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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

MICHAEL NELSON,

Petitioner.

NO. 49782-4-II
(Consolidated with #49797-6-II)

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PETITIONER'S PERSONAL RESTRAINT
PETITION:

1. Should this court dismiss petitioner's claims when this petition is successive as he previously filed a personal restraint petition under #45524-2?
2. If this court finds that the petitioner's personal restraint petition is not successive, does petitioner fail to show either deficient performance or resulting prejudice necessary to succeed in his claim of ineffective assistance of counsel?
3. Is the petitioner entitled to relief regarding his offender score when he stipulated to his offender score both on this case and in his prior cases?

1 B. STATUS OF PETITIONER:

2 Petitioner, MICHAEL NELSON, hereinafter "petitioner" is currently restrained
3 pursuant to a judgment and sentence entered in Pierce County Superior Court #11-1-
4 04142-7. Appendix A. He received a sentence of 168 months incarceration in accordance
5 with jury verdicts of guilty to first degree robbery and unlawful possession of a firearm in
6 the first degree. *Id.* The petitioner had a direct appeal, which affirmed his convictions and
7 sentence. *State v. Nelson*, 185 Wn. App. 1036 (2015); Appendix B. A petition for review
8 to the Washington Supreme Court was denied. *State v. Nelson*, 184 Wn.2d 1021, 361 P.3d
9 747 (2015); Appendix C. The petitioner then filed a CrR 7.8 motion that was transferred
10 to the Court of Appeals as a personal restraint petitioner under #45524-2-II. Appendix D.
11 The petitioner's first personal restraint petition was remanded back to Superior Court to be
12 treated as a civil action for damages. *Id.*

14 The petitioner then filed this personal restraint petition in Court of Appeals
15 #49782-4-II, and an additional personal restraint petition (originally filed as a CrR 7.8
16 motion) in 49795-6-II, both consolidated by this court. This response follows. The State
17 has no information with which to dispute a claim of indigency.

19 C. ARGUMENT:

20 1. PETITIONER'S PERSONAL RESTRAINT PETITION SHOULD
21 BE DISMISSED AS SUCCESSIVE.

22 RCW 10.73.140 limits the filing of subsequent collateral attack petitions,
23 particularly with the authority of the Court of Appeals to review them.

24 If a person has previously filed a petition for personal restraint, the court of
25 appeals will not consider the petition unless the person certifies that he or
she has not filed a previous petition on similar grounds, and/or shows good
cause why the petitioner did not raise the new grounds in the previous

1 petition. Upon receipt of a personal restraint petition, the court of appeals
2 shall review the petition and determine whether the person has previously
3 filed a petition or petitions and if so, compare them. If upon review, the
4 court of appeals finds that the petitioner has previously raised the same
5 grounds for review, or that the petitioner has failed to show good cause why
6 the ground was not raised earlier, the court of appeals shall dismiss the
7 petition on its own motion without requiring the state to respond to the
8 petition. Upon receipt of a first or subsequent petition, the court of appeals
9 shall, whenever possible, review the petition and determine if the petition is
10 based on frivolous grounds. If frivolous, the court of appeals shall dismiss
11 the petition on its own motion without first requiring the state to respond to
12 the petition.

8 RCW 10.73.140.

9 Where an issue is raised in a subsequent personal restraint petition, a petitioner
10 must show good cause why the grounds were not raised in the previous petition. *See, e.g.,*
11 *In re Personal Restraint of Holmes*, 121 Wn.2d 327, 330, 849 P.2d 1221 (1993)
12 (interpreting RAP 16.4(d)).

13 The Supreme Court has also considered successive petitions in the context of the
14 abuse of writ doctrine. *In re Personal Restraint of Stoudmire*, 141 Wn.2d 342, 352, 5
15 P.3d 1240 (2000) (*Stoudmire I*); *In re Personal Restraint of Turay*, 153 Wn.2d 44, 101
16 P.3d 854 (2004). A petitioner bears the burden of proving that his petition falls within an
17 exception to the one-year time limit. *Shumway v. Payne*, 136 Wn.2d 383, 399-400, 964
18 P.2d 349 (1998). To meet that burden of proof, the petitioner must state the applicable
19 exception within the petition. *In re Personal Restraint of Stoudmire*, 145 Wn.2d 258,
20 267, 36 P.3d 1005 (2001) (*Stoudmire II*). The State, in responding to a petition, should not
21 have to guess which exception the petitioner thinks applies, nor should the State have to
22 prove the exceptions that do not apply.

24 Here, the petitioner has already filed a personal restraint petition that was decided
25 in 2014. Appendix D. Although the claim in his prior petition is different than the claim

1 he raises here, he has failed to show good cause in this petition why he did not raise this
2 current claim in his earlier petitions. It appears he is going down a list of potential ways
3 to attack his sentence and when one fails, he makes a new attempt. The petitioner makes
4 no argument as to why he failed to raise his current claims in his prior petition. Where
5 he fails to make the required showing of good cause for why he failed to raise the claim
6 in the earlier petitions, this court lacks authority to consider the petition because it is
7 successive and therefor the petition should be dismissed.
8

9 2. IF THIS COURT WERE TO REACH THE MERITS OF THE
10 PETITIONER'S CLAIMS, PETITIONER HAS FAILED TO
11 SHOW EITHER DEFICIENT PERFORMANCE OR RESULTING
12 PREJUDICE NECESSARY TO SUCCEED IN HIS INEFFECTIVE
13 ASSISTANCE OF COUNSEL CLAIM.

14 a. Petitioner fails to show deficient performance of trial
15 counsel.

16 The right to effective assistance of counsel is the right "to require the prosecution's
17 case to survive the crucible of meaningful adversarial testing." *United States v. Cronin*,
18 466 U.S. 648, 656, 104 S. Ct. 2045, 80 L. Ed. 2d 657 (1984). When such a true adversarial
19 proceeding has been conducted, even if defense counsel made demonstrable errors in
20 judgment or tactics, the testing envisioned by the Sixth Amendment of the United States
21 Constitution has occurred. *Id.* "The essence of an ineffective-assistance claim is that
22 counsel's unprofessional errors so upset the adversarial balance between defense and
23 prosecution that the trial was rendered unfair and the verdict rendered suspect."

24 *Kimmelman v. Morrison*, 477 U.S. 365, 374, 106 S. Ct. 2574, 2582, 91 L. Ed. 2d 305
25 (1986).

1 To demonstrate ineffective assistance of counsel, a defendant must satisfy the two-
2 prong test laid out in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.
3 Ed. 2d 674 (1984); *see also State v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987). First,
4 a defendant must demonstrate that his attorney's representation fell below an objective
5 standard of reasonableness. Second, a defendant must show that he or she was prejudiced
6 by the deficient representation. Prejudice exists if "there is a reasonable probability that,
7 except for counsel's unprofessional errors, the result of the proceeding would have been
8 different." *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); *see also*
9 *Strickland*, 466 U.S. at 695 ("When a defendant challenges a conviction, the question is
10 whether there is a reasonable probability that, absent the errors, the fact finder would have
11 had a reasonable doubt respecting guilt."). There is a strong presumption that a defendant
12 received effective representation. *State v. Brett*, 126 Wn.2d 136, 198, 892 P.2d 29 (1995),
13 *cert. denied*, 516 U.S. 1121, 116 S. Ct. 931, 133 L. Ed. 2d 858 (1996); *Thomas*, 109
14 Wn.2d at 226.

15
16 The standard of review for effective assistance of counsel is whether, after
17 examining the whole record, the court can conclude that defendant received effective
18 representation and a fair trial. *State v. Ciskie*, 110 Wn.2d 263, 751 P.2d 1165 (1988). An
19 appellate court is unlikely to find ineffective assistance on the basis of one alleged mistake.
20 *State v. Carpenter*, 52 Wn. App. 680, 684-685, 763 P.2d 455 (1988).

21
22 Judicial scrutiny of a defense attorney's performance must be "highly deferential in
23 order to eliminate the distorting effects of hindsight." *Strickland*, 466 U.S. at 689. The
24 reviewing court must judge the reasonableness of counsel's actions "on the facts of the
25

1 particular case, viewed as of the time of counsel's conduct.” *Id.* at 690; *State v. Benn*, 120
2 Wn.2d 631, 633, 845 P.2d 289 (1993).

3 What decision [defense counsel] may have made if he had more information
4 at the time is exactly the sort of Monday-morning quarterbacking the
5 contemporary assessment rule forbids. It is meaningless...for [defense
6 counsel] now to claim that he would have done things differently if only he
7 had more information. With more information, Benjamin Franklin might
8 have invented television.

9 *Hendricks v. Calderon*, 70 F.3d 1032, 1040 (9th Cir. 1995).

10 Post-conviction admissions of ineffectiveness by trial counsel have been viewed
11 with skepticism by the appellate courts. Ineffectiveness is a question which the courts
12 must decide and “so admissions of deficient performance by attorneys are not decisive.”

13 *Harris v. Dugger*, 874 F.2d 756, 761 n.4 (11th Cir. 1989).

14 In addition to proving his attorney’s deficient performance, the defendant must
15 affirmatively demonstrate prejudice, i.e. “that but for counsel’s unprofessional errors, the
16 result would have been different.” *Strickland*, 466 U.S. at 694.

17 The presumption of counsel’s competence can be overcome by a showing, among
18 other things, that counsel failed to conduct appropriate investigations. *State v. Thomas*,
19 109 Wn.2d 222, 230, 743 P.2d 816 (1987). The adequacy of a pretrial investigation turns
20 on the complexity of the case and trial strategy. *Washington v. Strickland*, 693 F.2d 1243,
21 1251 (11th Cir.1982) (en banc), *rev'd on other grounds*, 466 U.S. 668, 104 S. Ct. 2052, 80
22 L. Ed. 2d 674 (1984). The decision to either call or not call a witness is generally a matter
23 of legitimate trial tactics and will not support a claim of ineffective assistance. *Thomas*,
24 109 Wn.2d at 230.

25 The reviewing court will defer to counsel's strategic decision to present, or to
forego, a particular defense theory when the decision falls within the wide range of

1 professionally competent assistance. *Strickland*, 466 U.S. at 489; *Campbell v. Knicheloe*,
2 829 F.2d 1453, 1462 (9th Cir. 1987), *cert. denied*, 488 U.S. 948 (1988). When the
3 ineffectiveness allegation is premised upon counsel's failure to litigate a motion or
4 objection, defendant must demonstrate not only that the legal grounds for such a motion or
5 objection was meritorious, but also that the verdict would have been different if the motion
6 or objections had been granted. *Kimmelman v. Morrison*, 477 U.S. 365, 375, 106 S. Ct.
7 2574, 91 L. Ed. 2d 305 (1986); *United States v. Molina*, 934 F.2d 1440, 1447-48 (9th Cir.
8 1991). An attorney is not required to argue a meritless claim. *Cuffle v. Goldsmith*, 906
9 F.2d 385, 388 (9th Cir. 1990).

11 The United States Supreme Court recently reiterated just how strong a presumption
12 of competence exists under *Strickland*: "The question is whether an attorney's
13 representation amounted to incompetence under 'prevailing professional norms,' not
14 whether it deviated from best practices or most common custom." *Harrington v. Richter*,
15 562 U.S. 86, 131 S. Ct. 770, 778, 178 L. Ed. 2d 624 (2011) (*citing Strickland*, 466 U.S. at
16 690). The Sixth Amendment guarantees reasonable competence, not perfection, and
17 counsel can make demonstrable mistakes without being constitutionally ineffective.
18 *Yarborough v. Gentry*, 540 U.S. 1, 8, 124 S. Ct. 1, 157 L. Ed. 2d 1 (2003). A petitioner
19 carries the burden of demonstrating that there was no legitimate strategic or tactical
20 rationale for the challenged attorney conduct. *State v. McFarland*, 127 Wn.2d 322, 336,
21 899 P.2d 1251 (1995). The standard of review for effective assistance of counsel is
22 whether, after examining the whole record, the court can conclude that defendant received
23 effective representation and a fair trial. *State v. Ciskie*, 110 Wn.2d 263, 751 P.2d 1165
24 (1988).

25 A petitioner must demonstrate both prongs of the *Strickland* test, but a reviewing
court is not required to address both prongs of the test if the petitioner makes an

1 insufficient showing on either prong. *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d
2 816 (1987).

3 Petitioner alleges that his trial counsel was ineffective by: 1) failing to move for
4 severance of two related counts, and 2) defense counsel “denying him the implicit right to
5 control his defense.”

6
7 **i. Petitioner cannot show that a severance motion
8 would have been granted.**

9 Petitioner alleges that his attorney was ineffective for failing to move to sever the
10 firearm charges from the robbery charge. Brief of Petitioner, page 6. First, the petitioner
11 waived the severance issue by failing to raise it below. *See State v. Emery*, 174 Wn.2d
12 741, 756, 278 P.2d 741 (2012). Second, even if defense counsel had raised a severance
13 motion, it would have been denied. In deciding whether multiple counts should be
14 severed, the trial court must consider whether the prejudice resulting from joinder is
15 mitigated by the following:

- 16 1. The strength of the State’s case on each count
- 17 2. The clarity of the defenses
- 18 3. Instructions to the jury to consider each count separately
- 19 4. The admissibility of evidence of the other charges even if not joined for
20 trial.

21 *See State v. Russell*, 125 Wn.2d 24, 63, 882 P.2d 747 (1994).

22 The defense below proceeded on the theory of general denial as to both charges and
23 the jury was instructed to consider each crime separately and that a verdict on one count
24 should not control the verdict on another. *See* Jury Instruction Number 5, Appendix E).
25 The petitioner alleges that “the presence of the firearm count suggested that Mr. Nelson
had a predisposition to commit a robbery. . .” Brief of Petitioner at page 5. Such
contention is without merit. Both charges were of equal strength and evidence. The
petitioner has not articulated any prejudice from defense counsel’s failure to move for

1 severance and has not made a showing that such a motion would have been granted. It is
2 entirely possible that the decision not to move to sever was a tactical choice and potentially
3 saved the petitioner from consecutive sentences if convicted separately.

4 The court addressed a similar issue in *State v. McDaniel*, 155 Wn. App. 829, 230
5 P.3d 245 (2010). In *McDaniel*, the defendant was charged with unlawful possession of a
6 firearm, attempted first degree murder and first degree robbery. *Id.* at 860-861. The court
7 held that severance of the firearm charge was unnecessary because the defense of denial as
8 to each count was clear to the jury, the court instructed the jury that it must decide each
9 count separately, and the State made little use of the fact that the defendant had a prior
10 conviction which precluded him from possessing firearms. *Id.*

11 Similarly, in this case the jury was also instructed to consider each count
12 separately, the defense was general denial, and the State made little use of the fact of the
13 petitioner's prior conviction. In fact, the State did not mention the petitioner's prior
14 conviction at all in closing, and mentioned it once during rebuttal. Appendix F, page 327.
15 Given the strength of the evidence regarding both charges, severance would not have been
16 granted. The petitioner cannot should prejudice in counsel's failure to raise a severance
17 motion, which would have been denied.

18 **ii. Petitioner has failed to substantiate a claim for ineffective**
19 **assistance of counsel on the basis that counsel "denied**
20 **him a defense."**

21 The petitioner alleges that defense counsel violated certain rules of professional
22 conduct. Such allegations may for the basis for bar discipline if substantiated, but do not
23 entitle this petitioner to relief. The petitioner asserts that defense counsel failed to
24 regularly meet with him to discuss the case. To support his allegation, he has submitted to
25 this court the jail visitation logs. The jail visitation logs, however, do not include all

1 potential contacts the petitioner may have had with defense counsel. The petitioner was in
2 the jail for at least 544 days. Appendix A. During that time, he was likely transported to
3 court multiple times. Each time he was brought to court he could have had contact and/or
4 meetings with his attorney which would not be captured on the jail visitation logs.
5 Moreover, even if counsel did not meet regularly with the petitioner, the petitioner has not
6 articulated how it translated into deficient performance or prejudice. The petitioner has
7 made a generalized statement that his counsel was not prepared, but does not give any
8 specifics as to how. Because the petitioner has not stated any deficiency or prejudice, and
9 has not demonstrated any, his claim fails.
10

11 3. THE PETITIONER STIPULATED TO HIS OFFENDER SCORE
12 AND IN HIS PRIOR CASES AGREED THAT HIS CRIMES DID
13 NOT CONSTITUTE THE SAME CRIMINAL CONDUCT,
14 THEREFORE HIS OFFENDER SCORE IS CORRECT AND HIS
15 CLAIM FAILS.

16 Both the Washington and federal double jeopardy clauses prohibit multiple
17 prosecutions or punishments for the same offense. “Within this constraint, however, the
18 legislature is free to define criminal conduct and specify its punishment.” *State v.*
19 *Baldwin*, 150 Wn.2d 448, 454, 78 P.3d 1005 (2003), citing *State v. Calle*, 125 Wn.2d 769,
20 776, 888 P.2d 155 (1995). Where “an act or transaction violates more than one criminal
21 statute, the double jeopardy question turns on whether the legislature intended to impose
22 punishment under both statutes for the same act or transaction.” *Id.*

23 The petitioner was convicted in 2006 of unlawful possession of a controlled
24 substance and conspiracy to deliver of a controlled substance under #05-1-04284-4.
25 Petitioner’s Exhibit A, page 13. The charges in that case were unlawful possession of a
controlled substance (MDMA/ecstasy) and conspiracy to deliver a controlled substance.
Id. at page 13-14. The petitioner made the following statement as part of his plea form:

1 On 8/30/05 I unlawfully possessed a small amount of ecstasy, and I agreed
2 with another to assist in the delivery of a controlled substance and took a
substantial step toward doing so.

3 *Id.* at page 18.

4 As part of his plea agreement, the petitioner stipulated that each offense counted in
5 his offender score. *Id.* at page 19. The petitioner's stipulation that each of the other
6 current counts should be included in his offender score indicates that he was in agreement
7 that they did not constitute the same criminal conduct. Moreover, the declaration for the
8 determination of probable cause on the case also indicates that the two charges did not
9 constitute the same criminal conduct. Petitioner's Exhibit A, page 11-12. The declaration
10 states that the petitioner's accomplice sold suspected *cocaine* to an undercover informant
11 and when the petitioner was later stopped by police, he was in possession of *ecstasy*. *Id.*
12 The two crimes in this case involve different drugs. Because the two crimes are different
13 factually, they are not the same criminal conduct and the petitioner's claim fails.

14 Similarly, in the petitioner's 2006 case, both crimes are also factually different
15 because they involve different drugs. In Pierce County Superior Court cause number 06-1-
16 01679-5, the petitioner was charged with unlawful possession of *cocaine* with the intent to
17 deliver and unlawful possession of *marijuana* with the intent to deliver. Petitioner's
18 Exhibit B, page 36-37. The petitioner also entered a stipulation in which both crimes were
19 counted in his offender score, indicating his agreement that the two crimes did not
20 constitute the same criminal conduct. *Id.* at page 46.

21 In 2010, the petitioner entered a plea of guilty to two counts of unlawful possession
22 of cocaine under Pierce County Superior Court cause number 09-1-04220-1. Appendix G.
23 He entered into a stipulation as part of that case in which all of the charges from both the
24
25

1 2005 and the 2006 cases were included and separately counted in his offender score
2 calculation. Appendix H. In 2010, the court sentenced the petitioner with an offender
3 score of “5,” suggesting that the two counts of possession from 2010 were determined to
4 be the same criminal conduct.

5 In the current case, the petitioner signed a “statement of prior record and offender
6 score.” Appendix I. The document signed by the petitioner includes all counts from the
7 2005 and 2006 cases. *Id.*

8 On May 20, 2011, *after* the petitioner was sentenced on the case before this court,
9 the petitioner entered a plea of guilty to one count of riot in Pierce County Superior Court
10 cause number 11-1-01309-1. Appendix J. In that case, again stipulated to his criminal
11 history and again affirmed that his 2005 convictions each counted, that his 2006
12 convictions each counted, but that his 2010 convictions counted only as one point. *Id.*

13 The Washington Supreme Court addressed a similar issue in *State v. Ross*, 152
14 Wn.2d 220, 95 P.3d 1225 (2004). In *Ross*, both consolidated defendants acknowledged at
15 their respective sentencings that their prior out-of-state and/or federal convictions were
16 comparable to Washington State crimes and therefore were properly included in their
17 offender scores. *Id.* at 230. The court held that the defendants’ affirmative
18 acknowledgement satisfied the requirements of the Sentencing Reform Act. *Id.* at 231.
19 The court further held that when the alleged error involves an agreement as to facts—as is
20 the case here—waiver can occur. *Id.*

21 The issue of same criminal conduct is an issue that involves both factual
22 determinations and the exercise of discretion. *State v. Nitsch*, 100 Wn. App. 512, 523, 997
23 P.2d 1000 (2000). In this case, the petitioner already agreed that his two prior cases did
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1 not constitute the same criminal conduct. He agreed in 2005 and 2006, as well as in 2011
2 after this case. Because the petitioner has repeatedly indicated to the court that, factually,
3 the offenses at issue are not the same criminal conduct, it is waived.

4 The petitioner relies on *State v. Deharo*, 136 Wn.2d 856, 966 P.2d 1269 (1998).
5 *Deharo*, however, is distinguishable from the case at bar. In *Deharo*, a direct appeal, the
6 defendant was convicted of conspiracy to deliver heroin and possession with intent to
7 deliver. *Id.* at 857. Both charges involved the same drug. *Id.* at 859. The court held that
8 there was no factual basis for distinguishing the two crimes. *Id.*

9
10 In the petitioner's case, there is a factual basis for distinguishing his crimes in both
11 the 2005 and 2006 cases. In each case, the crimes involved different drugs, making them
12 factually distinguishable. Moreover, unlike *Deharo*, this petitioner is raising this claim in
13 a personal restraint petition after repeatedly acknowledging, both before and after this case,
14 that each crime should have been counted separately. Because the petitioner was convicted
15 of factually different crimes in each instance and stipulated that each offense be counted
16 separately in his offender score calculation, his claim that those cases involved the same
17 criminal conduct fails.

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1 D. CONCLUSION.

2 For the above stated reasons, the State respectfully requests that the personal
3 restraint petition be denied.

4
5 DATED: April 11, 2017.

6 MARK E. LINDQUIST
7 Pierce County
8 Prosecuting Attorney



9 MICHELLE HYER
10 Deputy Prosecuting Attorney
11 WSB #32724

11 Certificate of Service:
12 The undersigned certifies that on this day she delivered by U.S. mail or
13 ABC-LMI delivery to the attorney of record for the appellant and appellant
14 c/o his attorney or to the attorney for respondent and respondent c/o his or
15 her attorney true and correct copies of the document to which this certificate
16 is attached. This statement is certified to be true and correct under penalty of
17 perjury of the laws of the State of Washington. Signed at Tacoma, Washington,
18 on the date below.

19
20
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25
Date 4/11/17 Signature [Handwritten Signature]

APPENDIX “A”

Judgment and Sentence—No. 11-1-04142-7

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

Dated: 4-5-13

By direction of the Honorable

John A. McCarthy
JUDGE John A. McCarthy

KEVIN STOCK
CLERK

By: *Margdalena Elena*
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

APR 08 2013 By *Margdalena Elena* Deputy



STATE OF WASHINGTON

ss.

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____

KEVIN STOCK, Clerk
By _____ Deputy

dlc

APR 08 2013



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO 11-1-04142-7

vs

JUDGMENT AND SENTENCE (JS)

MICHAEL ERIC NELSON

Defendant.

- Prison
- RCW 9 94A 712 9.94A.507 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline Mandatory Discretionary

SID WA22286655
DOB 05/18/1986

I. HEARING

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

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 3-5-13
by plea jury-verdict bench trial of

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	ROB 1 (AAA3)	9A.56.190 9A.56.200(1)(a)(i)(ii) 9.41.010 9.94A.530 9.94A.533 9.94A.535(3)(aa) 9.94A.030	FASE	10/01/11	LAKEWOOD PD 112740446
II	UPOF 1 (GGG66)	9.41.010(1d) 9.41.040(1)(a)	NONE	10/01/11	LAKEWOOD PD 112740446

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 1 of 11

139 03748 4

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

as charged in the ORIGINAL Information

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

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	FORGERY	03/25/05	PIERCE, WA	05/30/04	A	NV
2	UPCS	09/26/06	PIERCE, WA	08/30/05	A	NV
3	C/UDCS	09/26/06	PIERCE, WA	08/30/05	A	NV
4	UPCS	09/26/06	PIERCE, WA	04/14/06	A	NV
5	C/UDCS	09/26/06	PIERCE, WA	04/14/06	A	NV
6	UPCS	12/17/10	PIERCE, WA	09/17/09	A	NV
7	RIOT	05/20/11	PIERCE, WA	03/26/11	A	NV
8	UPOF I	CURRENT	PIERCE, WA	10/01/11	A	NV

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

2.3 SENTENCING DATA

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	8	IX	108-144 MONTHS	60 MONTHS FASE	168-204 MONTHS	50YRS
II	8	VII	77-102 MONTHS	NONE	77-102 MONTHS	20YRS

2.4 EXCEPTIONAL SENTENCE Substantial and compelling reasons exist which justify an exceptional sentence:

- within below the standard range for Count(s) _____
- above the standard range for Count(s) _____

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory

Findings of fact and conclusions of law are attached in Appendix 2.4 Jury's special interrogatory is attached The Prosecuting Attorney did did not recommend a similar sentence

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change The court finds

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 2 of 11

that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753

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

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

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [] as follows N/A

III. JUDGMENT

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

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

IV. SENTENCE AND ORDER

IT IS ORDERED

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

JASS CODE

RTNRJN	\$ _____	Restitution to: _____
	\$ _____	Restitution to _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office)	
PCV	\$ 500.00	Crime Victim assessment
DNA	\$ 100.00	DNA Database Fee
PJE	\$ 1500.00	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ 200.00	Criminal Filing Fee
FCM	\$ _____	Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for _____

\$ _____ Other Costs for _____

gmc \$ 2800.00 TOTAL

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

[] shall be set by the prosecutor

[] is scheduled for _____

[] RESTITUTION Order Attached

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 3 of 11

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

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

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

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

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

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

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

4 1b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____

4 2 [X] DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

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

4 3 NO CONTACT

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

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

4 4 OTHER Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law

- NO Contact with Theo Burke, Jareko Jackson, Travis Callaway
- 36 months Community custody
- Appendix "F"

4 4a All property is hereby forfeited

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

4 4b BOND IS HEREBY EXONERATED

4 5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

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

108 months on Count I _____ months on Count _____

102 months on Count II _____ months on Count _____

_____ months on Count _____ months on Count _____

A special finding/verdict having been entered as indicated in Section 2 i, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections

60 months on Count No I _____ months on Count No _____

_____ months on Count No _____ months on Count No _____

_____ months on Count No _____ months on Count No _____

Sentence enhancements in Counts _ shall run

concurrent consecutive to each other

Sentence enhancements in Counts _ shall be served

flat time subject to earned good time credit

Actual number of months of total confinement ordered is 108 months + 60 (FASE) months = Total 168 mo

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above)

The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____

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

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

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 5 of 11

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Confinement shall commence immediately unless otherwise set forth here _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number RCW 9 94A.505 The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court 544 days

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4 6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows

Count _____ for _____ months,

Count _____ for _____ months,

Count _____ for _____ months,

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

(A) The defendant shall be on community custody for the longer of:

(1) the period of early release. RCW 9 94A 728(1)(2); or

(2) the period imposed by the court, as follows:

Count(s) I 36 months for Serious Violent Offenses

Count(s) _____ 18 months for Violent Offenses

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

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed, (2) work at DOC-approved education, employment and/or community restitution (service), (3) notify DOC of any change in defendant's address or employment, (4) not consume controlled substances except pursuant to lawfully issued prescriptions, (5) not unlawfully possess controlled substances while in community custody, (6) not own, use, or possess firearms or ammunition, (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court, (9) abide by any additional conditions imposed by DOC under RCW 9 94A.704 and 706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9 94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

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

[X] consume no alcohol

[X] have no contact with victims and witnesses

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

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

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

undergo an evaluation for treatment for domestic violence substance abuse
 mental health anger management and fully comply with all recommended treatment.

comply with the following crime-related prohibitions per CCO

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Other conditions:
per CCO

For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

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

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

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

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

V. NOTICES AND SIGNATURES

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

5.2 **LENGTH OF SUPERVISION** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an

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1 offense committed on or after July 1, 2009, the court shall retain jurisdiction over the offender, for the
2 purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is
3 completely satisfied, regardless of the statutory maximum for the crime RCW 9.94A.760 and RCW
4 9.94A.505 The clerk of the court is authorized to collect unpaid legal financial obligations at any time the
offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations
RCW 9.94A.760(4) and RCW 9.94A.753(4)

5 5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice
6 of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the
7 court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in
monthly payments in an amount equal to or greater than the amount payable for one month. RCW
8 9.94A.7602 Other income-withholding action under RCW 9.94A may be taken without further notice.
RCW 9.94A.760 may be taken without further notice RCW 9.94A.7606

8 5.4 RESTITUTION HEARING

9 [] Defendant waives any right to be present at any restitution hearing (sign initials) _____

10 5.5 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and
Sentence is punishable by up to 60 days of confinement per violation Per section 2.5 of this document,
11 legal financial obligations are collectible by civil means. RCW 9.94A.634

12 5.6 FIREARMS You must immediately surrender any concealed pistol license and you may not own,
13 use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk
shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the
Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047

14 5.7 SEX AND KIDNAPPING-OFFENDER REGISTRATION RCW 9A.44.130, 10.01.200.

15 N/A

16 5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used.
17 The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of
Licensing, which must revoke the defendant's driver's license. RCW 46.20.285

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28 JUDGMENT AND SENTENCE (JS)

5 9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562

5 10 OTHER per c/o

DONE in Open Court and in the presence of the defendant this date: 4-5-13

JUDGE John A. McCarthy
Print name John A. McCarthy

J. H. P.
Deputy Prosecuting Attorney
Print name James Curtis
WSB # 36045

AM Quillen
Attorney for Defendant
Print name: AM Quillen
WSB # 6831

Michael Nelson
Defendant
Print name: MICHAEL NELSON

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

Defendant's signature: Michael Nelson



1
2 **CERTIFICATE OF CLERK**

3 CAUSE NUMBER of this case: 11-1-04142-7

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

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

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

7
8
9 **IDENTIFICATION OF COURT REPORTER**

10 NATASHA SEMAGO
11 Court Reporter



APPENDIX "F"



The defendant having been sentenced to the Department of Corrections for a

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed

The offender shall work at Department of Corrections approved education, employment, and/or community service,

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions.

An offender in community custody shall not unlawfully possess controlled substances,

The offender shall pay community placement fees as determined by DOC

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC

The Court may also order any of the following special conditions

(I) The offender shall remain within, or outside of, a specified geographical boundary _____
per c/o

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals _____
Victim and witnesses

(III) The offender shall participate in crime-related treatment or counseling services,

(IV) The offender shall not consume alcohol, _____

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections, or

(VI) The offender shall comply with any crime-related prohibitions.

(VII) Other. _____
per c/o

APPENDIX F

IDENTIFICATION OF DEFENDANT



SID No WA22286655
(If no SID take fingerprint card for State Patrol)

Date of Birth 05/18/1986

FBI No 550936EC2

Local ID No UNKNOWN

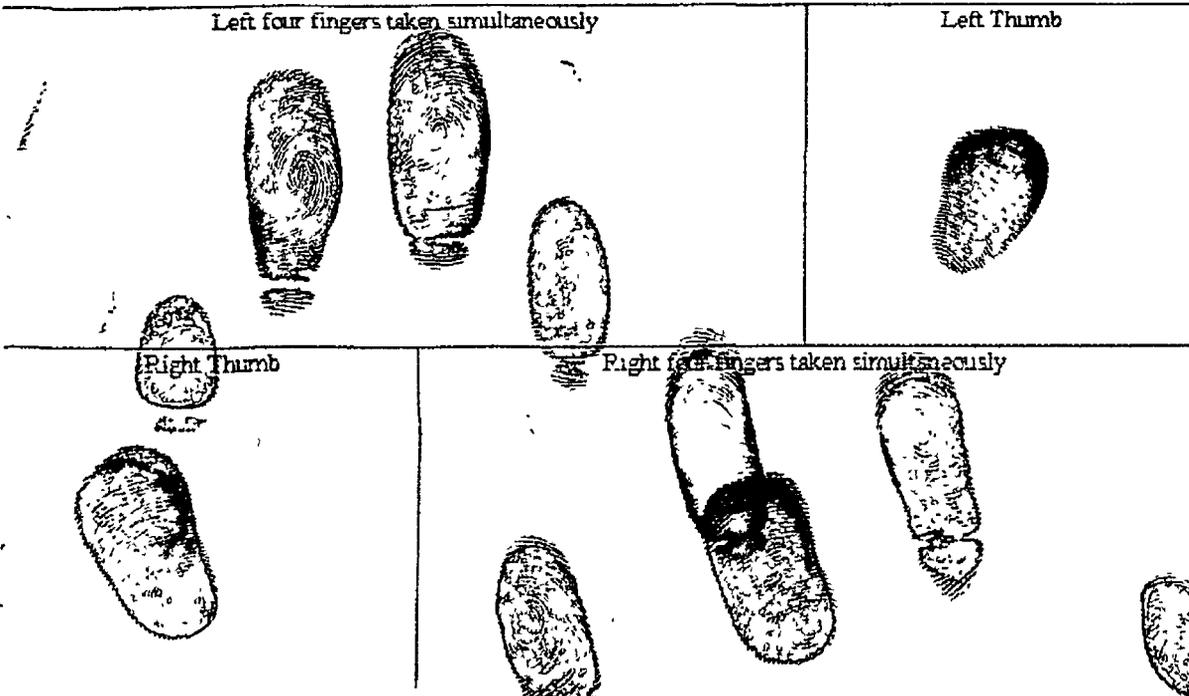
PCN No UNKNOWN

Other

Alias name, SSN, DOB

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

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto Clerk of the Court, Deputy Clerk, [Signature] Dated 4/5/13

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS _____

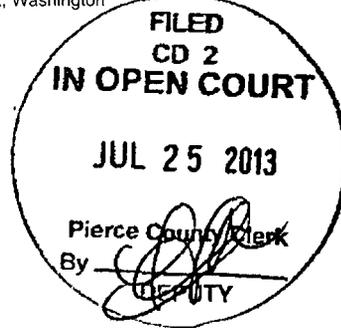
JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 11 of 11

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

Case Number: 11-1-04142-7 Date: April 11, 2017

Serial ID: AF567FE3-7798-4FFD-A01BF89785F8FBC8

Created By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-04142-7

vs.

MICHAEL ERIC NELSON,

Defendant.

MOTION AND ORDER CORRECTING JUDGMENT AND SENTENCE

CLERKS ACTION REQUIRED

THIS MATTER coming on regularly for hearing before the above-entitled court on the Motion of the Deputy Prosecuting Attorney for Pierce County, Washington, for an order correcting Judgment and Sentence heretofore granted the above-named defendant on 04/05/13, pursuant to defendant's plea of guilty to the charge(s) of ROBBERY IN THE FIRST DEGREE; UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, as follows:

1) That Page 4 of the Judgment and Sentence, 4.4 reflects 36 months community custody and should note 18 months community custody,

2) That Page 6 of the Judgment and Sentence, 4.6(A) reflects 36 months community custody and should note 18 months community custody,

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

ORDERED, ADJUDGED and DECREED that the Judgment and Sentence granted the defendant on 04/05/13, be and the same is hereby corrected as follows:

- 1
- 2 1) Page 4 of the Judgment and Sentence, 4.4 is corrected as follows:
- 3 a) 36 months community custody is deleted, and
- 4 b) 18 months community custody is inserted in its stead.
- 5 2) Page 6 of the Judgment and Sentence, 4.6(A) is corrected as follows:
- 6 a) 36 months community custody is deleted, and
- 7 b) 18 months community custody is inserted in its stead.
- 8 3) All other terms and conditions of the original Judgment and Sentence shall remain in full
- 9 force and effect as if set forth in full herein. IT IS FURTHER

10 ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment filed
11 on 04/05/13 so that any one obtaining a certified copy of the judgment will also obtain a copy of this
12 order.

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14 DONE IN OPEN COURT this 25 day July, 2013. NUNC PRO TUNC to 04/05/13.

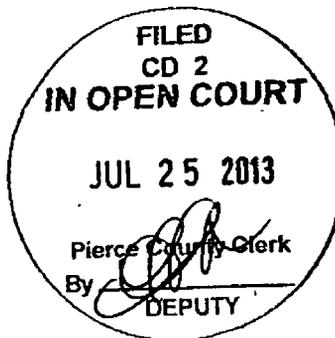
15
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17 Presented by:

18 JAMES H CURTIS
19 Deputy Prosecuting Attorney
20 WSB# 36845

MEAGAN M FOLEY
Criminal Court Commissioner

21 Approved as to form and Notice
22 Of Presentation Waived:

23 Robert Quillian
24 Attorney for Defendant
25 WSB# 6836



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28 dlc

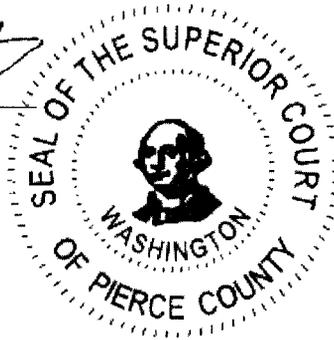
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of April, 2017



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 11, 2017 1:31 PM



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

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: AF567FE3-7798-4FFD-A01BF89785F8FBC8.

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

APPENDIX “B”

State v. Nelson, 185 Wn. App. 1036 (2015)

185 Wash.App. 1036

Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION,
SEE WA R GEN GR 14.1

Court of Appeals of Washington,
Division 2.

STATE of Washington, Respondent,
v.
Michael NELSON, Appellant.

No. 44725-8-II.

|
Jan. 27, 2015.

Appeal from Pierce County Superior Court; Hon. John a
McCarthy, J.

Attorneys and Law Firms

Jared Berkeley Steed, Nielsen Broman & Koch PLLC,
Seattle, WA, for Appellant(s).

Kathleen Proctor, Pierce County Prosecuting Atty Ofc.,
Tacoma, WA, for Respondent(s).

UNPUBLISHED OPINION

MAXA. J.

*1 Michael Nelson was convicted and sentenced for first degree robbery and unlawful possession of a firearm. He alleges that (1) the parties' exercise of peremptory challenges in writing violated his public trial right, and (2) the trial court abused its discretion in denying his request to represent himself on the second day of trial. Nelson's Statement of Additional Grounds (SAG) alleges that defense counsel provided ineffective assistance in several respects and that the trial court erred by incorrectly calculating Nelson's offender score.

We hold that (1) peremptory challenges do not implicate the public trial right, (2) the trial court had discretion to deny Nelson's request to represent himself because it was untimely, and (3) Nelson fails to show a claim for ineffective assistance of counsel. We decline to address Nelson's offender score contention because it relies on

facts outside the record. Accordingly, we affirm Nelson's convictions and sentence.

FACTS

Nelson, along with Theo Burke and another unidentified individual, offered a person a ride in their car. Nelson pointed a revolver at the person and took his wallet. The other individuals took the person's cell phone, hat, and jacket. The State charged Nelson with first degree robbery and first degree unlawful possession of a firearm.

Peremptory Challenges

At trial, the parties conducted voir dire of the prospective jurors. The trial court then explained the peremptory challenge process as follows:

[The parties] have a piece of paper. They will write down their peremptory challenges, and they will pass that piece of paper back and forth. And when they exercise up to the number that they are allowed, then they will bring a sheet of paper forward to me. I will go through their work and I will announce the names of people that will serve as jurors and alternate jurors in this case.

Report of Proceedings (RP) (Feb. 28, 2013) at 127. A sidebar conference was held, and then the trial court announced in open court the selected jurors and alternate jurors. The trial court did not consider the *Bone-Club*¹ factors before holding the sidebar. The list of peremptory challenges was filed with the court later that same day.

Request for Self-Representation

During trial, Nelson's attorney presented an opening statement, cross-examined the State's witnesses, and objected to improper questioning. The attorney performed similarly on the second day of trial. At a recess on the second day, Nelson told the trial court that he knew more about his case than his attorney and wanted to cross-examine the State's witnesses. The trial court asked Nelson if he had any formal legal training, and Nelson admitted he did not. But Nelson persisted and stated,

“[T]he questions that I have, they’re specific, and I feel that they will get the truth out of the witness.” RP (Mar. 4, 2013) at 152–53.

The trial court expressed concern that Nelson would implicate himself, and strongly cautioned him against questioning witnesses himself. However, Nelson continued to express frustration with his defense attorney’s cross-examination of the State’s witnesses. The following exchange then occurred:

*2 Court: [Y]ou have the right to a lawyer of your own choice, if you hired a lawyer. You don’t have the right to an appointment of a lawyer of your own choice, nor do you have the right to switch attorneys whenever you decide that an attorney is giving you advice that you don’t want to hear and not proceeding in a manner that you think is appropriate.

At this point in time, if you are asking me to represent yourself in this proceeding entirely, examine witnesses —

Nelson: Yes.

Court:—prepare jury instructions, argue the law and the facts to the jury and entirely take over the case?

Nelson: Yes.

Court: Well, at this point in time ... based on everything I have seen and heard, that is not in your best interest. You are not sufficiently trained in the law. You have a very experienced attorney.

Like I say, maybe he’s giving you some advice that you don’t want to hear. Sometimes attorneys can’t do anything to alter evidence that’s presented. That doesn’t necessarily mean that you can proceed on your own.

I am reluctant to ask you what kind of questions you wanted to ask of these witnesses because, once again, I’d hate you to say anything that implicated yourself.

RP (Mar. 4, 2013) at 156–57.

Nelson then reiterated his request to cross-examine one of the State’s witnesses. The trial court asked what Nelson would ask the witness, Nelson gave a short reply, and the trial court stated:

I am going to stop you, Mr. Nelson, because you are making statements now that implicate yourself as an accomplice or as a perpetrator of the offense.... You have the right to impeach things that [a witness] said ... through other witnesses. But based on what you are saying now, that certainly is—I can understand why [your attorney] would not want to pursue a line of inquiry that further implicates knowledge that you had.

[I]t’s really apparent to me that you are not prepared through education, training or experience to represent yourself or cross-examine the witness. So I am not going to allow you to do that at this time.

RP (Mar. 4, 2013) at 158–59.

Verdict and Sentence

Nelson’s trial continued and he was found guilty on both charges. At sentencing Nelson’s prior criminal history was submitted to the trial court. He had several prior felony convictions, including four 2006 convictions: two for possession of a controlled substance and two for conspiracy to deliver a controlled substance. The trial court calculated that Nelson’s offender score for his current offenses was eight. The trial court sentenced Nelson to 168–204 months on the first degree robbery charge and 77–102 months on the unlawful possession of a firearm charge.

Nelson appeals.

ANALYSIS

A. PUBLIC TRIAL RIGHT

Nelson argues that the trial court violated his right to a public trial by allowing the parties to exercise peremptory challenges in writing. We recently addressed this issue in *State v. Marks*, — Wn.App. —, 339 P.3d 196, 199–200 (2014), holding that (1) the exercise of peremptory challenges are not part of voir dire and therefore do not automatically implicate the public trial right, and (2) peremptory challenges do not satisfy the experience prong of the experience and logic test. We cited to our prior decision in *State v. Dunn*, which also held that peremptory challenges do not implicate the public trial right. 180 Wn.App. 570, 575, 321 P.3d 1283 (2014), *review denied*, — Wn.2d — (2015). Accordingly, we follow

Marks and *Dunn* and hold that the trial court did not violate Nelson's public trial right by allowing the parties to conduct peremptory challenges in writing.

B. RIGHT TO SELF-REPRESENTATION

*3 Nelson argues that he was deprived of his constitutional right to self-representation when the trial court denied his request to represent himself on the second day of trial. We disagree.

Criminal defendants have an explicit right to self-representation under article I, section 22 of the Washington State Constitution and an implicit right under the Sixth Amendment to the United States Constitution. *State v. Madsen*, 168 Wn.2d 496, 503, 229 P.3d 714 (2010); see also *Faretta v. California*, 422 U.S. 806, 819, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). This right is so fundamental that it is protected despite its potentially detrimental impact on both the defendant and the administration of justice. *Madsen*, 168 Wn.2d at 503. The unjustified denial of the right of self-representation requires reversal. *Id.*

But the right of a defendant to represent himself is not absolute or self-executing. *Id.* at 504. If a defendant asks to represent himself, then the trial court must determine whether the defendant's request is unequivocal and timely. *Id.* If the defendant's request is not unequivocal or untimely, the trial court must determine whether the defendant's request is voluntary, knowing, and intelligent. *Id.* Courts are required to indulge in every reasonable presumption against a defendant's waiver of his or her right to counsel. *Id.* We review a trial court's decision to deny a request for self-representation for an abuse of discretion. *Id.* at 504.

We assume without deciding that Nelson's request to represent himself was unequivocal. But even if a defendant makes an unequivocal request to represent himself, a trial court has broad discretion to grant or deny an untimely request. *State v. Stenson*, 132 Wn.2d 668, 737, 940 P.2d 1239 (1997).

Whether a request is timely, and the extent of the trial court's discretion in considering such a request, is determined on a continuum. *Madsen*, 168 Wn.2d at 508. Our Supreme Court in *Madsen* stated:

“If the demand for self-representation is made (1) well

before the trial or hearing and unaccompanied by a motion for a continuance, the right of self-representation exists as a matter of law; (2) as the trial or hearing is about to commence, or shortly before, the existence of the right depends on the facts of the particular case with a measure of discretion reposing in the trial court in the matter; and (3) during the trial or hearing, the right to proceed pro se rests largely in the informed discretion of the trial court.”

Id. (quoting *State v. Barker*, 75 Wn.App. 236, 241, 881 P.2d 1051 (1994)) (emphasis omitted).

Nelson made his request to represent himself on the second day of trial. We hold that the third *Madsen* rule applies. Therefore, we acknowledge that the decision whether to grant or deny Nelson's request to represent himself rested largely in the trial court's discretion.

Factors to be considered in assessing a request for self-representation during trial include:

*4 “[T]he quality of counsel's representation of the defendant, the defendant's prior proclivity to substitute counsel, the reasons for the request, the length and stage of the proceedings, and the disruption or delay which might reasonably be expected to follow the granting of such a motion.”

State v. Fritz, 21 Wn.App. 354, 363, 585 P.2d 173 (1978) (quoting *People v. Windham*, 19 Cal.3d 121, 128-29, 560 P.2d 1187 (1977)). Absent “substantial reasons,” a last minute request for self-representation “should generally be denied, especially if the granting of such a request may result in delay of the trial.” *State v. Garcia*, 92 Wn.2d 647, 656, 600 P.2d 1010 (1979).

The application of the relevant factors here does not suggest that the trial court abused its discretion. There is nothing in the record to suggest that Nelson received anything short of proper representation.² Nelson's apparent reason to represent himself—his frustration with

his attorney's unwillingness to ask the State's witnesses the questions Nelson wanted him to ask—is not particularly compelling. And Nelson's request was made in the middle of a jury trial after the jury had already heard testimony from two of the State's witnesses.

Because Nelson made his request to represent himself after the second day of trial, it was untimely and the trial court had broad discretion whether to grant or deny it. Nelson did not provide substantial reasons to grant his last minute request. Accordingly, we hold that the trial court did not abuse its discretion in denying Nelson's request to represent himself.

C. INEFFECTIVE ASSISTANCE OF COUNSEL

In his SAG, Nelson argues that he was denied his right to effective assistance of counsel because defense counsel allegedly failed to (1) contact Nelson for a three-month period regarding his case, (2) impeach a witness who testified against Nelson about an alleged videotaped confession, and (3) show Nelson a video of a witness's confession.

1. Legal Principles

To prevail on an ineffective assistance of counsel claim, the defendant must show both that (1) defense counsel's representation was deficient, and (2) the deficient representation prejudiced the defendant. *State v. Grier*, 171 Wn.2d 17, 32–33, 246 P.3d 1260 (2011). Representation is deficient if, after considering all the circumstances, it falls below an objective standard of reasonableness. *Id.* at 33. Prejudice exists if there is a reasonable probability that except for counsel's errors, the result of the proceeding would have differed. *Id.* at 34. Reasonable probability in this context means a probability sufficient to undermine confidence of the outcome. *Id.*

We give great deference to trial counsel's performance and begin our analysis with a strong presumption that counsel's performance was reasonable. *Id.* at 33. A claim that trial counsel provided ineffective assistance does not survive if counsel's conduct can be characterized as legitimate trial strategy or tactics. *Id.* at 33. To rebut the strong presumption that counsel's performance was effective, the defendant bears the burden of establishing the absence of any “ ‘conceivable legitimate tactic explaining counsel's performance.’ ” *Id.* at 42 (quoting

State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004)).

*5 We review claims of ineffective assistance of counsel de novo. *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009).

2. Lack of Contact

Before trial, Nelson alleged that his attorney did not discuss trial strategy with him outside of court and did not tell him about the State's potential plea deals. His defense attorney denied the allegations, telling the trial court that he had met with Nelson on several occasions and had discussed the merits of his case with him. Similarly, Nelson claims in his SAG that his defense counsel did not contact him about his case for a three-month period, and generally failed to keep him informed about his case.

Here, there is no evidence in the record that substantiates Nelson's claims that his attorney failed to contact him about his case, and therefore Nelson's claims rely on facts outside the record. We do not address claims based on facts outside the record on direct appeal. *State v. McFarland*, 127 Wn.2d 322, 337–38, 899 P.2d 1251 (1995). Accordingly, we do not address this claim.

3. Failure to Impeach

Nelson argues that his trial attorney was ineffective because he allegedly failed to impeach Burke, one of the State's witnesses who testified against Nelson. We hold that defense counsel's alleged failure to impeach Burke presents a matter of trial strategy and therefore was not deficient.

Nelson's SAG references Burke's videotaped confession in which Nelson contends Burke confessed to taking the victim's wallet. The record does not show what Burke actually said in the videotape. But the record does show that Nelson's attorney interviewed Burke prior to trial, and that his interview was consistent with what Burke stated in the videotape. At trial, Nelson's attorney impeached Burke by eliciting his testimony that Burke made a deal with the State for a reduced charge and sentence in exchange for testifying against Nelson. Moreover, Nelson's attorney questioned Burke about his alleged videotaped confession—Burke admitted to taking the victim's cell phone but not the victim's wallet.

Here, there is no evidence in the record to support Nelson's claim regarding Burke's confession. But to the extent defense counsel's performance might be deficient, Nelson also does not show that any error affected the outcome of his trial. Therefore, we hold that this claim has no merit.

4. Failure to Show Video

During trial, Nelson alleged that his attorney had failed to show him Burke's videotaped testimony against him. In his SAG, Nelson claims that his attorney's failure to show him the videotape constituted ineffective assistance of counsel. The record shows that as of the first day of Nelson's second trial, his defense attorney had not shown him Burke's videotape. The trial court instructed Nelson's attorney to show him the videotape either that day or the next. There is no evidence in the record as to whether or not Nelson was actually shown the video.

However, even if we presume this was deficient attorney conduct, Nelson fails to show how this was prejudicial to the outcome of his trial. Accordingly, we hold that this claim fails.

D. CLAIMED SENTENCING ERROR

*6 Nelson's SAG asserts that the trial court erred in calculating his offender score by including two prior convictions that constituted the same criminal conduct. We hold that we do not have a sufficient record to review this assignment of error.

When a defendant is convicted of multiple crimes, each is treated like a prior conviction for purposes of calculating the defendant's offender score unless the crimes constitute the same criminal conduct. RCW 9.94A.589(1)(a). A sentencing court must find that two or more crimes constitute the same criminal conduct if they "require the same criminal intent, are committed at the same time and place, and involve the same victim." *Id.* " 'If any one element is missing, multiple offenses cannot be said to encompass the same criminal conduct, and they must be counted separately in calculating the offender score.' " *State v. Garza Villarreal*, 123 Wn.2d 42, 47, 864 P.2d 1378 (1993) (quoting *State v. Lessley*, 118 Wn.2d 773, 778, 827 P.2d 996 (1992)).

In *State v. Deharo*, our Supreme Court examined a defendant's convictions of possession with intent to deliver

heroin and conspiracy to deliver. 136 Wn.2d 856, 857, 966 P.2d 1269 (1998). The defendant's convictions were based solely on his possession of six bindles of heroin at the time of arrest. *Id.* at 857. The defendant argued that the two counts encompassed the same criminal conduct, and our Supreme Court agreed. *Id.* at 857–58. The court concluded that the objective intent underlying the two charges—to deliver the heroin in the men's possession—was the same. *Id.* at 859. According to the court, the result might have been different if the record had established a distinction between the time or place of the two charges. *Id.* at 858. But because there was unity of intent, time, place, and victim, the two charges were considered the same criminal conduct for sentencing purposes. *Id.* at 858–59.

Here, the record is insufficient for us to determine whether Nelson's possession and conspiracy convictions constitute the same criminal conduct. The record does not show at what time or at what place Nelson's two convictions for conspiracy and possession took place. It is possible that either of Nelson's conspiracy convictions could have been completed at a time separate from his possession convictions, which would show Nelson's convictions were not the same criminal conduct. Alternatively, like the situation in *Deharo*, Nelson's two separate convictions for possession and conspiracy could have been based solely on the same conduct, which could have established that the two convictions were the same criminal conduct.

Here, Nelson's SAG contention refers to facts outside the record that we cannot review. *McFarland*, 127 Wn.2d at 337–38 (a personal restraint petition is the appropriate method to obtain review of matters outside the record). Therefore we do not further consider this issue.

We affirm Nelson's convictions and sentence.

*7 A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

We concur: JOHANSON, C.J., and SUTTON, J.

All Citations

Not Reported in P.3d, 185 Wash.App. 1036, 2015 WL 422947

Footnotes

- 1 *State v. Bone-Club*, 128 Wn.2d 254, 258–59, 906 P.2d 325 (1995) (establishing the five criteria a trial court must consider before closing a courtroom proceeding to the public).
- 2 Our analysis is not helped by the second *Fritz* factor. The State contends Nelson had a proclivity for substitution of counsel, but the record does not support this. Nelson's prior attorneys appear to have withdrawn due to a conflict of interest, or for an unspecified reason after Nelson's mother attempted to bribe witnesses to alter their testimony. There is no evidence that Nelson caused his attorneys to withdraw or requested that they withdraw.

APPENDIX “C”

State v. Nelson, 184 Wn.2d 1021, 361 P.3d 747 (2015)

State v. Nelson, 184 Wash.2d 1021 (2015)
361 P.3d 747 (Table)

December 02, 2015

184 Wash.2d 1021
(This disposition is referenced in the Pacific Reporter.)
Supreme Court of Washington

State
v.
Michael Eric Nelson

NO. 91356-1
|

Appeal From: 44725-8-II

Opinion

Petition For Review: Denied.

All Citations

184 Wash.2d 1021, 361 P.3d 747 (Table)

End of Document

2015 Edition of the Washington State Government Year

APPENDIX “D”

Order Remanding to Superior Court

July 18 2014 8:55 AM

KEVIN STOCK
COUNTY CLERK

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of:

MICHAEL ERIC NELSON,

Petitioner.

No. 45524-2-II

ORDER REMANDING TO
SUPERIOR COURT

FILED
COURT OF APPEALS
DIVISION II
2014 JUL 17 AM 10:37
STATE OF WASHINGTON
BY DEPUTY

While awaiting trial on charges of first degree robbery and first degree unlawful possession of a firearm, Michael Nelson filed a "Motion to Show Cause" in Pierce County Superior Court against the Pierce County Jail. Nelson alleged that the jail improperly denied him phone and mail privileges, subjected him to poor housing conditions, discriminated against him, and retaliated against him. Nelson sought a total of \$330,000 in damages. The superior court treated Nelson's motion as a CrR 7.8 motion for relief from judgment and transferred the motion to this court for consideration as a personal restraint petition under CrR 7.8(b).

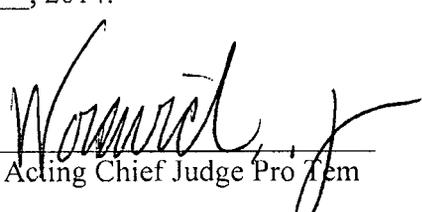
"[I]t is well settled that a demand for monetary damages is not actionable by personal restraint petition." *In re Personal Restraint of Williams*, 171 Wn.2d 253, 255-56 (2011). In almost identical circumstances, our supreme court held that the trial court erred by treating a complaint for monetary damages as a collateral attack on conviction, and remanded the case to the superior court for treatment as a civil action for damages. *Williams*, 171 Wn.2d at 255-56.

Accordingly, it is hereby

45524-2-II

ORDERED that this petition remanded to the superior court to be treated as a civil action for damages.

DATED this 17 day of July, 2014.



Acting Chief Judge Pro Tem

cc: Michael Eric Nelson
Pierce County Cause no. 11-1-04142-7
Jason Ruyf
Hon. John A. McCarthy

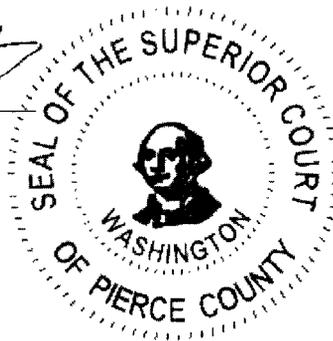
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of April, 2017



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 11, 2017 1:31 PM



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

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 952C7203-98EF-4CE0-B0B0EAF35F471D7B.

This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “E”

Jury Instruction

Case Number: 11-1-04142-7 Date: April 11, 2017
SerialID: 4344C2F6-7A05-41E2-8E20B87E2F6FA340
Certified By: Kevin Stock Pierce County Clerk, Washington



11-1-04142-7 40120267 CTINJY 03-06-13



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
MICHAEL ERIC NELSON,
Defendant.

CAUSE NO. 11-1-04142-7

COURT'S INSTRUCTIONS TO THE JURY

DATED this 5th day of March, 2013.

John A. McCarthy
JUDGE
John A. McCarthy

INSTRUCTION NO. 1

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

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

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

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

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

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

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

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

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

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

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

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

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

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INSTRUCTION NO. 2

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

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

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. 3

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

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

INSTRUCTION NO. 4

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

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

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INSTRUCTION NO. 5

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on the other count.

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INSTRUCTION NO. 6

A person commits the crime of robbery in the first degree when in the commission of a robbery he is armed with a deadly weapon.

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INSTRUCTION NO. 7

A person commits the crime of robbery when he unlawfully and with intent to commit theft thereof takes personal property from the person of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person. A threat to use immediate force or violence may be either expressed or implied. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which case the degree of force is immaterial.

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Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 8

A firearm, whether loaded or unloaded, is a deadly weapon.

22494 3/6/2013 1488382

Case Number: 11-1-04142-7 Date: April 11, 2017

SerialID: 4344C2F6-7A05-41E2-8E20B87E2F6FA340

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 9

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

Case Number: 11-1-04142-7 Date: April 11, 2017

SerialID: 4344C2F6-7A05-41E2-8E20B87E2F6FA340

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 10

Theft means to wrongfully obtain or exert unauthorized control over the property or services of another, or the value thereof, with intent to deprive that person of such property or services.

INSTRUCTION NO. 11

A person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable. A person is legally accountable for the conduct of another person when he is an accomplice of such other person in the commission of the crime.

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

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

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

INSTRUCTION NO. 12

To convict the defendant of the crime of robbery in the first degree, each of the following six elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about October 1, 2011, the defendant or an accomplice unlawfully took personal property from the person of another;
- (2) That the defendant or an accomplice intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant or an accomplice's use or threatened use of immediate force, violence, or fear of injury to that person;
- (4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (5) That in the commission of these acts the defendant or an accomplice was armed with a deadly weapon and
- (6) That any of these acts occurred in the State of Washington.

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

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

Instruction No. 13

The defendant is charged with robbery in the first degree. If, after full and careful deliberation on this charge, you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crime of theft in the third degree.

When a crime has been proved against a person, and there exists a reasonable doubt as to which of two or more crimes that person is guilty, he or she shall be convicted only of the lesser crime.

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SerialID: 4344C2F6-7A05-41E2-8E20B87E2F6FA340

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Instruction No. 14

A person commits the crime of theft in the third degree when he or she commits theft of property or services.

Instruction No. 15

Wrongfully obtains means to take wrongfully the property of another.

To exert unauthorized control means, having any property in one's possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto.

INSTRUCTION NO. 16

To convict the defendant of the crime of theft in the third degree, each of the following three elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about October 1, 2011, the defendant or an accomplice wrongfully obtained or exerted unauthorized control over property of another;
- (2) That the defendant intended to deprive the other person of the property; and
- (3) That this act occurred in the State of Washington

If you find from the evidence that elements (1), (2), and (3) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of elements (1), (2), or (3), then it will be your duty to return a verdict of not guilty.

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INSTRUCTION NO. 17

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

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Case Number: 11-1-04142-7 Date: April 11, 2017
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Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 18

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

INSTRUCTION NO. 19

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

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

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

INSTRUCTION NO. 20

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

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

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

INSTRUCTION NO. 21

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

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

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

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

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

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

Case Number: 11-1-04142-7 Date: April 11, 2017

SerialID: 4344C2F6-7A05-41E2-8E20B87E2F6FA340

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 22

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

Instruction No. 23

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

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

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

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

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

When completing the verdict forms, you will first consider the crime of robbery in

the first degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form I the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form I.

If you find the defendant guilty on Verdict Form I, do not use Verdict Form II. If you find the defendant not guilty of the crime of robbery in the first degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of theft in the third degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form II the words "not guilty" or the word "guilty", according to the decision you reach.

You must then fill in the blank provided in Verdict Form III the words "not guilty" or the word "guilty", according to the decision you reach.

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

Instruction No. 24

You will also be given a special verdict form for the crime of Robbery in the First Degree. If you find the defendant not guilty of this crime, or if, after full and careful consideration of the evidence you cannot agree on that crime, do not use the special verdict form. If you find the defendant guilty of that crime, you will then use the special verdict form. In order to answer the special verdict form "yes," all twelve of you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you do not unanimously agree that the answer is "yes" then the presiding juror should sign the section of the special verdict form indicating that the answer has been intentionally left blank.

INSTRUCTION NO. 25

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

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

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

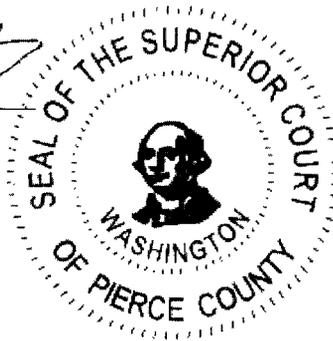
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of April, 2017



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 11, 2017 1:31 PM



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APPENDIX “F”

Closing Argument

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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.)	Superior Court No.
)	11-1-04142-7
MICHAEL ERIC NELSON,)	Court of Appeals No.
Defendant.)	44725-8-II
)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME 4 PAGES 257-343

BE IT REMEMBERED that on the 5th day of March, 2013, the following proceedings were held before the Honorable JOHN A. MCCARTHY, Judge of the Superior Court of the State of Washington, in and for the County of Pierce, sitting in Department 11.

The Plaintiff was represented by its attorney, JAMES CURTIS;

The Defendant was represented by his attorney, ROBERT QUILLIAN;

WHEREUPON, the following proceedings were had, to wit:

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VOLUME 4
MARCH 5, 2013
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1 first degree, in the second degree and the third
2 degree, each statutory framework excludes firearms. It
3 says "excluding firearm."

4 And what the legislature did is they carved out a
5 special type of crime, of conduct, which involves the
6 theft of a firearm. That's why you have a crime, theft
7 of a firearm which is different from Theft in the First
8 Degree, Second Degree and Third Degree. It's theft of
9 a firearm. Doesn't matter what the value is of the
10 firearm. It's theft of a firearm.

11 And theft of a firearm is not a lesser-included in
12 Robbery in the First Degree, Your Honor. And that's
13 the problem we have. That's the legislative framework
14 that prevents this lesser-included from being included
15 in the instructions, Your Honor. It was a firearm and
16 he can't get a --

17 THE COURT: Well, let me -- I thought about
18 this last night. Let's just talk about it out loud,
19 think about it out loud, no matter how confused my
20 thoughts might be. The State really didn't charge him
21 with robbery of the gun.

22 MR. CURTIS: No.

23 THE COURT: And therefore, theft of the gun
24 is not a lesser. What we are talking about, I think,
25 if the defendant were to be able to get a theft, is,

1 under their theory, is that he took the gun.

2 Under that theory, I suppose you could take the
3 position that he robbed or was an accomplice in robbing
4 the other items with the gun, or that story is totally
5 fabricated in which case he had the gun and he robbed
6 the other item.

7 So I am separating the gun, because theft of the gun
8 is not -- was not, never has been the State's
9 underlying theory. The only issue is, I think, whether
10 it differentiates the gun from the other items taken.
11 And therefore, are they entitled to an instruction on,
12 you know, robbery of the other items by use of the gun,
13 which is the way it's charged, while armed with a gun,
14 or are they entitled to a lesser of theft of the other
15 items, not the gun? And is theft of the other items a
16 lesser? Do you see what I am thinking?

17 MR. CURTIS: I see where the Court is going
18 with this. And what I did was I spoke to our appellate
19 unit. And what we have here is we have the State's
20 charges. And the State charged him with stealing
21 property, not including a gun, and that's one analysis.
22 But based on the State's information in the declaration
23 that we have charged him with, we have charged him with
24 Robbery in the First Degree, based on him being --
25 having possession of a firearm and taking personal

1 property from our victim, which was the wallet and
2 those items. It's described in our declaration.

3 Now, what the defendant has done is, he has -- I
4 think he is alleging and gambling that if he says that
5 he took the gun from the victim, then he can get this
6 instruction of Theft in the Third Degree claiming he
7 only stole the gun. He never claimed that he stole the
8 other property. You see?

9 And that prevents us from going down that other
10 analysis of, what if we just separate the firearm and
11 just look at the property? Well, he never -- he said
12 that he had nothing to do with the property. In fact,
13 his testimony was, he rebuffed his friends and
14 admonished him from taking the property.

15 So the question is, what did he do by asserting the
16 facts or alleging that he stole the gun and only the
17 gun? What did he do? Did he change the nature of the
18 charges? Did he change the nature of the charges in
19 such that he could get a Theft in the Third Degree? He
20 can't.

21 The reason why he can't and the analysis stops here
22 because he indicated that he stole the gun. Now, the
23 only way we can consider giving him that lesser is if
24 there is any facts -- and it doesn't matter where the
25 facts came from, the State or the defense. So we have

1 to look at it and say, did he allege facts that would
2 constitute the crime of Theft in the Third Degree?
3 Because the item he stated he stole was a gun, I don't
4 think -- I think the analysis stops right there because
5 theft of a firearm is not a lesser-included.

6 Now, there is no allegations that he stole the other
7 property, so we don't even have to go down that road
8 because there is no facts to support that he, under his
9 analysis, that he didn't have a gun and he only took
10 property.

11 It sounds confusing because we are trying to think
12 of hypotheticals to support these baseless claims from
13 the defendant. But we have to go through the analysis.
14 In my appellate unit, we looked at it and we fell back
15 to the statute. Did he allege anything that would
16 constitute Theft in the Third Degree? He didn't. He
17 said he stole a loaded firearm.

18 And what he -- even if we base it on his facts, it
19 constitutes a robbery. You can walk down the
20 to-convict instructions based on what he alleged and it
21 would be Robbery in the First Degree.

22 MR. QUILLIAN: Well, I can't disagree with
23 that last statement more. Robbery in the First Degree,
24 Mr. Curtis is focusing on the armed with a deadly
25 weapon element, but there is also the element of use of

1 force or a threatened force and that kind of thing.
2 But let me get back to what the initial argument was
3 about.

4 The State's theory is that -- and putting aside what
5 Mr. Nelson said, the State's theory is that either
6 Mr. Nelson or an accomplice took this property from
7 Mr. Calloway, and that's why we put in the accomplice
8 instruction and the elements instructions put for an
9 accomplice.

10 Clearly, Mr. Burke took some of the property or
11 certainly took some of the property off the person of
12 Mr. Calloway. And clearly, Mr. Jackson ended up with
13 some of the property, as well. There is certainly an
14 argument there, regardless of what Mr. Nelson testified
15 or didn't testify to, that he is an accomplice to the
16 taking of that property, just the theft of that
17 property, putting aside the issue of the gun for a
18 moment.

19 So I think -- I don't think that -- I don't think
20 what Mr. Curtis is saying solves the problem.

21 MR. CURTIS: Your Honor, I would ask
22 defense counsel, how do you get over the fact that the
23 statute excludes Theft of a Firearm from the Theft in
24 the Third Degree, Second Degree and First Degree? How
25 do you get over that?

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MR. QUILLIAN: Because there was other property taken, cell phone, wallet, coat, hat, money, bus tickets.

MR. CURTIS: Your Honor, here is the problem with that argument: He is saying that there were other items taken. So if we are going to look at the other items that were taken after the -- well, if we are looking at -- well, I think the problem is, you can't separate the two -- the factual scenarios. We can't say, okay, the defendant has his story, which he alleged so he could get the theft of a lesser-included. We have our story that we presented on the stand. Our story is, and it was consistent, he had a gun. He pointed it at the chest of Mr. Calloway and took his personal property.

His side is this: His story is this: Mr. Calloway got in the car with us. He said, "Hey, look at my .38 revolver" and handed it to him. And I apologize for laughing. He handed it to the defendant and the defendant says, "I am taking your gun because you are a snitch."

So if we stop right there, that's what the defendant alleged. He said he didn't do anything else. So you can't try to put all of these facts together just to carve out an exception. You can't just take parts of

1 his story and then take parts of my story and say,
2 okay. We can get rid of the firearm aspect of it. You
3 can't do that.

4 I think if we look at the Theft in the Third Degree,
5 it says it excludes firearms. Theft in the Second
6 Degree excludes firearms. Theft in the Third Degree
7 excludes firearm. So I don't see how we get this
8 instruction.

9 MR. QUILLIAN: Well, Mr. Curtis might not
10 like the defense theory of the case, but I don't think
11 prosecutors generally like the defense theories of the
12 case. If there is some evidence to support that, I
13 think the defense is entitled to an instruction.

14 MR. CURTIS: I actually like the
15 defendant's testimony, actually, but it doesn't matter.
16 It's the law, and it's not -- there is no facts of a
17 stolen firearm being Theft in the Third Degree.

18 THE COURT: You know, what I think is this:
19 I guess I am concerned about the language of WPIC
20 37.02, the language in the comments on that, in which
21 said, "Theft in the Third Degree is a lesser-included
22 offense under all alternatives to Robbery in the First
23 Degree."

24 So I suppose the defendant's theory or the jury
25 could conclude that the alleged victim gave up this

1 gun, and that no force or threatened use of force was
2 used by the defendant or an accomplice to steal the
3 property, and that's the defense theory of the case, if
4 you forget the gun altogether as part of the theft.
5 That's the defense theory of the case.

6 Now, that would require the jury to believe that,
7 indeed, this was not defendant pulling a gun, but the
8 alleged victim handing over. And even with the
9 defendant holding the alleged gun, there being no force
10 or threatened use of force.

11 If the jury were to take that leap on the robbery
12 charge, I suppose they could go through the elements
13 and conclude that it's a Theft in the Third Degree of
14 the other items, not the gun. Forget the gun.

15 If I were to do that, however, you know, your
16 proposed instructions, Mr. Quillian, are inaccurate to
17 the extent that you don't put in the accomplice
18 language. You didn't say --

19 MR. QUILLIAN: You are right.

20 THE COURT: -- that the -- and the reason I
21 am inclined to do this is I don't like to try cases
22 more than once and come back. And your "To convict the
23 defendant of the crime of Theft in the Third Degree,
24 each of the following --"

25 MR. QUILLIAN: No, I see what you mean.

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THE COURT: "-- the defendant or an accomplice" and accomplice instruction.

And I think the reason I need to do that is because of the comments to the lesser-included offense. And that -- it's a big leap, I think, for the -- but a jury -- you know, that's the defendant's theory of the case, and he can argue that, I think.

MR. CURTIS: Your Honor, I just -- well, the State would respectfully object. And I just find it hard to see how we can change -- wiggle around the law. The defendant's -- I understand, and with great caution, if there is any facts to support the lesser-included, I think we have to include it.

But the defendant -- we have to look at what the defendant said. He said, "I stole a gun, and I sold a gun." That's Theft of a Firearm. He said he didn't -- he said he didn't in no way participate in the stealing of the other items.

So if we look at what he says and we say, okay, we could -- and we say, okay. If he stole a firearm, based on his story, the guy handed him the firearm and him taking it, yes, that would be a theft, and I agree that we could argue it was Theft in the Third Degree.

But when you look at the Theft in the Third Degree language, it says it excludes firearms. That's the

1 only problem we have here.

2 So we can't just say, well, let's ignore it and
3 let's suggest that he -- the other property, he stole
4 that one or he was an accomplice to theft of those
5 properties. He -- there is no facts to support that
6 because he didn't -- he didn't say that. And our story
7 is completely different. Doesn't support that
8 situation.

9 So what we are trying to do is we are trying to say,
10 well, we can't work -- we can't give the lesser based
11 on what he said, so let's add some other facts to it
12 because those are facts not in evidence. There is
13 nothing in evidence that suggests that he participated
14 in the theft of the other property, based on his
15 testimony.

16 THE COURT: Well, your position, your
17 argument to the jury is essentially what he said is
18 hogwash; he put a gun, committed a robbery.

19 MR. CURTIS: Yes.

20 THE COURT: And, members of the jury, even
21 if you don't believe that, if you were to believe
22 somehow that the alleged victim handed over his gun,
23 then, he still, assuming it was just the accomplices
24 that took the other items of personal property, he
25 still utilized force or the threatened use of force by

1 virtue of the fact that he had a gun on him, okay? So,
2 and therefore, this is a robbery. It's not just a
3 theft. Members of the jury, for you to find that it's
4 just a theft, you would have to find that, if you
5 believed his story to be true, that the gun was
6 voluntarily given over and he just had it on his lap.
7 You would have to find that, in essence, I haven't
8 proven to you beyond a reasonable doubt that him having
9 a loaded gun was use of force and the other elements of
10 robbery.

11 Separating the theft of the gun, because you never
12 charged him -- your theory -- and you never charged him
13 with theft of a gun. So it really is, we are focusing
14 on either the robbery of the personal property items by
15 use of the gun, or we are talking about the defense
16 theory of theft of the other items, not the gun.

17 Because I don't think theft of a gun doesn't come
18 into play here except to the extent as it goes to the
19 defendant's credibility. That's how I see it. I think
20 if I don't give a lesser to Theft in the Third Degree,
21 that I think we will be back here trying this again.

22 MR. CURTIS: Well, Your Honor, I am ready
23 to go forward.

24 THE COURT: But you understand --

25 MR. CURTIS: I understand what the Court --

1 I understand, and it was a, you know -- and I am ready
2 to go either way. I can handle it.

3 THE COURT: No, no, I understand. But in
4 order to fix that, though, we need to repair your
5 instructions --

6 MR. QUILLIAN: Right.

7 THE COURT: -- Mr. Quillian.

8 MR. QUILLIAN: I apologize for that.

9 THE COURT: Well, let's see what needs to
10 be repaired.

11 MR. QUILLIAN: I think just the to-convict.

12 MR. CURTIS: I think it's the -- let me
13 see. So the only to-convict, his theft to-convict
14 instruction, is that what we are trying to repair?

15 THE COURT: Well, let me get up to that. I
16 am going through your supplemental ones you gave today.
17 And was the change there just in the accomplice?

18 MR. CURTIS: Yeah, mine was change of the
19 accomplice, and then accomplice language under
20 to-convict.

21 THE COURT: Okay. Because I am going -- I
22 went through your original set, and I started to number
23 those. What about -- Karen, can you do this
24 instruction? After it says "the defendant," add the
25 language "or an accomplice."

1 Have you looked at Mr. Quillian's other
2 instructions?

3 MR. CURTIS: I have, Your Honor. I think
4 his instruction that begins "when you begin
5 deliberating --"

6 THE COURT: Right.

7 MR. CURTIS: -- it says, "there will be
8 three verdict forms."

9 THE COURT: Right.

10 MR. CURTIS: Mine says "two."

11 THE COURT: Right.

12 MR. CURTIS: And then his also includes the
13 instructions we have already -- Verdict Form 2, if you
14 don't find him guilty of Robbery in the First Degree.

15 THE COURT: Okay. "You will be given a
16 special verdict form," his looks the same as yours,
17 except he talks about Robbery in the First Degree.

18 MR. CURTIS: Let me see which one. I think
19 ours has different language in it. Mine follows the
20 WPIC, Your Honor. I don't know this other language.

21 MR. QUILLIAN: Well, Your Honor, the other
22 -- I agree they are different, and also, my special
23 verdict form is a little bit different.

24 And I had this issue come up in a trial a couple
25 weeks ago in Judge Costello's courtroom, and I wish I

1 could quote you chapter and verse, and I didn't have a
2 chance to look that up this morning.

3 There was a case that came out within the last, I
4 think, six to eight months which discussed special
5 verdict -- special verdicts. And we had the discussion
6 about that in the last trial I had, and Judge Costello
7 came to the conclusion that the form that I proposed
8 and the language I proposed was appropriate in light of
9 that case, but I apologize for not being able to give
10 you that specific case. I could probably find it in a
11 few minutes if I got to a computer somewhere. And so
12 that's why I did that. I agree that what Mr. Curtis
13 proposed is according to the current version of the
14 WPICs.

15 THE COURT: So the special verdict form in
16 your instruction has this language, the answer section
17 above has been intentionally left blank. Yeah,
18 somewhere in the back of my mind, I recall some case on
19 that issue, but.

20 MR. CURTIS: I am not familiar with the
21 case, but the language is, you know, it talks about --
22 his language, it includes a whole bunch of additional
23 language that's not included in the WPIC.

24 MR. QUILLIAN: I think the case essentially
25 said, as I recall, that if they are not unanimous, they

1 don't necessarily have to be all unanimous for no in
2 order to sign the special verdict form. They just
3 don't sign it.

4 THE COURT: I think there is a case,
5 something to that effect. I don't think it makes a big
6 deal in the scheme of things, but I think, you know, I
7 think there is some case on that issue about that.

8 MR. CURTIS: I think there is different
9 language that says you must unanimously be satisfied
10 beyond a reasonable doubt, and then his says all 12.
11 It just adds a whole bunch of different language that
12 is not included in the WPIC. That's my only problem
13 with it.

14 And I don't know what the case law says, but I don't
15 think the case law rewrote the WPIC to add all of this
16 extra language in it regarding all 12 and -- is that
17 what the case law?

18 MR. QUILLIAN: I think it did. I think it
19 addressed.

20 THE COURT: Well, why don't you look it up.
21 It's 9:30. Unfortunately, we have had my jury waiting
22 here for 40 minutes, but if you are telling me I need
23 to give another instruction, then give me the law.

24 MR. QUILLIAN: Can I go down to the library
25 for just a second and use the computer down there?

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THE COURT: I guess.

MR. CURTIS: Your Honor, I am gonna go see if I can help him research it since my office is right upstairs.

MR. QUILLIAN: Your Honor, the case I think I am thinking of is State vs Ryan, R-Y-A-N. My search engine didn't have a Washington cite for it. It was cited on June 7, 2012. They didn't -- I couldn't get a Wn.2d cite on it.

THE COURT: Karen, can you see if you can? Okay. Back on the record. It's 9:55. So you've now provided State vs Ryan. Have you looked at it?

MR. CURTIS: Yeah, I have read it.

THE COURT: Comments? Any comments, Mr. Curtis?

MR. CURTIS: I just don't see the different -- I still don't see any -- the different language. When you look at my second sentence, my first sentence and the second sentence, I don't see how we get to the different language that's in there. "After full and careful consideration," that's not in here.

I don't understand -- that's my problem, it's been rewritten in a way that is not supported by this case. So we can always add language that we want. My goal is just to go with the WPIC, the language in the WPIC. We

1 can always rephrase and add "full and careful
2 consideration." There is some instructions I would
3 like to change, but I can't do that. That's my only
4 contention.

5 THE COURT: Okay.

6 MR. QUILLIAN: Well, Your Honor, I will be
7 honest with you, I know we had this discussion in my
8 other case, and Judge Costello decided to give the
9 instruction that I proposed and the special verdict
10 form that I proposed.

11 But in looking at Ryan, it looks like they approve
12 the language that's in the State's instruction. Maybe
13 I am not reading -- it's a confusing opinion, to say
14 the least.

15 THE COURT: It is confusing.

16 MR. QUILLIAN: Because the instruction that
17 was given, for example, in Nunez, which was the
18 co-appellant, apparently seems to be identical to
19 State's proposed instruction.

20 THE COURT: Right. Well, but I think what
21 the decision says is the only option we give them under
22 the WPIC instructions is unanimously yes or unanimously
23 no. And if you can't agree one way or the other, then
24 you continue to go back and deliberate that issue, as
25 opposed to, they could conclude that they can't --

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MR. QUILLIAN: Not in agreement.

THE COURT: They don't agree on that. I think, and I think your Instruction No. 24, which you said Judge Costello gave?

MR. QUILLIAN: Is that the one I proposed?

THE COURT: Right, your proposed.

MR. QUILLIAN: Yeah, that's correct.

THE COURT: Says, "If you unanimously agree that the answer is yes, then the presiding juror should sign the section special verdict form indicating the answer has been intentionally left blank." I actually think that's probably, based on this decision, a more careful and appropriate way to instruct the jury.

In other words, to find that special verdict, armed with a firearm, they have to unanimously agree that the answer is yes. They don't have to unanimously agree it's no, but they have to unanimously agree it's yes, and I think that just makes it clear.

So here are the instructions I am going to give. Karen, do you want to go ahead and make a copy for the attorneys?

MR. CURTIS: Your Honor, I have one more issue.

THE COURT: What is that?

MR. CURTIS: With regard to the

1 lesser-included, is the Court going to prevent defense
2 counsel from arguing that his taking of the gun is
3 Theft in the Third Degree, since it does not comply
4 with law? Since what we are saying is I think the
5 Court analysis is that --

6 THE COURT: Am I going to prevent him from
7 arguing --

8 MR. CURTIS: That theft of the firearm,
9 based on his -- based on Mr. Nelson's testimony, he
10 only took the firearm.

11 THE COURT: Right.

12 MR. CURTIS: Because we all know that theft
13 of a firearm is not -- cannot be -- is not included or
14 not an element.

15 THE COURT: Of Theft in the Third Degree.

16 MR. CURTIS: Right. Is the Court going to
17 prevent -- can I get a motion in limine right now that
18 prevents him from arguing that his client's action of
19 taking the firearm constitutes Theft in the Third
20 Degree?

21 THE COURT: I think that's correct.
22 Mr. Quillian?

23 MR. QUILLIAN: I will accept that.

24 THE COURT: I think that's correct. I
25 think the only way we get to Theft in the Third is of

1 the other personal property, and that's only if they
2 conclude, one, he didn't pull a gun and rob the alleged
3 victim, and two, that even assuming he had a gun on his
4 lap given to him, that that did not constitute the
5 other elements of Robbery in the First Degree.

6 MR. CURTIS: Okay.

7 THE COURT: I agree.

8 THE CLERK: Make all the copies right now?

9 THE COURT: Go ahead and make the copies.
10 So I am going to take a brief recess.

11 MR. CURTIS: Okay.

12 (Brief recess.)

13 THE COURT: Okay. Please be seated. We
14 are going to recess at 11:30 today, just so you know.
15 So all this time we have taken on the instructions, I
16 hope it doesn't --

17 MR. CURTIS: For the rest of the day?

18 THE COURT: What?

19 MR. CURTIS: For the rest of the day?

20 THE COURT: I am hoping your closing
21 arguments will be done by then. We have taken an hour
22 and a half longer than I thought on this. Take a look
23 at the Court's instructions. Okay. Any exceptions by
24 the State, other than the objection to the
25 lesser-included and the discussion we had regarding

1 special verdict?

2 MR. CURTIS: No, Your Honor.

3 THE COURT: Okay. Mr. Quillian, any
4 exceptions?

5 MR. QUILLIAN: No, Your Honor. Thank you.

6 THE COURT: All right. We will bring the
7 jury in, then. I am going to be back today. My hope
8 was to have this to the jury this morning. I have a
9 commitment, and we have lost an hour and a half now. I
10 need to be out of here no later than 20 to 12:00, just
11 so you know.

12 MR. CURTIS: I will reduce my closing by 45
13 minutes, Your Honor.

14 THE COURT: How long --

15 MR. CURTIS: And I will cut in half the
16 Power Points.

17 THE COURT: I don't want to rush either one
18 of you, but I am just kind of telling you my schedule
19 anyway, so I'll leave that up to you.

20 MR. CURTIS: We will be fine.

21 THE COURT: If we need to go later, we do.

22 (Jury enters.)

23 THE COURT: Please be seated, folks. Sorry
24 to keep you waiting so long. We have been discussing
25 instructions since this morning. At this time, I am

1 going to instruct you regarding the law to be applied
2 in this case. I am going to read these instructions to
3 you, but we are also giving to each one of you an
4 individual copy of the Court's instructions on the law.

5 So what you are getting is your working copy.
6 You'll get the original instructions and the original
7 verdict forms when you begin your deliberations. So
8 this is your working copy of the instructions. Thanks.
9 Do I need to repeat anything I just said? Okay.

10 So what you have is a working copy of the Court's
11 instructions. That means you can either follow along
12 as I read them. You are gonna be able to take those
13 back to the jury room with you. If you feel like you
14 want to write on them as I or the attorneys discuss
15 them, feel free to do so. So those are your working
16 copies of the instructions.

17 (Instructions given.)

18 THE COURT: The rest of what you have are
19 Verdict Forms 1, 2 and 3 and the special verdict form
20 that I just referred to.

21 So, at this time, members of the jury, if you would
22 give your attention to Mr. James Curtis on behalf of
23 the State of Washington. Mr. Curtis?

24 MR. CURTIS: Thank you, Your Honor. May it
25 please the Court, Mr. Quillian, defendant, members of

1 the jury. Last week, I think it was Thursday, I stood
2 before you and I told you that the State would present
3 to you credible evidence that will establish beyond a
4 reasonable doubt that on October 1st, 2011, the
5 defendant committed the crime of Robbery in the First
6 Degree, and that he was armed with a firearm, and that
7 he unlawfully possessed a firearm in the first degree.

8 And I gave you some facts to support that. I told
9 you that the State's evidence would present to you and
10 would show that the defendant pointed a .38 revolver at
11 the chest of Travis Calloway. And when the defendant
12 pointed that gun, he called him a snitch and told him
13 that he wanted his personal property.

14 So now that you recall that, now you have to see,
15 did the State deliver on its promises. Because opening
16 statements is sort of like a promise. And when the
17 State stands before you and presents evidence, if they
18 can't fulfill that promise, then -- then it's likely --
19 unlikely that it can meet its burden.

20 But you heard the evidence and what did you hear,
21 and who did you hear from? Who do you recall the
22 State's first witness was? Jeff Martin. He is an
23 investigator for the Lakewood Police Department.

24 And the other witnesses include the victim in this
25 case, Travis Calloway and two long-time friends of the

1 defendant, Theo Burke, who he has known since he was in
2 second grade, and Jerako Jackson, a young man who had
3 recently lived with the defendant. And then we heard
4 from Caitlyn Dripps. And lastly, we heard from Darin
5 Sales who did the latent fingerprint examination of the
6 gun.

7 So what was the evidence? What was the State able
8 to show you based on testimony and exhibits? Well, in
9 considering what the State presented, you need to
10 carefully think about the instructions and think about
11 one of the key analyses for determining whether a
12 witness was credible, the things you can consider.
13 Were their stories consistent? Were there any big
14 differences between the testimony of the State's
15 witnesses? I would submit to you no.

16 I would submit to you that Mr. Calloway, Theo Burke
17 and Jerako Jackson all admitted to you that they had no
18 prior relationship with each other. Their only
19 connection was the defendant, Michael Nelson. I asked
20 Theo Burke, had you ever met Travis Calloway before?
21 And he said no. And remember, Theo Burke was the
22 back-seat passenger. Jerako Jackson, he was the
23 driver. And remember what he said? I asked him, did
24 you have any prior relationship or knowledge of who
25 Travis Calloway was? And he said no.

1 And then I asked Jerako and Mr. Theo Burke, I asked
2 them, did they know each other prior to this incident,
3 and they said no.

4 What does that mean? What -- what is the -- what is
5 the meaning of that? If the driver and the back-seat
6 passenger did not know each other, what does that
7 suggest to you? That suggests to you if they didn't
8 know each other and they were just riding in the car
9 because the defendant was transporting them, that means
10 there was no plan between the driver and the back-seat
11 passenger prior to them getting in the car. That means
12 that when they got in the car, they hadn't spoken to
13 each other because they didn't know each other prior to
14 October 1st.

15 What is the meaning of that? Well, the meaning is,
16 when they saw Travis Calloway standing on a corner,
17 they didn't think anything of it because they didn't
18 know him. Who knew Travis Calloway? The defendant.
19 And how did he know him? He knew him because they were
20 locked up in the Pierce County Jail together.

21 And when the defendant, who was seated in the front
22 seat of the car, of the white Taurus, he told Jerako
23 Jackson and Theo Burke, "I know that guy standing at
24 the bus stop." That's what they told you. They said
25 that the defendant pointed him out and said, "That guy

1 was locked up with me. He is a snitch." And what did
2 Mr. Burke tell you? Mr. Burke said that Mr. Nelson,
3 the defendant, said, "I am going to rob him." And he
4 told Jerako to pull over there next to the bus stop.
5 That's the testimony.

6 And it's significant that Mr. Burke and Mr. Jackson
7 didn't know each other prior to getting into that
8 vehicle because they didn't plan this out. This was
9 all the defendant's. It was spontaneous. It was his
10 idea. He saw a man sitting at the corner -- at the bus
11 stop. He thought he was a snitch, and he didn't like
12 it.

13 And what did the defendant say about Mr. Calloway?
14 Remember I asked him, I said, "You wanted to get
15 revenge?" And he said, yes, he wanted revenge. He had
16 a personal beef. It was his personal beef.

17 So when he went up to Calloway, he asked him a
18 question. Calloway testified to this. Mr. Burke
19 testified to this. They said that the defendant asked
20 Mr. Calloway if he wanted to buy some weed, and
21 Mr. Calloway was pretty blunt about it. He says the
22 amount that he was trying to sell me was too good to be
23 true. He wanted a 100, \$200 for a larger quantity of
24 marijuana, and it was too good to be true.

25 And what did the victim, Mr. Calloway, tell you? He

1 said that he thought that the defendant was asking him
2 if he wanted to buy marijuana to determine what? How
3 much money he had on him.

4 Well, we know Mr. Calloway got in the car. He
5 refused to buy marijuana. Said he didn't have any
6 money. In fact, he told you how much money he had. He
7 told you he donated plasma, and he got \$35, and he was
8 planning to meet the mother of his children so he can
9 contribute the \$35 to the young child. He didn't have
10 a job. He told you he was a convicted felon. He told
11 you he spent time in prison. That's his baggage, and
12 he told you.

13 But he told you he got in the car, and he thought
14 that they were gonna take him to the Lakewood Towne
15 Center. That's what he thought they were going to do.

16 But Mr. Burke told you that he knew what was going
17 down. And remember what he said? When Calloway got
18 into the car, he kind of put his head down because he
19 knew what was gonna happen. He said that he even tried
20 to convince the defendant, "Don't rob this guy. Let's
21 keep going." But Calloway got in the car.

22 And what did the defendant tell Mr. Jackson to do?
23 He told Mr. Jackson to pull into an apartment complex.
24 And you might have to use your memories for this: But
25 I want you to think back to when Mr. Calloway was on

1 the stand. And, you know, he had his dreadlocks on,
2 and he was speaking kind of fast. And he said, "They
3 pulled into an apartment, and they did like a U-turn."
4 Remember, he had to slow down and he kept on gesturing,
5 right?

6 I found that interesting because when Theo Burke
7 took the stand and he described them going into a
8 cul-de-sac right where the apartment complex was
9 located, and what did he tell you the vehicle did? He
10 told you that the vehicle did a U-turn. So when you
11 are looking for consistencies, you want to look at
12 these little minor details. Did they fit?

13 Here are two strangers who didn't know each other,
14 met for a matter of minutes and now, a year and a half
15 later, they are describing the situation and their
16 stories are consistent. Those little details.

17 And what did all three of the State's witnesses
18 testify to once that vehicle came the a stop? Both
19 Mr. Jackson, Mr. Burke and the victim, they all said
20 when the vehicle came to a stop, the defendant pulled
21 out a black, rusty-looking, chrome-looking .38 revolver
22 and pointed it to the chest of the victim. That's what
23 they all described. They all were shown the gun and
24 they described the gun: Wood handle, short muzzle
25 barrel. They described it. And when I showed them the

1 gun, they said that was the gun that the defendant had.
2 They were consistent. Not one of them said, "I don't
3 know." They said that was the gun.

4 And what happened afterwards? They said that the
5 defendant demanded his personal property. He says
6 that, "This is a jack. You are a snitch in jail."
7 They all testified to the same thing, both the victim
8 and both of his friends testified that he pulled the
9 gun out and called him a snitch and told him to give up
10 his personal belongings and they all were consistent on
11 the property that was taken. They said it was a
12 wallet, \$35, a Tommy Hilfiger wallet with a Champ's
13 sport card in it, \$35, or some of them they said 17,
14 they didn't know. They said it was a small amount of
15 cash. But we know why they didn't know the exact,
16 because the defendant had the money, but it was a small
17 amount of cash. And it was a hat and a jacket that was
18 taken.

19 And Jerako Jackson, he told you, he said, "The
20 defendant told me to get his hat and jacket and that's
21 what I did, and I took it." And he even said, "It was
22 raining outside, so I took the jacket, and I took it."
23 He says that it didn't belong to him, and he admitted
24 that he didn't try to call police; he didn't do
25 anything to stop it. He said he took the jacket. It

1 was raining outside. And we know it was raining
2 because Mr. Calloway told you the victim said it was
3 raining when he got out the car and he ran to his
4 aunt's house. Those are just little details that shows
5 consistency in their statements.

6 They all testified that the property was taken.
7 Mr. Burke told you that he went in there and he reached
8 in his pocket. He said he took some property from him
9 and handed it forward to the defendant.

10 Now, you may be thinking, hmm, Theo Burke, he pled
11 guilty to Robbery in the First Degree. He is looking
12 at some significant time. He has -- you know, he has
13 an interest. He has an interest. And you might think
14 he might have an interest in telling the truth, or you
15 might think he has an interest in lying. You are gonna
16 make that determination. But when you make that
17 determination, you have to consider whether his
18 testimony fits into the greater scheme of the evidence.
19 Did it fit the story -- was it identical to the
20 victim's recitation? Was it identical to the driver,
21 two strangers that he never met, except for that moment
22 in time inside the vehicle? I would submit to you it
23 is consistent.

24 So what happened after the robbery? The victim told
25 you after he gave up his stuff, he was going to leave

1 the car. He was trying to leave the car. And what did
2 he say the defendant said to him? He said that the
3 defendant said, "I should shoot you for being a
4 snitch." That's what he told you. And what did
5 Mr. Burke tell you about that? Mr. Burke also told you
6 that the defendant said that he was going to shoot him.
7 Mr. Burke -- Mr. Burke told you that on the stand.
8 Mr. Calloway was able to get out of the car. He wasn't
9 shot. And he came in here and testified with all his
10 baggage, everything in the past. And he said something
11 that was interesting when he left the car. He said
12 when he left the car, he kind of like smiled for a
13 second as he was running away and he thought to
14 himself, karma, some of the things he has done in the
15 past has come back on to him.

16 And I want you to guard against something because
17 it's really important because you can look at him and
18 say, yeah, he's committed crimes, he's gone to prison.
19 So what? It is karma. But our law doesn't recognize
20 karma. And our legal system has to be fair. We can't
21 look at someone and based on the their appearance or
22 their lack of education and say they don't deserve --
23 we can't consider what happens to them. We have to.
24 That's how our system works. We can't consider the
25 fact that, oh, he's gone to prison, or it was karma.

1 We have to look at the facts of the case, and that's
2 the only way the system works, and we have talked about
3 that.

4 And we know how that is important for our system to
5 work; that we can't use what he's done in the past
6 against him, but can you consider it with regard to
7 credibility. You can consider the fact that he was
8 convicted of robbery for his credibility. And then I
9 would ask you to look at his testimony within the
10 greater framework of the State's evidence. Does it
11 fit? Is there any discrepancies? Do you believe he's
12 made anything up? He told you a black Tommy Hilfiger
13 wallet was taken from him. And what did the State show
14 you? A black Tommy Hilfiger wallet.

15 And he said there was a Champ's sports card inside
16 of it. What did you see? There was a Champ's sports
17 card inside of his wallet. Where was that wallet
18 found? Jeff Martin was assigned to this case, Lakewood
19 Police Department. He was head of this investigation.
20 And what did he do? He told you he was able to locate
21 where the defendant was staying, was at, his
22 whereabouts. He was right up the street here, right
23 off of Yakima in a townhome. And they found him going
24 outside from a townhome. They contact -- Jeff Martin
25 indicated, he testified that he contacted the

1 defendant, and this was 10 days after the robbery. And
2 what did he tell you? He said he contacted the
3 defendant, and he asked the defendant where was he
4 staying, and defendant pointed to a residence, Caitlyn
5 Dripps' residence. He said, "I was staying there."

6 And what did Jeff Martin testify? He testified that
7 he asked the defendant, is she home? And he said that
8 the defendant said no, she's not home. Her car broke
9 down. He had a very elaborate story to prevent them
10 from going and knocking on that door.

11 So the question is, why would the defendant tell
12 Jeff Martin that Caitlyn Dripps wasn't home on that day
13 of October 10th, 2011? Why would he tell her, tell the
14 officer she is not home if he did not know that he had
15 the gun inside the residence? Was that consciousness
16 of his own guilt?

17 Well, based on his training and experience, Jeff
18 Martin decided not to believe that. He knocked on the
19 door and guess who answered? Caitlyn Dripps. And she
20 testified here. She said the defendant had previously
21 been spending the night at her house since he's been
22 back in town. She said he had some clothing at the
23 house. And she said that there wasn't a gun there.
24 She didn't believe there would be a gun there.

25 And when they searched her house and they looked on

1 top of the refrigerator, they found the same gun that
2 three witnesses testified was the gun used in the
3 robbery. It was a black revolver, .38 revolver.

4 And what did Jeff Martin tell you the defendant said
5 when he saw that gun? Excuse my language, but the
6 defendant's only word was "shit" because he knew he was
7 had. He knew that he was going down for robbery.

8 And when they went to his mother's house, what did
9 they find at his mother's house? They went there.
10 They had a search warrant. They went in the garage,
11 and they found the black Tommy Hilfiger wallet, at his
12 mother's house.

13 So when you consider the State's case, the fact that
14 two of his closest friends, one friend since second
15 grade, came here and testified, another young man who
16 lived with him recently, they testified, they said that
17 he pulled out a gun, pointed it to the chest of the
18 victim, and the victim said the same thing. The State
19 believes that it's given you credible evidence.

20 So what must the State prove? To convict the
21 defendant of Robbery in the First Degree, Instruction
22 No. 12, you can turn there and follow along or you've
23 already seen it and read it, but it says that on or
24 about October 1st, 2011, the defendant or an
25 accomplice unlawfully took personal property from the

1 person of another.

2 Well, we know that the defendant pointed a gun at
3 the chest of Calloway and demanded his cash. And
4 Mr. Calloway said that he don't know where any of the
5 other property went; he just handed it forward. But he
6 did say, "I remember giving the cash to the defendant."

7 And we know that based on Mr. Jackson's testimony,
8 defendant told him to take the hat and the jacket. And
9 we know, based on Mr. Martin's search of his mother's
10 house, the defendant's mother's house, that the wallet
11 was found at his -- that he had taken the wallet
12 because it was at his mom's house. We know that
13 property was taken.

14 When you look at two, that the defendant or an
15 accomplice intended to commit theft of property, we
16 know that because that was the defendant's demand,
17 "Give up your property. This is a robbery. You are a
18 snitch." We know that.

19 When we go down to No. 3, it said, "The taking was
20 against a person's will by the defendant or an
21 accomplice use or threatened use of immediate force,
22 violence or the fear of injury to that person."
23 Mr. Calloway testified that he had a fear of injury.
24 He thought he was going to get shot. The defendant
25 told him, "I should shoot you." A gun to his chest,

1 that's threatened use of force.

2 Even -- and I will get to his story later, but let's
3 go down to four, "That the force or fear was used by
4 the defendant or an accomplice to obtain or retain
5 possession of the property or to prevent or overcome
6 resistance of the taking."

7 When you put a gun to someone's chest, then it's
8 very clear that the force that you are using and
9 threatening to shoot them is going to be used to
10 prevent the person -- is used for the only purpose to
11 prevent them from overcoming or resisting your demands,
12 and that's what the defendant was doing.

13 When you look at No. 5, "The commission of these
14 acts of the defendant or an accomplice -- that in the
15 commission of these acts, the defendant or accomplice
16 was armed with a deadly weapon." We know the firearm
17 instruction tells you a firearm is a deadly weapon.
18 The defendant was armed with it. We have three
19 witnesses that said he was. And that these acts
20 occurred in the state of Washington.

21 Now, we also have the accomplice liability, and that
22 instruction is there just to show you that the
23 defendant, when he was holding that gun to the chest of
24 Mr. Calloway, that he was liable for the actions of
25 Jerako Jackson and Theo Burke during that time. And it

1 explains why, "That if a person is an accomplice in the
2 commission of a crime if with knowledge that it will
3 promote or facilitate the commission of the crime, he
4 either solicits, commands, encourages or requests
5 another to commit the crime."

6 We know that he says he was the only person in that
7 car who knew Calloway. He encouraged it. He told
8 Jackson to pull over to that young man because Jackson
9 didn't even know who he was. Defendant gave the
10 orders. The defendant is the one who had the gun. He
11 encouraged it. He facilitated this. It was his idea.
12 He requested that Jerako Jackson take property from the
13 victim. The defendant was an accomplice.

14 And then it says, "Or aids or agrees to aid." Well,
15 of course he aided. Had the gun and he took the
16 property. He even provided the vehicle because the
17 vehicle was the vehicle that he was driving before he
18 allowed Mr. Jackson to take possession of it.

19 The State believes that it's presented very strong
20 and competent, credible evidence to establish beyond a
21 reasonable doubt that the defendant committed the crime
22 of robbery, and that he was armed with regard to a
23 special verdict form; that he had a firearm that was
24 readily available. It was in his hand. It was pointed
25 at the chest of the victim.

1 Now, with regard to Unlawful Possession of a Firearm
2 in the First Degree, there was a stipulation that was
3 read by the Court, and both the State and the defendant
4 stipulated that the defendant had previously been
5 convicted of Solicitation to Unlawfully Deliver a
6 Controlled Substance, and that that crime is a serious
7 offense. So with regard to Unlawful Possession of a
8 Firearm, the defendant had actual possession of it. He
9 had it in his hands. He had previously been convicted
10 of a serious offense, and that these acts happened in
11 the state of Washington.

12 The defendant is guilty of Unlawful Possession of a
13 Firearm.

14 Now, the defendant proposed to you a different
15 scenario. And when you think about what the defendant
16 said to you and what the defendant's excuses was about
17 what happened, you have to think about the very
18 important quote or question that was posed by defense
19 counsel on Thursday.

20 You know, what he said in his opening statement, I
21 wrote it down, and even though the opening is not
22 evidence, our statement during opening is not evidence,
23 the testimony is evidence. The exhibits is evidence.
24 He posed an interesting question, and his first
25 question is, why do people lie? That's what he said

1 during opening. He posed the question, why do people
2 lie? And I guess it was to insinuate that the State's
3 witnesses might lie; you'll be able to pick them apart.

4 We know the State's witnesses were pretty
5 consistent. Three strangers were consistent about the
6 facts that happened. But why do people lie? Well, we
7 know one person who lied, and we know that they lied
8 and admitted to lying.

9 I read a series of letters that the defendant wrote,
10 one to a former Superior Court Judge, Beverly Grant.
11 And in writing that letter to a Superior Court Judge, I
12 asked the defendant, I said, "When you wrote a letter,
13 you told the truth?" And he said, "Yes, I told the
14 truth." I said, "You wouldn't lie to a Superior Court
15 Judge, would you?" And he said, "No."

16 And then when I had him read his letter out loud, he
17 said that, "Dear, Your Honor, there was no gun in the
18 car." There was no gun. But he testified that there
19 was a gun. And then I asked him, was that a lie? And
20 he said yes.

21 So the question is, why do people lie? Why did this
22 man lie to a Superior Court Judge? It's a very
23 difficult question to answer. One would have to be
24 able to read one's mind. But it doesn't stop us from
25 attempting to answer that question. Why do people lie?

1 Well, he said there was not a gun, and then he got
2 up here and told a story about the victim got into the
3 car, and then said, "Hey, guys, I got a .38 revolver.
4 Look at it." And then he took it, and he says, "I am
5 not giving it back to you because you are a snitch."
6 And he said he didn't point it at him; he didn't do
7 anything.

8 And then he said that his friends, after he took the
9 gun from the snitch, he said that his friends started
10 taking his personal property, and then he was like,
11 "Why are you guys doing that? This guy, he's a snitch.
12 He's going to tell on you." But he just took a gun
13 from this person. That's his -- that was his story.

14 But then you got to look back at, he told a
15 different story to a sitting Superior Court Judge, and
16 he admitted to it under oath that, "I lied to a
17 Superior Court Judge." Why did he lie? Why did he say
18 there was no gun? Was he conscious of his own guilt?
19 Was he trying to change the factual scenario to prevent
20 himself from being held accountable? Who would think
21 that they can lie to a Superior Court Judge and just
22 casually say, "Yeah, I lie."

23 But he didn't stop there. He even made accusations
24 against the Lakewood Police Department. He said that
25 the officers set him up. And he wrote that in his

1 letter. And then he tried to explain it. And that was
2 in the same sentence where he said that there was no
3 gun. He said that the officers went to his house and
4 planted a Tommy Hilfiger wallet with a Champ's sport
5 card in it. Why do people lie?

6 You do recognize that when Jeff Martin was on the
7 stand, there was no questions to that effect. The
8 witnesses, they weren't questioned about Mr. Calloway
9 bringing a gun. Mr. Calloway wasn't questioned.
10 Mr. Calloway, "Did you bring a gun and show it?"
11 Because it didn't happen. I would submit to you he
12 made it up right there, just like he made up that
13 letter, that statement that he wrote to the Superior
14 Court Judge.

15 And when you think about his credibility, you have
16 to think about it in light of this is a person who lied
17 to a Superior Court Judge.

18 They are going to propose to you, hey, this was
19 Theft in the Third Degree. This wasn't robbery. I am
20 not going to go into detail about Theft in the Third
21 Degree. How do we get there when we have three
22 strangers testifying that he had a gun pointed at the
23 chest of Mr. Calloway?

24 His female friend, whether it's his girlfriend or
25 not girlfriend, we found the gun on top of her

1 refrigerator and the wallet at his mother's house, but
2 everyone set him up.

3 Don't let him get away with this. It was Robbery in
4 the First Degree, and he was armed with a firearm.

5 The State's going to ask you to return a verdict
6 that reflects the evidence and the testimony, the
7 credible evidence and the testimony, guilty of Robbery
8 in the First Degree; answer "yes" to the special
9 verdict question of, was he armed with a deadly weapon,
10 a firearm? Yes. Answer the question of what -- and to
11 Count II of -- or Count III with regard to
12 instructions, did he unlawfully possess a firearm in
13 the first degree? Yes. Thank you.

14 THE COURT: Members of the jury, please
15 give your attention to the closing argument of
16 Mr. Quillian on behalf of his client.

17 MR. QUILLIAN: Thank you, Your Honor, may
18 it please the Court, ladies and gentlemen of the jury,
19 counsel. Good morning. First of all, let me thank you
20 for your service in this case on behalf of I think
21 everybody here in the courtroom. When I am talking to
22 you and when Mr. Curtis is talking to you about the
23 evidence in this case, we are going to, as he has
24 already done, I am going to do the same thing for a
25 little bit, is recounting to you what our recollection

1 is to some of the evidence. I am sure that neither one
2 of us will intentionally misstate the evidence, but
3 obviously, your 12 collective minds are far better than
4 our one. So if we do happen to accidentally say
5 something that your recollection is, "I don't think
6 that's what the evidence was," we expect you to call us
7 on it when you get back in the jury room and correct
8 that, but I assure you neither he nor I would
9 intentionally try and do that.

10 Again, I want to thank you for your attentiveness in
11 this case. I have been watching you a little bit here,
12 maybe you've been grabbing a glance at me or Mr. Nelson
13 at some point. When I complete my comments to you here
14 in the next few minutes, my job in this case is done.
15 I don't get a chance to talk to you again. Mr. Curtis
16 will have one more opportunity to rebut my argument or
17 have final comments to you.

18 But I submit to you that your job as a jury is
19 twofold, I think, is a good way to look at it. One is
20 to be an attentive jury; listen to the evidence
21 carefully. And as I said, I have been watching you
22 here and there, and I think you've done a very good job
23 of that.

24 The second job obviously is to go back in the jury
25 room and deliberate this case. And the question there

1 is, looking at all the evidence, what has been proven
2 beyond a reasonable doubt? Keep in mind the concept of
3 proof beyond a reasonable doubt, as you are analyzing
4 the evidence and analyzing the law and analyzing this
5 case, looking at the jury instructions as to what the
6 law is and deciding, has the State proven Mr. Nelson
7 guilty of any crime beyond a reasonable doubt?

8 Now, I used the term "reasonable doubt" or "beyond a
9 reasonable doubt" three, four, five times in the last
10 20 seconds or so. That is a concept that you, as
11 jurors, cannot hear too often. It's the concept and
12 the standard by which anyone here in this room is
13 entitled to be judged under our system before they are
14 convicted of a crime, so it's a critically important
15 concept.

16 And it is defined for you as best the law can in
17 Jury Instruction No. 2, which is what we call the
18 reasonable doubt instruction. And that, again, defines
19 for you the best shot the law has taken at defining
20 what a reasonable doubt is. It is one for which a
21 reason exists and may arise from the evidence or lack
22 of evidence. It is such a doubt as would exist in the
23 mind of a reasonable person after fully, fairly and
24 carefully considering all of the evidence or lack of
25 evidence.

1 And again, I think I mentioned earlier on, perhaps
2 in opening, the lack of evidence is an important
3 concept, as well, in determining reasonable doubt.

4 If from such consideration you have an abiding
5 belief in the truth of the charge, you are satisfied
6 beyond a reasonable doubt.

7 I ask you, as I did in my opening statement, to keep
8 in mind some of the things we discussed during the voir
9 dire process. You'll recall my -- or maybe you
10 would -- I hope you'll recall my Perry Mason question
11 about if you come to the end of this case and you just
12 are not really sure exactly what happened here, would
13 that bother you? And there was sort of a standard
14 response was, "Well, no, because that may well go to
15 whether there is a reasonable doubt or not." Well, I
16 submit that that's exactly what has happened here.

17 We also talked about in my question about, "Well, we
18 found him not guilty but tell him not to do it again,"
19 the concept that gut feelings or, "gee, I think so" is
20 not a basis for convicting someone of a crime. It
21 requires proof beyond a reasonable doubt. And we
22 talked a little bit about requiring proof.

23 I often ask jurors, well, will you require proof,
24 actual proof, before you convict my client? And some
25 of you looked at me look I am crazy to ask that

1 question. But again, it's an important question that
2 you, as jurors, have to understand and accept that
3 there must be proof, not just, "gee, I think so." And
4 I submit to you in this case, there has not been that
5 proof.

6 Judge McCarthy has instructed you on the law. You
7 have a packet of instructions there in front of you.
8 They are all there for a purpose. They all form what
9 we hope is a cohesive whole of the statement of the
10 law. I am going to refer to some of them, certainly
11 not all of them, but I urge you to take your time when
12 you get back to the jury room, review them, read them,
13 understand them, because, again, that's the framework,
14 if you will, of how you will decide this case.

15 So, what are the charges here? Robbery in the First
16 Degree with a potential lesser-included offense of
17 Theft in the Third Degree, and I will get to that in a
18 minute, and Unlawful Possession of a Firearm in the
19 First Degree.

20 You are told in your instructions that separate
21 crimes are charged, and that each should be considered
22 separately. So you are really doing a couple trials
23 here, one trial concerning the Robbery charge, one
24 trial concerning the Unlawful Possession of a Firearm
25 charge.

1 Now, again, with regard to the Robbery charge, there
2 is what is called a lesser-included offense which comes
3 up in Instruction No. 13. It tells you in that
4 instruction that the defendant is charged -- Mr. Nelson
5 is charged with Robbery in the First Degree. But if
6 you either find him not guilty of that or can't decide
7 on that charge, guilt or innocence, then you will
8 consider a lesser crime of Theft in the Third Degree.
9 I am going to come back to that a little bit later, but
10 I want you to just understand the concept that there is
11 what is called a lesser-included offense that is
12 available to you for consideration if you cannot find
13 him guilty of Robbery in the First Degree.

14 Let's keep in mind, ladies and gentlemen, what
15 Mr. Nelson is charged with and what he is not charged
16 with. He is not charged with using marijuana. He is
17 not charged with trying to sell marijuana to
18 Mr. Calloway. He is not charged with selling a gun.

19 You heard in this case seven witnesses, Officer
20 Martin, Mr. Calloway, Mr. Jackson, Mr. Burke,
21 Ms. Dripps, Detective Sale and Mr. Nelson, himself.
22 Detective Sale obviously was there simply to say I
23 tried to get some fingerprints off of the gun and
24 couldn't, so his evidence, his testimony really didn't
25 add much to the calculus here.

1 But again, in opening statement, you'll recall I
2 asked all of you to pay attention, if you would, to
3 details, details, details. And Mr. Curtis, I think,
4 has agreed in his argument to you that details are
5 important.

6 Now, some facts are not disputed here. Obviously,
7 on October 1st, 2011, there were four guys in this car.
8 It was a white Taurus, no question about that.
9 Mr. Calloway lost some property during that incident.
10 Property was taken. The route that these people
11 followed was not terribly at issue. The initial
12 contact occurred at the Shell station at 56th and
13 Orchard, and then proceeded down Orchard and turned
14 into the Lakewood Village Apartments. So again, all of
15 that stuff is not in dispute at all.

16 But what happened inside that car is certainly in
17 dispute and the incidents leading directly before and
18 directly after are certainly in dispute. And you heard
19 several different versions of what happened inside that
20 car.

21 Can you say beyond a reasonable doubt you know what
22 happened inside that car? Can you say beyond a
23 reasonable doubt that Mike Nelson is guilty of Robbery
24 in the First Degree based on what happened in that car?
25 I submit that you cannot.

1 Now, the State will tell you and has already told
2 you, well, Mr. Nelson here, he has every motive in the
3 world to lie. In fact, he took the stand and admitted
4 he lied when he wrote this letter to Judge Grant. And
5 my recollection is, and again, correct me if I am
6 wrong, is that the letter he said he wrote to Judge
7 Grant said, "I didn't touch the gun," not that there
8 wasn't a gun in the car, but that's somewhat of an
9 academic point.

10 But the problem with that argument, ladies and
11 gentlemen, is all these people had a motive to lie.
12 Everybody had a motive to lie.

13 Let's look at Mr. Calloway. I submit to you
14 Mr. Calloway was mad at Mike Nelson because Mike Nelson
15 kept his gun and didn't give it back to him because he
16 was a snitch, just like Mike Nelson testified to. But,
17 you see, Mr. Calloway couldn't call and go to the
18 police and say, "Gosh, you know, this guy stole my gun"
19 because as Mr. Calloway, himself, admitted he has prior
20 convictions. He can't have a gun, just like Mr. Nelson
21 can't have a gun.

22 So he turns the tables on Mr. Nelson and says, "Oh,
23 Mr. Nelson pointed the gun at me and took my stuff. He
24 was going to shoot me."

25 Make no mistake about it. Mr. Calloway was mad. He

1 got ripped off. Mr. Calloway also says -- remember how
2 he describes what is going on inside the car? That the
3 driver, Mr. Jerako Jackson, is saying, "Get his hat.
4 Get his coat. Empty his pockets." Mr. Burke, who is
5 sitting in the back seat, is aggressively rummaging
6 through his pockets to grab things out of his pocket, a
7 cell phone.

8 And that's consistent with the testimony of
9 Mr. Nelson who tells you that only after these people
10 found out that Mr. Calloway was a snitch, it was then
11 that Mr. Jackson and Mr. Burke seized on the
12 opportunity to rip him off while Mr. Nelson was sitting
13 in the front seat.

14 Mr. Jackson takes the stand tells you, "I didn't say
15 anything," directly contradicting Mr. Calloway's
16 testimony. Never said that he was up there screaming,
17 "Get the hat. Get the jacket. Get the gun. I was
18 just driving. Didn't do anything." And yet, he
19 somehow miraculously ends up with the jacket because,
20 of course, it's raining out and he doesn't want to get
21 wet. And left the car with the jacket. But, of
22 course, he was a nonparticipant. He somehow ended up
23 with the jacket, left the car with the jacket.

24 And, of course, later on, he gave the jacket back
25 several hours later without Mr. Nelson's knowledge;

1 somehow just left it back in the car.

2 And he tells you that they went to his sister's
3 house after this happened.

4 Now, the police knew who Mr. Jackson was at least in
5 November, 2012 because you heard Mr. Burke in his
6 testimony talking about when he got arrested in
7 November of 2012, that he was talking to the police.
8 And initially -- I will get to Mr. Burke in a minute.
9 And initially, he said, "I didn't do anything. I
10 didn't do anything. I don't know who the driver was.
11 I don't know who the driver was."

12 And then after the police pressed him, Mr. Burke
13 said, "Yeah, I lied about that." But after the police
14 pressed him and say, "We think you do know who the
15 driver is," he gave the driver up, this guy named Sucka
16 Free. They look him up on Facebook. Pull the picture
17 off. While he is sitting there in the interview room,
18 "Is that the guy?" "Yeah, that's the guy."

19 So as of November, 2012, the police knew who this
20 guy was. And yet, Mr. Jackson has never been charged
21 with this crime, ever, and he never will be charged as
22 long as he goes along with the program.

23 MR. CURTIS: Objection, Your Honor. Facts
24 not in evidence.

25 THE COURT: Sustained. The jury is to

1 disregard that statement.

2 MR. QUILLIAN: But he hasn't been charged
3 yet. Let's talk about Mr. Burke. Mr. Burke is a
4 classic case of making it up as you go along.
5 Mr. Burke tells you, boy, I knew it was -- I knew a
6 robbery was going to go down, and I tried to talk
7 Mr. Nelson out of doing that. Well, nobody else heard
8 Mr. Burke try to talk Mr. Nelson out of doing anything.
9 And, of course, Mr. Burke told the police, "Did you lie
10 to the police, too?"

11 Mr. Curtis makes a big point about Mr. Nelson not
12 lying to a superior court judge. Did he lie to the
13 police? Mr. Burke certainly did. "I didn't do
14 anything. I was just sitting there in the back seat.
15 Didn't do a thing." They press him and they press him.
16 Then he said, "Well, yeah, gee, I took the gun and cell
17 phone out of his pocket." Remember what he said? "I
18 was just trying to help him out here. He was having
19 trouble getting it out of his pocket, so I was trying
20 to help him." Give me a break.

21 He never disassociated himself from anything that
22 was going on, assuming something was going on. And he
23 says we went to Mr. Nelson's mother's house after this
24 incident, not to Jackson's sister's house. Making it
25 up as you go along.

1 And what was Mr. Burke's motive to lie? Well, he
2 was charged, and he's made a deal. His deal is, I
3 plead to Robbery in the First Degree. And if I
4 testify, that goes away, and I get a theft charge, and
5 I don't serve any more time in jail. Not a bad deal.
6 Every motive in the world to lie about what happened
7 out there.

8 Ms. Dripps, an emotional witness. Obviously has
9 some feelings for Mr. Nelson. And yet, she was as
10 truthful as anyone, I would submit. She says, "Yeah,
11 Mike was at my house a couple times in that intervening
12 period," but she also says that Mr. Jackson and
13 Mr. Burke were there, as well, and other people were
14 there, as well, not just Mr. Nelson. And she had no
15 idea there was this gun in her apartment, but it's
16 found there. A gun was found in her apartment. The
17 gun that's obviously Exhibit 13 that we have been
18 flashing around the courtroom was found in her
19 apartment.

20 Concerning the robbery, can you say beyond a
21 reasonable doubt that Mr. Nelson pulled his gun out,
22 pointed it at Mr. Calloway and said, "Give me all your
23 stuff. This is a jack," and it went down just the way
24 he said? I submit you cannot. There is reasonable
25 doubt all over the place about what happened in that

1 car.

2 What is clear is that Mr. Calloway lost some
3 property, and other people got his property, and that's
4 where the lesser-included offense comes in.

5 The lesser-included offense we are talking about is
6 Theft in the Third Degree which is simply what it says,
7 taking the property of another person, taking property
8 that you are not entitled to.

9 Mr. Nelson says, "I kept the gun. I wasn't going to
10 give it back to him because he was a snitch." And then
11 a theft occurred of his cell phone, his wallet, his hat
12 and his coat, some money, and that's all that happened,
13 ladies and gentlemen, a theft.

14 And if you want to find that Mr. Nelson was somehow
15 an accomplice to Mr. Jackson and Mr. Burke in that
16 theft because they were the ones that were really
17 physically taking the property, fine, because that
18 might be hard to ignore that Mr. Nelson was there.
19 And, in fact, Mr. Nelson says he ended up selling the
20 gun for one thing, along with Mr. Burke. But that's
21 where the lesser-included offense comes in. And if
22 Mr. Nelson is guilty of anything, and I submit to you
23 he is not, if he is guilty of anything, he is guilty
24 only of Theft in the Third Degree.

25 Now, let's talk about for a second the Unlawful

1 Possession of a Firearm charge. Mr. Curtis tells you,
2 well, Mr. Nelson obviously knew there was this gun in
3 the apartment.

4 The better question is, if he knew this gun was in
5 the apartment, why would he tell the police that
6 Ms. Dripps lives in Apartment 18? Why, when asked by
7 Detective Martin, "Where does your friend live?" would
8 he say, "It's in No. 18"? Ignore the fact that he
9 said, well, she is not there right now. But why would
10 he even give up No. 18 if he knew there was this gun in
11 there from this robbery? That makes no sense at all.

12 And here is what the critical point about that
13 charge, Unlawful Possession of a Firearm. You have to
14 find beyond a reasonable doubt that the gun that's in
15 evidence as Exhibit 13 that's in that box, that that
16 gun was in Mr. Nelson's possession, not some other gun,
17 that gun. And the reason for that is this: If you
18 look at the jury instructions on firearm, firearm is
19 defined for you as a weapon from which a projectile can
20 be fired by use of -- I don't want to paraphrase that.
21 "Firearm is a weapon or device from which a projectile
22 may be fired by an explosive such as gunpowder."

23 You may remember why Officer Martin during the end
24 of his testimony, he said, "Yeah, I checked that
25 Exhibit 13 out of evidence, and I took it out to the

1 firing range, and I fired it to see if it worked"
2 because that's necessary. Because if it didn't work,
3 if for some reason, let's say, the firing mechanism
4 wasn't even in the gun, it's not a firearm because it
5 can't be -- if you can't fire a projectile from it,
6 such as gunpowder, so it has to be an operating
7 firearm, and that's why Detective Martin did what he
8 did, went out and tested the gun.

9 But the only gun he tested is Exhibit 13. So you
10 need to find beyond a reasonable doubt that that's the
11 gun that Mr. Nelson had.

12 And one by one, the witnesses took the stand.
13 Mr. Curtis got the box. Is that the gun? Oh, that's
14 the gun. No doubt about it. That's the gun that
15 Mr. Nelson had. Yet, the gun wasn't found at the
16 scene. There are no -- getting into CSI. Again, no
17 ballistics or anything that connected anything to that
18 gun with Mr. Nelson at the scene.

19 And wasn't it interesting that both Mr. Jackson, and
20 particularly Mr. Burke, had described the gun as
21 silver, and Mr. Burke had described it as chrome? You
22 could take a look at Exhibit 13. You may have been
23 able to see it probably flashing around here. It's not
24 chrome. It's not silver.

25 Can you say beyond a reasonable doubt that that was

1 the gun that Mr. Nelson had in that car that day? Of
2 course not. It was a gun found in Ms. Dripps'
3 apartment. It was a gun that was taken into evidence.
4 It was a gun that was tested by Officer Martin.

5 There is nothing to show beyond a reasonable doubt
6 that that was the gun that Mr. Nelson had in his
7 possession, in the car on that day, or that he had in
8 his possession constructively or actually on
9 October 10th, which is when he is charged with
10 possessing.

11 Ms. Dripps didn't say anything about him having that
12 gun in his possession. She didn't know it was there.
13 And remember her testimony? A lot of people were in
14 her house.

15 No one with any credibility at all connects Exhibit
16 13 with the gun that was in that car or with
17 Mr. Nelson.

18 Ladies and gentlemen, as I said in my opening, pay
19 attention to detail. Keep in mind the concepts we have
20 been discussing that are set forth for you in the jury
21 instructions about credibility, motive to lie, proof
22 beyond a reasonable doubt.

23 Keep in mind that speculation and filling in the
24 blanks has no part in a criminal courtroom.

25 I am done. In 30 seconds, I am done, and I sit down

1 and I don't get to talk to you again, but Mr. Curtis
2 does, as I said. And all I ask is that you listen to
3 him, keep in your mind and ask yourselves, well, what
4 did Quillian say about that?

5 But ladies and gentlemen, here is the bottom line:
6 If you fully and fairly examine this evidence as you
7 are charged to do, if you take your time and discuss it
8 and be analytical and not just, gee, I think he did it,
9 but tell him not to do it again, this case comes up
10 short on proof beyond a reasonable doubt.

11 And I submit to you the proper verdicts in this case
12 are simply verdicts of not guilty. Thank you very
13 much. Thank you, Your Honor.

14 THE COURT: Mr. Curtis, because of my
15 schedule, I think my preference is that your rebuttal
16 argument take place after lunch. Does that work for
17 you?

18 MR. CURTIS: That's fine.

19 THE COURT: Okay. I don't know how long
20 you are going to be in rebuttal, but, as I mentioned, I
21 have a commitment.

22 MR. CURTIS: Okay.

23 THE COURT: Okay. How long will you be?

24 MR. CURTIS: Five minutes or so.

25 THE COURT: Well, okay. I don't want to

1 rush you, but if that's what you think you are going to
2 be, fine. If you think you are going to need more than
3 that because of my schedule, it works better for me to
4 wait until after lunch. So what is your priority?

5 MR. CURTIS: Well, we can wait after lunch.
6 I don't -- we can wait until after lunch.

7 THE COURT: All right. Members of the
8 jury, you still don't have the case for your
9 discussions or deliberations. The State has the burden
10 of proof, so they have the opportunity for rebuttal
11 argument. So I am going to ask you to leave your
12 notepads once again on your chair. Do not discuss the
13 case yet. I'd ask you to return back at 1:20, 1:20.
14 See you back at 1:20, at which time you'll hear
15 rebuttal argument from the State.

16 THE JURY: Do we leave the notes here, too?

17 THE COURT: Still leave the notes and
18 everything on your chair. We will see you back at
19 1:20.

20 (Jury exits.)

21 (Noon recess.)

22 (Jury enters.)

23 THE COURT: Please be seated. Mr. Curtis,
24 are you ready for your rebuttal argument?

25 MR. CURTIS: Yes, I am. Mr. Calloway, his

1 recitation of the facts, his testimony has not been
2 contradicted in any way, except for the testimony of
3 the defendant.

4 Mr. Calloway, no one questioned the fact that he was
5 picked up. No one questioned the fact that there was a
6 gun inside of the car. No one questioned the fact that
7 he was called a snitch. No one questioned the fact
8 that his personal belongings was taken. No one
9 questioned the fact that the defendant said he was
10 going to shoot him. The only thing that's questioned
11 is whether or not he brought the gun into the car
12 himself, and then it was taken by the defendant.
13 That's the only contradiction.

14 Defense counsel stood in front of you. He never --
15 the only thing that he said that Mr. Calloway was not
16 telling the truth about was bringing a gun in the car.

17 And the person who alleges that he brought the gun
18 in the car is the defendant, the only person. The
19 State -- but Mr. Calloway's testimony was, the gun was
20 pointed at his chest. And when he took the stand,
21 there was not one question posed to him, "Did you give
22 him the gun?" Remember, that's important. He was
23 never asked that question, neither were any of the
24 other men. That's really important. Why? Because the
25 defendant's testimony was just brought up after

1 everyone came in and testified. He heard everything.
2 He had an opportunity to hear the testimony. His
3 letter to the judge was, "There was no gun, or I didn't
4 touch a gun." But he says there was no gun.

5 And in his letter, the other jail letter he wrote
6 that he passed to another inmate, he says there was no
7 gun. That was before the State was able to get his two
8 close friends to testify.

9 Now he has to deal with the facts that, darn it.
10 They said it was a gun. How can I get away with this?
11 How can I get around it? And his testimony was -- his
12 way of getting around it is to allege that the victim,
13 once he got on the stand, but I want you to notice
14 there was no questions about that. No one knew.

15 The State's evidence is, Mr. Calloway said that this
16 gun was pointed at him, okay? When you look at this
17 gun and when you look at the glare, can you see
18 different colorations of this gun? They said -- they
19 all looked at this gun and they said this was the gun.
20 He says this is the gun that was pointed to his chest.
21 Mr. Calloway told you that.

22 And the only person who contradicts that is the
23 defendant. And you are going to be the only judge.
24 You judge credibility. I can't. I can bring out stuff
25 and show it to you and show you that he lied to the

1 judge; that he wrote another letter saying there was no
2 gun. And then after everyone testifies, he says there
3 was a gun, and the victim brought the gun in the car.
4 Well, I would submit to you that that's not supported
5 by the evidence.

6 Now, I want you to remember that the State does have
7 the burden to prove each and every element beyond a
8 reasonable doubt. But what is reasonable doubt?
9 Remember what we said? It's not beyond all doubt. We
10 went through this in voir dire. We talked about it.
11 Some said, "Well, I would like it to be beyond all
12 doubt," but then we went through exercises. Can you
13 prove anything beyond all doubt? And the answer was
14 no. It's beyond a reasonable doubt.

15 And Mr. Calloway's testimony hasn't been
16 contradicted, only by the defendant. And he has a
17 self-interest in mind. And he has changed his story.
18 Mr. Calloway gave the same story. He wrote a
19 handwritten letter, and I gave it to him. He provided
20 the same story in that handwritten letter, the same
21 story to Jeff Martin, and his story led to him
22 identifying Mike Nelson.

23 Mr. Calloway's story that he provided, his testimony
24 to the officers led to them finding the gun and his own
25 wallet. Everything he said has been supported by the

1 evidence. It was supported. It was so strong that the
2 defendant's friend, Theo Burke, pled guilty. He pled
3 -- his friend pled guilty to Robbery. And yes, the
4 State gave him a deal. He came in and testified
5 truthfully. He gets a deal. He gets a reduction to a
6 felony theft charge.

7 But that's not a concern, only to his credibility.
8 You shouldn't look at it and say, well, I don't like
9 what the State did. You can't do that. Your job is,
10 did the State prove each and every element beyond a
11 reasonable doubt? And when you look at the reasonable
12 doubt instruction, No. 2, I need to point this out
13 because defense counsel has told this story to you, and
14 I never heard of this story. A juror walking to a
15 defense attorney saying, "Yeah, we acquitted your
16 client, but tell him don't do it again." Really? That
17 really happened? A juror really went up to someone and
18 said, "We didn't follow these instructions"?

19 Look at the last sentence. It says, "If from such
20 consideration you have an abiding belief in the truth
21 of the charge, you are satisfied beyond a reasonable
22 doubt." If you believe he did it, if you have an
23 abiding belief in the truth of the charges, then you
24 find him guilty. Don't let him off because, yeah, the
25 defendant's a criminal and his buddy got a deal. You

1 have to look at the truth of the charges. Was
2 Mr. Calloway's testimony supported? Was it reasonable?

3 On page -- when you look at page -- Instruction No.
4 1, the second page, it starts with "you are." "You are
5 the sole judges of the credibility of each witness."
6 And I am not going to read the whole paragraph, but I
7 want to point out some things. "In considering a
8 witness's testimony, you may consider these things:
9 The opportunity of the witness to observe."

10 You know that Mr. Calloway was in a car. He was a
11 victim. Ability of the witness to observe accurately.
12 He described the gun to a "T." Is this just a
13 coincidence that he said that he was robbed? And he
14 wrote it down, he told Jeff Martin, and he came in and
15 told you before I showed him the gun. He gave -- I
16 asked him, describe the gun, and then I showed it to
17 him. He said it was a dark revolver, black revolver,
18 and he said it had a wooden handle, and that's what you
19 saw here.

20 Now, he would testify, the State can't prove that he
21 had the gun because it was in the house of his
22 girlfriend's house or his female friend's house? Well,
23 he had the gun on the 1st. When you look at the
24 to-convict instructions on the firearm, it says, "On
25 October 1st, did he possess a gun?" He had a gun.

1 Calloway said he pointed a gun to his chest.

2 And then you want to think about this: The quality
3 of the witness's memory, the manner in which they
4 testify and any personal interest that the witness
5 might have in the outcome or the issues.

6 Now, Mr. Calloway was robbed. He gave the story
7 three times, and he testified to the same facts. What
8 interest does he have in the outcome? He was still
9 robbed. His stuff is gone. His \$35 from donating
10 plasma is gone. He has already gone through this
11 experience. What interest does he have in the outcome?

12 Now, defense is going to tell you that if you
13 believe the defendant's story, that he brought the gun
14 in the car, then he has an interest in it. But that's
15 the first time the defendant ever gave that story.
16 That was on the stand. He was denying it.

17 So the statements -- look, if you go through this
18 analysis, the defendant has an interest in the outcome.
19 That's why he wrote the letter to the judge and said
20 there was no gun, because he wanted the judge to help
21 him out of the situation. "Judge, there wasn't a gun.
22 I didn't have it." Now, he is telling you, it was
23 Calloway's gun. He has an interest.

24 And then it talks about this: Any bias or prejudice
25 that the witnesses may have shown. And then most

1 important, the reasonableness of the witness statements
2 in the context of all the other evidence.

3 Is it reasonable, is Mr. Calloway's testimony
4 reasonable? He told you, "They took my Tommy Hilfiger
5 wallet. Did they find one? Yes. It was a black
6 revolver. Did you see one? Yes. His testimony is
7 reasonable. Is the defendant's testimony reasonable?
8 Is it reasonable that his two close friends didn't
9 describe Mr. Calloway as bringing the gun in? They
10 said he pulled the gun out. His testimony is not
11 reasonable. It doesn't fit into the context of the
12 greater body of evidence.

13 And lastly, the one thing that's very difficult to
14 overcome, one fact that the defendant struggled with
15 when he was on the stand and that is explaining how the
16 wallet ended up in his mother's garage. That was very
17 difficult.

18 If you believe his testimony and you find it
19 credible that Officer Jeff Martin put it there, bought
20 a Tommy Hilfiger wallet, then it's going to be up to
21 you to do that.

22 I would submit to you that based on the evidence,
23 based on his access to his mom's house, based on the
24 fact that Theo Burke said he handed the wallet to the
25 defendant, he put that wallet there. The evidence also

1 supports that he put the gun inside of his girlfriend's
2 house.

3 When you go back there and you are thinking about
4 this case, it's very important that we begin with what
5 Mr. Calloway said and then build upon that. Was there
6 anything else to support what he said? Did the
7 officer, were they able to support his testimony? Were
8 the defendants really close friends? Did they support
9 the victim's testimony?

10 And if you believe in the truth of the charges, if
11 you have an abiding belief, don't do what the defendant
12 said and just smack him on the wrist and say, oh, tell
13 him not to do it next time. Enforce the law. Find him
14 guilty of Robbery in the First Degree.

15 When you get to that special verdict form, was he in
16 possession -- did he have a firearm? Was he armed with
17 a firearm? Was it available for offensive or defensive
18 purposes? Just imagine the firearm pointed at the
19 chest of somebody, a loaded firearm. You are going to
20 have the bullets. I mean, I ask that you not put them
21 together, but think about that. He was armed with a
22 firearm. He put it to his chest. And Mr. Calloway
23 said that the defendant told him, "I should shoot you
24 for being a snitch." And Mr. Burke testified that the
25 defendant -- the defendant also, he heard the defendant

1 say that; that the defendant said that he should shoot
2 him.

3 And if you are not convinced with that, think about
4 his letter that he passed in the jail about Theo Burke.
5 He didn't call Theo Burke a liar. He called him a
6 snitch. And he said he was going to put his taped
7 statement that he gave law enforcement on You Tube.
8 Just think about the consequences of that. He doesn't
9 like snitches, and that's why he put the gun to the
10 chest of Mr. Calloway and threatened to shoot him.

11 And finally, find him guilty of Unlawful Possession
12 of a Firearm. There is no question that he was
13 previously convicted of a serious offense, and that he
14 was prohibited from having a firearm. And that action
15 of him pulling out that firearm and pointing it at his
16 chest, that did constitute possession of a firearm.
17 Find him guilty.

18 You might go back there and say, you know, I am not
19 uncomfortable with this, but when you stick to the
20 elements, did the State prove beyond a reasonable
21 doubt, I am confident you are going to answer that
22 question by saying yes. Thank you.

23 THE COURT: Okay. First of all, members of
24 the jury, we selected two alternate jurors, and we did
25 that, as you know, in case someone became ill, disabled

1 or disqualified, particularly since we had a weekend.

2 Fortunately, all 14 of you were able to remain
3 throughout the course of the trial. But I am going to
4 temporarily excuse the alternate jurors at this time,
5 and that would be Jurors 13 and 14, Ms. Johnson and
6 Ms. Bissonnet. I have a couple of instructions for
7 you.

8 One, I say you are temporarily excused because
9 sometimes it occurs during the course of deliberation
10 that an alternate or alternates are called back in and
11 asked to deliberate. So you still cannot discuss the
12 case with anyone until after the jury has reached a
13 verdict. I would ask you to let Ms. Ladenburg know how
14 you could be contacted in the event that your services
15 would be further required. So when you go back with
16 the other jurors to the jury room, you can take your
17 notes with you. Once again, no one will read your
18 notes. I want to thank you very much for your service
19 as alternate jurors in this matter.

20 So, members of the jury, at this time, you all may
21 go back to the jury room. Take your notes. Take your
22 copy of the Court's instructions. Once you have the
23 original instructions and the exhibits, you may begin
24 your deliberations on your verdict. So I will excuse
25 you all to the jury room at this time.

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(Jury exits.)

THE COURT: Okay. Just double check the exhibits that are going to go back. If the jury has a question, obviously, I need you both back here. I'd like you to be able to be back within 10 minutes because they stop deliberating if there is a question.

So I am hoping you'll stay in or near the courthouse this afternoon, Mr. Quillian. And stay in touch with the Court because if there is a question, we will bring your client back up and we will discuss it before the question is responded to. I think that's all I have at this time.

MR. QUILLIAN: Your Honor, I have got a couple matters, if I could? I am wondering if the Court would consider at this point, back in September of 2011, after what happened concerning the prior trial and the revelations about attempted witness tampering, bribery, et cetera, Judge Grant had entered an order essentially cutting off completely Mr. Nelson's ability to make phone calls from the jail, other than to his attorneys, attorney or attorneys.

I am wondering if the Court -- and that's been in effect ever since then. I am wondering if the Court would consider at this point in time removing that restriction so he can at least -- his trial is over at

1 this point, so he can at least have some contact with
2 his family. It's been extremely difficult for there to
3 be no contact at all, and I am hoping the Court would
4 agree at this point to lift that. And it would require
5 a court order because there is a prior court order
6 making that restriction.

7 THE COURT: Mr. Curtis?

8 MR. CURTIS: Your Honor, I think he has
9 made it clear that he has utilized the jail -- he has
10 passed letters in the jail attempting to intimidate
11 Theo Burke when he was in custody. It's very clear
12 that he and his mother, and it's not before this Court
13 right now, attempted to affect the testimony of other
14 witnesses. His mother has a pending case right now.
15 The State believes that he will continue his behavior.
16 He already knows who's testified against him. He has
17 demonstrated, and even on the stand, that he wants
18 revenge against snitches. He's robbed -- his actions
19 in this case demonstrate that. But I will -- I don't
20 -- I think that he is a danger, but I will defer to the
21 Court and the jail as far as --

22 THE COURT: I am not going to change any
23 condition. We just sent the case to the jury. Don't
24 know what decisions they will reach. Of course, if
25 it's a finding of not guilty, then we have one

1 situation. If it's a finding of guilty, then the Court
2 would schedule a sentencing and address conditions that
3 might be imposed. But at this point in time, just
4 giving the case to the jury, I am not going to change
5 any conditions that Judge Grant or a previous judge has
6 ordered.

7 MR. QUILLIAN: Can I ask one other
8 question?

9 THE COURT: Sure.

10 MR. QUILLIAN: As far as not this afternoon
11 necessarily but tomorrow, would the Court allow me to
12 arrange for someone to cover the verdict if I were
13 available telephonically for any jury question that
14 might arise? I have done that before with no problems.

15 THE COURT: Covering the verdict, I have no
16 problem. Questions, you know, my concern is we can't
17 get in touch with you.

18 MR. QUILLIAN: I will have -- I can give
19 Ms. Ladenburg a cell phone number, and I will have it
20 with me the entire time.

21 THE COURT: I have had a lot of situations
22 with -- you know, let me think about that, and we will
23 talk later this afternoon --

24 MR. QUILLIAN: Okay.

25 THE COURT: -- about that, just that

1 procedure.

2 MR. QUILLIAN: Okay. Very well.

3 THE COURT: Okay.

4 MR. QUILLIAN: So should we plan on coming
5 back?

6 THE COURT: Yeah, I think so. Well, you
7 are not going to go back down to Thurston County
8 anyway.

9 MR. QUILLIAN: No, not this afternoon.

10 THE COURT: So why don't you plan on
11 checking in with the Court toward the end of the
12 afternoon.

13 MR. QUILLIAN: 3:30, quarter to 4:00,
14 something like that?

15 THE COURT: Yeah.

16 MR. QUILLIAN: That's fine.

17 THE COURT: Yeah, why don't you plan on
18 checking back in. You know, my concern is we can't get
19 in touch with you, we have a question, the jury stops
20 deliberating. I send them home. You know, I don't
21 like that. I prefer you -- to be honest with you, I
22 just prefer you to be nearby. If there is a question,
23 that we get it answered right away. I don't want to
24 delay the deliberation process.

25 MR. QUILLIAN: It's your call. I

1 understand.

2 THE COURT: All right. So I want you
3 available. All right. We will stand at recess at this
4 time.

5 (Brief recess.)

6 THE COURT: Okay. Please be seated. It's
7 10 after 3:00. Defendant is here with his counsel.
8 The prosecutor is here. I think it was about 10
9 minutes ago, the jury gave Ms. Ladenburg a note asking
10 essentially what the difference was between Count I and
11 Count II, and then they -- before the attorneys were
12 congregated to discuss that note, the jury contacted
13 Ms. Ladenburg and said they had a verdict. So at this
14 point in time, we will accept the verdict of the jury.
15 We will bring the jury in.

16 (Jury enters.)

17 THE COURT: Okay. Good afternoon, folks.
18 Please be seated. Will the presiding juror please
19 stand? Mr. Boevers, I am told that the jury has a
20 verdict. Has the jury reached a verdict?

21 MR. BOEVERS: Yes, Your Honor.

22 THE COURT: Were you able to hear me?

23 MR. BOEVERS: Yes, I did.

24 THE COURT: The jury has reached a verdict?

25 MR. BOEVERS: Yes.

1 THE COURT: Ms. Ladenburg will retrieve the
2 verdicts, and I will read the verdicts of the jury.
3 Before I receive and read those verdicts, I do want to
4 thank you very much for your service in this case. For
5 many of you, this was a first experience. I want to
6 thank you very much for serving as a juror in this
7 matter.

8 In the matter, then, of the State of Washington
9 versus Michael Eric Nelson, Verdict Form 1: "We, the
10 jury, find the defendant guilty of the crime of Robbery
11 in the First Degree, as charged in Count I.

12 Special Verdict Form: "We, the jury, return a
13 special verdict by answering as follows: Question, was
14 the defendant, Michael Eric Nelson, armed with a
15 firearm at the time of the commission of the crime of
16 Robbery in the First Degree? Answer: Yes."

17 Verdict Form 3: "We, the jury, find the defendant
18 guilty of the crime of Unlawful Possession of a Firearm
19 in the First Degree as charged in Count II."

20 Does either counsel wish me to poll the jury?

21 MR. CURTIS: State would ask that the Court
22 do so.

23 THE COURT: All right. I am going to ask
24 each of you if the verdicts that I have read are indeed
25 the verdicts of this jury and if they were your

1 of this jury?

2 A Yes, Your Honor.

3 Q Were those your verdicts, as well?

4 A Yes, Your Honor.

5 Q Juror No. 6, were the verdicts that I read the verdicts
6 of this jury?

7 A Yes, Your Honor.

8 Q Were those your verdicts, as well?

9 A Yes, Your Honor.

10 Q Juror No. 7, were the verdicts that I read the verdicts
11 of this jury?

12 A Yes, Your Honor.

13 Q Were those your verdicts, as well?

14 A Yes, Your Honor.

15 Q Juror No. 8, were the verdicts that I read the verdicts
16 of this jury?

17 A Yes, Your Honor.

18 Q Were those your verdicts, as well?

19 A Yes, Your Honor.

20 Q Juror No. 9, were the verdicts that I read the verdicts
21 of this jury?

22 A Yes, Your Honor.

23 Q Were those your verdicts, as well?

24 A Yes, Your Honor.

25 Q Juror No. 10, were the verdicts that I read the

1 verdicts of this jury?

2 A Yes, Your Honor.

3 Q Were those your verdicts, as well?

4 A Yes, Your Honor.

5 Q Juror No. 11, were the verdicts that I read the
6 verdicts of this jury?

7 A Yes, Your Honor.

8 Q Were those your verdicts, as well?

9 A Yes.

10 Q Juror No. 12, were the verdicts that I read the
11 verdicts and decision of this jury?

12 A Yes, Your Honor.

13 Q Were those your decisions and verdicts, as well?

14 A Yes, Your Honor.

15 THE COURT: The verdicts are received and
16 will be filed. At the beginning of the case, I told
17 you you could not discuss the case with anyone. Now
18 you are free to discuss the case with anyone you'd
19 like. You are also free not to discuss it if you don't
20 want to.

21 What I am going to do now is I am going to schedule
22 a sentencing proceeding, and then when I am done with
23 that, I am going to excuse the attorneys. Those of you
24 that don't mind waiting around and talking to the
25 attorneys after we have concluded the scheduling, I

1 invite you to remain in the jury room. You are under
2 no obligation to do that. You can leave whenever you'd
3 like. It will take a few minutes for us to schedule
4 that and discuss a couple of other things. But if you
5 are willing to talk to the attorneys, I invite you to
6 remain in the jury room.

7 I think what you do need to do is to report out with
8 the jury administrator before you leave the courthouse
9 today. So, at this time, the verdicts have been
10 received. They are filed. I want to thank you once
11 again for your service in this matter, and I will
12 excuse you in these proceedings. So you may go with
13 Ms. Ladenburg again back to the jury room.

14 (Jury exits.)

15 THE COURT: All right. Just in terms of
16 scheduling, I think our next sentencing date would be
17 April 5th, and is that available to both counsel at
18 1:30?

19 MR. CURTIS: Yes, Your Honor.

20 MR. QUILLIAN: Yes.

21 THE COURT: All right. We will schedule
22 the sentencing for April 5th at 1:30 in this --

23 MR. CURTIS: April 5th, okay. I thought it
24 was 15th.

25 THE COURT: April 15th is a day in all of

1 our minds, I am sure. So April 5th will be the
2 sentencing date. With regard to bail or conditions of
3 release, what is the State's position?

4 MR. QUILLIAN: Your Honor, State's asking
5 for a no-bail hold.

6 THE COURT: All right. Any comments,
7 Mr. Quillian?

8 MR. QUILLIAN: No comments on that, Your
9 Honor. I would like to renew my request that his phone
10 restrictions be lifted, now that he is convicted and is
11 facing a substantial prison sentence.

12 His calls are recorded. If he does anything
13 untoward, it will be recorded. I am sure he'll get in
14 trouble again. I don't anticipate that happening. I'd
15 like him to be able to talk to his family at this
16 point.

17 THE COURT: First of all, I am going to
18 order that he be held without bail pending sentence.
19 At this stage, he has been found guilty, and I will
20 express to you some real concerns I had about his
21 testimony, real concerns I had about his testimony with
22 regard to Mr. Calloway and others.

23 And in light of the history of this case, I am not
24 inclined, in light of his testimony, to lift that.

25 Now, I think I would -- particularly right now, this

1 day, right after this verdict has been arrived at, and
2 I am concerned about contacts of witnesses by family
3 members with the emotion that goes with a verdict
4 having been rendered.

5 I might be inclined to lift that before the April
6 5th date, but not today. And so -- because I do have
7 some real concerns, based on what I heard him say on
8 the stand under oath.

9 MR. QUILLIAN: Would you authorize him to
10 have visits with his family?

11 THE COURT: Say that again.

12 MR. QUILLIAN: Would you authorize him to
13 have visits with his family in the jail?

14 THE DEFENDANT: For six months.

15 THE COURT: Mr. Curtis?

16 MR. CURTIS: Your Honor, given his
17 testimony, given the actions, the threats that other
18 witnesses have received and the contact, I would ask
19 that they not be changed. And also, Your Honor, while
20 he was on these phone restrictions, he submitted a
21 letter in which he accused Theo Burke of being a
22 snitch. He indicated that he was -- he doesn't like
23 snitches. He wants to get revenge. He put in a letter
24 he was going to put State's evidence on You Tube and --

25 THE COURT: Yeah, that causes me -- that

1 all causes me real concern. I am not going to lift it
2 or change anything now. I might do it before the April
3 5th date, but I am not going to do it today.

4 THE DEFENDANT: Your Honor?

5 THE COURT: Yes, sir.

6 THE DEFENDANT: When will I be able to tell
7 my family -- I have never been in prison before -- call
8 them and let them know to get me some stuff, the money
9 I need. I don't know what is going on.

10 THE COURT: I told you, based on what I
11 heard, you took the stand, you took an oath. I heard
12 that testimony. I heard questions that were asked of
13 the other witnesses. I have some real concerns. You
14 put yourself in this situation. I am not going to
15 change anything today. I will keep an open mind.
16 Maybe I will change it another day. But to make myself
17 perfectly clear, nothing will be changed today.

18 Will you have an opportunity to convey to the
19 witnesses the verdict? And then before I consider this
20 issue again, I want to make sure they knew that the
21 case has concluded, at least there is a verdict.

22 MR. CURTIS: I will, Your Honor.

23 THE COURT: All right.

24 MR. CURTIS: One of the witnesses,
25 Mr. Jerako Jackson, indicated that he had already been

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contacted by people.

THE COURT: By who?

MR. CURTIS: By people regarding his interview with me and Mr. Quillian. He informed me of that right before he got on the stand to testify; that he had been contacted, and his family, his sister had been contacted, so -- and that gives the State additional concern. But I will notify him of the outcome, so they are aware.

THE COURT: All right. I will consider that issue again, but not today. At this time, the Court will stand at recess.

(Proceeding concluded.)

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*****CERTIFICATE*****

I, Cathy D. Schamu, do hereby certify that the foregoing transcript entitled Verbatim Report of Proceedings, was taken by me stenographically and reduced to the foregoing, and that the same is true and correct as transcribed.

DATED at Tacoma this 30th day of May, 2013.

CATHY D. SCHAMU

APPENDIX “G”

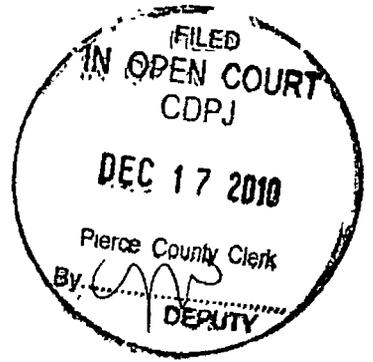
Judgment and Sentence--#09-1-04220-1

Case Number: 09-1-04220-1 Date: April 11, 2017
SerialID: F9D8F352-6022-41D8-86E1CD84397C311D
Certified By: Kevin Stock Pierce County Clerk, Washington



09-1-04220-1 35562297 JDSWCJ 12-17-10

09-1-04220-1



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

DEC 17 2010

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 09-1-04220-1

vs

JUDGMENT AND SENTENCE (FJS)

MICHAEL ERIC NELSON

Defendant.

- Prison RCW 9 94A.712 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Breaking The Cycle (BTC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

SID: WA22286655
DOB: 05/18/1986

I HEARING

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

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 12-17-10 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
III	UPCS (J73) COCAINE, SCH II	69.50.4013	NONE	09/17/09	TPD 092520427
IV	UPCS (J73) COCAINE, SCH II	69.50.4013	NONE	09/17/09	TPD 092520427

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

as charged in the SECOND AMENDED Information

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 1 of 10

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

10-9-14579-7

- The court finds that the offender has a chemical dependency that has contributed to the offense(s).
RCW 9.94A.607.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A. or J ADULT JUV	TYPE OF CRIME
1	FORGERY	03/25/05	PIERCE, WA	05/30/04	A	NV
2	UPCS	09/26/06	PIERCE, WA	08/30/05	A	NV
3	C/UDCS	09/26/06	PIERCE, WA	08/30/05	A	NV
4	UPCS	09/26/06	PIERCE, WA	04/14/06	A	NV
5	C/UDCS	09/26/06	PIERCE, WA	04/14/06	A	NV

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

2.3 SENTENCING DATA:

COUNT NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
III	5	I	6+ to 18 MONTHS	NONE	6+ to 18 MONTHS	5 YRS
IV	5	I	6+ to 18 MONTHS	NONE	6+ to 18 MONTHS	5 YRS

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

- 2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defend' s past, present and future ability to pay legal financial obligations, including the defendant' s financial resources and the likelihood that the defendant' s status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

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

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [] as follows: N/A

III. JUDGMENT

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

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RTN/R/N	\$ _____	Restitution to: _____
	\$ _____	Restitution to: _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$ 500.00	Crime Victim assessment
DNA	\$ 100.00	DNA Database Fee
PUB	\$ 100.00 <i>100.00</i>	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ 200.00	Criminal Filing Fee
FCM	\$ _____	Fine <i>W. A. Vest, indigent</i>
CLF	\$ _____	Crime Lab Fee [] deferred due to indigency
CDF/DFA-DFZ	\$ _____	Drug Investigation Fund for _____ (agency)
WFR	\$ _____	Witness Costs

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ ~~1000.00~~ TOTAL *8800*

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

[] shall be set by the prosecutor

[] is scheduled for _____

[] RESTITUTION. Order Attached

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

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein. Not less than \$ 28 per month commencing Jan 2011. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

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

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

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

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

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

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

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

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

4.3 NO CONTACT
The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

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

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

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2
3 4.4a **BOND IS HEREBY EXONERATED**

4 4.5 **JAIL ONE YEAR OR LESS.** The defendant is sentenced as follows:

5 (a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total
6 confinement in the custody of the county jail:

7 183 days/months on Count III days/months on Count _____
8 183 days/months on Count IV days/months on Count _____

9 Actual number of months of total confinement ordered is: _____

10 **CONSECUTIVE/CONCURRENT SENTENCES:** RCW 9.94A.589

11 All counts shall be served concurrently, except for the following which shall be served consecutively:

12 _____
13 The sentence herein shall run consecutively to all felony sentences in other cause numbers that were
14 imposed prior to the commission of the crime(s) being sentenced.

15 The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed
16 subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. The
17 sentence herein shall run consecutively to the felony sentence in cause number(s) _____

18 _____
19 The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless
20 otherwise set forth here: _____

21 Confinement shall commence immediately unless otherwise set forth here: _____

22 **PARTIAL CONFINEMENT.** Defendant may serve the sentence, if eligible and approved, in partial
23 confinement in the following programs, subject to the following conditions: _____

24 Work Crew RCW 9.94A.725 Home Detention RCW 9.94A.731, .190
25 Work Release RCW 9.94A.731

26 **CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsax Offenses).** RCW
27 9.94A.680(3) The county jail is authorized to convert jail confinement to an available county
28 supervised community option and may require the offender to perform affirmative conduct pursuant to
RCW 9.94A.

BTC Facility

ALTERNATIVE CONVERSION. RCW 9.94A.680. _____ days of total confinement
ordered above are hereby converted to _____ hours of community restitution (8 hours = 1
day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of
Corrections (DOC) to be completed on a schedule established by the defendant's community
corrections officer but not less than _____ hours per month.

Alternatives to total confinement were not used because of: _____

criminal history failure to appear (finding required for nonviolent offenders only) RCW
9.94A.680.

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

183 DAYS

4.6 **COMMUNITY** **SUPERVISION** **CUSTODY**. RCW 9.94A.505. Defendant shall serve 12 months (up to 12 months) in community supervision (Offense Pre 7/1/00) or community custody (Offense Post 6/30/00).

[On or after July 1, 2003, the court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.715 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(1)(a).]

Defendant shall report to DOC, 755 Tacoma Ave South, Tacoma, not later than 72 hours after release from custody, and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. For sex offenses, defendant shall submit to electronic monitoring if imposed by DOC. Defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody. The defendant shall:

- Remain in prescribed geographic boundaries specified by the community corrections officer
- Cooperate with and successfully complete the program known as Breaking The Cycle (BTC)

- notify the community corrections officer of any change in defendant's address or employment
- not reside in a community protection zone (within 880 feet of the facilities and grounds of a public or private school). (RCW 9.94A.030(8)).

Other conditions: _____

For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense, unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589. The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here: _____

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

V. NOTICES AND SIGNATURES

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

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

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

5.4 **RESTITUTION HEARING.**
[] Defendant waives any right to be present at any restitution hearing (sign initials): _____

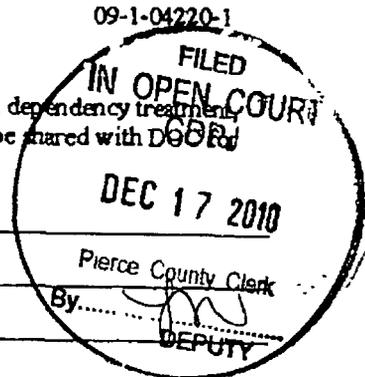
5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

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

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

N/A

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



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

5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 12-17-10

JUDGE [Signature]
Print name Buckner

[Signature]
Deputy Prosecuting Attorney
Print name: Robert K.
WSB # 40013

[Signature]
Attorney for Defendant
Print name: Michael Stewart
WSB # 23981

[Signature]
Defendant
Print name: Michael Wilson

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

Defendant's signature: [Signature]

09-1-04220-1

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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 09-1-04220-1

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

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

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

IDENTIFICATION OF COURT REPORTER

Christie Jameson
Court Reporter

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APPENDIX "E" - ADDITIONAL CONDITIONS OF RELEASE

It is further ordered that the defendant, as a condition of his/her community supervision, as a first-time offender, shall:

- FTO 1) Refrain from committing new offenses;
- FTO 2) Devote time to a specific employment or occupation;
- FTO 3) Enter and successfully complete Breaking the Cycle (BTC) or other available outpatient treatment for up to two years, or inpatient treatment as designated by Community Corrections Officer;
- FTO 4) Pursue a prescribed, secular course of study or vocational training;

It is further ordered that the defendant, as a condition of his/her community supervision, shall:

- 1) Remain within prescribed geographical boundaries. Notify the court or the community corrections officer prior to any change in the defendant's address or employment;
- 2) Report as directed to the court and a community corrections officer;
- 3) (NARC order) Refrain from entering certain geographical boundaries (designated by attachment);
- 4) Not purchase, possess, or use any controlled substances without a lawful prescription from a licensed physician or practitioner. Provide a written prescription for controlled substances to the Community Corrections Officer within 24 hours of receipt. Submit to urinalysis as directed by the Community Corrections Officer;
- 5) Refrain from associating with drug users or drug sellers;
- 6) Comply with Breaking the Cycle (BTC) Program requirements, including participation in BTC recommended chemical dependency treatment;
- OTHER: successfully complete drug treatment
as directed by CCO.

Case Number: 09-1-04220-1 Date: April 11, 2017
SerialID: F9D8F352-6022-41D8-86E1CD84397C311D
Certified By: Kevin Stock Pierce County Clerk, Washington

09-1-04220-1

IDENTIFICATION OF DEFENDANT

SID No. WA22286655 Date of Birth 03/18/1986
(If no SID take fingerprint card for State Patrol)

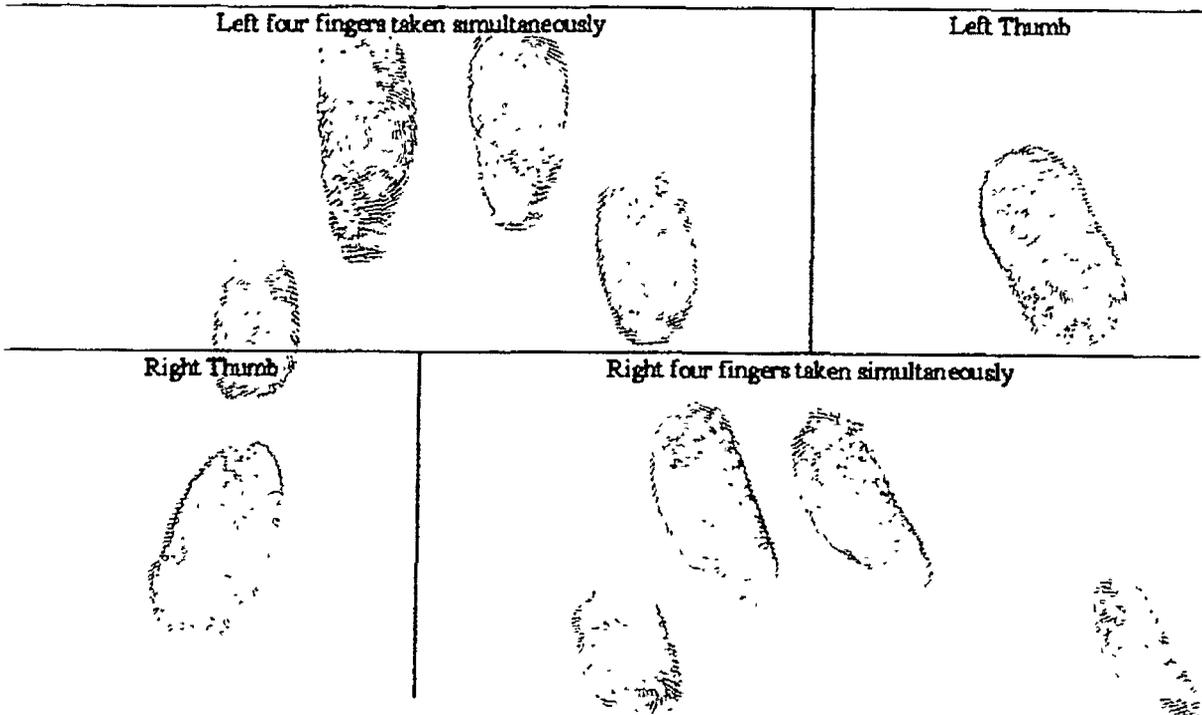
FBI No. 550936EC2 Local ID No. UNKNOWN

PCN No. 539908669 Other

Alias name, SSN, DOB. _____

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

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, J. Richards Dated: 12/17/10

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: _____

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of April, 2017



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 11, 2017 1:31 PM



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

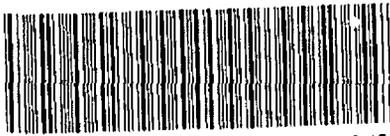
<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: F9D8F352-6022-41D8-86E1CD84397C311D.

This document contains 11 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

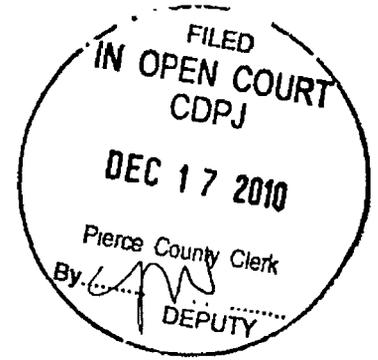
APPENDIX “H”

Stipulation on Prior Record--#09-1-04220-1

Case Number: 09-1-04220-1 Date: April 11, 2017
SerialID: 9034E4E9-2BCE-4C65-AF47B069862DF26B
Certified By: Kevin Stock Pierce County Clerk, Washington



09-1-04220-1 35562296 STPPR 12-17-10



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

DEC 17 2010

Plaintiff,

CAUSE NO. 09-1-04220-1

vs.

MICHAEL ERIC NELSON,

STIPULATION ON PRIOR RECORD AND
OFFENDER SCORE
(Plea of Guilty)

Defendant.

Upon the entry of a plea of guilty in the above cause number, charge UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE and UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE, the defendant MICHAEL ERIC NELSON, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions:

WASHINGTON STATE CONVICTIONS

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
FORGERY	03/25/05	PIERCE, WA	05/30/04	A	NV	C	1	FELONY
UPCS	09/26/06	PIERCE, WA	08/30/05	A	NV	C	1	FELONY
C/UDCS	09/26/06	PIERCE, WA	08/30/05	A	NV	C	1	FELONY
UPCS	09/26/06	PIERCE, WA	04/14/06	A	NV	C	1	FELONY
C/UDCS	09/26/06	PIERCE, WA	04/14/06	A	NV	C	1	FELONY

Concurrent conviction scoring: 5

CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

NONE KNOWN OR CLAIMED

Concurrent conviction scoring:

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

STIPULATION ON PRIOR
RECORD -1
jsprior dot

Office of Prosecuting Attorney
930 Tacoma Avenue S, Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

COUNT NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
III	5	I	6+ to 18 MONTHS	NONE	6+ to 18 MONTHS	5 YRS
IV	5	I	6+ to 18 MONTHS	NONE	6+ to 18 MONTHS	5 YRS

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

The defendant further stipulates:

- 1) Pursuant to Blakely v. Washington, 542 U.S. 296, 124 S. Ct 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.
- 2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty;
- 3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution;
- 4) That none of the above criminal history convictions have "washed out" under RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated.

If sentenced within the standard range, the defendant further waives any right to appeal or seek redress via any collateral attack based upon the above stated criminal history and/or offender score calculation.

Stipulated to this on the 17 day of December, 2010.



 JOHN MACEJUNAS
 Deputy Prosecuting Attorney
 WSB # 37443



 MICHAEL ERIC NELSON



 MICHAEL A. STEWART
 WSB # 23981

kes

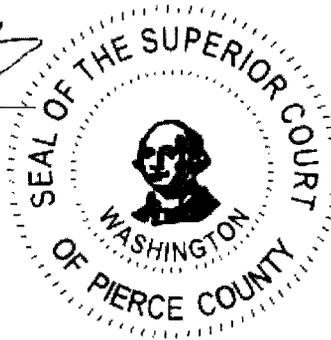
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of April, 2017



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 11, 2017 1:31 PM



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

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enter SerialID: 9034E4E9-2BCE-4C65-AF47B069862DF26B.

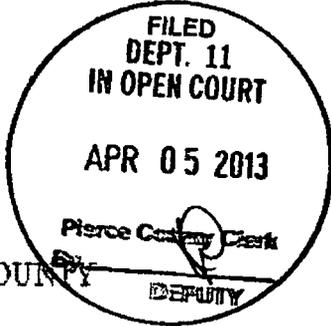
This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX "I"

Statement on Prior Record and Offender Score--#11-1-04142-7

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-04142-7

vs.

MICHAEL ERIC NELSON,

STATEMENT OF PRIOR RECORD AND
OFFENDER SCORE
(Verdict of Guilty)

Defendant.

Upon a verdict of guilty in the above cause number, charge ROBBERY IN THE FIRST DEGREE; UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, the defendant MICHAEL ERIC NELSON, comes now the State and hereby submits that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions. The State further submits that any out-of state convictions listed below are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525:

ALL CURRENT CONVICTIONS, THIS CAUSE NUMBER

Count	Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crme	A or J Adult Juv	Type of Crme	Class	Score by Ct	Felony or Misdemeanor
I	ROB 1	CURRENT	PIERCE WA	10/01/11	A	V	A		FELONY
II	UPOF1	CURRENT	PIERCE WA	10/01/11	A	NV	B		FELONY

[] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525

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OTHER CURRENT CONVICTIONS, OTHER CAUSE NUMBERS (if any)

None Known or Claimed, or:

PRIOR CONVICTIONS (if any)

None Known or Claimed, or:

Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	A or J Adult Juv	Type of Crime	Class	Score by Ct	Felony or Misdemeanor
FORGERY	03/25/05	PIERCE, WA	05/30/04	A	NV	C	1	FELONY
UPCS	09/26/06	PIERCE, WA	03/30/05	A	NV	C	1	FELONY
C/UDCS	09/26/06	PIERCE, WA	08/30/05	A	NV	B	1	FELONY
UPCS	09/26/06	PIERCE, WA	04/14/06	A	NV	C	1	FELONY
C/UDCS	09/26/06	PIERCE, WA	04/14/06	A	NV	B	1	FELONY
UPCS	12/17/10	PIERCE, WA	09/17/09	A	NV	C	1	FELONY
RIOT	05/20/11	PIERCE, WA	03/26/11	A	NV	C	1	FELONY

The State submits that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	8	IX	108-144 MONTHS	60 MONTHS FASE	168-204 MONTHS	50YRS
II	8	VII	77-102 MONTHS	NONE	77-102 MONTHS	20YRS

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh Hom, See RCW 46.61.520, (JP) Juvenile present.

DATED this on the 5th day of April, 2013.


 JAMES H CURTIS
 Deputy Prosecuting Attorney
 WSB # 36845


 MICHAEL ERIC NELSON


 ROBERT M. QUILLIAN
 WSB # 6836

dlc

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of April, 2017



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 11, 2017 1:31 PM



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APPENDIX “J”

Stipulation on Prior Record--#11-1-01309-1



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY MAY 23 2011

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-01309-1

vs.

MICHAEL ERIC NELSON,

STIPULATION ON PRIOR RECORD AND
 OFFENDER SCORE
 (Plea of Guilty)

Defendant.

Upon the entry of a plea of guilty in the above cause number, charge RIOT, the defendant MICHAEL ERIC NELSON, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions:

WASHINGTON STATE CONVICTIONS

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
FORGERY	03/25/05	PIERCE, WA	05/30/04	A	NV	C	1	FELONY
UPCS	09/26/06	PIERCE, WA	08/30/05	A	NV	C	1	FELONY
C/JUDCS	09/26/06	PIERCE, WA	08/30/05	A	NV	B	1	FELONY
UPCS	09/26/06	PIERCE, WA	04/14/06	A	NV	C	1	FELONY
C/JUDCS	09/26/06	PIERCE, WA	04/14/06	A	NV	B	1	FELONY
UPCS	12/17/10	PIERCE, WA	09/17/09	A	NV	C	1	FELONY
COMM CUSTODY							1	

Concurrent conviction scoring:

CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

NONE KNOWN OR CLAIMED.

Concurrent conviction scoring:

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	N/A	UNRANKED	0-12 MONTHS	NONE	0-12 MONTHS	1 YR

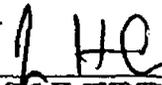
*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

The defendant further stipulates:

- 1) Pursuant to *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.
- 2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty;
- 3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution;
- 4) That none of the above criminal history convictions have "washed out" under RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated.

If sentenced within the standard range, the defendant further waives any right to appeal or seek redress via any collateral attack based upon the above stated criminal history and/or offender score calculation.

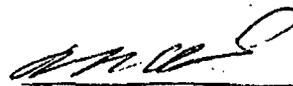
Stipulated to this on the 20th day of May, 2011.



JAMES H CURTIS
Deputy Prosecuting Attorney
WSB # 36845



MICHAEL ERIC NELSON



MICHAEL A. STEWART
WSB # 23981

kes

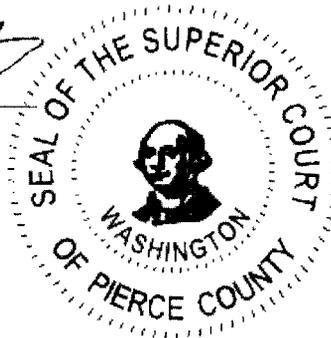
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of April, 2017



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Apr 11, 2017 1:31 PM



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PIERCE COUNTY PROSECUTOR
April 11, 2017 - 2:28 PM
Transmittal Letter

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Case Name: In re the PRP of: Michael Nelson

Court of Appeals Case Number: 49782-4

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: _____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: hjohns2@co.pierce.wa.us