-1-09243-5 is a case involving Rand Harris who was charged with Assault in the 3rd degree and domestic violence against Lisa Collinsworth with whom Rand had lived and been abusive (**Exhibit # 2-2**). King county 07-1-09243-5 discloses an order for Rand to surrender his firearms to the Sheriff's office (**Exhibit # 2-12**).

Rand's mother Pat Mullin, was also a victim of Rand's bad temper. Pat, now 82 years old, recalls an incident in which her son Rand had been drinking hard liquor and shoved her (**Interview with Pat Mullin**). Jon who remembers this incident and the fear and helplessness he felt, was about 10 when this happened. Jon loves his grandmother Pat and calls her his best friend.

When Jon was fourteen he lived briefly with his mother who had remarried, divorced and remarried again always keeping Rand Jr. with her but sending Jon back to his father.

Jon kept his feelings of abandonment, fear, and humiliation inside until he finally shared some of it with his close friend Shantelle Deutch who has known Jon since the 7th grade (**See Deutch interview**) and later Tesia Carbone Jonathon's high school sweetheart who cheated on Jon.

Marie Page, a former teacher of Jon's at Tahoma High and Elizabeth Richardson, a para professional who worked with Jonathon, both recall Jon's frustration at not being able to do things and his getting behind the other students (**See interviews Page and Richardson**). Page recalls that Jonathon's home life was not healthy. She also recalls that Jon was frequently teased by other kids. Despite this Page found Jon to be a very likable big kid who she calls a gentle giant and was someone who wanted to be helpful.

EMOTIONAL / PHYSICAL PAIN

Despite the overwhelming emotional and physical trauma Jon experienced during his childhood, he received no professional help. Jon continued to experience recurring headaches and blackouts that his friend Shantelle thought might be related to head trauma Jon experienced from the abuse by his father (**See interview with Deutch**).

It was not until 2005 when Jon was nineteen and went to live with his mother Leslie, that he finally saw a counselor, Dr. Molli Wilson PhD. It was the first time he'd shared with any adult his sadness over the abandonment by his mother, his father's abuse, and the sexual abuse when he was little. Wilson's records (**Exhibit # 3**) it was not until 11/22/05 that Jon was finally able to tell his mother about his feelings of abandonment which she admitted (**Exhibit #3-13**). Jon shared his frustration over his mother blaming his father and how his father makes him "...feel like shit." (**Exhibit # 3-14**). Dr. Wilson notes a contact 1/31/06 that Jon is frustrated by issues with his girlfriend named Tesia and his worries about her cheating (**Exhibit # 3-17**). On 1/27/06 Wilson notes that Tesia came with Jon to one of his counseling sessions and that he told her about being molested as a child (**Exhibit # 3-18**). Wilson diagnosed severe depression, noted panic attacks during drinking (**Exhibit # 3-19**) and referred Jon to Dr. Gayle Fay neuropsychologist.

Dr. Fay saw Jon several times in October 2005 for reported daily headaches with a history of notable impact to head (**Exhibit# 4-1**). In her summary and conclusions Dr. Fay noted that Jon 's verbal expression and processing were all well below average, and in the Extremely Low to Borderline range of cognitive functioning (**Exhibit # 4-3**).

She also noted that it is "...unclear if past head injuries are associated with his headaches and difficulty with school." Dr. Fay also noted that she believes Jon "...is enduring a notable amount of distress on some level" (**Exhibit#4-4**).

In 2008 at the age of 22, Jon went without referral, to Rainier Biobehavioral Institute (RBI) due to continuing problems with mood swings, bi-polar depression, and ADD. He was prescribed Lorazepam for anxiety, Invega (an anti-psychotic) and Ritalin (**Exhibit # 5 – 1**). He was instructed about interactions with alcohol (**Exhibit # 5-2**). By 2009 Jon had a DUI while still in on-going treatment with RBI.

According to medical records (**Exhibit # 6.**) On 2/16/12 Jon was seen at Sound Family Medicine where it is noted that Jon is on Vicodin (**Exhibit # 6-1**). Jon again reported headaches and that he was drinking three pitchers of beer a day as well as hard liquor (**Exhibit # 6-3**). Record notation 9/10/14 note that Jon was taking Lamictal, a drug used for bi-polar disorder/mood swings, and Ritalin for ADD.

Jon was suffering chronic pain in his back and feet. He was diagnosed with Lumbar Radiculopathy, a nerve irritation caused by damage to discs between the vertebrae. This is a degenerative problem caused by wear and tear. By August 2014 he was seen by Dr. Jeremy Van Gieson who referred Jon for pain management and possible surgery (**Exhibit # 6-6**).

Dr. Fay saw Jon again several times in November 2014 for delineation of neurocognitive status and development of a comprehensive intervention plan. She documents Jon's problems as headache with associate blanking out; degenerative disc disease, chronic traumatic encephalopathy, and sleep disruption. She also notes his self-esteem is low (**Exhibit # 4-28**). After testing Dr. Fay notes problems with immediate and delayed memory (**Exhibit # 4-30**). She further notes that "given his severe problems with verbal learning and memory, consolidation of information in long-term memory can be expected to be problematic" (**Exhibit # 4-33**). Under summary conclusions (**Exhibit # 4-37 & 38**), Dr. Faye notes Attention Deficit Disorder, auditory attention problems, highly distractible; & learning disability (**Exhibit # 4-38**).

WORK HISTORY

Jon likes to work with his hands and has had some success doing mechanical work (**See interview Rand Harris Sr.**). He has also worked as a landscaper, a bouncer and repossessing cars. Richard Reese, Jon's employer, reports that Jon is a hard worker who likes to help people, often going out of his way to assist someone in need (**See interview Reese**).

CRIMINAL JUSTICE SYSTEM CONTACTS

On August 30, 2008, Jon learned that his girlfriend Tesia, with whom he'd shared his most intimate secrets, had cheated on him. Jon was devastated. He got drunk and while in possession of a shotgun drove to a party he believed Tesia was attending with her new boyfriend. He was said to have pointed the shotgun at someone. He was arrested and charged with assault in the 2nd degree This incident led to Jonathon's conviction and a prison sentence.

Harris mitigation

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Pierce County Cause # 08-1-04067-6 Assault in the 2nd Degree (Exhibit # 7)

Jonathon had no criminal history (Exhibit # 7-3) when he pled guilty to 2nd degree assault and was sentenced to prison for 14 months as a result of this incident (Exhibit #7-7).

While Jon was in prison his father moved to Colorado where he is currently living. By 11/29/11 Jon had taken care of his financial obligations related to that case (Exhibit #7-18).

Pierce County Cause # 15-1-02431-2 Murder 2

On 7/17/16 Jon now age 30. pled guilty to murder in the 2nd degree (Exhibit # 8). He states he was drinking heavily the night of 6/6/15 and consumed most of a 5th of whiskey that his mother had (See interview with Leslie Gnagy) and also took pain killers prescribed for his back problem.

- It is hoped that consideration of all mitigating evidence will result in a compassionate and fair sentence for Jon.

INTERVIEWS CONDUCTED

Portions of interviews completed during this investigation are referred to in the body of the report. The following are complete summaries of interviews:

RAND HARRIS SR. (father)

719-221-6826 (cell)

719 542-2108 (home)

I spoke with Rand Harris Sr. by telephone on two occasions. Harris who calls his son Jon, confirms he was a former Marine who had gone to college following his service and also worked a part time job. He'd met Leslie, Jon's mother, at a Seattle bar where she was employed as a manager. Leslie pushed Rand to get married when she became pregnant with their first son Rand Jr. Rand Sr. "...had to quit college and go to work for an oil company in 1981." His work took him on the road. Jonathon was born four years following the birth of their first child Rand Jr.

Harris states his wife Leslie was not motherly at all. Jon was huge when he was born; weighing 13 pounds and had to spend ten days in the hospital because his bilirubin count was very high.

Jon suffered recurring ear infections. When Jon was about two a neighbor pointed out to Harris that Jonathon didn't hear. They took him to a doctor who confirmed problems with his ears. When Jon was a two and a half he had surgery. An eye muscle was nicked during surgery which required another surgery.

Jon was so big Leslie wouldn't pick him up. He continued to grow at a rapid rate and had both speech and eye problems.

Harris mitigation

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When Jon was about five or six years old Harris reports that Leslie had an affair and they divorced. Harris states that Rand Jr. was always "...his mom's kid," so she left taking Rand and Jon stayed with dad.

They battled back and forth regarding custody. Jon only saw Leslie every 3-4 months. Leslie had another affair with a co-worker Bob Waters then subsequently married Waters who was abusive to Jon according to Harris. Harris remarried a woman named Debbie who used to smack Jon a lot. During his marriage to Debbie they took Jon to Sylvan to try to catch up at school, but Leslie kept filing papers resulting in huge attorney bills causing Harris financial problems.

Leslie wouldn't see Jon except some holidays. She'd have to be forced to call and she wouldn't pick up Jon for visits.

Jon was 6 feet tall in 6th grade. He was always behind in school about 5-6 years due to hearing problem. Jon got trifocals in the 3rd grade and other kids ripped them off and broke them. Harris recalls having to buy 3 pair. Jon was big and had trouble fitting in. Jon's legs hurt him all the time.

Rand admits using corporal punishment on Jon and that after Jon graduated he went to live with his mother and that's when things started going wrong. Harris also admits to drinking beer every night and that he got a DUI. He states his grandparents were alcoholics and are part Cherokee so feels there is a genetic issue with sensitivity to alcohol. He also believes depression runs in the family. Leslie had a half-brother who killed himself. Her dad was an alcoholic would drink two fifths of whiskey a day. He also wanted me to know that Leslie's sister is Gay...

According to Harris, Leslie was always trying to get Jon to take her side, probably because she's Jewish and that seems to be what they do. He describes Jon as a sweetheart who hurts inside due to his mother's abandonment. Leslie and Rand reunited briefly but separated again. Leslie also came and slept with Rand one time and told Jon she was coming back then he didn't see her for months.

Rand recalls using Sharon Phillips as a babysitter in Ravensdale WA when Jon was very little. Later he vaguely recalls some neighbor kid babysitting Jon.

Leslie Gnagy -mother 253 666-3375

Leslie Gnagy states that she had gestational diabetes when pregnant with Jonathon who was very large when he was born at Valley General in Renton. He got very sick when he was 3- 4 weeks old, got dehydrated and had to spend time in intensive care.

Her husband Rand was abusive to her. He drank a lot and would yell at her, shove her and one time threw her against a wall and choked her. She was scared to death of Rand;

Harris mitigation

Page 7 of 11

who was getting mean with their son Randy. At one time he was diagnosed bi-polar but she's not aware if he has sought help for this or takes any medication.

When Jon was about six years old she left Rand Sr. and left Jon with his dad. She could not explain why she left Jon with Rand who was abusive. She was supposed to visit every other weekend and remembers having to call the police to assist with the kid swap. Rand would do things to make it impossible for her to see Jon. She filed a TRO against big Rand because little Rand was so terrified of him. Jon didn't tell her about any abuse he suffered until the last 4-5 years.

She was married for 6 weeks to Bob Waters when Jon was about 10. She divorced Waters then married Curt Nagy when Jon was about 14. He came to live with them briefly but then went back to his dad's.

She did not attend any school meetings regarding Jon but knew he was in special education because he had trouble learning and had no reading comprehension. She recalls him having a hearing problem and that he couldn't talk well for a long time. She doesn't know where Jon's surgery was done for his ears.

Leslie reports that Rand Sr. moved to Colorado when Jon went to prison. Once Jon was released he moved in with Leslie who has found him to have no self-esteem or self-confidence.

Jon has suffered from degenerative disc disease and has lower disc compression and a narrowing of the nerve in his back. As a result, he suffers from pain and had been taking pain medication prescribed by his doctor. According to Leslie Jon is a big gentle guy who tries to be helpful; does things for people who use him and take advantage of him. He's had a hard time in life.

Pat Mullin – Paternal Grandmother 719 542-2108

Pat is 82 years old and lives with her son Rand, Jon's father in Colorado which has always been her home. She seven children and tried to visit them all but never spent long with any one of them. Pat was a school teacher and recalls Jon being unable to hear or respond normally when he was a little boy. It concerned her and she told Leslie there was something wrong. Leslie drug her feet and did nothing for a long time. As a result, Jon's speech was very delayed and his hearing is still not right. He also had vision problems.

When Rand and Leslie split up Leslie didn't want Jon and that hurt him. Jon longed for his mom. Pat felt helpless to do much as she was in Colorado and didn't know much about the babysitters Jon had. She knows that Mother's Day was a hard day for him because he didn't have a mom. Pat was aware that Jon was in special education. She does not know about his use of alcohol but says he smoked. Close to graduation from high school Leslie finally decided to have Jon in her life. Pat believes it was just so she

Harris mitigation**Page 8 of 11**

could have his help around the house to do work. According to Pat alcohol was her son Rand and Jon's worst problem.

When Jon was little Rand was abusive; was on some kind of pill and he drank hard liquor and lots of beer. He didn't know what he was doing. One-time Rand shoved Pat when he was drunk. She thinks Jon was about 10 when this happened. She didn't see Rand hit Jon but knows people do bad with hard liquor and she told her son he shouldn't drink it any more after he shoved her. He still drinks according to Pat who has suffered throat cancer.

Rand Harris Jr. - brother**253 282-8678**

Rand Jr. is Jon's older brother. He states he has been harassed by people regarding his brother's case and does not want to be involved. He is married, has a new baby and lives very close to where Nicole White or her relatives live. He did tell me that their father was a monster who used to hit them all, all over the place. His statement to law enforcement confirms that Jon has had learning disabilities his whole life, and that he "...copped a lot of physical abuse from their dad who neglected him" (Bates 543). Rand also confirmed that Jon takes medication for back and leg pain and that Rand had given his brother some anxiety pills prescribed for Rand who is bipolar and states their father is too (Bates 544). Rand also confirmed that Jon "...gets really bad headaches and can't remember things" (Bates 546).

Sharon Phillips**253 630-9884 or 360 886-0935**

Phillips babysat Jon during the summer when he was in kindergarten. She recalls his family was going through tough times. His parents divorced and it was acrimonious. She recalls Leslie, the mother, complaining that her husband Rand was physically abusive. One time Leslie came over to the Phillips and said she was afraid of Rand. Phillips' husband had to threaten calling the police for Rand to leave. Phillips' memories of Jon as a little boy were that he had emotional problems. One time he hid in a shed on the property and she couldn't find him so called the police because he was missing. She recalls that Rand Sr. had a quick temper and was very loud and frightening. Although she didn't see Rand drink she thinks he did drink and that Rand Jr. tried to be protective of Jonathon.

Shantelle Deutch – friend**253 753-3577**

Shantelle recalls meeting Jon when he was in the 7th grade at Glacier Park Elementary school. They became very close friends who shared a lot by the time they got to middle school. She got to know his family very well and states Jon was used as a pawn between his parents with whom she has kept in touch over the years. Shantelle observed that Leslie and Rand Sr. hated each other then and still hate each other. Jon was damaged

emotionally when his mother left and chose his older brother to take with her. According to Shantelle, Rand Sr. was not equipped to be a single parent. He had a drinking problems and women were in and out of the house. She remembers Rand Sr. smoking marijuana in the garage with Jon when they were young. Jon shared with Shantelle that he was raped by a babysitter his father got for him when he was in elementary school. He was afraid, embarrassed, and humiliated and didn't want to tell his father.

Jon used to have blackouts and Deutch recalls him being treated for that. She believes these blackouts happened as a result of head trauma from his abuse in combination with the feeling of abandonment from his mother's having chosen his older brother to take with her when she left his father. Shantelle lived with Jon and his father for a time and has never experienced any violence from Jon whom she says is gentle and someone who has stood up for her and other women who were being bullied by others. She's never seen Jon exhibit any random violence.

Richard Reese (employer/friend)
253 405-776

Reese owns car repossession business. He has known Jon who worked for Reese on and off for ten years. Reese describes Jon as a "big strong goofy kid who looked at Reese like an uncle." Reese has known Jonathon to be one of the sweetest kindest people he knows and states that Jon reminded him of the Lennie Small character in of "Mice and Men"

Reese states that Jon, "has a big heart", and "...would fix anything for anyone," and wanted to help everyone." His biggest problem was that Jon had a "...kind of bi-polar manic depression problem and he would slump off when he'd get frustrated.

"When Jon drank he did stupid stuff "and that's why Reese couldn't hire Jon full time. Reese knew that Jon worked as a bouncer in a couple of bars and was fine when he wasn't drinking. Reese has never seen Jon be violent but if he got frustrated he would get depressed." One time Reese got called when Jon was drunk, crying and babbling like a baby." Reese talked to him like a man and told him to shape up; Jon agreed that Reese was right. It broke Jon's heart when his girlfriend cheated on him and he flew off the handle just before Jon's arrest for assault.

Reese knows Jon's mother and brother and said Jon didn't get along with his brother who was the mother's baby boy who got to stay with the mom. Everyone could count on Jon who would hurt himself to help others out. He was a good mechanic but was too big to fit into some places he needed to get. He was also good with tow trucks. but he's got mind of young boy. Jon is very immature and unable to grasp some things.

Marie Page, - former teacher

425 413-6200

206 498-4092

Page was a former teacher of Jon's at Tahoma High when he had his IEP. She recalls Jon's frustration at not being able to do some of the work and getting behind the other students. She also recalls Jon was a hands on person who did better when he had something physical to do but had trouble with reading and understanding instructions. Page was aware that Jon's dad seemed to go from woman to woman and that there were lots of arguments in Jon's home. She describes Jon's home life as not a positive environment. She said Jon would get frustrated and angry when other kids harassed him and at least once he got suspended for telling someone off. She would call him on his temper and was able to calm him down. She recalls when he got his DUI that she called him on the carpet for her and he listened and appreciated her concern. Both she and a para educator Elizabeth Richardson found Jon to be a very likable big kid who she calls a gentle giant. She found him to be very considerate. Jon visited Page at least a half dozen times after he left school.

Elizabeth Richardson –para professional

206 550-2470 or 206 382-7273

Richardson worked as a para professional at Tahoma school district and was assigned to help Jon one on one due to his status as a special education student. She found him to be a very pleasant person. He had problems with attention span but was able to succeed with tasks that required hands on. He was always good with Richardson; someone who followed the rules while she worked with him and she never saw him act out.

CONCLUSION

By pleading guilty, Jon has taken responsibility for taking a life. He should be shown some mercy in sentencing for the life that was taken from him as a child.

Before the age of five Jon experienced pain, fear, rejection, and abandonment. By the age of ten he was humiliated by sexual abuse. Jon had no control over and no help with any of these experiences. His parents, who should have helped, were too busy battling each other.

Children raised with chronic loss, without psychological or physical protection tend to internalize fear. The long-term impact of this can result in alienation, guilt, sleeping disorders and physical ailments, including drug and alcohol abuse, anxiety, depression, anger and grief (Myers 2005). Jon experienced all of these throughout his life

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Harris mitigation

Page 11 of 11

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NO: 15-1-02431-2

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JONATHAN DANIEL HARRIS,

Defendant.

NO. 15-1-02431-2

**DEFENSE ARGUMENT RE:
DETERMINATION OF SRA
OFFENDER SCORE AND STANDARD
RANGE**

I. RELEVANT FACTS

The Pierce County Prosecuting Attorney has filed three (3) Informations in this cause – each containing different charge(s). The original Information charging Felony Murder by Assault in the Second Degree and Declaration for Determination of Probable Cause were filed on June 23, 2015. An Amended Information charging Murder in the First Degree by Premeditation was filed with a Supplemental Declaration for Determination of Probable Cause was filed November 4, 2015. The Supplemental Declaration differed in content by adding two paragraphs at the end of the declaration regarding forensic examination by a King County Medical Examiner’s Office employee. On July 27, 2016, a Plea Agreement was filed. Only July 28, 2016, a Second Amended Information charging Murder in the Second Degree (Intentional) in Count I, Assault in the Second Degree, Count II, and Assault in the Third Degree, Count III. All three counts involve the same

DEFENSE ARGUMENT RE: DETERMINATION OF SRA
OFFENDER SCORE AND STANDARD RANGE - 1

LAW OFFICE OF JOHN H. HILL, III
WSBA #5663
2703 N. 31st Street
Tacoma, Washington 98407
253.318.3336

1 victim, but allege differing dates. The dates alleged for Counts II and III are fictitious. The
2 fictitious and contrived dates for Counts II and III are designed to enhance the Defendant's true
3 SRA offender score from 4 to 7, and resulting Standard Range re: Count I (Murder in the Second
4 Degree). Alleging separate fictitious crimes and dates is argued to preclude application of
5 'merger' sentencing doctrines, as well as SRA 'same course of criminal conduct' offender scoring
6 re: other current offenses. For convenience, the above documents (i.e. filed Informations and
7 Declarations) are contained in Attachment I.

9 On July 28, 2016, a Statement of Defendant on Plea of Guilty was filed together with an
10 Addendum to Plea form for In Re: Barr Pleas as to Counts II and III of the Second Amended
11 Information. The Statement of Defendant form, the Addendum and a copy of the Plea transcript
12 are contained for convenient reference in Attachment II.

13 The defendant has formally and explicitly objected in writing to the State's asserted
14 offender score calculation of seven (7) for Count I, Murder in the Second Degree, based on scoring
15 the fictitious current offenses and dates contained in Counts II and III. The defense asserts the
16 correct SRA Offender Score for Count I is four (4).

17 Relevant Standard Ranges are as follows:

- 18
- 19 1) Murder Second Degree: Offender Score of 4 = 165 - (215) - 265
20 Offender Score of 7 = 216 - (266) - 316
- 21 2) Murder First Degree: Offender Score of 4 = 281 - (328.5) - 374

22 **II. ISSUE PRESENTED**

23 **Whether an SRA Sentencing Court Determining a Disputed Offender Score and**
24 **Standard Range for Count I of Three Counts Must Score the Other Separate Counts**
25 **Alleged in the Same Information as Prior Offenses Pursuant to RCWs 9A.94A.525(1) and**
26 **9A.94A.589 in circumstances where 1) the Other Counts Allege the Same Victim; 2) the**
Other Counts are Lesser Included Offenses but for Alleged and Admittedly Fictitious Dates;
3) the Other Counts are Pled to on the Same Date as Count I; 4) the Other Counts are Based

1 on the 'Same Course of Criminal Conduct' but for the Contrived Dates; 5) the Other
2 Fictitious Counts are Added as Counts for the Sole and Express Purpose of Enhancing the
3 Defendant's SRA Offender Score and Standard Range Beyond His True Offender Score;
4 and 6) the Other Counts Are Based on Record That Does Not Adequately Demonstrate the
5 Defendant's Subjective and Affirmative Understanding of His Reasons for Pleading to
6 Fictitious Offenses and Has Attempted to Withdraw His Plea to Fictitious Counts?

5 III. ARGUMENTS

6 A. **When an SRA Offender Score/Standard Range are Disputed the Sentencing Court**
7 **Bears the Responsibility to Determine the Correct Offender Score/Standard Range.**
8 **In Doing so the Court is Not Bound by the Parties Recommendation or Plea**
9 **Agreement Regarding the Correct Offender Score/Standard Range. The Defendant**
10 **Formally and Explicitly Has Disputed and Objected to the Offender Score/Standard**
11 **Range Set Forth in this Plea Agreement.**

12 When, as here, an Offender Score is disputed, the law appears clear and well settled
13 regarding the Court's responsibility.

14 RCW 9.94A.441 provides:

15 The prosecuting attorney and the defendant shall each provide the
16 court with their understanding of what the defendant's criminal
17 history is prior to a plea of guilty pursuant to a plea agreement. All
18 disputed issues as to criminal history shall be decided at the
19 sentencing hearing.

20 The prosecutor and defendant may agree to 'sentencing' as part of a plea agreement but the
21 Sentencing Court bears the ultimate responsibility to determine the correct Offender Score and
22 Sentencing Range. St. v. Malone, 138 Wash.App. 587, 157 P.3d 909 (2007). The burden of
23 establishing criminal history et al for the purpose of a dispute offender score is by a preponderance
24 and lies with the prosecution. St. v. Ammons, 105 Wash.2d 175, 713 P.2d 719 (1986); In Re
25 Goodwin, 146 Wash.2d 861, 50 P.3d 618 (2002). And see St. v. Harris, 102 Wash.App. 275, 6
26 P.3d 1218 (2000); St. v. Wakefield, 130 Wash.2d 464, 925 P.2d 183 (1996).

A Sentencing Court acts without authority when it imposes a sentence based on a
wrongfully determined Offender Score. State v. Bush, 102 Wash.App. 372 (2000); State v.

1 Mitchell, 81 Wash.App. 387 (1996). Such a sentence above the correct Standard Range is subject
2 to statutory and constitutional restrictions and procedures indisputably not complied with herein.
3 See Blakely v. Washington, 542 U.S. 961, 125 S.Ct. 21 (2004); and RCW 9.94A.53.

4 **B. The Record Herein Fails to Establish The Essential Criteria Required By Law For**
5 **Validity Of Conviction to Counts II and III Which Are Indisputably Fictitiously Based**
6 **For The Purpose of Enhancing an SRA Offender Score and Standard Range Sentence.**

7 The Defendant has been found guilty of Count II (Assault in the Second Degree) and Count
8 III (Assault in the Third Degree). The record for such finding is contained in the materials
9 attached – i.e. the Information (Felony Murder in the Second Degree) and Declaration for
10 Determining Probable Cause (filed 06/23/15); the Amended Information (Premeditated Murder
11 in the First Degree) and Supplemental Declaration for Determination of Probable Cause (filed
12 11/04/15); the Second Amended Information (filed 07/27/16); the Statement of Defendant on Plea
13 of Guilty (filed 7/28/16); the Plea Agreement (filed 07/27/16); the Addendum to Plea Form for In
14 Re Barr Pleas (filed 07/28/16); and the Transcript on Plea of Guilty – dated July 28, 2016.

15
16 Because Counts II and III are indisputably fictitious and did not occur as alleged in the
17 Second Amended Information, the finding of guilty must be supported in the record by a unique
18 factual basis. The Washington Supreme Court has set forth the essential criteria that must be of
19 record to support the finding at In the Matter of the Personal Restraint Petition of Terry Patrick
20 Barr, 102 Wash.2d 265; 684 P.2d, 712 (1984). (See Attachment III)¹

21
22 While the legal factual and procedural postures of Barr and the case herein are
23 materially distinguishable, the case does establish minimal constitutional criteria that must be
24

25 ¹It should be noted that Barr is a pre-SRA case, coming to the Court after appeal in the posture of a Personal Restraint Petition.
26 As such, it does not contain an analysis of using fictitious pleas added to enhance SRA Offender Scores/Standard Ranges
outside true calculations. Thus Barr is not precedent for using such contrived findings of guilt for disputed SRA determinations
that are central to the SRA's fundamental featuring reforms. None of the Justices involved in Barr currently serve on the
Court.

1 shown in the Court's record to support a finding of guilt based on a fictitious and not committed
2 "lesser" charge 'in order to avoid certain conviction for a greater offense.' Barr on Page 3 of
3 attachment.

4 The essential hold and criteria of Barr regarding such pleas is set forth as follows:

5 ...for the trial court to make the proper evaluation, the plea bargain must be fully
6 disclosed. The trial court must find a factual basis to support the original charge,
7 and determine the defendant understands the relationship of his conduct to that
8 charge. *Defendant must be aware that the evidence available to the State on the
original offense is sufficient to convince a jury of his guilt.*

9 Barr at page 3 in Attachment III. (*Emphasis added*).

10 For constitutional purposes (v. SRA purposes) the record must establish a factual basis for
11 the crimes 'originally charged' (i.e., the greater charge of Murder in the First Degree here) and
12 reveal the defendant's understanding of his complicity of that charge.

13 A close reading of the record herein described above does not demonstrate that the
14 defendant understood that he was pleading to contrived charges he did not commit to avoid his
15 conviction and harsher sentence of the Standard Range applicable to Premeditated Murder in the
16 First Degree²

17 The Plea Agreement: The Plea Agreement contains nothing pertinent to the Barr criteria.
18 In fact, in the section of the plea agreement entitled 'Factual Basis for the Plea' regarding Counts
19 II and III, it merely states "...the defendant understands that by entering In re Barr plea of guilty
20 to Counts II and III of the Second Amended Information, he is entering pleas of guilty to crimes
21 he did not commit and for which there is no factual basis, but is doing so in order to take advantage
22 of the plea agreement reached with the State." Nowhere in the plea agreement does the Defendant
23
24
25

26 ²Indeed, the standard range for Murder in the Second Degree being recommended by the State is well above the minimum
Standard Range Defendant would be subjected to for Murder in the First Degree.

1 acquiesce to or even address his alleged complicity in or the sufficiency of evidence regarding the
2 greater charge of Premeditated Murder as required by Barr.

3 Addendum to Plea Form for In Re Barr Pleas: This Addendum is set forth in Attachment
4 II. The defense asserts that this document is confusing on its face and never makes reference to
5 the defendant's acknowledgement regarding either the probable sufficiency of evidence regarding
6 Murder in the First Degree or that believes he would be convicted of Murder in the First Degree.
7 The Addendum begins by defining the 'original charge' as Murder in the Second Degree.
8 'Original Charge' is the language of Barr used to define this 'greater charge' which is being
9 reduced for the benefit of a defendant. The awkward use of language in the Barr Addendum
10 regarding 'original charge' and amended charge make the purpose of the addendum confused and
11 difficult for a lay person to understand much less a person of defendant's documented capacity
12 issues. (See Mitigation Package filed herein.) By defining the 'original charge' as Murder in the
13 Second Degree, a charge to which the defendant plead on its merits, the document makes any
14 interpretation relevant to the essential criteria of Barr impossible.
15

16
17 Normally, the language of the Barr Addendum submitted would be sufficient where there
18 is only one original information containing the 'greater charge'. But here, because there are three
19 information's, the Addendum's boilerplate language fails. The record regarding defendant's
20 understanding of whether the evidence regarding the greater charge pertaining to Murder in the
21 First Degree to convict him is confused, convoluted, conclusory, and factually insufficient.
22

23 Plea Colloquy. The defense believes that the relevant part of the plea colloquy to Counts
24 II and III are on pages 20 and 21 of the attached transcript. Essentially, the defendant was told
25 that the Court had read the "*original* declaration that support the *original* charges, the prosecutor's
26 statement. I believe that does support the charges . . . more serious charges frankly, and I'm

1 incorporating that into this statement of defendant on plea of guilty.” Transcript at page 20, 21.

2 (*Emphasis added*)

3 It is not hard to see that where the prosecutor’s Barr addendum defines ‘original charge’ as
4 Murder in the Second Degree (not Murder in the First Degree) that the Court’s Statement to
5 defendant Harris would carry the same definition. Further, it is not the Court’s understanding that
6 is at issue. Nowhere in the colloquy regarding Counts II and III is there any clear or meaningful
7 discussion regarding the defendant’s understanding of the evidence establishing probable
8 conviction to Murder in the First Degree or that he acknowledges such a belief. Nowhere as in
9 Barr, is there the lengthy discussion of the defendant’s relation to the evidence supporting Murder
10 in the First Degree and the Defendant’s reasons to believe he would probably be convicted of
11 Murder in the First Degree.
12

13
14 In summary, the record is insufficient to meet the law’s constitutional criteria for supporting
15 the finding of guilt on Counts II and III and, therefore, they should not be considered in
16 determining his SRA Offender Score and Standard Range for Sentencing.

17 **C. The Pierce County Prosecutor is Prohibited From Inventing and Posturing Fictitious**
18 **Offenses for the Sole Purpose of Enhancing SRA Offender Scoring and Standard**
19 **Range Sentencing Beyond What Would Otherwise be an Offenders Maximum**
20 **Sentence. The Contrived Offender Scoring Posture Urged by the Prosecutor**
21 **Amounts to Prosecutorial Overreaching of its Authority, Conflicts with the Central**
22 **Purpose and Authority of Washington’s Sentencing Reform Act, Conflicts with**
23 **Washington Sentencing Case Law Regarding Sentencing Merger, and Conflicts with**
24 **U.S. Supreme Court Constitutional Requirements for Sentencing That Exceeds a**
25 **Washington Offender’s True Standard Range Maximum Sentence.**

26 The Defense concedes the Prosecutions actions are done in good faith. Nonetheless, the
proposed use of Counts II and III by the Prosecutor would purposefully result in a materially false
SRA Offender Score/Standard Range for the purpose of exceeding the Defendant’s true Standard
range maximum sentence in Washington as defined by the U.S. Supreme Court. The proposed

1 scoring also is in conflict with Washington established sentencing case law and the fundamental
2 purposes of Washington's Sentencing Reform Act.

3 Conflict With Washington's Sentencing Reform Act: The central purpose of Washington's
4 Sentencing Reform Act (SRA) is to impose sentences that apply equally to offenders without
5 discrimination as to any element that does not relate to the crime. The SRA's primary means of
6 accomplishing this is done through a Standard Range grid determined by intersecting offender
7 scores and Offense Seriousness Levels. Neither the State nor a Sentencing Court have authority
8 to defeat the SRA's purpose by manipulating or contriving false and fictitious Offender
9 Scoring/Standard Ranges. It is the Sentencing Courts duty and responsibility to assure the
10 integrity of the SRA's scoring process and neither the Court nor the Prosecutor is allowed to
11 manipulate or contrive an Offender Score. See RCW 9.94A.421(6), prohibiting omission of prior
12 offenses in calculating Offender Score. Surely it is equally appropriate to prohibit a manufactured
13 Offender Score based on invented offenses for the purpose of exceeding a correct standard range
14 maximum sentence. The fundamental purpose of the SRA cannot be subject to such executive
15 overreach. While there may be circumstances that allow Barr pleas finding of guilt to be the basis
16 for an SRA scoring – they are not present here. The degree of manipulation here far exceeds
17 acceptable tolerance consistent with SRA purposes, sentencing case law, and constitutional
18 restrictions imposed on sentences exceeding the legislature's true standard range/maximum
19 sentence.
20
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23 A plea agreement regarding a contrived offender score may not justify an enhanced
24 sentencing range where the purposes of the Sentencing Reform Act (SRA) are not served by such
25 a sentencing in accordance with an agreement. St. v. Gronnert, 122 Wash.App. 214, 93 P.3d 200
26 (2004).

1 Judicial Case law – Merger/Same Court of Criminal Conduct: The contrived offenses of
2 Count II and III here are essentially lesser included offenses to Count I involving the same victim
3 and same course criminal conduct that were pled to on the same day as Count I. Therefore, under
4 well-established doctrine and case law regarding sentencing ‘merger,’ if interpretation of crimes
5 pled to on the same date as Count I that encompass the ‘same course of criminal conduct’ (see
6 RCW 9.94A.589(1)(a)), Counts I, II and II would be treated as one offense. Here, part of the
7 prosecutor’s effort to evade those doctrines, Counts II and III contain fictitious dates for said
8 offenses thereby contriving argument that enhances the true Offender Score/Standard Range that
9 far exceeds the correct Standard Range sentence to one that overlaps the Standard Range provided
10 for the Amended out greater charge of Murder in the First Degree.
11

12 In such circumstances, the Court should find that the purpose of the Act, together with
13 judicial doctrines regarding sentencing merger, requires the Court to score all three counts as one
14 for purposes of determining the appropriate SRA Offender Score/Standard Range. The Supreme
15 Court of Washington’s view of sentencing merger is contained in St. v. Freeman, 153 Wash.2d
16 765 (2005).
17

18 Constitutional Restrictions – Blakely v. Washington, 542 U.S. 961, 125 S.Ct. 21 (2004).

19 In 2004, the U.S. Supreme Court held that Washington sentencing courts cannot exceed a
20 correctly scored SRA Standard Range Sentence without the right to trial by jury of facts necessary
21 to exceed the statutory Standard Range maximum. The true Standard Range for Count I, Murder
22 in the Second Degree is 165 months to 265 months based on an Offender Score of 4. The
23 prosecutors seeks a sentence of 316 months, based on an Offender Score of 7. The defense asserts
24 that a sentence above 265 months puts the defendant squarely in the parameters of Blakely, id. It
25 is indisputable that the defendant does not and has not waived his constitutional rights outlined in
26

1 Blakely, - eq. rights to notice and jury trial regarding fact(s) necessary to exceed a standard range
2 sentence. Therefore, the defendant's sentencing Court may not impose a sentence for Count I of
3 265 months.

4 **IV. CONCLUSION**

5 The defense argues that it is the Sentencing Court's duty and responsibility to determine
6 the Defendant's correct offender Score/Standard Range. The correct Offender Score is not
7 controlled by plea agreement or the Pierce County Prosecuting Attorney's Office. Reliance on
8 the Prosecutions Offender Score fictitiously based calculation regarding Counts II and III is in
9 error because it conflicts with the Sentencing Reform Acts purpose and intent; because it conflicts
10 with established judicial sentencing principles/doctrines regarding merger and same course of
11 criminal conduct; and it results in exceeding the true standard range maximum sentence without
12 complying with constitutional requirements established by the United States Supreme Court
13 pertaining to Washington Sentencing.
14

15
16 RESPECTFULLY SUBMITTED this 28th day of October 2016.

17
18 s/John H. Hill, III
19 JOHN H. HILL, III, WSBA#5663
20 Attorney for Defendant
21
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ATTACHMENT I

June 23 2015 1:51 PM

KEVIN STOCK
COUNTY CLERK

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 15-1-02431-2

vs.

JONATHAN DANIEL HARRIS,

INFORMATION

Defendant.

DOB: 4/24/1986

SEX : MALE

RACE: WHITE

PCN#:

SID#: 23980556

DOL#: WA HARRIID145J4

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JONATHAN DANIEL HARRIS of the crime of MURDER IN THE SECOND DEGREE, committed as follows:

That JONATHAN DANIEL HARRIS, in the State of Washington, during the period between the 6th day of June, 2015 and the 7th day of June, 2015, did unlawfully and feloniously, while committing or attempting to commit the felony crime of assault in the second degree, and in the course of and in furtherance of said crime or in immediate flight therefrom, did cause the death of Nicole White, a human being, not a participant in said crime, on or about the 7th day of June, 2015, contrary to RCW 9A.32.050(1)(b), and against the peace and dignity of the State of Washington.

DATED this 23rd day of June, 2015.

PIERCE COUNTY SHERIFF
WA02700

MARK LINDQUIST
Pierce County Prosecuting Attorney

jea

By: /s/ JARED AUSSERER
JARED AUSSERER
Deputy Prosecuting Attorney
WSB#: 32719

INFORMATION- 1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

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INFORMATION- 2

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

June 23 2015 1:52 PM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 15-1-02431-2

vs.

JONATHAN DANIEL HARRIS,

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE

Defendant.

JARED AUSSERER, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the PIERCE COUNTY SHERIFF, incident number 151590605;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, the defendant, JONATHAN DANIEL HARRIS, did commit the crime of second degree.

On June 23, 2015, detectives and an FBI agent provided the following information:

On June 6, 2015, Nicole White was seen leaving a bar in Spanaway with Jonathan Harris, the defendant. When White did not return home June 7, 2015, she was reported missing. White's vehicle was found abandoned near the defendant's residence.

Harris told detectives that he met White at the bar and that she gave him a ride home. Before they reached the defendant's residence he asked White to stop at a convenience store so he could use the restroom. Harris said that he went into the store to use the restroom, and when he came out White was gone. Harris reported that he used a pay phone to call White, but that she did not answer. He told detectives that he then walked home and had not seen White since.

Detectives contacted the bar and obtained video footage of Harris and White together. Harris was wearing a dark hooded sweatshirt. A sweatshirt was recovered at the defendant's residence that appeared to be the same as depicted in the video. Detectives located blood on the sweatshirt, and the blood was analyzed and determined to be White's blood. Detectives processed the defendant's residence and located several areas of blood that are being processed.

Detectives contacted the convenience store that Harris claimed to have used the restroom at and where he last saw White. The attendant reported that he had not seen Harris on June 6 or the early morning hours on June 7, 2015, and said customers are not allowed to use the restroom at the time that Harris said he was there. Detectives reviewed video evidence from the store and Harris did not enter the store as he reported. There was no pay phone at the store.

While searching the defendant's residence detectives contacted his neighbor. The neighbor reported that a woman matching White's description arrived at her residence on June 6, 2015, at approximately 10 pm and asked for the defendant. The same neighbor told detectives that she heard a female screaming at the defendant's residence at 4 am on June 7, 2015. The screaming stopped abruptly.

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 The defendant's vehicle was equipped with an ignition interlock device. This device
 2 obtains photographic images when Harris blows into it. On June 7, 2015, the device obtained an
 3 image of the defendant, and the photograph revealed that his vehicle was in a wooded area. The
 4 defendant's phone records indicated that his phone was registering off of a tower with landscape
 5 that is consistent with the photograph the ignition interlock device recorded. On June 20, 2015,
 6 detectives located a body around the area that the defendant's phone was registering.

7 The body was located at the bottom of an embankment and was wrapped in a canvass and
 8 the canvass was wrapped in a green tarp. The body was badly decomposed, but there was a
 9 visible tattoo on one of the legs. The medical examiner was able to determine that the remains
 10 were of a female body, approximately the same height as White. White's family confirmed that
 11 the tattoo that was visible was White's. White had a skull fracture, an orbital fracture, a
 12 fractured sternum, and several broken ribs. The medical examiner classified White's death as a
 13 homicide.

14 Harris had previously been arrested on federal charges. When he was being processed
 15 detectives noted that he several injuries to his body. He had multiple abrasions on his right arm.
 16 His right wrist was swollen. He had abrasions on both knees. He had an abrasion on his side
 17 and on his back. Harris claimed that his injuries were sustained when he fell off of a stool at the
 18 bar that he and White met. The bartender told detectives that Harris never fell off his stool and
 19 did not sustain injuries while at the bar.

20
 21 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
 22 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

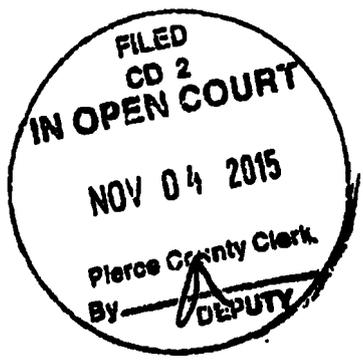
23 DATED: June 23, 2015
 24 PLACE: TACOMA, WA

 /s/ JARED AUSSERER
 JARED AUSSERER, WSB# 32719

DECLARATION FOR DETERMINATION
 OF PROBABLE CAUSE -2

Office of the Prosecuting Attorney
 930 Tacoma Avenue South, Room 946
 Tacoma, WA 98402-2171
 Main Office (253) 798-7400

11/5/2015 9:21 0209



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,	
Plaintiff,	CAUSE NO. 15-1-02431-2
vs.	
JONATHAN DANIEL HARRIS,	AMENDED INFORMATION
Defendant.	

DOB: 4/24/1986	SEX : MALE	RACE: WHITE
PCN#:	SID#: 23980556	DOL#: WA HARRIJD145J4

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JONATHAN DANIEL HARRIS of the crime of MURDER IN THE FIRST DEGREE, committed as follows:

That JONATHAN DANIEL HARRIS, in the State of Washington, during the period between the 6th day of June, 2015 and the 7th day of June, 2015, did unlawfully and feloniously, with premeditated intent to cause the death of another person, cause the death of such person or a third person, Nicole White, a human being, on or about the 7th day of June, 2015, contrary to RCW 9A.32.030(1)(a), and against the peace and dignity of the State of Washington.

DATED this 3rd day of November, 2015.

PIERCE COUNTY SHERIFF
WA02700

MARK LINDQUIST
Pierce County Prosecuting Attorney

jea

By: 
JARED AUSSERER
 Deputy Prosecuting Attorney
 WSB#: 32719

AMENDED INFORMATION- I

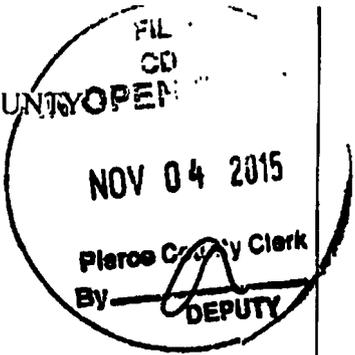
 ORIGINAL

Office of the Prosecuting Attorney
 930 Tacoma Avenue South, Room 946
 Tacoma, WA 98402-2171
 Main Office (253) 798-7400



15-1-02431-2 45838469 ADPCSP 11-05-15

WASHINGTON FOR PIERCE COUNTY OPEN



STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 15-1-02431-2

vs.

JONATHAN DANIEL HARRIS,

SUPPLEMENTAL DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

Defendant.

JARED AUSSERER, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the PIERCE COUNTY SHERIFF, incident number 151590605;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, the defendant, JONATHAN DANIEL HARRIS, did commit the crime of second degree.

On June 23, 2015, detectives and an FBI agent provided the following information:

On June 6, 2015, Nicole White was seen leaving a bar in Spanaway with Jonathan Harris, the defendant. When White did not return home June 7, 2015, she was reported missing. White's vehicle was found abandoned near the defendant's residence.

Harris told detectives that he met White at the bar and that she gave him a ride home. Before they reached the defendant's residence he asked White to stop at a convenience store so he could use the restroom. Harris said that he went into the store to use the restroom, and when he came out White was gone. Harris reported that he used a pay phone to call White, but that she did not answer. He told detectives that he then walked home and had not seen White since.

Detectives contacted the bar and obtained video footage of Harris and White together. Harris was wearing a dark hooded sweatshirt. A sweatshirt was recovered at the defendant's residence that appeared to be the same as depicted in the video. Detectives located blood on the sweatshirt, and the blood was analyzed and determined to be White's blood. Detectives processed the defendant's residence and located several areas of blood that are being processed.

Detectives contacted the convenience store that Harris claimed to have used the restroom at and where he last saw White. The attendant reported that he had not seen Harris on June 6 or the early morning hours on June 7, 2015, and said customers are not allowed to use the restroom at the time that Harris said he was there. Detectives reviewed video evidence from the store and Harris did not enter the store as he reported. There was no pay phone at the store.

While searching the defendant's residence detectives contacted his neighbor. The neighbor reported that a woman matching White's description arrived at her residence on June 6, 2015, at approximately 10 pm and asked for the defendant. The same neighbor told detectives that she heard a female screaming at the defendant's residence at 4 am on June 7, 2015. The screaming stopped abruptly.

SUPPLEMENTAL DECLARATION FOR DETERMINATION OF PROBABLE CAUSE - I

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

ORIGINAL

1 The defendant's vehicle was equipped with an ignition interlock device. This device
2 obtains photographic images when Harris blows into it. On June 7, 2015, the device obtained an
3 image of the defendant, and the photograph revealed that his vehicle was in a wooded area. The
4 defendant's phone records indicated that his phone was registering off of a tower with landscape
5 that is consistent with the photograph the ignition interlock device recorded. On June 20, 2015,
6 detectives located a body around the area that the defendant's phone was registering.

7 The body was located at the bottom of an embankment and was wrapped in a canvass and
8 the canvass was wrapped in a green tarp. The body was badly decomposed, but there was a
9 visible tattoo on one of the legs. The medical examiner was able to determine that the remains
10 were of a female body, approximately the same height as White. White's family confirmed that
11 the tattoo that was visible was White's. White had a skull fracture, an orbital fracture, a
12 fractured sternum, and several broken ribs. The medical examiner classified White's death as a
13 homicide.

14 Harris had previously been arrested on federal charges. When he was being processed
15 detectives noted that he several injuries to his body. He had multiple abrasions on his right arm.
16 His right wrist was swollen. He had abrasions on both knees. He had an abrasion on his side
17 and on his back. Harris claimed that his injuries were sustained when he fell off of a stool at the
18 bar that he and White met. The bartender told detectives that Harris never fell off his stool and
19 did not sustain injuries while at the bar.

20 White's remains were analyzed by Katherine Taylor, forensic anthropologist with the
21 King County Medical Examiner's Office. Taylor documents cranium fractures fragment the
22 right zygomatic bone into two pieces and separate the maxilla from the remainder of the
23 cranium. There were additional linear fractures involving both nasal bones, both eye orbitals,
24 three fractures to the right side of the frontal bone, a fracture from the mid left parietal along the
left inferior lambdoidal suture across the sphenoid across the orbital plates, a fracture of the left
zygo-frontal suture, a fracture of the left zygomatic temporal suture, and a fracture of the right
greater wing of the sphenoid and squamous of the right temporal bone. The mandible was
present in four pieces.

Taylor also analyzed White's sternum and found a complete, slightly diagonal, transverse
fracture coursing from the inferior border of the left third costal notch to the superior border of
the right third costal notch. Detectives reported that, in speaking with Taylor, this injury is
consistent with being stomped.

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

20 DATED: June 23, 2015
21 PLACE: TACOMA, WA

22 
23 _____
24 JARED AUSSERER, WSB# 32719

SUPPLEMENTAL DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -2

Office of the Prosecuting Attorney
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Main Office (253) 798-7400

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18-1-02431-2 47315878 AMINF2 07-28-16



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 15-1-02431-2

vs.

JONATHAN DANIEL HARRIS,

Defendant.

SECOND AMENDED INFORMATION

DOB: 4/24/1986
PCN#:

SEX : MALE
SID#: 23980556

RACE: WHITE
DOL#: WA HARRIJD145J4

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JONATHAN DANIEL HARRIS of the crime of MURDER IN THE SECOND DEGREE, committed as follows:

That JONATHAN DANIEL HARRIS, in the State of Washington, on or about the 7th day of June, 2015, did unlawfully and feloniously, with intent to cause the death of another person, severely beat Nicole White, thereby causing the death of Nicole White, a human being, on or about the 7th day of June, 2015, contrary to RCW 9A.32.050(1)(a), and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JONATHAN DANIEL HARRIS of the crime of ASSAULT IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That JONATHAN DANIEL HARRIS, in the State of Washington, on or about the 6th day of June, 2015, did unlawfully and feloniously, under circumstances not amounting to assault in the first

SECOND AMENDED INFORMATION- 1

ORIGINAL

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930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

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degree, intentionally assault another and thereby recklessly inflict substantial bodily harm, contrary to RCW 9A.36.021, and against the peace and dignity of the State of Washington.

COUNT III

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JONATHAN DANIEL HARRIS of the crime of ASSAULT IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That JONATHAN DANIEL HARRIS, in the State of Washington, on or about the 5th day of June, 2015, did unlawfully and feloniously, under circumstances not amounting to assault in the first or second degree, with criminal negligence, cause bodily harm to Nicole White, accompanied by substantial pain that extends for a period sufficient to cause considerable suffering, contrary to RCW 9A.36.031(1)(f), and against the peace and dignity of the State of Washington.

DATED this 25th day of July, 2016.

PIERCE COUNTY SHERIFF
WA02700

MARK LINDQUIST
Pierce County Prosecuting Attorney

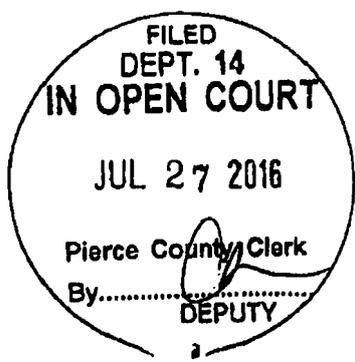
trl

By:



TIMOTHY LEWIS
Deputy Prosecuting Attorney
WSB#: 33767

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7/28/2016



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY
DEPARTMENT 14, JUDGE SUSAN K. SERKO

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 15-1-02431-2

vs.

JONATHAN DANIEL HARRIS,

PLEA AGREEMENT

Defendant.

COMES NOW, the plaintiff, the State of Washington, by and through its attorney, Pierce County Prosecuting Attorney Mark E. Lindquist, by and through his deputies, Jared Ausserer and Tim Lewis, Deputy Prosecuting Attorneys, and the defendant, Jonathan Daniel Harris, represented by counsels Mark Quigley and David Katayama, have entered into a plea agreement resolving this case pursuant to Revised Code of Washington (RCW) 9.94A.421. The terms of the plea agreement between the State of Washington and the defendant are as follows:

1. **Offenses and Maximum Penalties:**

The Defendant agrees to plead guilty to each count in the second amended Information presented by the State, contingent upon the Court's acceptance of the second amended Information, in which the Defendant is charged in Count I with Murder in the Second Degree, contrary to RCW 9A.32.050(1)(a), Count II with Assault in the Second Degree, contrary to RCW 9A.36.021, and Count III with Assault in the Third Degree, contrary to RCW 9A.36.031(1)(f).

The Defendant understands that Murder in the Second Degree, as charged in Count I of the



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1 second amended Information, is a Class "A" Felony Crime, punishable by up to life
2 imprisonment and a \$50,000 fine per RCW 9A.20.021. The Defendant understands that Assault
3 in the Second Degree, as charged in Count II of the second amended Information, is a Class "B"
4 Felony Crime, punishable by up to 10 years imprisonment and a \$20,000 fine per RCW
5 9A.20.021. The defendant understands that Assault in the Third Degree, as charged in Count III
6 of the second amended Information, is a Class "C" Felony Crime, punishable by up to 5 years
7 imprisonment and a \$10,000 fine per RCW 9A.20.021. The defendant understands that Murder
8 in the Second Degree, as charged in the second amended Information, is a serious violent offense
9 per RCW 9.94A.030(45), and requires a term of 36 months of Community Custody upon release
10 from confinement per RCW 9.94A.701, and that violation of the terms of Community Custody
11 could result in additional terms of imprisonment. The defendant understands that Murder in the
12 Second Degree and Assault in the Second Degree, as charged in the second amended
13 Information, qualify as most serious or "strike" offenses per RCW 9.94A.030(32).
14

15
16 **2. Factual Basis for the Plea:**

17 The defendant will plead guilty to Murder in the Second Degree, as charged in Count I of
18 the second amended Information, because the defendant is in fact guilty of this charged offense.
19 The defendant stipulates that the facts and statements included in the plaintiff's Declarations for
20 Determination of Probable Cause are true and accurate, and that such facts and statements form a
21 factual basis for finding the defendant guilty of Murder in the Second Degree in the death of
22 Nicole White beyond a reasonable doubt.

23 The defendant will enter pleas of guilty to Assault in the Second Degree, as charged in
24 Count II of the second amended Information, and Assault in the Third Degree, as charged in
25

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1 Count III of the second amended Information, via *In re Barr* pleas. In re Barr, 102 Wn.2d 363
2 (1976). The defendant understands that by entering *In re Barr* pleas of guilty to Counts II and III
3 of the second amended Information, he is entering pleas of guilty to crimes he did not commit
4 and for which there is no factual basis, but is doing so in order to take advantage of the plea
5 agreement reached with the State.

6
7 **3. Waiver of Appeal:**

8 The defendant understands that he has a right to appeal his convictions. The defendant
9 understands that since he has entered pleas of guilty to the charges in the second amended
10 Information, he has waived his right to raise certain issues, as discussed in his Statement of
11 Defendant on Plea of Guilty, in an appeal. The defendant understands that he has a right to
12 appeal any sentence that is outside of his standard sentencing range. The defendant hereby
13 waives any and all other appellate rights pertaining to this conviction and sentence as part of this
14 plea agreement in accordance with *State v. Lee*, 132 Wash.2d 498, 505-506 (1997).
15

16
17 **4. Restitution:**

18 The defendant agrees to pay restitution as ordered by the Court pursuant to RCW
19 9.94A.753. The defendant waives any causation objection to the restitution amount ordered by
20 the Court otherwise available pursuant to *State v. Tobin*, 161 Wash.2d 517 (2007). The defendant
21 further stipulates that the Court may order or modify restitution amounts in this case beyond 180
22 days from time of sentencing as contemplated at RCW 9.94A.753(4) and waives his presence at
23 such hearings.
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5. Assistance and Advice of Counsel:

The defendant stipulates that he is completely satisfied with the representation afforded by his attorneys and that his attorneys have rendered effective assistance in their representation of him in this matter.

6. Sentencing Recommendation:

The defendant understands that pursuant to his pleas of guilty to the second amended Information filed by the State, for purposes of sentencing, he would present with an offender score of seven as to Counts I and II, and an offender score of four as to Count III. The standard sentencing range for Murder in the Second Degree with an offender score of seven is 216-316 months imprisonment. The standard sentencing range for Assault in the Second Degree with an offender score of seven is 43-57 months. The standard sentencing range for Assault in the Third Degree with an offender score of four is 12+-16 months imprisonment.

Contingent upon the defendant entering pleas of guilty to Counts I through III of the second amended Information, the State will make the following recommendation to the Court regarding sentencing:

Count I (Murder in the Second Degree): 316 months imprisonment concurrent with Counts II and III of the second amended Information. Credit for time served in custody since June 23, 2015. 36 Months Community Custody to be supervised by the Washington State Department of Corrections; comply with all conditions of community custody as prescribed in the judgement and sentence and imposed by the Department of Corrections Community Corrections Officer. Legal Financial Obligations in the form of \$500.00 CVPA, \$200.00 Court Costs, \$100.00 DNA Testing Fee.

Count II (Assault in the Second Degree): 57 months imprisonment concurrent with Counts I and III of the second amended Information. 18 Months Community Custody to be supervised by the Washington State Department of Corrections and comply with all conditions of community custody as prescribed in the judgement

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and sentence and imposed by the Department of Corrections Community Corrections Officer.

Count III (Assault in the Third Degree): 16 months imprisonment concurrent with Counts I and II of the second amended Information.

7. Allocation of Defendant

The defendant understands that fulfillment of his obligations under this plea agreement includes providing full, complete, and truthful responses to detectives of the Pierce County Sheriff's Department regarding any and all aspects of the crimes to which he is pleading guilty in this case. The defendant understands that his attorneys may be present for these interviews. The defendant understands that Deputy Prosecuting Attorneys may be present for these interviews. The defendant understands that these interviews will be audio recorded.

8. Role of the Court

The defendant stipulates that the Superior Court of the State of Washington, in and for the County of Pierce, has both personal and subject matter jurisdiction over him and this case and waives any objection to venue. The Defendant understands that the Court is not bound by the sentencing recommendation of either party pursuant to RCW 9.94A.431(2), but may impose any sentence within the standard sentencing range for each offense to which the defendant pleads guilty. The State of Washington makes no promise or representation concerning what sentence the Court will impose, and the defendant understands that he cannot withdraw his plea of guilty based upon the actual sentence imposed by the Court.

9. Nature of Agreement and Modifications:

This written agreement constitutes the complete plea agreement between the plaintiff, the State of Washington, and the defendant, Jonathan Daniel Harris. The Defendant acknowledges

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1 that no threats, promises, or representations have been made, nor agreements reached, other than
2 those set forth in writing in this plea agreement, to cause the defendant to plead guilty to the
3 charges as set forth in the second amended Information in this case.

4
5 DATED this 27 day of July, 2016.

6 MARK E. LINDQUIST
7 Prosecuting Attorney

8 By: 
9 Tim Lewis
10 Deputy Prosecuting Attorney
11 WSBA # 33767

12 **Defendant's Signature:** I hereby agree that I have consulted with my attorneys and fully
13 understand all rights I have as a criminal defendant as to these charges and that I am giving up
14 those rights by voluntarily entering into this plea agreement with the State of Washington, and by
15 entering pleas of guilty to the second amended Information in this case. I further understand that
16 the Sentencing Reform Act, RCW 9.94A, and the sentencing guidelines therein, apply fully to
17 my case, and that the Court is not bound by any recommendation of either party as to the
18 sentence I receive. I have read this plea agreement fully and reviewed each portion of this plea
19 agreement with my attorneys. I understand this agreement and voluntarily agree to it.

20
21 Date: 7/27/16

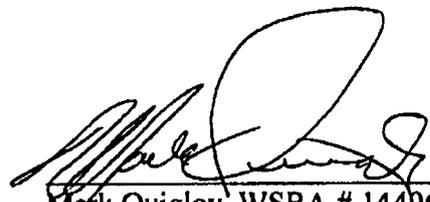
22 
Jonathan Daniel Harris, Defendant

23 **Defense Counsel Signature:** I am counsel for the defendant in this case. I have fully explained
24 to the defendant each and every right he has a criminal defendant, that he is giving up those
25 rights by entering into this plea agreement with the State of Washington, and by entering pleas of

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1 guilty to the second amended Information before this Court. I have explained to my client that
2 the Court is not bound by this plea agreement, nor the recommendation of either party, in
3 imposing sentence in this case. I have carefully reviewed every part of this plea agreement with
4 the defendant. To my knowledge, the defendant's decision to enter into this plea agreement is an
5 informed and voluntary one.

6
7 Date: 7-27-16


Mark Quigley, WSBA # 14496
Attorney for Defendant

8
9 Date: 7-27-16

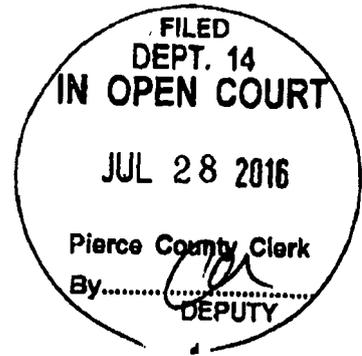

David Katayama, WSBA # 33758
Attorney for Defendant

ATTACHMENT II

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

STATE OF WASHINGTON,

Plaintiff,

vs.

JONATHAN DANIEL HARRIS,
D.O.B.: 04/24/1986

Defendant.

CAUSE NO. 15-1-02431-2

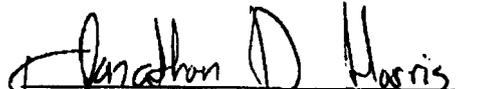
ADDENDUM TO PLEA FORM FOR *IN RE BARR* PLEAS AS TO COUNTS II AND III OF THE SECOND AMENDED INFORMATION

***In re Barr*, 102 Wn.2d 265 (1984):** As stated in my Statement of Defendant on Plea of Guilty, there is a factual basis to support the charge of Murder in the Second Degree as charged in the original Information filed in this case. The evidence available to the State in this case is sufficient to prove my guilt beyond a reasonable doubt for Murder in the Second Degree as charged in the original Information. In addition to my factual admissions in the plea form as to Count I of the second amended Information, Murder in the Second Degree, I recognize that I am also entering pleas of guilty to crimes that I in fact did not commit; namely Assault in the Second Degree, as charged in Count II of the second amended Information, and Assault in the Third Degree, as charged in Count III of the second amended Information. My attorney has discussed with me all of the elements of the original charge and the elements of the amended charges, and I understand them all. There is a factual basis for the original charge. I understand that the prosecution would be unable to prove the amended charges in Counts II and III at trial, but I see pleading guilty to the amended charges as being beneficial to me because it will allow me to avoid the risk of conviction on the greater charges I would face at trial. Based upon a review of the alternatives before me, I have decided to plead guilty to crimes I did not commit in order to take advantage of the State's pretrial offer. I understand the consequences of this plea agreement and I am making a voluntary and informed choice to enter into it.

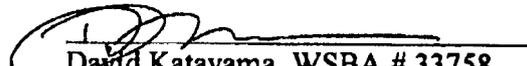
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I understand that the court must find a factual basis for the original charge and I agree that the court may consider my statement in the Defendant's Statement on Plea of Guilty, the declaration for determination of probable cause, and any other information presented by the prosecutor at the time of this plea to support the factual basis for the original charge.

DATED this 27th day of July, 2016.

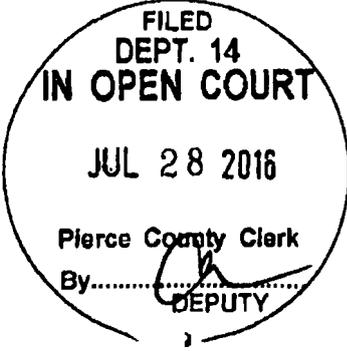

Jonathan Daniel Harris, Defendant


Mark Quigley, WSBA # 14496
Attorney for Defendant


David Katayama, WSBA # 33758
Attorney for Defendant

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Superior Court of Washington For Pierce County	
<u>State of Washington</u>	Plaintiff
vs.	
<u>Jonathan Daniel Harris</u>	Defendant

No. 15-1-02431-2

**Statement of Defendant on Plea of
GUILTY to Non-Sex Offense
(STTDFG)**

1. My true name is: Jonathan Daniel Harris
2. My age is: 30 Years
3. The last level of education I completed was 12th
4. **I Have Been Informed and Fully Understand That:**
 - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is: Mark Gulgley & Dave Katayama
 - (b) I am charged with the crime(s) of: Murder in the Second Degree (Count I), Assault in the Second Degree (Count II), Assault in the Third Degree (Count III) as set out in the second amended Information, dated July 25, 2016, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. [Signature]
(Defendant's initials)

The elements of this crime these crimes are as set out in the second amended Information, dated July 25, 2016 a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. [Signature]
(Defendant's initials)

 Additional counts are addressed in Attachment "B"
5. **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**

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[Handwritten signature]

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

6. In Considering the Consequences of My Guilty Plea, I Understand That:

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
1	7	216-316 Months	N/A	36 Months	Life/\$50,000
2	7	43-57 Months	N/A	18 Months	10 Years/\$20,000
3	4	12+-16 Months	N/A	N/A	5 Years/\$10,000

*The sentencing enhancement codes are: (RPh) Robbery of a pharmacy, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude. The following enhancements will run consecutively to all other parts of my entire sentence, including other enhancements and other counts: (F) Firearm, (D) Other deadly weapon, (V) VUCSA in protected zone, (JP) Juvenile present, (VH) Vehicular Homicide, see RCW 46.61.520, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (P16) Passenger(s) under age 16.

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this statement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the offender score, I understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

~~(f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.~~

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me for up to 12 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody term will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses as defined by RCW 9.94A.030(45)	36 months
Violent Offenses as defined by RCW 9.94A.030(54)	18 months

Crimes Against Persons as defined by RCW 9.94A.411(2)	12 months
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)	12 months
Offenses involving the unlawful possession of a firearm where the offender is a criminal street gang member or associate	12 months

Certain sentencing alternatives may also include community custody.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

(g) The prosecuting attorney will make the following recommendation to the judge:

The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

(h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing

Reform Act.

- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I may not possess, own, or have under my control any firearm, and under federal law any firearm or ammunition, unless my right to do so is restored by the court in which I am convicted or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.
- (k) **Loss of voting rights –Acknowledgment, 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 (i) a certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637; (ii) a court order issued by the sentencing court restoring the right, as provided in RCA 9.92.066; (iii) a final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or (iv) a certificate of restoration issued by the governor, as provided in RCW 9.96.020.

Voting before the right is either provisionally or fully restored is a class C felony under RCW 29A.84.660.

- (l) Government assistance may be suspended during any period of confinement.
- (m) I will be required to have a biological sample collected for purposes of DNA identification analysis. I will be required to pay a \$100.00 DNA collection fee.

Notification Relating to Specific Crimes: If any of the following paragraphs DO NOT APPLY, counsel and the defendant shall strike them out. The defendant and the judge

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8/1/2016

shall initial all paragraphs that DO APPLY.

 (n) This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

 (o) ~~The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement and up to one year of community custody plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.~~

 (p) ~~The judge may sentence me under the Parenting Sentencing Alternative if I qualify under RCW 9.94A.655. If I am eligible, the judge may order DOC to complete either a risk assessment report or a chemical dependency screening report, or both. If the judge decides to impose the Parenting Sentencing Alternative, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. The court may modify the conditions of community custody or impose sanctions. If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.~~

 (q) If this crime involves kidnapping involving a minor, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for complying with the new requirements.

 (r) If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

 (s) If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

 (t) ~~The judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. If I qualify and the judge is considering a residential chemical dependency treatment based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment based alternative.~~
If the judge imposes the prison based alternative, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will

also impose a term of community custody of one half of the midpoint of the standard range. If the judge imposes the residential chemical dependency treatment-based alternative, the sentence will consist of a term of community custody equal to one half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of three to six months, as set by the court.

As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

 (u)

If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

_____ (v) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, and if a fine is imposed, \$3,000 of the fine may not be suspended. RCW 69.50.401(2)(b).

_____ (w) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(e) and 21 U.S.C. § 862a.

 (x) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a motor vehicle in the commission of this felony.

_____ (y) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).

_____ (z) ~~If I am pleading guilty to felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.04A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements. In addition to any other costs of the ignition interlock device, I will be required to pay an additional fee of \$20 per month.~~

_____ (aa) ~~For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)), or felony physical control under the influence (RCW 46.61.504(6)), the court shall add 12 months to the standard sentence range for each child passenger under the age of 16 who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.~~

_____ (bb) ~~For the crimes of felony driving under the influence of intoxicating liquor, or any drug, for vehicular homicide while under the influence of intoxicating liquor, or any drug, the court may order me to reimburse reasonable emergency response costs up to \$2,500 per incident.~~

_____ (cc) ~~The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(a).~~

_____ (dd) ~~I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.~~

_____ (cc) ~~The offense(s) I am pleading guilty to include(s) a Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.~~

_____ (ff) ~~The offense(s) I am pleading guilty to include(s) a deadly weapon, firearm, or sexual motivation enhancement. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.~~

_____ (gg) ~~I am pleading guilty to (1) unlawful possession of a firearm(s) in the first or second degree and (2) felony theft of a firearm or possession of a stolen firearm, I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to unlawful possession of more than one firearm, I must serve each of the sentences for unlawful possession consecutively to each other.~~

~~_____ (hh) I may be required to register as a felony firearm offender under RCW 9.41.330 and RCW 9.41.333. The specific registration requirements are in the "Felony Firearm Offender Registration" Attachment.~~

~~_____ (ii) If I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.~~

~~_____ (jj) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense. RCW 9.94A.690~~

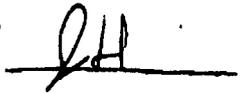
7. I plead guilty to count(s) I, II, & III as charged in the second amended Information, dated July 25, 2016. I have received a copy of that Information and reviewed it with my lawyer.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement
As to Count I, Murder in the Second Degree, in the early morning hours of June 7, 2015, at my residence in Pierce County, Washington State, with intent to cause her death, I severely beat Nicole White, a human being, and thereby caused her death. As to Counts II and III, please see the addendum to this plea form for In re Barr pleas.



Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" and/or "Felony Firearm Offender Registration" Attachment, if applicable. I understand and acknowledge them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

Jonathan D Morris
Defendant

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8/1/2015

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

[Signature]

Prosecuting Attorney

Tim Lewis 33767

Print Name WSBA No.

[Signature] 14496

Defendants Lawyer

Mark Quigley

Print Name WSBA No.

[Signature] 33758

The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

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

Interpreter's Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands. I have translated and interpreted this document for the defendant from English into that language. I have no reason to believe that the defendant does not fully understand both the interpretation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

Interpreter _____

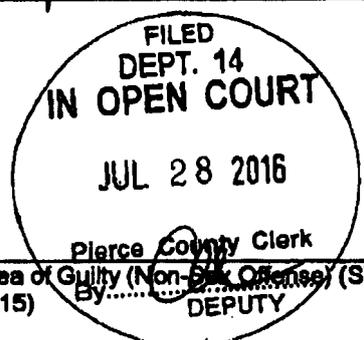
Print Name _____

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: 7/28/2016

[Signature]

Judge SUSAN K. SERKO



Statement on Plea of Guilty (Non-Serious Offense) (STTDFG) - Page 10 of 10
CrR 4.2(g) (6/2015) By _____ DEPUTY

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A P P E A R A N C E S

For the State of Washington:
TIMOTHY LEWIS
DEPUTY PROSECUTING ATTORNEY

For the Defendant:
MARK QUIGLEY
DAVID KATAYAMA
DEPARTMENT OF ASSIGNED COUNSEL

T A B L E O F C O N T E N T S

PROCEEDINGS PAGE

JULY 28, 2016

TESTIMONY

(No witnesses heard.)

OTHER

Plea, Colloquy..... 3

E X H I B I T

EXHIBIT DESCRIPTION MARKED/ADMITTED PAGE

(No exhibits marked or admitted.)

1 BE IT REMEMBERED that on THURSDAY, JULY 28, 2016, the
2 above-captioned cause came on duly for hearing before the
3 **HONORABLE SUSAN K. SERKO**, Judge of the Superior Court in and
4 for the County of Pierce, State of Washington; the following
5 proceedings were had, to wit:

6
7 <<<<<< >>>>>>

8
9 THE JUDICIAL ASSISTANT: All rise. Court's
10 reconvened.

11 THE COURT: Thank you. Please be seated. Good
12 afternoon.

13 MR. LEWIS: Good afternoon, Your Honor.

14 Your Honor, we are before the Court this afternoon on
15 State of Washington v. Jonathan Daniel Harris. May we have
16 Mr. Harris, please?

17 (Jail staff brings in the defendant.)

18 MR. LEWIS: And, Your Honor, for the record; Tim
19 Lewis appearing on behalf of the State of Washington. This
20 is State of Washington v. Jonathan Daniel Harris, Cause
21 Number 15-1-02431-2. Mr. Harris is present in the courtroom
22 to my right appearing in custody and represented by counsel
23 David Katayama and Mark Quigley.

24 Your Honor, the parties are before the Court today
25 pursuant to a plea agreement that has been reached by the

1 parties pursuant to RCW 9.94A.421. At this time the State
2 has provided to the Court a second amended information.
3 Attached to that second amended information is a prosecutor's
4 statement regarding the basis for that amendment. Contingent
5 upon the Court's acceptance of the filing of that second
6 amended information, the parties have also prepared and
7 handed forward for the Court's review a statement of
8 defendant on plea of guilty as well as an addendum to that
9 plea of guilty in the form of In Re Barr pleas as to Count 2
10 and Count 3.

11 Additionally, parties have completed and handed forward
12 a stipulation to offender score which the parties agree
13 accurately encompass and provide the Court with a complete
14 picture of the defendant's criminal history including prior
15 and current offenses which are before the Court.

16 THE COURT: Okay. They're all together here.
17 Probably want these stapled so that --

18 MR. LEWIS: We'll defer to the Court, Your Honor.

19 THE COURT: You don't want the stipulation stapled
20 to the --

21 MR. LEWIS: No, Your Honor.

22 THE COURT: -- statement of defendant on plea of
23 guilty. Is there anything else that I should remove?

24 MR. LEWIS: Not at this point, Your Honor.

25 THE COURT: Okay. What about the addendum?

1 MR. LEWIS: Your Honor, the addendum is actually
2 part of the plea form, so the State would ask --

3 THE COURT: Okay. So it's stay?

4 MR. LEWIS: -- that it remain as part and parcel
5 with the plea.

6 THE COURT: Okay. Who's done the redlining on this;
7 was that the defense or prosecution?

8 MR. LEWIS: Your Honor, I did it and then I provided
9 it to the defense to review and to also review with
10 Mr. Harris; and I can let Mr. Quigley speak to that.

11 THE COURT: All right. The other document I have in
12 front of me is a plea agreement; is that something that you
13 wish that the Court go through with the defendant?

14 MR. LEWIS: Your Honor, I don't believe that's
15 necessary, I don't believe the statute requires that. I
16 filed the original with your judicial assistant yesterday and
17 I also provided a bench copy. I think what the statute
18 contemplates is that the Court would review the proposed plea
19 agreement between the parties and indicate any concerns the
20 Court may have, if the Court has any concerns. But unless or
21 in the event the Court has some concern regarding the nature
22 of that agreement, it is not something that I think needs to
23 be put on the record or gone through with the parties.

24 THE COURT: Thank you. And then I suppose I can
25 wait for my questions until I've heard from the defense.

1 Mr. Quigley?

2 MR. QUIGLEY: Good afternoon, Your Honor. I'm Mark
3 Quigley, Dave Katayama standing to my right. We both
4 represent Mr. Harris who is present. As to the filing of the
5 amended information, Your Honor, we received a copy and we
6 shared it with Mr. Harris yesterday. We'll waive a formal
7 reading if the Court accepts it. If the Court does accept
8 it, we're prepared to plead guilty to it this afternoon. And
9 I'll make a further record about the colloquy I had with
10 Mr. Harris on the plea form at the appropriate time. Thanks.

11 THE COURT: Thank you.

12 You are Jonathan Daniel Harris, correct?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And your date of birth is April 24,
15 1986, correct?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: I have had a chance to review the second
18 amended information along with the prosecutor's statement in
19 support. I also had access to the other documents,
20 specifically the plea agreement which I had a chance to read.
21 I will accept the second amended information contingent on a
22 change of plea to the charges in this second amended
23 information. With that?

24 MR. QUIGLEY: Thank you, Your Honor. We've had many
25 discussions with Mr. Harris throughout our representation of

1 him. Yesterday, after much negotiation, we met with
2 Mr. Harris in the jail --

3 THE COURT: Can I stop you for a minute, I'm sorry.

4 MR. QUIGLEY: Sure.

5 THE COURT: It appears to me that someone is
6 recording in the back. The young lady in the front row, you
7 were holding a cell phone up.

8 A YOUNG WOMAN: Oh, yes.

9 THE COURT: Yeah, and either you were taking
10 pictures or making a recording, which is not allowed.

11 A YOUNG WOMAN: Oh, I'm sorry.

12 THE COURT: All right.

13 THE JUDICIAL ASSISTANT: You need to have that
14 completely turned off.

15 THE COURT: It needs to be turned off. If you could
16 make sure. And so that applies to everyone in the courtroom
17 please. We've had a lot of issues with cell phones lately in
18 this courthouse resulting in confiscation of cell phones.
19 And I'd rather not have to do that, so if you all could turn
20 off your cell phones and reassure me that you're not
21 recording. Our official record is up here, okay? Thank you.

22 I'm sorry, Mr. Quigley, go ahead please.

23 MR. QUIGLEY: Thank you, Your Honor. So, Your
24 Honor, we met with Mr. Harris yesterday in the jail and we
25 went through the plea form with him in detail. I can advise

1 the Court that I believe that Mr. Harris understands the
2 elements of this offense and the two other charges that he's
3 also pleading guilty to, which was part of our overall
4 negotiated settlement here. We discussed the elements
5 therefore of all three offenses; Mr. Harris is aware of
6 those. We discussed the rights he's giving up by pleading
7 guilty. We spent a lot of time discussing that; his initials
8 appear in the left-hand margin of that section of the plea
9 form, to include of course the right to go to trial in this
10 matter.

11 We discussed the recommendation of the Prosecutor's
12 Office which differs from our recommendation to the Court.
13 The respective recommendations are contained in the addendum
14 which is the plea agreement, which is incorporated as part of
15 the plea form, and it says that on the plea form. That plea
16 agreement is signed by all parties; Mr. Lewis, myself,
17 Mr. Katayama and Mr. Harris, and to that end we spent
18 significant time explaining to Mr. Harris the contents of
19 this plea agreement. I believe he understands them, I
20 believe he understands his obligations under this plea
21 agreement. I believe he understands what the State's going
22 to recommend and he understands what the defense is going to
23 recommend, and he understands that the Court is not bound by
24 any recommendation as long as the Court stays within the
25 bounds of the law. So that's the content of our discussion

1 regarding the plea agreement which again is an addendum to
2 the plea form.

3 We discussed the fact that there are collateral
4 consequences of a felony conviction that Mr. Harris is aware
5 of. First and foremost on this case, it's a strike offense,
6 Mr. Harris has a prior strike offense on his record;
7 therefore, at the time he's released from prison on this
8 matter he will have two strikes on his record. He's aware of
9 the consequences of a third strike which is life imprisonment
10 without the possibility of parole. He's also aware that he
11 will lose the right to have and possess a firearm,
12 ammunition, the right to vote, and other collateral
13 consequences that are part of a conviction for a felony.

14 The final paragraph is typewritten by Mr. Lewis. It
15 should be noted that Mr. Lewis prepared this plea form. It's
16 completely in the form that I would have prepared it. The
17 last paragraph is a typewritten statement prepared by
18 Mr. Lewis that supports a factual basis for the plea. As you
19 can see, there are two parts to it; the first is a factual
20 plea or a factual statement as to Count 1.

21 THE COURT: Right.

22 MR. QUIGLEY: The second part of that statement is
23 in the form of an In Re Barr plea. You will see that there
24 is another addendum regarding the In Re Barr plea that is
25 necessary of course because Counts 2 and 3 do not support the

1 facts as charged in this matter, the facts as we know them to
2 be. They are for purposes of a plea bargain and therefore we
3 have to use In Re Barr, the case, to do this.

4 Finally, the final page has my signature and
5 Mr. Harris's signature and Mr. Katayama's signature; which
6 indicates that we went through this form with him, answered
7 all of his questions. I believe he's proceeding this
8 afternoon freely and voluntarily with full knowledge of his
9 rights, and I would ask the Court to accept his plea and
10 inquire further of Mr. Harris.

11 THE COURT: Before I do that; did I understand you
12 to say that there were two addendums?

13 MR. QUIGLEY: Yes.

14 THE COURT: I see one.

15 MR. QUIGLEY: There should be in your packet.

16 MR. LEWIS: Your Honor, I believe that -- and
17 Mr. Quigley can correct me if I'm wrong -- there is an
18 addendum that is regarding the In Re Barr portion.

19 MR. QUIGLEY: Right.

20 THE COURT: In Re Barr, that's what I see.

21 MR. LEWIS: The second addendum that I believe
22 Mr. Quigley is referring to is the plea agreement itself.
23 And I believe why Mr. Quigley is referring to the plea
24 agreement itself is the Court will note, in the statement of
25 defendant on plea of guilty, rather than writing out the

1 prosecutor's recommendation as to each count, the box that is
2 checked is, please see attached plea agreement, or the
3 prosecutor's statement is contained within the attached plea
4 agreement which has also been filed with the Court. So I
5 believe that's why Mr. Quigley is referring to that as an
6 addendum to the plea because that is the document that
7 contains the recommendation that we had negotiated with Mr.
8 Harris and his attorneys that we would be making at the time
9 of sentencing.

10 THE COURT: All right. And, once again, you do not
11 believe it's necessary that I go through that plea agreement
12 with him?

13 MR. LEWIS: Your Honor, based on the colloquy --
14 excuse me, the record that Mr. Quigley just made wherein, as
15 I understood it, he had represented to the Court that he and
16 Mr. Katayama went through the entire plea agreement with
17 Mr. Harris and that Mr. Harris has had all of his questions
18 answered, I don't believe it's necessary but I will defer to
19 the defense counsel and the Court.

20 THE COURT: Any reason why I should go through that
21 plea agreement?

22 MR. KATAYAMA: Your Honor, I think it just needs to
23 be inquired that he understands and has read the plea
24 agreement with us.

25 THE COURT: All right. And one final question

1 before I speak directly with Mr. Harris, and that is the
2 prior Assault 2 in 2009 is the prior strike offense that
3 you're referring to, correct?

4 MR. QUIGLEY: Yes.

5 THE COURT: There's nothing else in this record that
6 I can see that would suggest that this could be his third
7 strike, correct?

8 MR. QUIGLEY: Correct.

9 THE COURT: Counsel are satisfied that that's the
10 case?

11 MR. QUIGLEY: Absolutely.

12 MR. KATAYAMA: Yes.

13 THE COURT: All right. Thank you.

14 MR. LEWIS: Your Honor, if I may also ask the Court
15 to clarify just one thing. I believe that on the statement
16 of defendant on plea of guilty, the statement of the
17 defendant which Mr. Quigley is right I typed out and
18 prepared, I believe Mr. Harris's initials do appear by that
19 factual statement, which the State understands to be
20 Mr. Harris adopting that statement as being accurate and
21 true.

22 MR. QUIGLEY: I neglected to add that to my
23 statement to you as to what we did regarding going off the
24 plea form. Yes, I discussed that statement with Mr. Harris,
25 his initials appear at the end of it. I'm sure you'll ask

1 him this question but my understanding is that initial
2 indicates his agreement to that statement.

3 THE COURT: I will.

4 MR. QUIGLEY: Thank you.

5 MR. LEWIS: Thank you, Your Honor.

6 THE COURT: All right. And at this time I'm about
7 to engage in a question and answer process with you directly,
8 Mr. Harris, with the blessing of your counsel. Before I do
9 that, I remind you that you have the right to remain silent;
10 you haven't given up that right yet but you're about to by
11 going through this process with me; do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you wish to give up the right to
14 remain silent and proceed?

15 THE DEFENDANT: No, ma'am -- or --

16 THE COURT: In other words, you still have the
17 constitutional right to remain silent, that's one of your
18 rights. But you're giving it up now by going through this
19 process with me and answering my questions; do you understand
20 that?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you wish to proceed?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. So what I'm about to do now
25 is go through this document with you, the statement of

1 defendant on plea of guilty. And my first question to you is
2 did you have a chance to go through this and read it
3 yourself?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Did you also go through it carefully
6 with counsel, Mr. Quigley and Mr. Katayama?

7 THE DEFENDANT: Yes, ma'am; I did.

8 THE COURT: Did you understand everything?

9 THE DEFENDANT: Yes, I did.

10 THE COURT: Were they able to answer all of your
11 questions?

12 THE DEFENDANT: Yes, they were very helpful.

13 THE COURT: Was there anything that they were not
14 able to answer or any confusion or questions that you have
15 for the Court?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: The charges in the second amended
18 information now and a part of this document, the statement of
19 defendant on plea of guilty, are as follows: Murder in the
20 Second Degree, Count 1; Assault in the Second Degree, Count
21 2; and Assault in the Third Degree, Count 3. Did you go
22 through the elements of those three crimes very carefully?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Did you understand them?

25 THE DEFENDANT: Yes, ma'am; I did.

1 THE COURT: Do you have any questions about the
2 elements of those three crimes?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: At the top of the second page all of
5 your constitutional rights are listed; did you have a chance
6 to go through those with counsel?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: You understand by pleading guilty today
9 you're giving up all these constitutional rights?

10 THE DEFENDANT: Yes, ma'am; I do.

11 THE COURT: Is this your initials in the margin
12 here?

13 THE DEFENDANT: Yes.

14 THE COURT: My understanding is that for purposes --
15 and correct me Counsel if I'm wrong here -- but for purposes
16 of Count 1 and 2 the offender score would be 7; is that true?

17 MR. LEWIS: That is correct, Your Honor.

18 THE COURT: Did you understand that as well?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And for Count 3 the offender score is 4;
21 did you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Can someone tell me why the difference?

24 MR. QUIGLEY: The -- well, the Murder Second Degree
25 and the Assault Second Degree charge, Your Honor, are violent

1 felonies. The murder actually is a serious violent felony;
2 but in any event, they have multipliers. Where prior violent
3 offenses count more than one point, in this instance they
4 count two points. So his two prior Assault 2s count as two
5 points each on Counts 1 and 2. However, Assault 3 being
6 nonviolent has no multipliers and therefore they only count
7 as one point each.

8 THE COURT: I see.

9 MR. QUIGLEY: And the other current as well in the
10 calculation of his offender score. So in other words, the
11 Assault 2 -- what he's pleading to today also counts as two
12 points against the Murder Second Degree. That's how we get
13 to 7.

14 THE COURT: So, Mr. Harris, did you understand that
15 as well?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Was it carefully explained to you?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Any questions about that?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: With an offender score of 7 for Count 1
22 which is the murder charge, the standard range is 216 months
23 to 316 months. No enhancements, a community custody range of
24 36 months with a maximum term of life and a \$50,000.00 fine.
25 Were you aware of that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: On Count 2, Assault in the Second Degree
3 with an offender score of 7, the standard range would be 43
4 to 57 months, no enhancements, community custody of 18 months
5 and a maximum term of ten years and a fine of \$20,000.00.
6 Were you aware of that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Finally, for Count 3 which is the
9 Assault in the Third Degree with an offender score of 4, the
10 standard range is 12 months plus one day up to 16 months, no
11 enhancements, community custody would be not applicable in
12 that case and the maximum term is five years and a \$10,000.00
13 fine. Were you aware of that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you agree that the criminal history
16 which is part of this stipulation and is found on Page 2 of
17 the stipulation is accurate?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you understand that you'd be subject
20 to a \$500.00 crime victim penalty assessment and other
21 mandatory fines and penalties?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: During the course of counsel's
24 representations to the Court, they talked about what was
25 going to happen at the sentencing hearing, what the

1 recommendations were going to be, and my understanding is
2 that the plea agreement which I did read very carefully sets
3 out what the State's position is. And, Mr. Lewis, again
4 please correct me but it was my understanding that the State
5 is going to be recommending the maximum penalty pursuant to
6 that plea agreement?

7 MR. LEWIS: That is correct, Your Honor. The State
8 is going to be recommending the high end of the standard
9 range.

10 THE COURT: And the purpose of the plea agreement
11 was to put Mr. Harris on notice of that fact, I presume?

12 MR. LEWIS: In part, yes, Your Honor.

13 THE COURT: And also to put the Court on notice,
14 that there is going to be a dispute as to what the sentence
15 ought to be, and I presume that the defense would be
16 recommending something less.

17 MR. LEWIS: That is my understanding as well, Your
18 Honor.

19 THE COURT: All right. Mr. Harris, did you
20 understand that as well?

21 THE DEFENDANT: Yes, ma'am; I do.

22 THE COURT: And do you understand that the Court is
23 not obligated to follow either recommendation; even when it's
24 agreed, the Court is not obligated to follow the
25 recommendation?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: If you're not a citizen of the United
3 States, a plea of guilty could expose you to some kind of
4 immigration proceeding up to and including some kind of
5 deportation; were you aware of that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: If you plead guilty you may not possess,
8 own or control a firearm; were you aware of that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: You will lose your voting rights; were
11 you aware of that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Government assistance could be
14 suspended; were you aware of that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: A DNA test will be required along with a
17 \$100.00 DNA fee; were you told that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Most importantly by pleading guilty,
20 Assault 2 and certainly Murder 2 are serious offenses,
21 they're called strike offenses. If you receive three of
22 these type of strike offenses during your lifetime, you're
23 automatically sentenced to life in prison without the
24 possibility of parole. Were you aware of that?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Are you aware that this would be your
2 second strike?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: In the event that you are subject to
5 community custody -- which I think is present in this case --
6 and the Court finds that you have any chemical dependency
7 issues the Court could order you into treatment; were you
8 aware of that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: There's a factual statement here that
11 supports your plea of guilty to Count Number 1, so I'm going
12 to read that one out loud and ask you if it's true. Listen
13 carefully. As to Count 1, Murder in the Second Degree; in
14 the early morning hours of June 7, 2015, at my residence in
15 Pierce County Washington state, with intent to cause her
16 death, I severely beat Nicole White, a human being, and
17 thereby caused her death.

18 Is all of that true?

19 THE DEFENDANT: Yes, sir -- yes, ma'am.

20 THE COURT: Did you initial that factual statement
21 and adopt it as your own?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: As to Counts 2 and 3, those are in the
24 form of an In Re Barr plea and because of that I have read
25 the original declaration that supports the original charges,

1 the prosecutor's statement. I believe that does support the
2 charges -- more serious charges frankly, and I'm
3 incorporating that declaration into this statement of
4 defendant on plea of guilty.

5 Mr. Harris, do you understand -- well, first and
6 foremost, you had a chance to go over this addendum with your
7 counsel; did you not?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: The In Re Barr addendum?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you have any questions about it?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Did you sign it here?

14 THE DEFENDANT: Yes, ma'am; I did.

15 THE COURT: If I accept your pleas of guilty to the
16 Counts 2 and 3, Assault 2 and Assault 3, if you answer guilty
17 when I say how do you plead, that has the same effect as if
18 you went through trial and were convicted on Assault 2 and
19 Assault 3, regardless of the manner in which you're
20 pleading -- in other words, In Re Barr -- do you understand
21 that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Are you making your guilty pleas today
24 freely and voluntarily?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Did anyone force you?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Other than what's been worked out as the
4 plea agreement, have any promises been made to you in
5 exchange for a guilty plea?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: I'm satisfied that your guilty pleas are
8 being made freely, voluntarily, intelligently, that you
9 understand the rights you're giving up and the consequences
10 of your pleas. So now I'm going to go through each one of
11 them and ask how do you plead.

12 In response to Count 1, Murder in the Second Degree;
13 how do you plead?

14 THE DEFENDANT: Guilty, Your Honor.

15 THE COURT: In response to Count 2, Assault in the
16 Second Degree; how do you plead?

17 THE DEFENDANT: Guilty.

18 THE COURT: In response to Count 3, Assault in the
19 Third Degree; how do you plead?

20 THE DEFENDANT: Guilty.

21 THE COURT: I accept your pleas. I'm signing the
22 statement on plea of guilty, and my understanding is that we
23 will be doing a sentencing hearing in September, which I had
24 a question about. I'm just curious as to why it's set out
25 that far?

1 MR. LEWIS: Your Honor, I think there are a couple
2 of reasons; there is some scheduling issues with periods of
3 time between now and September 23rd where I am unavailable
4 and would be out of state. I believe there are some periods
5 of time where either Mr. Quigley or Mr. Katayama would be
6 unavailable. Also, Your Honor, pursuant to the plea
7 agreement, there is a provision wherein Mr. Harris has agreed
8 to allocute and meet with the detectives in this case in the
9 presence of his attorneys. I intend to be present for that
10 allocution as well. That is something that needs to be
11 coordinated, the schedules of the investigating detectives,
12 myself, Mr. Katayama and Mr. Quigley, that takes some time.
13 So in light of that, Your Honor, we were looking at some of
14 the other dates that were provided by your judicial assistant
15 and we were concerned that what that may end up simply
16 causing us to do is having to come back before Your Honor to
17 indicate we're simply not ready and we were erring on the
18 side of caution.

19 THE COURT: So my understanding is you all have
20 selected Friday September 23rd at 1:30 in this courtroom for
21 your sentencing; is that true?

22 MR. QUIGLEY: Yes.

23 MR. KATAYAMA: Yes, Your Honor.

24 MR. LEWIS: Yes, Your Honor.

25 THE COURT: And I also assume that Mr. Harris waives

1 a speedy sentencing; is that true? Did you want to
2 interlineate that on the scheduling order?

3 MR. LEWIS: Yes, Your Honor. And I apologize, I
4 meant to do that previously.

5 THE COURT: That's okay. Now finally, there is an
6 order establishing conditions here; would the State like to
7 make a recommendation on this?

8 MR. LEWIS: Yes, Your Honor. Given that Mr. Harris
9 has now pled guilty to among other things Murder in the
10 Second Degree and the Court's accepted Mr. Harris's plea, he
11 is no longer entitled to bail and we would ask, given the
12 nature of the offense, that the Court hold Mr. Harris without
13 bail pending sentencing.

14 THE COURT: Any argument on that, Mr. Quigley?

15 MR. QUIGLEY: No, Your Honor.

16 THE COURT: Okay. I'm checking that box, held
17 without bail, and signing the order establishing conditions.
18 Any other conditions that I need to interlineate on this
19 order?

20 MR. LEWIS: Your Honor, I don't believe so.

21 THE COURT: Okay. And I am signing now the
22 scheduling order setting sentencing for September 23rd at
23 1:30 p.m. for those of you who want to be present. Anything
24 else on this case?

25 MR. LEWIS: Your Honor, just for the record, I

1 believe -- and I'm sorry I didn't see it before it was handed
2 back to the Court but I believe there has been a notation on
3 the scheduling order wherein Mr. Harris has waived his right
4 to speedy sentencing.

5 THE COURT: Thank you for making that record.

6 MR. LEWIS: Nothing further from the State, Your
7 Honor.

8 THE COURT: All right.

9 MR. QUIGLEY: Nothing further, thank you.

10 THE COURT: Thank you. I'm going to step down.

11 MR. LEWIS: Thank you, Your Honor.

12 THE JUDICIAL ASSISTANT: All rise. Court's at
13 recess.

14 (Proceedings concluded at 13:55 p.m.)
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.) Superior Court
) No. 15-1-02431-2
 JONATHAN DANIEL HARRIS,)
)
 Defendant.)
)

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss
 COUNTY OF PIERCE)

I, Lanre G. Adebayo, Official Court Reporter in the State of Washington, County of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

Dated this 10th day of August, 2016.

LANRE G. ADEBAYO, CCR
 Official Court Reporter
 CCR #2964

ATTACHMENT III

LEXSEE 102 WN.2D 265

In the Matter of the Personal Restraint Petition of Terry Patrick Barr, Petitioner

No. 49804-1

SUPREME COURT OF WASHINGTON*102 Wn.2d 265; 684 P.2d 712; 1984 Wash. LEXIS 1798*

July 26, 1984

PRIOR HISTORY: [***1] Appeal from Division III, Court of Appeals Court.

SUMMARY:

Nature of Action: Action seeking relief from personal restraint by a person who had pleaded guilty to indecent [***2] liberties pursuant to a plea bargain. The petitioner had acknowledged that he probably could have been convicted of multiple counts of statutory rape.

Supreme Court: Holding that a nonconstitutional error was not cognizable and that the absence of a factual basis for convicting the petitioner of indecent liberties did not invalidate his guilty plea, the court *denies* the petition.

HEADNOTES

WASHINGTON OFFICIAL REPORTS HEADNOTES

[1] **Personal Restraint -- Scope -- Issues Not Presented on Appeal -- Nonconstitutional Error** An error of less than constitutional magnitude may not be raised in a personal restraint petition if the error was not previously raised on appeal.

[2] **Criminal Law -- Plea of Guilty -- Plea Bargaining -- Deficiencies in Substituted Charge -- Effect** When a defendant pleads guilty to a substituted charge as a result of plea bargaining and a factual basis for the original charges and the defendant's understanding of his complicity in the original charges are established in the record, the failure to inform the defendant of an element of the substituted charge or to establish a factual basis for his commission of the substituted charge does not invalidate the guilty plea.

COUNSEL: *Mr. Mitchell A. Riese and Ms. Patricia J. Arthur of Institutional Legal Services, Steilacoom, Washington, for petitioner.*

Honorable Donald C. Brockett, Spokane County Prosecuting Attorney, and Mr. Ronald W. Skibbie and Mr. Daniel W. Short, Deputies, Spokane, Washington, for respondent.

JUDGES: En Banc. Dimmick, J. Williams, C.J., Rosellini, Utter, Brachtenbach, Dolliver, Dore, and Pearson, JJ., and Cunningham, J. Pro Tem., concur. Andersen, J., did not participate in the disposition of this case.

OPINION BY: DIMMICK**OPINION**

[*266] [**713] In this personal restraint petition, petitioner challenges the guilty plea resulting in the conviction under which he is presently serving sentence. He claims an invalid plea on two grounds: the trial court failed to establish a factual basis for the plea; the plea was not "knowing and voluntary" because he was not informed of a critical element of the charge. We reject his contentions and dismiss the petition.

Petitioner was charged on May 1, 1981, with one count [***3] of second degree statutory rape and one count of third degree statutory rape. On June 30, 1981, petitioner was charged with, and pleaded guilty to, one count of indecent liberties.¹ The June information recited as follows:

[**714] That the defendant, Terry Patrick Barr, in Spokane County, Washington, on or about between November 21, 1980, and February 2, 1981, by forcible compulsion, did knowingly cause [the victim], not the spouse of the [*267] de-

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defendant, to have sexual contact with the defendant or another.

This second information was filed pursuant to a plea bargain arrangement in which the prosecutor agreed not to charge any other offenses based on currently possessed information in exchange for the guilty plea.

1 *RCW 9A.44.100* defines indecent liberties (in relevant part) as knowingly causing another person who is not the actor's spouse to have sexual contact with the actor or another (a) by forcible compulsion; or (b) when the other person is less than 14 years of age.

The [***4] record reflects that petitioner requested the agreement so that he could be committed for treatment under the sexual psychopath program. The petition and commitment order for the program were also before the trial court at the plea hearing. Under questioning by the court, petitioner indicated that his sexual problems began in prison, where he had previously been incarcerated for four separate offenses. Petitioner stated that he felt it was time to "get to work" on straightening out his life, and that he believed the sexual psychopath program would help him a great deal.

When the prosecutor filed the second information, he apparently understood that all sexual contact with the victim had occurred after the date alleged in the information, November 21. Under the mistaken assumption that the victim had turned 15 on November 19, the plea bargain arrangement was made to charge the "lesser" offense of indecent liberties by forcible compulsion since it appeared that the age requirement of the statute could not be met.

The discussion at the plea taking hearing disclosed a further erroneous assumption. The parties believed that the indecent liberties statute required the victim to be [***5] *14 or less*, when the statute actually reads *less than 14*. When petitioner was asked to explain what he did to warrant the indecent liberties charge, he indicated that sexual contact with the victim "occurred prior to the November 21, 1980, date, and when [the victim] was 14." This statement was apparently made in an effort to admit a basis for guilt under the statute's age requirement. Petitioner's counsel also explained that although the information alleged forcible compulsion rather than the underage of the victim, "[petitioner] understands that and knowing that and knowing all the facts of this case wishes to continue with [*268] his plea of guilty . . ."

The court then reviewed the material allegations in the information, and petitioner acknowledged that he

understood the charge. Petitioner's constitutional rights were each thoroughly discussed.

Following the proffer of the guilty plea, the prosecutor presented the factual allegations underlying the charges and the sexual psychopath petition. Petitioner was originally arrested for statutory rape charges involving several juveniles who were runaways. His home was known as a place where runaways could stay [***6] without being turned in to authorities. Petitioner had been involved in sexual activities, including oral and anal intercourse, with several juveniles. He had taken and attempted to sell pornographic photographs of these juveniles. The sexual contact complained of in the second information involved yet another juvenile and occurred while the victim stayed at petitioner's home, presumably from November 21, 1980, until February 2, 1981, and involved mutual masturbation.

Upon questioning, petitioner acknowledged receiving copies of the police reports filed in regard to the statutory rape charges. He conceded that the statutory rape charges could have been brought, admitting that the sexual conduct involved juveniles, and that he probably would have been convicted of those charges. He indicated that he joined in the sexual psychopath petition to obtain treatment. The court also probed the facts underlying the indecent liberties charge. Petitioner again admitted that the conduct involved an underage victim.

The court accepted the guilty plea to the indecent liberties charge after determining that it was voluntary, and based on a sufficient factual basis. The court determined that [***7] it was a "plea of convenience" because [**715] petitioner understood that he probably would have been convicted of the statutory rape charges if tried.

Following acceptance of the plea, the court imposed a 10-year suspended sentence with 5 years' probation on the condition that he undergo treatment as a sexual psychopath. [*269] At the end of the 90-day observation period, petitioner was rejected from the program and returned to the county jail. His suspended sentence was revoked and he was sentenced to a maximum 10 years in prison.

[1] Petitioner argues that his plea was invalid because the trial court accepted the plea without obtaining a factual basis for the indecent liberties charge as required by *CrR 4.2(d)*. He raises this claim not on appeal, but for the first time in this collateral proceeding. If petitioner's claim merely asserts a violation of the rules of criminal procedure, failure to bring an appeal forecloses relief in a personal restraint petition. *In re Keene, 95 Wn.2d 203, 622 P.2d 360 (1980)*. Therefore, whether the trial court complied with *CrR 4.2(d)* is not properly before us in this petition.

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1984 Wash. LEXIS 1798, ***

If, however, the alleged violation raises a constitutional [***8] error, petitioner may challenge the plea in a collateral proceeding.² To obtain collateral relief, petitioner must show actual prejudice resulting from the error. *In re Hews*, 99 Wn.2d 80, 660 P.2d 263 (1983).

2 We acknowledge that the rule of *CrR 4.2(d)*, which requires the trial court to ascertain the factual basis for the plea, is intended to ensure that the constitutional "voluntary-intelligent" standard is met. See *In re Keene*, 95 Wn.2d 203, 206, 622 P.2d 360 (1980). A violation of the procedural rule does not necessarily establish, however, that a particular plea was constitutionally infirm. See generally J. Bond, *Plea Bargaining and Guilty Pleas* § 3.54 (1982).

Petitioner's claim of constitutional error rests on the failure to inform him that, in the absence of forcible compulsion, the indecent liberties statute requires the victim to be less than 14. He correctly asserts that a constitutionally valid guilty plea must be knowing, intelligent and voluntary, with the accused being apprised [***9] of the nature of the charges against him. *Henderson v. Morgan*, 426 U.S. 637, 49 L. Ed. 2d 108, 96 S. Ct. 2253 (1976); *In re Hews*, *supra*. Petitioner therefore argues that he has met his burden of showing actual prejudice, because without knowing the statutory elements, he could not have made a voluntary and intelligent plea.

[2] A plea does not become invalid because an accused [*270] chooses to plead to a related lesser charge that was not committed in order to avoid certain conviction for a greater offense. See, e.g., *People v. Martin*, 58 Ill. App. 3d 633, 374 N.E.2d 1012 (1978); *People v. Johnson*, 25 Mich. App. 258, 181 N.W.2d 425 (1970); *People v. Clairborne*, 39 A.D.2d 587, 331 N.Y.S.2d 780 (1972). See generally J. Bond, *Plea Bargaining and Guilty Pleas* § 3.55(a), (b) (1982). The choice to plead to such lesser charges is voluntary if it is based on an informed review of all the alternatives before the accused. See *North Carolina v. Alford*, 400 U.S. 25, 31, 27 L. Ed. 2d 162, 91 S. Ct. 160 (1970). What must be shown is that the accused understands the nature and consequences of the plea bargain and has determined the course of action that he [***10] believes is in his best

interest. See *Williams v. State*, 316 So. 2d 267 (Fla. 1975); see also *State v. Majors*, 94 Wn.2d 354, 616 P.2d 1237 (1980).

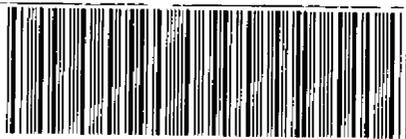
For the trial court to make the proper evaluation, the plea bargain must be fully disclosed. The trial court must find a factual basis to support the original charge, and determine that defendant understands the relationship of his conduct to that charge. Defendant must be aware that the evidence available to the State on the original offense is sufficient to convince a jury of his guilt.

These criteria are satisfied here. The record convinces us that petitioner chose to plead guilty to the second, substituted information charging only one count of indecent liberties to obtain dismissal of the information charging two counts of statutory [**716] rape. He thus was able to avoid punishment for two crimes and obtain sentencing that involved treatment for sexual psychopathy. He was fully aware that the State's information alleging indecent liberties was potentially defective. The plea bargain, with its factually suspect information, was completely disclosed to the trial court. Petitioner's reasons for desiring the plea [***11] arrangement were discussed at length.

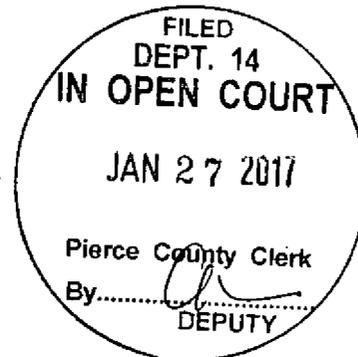
We also find that petitioner understood that the evidence was sufficient to support conviction for the two statutory rape charges. He joined in the sexual psychopath petition [*271] alleging statutory rape. He acknowledged that the sexual acts occurred with youths he knew to be juveniles and that he would probably be convicted of the charges.

In summary, we hold that when, as here, the record establishes a factual basis for the two crimes originally charged and reveals defendant's understanding of his complicity in those crimes, the failure to state a basis for all the elements of the offense substituted for the first two charges after plea bargaining will not preclude a finding that the plea to the substituted charge is voluntary and intelligent. In this case, the record amply supports the conclusion that petitioner's plea was voluntary, and rationally based on the alternatives before him. As there was no error, petitioner's personal restraint petition is dismissed.

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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff,

vs.

HARRIS, JONATHAN DANIEL,
Defendant.

Cause No. 15-1-02431-2

**ORDER DENYING MOTION TO
SCHEDULE EVIDENTIARY
HEARING UNDER CrR 7.8**

THIS MATTER having come on regularly before the above-entitled Court upon the Defendant's Motion to Schedule Evidentiary Hearing Under CrR 7.8, and the Court having reviewed the records and files herein, and being fully advised, it is hereby

ORDERED, that the Defendant's Motion to Schedule Evidentiary Hearing Under CrR 7.8 be and it is hereby DENIED.

DONE IN OPEN COURT this 27th day of January, 2017

DATED [Signature]

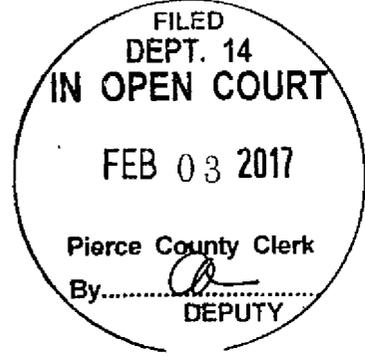
[Signature]
JUDGE SUSAN K. SERKO

cc: Timothy Lewis, DPA
John H. Hill, III

0406
15818
2/10/2017

LAW OFFICE OF JOHN H. HILL, III

Attorney at Law
2703 N. 31st Street
Tacoma, WA 98407
(253) 318-3336



February 2, 2017

The Honorable Susan K. Serko
Pierce County Superior Court
Department #14
930 Tacoma Avenue S., Rm. 533
Tacoma, WA 98402

Re: State of Washington vs. Jonathan D. Harris
Pierce County Superior Court Cause No. 15-1-02431-2
Transfer to Court of Appeals Per CrR 7.8(c)(2)

Dear Judge Serko:

We have received the Court's Order Denying Motion to Schedule Evidentiary Hearing under CrR 7.8.

Accordingly, pursuant to CrR 7.8(c)(2), Transfer to Court of Appeals, we anticipate the Court will transfer the underlying CrR 7.8 Motion for Relief filed, with attachments, to the Court of Appeals for consideration as a Personal Restraint Petition:

The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

CrR 7.8 Relief From Judgment or Order; (c)(2) Transfer to Court of Appeals

I am advised by the Court of Appeals that this is a procedure commonly utilized by the Pierce County Superior Court. Please advise if I may be of any assistance to you in accomplishing the required transfer for further consideration.

Thank you.

Sincerely,

John H. Hill, III
John H. Hill, III

JHH/lf

cc: Tim Lewis, DPA

PIERCE COUNTY SUPERIOR COURT

February 13, 2017 - 4:12 PM

Transmittal Letter

Document Uploaded: 0-prp-HARRIS.PRP.pdf

Case Name: STATE VS JONATHAN DANIEL HARRIS

County Cause Number: 15-1-02431-2

Court of Appeals Case Number:

✓ Personal Restraint Petition (PRP) Transfer Order

Notice of Appeal/Notice of Discretionary Review

(Check All Included Documents)

Judgment & Sentence/Order/Judgment

Signing Judge: _____

Motion To Seek Review at Public Expense

Order of Indigency

Filing Fee Paid - Invoice No: ____

Affidavit of Service

Clerk's Papers - Confidential Sealed

Supplemental Clerk's Papers

Exhibits - Confidential Sealed

Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Administrative Record - Pages: ____ Volumes: ____

Other: _____

Co-Defendant Information:

No Co-Defendant information was entered.

Comments:

No Comments were entered.

Sender Name: Chris R Hanson