

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

IN RE THE PERSONAL RESTRAINT  
PETITION OF:

AZIAS ROSS,

Petitioner.

NO. 51469-9-II

STATE'S RESPONSE TO PERSONAL  
RESTRAINT PETITION

I. STATUS OF PETITIONER:

Petitioner, AZIAS ROSS, is restrained pursuant to a Judgment and Sentence (CP 40-61 as modified by CP 276-79<sup>1</sup>) entered in Pierce County Cause No. 12-1-03305-8.

II. RELEVANT FACTS

1. Procedure

On December 23, 2013, the State charged petitioner by amended information with conspiracy to commit first degree robbery and/or first degree burglary in counts I, VII, and LIX, first degree burglary in counts II, VIII, and LX, first degree robbery in counts III, IX, LXI, and LXII, second degree assault in counts IV, X, LXIII, LXIV, LXV, and LXVI, unlawful imprisonment in counts V, XI, LXVII, LXVIII, LXIX, and LXX, first degree

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<sup>1</sup>This reference is to the clerks papers prepared in the direct appeal of petitioner's resentencing. The documents are also attached to this response as Appendix 1-22.

trafficking in stolen property in counts VI, XIII, and LXXI, and theft of a firearm in count XII. CP 471-82.<sup>2</sup> All counts, except the theft of a firearm count, included firearm or deadly weapon sentence enhancements. CP 471-82. Petitioner, Soy Oeung, and Nolan Chouap were called for a joint trial, along with Alicia Ngo. RP 21-22.<sup>3</sup> The case against Ngo was dismissed without prejudice. RP 22-29. In the course of the trial, Defendant Chouap pleaded guilty to a second amended information and was sentenced. RP 1602-17. See RP 1684-85. Petitioner was sentenced to 507 months in total confinement. 06/23/14 RP 70-72.; 06/23/14 RP 75-77; CP 739-56. Petitioner appealed his sentence in Court of Appeals No. 46425-0-II. The finding of guilt was affirmed and the matter was remanded for resentencing. *Id.* The instant appeal and personal restraint petition followed.

2. Facts

A. 9106 MCKINLEY AVENUE, JANUARY 25, 2012

Seoung Lem, a 59-year-old Cambodian immigrant, whose primary language is Cambodian, lived in a four-bedroom house at 9106 McKinley Avenue in Tacoma in January, 2012. RP 793-96, 798. She lived there with her three daughters, Natalie Chan, 31, Sokha Chan, 27, and Phala Chan, 25, and her son, Sokthy Chan, 29. RP 796-97. On January 25, 2012, at a little after 4:00 p.m., Lem left through the back door of her residence to take out the garbage, and clean up the area outside. RP 798, 854. When she got back into the house a man grabbed Lem's arm and pointed a gun at her head. RP 799-800, 855, 857. She testified that she was scared to look at it, but "knew it was a gun." RP 799. The man then asked her, in English, do you know what this is? RP 800, 858. Lem could not

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<sup>2</sup> The CP and transcript references in the facts section relate to the transcripts and clerks papers prepared for petitioner's first direct appeal. Respondent has asked this Court to transfer that record to this case.

<sup>3</sup> The verbatim report of proceedings consists of 28 volumes, 17 of which are paginated consecutively, 1 through 2467, and titled, volume I through XVII. The consecutively-paginated volumes are herein cited: RP [Page Number]; the remaining volumes are cited: [Date of Proceeding] RP [Page Number].

answer; she was scared, and just screamed. RP 800. The man grabbed her arm and pushed her down, telling her to lay flat down in front of the stove. RP 800, 858. Once she was on the floor, he again asked her, this time in Cambodian, “do you know what this is, grandma[?]” RP 800-01, 858.

Lem answered, yes, and the man picked her up, and walked her to a sofa in the living room. RP 800-01, 859. While walking, he asked her where the gold was. RP 802. The man then tied her hands behind her back and sat her on the floor. RP 802, 804. He asked her where the gold jewelry was, and she told him there was no gold and/or to look for it himself; she didn’t know where it was. RP 802, 804. Lem noted that her kids were all gone at work at the time. RP 802. The man then had her lay down on the sofa, which she did, and covered her face with her jacket. RP 804-05.

The man was either wearing a mask or a hat and dark colored clothing. *See* RP 801, 859-60. He seemed to have some pimples on his face and a mustache. RP 807, 860, 862. While he was speaking with her, a second, taller man was searching the house. RP 803, 860-61. The men stayed in her house for about thirty minutes before leaving. RP 805. Before they left, they told Lem to wait 15 minutes before she got up. After they exited the home, Lem worked to untie herself, but took about 15 minutes to do so. RP 805. She then closed the door, called her son and younger sister, and they both came to the house. RP 807-08.

Even after her sister arrived, Lem was terrified, scared, and nervous, and her body was shaking. RP 809. Her daughter described her as “[v]ery distraught” and “[t]rumatized.” 02/03/14 RP 7. A responding officer testified that Lem seemed scared. RP 885. When her son arrived, he asked her what happened, and then called the police. RP

809. She described her assailants as two Asian men, one of whom was about five feet tall and one about six feet tall. RP 886. Lem indicated that both were wearing dark clothing, and that one pointed a silver and black semiautomatic handgun at her. RP 886. According to Lem, one only spoke English and one only spoke Cambodian. RP 886. According to Officer Smith, Lem showed him a USB cable used by the man to tie her hands. RP 887.

Lem testified that the men took \$4,000 in cash from the residence. RP 817-18, 868; 02/03/14 RP 10. The men stole a bracelet, gold necklace with a pendant, a watch, and a purse containing a cell phone, ID card and a "food stamp card." RP 820, 870.

Lem later identified two necklaces, one with a pendant, the stone of which had been removed, as being depicted in a photograph marked as exhibit 20A of property recovered by police. RP 820-24, 2041. Chan testified that her diamond earrings, diamond rings, necklaces, purses, two digital cameras, some video games, pairs of shoes, and electronic items were stolen from her. 02/03/14 RP 10-14. *See* RP 2041.

On July 26, 2012, Lem also reviewed a photo montage with Detective Baker, in which she identified photo number three, a photo of Nolan Chouap, as that of the man who tied her up. RP 824-27, 2038-41. She said she was 90% certain. RP 2040. Lem then identified defendant Chouap as the man who tied her up, burglarized her home, and robbed her. RP 827, 853-54. *See* RP 850-51.

Lem identified photographs of her residence taken after the burglary, marked as exhibit 22, RP 810-15. RP 815-16. She also identified a piece of wire, marked exhibit 16, as that used by the man to tie her hands behind her back. RP 813.

Tacoma Police Crime Scene Technician Lisa Rossi arrived at the scene at about 6:30 p.m., RP 926, spoke with one of Lem's daughters, photographed the scene, and

processed it for latent fingerprints. RP 931-34. She identified exhibit 22 as the prints of the photographs she took that evening. RP 932-33. She found a suspected glove print on some of the items in the house. RP 934-35.

B. 8208 SOUTH G STREET, APRIL 27, 2012<sup>4</sup>:

Bora Kuch, a 58-year old Cambodian immigrant, lived at 8208 South G Street in Tacoma, Washington in April, 2012. RP 625-28, 712. Her daughter, Ratanna Van Camp, son-in-law, Fred Van Camp, V, and two-year-old grandson, F.V.C., VI, shared the two-story, four-bedroom house with her. RP 628-30, 682, RP 711-12.

On April 27, 2012, at about 5:30 in the afternoon, Kuch was home alone with her grandson. RP 630. Her daughter had just left for work, and her grandson, who was upset because he wanted to go with his mother, was crying. RP 631. Kuch tried to calm her grandson and they were both watching television when she heard a “pounding sound.” RP 631, 687. Kuch initially thought the noise had come from the neighbor’s house, but, a moment later, heard the same sound again. RP 632.

She left the upstairs bedroom where she was with her grandson and started down the stairs to investigate. RP 632, 687-88. Halfway down the stairs she was met by two people, one of whom pushed her back up the stairs and back into her bedroom. RP 632-34. *See* RP 688. Kuch was scared, shaking, her heart was beating quickly, and she felt cold when she encountered the men. RP 633, 661, 688.

She described the person who pushed her as an approximately 25-year-old man, who was about 1.5 to 1.57 meters, or about 4 feet, 11 inches<sup>5</sup> to 5 feet, 2 inches<sup>6</sup> in height, with a thin build, long hair, and a mustache. RP 635, 689, 691-92, 694-95. Kuch described his race as Khmer. RP 635. After pushing Kuch into her bedroom, the man took

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<sup>4</sup> *See, e.g.*, RP 628-30, 682, 711-12, 896-98.

<sup>5</sup>  $(1.5\text{m})(3.28084\text{ ft/m}) = 4.92126\text{ ft}$ , or 4 ft and (.92126 ft)(12 in/ft) = 11.05512 in., or about 4'11".

<sup>6</sup>  $(1.57\text{m})(3.28084\text{ ft/m}) = 5.1509188\text{ ft}$ , or 5 ft and ((.1509188 ft)(12 in/ft) = 1.8110256 in., or about 5'2".

a shirt from Kuch's closet and used it to cover his face. RP 657-58, 689. He was wearing a black jacket (RP 690), gloves, and black shoes. RP 636, 693-94. At some point, this man began pointing a handgun at Kuch (RP 635, 642) and demanding "money and stuff" in English, but when she told him she could not speak English, he started to speak Cambodian, though not fluently. RP 635. This man pushed the bedroom window shut, and when Kuch tried to open it, he yelled to her. "You want to die?" RP 63, 6427. He asked this a couple of times, and then tied Kuch's hands behind her back. RP 638-39, 641-42. This apparently took place in front of her grandson. RP 644.

After about ten minutes Kuch untied herself and walked into her daughter's bedroom, but the same man again tied her hands behind her back. RP 644-45. He then asked her for keys and money. RP 645-46. After 20 to 30 minutes in her daughter's room, Kuch left and checked on her grandson and the activity of the two men. RP 647.

Kuch could not look at the other man because he was searching the remainder of the house while she was kept in the bedroom, though she indicated that he was significantly taller than the man who pushed her<sup>7</sup> (RP 635-37, 657) had short, dark hair, and appeared to be approximately 25 years old. RP 695-96. This second man was wearing a black hat, black coat, gloves, and a handkerchief over his face. RP 657, 691, 696-97.

The men turned everything upside down," and "went up and down the stairs, looking for tools" to open a safe. RP 638. When they couldn't find a key to open a safe, the men demanded the key from Kuch. RP 637, 651. However, Kuch did not have the key, and the men were ultimately able to open the safe themselves using tools found in the garage of the residence. RP 651-52, 657; 02/11/14 RP 18.

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<sup>7</sup> Kuch described this second man's height to police in meters, and her daughter translated this description, and apparently converted the units of measurement from meters to feet and inches, to arrive at 5'9" tall. RP 695.

As they were there, the taller man was talking in English on what Kuch described as a phone with what sounded like a woman. RP 659. When the men had almost opened the safe, Kuch heard the man tell the woman on the phone, “almost.” RP 659. Kuch testified that she could “clearly” hear the female voice with whom the man was speaking on the phone, and believed that the female was “involved” in the burglary. RP 659-60, 708-09. However, she did not pay attention to the type of phone the man was using and did not know what a walkie-talkie is. RP 659-60.

The men then removed everything inside the safe. RP 652. Kuch testified that inside the safe were three to four firearms, as well as jewelry. RP 648, 653. Among those firearms was a long gun, which appeared to be a rifle. RP 652. One of the men showed it to Kuch, and said, “This is a nice gun, grandma.” RP 652. The men left a second, older rifle behind. RP 654.

Kuch was forced to give the men about \$500 in cash that she had saved and some jewelry. RP 649-50. She testified that the men threatened to kidnap her grandchild if she did not give them the money. RP 649-50. The men also stole a gold ox necklace that her grandson, who was born in the year of the ox, was wearing (RP 650-51, 736), as well as jewelry belonging to Kuch and her daughter. RP 653-54.

Kuch testified that the men entered the house about 5:30 p.m., and remained there until a little after 7:00 p.m., when they left through the front door. RP 638, 658. Kuch testified that this door had been locked at the time of the burglary. RP 633. However, after the men left, she found a broken window in the living room of the residence, which faced the back of the house. RP 655, 669.

Kuch then went downstairs and called her other daughter because she knew that daughter was off work at that time; it didn't occur to her to call 911, and she did not speak

English to communicate with the 911 worker. RP 660. *Cf* RP 897. Kuch asked her daughter to call her son-in-law and have him come back. RP 661-62.

Fred Van Camp, V, testified that he got a telephone call at around 6:30 to 7:00 that night from his brother-in-law. RP 712-13. Van Camp armed himself with a pistol, called 911, and returned to his residence, arriving about 30 to 40 minutes later. RP 661-62, 714-15. *See* RP 662. When he arrived, Kuch was present, along with his sister and brother in law, and son. RP 715. *See* RP 663-64. Van Camp described Kuch as “frantic,” breathing rapidly, a little shaky, and nervous. RP 717.

Tacoma Police Officer Ronnie Halbert was dispatched to the residence in response to the 911 call at about 8:00 p.m., and arrived ten to fifteen minutes later. RP 896-98. Van Camp was already present when the officers arrived. RP 901. Other officers arrived at about the same time. *See* RP 899.

Afterwards, Kuch told them, with her daughter, and perhaps son, acting as a translator, what happened. RP 664-65, 691. *See* RP 722, 902-02. Kuch indicated that there were two suspects, one shorter than the other. RP 910. The shorter man was approximately 25 years of age, about five-foot-four with a thin build, a thick mustache, a dark complexion, and curly, collar-length hair, RP 910, 919-20. He was wearing a black cap, black coat, blue gloves, black pants, and black shoes. RP 910.

Officer Halbert described Kuch as, *inter alia*, very “emotionally upset[.]” RP 904. She described the taller man, through her daughter’s translation, as approximately the same age, about five-foot-nine, with short, black hair, and a dark complexion, wearing a black hat, black coat, gloves, black pants, and black shoes. RP 921. This man was also wearing a red and yellow scarf over his face. RP 922.

Van Camp walked through the residence with officers to identify items damaged or missing. RP 723. He testified that the downstairs window was shattered, a television

stand and stereo equipment had been ripped out and were laying on the floor with the stand cracked, two safes had been cracked open, and one fell onto a desktop computer tower, destroying it. RP 724-25, 730. An Olympus camera was also stolen. RP 731.

Van Camp testified that he had been storing the property of his friend, Sidoung Sok, who had taken a trip to Cambodia. RP 726; 02/11/14 RP 17-19. That property included Sok's firearms and "his fire safe full of stuff." RP 726; 02/11/14 RP 17-20. Among the property stored in the safe was a gold necklace and a gold bar. RP 727.

Among the firearms were a Mossberg shotgun, two 9-mm pistols, a .40-caliber pistol, an SKS rifle, and a 16-gauge shotgun. RP 727-28; 02/11/14 RP 19-20. Van Camp testified that he also owned a 12-gauge shotgun, another Remington 870 shotgun, a 9-mm pistol, and a .357-caliber snub-nose revolver. RP 728. One of Sok's 9-mm pistols and Van Camp's pistol both had laser sights attached. RP 729. All of these firearms, except the .357 revolver, were kept in the gun safe. RP 729. Of these firearms, all but the (apparently non-Remington) shotgun and the SKS rifle were stolen from the residence. RP 728; 02/11/14 RP 20. *See* RP 739. Van Camp testified that he had fired the firearms he owned and that all functioned properly, firing projectiles with gunpowder. RP 744.

Kuch identified photos of her home taken the day of the burglary, all of which were admitted. RP 665-72. She also identified photographs of two of her rings and of her daughter's necklace, all of which were stolen from the residence that day. RP 683-87, 2043-45. Van Camp also identified these photographs. RP 734, 740, 2043-45. Ms. Kuch testified that the rings were composed of gold and each was worth more than \$100. RP 687.

Van Camp identified photographs of two necklaces and a ring as items belonging to his wife that were stolen from the residence. RP 734-35, 2043-45. He also identified a photo of the two shotguns, two pistols, a Muckleshoot bag, and a ring that were stolen

from the residence. RP 738. This photo was taken from Petitioner's cell phone. RP 2045-46.

Finally, Van Camp searched a defendant's Facebook page and found a photo of a woman he knew as "Alicia" wearing a gold necklace with a blue topaz, which belonged to his wife and was stolen from his residence. RP 744-47, 788-89. Van Camp testified that he had bought the necklace for his wife, and that he could recognize it by its chain, the stone of its pendant, and the mounting for that stone. RP 791. He also testified that this woman had jewelry in her cheeks and that this was depicted in the photograph. RP 789-90. He gave this photo to Detective Baker. RP 747, 2046-54. *Cf.* RP 1927-30.

On July 24, 2012, Detective Baker showed Kuch a photo montage. RP 672-73, 681-82, 705-07, 2042-43. Kuch testified that she "told the officer that one picture looked similar to the person that came to rob [her]," and put her signature next to that photograph, but that "the officer said, no, that's not the right guy." RP 673-75. Kuch did, however, place her initials next to photograph 3, which was Nolan Chouap. RP 2043. She told the detective she was 80% certain of this. RP 2043.

Officer Halbert contacted forensic personnel to document the scene by, for example, taking photographs, and collecting fingerprints, if possible. RP 906. Halbert found the black nylon strap which was used to tie Kush's hands, RP 907-08, and Rossi collected it as evidence. RP 940-43. The strap was ultimately admitted at trial as exhibit 4. RP 940-43.

C. 7502 SOUTH AINSWORTH AVENUE, MAY 10, 2012<sup>8</sup>

Remegio Fernandez, a 66-year-old Filipino immigrant who served twenty years in the United States Army and in the United States Postal Service thereafter, lived in his home at 7502 South Ainsworth Avenue in Tacoma, Washington on May 10, 2012. RP

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<sup>8</sup> RP 944-47, 1055-56.

944-47, 1030. He shared the three-bedroom, tri-level home with his wife, Norma Fernandez, and his 26-year-old step-daughter, Carolyn Deguzman, RP 946-48, 1030.<sup>9</sup>

On May 10, 2012, at about 5:00 p.m., Remegio was home with his wife when someone knocked at his door. RP 948-49, 1030-31. He looked out the window to see a woman and asked her what she wanted. RP 949, 1031. She asked for "John," and Remegio told her that John didn't live there. RP 949, 1031. She then turned, walked away, and got into the passenger side of a car that then drove away. RP 953-54. He described the woman as in her twenties, "kind of short and chubby" and wearing a brown shirt and blue jeans. RP 951-53, 974-75. Remegio, who is five-foot-two, testified that the woman was shorter than he is. RP 952.

After she left, Remegio and his wife watched television and played cards. RP 956, 982. Before 7:00 p.m., they heard a big crash at the back, glass door. RP 956, 982-83, 1031-32. The glass of that door was broken out and two men, one of whom was armed with a gun, came into their home. RP 956-57, 1032. The gun itself was a black, 9-mm pistol with a laser sight, which the man pointed in Remegio's face. RP 984-87. *See* RP 1038-39. They said something to the effect of "I want your money." RP 984. The man with the gun showed Remegio its magazine to demonstrate that the weapon was loaded, and said something to the effect of, "you know all I got to do is pull this trigger, and you are dead." RP 985. He showed him the magazine multiple times. RP 985. Remegio testified that the magazine was loaded. RP 986.

Both men were wearing ski bonnets, or knit caps, and bandanas over their faces, such that all Remegio and his wife could see were their eyes. RP 957-58, 997, 1032-34. Remegio's wife believed that the bandanas of both men were blue. RP 1034, 1037. Their skin appeared to be brown, like that typically associated with some people of Asian

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<sup>9</sup> Because they share a surname, Mr. and Mrs. Fernandez will be referred to by their given names for clarity herein. No disrespect is intended.

descent. RP 1035, 1037. However, there was one point at which the man with the pistol lowered his handkerchief. RP 975-76. Remegio noted that the man had dark skin, and was about five-feet-two inches in height. RP 976-78, 980. His wife estimated that he was between five-four and five-six. RP 1036. The man with the pistol was wearing a dark-hooded sweatshirt, a black bonnet, a blue handkerchief, gloves, and dark, baggy pants that looked to Remegio like sweat pants. RP 978-80, 1022-23. His wife thought they were blue jeans. RP 1032-33.

Remegio estimated that the second man was about five-feet-five to five-feet-six. RP 981. He had long, kind of curly, black hair. RP 982. His bonnet was black and handkerchief blue. RP 981-82. Otherwise, he was wearing clothing similar to that of the man with the gun. RP 982.

After the men came in and demanded money, Remegio told them he didn't have any money in the house. RP 987. One of the men told him that if he didn't have it at the house, they would take him to an ATM to withdraw it. RP 987. The men then took Remegio and his wife upstairs, to search the rooms there. RP 988. They took them to the main bedroom and searched it, saying something to the effect of "we know you Asians, you Filipinos, you keep your money in the house." RP 988, 1040. The man with the pistol stayed in the room with Remegio and his wife while the other man searched their daughter's room, and ultimately found and stole over \$5000 in cash that she had been saving for a trip. RP 988, 1020. They also stole all the jewelry in the house, including the necklace Norma Fernandez was wearing, an X-Box 360 video game console, a .22-caliber Jennings pistol, and a samurai sword. RP 992, 999-1000, 1008-11, 1039-41. They moved a .22-caliber Marlin rifle from a closet to a bathtub. RP 1012-14.

At the same time, the man without the pistol had a "two-way radio" through which he was communicating with a woman, who asked them what they were doing, to which

they responded “just wait, we still finding things.” RP 988-90, 1041-43. She asked them if they were finished and the men kept telling her to wait. RP 990, 1041-43. Remegio testified that the voice of the woman on the radio sounded the same as the voice of the woman who had been at his front door that evening. RP 990, 1060-61.

When they were searching the upstairs, Remegio tried to escape by running down the stairs and out the broken back door, but the men caught up to him and brought him back inside. RP 992-93, 1043-44. The man with the pistol stuck its barrel in Remegio’s mouth as they did so. RP 985, 994-95. They told him that all they had to do was pull the trigger, and that was it. RP 995. The men kicked him and “roughed [him] up a little bit.” RP 993-94. The man with the pistol then tied his hands and legs with some telephone charger cables. RP 999-95, 1022. The men stayed in the home for approximately three hours. RP 956. Before they left, they indicated that they had some friends at the Jack in the Box restaurant near the home who would come over and beat them up if they did anything. RP 991.

After they left, Remegio called 911, and told the communications officer that they had been robbed. RP 996. The police arrived about five to ten minutes later. RP 996. *But see* RP 1044 (where Remegio’s wife estimated the period as 15 to 20 minutes). When they arrived, Remegio told them what happened and walked through the house with them. RP 997.

Graham testified that he met with Remegio and Norma, that both appeared very shaken, and that Norma in particular appeared to be almost in shock over what had occurred. RP 1056-57. He noticed that “[t]he house was completely ransacked,” with broken glass and furniture, and that almost every drawer upstairs had been emptied and the contents thrown everywhere. RP 1057.

According to Officer Graham, Remegio described the woman who came to the door as a Hispanic female, about 25 to 30 years of age, who was heavy set and short. RP 1059. He described the man with the firearm as a short, "white or Hispanic male" in his twenties, of "average build," who was wearing a blue bandana over his face and a black jacket. The other man was also described as white or Hispanic, in his 20s, with a slight build, and tall. RP 1059-60. He wore a blue bandana over his face, as well, with a black jacket and gray sweatpants. RP 1059-60. Both wore gloves the entire time. RP 1060. Finally, Remegio described the firearm as a black, semiautomatic pistol equipped with a laser sight. RP 1060.

Remegio and his wife later met with a detective and a sketch artist, and the artist produced sketches of the woman and the man with the pistol. RP 1014-17. They also viewed photo montages, and both identified Nolan Chouap, depicted in photograph number 3, as the man with the pistol, Remegio with 70% certainty, and his wife with 60%. RP 1018-21, 1025-26, 1045-51, 2054-56. Remegio could not identify the woman who knocked on the door from a photo montage. RP 1027.

D. 1815 SOUTH 90<sup>TH</sup> STREET, JUNE 9, 2012<sup>10</sup>

On June 9, 2012, 75-year-old Vietnamese immigrant Duoc Nguyen was living with his wife, Thanh My Thi Vu, in a house located at 1815 South 90<sup>th</sup> Street in Tacoma, Washington. 02/03/14 RP 18-20, 53-56.

Thanh was sleeping in the master bedroom that morning when she woke to find a man pointing a gun at her. 02/03/14 RP 57. She saw some sort of "red color[ed]" light from the gun pointed at her face. 02/03/14 RP 57-58. She screamed, but the man covered her mouth. 02/03/14 RP 57. The man was wearing a pair of Thanh's garden gloves. 02/03/14 RP 58-59. Thanh testified that his mouth was covered with something that was

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<sup>10</sup> See, e.g., 02/03/14 RP 19-20, 105-06.

blue and bore something like a floral pattern and that he was wearing a hat or cap on his head. 02/03/14 RP 60. He was short. 02/03/14 RP 61.

He pushed her into the bathroom associated with the bedroom. 02/03/14 RP 60-61. A taller man then went into her husband's bedroom. 02/03/14 RP 61, 63. Thanh testified that they spoke to one another in a language other than English, which Thanh, who was from Vietnam, and who studied in the Philippines, didn't understand. 02/03/14 RP 55, 61-62.

Nguyen testified that he was in bed watching a soccer match, when, at about 2:40 a.m., his bedroom door opened. 02/03/14 RP 21-22. A person about his height with "a scarf on his face and [a] scar on his head," was pointing a gun at him. 02/03/14 RP 22. The scarf was black and he had another black scarf covering his head. 02/03/14 RP 26. The man had a dark skin tone. 02/03/14 RP 27. Nguyen described the gun he held as a pistol, with an apparent laser sight. 02/03/14 RP 23-24. He described the man who threatened him with that pistol removing its magazine to demonstrate to him that "[i]t's a real gun." 02/03/14 RP 38-39. Nguyen testified that he could see "bullets" inside. 02/03/14 RP 39.

The man asked Nguyen in English where the money was, and Nguyen told him he didn't have any money. 02/03/14 RP 27, 64. The man then took Nguyen to the master bedroom, where his wife and another man were. 02/03/14 RP 28. This man was also wearing a scarf over his face and holding a gun. 02/03/14 RP 28, 33, 39-40.

The men took the couple to the garage to search a car, then to the kitchen where one of them grabbed a knife; they tied up Nguyen and his significant other with tape in the bathroom associated with the master bedroom. 02/03/14 RP 28-29, 31-32, 34, 62, 66, 99. They then searched the residence. 02/03/14 RP 63-64. The men were communicating on a

walkie-talkie with a female. 02/03/14 RP 37. *See* 02/03/14 RP 68. The woman was asking the man if they had finished the job or not. 02/03/14 RP 68-69, 78-79.

After they left, Nguyen heard the sound of a car. 02/03/14 RP 38. Nguyen then called the police. 02/03/14 RP 40, 71.

Officers Yglesias and Belman were dispatched to the residence at 5:04 a.m. and arrived there at 5:12 a.m. 02/03/14 RP 108. When they arrived, they found that both Nguyen and Thanh had duct tape on their hands. 02/03/14 RP 109. Nguyen was “[v]isibly shaken” and his wife was “probably twice as bad.” 02/03/14 RP 112-13. After determining that their first language was Vietnamese, officers had Vietnamese-speaking Officer Pham respond. 02/03/14 RP 109-11, 40-41, 43, 72, 79.

Nguyen and Thanh described the suspects as Hispanic men, both about 30 to 35 years of age, 5’3” to 5’-5”, 130 pounds, with black hair, dark brown skin, and “brown Asian eyes,” one wearing a blue-hooded sweatshirt and pants with a brown bandana or something covering his face and one wearing a black-hooded sweat coat with black and red flowers all over it and a bandana over his face. 02/03/14 RP 115; RP 2057. This man may have been wearing a blue bandana over his face. RP 2058. Thanh described one of the men wearing her gardening gloves. 02/03/14 RP 115-16.

Among the property the men took was \$90 in cash from Nguyen, “[\$]200-something” in cash from Thanh, a phone, an iPad, a camera, jewelry, including earrings, and a ring, perfume bottles, and glasses. 02/03/14 RP 35, 45-46, 65, 70. Nguyen later discovered that a back door and window had been left open. 02/03/14 RP 36.

On July 27, 2012, Detective Baker showed Thanh a photo montage, and she selected Nolan Chouap, who was depicted in photo number 3, as the shorter man with 80 percent certainty. 02/03/14 RP 83-87; RP 2058-59. Nguyen did not recognize either man among the photos. 02/03/14 RP 104.

E. 1510 SOUTH 86<sup>TH</sup> STREET, JUNE 17, 2012<sup>11</sup>

On June 17, 2012, Nhi Ha, a Vietnamese immigrant, who owned a nail shop, lived with her parents and her two children at 1510 South 86<sup>th</sup> Street in Tacoma, Washington. 02/04/14 RP 18-22, 65-66, 75-78. In the early morning of that day, awakened by noises, she opened her bedroom door, and found two Thai or Cambodian men wearing black clothes, masks, hats, gloves, and carrying handguns. 02/04/14 RP 22-35. *See* 02/04/14 RP 70, 82. One was taller than the other 02/04/14 RP 61. They demonstrated that they were real guns by taking “the bullets out and put[ting] it back in[.]” 02/04/14 RP 35-36.

One of them raised a gun, and told her that if she didn’t listen to them, they would shoot her. 02/04/14 RP 26. She screamed, and, according to her testimony, her parents came out of their rooms. 02/04/14 RP 27, 79. Her father testified that he was awoken by someone screaming and that the men took him from his room. 02/04/14 RP 67-69. The men then took Ha and her parents into a bathroom. 02/04/14 RP 26-27, 68, 83.

One of the men watched them while the other searched the home. 02/04/14 RP 30, 32, 69-70. This man told them that he had “a real gun” and that if they resisted, he might shoot them to death. 02/04/14 RP 36-37, 71. The person searching the house was speaking to a third person on something with an antenna that was not a cell phone. 02/04/14 RP 37. The men took the jewelry that Ha and her mother were wearing, and took jewelry, including a watch, a hammer, \$2,300 in cash from Ha, and either \$2,400 or \$1,400 in cash from her mother. 02/04/14 RP 27-29, 43-45, 52, 79-81, 83-84. About ten minutes after they left, Ha called the police, and the police came right away. 02/04/14 RP 41.

Detective Baker later had Ha view a photo montage from which she selected Nolan Chouap, depicted in photograph number 3, as the shorter man with 90 percent certainty. 02/04/14 RP 53-54, 61-64; RP 2059-61.

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<sup>11</sup> *See, e.g.*, 02/04/14 RP 18-21

F. 9036 SOUTH K STREET. JUNE 29, 2012<sup>12</sup>

On June 29, 2012, Rany Eng, a Cambodian immigrant, lived with her husband, Thiem Hane, and her then seven-year-old daughter at 9036 South K Street in Tacoma, Washington. RP 1077-79, 1081. They lived with her friend, Ha Thiem, and her parents, Thiem Moo and Hung Yu. RP 1079. That day, she was home with her daughter, and Ha's parents. RP 1080-81. *See* RP 1157. After entering her house by the back door, she noticed two men behind her. RP 1082-85. They were wearing black gloves and a blue and white handkerchief over their faces. RP 1085, 1087, 1157-58. *See* RP 1121. Eng testified that, though they were of different heights, neither was tall and both were slim. RP 1085-86. They spoke English to each other, but one spoke Cambodian to Eng. TP 1086-87.

Eng testified that she was shaking, scared, and that her heart was pounding. RP 1086-87, 1090. They told her to sit down. RP 1087. Eng testified that one man pulled out "two guns" and pointed them at her while the other ran upstairs, though she indicated that there was a red light coming from both. RP 1087-88. Thiem Moo testified that the man was holding one gun. RP 1121. Hang Yu also testified that the man had one gun, which emitted a red light, and that the man pointed it at him. RP 1158. According to Yu, the man "unload[ed] the gun, [and] showed [him] a bullet," before asking him, "Do you want to die?" RP 1158. Yu felt he did this to demonstrate that he was holding a "real gun[.]" RP 1158. Yu testified that he tried to run outside his home, but the man caught him, and kicked him. RP 1158-59. Yu fell down on the floor and the man kicked him, pulled him back into the house, and told him to sit down. RP 1158. The man tied his hands and feet up. RP 1159. The man had Eng, her daughter, and Yu and his wife sit in the same vicinity. RP 1088-89, 1157. Eng's daughter was also scared and shaking. RP 1090.

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<sup>12</sup> *See, e.g.*, RP 1055-56, 1176-77.

Yu pressed a button to activate a household alarm several times, without any apparent effect. RP 1088-90, 1159. The man saw him do so and hit him “behind [his] neck[.]” RP 1159. One of the men apparently threw a “scoop” at a camera, which was part of the alarm system, causing the camera to fall down, and strike Moo Thiem and her daughter in the face. RP 1090-96, 1121. Her daughter suffered some bleeding and swelling on her face as a result. RP 1093. Moo Thiem suffered some swelling and pain, as well. RP 1102, 1121-23. Eng’s daughter and Moo Thiem later went to a hospital for treatment of their injuries. RP 1109. The men also knocked off the remaining three cameras installed in the residence, causing damage to the walls. RP 1095.

One of the men told Eng, “Just give me the money and gold, I won’t do anything to you.” RP 1097. While the man with the gun watched the residents of the house, the other man went upstairs and stole money and purses, as well as some recent birthday gifts given to her daughter, placing them in one of Eng’s pillowcases. RP 1099, 1125, 1160. They took \$8,000 in cash that belonged to Eng and her husband and another \$4,000 that belonged to Ha Sok. RP 1104. Eng testified that her legs were tied with a red rope. RP 1099. She asked them to return her identification to her, and one of the men did. RP 1100.

Eng testified that while they were in the house, she heard a female voice speaking to one of the men, though she was not sure if he was on the phone. RP 1106. Both men then left the residence through the front door. RP 1100. A responding officer noticed that Yu still had some tape around his ankles from where the assailants had restrained him. RP 1135-36.

Officer Smith got suspect descriptions from the occupants. RP 1139-40. Yu told him there were two male assailants, one who was about five foot six and the other about

five foot ten. RP 1139. Both were Asian, skinny, and wearing black clothing and blue bandanas over their faces as masks. RP 1139. Eng's description matched that of Yu, except she added that she believed both to be right handed. RP 1140. Eng also told the officer that she heard a female voice from a walkie-talkie used by one of the male assailants. RP 1154.

Neighbor Tri Ngo testified that he saw a light yellow colored car bearing what he believed to be an Idaho license plate parked on the side of his house, around the corner from the victim residence. RP 1939-40.

G. 631 EAST 51ST STREET, AUGUST 26, 2012<sup>13</sup>

On August 26, 2012, Hoang Danh, a Vietnamese immigrant, lived with his wife, Sophea, and their two children, Ad.K.D. and An.K.D. at a residence located at 631 East 51<sup>st</sup> Street in Tacoma. RP 1189-91. *See* RP 1232. On that date, he went to Home Depot with his children to buy a new mailbox. RP 1192.

When he returned, he carried one of his sons into the home through the garage. RP 1193, 1227. His second son walked in behind him some minutes thereafter. RP 1193, 1227, 1279-80. As Danh entered the residence, two men grabbed him. RP 1193, 1200, 1227. When his other son came in, a man tried to grab him as well. RP 1280-81. His son jumped back and kicked the man, but the man eventually secured him, and brought all three upstairs to a bathroom associated with the master bedroom. RP 1195-99, 1280-82.

The men were armed with knives. RP 1204-05. *See* RP 1282-83. They asked Danh to open a safe that he kept in a closet of his master bedroom, and he did so because he was concerned for his children's safety. RP 1194-95, 1199-1200, 1283. Inside the safe

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<sup>13</sup> *See, e.g.*, RP 1190-91. 1300-01; 02/11/14 RP 7-8.

Danh had stored jewelry, about \$20,000 in \$100 bills, and “important documents.” RP 1200, 1270-71. After he opened it, the men removed the money and jewelry. RP 1206, 1283. Danh described the money as his wife’s “life savings[.]” RP 1212. The men also stole a camera from the house. RP 1268-69. The men tied Danh’s hands and then left him and his children in the bathroom while they searched the remainder of the house. RP 1206-07. Danh and his children were scared. RP 1208.

About an hour later, at about 4:00 p.m., Danh’s wife returned home. RP 1206-07, 1233. She entered the residence through the garage. RP 1233. As she did so, she saw her husband’s telephone left in the garage, and one of the passenger-side doors of his vehicle ajar. RP 1233-34.

She then entered the house from the garage, and two men came running down the stairs towards her. RP 1234. *See* RP 1209-10. A person who had used one of her shirts to cover his face then tried to grab her, and she told him, “Don’t do that. Don’t play like that.” RP 1235. She tried to go back out of the house, but one of the men pulled her back and the other told her not to fight back. RP 1235. One man held a knife to her and said:

[I]f you don’t want to die, go up stair[s], because your family, if you fight back, I will kill all your kids. If you don’t want that to happen to your kid, go upstairs[s], because your family is up there.

RP 1235-27. *See* RP 1285. Sophea testified that the knife used was her knife, taken from her kitchen, and identified a photograph of it in exhibit 41. RP 1236-37. She was scared and shaking and went upstairs with them to the bathroom, where she found her husband and their children, all tied up with tape. RP 1210, 1237-38. She was tied up and placed in the bathroom, as well, where she cried and asked why this happened to them. RP 1238.

Sopheha indicated that they were in the bathroom for about twenty to thirty minutes. RP 1240. Sopheha described the man who grabbed her as an Asian man in his 20s, who was about five-four to five-five in height, with a slim build. RP 1265-67. He was wearing something over his face, and Sopheha testified that one of the two men took one of her shirts and covered his face with it. RP 1266.

As they were preparing to leave, the men moved a bed to block the doorway from the bathroom. RP 1211, 1241, 1283, 1286.

After Danh could not hear the men's voices anymore, he and his wife opened the door. RP 1211-13, 1241-42, 1283. They then called a friend, who called the police. RP 1213, 1242, 1283.

To police, the family described one as an Asian male, about five-foot-five, thin build, with a thin face, and "sharp nose," wearing a black "sweater-like jacket" and black Nike shoes. RP 1304. The second was described as an Asian man, about five-foot-three, thin build, with a thin face, a thin nose, and a scar on the bridge of his nose. RP 1304.

Dahn testified that both men were Asian and skinny, but that one was taller than the other. RP 1200-02. Both men had taken an article of clothing from the house and used it to cover their faces, though they did not cover their entire faces. RP 1201-02, 1228, 1289. He described the shorter one as about his height, and testified that he was five-foot-three to five-foot-four. RP 1201. The shorter man told him that he was Laotian. RP 1202. The taller man had a darker complexion. RP 1202. The men spoke English. RP 1203, 1267-68, 1287-88, 1304-05. However, Officer Weaver testified that the Danhs told him they also spoke Cambodian. RP 1304-06, 1308.

Danh identified exhibit 41 as photographs of his home as it appeared after the robbery, and the exhibit was admitted and published to the jury. RP 1214-23. He determined that the men gained access to the residence by breaking through a ground-floor window. RP 1216. Among the photographs was the photograph of one of the kitchen knives used by the men. RP 1221.

On August 30, 2012, Detective Baker showed Danh, his wife, and their eldest son a photo montage. RP 1223-25, 1229-30, 1273, 1290-91, 2061-65. Danh identified Nolan Chouap, depicted in photograph number 3, as a possible match with what he termed 20 percent certainty. RP 1223-25, 1229-30, 2061-64. Sophea also selected Chouap as the man who threatened her, writing that she did so with 50 percent confidence. RP 1273-77, 2061-65. Finally, their eldest son identified Chouap, as well, and did so with what he reported to Detective Baker was 90 percent certainty, and what he testified was 70 to 80 percent certainty. RP 2061-63. *See* RP 1291-97.

Detective Baker also showed Danh and his wife photographs of jewelry removed from Azariah Ross, petitioner, Defendant Oeung, Nolan Chouap, and Alicia Ngo at the time of their arrest, and the couple identified pieces of this jewelry as being stolen from their residence. RP 1225-26, 1271-72, 2065-67.

#### H. FOLLOW-UP INVESTIGATION:

While in the Pierce County Jail from March 12 to July 13, 2012, Dale Vasey met petitioner. RP 1757-59, 1762. During the first week of July, Vasey, who had a subscription to the local newspaper, saw an article in it about some home invasion robberies. RP 1764. He loaned his copy to Petitioner, who read the article before turning to the inmate next to him and asking him to “read this.” RP 1764-65. Petitioner asked Vasey if he could hold on to that portion of the newspaper for a while, and Vasey allowed

him to. RP 1766. Petitioner took the article to a telephone, and called his mother. RP 1766-67. Ross then asked for his mom to get in touch with his brother. RP 1768. Vasey, who had been washing his hands and brushing his teeth, walked back to his bunk and did not hear the remaining conversation. RP 1768. Ross later returned the paper. RP 1768.

Vasey contacted Detective Griffith with this information on July 12, 2012, and Griffith then listened to telephone calls made by petitioner from the jail. RP 2094, 2097-98. He found two telephone calls made by petitioner from the Jail on July 4, 2012, and ultimately listened to 15 to 20 hours of calls made by Ross to others during his May 9 to August 10, 2012 jail incarceration. RP 2098-99, 2100-04. Most of the calls he made were to Defendant Oeung. RP 2104-05. Recordings of excerpts of 15 different calls were admitted and published to the jury. RP 2109-26.

Based on this information, beginning July 13, and continuing into August, 2012, Officers conducted surveillance on the residence of petitioner, located at 8632 South Asotin Street, RP 1909-10, 1688-94, and that of Nolan Chouap, located at 915 East 75<sup>th</sup> Street Apartment B in Tacoma. RP 1451-52. On August 27, 2012, Officer Benson observed Chouap exit that residence and enter the driver's seat of a green minivan with two occupants, and then leave the area. RP 1451-52, 1463-64. Chouap drove to South Hill Mall, where he parked along with a black Dodge Stratus. RP 1452, 1464. Tacoma Police detained everyone in both vehicles. RP 1452-53, 1465.

Michael Leair and Kasandra Zuniga were in the green minivan with Chouap. RP 1454. Defendants Ross and Oeung were in the Stratus, along with their child, Ross' brother Azariah, and Alicia Ngo. RP 1454-55. Azariah Ross was arrested with, among other things, a bag that contained a gold watch and other jewelry and, in his right pocket, a

large amount of cash, including 56 new \$100-bills. RP 1467-68, 2071-75. Ngo had over \$7,200 in cash, including 72 new \$100-bills and two business cards on her: one for Gold & Silver Plus, Inc., and one for American Gold, Inc. RP 2068-70.

Officers next returned to the Chouap residence at 915 East 75<sup>th</sup> Street Apartment B and searched it. RP 1457. Among the items of evidence found there were a temporary Washington identification card issued to Nolan Chouap found in a bedroom (Exhibit 89) (RP 1489-90), an X-Box 360 console, serial number 049671102708, power supply, and controller, all owned by Remegio Fernandez (RP 1490-94) (exhibit 90), an “AK-47 style” assault rifle, under a mattress, a black and silver Ruger P95 DC semiautomatic pistol (RP 1494-95), an extra magazine for that pistol (RP 1496), and five rounds of .357 Magnum ammunition in Chouap’s bedroom. RP 1457-60.

Detective William Foster assisted in the search, focusing his efforts on the residence laundry room. RP 1506-07. He found two pistols, both in cases, in that room: a .357-caliber Ruger revolver (serial number 57290786), and a .22-caliber Ruger semiautomatic pistol (serial number 223-64306). RP 1507-13. Both were collected as evidence. RP 1508-09. He also found a ring in the .357 revolver’s case, and testified that it looked “like possibly a wedding type ring[.]” RP 1513.

Tarey Rogers testified that she lived at the 915 75<sup>th</sup> Street East Apartment B residence in 2012, with her children, her husband, and Nolan Chouap. RP 1698-99. It was a two-bedroom apartment; her children slept in one bedroom and she and her husband would sleep in the other or in the living room. RP 1700. When they did not sleep in the bedroom, Chouap would. RP 1700. She testified that Chouap slept in the bedroom for a four-month period at one point. RP 1701. He was not working and did not pay rent. RP

1704. She described Chouap as Asian, skinny, and about five-three in height, and testified that he went by the names “Monkey” and “Sneaky.” RP 1701, 1704. *See* RP 2107. He would sometimes have friends over. RP 1701. Rogers did not know their real names, but knew them as “A.Z.” and “Azzy.” RP 1701-02. She identified A.Z. as petitioner. RP 1702. Rogers would sometimes see petitioner with defendant Oeung, whom she knew as “Taidaiz.” RP 1702-03. Rogers testified that there was an X-Box console in her bedroom, but she did not know where it came from. RP 1706. She testified that it first appeared there two to the three months before the search warrant was served. RP 1705.

Detective Gregory Rock executed search warrants for both the 1995 Ford van and the 2005 Dodge Status from which the suspects were arrested. RP 1515-19. Inside the Ford, he found a Coach purse on the front passenger seat, a CD in the front seat rear pocket, and a pink bag with what appeared to be costume jewelry. RP 1518. Found inside the Coach purse was \$2,430 in cash, which included 24 \$100-bills, an ID card in the name of Kasandra Zuniga, and some credit cards in her name. RP 1518-19, 1522. Inside the Dodge, he found a BB gun that resembled a rifle and a tin of pellets for that gun. RP 1517. Photographs were taken of the vehicles. RP 1519.

On August 29, 2012, police executed a search warrant at petitioner’s residence at 8632 South Asotin Street. RP 1708-09. Detective William Muse searched a downstairs bedroom and portions of an upstairs family room of that house. RP 1712. In the downstairs bedroom, Muse found mail addressed to petitioner and defendant Oeung. RP 1733. Inside a drawer in that bedroom, Muse found a Coach-brand bag, a red bandana, and a magazine for a Taurus .44-caliber, semiautomatic pistol. RP 1733-35, 1748-51, exhibit 105. In the family room, he found a black glove. RP 1736., 1746-47. A second black

glove was found behind that drawer and may have been in the drawer. RP 1747. Muse also found a book titled "Safecrackers Manual" inside that cabinet. RP 1747. Muse identified exhibit 103 as photographs of the residence on the day of the search. RP 1729. See RP 1753-54.

Detective David Hofner searched the family room, storage room, laundry room, and garage on the lower level of the Ross house. RP 1753. In the storage room beneath the stairs, he found two bandanas, a pair of gloves, and boxes of ammunition of different calibers. RP 1754-55. He also found a stocking cap and a pair of gloves on top of a shelf in the laundry room. RP 1755.

Garrison Ross, the father of Azariah, or "Azy," and petitioner, RP 1687, also known as "Zi," testified that in 2012 he lived with his wife, and these two sons in the split level house at 8632 South Asotin Street. RP 1688-89, 1693-94. Petitioner had a bedroom in the downstairs of that home, and his brother Azariah had a bedroom upstairs. RP 1694. Sometimes defendant Oeung, and Nolan Chouap, among others, lived there, as well. RP 1688-92. Neither of his sons had a job. RP 1688-89. Garrison testified that petitioner and defendant Oeung have a daughter in common. RP 1689-90. He also testified that Azariah Ross and Alicia Ngo were in a romantic relationship during 2012. RP 1690-91.

Garrison described Chouap as a thin, Asian male, about five-three to five-four in height. RP 1692. He testified that Azariah was taller than Chouap. RP 1692.

Detective Timothy Griffith examined the digital contents of petitioner's Apple iPhone cellular telephone, marked as exhibit 115, pursuant to a search warrants. RP 1872-74. On July 18, 2012, Detective Bair, whose primary duties are conducting cell phone forensics, downloaded the data from the telephone, and placed it on a disc ultimately

marked exhibit 109. RP 1874, 1877, 1880-83. Among the data recovered from petitioner's phone were text messages and voicemails. RP 1890-92. Included within these were text message exchanges from October 10, 2011 and April 18, 2012, RP 1893-96, and voice mails from at or about 10:53 p.m. on April 15, 2012, at or about 7:01 p.m. on May 1, 2012, and at or about 9:39 p.m. of May 1, 2012. RP 1961-68. On at least the May 1, 2012 voicemails, the caller asked to speak to "Azias." RP 1967-68.

In a 11:36:53 p.m., January 26, 2012 text message exchange, petitioner's phone received a message from "Taidaiz Reallaz" stating, "I know you're going to take quite a while, so I'm gonna find a ride to my mom." RP 1969-70. A response of, "yup" was sent at 11:38:22 p.m. RP 1970-71. Reallaz responded, "okay, TTYL. Muuaah" at 11:38:57 p.m. RP 1971. The reply sent from petitioner's phone at 11:40:12 p.m. was "Muuaah." RP 1971. Another response was then sent from petitioner's phone at 11:40:38 p.m., stating, "I'm at South Hill LOL, but now I'm going back, B N I to sell my gold." RP 1971-72, 2018-20.

On April 27, 2012, there was an exchange of text messages to and from petitioner's phone beginning at 5:39:12 a.m. and ending at 6:43:12 p.m. RP 1976-78. The subject of the conversation seemed to be negotiation for the sale and purchase of a car. RP 1979. A message sent from petitioner's phone at 6:29:03 p.m. read, "Fuck wit,... me, G. This ain't got to be one time thing. I'm always having thangs,... I'm talking jewels, TVs, laptops, choppas cars... and anything you need." RP 1979-80, 2017. A follow-up message sent from the phone at 6:30:50 p.m., stated, "We can work sumthing out... on mamas. I really want that Monte. You give me a lil time... I'll get... sum cash. I'm bout... to make some money as we speak." RP 1980, 2017-18. Finally, a 6:38:35 p.m. message from the phone

read, "I-ma... get sum... dough, N I'm ah holla... at you if something, or if someone else hit you up bout it, let me know, G-E." RP 1980-81.

On April 28, 2012 at or about 3:02:04 a.m., Ross's phone sent a MMS to "Sneaky," phone number 253-951-6559, which included, as an attachment a photograph of shotguns and handguns. RP 1972-75, 2018.

Detectives interviewed Nolan Chouap and Petitioner on August 27, 2012. 02/11/14 RP 104-05, 105-49 (Chouap interview). Chouap stated that he had a gun during the robberies, though not all of them, and that when he did, it was a .38 snub nose revolver." 02/11/14 RP 130, 147. Chouap also said that Azariah Ross carried a gun in all the robberies, usually or always a semiautomatic pistol. 02/11/14 RP 148-49. Detectives did not ask Chouap whether that pistol had a laser sight. RP 148.

Detectives told petitioner that they were investigating a series of home invasion robberies and asked him how many times he had been in the car outside during these robberies. 02/11/14 RP 151. Petitioner responded, "Honestly, it was only one time." 02/11/14 RP 151. He said it took place at a house in the area of East 59<sup>th</sup> and S Street, and that he was the one who drove the people involved to that location. 02/11/14 RP 152. He said that he and Ngo waited in the car while two others did the burglary. 02/11/14 RP 154.

Petitioner eventually admitted that he had driven participants to two of the home invasion robberies (02/11/14 RP 154) and admitted to knowing what the participants were planning on doing. 02/11/14 RP 237. Petitioner said the first was at a residence on the west side of McKinley, just south of 84<sup>th</sup> Street, which matched the January 25 incident in TPD Incident number 12-025-1062. 02/11/14 RP 155. Petitioner admitted driving Azariah Ross and the other individual to the location and said he waited in the car during the

robbery. 02/11/14 RP 155. They called and he picked them up after the robbery was done. 02/11/14 RP 156, 236-37. Petitioner said they got gold and about two to three thousand dollars in cash from the residence. 02/11/14 RP 156, 236-37. He told detectives that they sold the gold. 02/11/14 RP 156.

Petitioner also described his involvement in the robbery of 8208 South G Street, saying that he drove Azariah Ross, Alicia Ngo, and the other person to the home, and that Ngo knocked on the door to see if anyone was home. 02/11/14 RP 160-62. Ngo indicated that nobody answered the door, so he dropped off Azariah and the other person and he and Ngo waited in the car. 02/11/14 RP 162, 227. However, Azariah and the other person encountered a person within the residence. 02/11/14 RP 163, 238-39. Ngo was speaking to Azariah and the other person via walkie-talkie so that if there was a shooting inside the house or anyone went into the house the participants could contact each other more quickly than with a cell phone. 02/11/14 RP 163-64, 239. When Azariah and the other person were done with the robbery, they called on the walkie-talkie and asked petitioner to come get them. 02/11/14 RP 164, 240. Petitioner picked them up around the corner. 02/11/14 RP 164. Azariah and the other person were carrying a pillowcase and a gun case that contained two shotguns. 02/11/14 RP 164-65.

Ross said he drove everyone to his residence at 8632 South Asotin, where they took the stolen property into his house and went through it together. 02/11/14 RP 165. Once there, he took a photograph of the stolen weapons with his cell phone and then emailed it to another person to assist in the sale of these weapons. 02/11/14 RP 165-66. Detectives found the photo on Ross' cell phone, and Ross acknowledged that it was the photo he took. 02/11/14 RP 166-68.

Petitioner told detectives that guns were used in the two robberies in which he drove, 02/11/14 RP 159-60, that is, that the two men who went into the residences had guns. 02/11/14 RP 226-27. Petitioner said they communicated on walkie-talkies because, “if anybody went to the house, he could contact the people inside much quicker on a walkie-talkie than a cell phone,” and, “if there was a shooting inside the residence, Azariah Ross and [Chouap] could call him quicker ... than a cell phone.” VRP (2/11/2014) at 163–64. When petitioner picked up Azariah and Chouap after the robbery on April 27, they were carrying a pillowcase and a gun case that contained two shotguns.

Petitioner continued to make statements such as “Any time they get jewelry, I never keep it,” and “I took them to sell it,” referring to multiple incidents. 02/11/14 RP 156. He indicated that he participated in these other incidents at least to the extent of selling gold, and that he sold gold at several places, including “the watch place” at the South Hill Mall and a place behind B&I. 02/11/14 RP 156, 158-59. He said he got between \$200 and \$300 when he helped them sell gold. 02/11/14 RP 157. Ross told them that, in total, he received anywhere from \$5,000 to \$10,000 for his involvement. 02/11/14 RP 167.

### III. ARGUMENT:

#### A. PETITIONER IS ENTITLED TO A FULL RESENTENCING

On direct appeal, this Court found five errors in petitioner’s sentence. No. 46425-0-II Opinion at 69-70. This Court reversed “Ross’s convictions dismissed without prejudice on double jeopardy grounds and remand[ed] with instructions that the sentencing court vacate and dismiss those convictions without prejudice.” *Id.* at 70. This Court also “acknowledge[d] the scrivener’s error regarding Ross’s count LXXII, and ordered the

sentencing court to resentence Ross on count LXXI.” *Id.* The correction of those matters plainly did not implicate the discretion of the sentencing court. *Id.*

Counts I and IX were addressed differently. In the order captioned “MOTION AND ORDER CORRECTING JUDGMENT AND SENTENCE” the resentencing court imposed an exceptional sentence downward in order to correct the judgment and sentence. Appendix 20. An exceptional sentence downward always involves a finding that “considering the purpose of [RCW Chapter 9.94A], that there are substantial and compelling reasons justifying an exceptional sentence.” RCW 9.94A.535. The decision to impose an exceptional sentence is an exercise of discretion. *State v. Houston-Sconiers*, 188 Wn.2d 1, 36, 391 P.3d 409 (2017).

The trial court was not required to exercise its discretion and impose an exceptional sentence downward. The trial court could have relied upon RCW 9.94.701(9) (as it apparently did at CP 78) to delete the community custody requirements for Counts I and IX. The trial court could then have relied upon *State v. DeSantiago*, 149 Wn.2d 402, 416, 68 P.3d 1065 (2003), which held:

Therefore, the total sentence, including enhancements, remains presumptively limited by the statutory maximum for the underlying offense unless the offender is a persistent offender. If the total sentence exceeds the maximum sentence provided in RCW 9A.20.021(1), the underlying sentence, not the enhancement, must be reduced.

*Id.* This approach would have achieved the same correction without the imposition of an exceptional sentence downward. The difference between the two approaches is trivial. It ought never amount to a fundamental defect resulting in a complete miscarriage of justice, sufficient to secure resentencing via a personal restraint petition. However, the State’s response in the direct appeal consolidated with this case asserts that a standard range sentence was imposed in this case. Respondent’s Brief at 5-7. That position is

unsupportable. CP 278. Although at petitioner's original sentencing the trial court explicitly rejected an exceptional sentence downward,<sup>14</sup> an exceptional sentence downward was imposed at petitioner's resentencing. CP 276-79 Any oral statements contradicting the imposition of that exceptional sentence must be disregarded. Oral statements of the trial court, when at variance with the written findings of fact, cannot be used to impeach the findings, although when consistent therewith, the findings may be read in their light. *Rutter v. Rutter's Estate*, 59 Wn.2d 781, 784, 370 P.2d 862, 864 (1962). The trial court's oral opinion may be used to clarify the formal findings when necessary, but it is not itself a finding of fact. *State v. Kingman*, 77 Wn.2d 551, 552, 463 P.2d 638 (1970); *State v. Williamson*, 72 Wn.App. 619, 623, 866 P.2d 41 (1994).

Th trial court imposed an exceptional sentence downward, yet denied petitioner the opportunity to present evidence pertaining to the duration of that exceptional sentence downward. Petitioner is entitled to a full resentencing. This Court should accept this as a concession of error as to the direct appeal in this case.

B. THIS PERSONAL RESTRAINT PETITION IS NOT TIME BARRED BY RCW 10.73.090.

Petitioner claims pertaining to the conduct of his trial are not time barred by RCW 10.73.090. Petitioner was resentenced to an exceptional sentence downward at his October 6, 2019 resentencing following an appeal. CP 276-79. That brings this PRP squarely within *In re Skylstad*, 160 Wn.2d 944, 946-47, 162 P.3d 413 (2007).

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<sup>14</sup> See RP 6/23/14 75-76.

C. PETITIONER'S CONFRONTATION CLAUSE CLAIM IS NOT PROPERLY BEFORE THIS COURT.

1. Petitioner waived his Confrontation Clause claim.

Det. Baker testified to statements made to him by Nolan Chouap. 2/11/14 VRP 108-49. Prior to Det. Baker's testimony, the trial court, on the record, addressed the redaction of Det. Baker's testimony. 2/11/14 VRP 27-80. Petitioner's counsel (Ms. Martin) made an ambiguous statement regarding redactions and cross-examination which did not mention the Confrontation Clause. 2/11/14 VRP 48. The trial court made it clear that an objection would be necessary:

I mean, I'll be happy to file your redactions. Above and beyond that, I don't know what to tell you. If we don't go over them now, I don't know when we would go over them. If you think you can handle them in cross-examination, fine. If you think there is something that absolutely is offensive, though, I don't have an opportunity to deal with it unless you call it to my attention.

2/11/14 VRP 49. The trial court then noted that the defendants had a standing objection, but that objection was not a Confrontation Clause objection:

And I think you can probably have a general objection to the whole process, given that you think it's unfair because it's not quoted material -- it's interpreted material, if you will -- and that the whole process is tainted by that.

2/11/14 VRP 49. At this point petitioner's counsel made it clear that she was addressing statements made by petitioner to Det. Baker and not statements made by Mr. Chouap to Det. Baker:

I think that is my issue, Your Honor. We're attributing statements to Mr. Ross that are inculpatory that the State claims are confessions when we have no direct quotes. We don't know what was said specifically, and we don't know the context of what was said. And that is, I think, problematic because language matters in this case, specifically, and that would be my standing objection.

2/11/14 VRP 49. Petitioner's counsel presented no further objections during the course of the redaction process. 2/11/14 VRP 49-80. No Confrontation Clause objections were

presented during the course of Det. Baker's testimony relating Mr. Chouap's statements.<sup>15</sup>  
2/11/14 VRP 108-149.

Petitioner waived his Confrontation Clause claim by failing to interpose a timely, reasonably specific objection. "Where a defendant does not object at trial, 'nothing the trial court does or fails to do is a denial of the right, and if there is no denial of a right, there is no error by the trial court, manifest or otherwise, that an appellate court can review.'" *State v. Burns*, 193 Wn.2d 190, 211, 438 P.3d 1183, 1193 (2019) (quoting *State v. Fraser*, 170 Wn. App. 13, 25-26, 282 P.3d 152 (2012)).

A Confrontation Clause issue, framed in the context of the denial of defense counsel's motion for mistrial, was addressed on direct appeal in this case in cause No. 46425-0-II. Should petitioner argue that the motion for mistrial constituted an "objection," the State asserts that the objection was not sufficiently specific to support the argument that petitioner now makes more than five years after his trial. Petitioner's current claim is built around the redaction process (PRP at 17-19) and, as discussed *supra*, no objection to the redaction process was made at trial.

2. Alternatively, petitioner has failed to demonstrate that the interests of justice require relitigating the Confrontation Cause claim.

Should petitioner argue that his Confrontation Clause claim is preserved by the mistrial motion made in petitioner's trial, that claim has already been litigated in petitioner's first direct appeal. "The petitioner in a personal restraint petition is prohibited from renewing an issue that was raised and rejected on direct appeal unless the interests of justice require relitigation of that issue." *In re Davis*, 152 Wn.2d 647, 671, 101 P.3d 1

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<sup>15</sup> Only one objection was interposed during Det. Baker's testimony relating to Mr. Chouap's statements. 2/11/14 VRP 123. The lawyer for Mr. Chouap objected that a question was "leading." *Id.*

(2004). “The interests of justice are served by reexamining an issue if there has been an intervening change in the law or some other justification for having failed to raise a crucial point or argument in the prior application.” *Id.* (n.15) (citing *In re Stenson*, 142 Wn.2d 710, 720, 16 P.3d 1 (2001)).<sup>16</sup> Petitioner has presented neither a change in the law, nor any argument that the interests of justice require relitigation of the denial of petitioner’s mistrial motion.

D. ALTERNATIVELY, PETITIONER HAS FAILED TO DEMONSTRATE ACTUAL AND SUBSTANTIAL PREJUDICE RESULTING FROM ANY CONFRONTATION CLAUSE VIOLATION.

“On collateral review the burden shifts. If a constitutional error is subject to harmless error analysis on direct appeal, that same error alleged in a PRP must be shown to have caused actual and substantial prejudice in order for the petitioner to obtain relief.” *In re Brockie*, 178 Wn.2d 532, 539, 309 P.3d 498, 502 (2013) (citing *In re Hagler*, 97 Wn.2d 818, 825–26, 650 P.2d 1103 (1982)). To prevail on a personal restraint petition asserting constitutional error a petitioner must satisfy a threshold burden of demonstrating actual and substantial prejudice to a constitutional right. *In re Stockwell*, 179 Wn.2d 588, 597, 316 P.3d 1007 (2014) (citing *In re Haverty*, 101 Wn.2d 498, 504, 681 P.2d 835 (1984)).

A personal restraint petition is not a substitute for direct appeal and availability of collateral relief is limited. In order to obtain relief, Grasso must first overcome statutory and rule based procedural bars. Then, in order to successfully argue a claim not previously raised, Grasso must demonstrate by a preponderance of the evidence either a constitutional error that worked to his actual and substantial prejudice. . .”

(citations omitted) *In re Grasso*, 151 Wn.2d 1, 10–11, 84 P.3d 859, 864 (2004). Should petitioner surmount the insurmountable waiver bar of *State v. Burns, supra*, petitioner’s

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<sup>16</sup>“ Because identical grounds for relief can be supported by different legal arguments or couched in different language, simply recasting an argument in this manner does not create a new ground for relief or constitute good cause for reconsidering a previously rejected claim.” *In re Cross*, 180 Wn.2d 664, 710, 327 P.3d 660, 687 (2014).

Confrontation Clause challenge should be dismissed because petitioner has not attempted to demonstrate the actual and substantial prejudice required on collateral review.<sup>17</sup>

A pronounced difference between the harmless error standard and the actual and substantial standard is that the burden of proof shifts to the petitioner in a personal restraint petition. *In re Phelps*, 190 Wn.2d 155, 165, 410 P.3d 1142 (2018). In this PRP, petitioner presents several conclusory statements and no citations to the record. PRP at 19-20. Petitioner's Confrontation Clause claim should be denied because petitioner fails to produce evidence sufficient to meet his burden of proving actual and substantial prejudice. *In re Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992).

Further, the failure of trial counsel to object at trial "strongly suggests to a court that the argument or event in question did not appear critically prejudicial to an appellant in the context of the trial." *State v. Swan*, 114 Wn.2d 613, 661, 790 P.2d 610, 635 (1990). *See also, State v. Miller*, 66 Wn.2d 535, 537, 403 P.2d 884, 886 (1965).<sup>18</sup> In this case, petitioner did not seek to distance himself from his own confession. 3/3/2014 VRP 2290. In closing, petitioner's counsel conceded much:

He's guilty of Residential Burglary, he's guilty of Trafficking. If you believed that there were firearms in the home, he's guilty of Theft of a Firearm, but he is not guilty of Robbery First Degree. He is not guilty of Burglary First Degree. He is not guilty of Assault 2. He is not guilty of Unlawful Imprisonment, and he is not guilty of a Conspiracy to commit either Robbery or Burglary in the First Degree.

RP 2294. Petitioner's trial counsel was obviously hamstrung by petitioner's confession (RP 149-67), incriminating text messages (RP 1966-1980), and jailhouse telephone calls.

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<sup>17</sup> Petitioner's harmless error argument is entirely conclusory and devoid of any citation to the record. *See* PRP at 19-20.

<sup>18</sup> "Apparently counsel for appellants was satisfied that no prejudice resulted, because he made no motion for a mistrial." *Id.*

RP 2093-2147. Petitioner's trial counsel did not challenge petitioner's confession to Detective Baker,<sup>19</sup> but sought to work around it by trying to distance petitioner from the firearms used in the robberies. 3/3/2014 VRP 2290-94.

Mr. Chouap did make statements to Det. Baker admitting that firearms were used in the robberies, but the jury was instructed to disregard those statements. Appendix 36. Jurors are presumed to follow the court's instructions. *State v. Hopson*, 113 Wn.2d 273, 287, 778 P.2d 1014 (1989). Petitioner, even if he tried, could not demonstrate the actual prejudice necessary to establish that the jury disregarded those instructions and that actual and substantial prejudice resulted.

In the course of this trial, there was evidence that at least one of the co-conspirators was armed with a handgun in each of the robberies and that this man took pains to insure that the victims knew it was a real gun. *See, e.g.*, RP 799-800, 855, 635, 642, 956-57, 984-87, 1032. In the April 27, 2012 home invasion robbery, the robbers armed themselves with firearms stolen in the course of the robbery—and petitioner took pictures of those firearms. RP 727-28; 02/11/14 RP 19-20; RP 738, RP 2045-46. A Taurus .44-caliber, pistol magazine was found in petitioner's bedroom, RP 1733-35, 1748-51 along with a gun lock for a Taurus semiautomatic pistol. RP 1748-51. Boxes of ammunition of different calibers were found in petitioner's residence. RP 1754-55. Petitioner himself, admitted that his co-conspirators in these robberies were armed with a firearm. 02/11/14 RP 159-60, 226-27. Petitioner "also advised if there was a shooting inside the residence, Azariah Ross and the other individual could call him quicker on a walkie-talkie than a cell phone." RP 164.

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<sup>19</sup> "We admit that he conspired and was an accomplice to residential burglaries on January 25th, and April 27th. He told law enforcement that he was. He also told law enforcement he didn't know there were people in the house until afterwards. 3/3/2014 VRP 2290.

Even if the jury did violate the trial court's instruction and consider Mr. Chouap's statement, any such consideration was cumulative to petitioner's confession (and his corroborating text messages and phone calls), along with the very ample evidence that the robbers in these home invasions were armed with firearms. Petitioner cannot establish the actual and substantial prejudice required of a personal restraint petition.

E. PETITIONER'S PROSECUTORIAL MISCONDUCT CLAIMS ARE NOT WELL TAKEN.

1. Petitioner has not demonstrated actual and substantial prejudice resulting from "improper slides."

Petitioner asserts that the prosecutor's closing argument was an "improper opinion warranting reversal" pursuant to the United States and Washington constitutions. PRP at 20-21. Petitioner then cites the appropriate legal standard for a direct appeal. PRP at 21. However, this case is a personal restraint petition raising a constitutional claim. "A personal restraint petitioner raising a prosecutorial misconduct claim must prove the misconduct was either a constitutional error resulting in actual and substantial prejudice. ..." *In re Phelps*, 190 Wn.2d at 165.

The prosecutor's closing argument relating to the challenged slides was a legal argument, not an expression of improper opinion. The two slides preceding the challenged slides were the accomplice liability jury instructions 6 and 7.<sup>20</sup> PRP Appendix E. The employment of the challenged slides is apparent from the context of the prosecutor's closing argument. The discussion of instruction 6 is at RP 2248-50. The discussion of Instruction 7 is at RP 2250-2251. This argument was a legal argument. It began with the following premise:

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<sup>20</sup> In the PRP, Appendix E, those slides are numbered 0199 and 0200. The challenged slides are numbered 0201-0204.

Now, when you go back to deliberate, you will go through the charges and the counts, but really, what should focus your deliberations here are two questions, because if these two questions are yes, these defendants are guilty of every crime with which they have been charged.

RP 2248. After the two accomplice jury instructions were discussed, the argument proceeded to more the specific examples illustrated in the PowerPoint slides:

Likewise, I was down to rob, but I didn't know they had a gun and I didn't know they'd go in with a gun. Doesn't matter. You're still on the hook for whatever degree of robbery your other participants inflicted.

Likewise as Jury Instruction Number 7 tells you, if you say, you know what, I knew there were going to be people in there, and I figured they'd probably put some fear in them, in assault, but I didn't know that they were going to be armed with a deadly weapon and I didn't know they'd use a deadly weapon to put that fear in them, doesn't matter. You are still guilty of Second Degree Assault.

Likewise, for the Theft of a Firearm charge. If you are down for theft, it is not a defense that you didn't know what, in fact, was going to be stolen. If you are down for theft, you are down for any degree of theft that occurs, and that is what Jury Instruction Number 7 tells you.

It's sort of a concept of strict liability, if you will. If you are down for a degree of a crime, you are down for any degree of that same crime, whether or not you know it would get taken to that higher degree, and the same type of principle applies to your Special Verdict Forms. You are going to be given Special Verdict Forms for each of the charges except for the Theft of a Firearm counts, and you are going to be asked in this Special Verdict Form, was any participant in the crime armed with a deadly weapon in the case of the August 26th home invasion where knives were used, or in the case of the January 25th and April 26th and May 10th home invasions, were they armed with firearms? And this, as well, is a strict liability question. It does not matter if Soy Oeung or Azias Ross knew that the men that went into the homes would have guns or that they knew that they might grab knives while in the home. If any participant arms himself during the crime, you are on the hook for that. It is not a defense to say I didn't know. And that's what these Special Verdict Forms entail.

RP 2251-52. The foregoing argument is a legal argument which respected the jury's role in determining the facts as they related to accomplice liability. Petitioner does not challenge this argument—he does not even cite to it. When viewed in context, it is apparent that the PowerPoint slides provide visual support to that legal argument.

This case is unlike *In re Glasmann*, 175 Wn.2d 696, 706, 286 P.3d 673 (2012) and *State v. Walker*, 182, Wn.2d 463, 478, 341 P.3d 976 (2015) because the prosecutor altered no exhibits, did not use his “position of power and prestige to sway the jury,” and did not “express an individual opinion of the defendant's guilt, independent of the evidence actually in the case.” *In re Glasmann*, 175 Wn.2d at 696. The prosecutor in this case certainly was not making “clear efforts to distract the decision maker.” *State v. Walker*, 182 Wn.2d at 478-79. This case involves no misconduct. It involves merely an argument addressing the law of accomplice liability as related to the facts of this case.

Alternatively, petitioner has not proven the actual and substantial prejudice required of a personal restraint petition. *In re Phelps, supra*. In a personal restraint petition, petitioner must demonstrate that but for the prosecutorial misconduct, the outcome of the trial would have been different. *In re Sims*, 118 Wn. App. 471, 477, 73 P.3d 398 (2003) (citing cases). Excepting his closing argument references, petitioner’s prosecutorial misconduct argument makes no citation to the trial record and never mentions actual and substantial prejudice. PRP at 20-25. Petitioner’s prosecutorial misconduct claim should be dismissed for this additional reason.

2. Petitioner’s other prosecutorial misconduct claims.

Petitioner argues that “the slide [sic] was presented against a backdrop of multiple assertions of opinion concerning guilt . . .” PRP at 25. None of these assertions was subject to a timely objection. RP 2244-45, 2268, 2272, 2352. None of these assertions were presented in the context of the PowerPoint slides which actually were objected to. *See* RP 2251-52 (argument) and RP 2273-79 (objections raised). Accordingly, for these claims of prosecutorial misconduct, raised in a personal restraint petition, petitioner must also demonstrate that the claimed prosecutorial misconduct was “so flagrant and ill-

intentioned that it caused an enduring and resulting prejudice that could not have been neutralized by a curative instruction.” *In re Phelps*, 190 Wn.2d at 165.

A. The challenged statements were not misconduct.

Petitioner asserts that the following statement is an impermissible opinion: “it is beyond a reasonable doubt that they were down for home-invasion robberies.” PRP at 25. The whole sentence should be considered by this Court: “The evidence in this case, ladies and gentlemen of the jury, is clear, and it is beyond a reasonable doubt that they were down for home-invasion robberies and the time has come to hold them accountable in your verdicts.” RP 2244-45. This is an argument related directly to the evidence.

Petitioner asserts that the following statement is an impermissible opinion: “[t]hey’re guilty,”. PRP at 25. This statement was made in the context of the evidence relating to petitioner’s trafficking in stolen property:

So, were they in on a plan to steal with the intent to resell? Azias Ross said as much. He talked about how they would always sell the gold, how he would drive others to sell the gold, how they would never keep the jewelry.

Azias Ross time and time and time again was selling stolen jewelry. You have Azias Ross' April 27<sup>th</sup> text messages where he over and over and over again is talking about wanting to fence, make a long-term arrangement with this guy where he can sell stolen property.

And you have Soy Oeung on May 10th to Azias Ross -- sorry, this is actually May 11th, the next day, but she says as they're talking about all the stuff he got, the gold and the jewelry, she says and I'm about to have other shit to sell too. And she, as they're talking some more, they're talking about all this stuff that was stolen from the Fernandez's, the iMax, the iPads and the cameras, and Azias says, well, don't sell that camera, and she says they're not, they're not. Is she in on this plan to liquidate these assets from these home invasions? Absolutely. Again, that's always the plan. They're not stealing all this stuff because they want to parade around town with the most gold jewelry and all the stolen items. The goal is to find the cash, and whatever else they can get their hands on, liquidate it.

So Azias was selling the stolen jewelry. The next day he's guilty of trafficking. They knew the plan always was to sell it or to steal with the intent to resell. They're guilty, and other members of this group were armed with

weapons in the home when they were stealing this property, so the Special Verdict Form is yes.

RP 2267-68. This is an evidence-based argument, not prosecutorial misconduct.

Petitioner asserts that the following statement is an impermissible opinion: “[t]hese defendants are guilty of the charges with which they have been charged.” PRP at 25. That sentence needs to be examined in the context of its paragraph:

Ladies and gentlemen, the State's burden is to prove this case beyond a reasonable doubt, and it's a burden that we embrace here, because the evidence is overwhelming. These defendants are guilty of the charges with which they have been charged, and the time has come for you to hold them accountable in your verdicts. Thank you.

RP 2272. This is another evidence-based argument, not prosecutorial misconduct.

Petitioner asserts that the following statement is an impermissible opinion: “these defendants are all guilty of all crimes charged.” PRP at 25. This sentence fragment needs to be considered in the context of both the entire sentence and the entire paragraph:

Thank you. Getting back on track, and now I've somewhat lost it but it's an abiding belief, again down the road. You've got to be still convinced, and what I was saying when I -- when there was an objection was based on the law that the Court gives you, based on the facts as you understand them, not based on nebulous feelings, et cetera, but based on the facts as applied to the law that the Court gives you. And in this case the State is confident that based on the evidence in this case, and the law, these defendants are all guilty of all crimes charged. Thank you.

RP 2352. This is another evidence-based argument, not prosecutorial misconduct.

- B. Petitioner has not demonstrated that any statement made by the prosecutor was so flagrant and ill-intentioned that it caused an enduring and resulting prejudice that could not have been neutralized by a curative instruction.

The four arguments related above, when viewed in context, are rather ordinary components of a closing argument. There is nothing “flagrant or ill-intentioned” about them. *In re Phelps, supra*. Alternatively, should this Court find anything improper about

the arguments, any impropriety could have been remedied by a curative instruction. *Id.*

Petitioner's prosecutorial misconduct claim should be rejected for these additional reasons.

C. Petitioner has not demonstrated actual and substantial prejudice.

As discussed, *supra*, petitioner has made no attempt to address actual and substantial prejudice in the context of his trial. Petitioner's prosecutorial misconduct claim should be rejected for this additional reason.

F. PETITIONER'S JURY WAS PROPERLY INSTRUCTED ON THE FIREARM ENHANCEMENTS.

In each of the special verdict forms presenting a firearm enhancement, the jury was presented with two interrogatories. CP 682, 684, 673, 675, 677, 679, 686, 689, 691, 693, 695, 697, 699, 702, 705.<sup>21</sup> Those two interrogatories took the following form:

QUESTION ONE: Was the defendant or an accomplice armed with a deadly weapon at the time of the commission of the crime in Count [appropriate number]?

ANSWER: \_\_\_\_\_ (Write "yes" or "no")

QUESTION TWO: Was the deadly weapon a firearm?

ANSWER: \_\_\_\_\_ (Write "yes" or "no")

*Id.* Petitioner presents no challenge to the first interrogatory. Petitioner claims that the second interrogatory was constitutionally defective because "those findings were not made beyond a reasonable doubt in light of the failure to so instruct the jury." PRP at 30. That argument is baseless. The jury was so instructed:

You will also be given special verdict forms for certain counts. If you find the defendant not guilty of a particular count, do not use the corresponding special verdict form for that count. If you find the defendant guilty of a particular count, you will then use the special verdict form for that particular count. **In order to answer a special verdict form "yes," all twelve of you**

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<sup>21</sup> These CP references are taken from the clerks papers references used on petitioner's first direct appeal.

**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 intentionally been left blank.

(emphasis added) Appendix 98 (Concluding Instruction No. 59 (corrected) at 2). The jury was instructed that “A ‘firearm’ is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.” Appendix 49 (Jury Instruction No. 16). According to the jury instructions, the word “yes” could not be used to answer the question “Was the deadly weapon a firearm?” unless all twelve jurors were unanimously satisfied that “yes” was the correct answer. *Id.* The jury was properly instructed as to the unanimity and reasonable doubt standards. Because the jury was properly instructed as to the firearm special interrogatories, defendant’s claim of ineffective assistance of counsel based upon instructional error is frivolous and should be rejected.

G. THIS CASE PRESENTS NO CUMULATIVE ERROR.

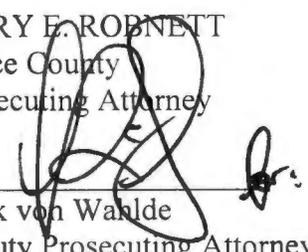
Because petitioner’s claims individually lack merit, no cumulative error is presented by this case.

IV. CONCLUSION.

Petitioner is entitled to a resentencing. Petitioner’s trial claims are meritless.

DATED: October 11, 2019

MARY E. ROBNETT  
Pierce County  
Prosecuting Attorney

  
Mark von Wahlde  
Deputy Prosecuting Attorney  
WSB #18373

Certificate of Service:

The undersigned certifies that on this day she delivered by E-file or U.S. mail to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

10.11.19   
Date Signature

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12-1-03305-8 42805372 JDSWCD 06-25-14

6/25/2014 1636



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 12-1-03305-8

vs.

AZIAS DEMETRIUS ROSS,

Defendant.

WARRANT OF COMMITMENT

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

JUN 24 2014

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

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

- [ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).
- 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

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

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

Dated: 6.23.14

By direction of the Honorable

*Thomas J. Felragle*

JUDGE

Thomas J. Felragle

KEVIN STOCK

CLERK

DEPUTY CLERK



CERTIFIED COPY DELIVERED TO SHERIFF DEPUTY

Date JUN 24 2014 *Chris Hutton* 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

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COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
	<del>XXXXXXXXXX</del>				<del>XXXXXXXXXX</del>
VI	TRAFFICKING IN STOLEN PROPERTY IN THE FIRST DEGREE (BBB8)	9A.82.050(1)	FASE	01/25/12	TACOMA PD 120251062
	<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>		<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>
VIII	BURGLARY IN THE FIRST DEGREE (G1)	9A.52.020(1)(a)	FASE	04/27/12	TACOMA PD 121181156
IX	ROBBERY IN THE FIRST DEGREE (AAA1)	9A.56.190	FASE	04/27/12	TACOMA PD 121181156
XI	UNLAWFUL IMPRISONMENT (DDD1)	9A.40.040	FASE	04/27/12	TACOMA PD 121181156
XII	THEFT OF A FIREARM (JJ188)	9A.56.020	NONE	04/27/12	TACOMA PD 121181156
XIII	TRAFFICKING IN STOLEN PROPERTY IN THE FIRST DEGREE (BBB8)	9A.82.050(1)	FASE	04/27/12	TACOMA PD 121181156

*IA*

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Harm, 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 Jury Verdict

- [X] A special verdict/finding for use of firearm was returned on Count(s) I, II, III, V, VI, VII, VIII, IX, XI, and XIII RCW 9.94A.602, 9.94A.533.
- [X] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589): *The court finds that Count XII, Theft of a FA, constituted the same criminal conduct as Count VIII, Burglary 1°.*
- [ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

→ LXXII Trafficking in Stolen Property 1° 9A.82.050(1) DWSE 8/26/12

*IA*

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

NONE KNOWN OR CLAIMED

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	12	IX	96-75-128.25 MOS	36 MOS	132.75-164.25 MOS	10 YRS
II	12	VII	87-116 MOS	60 MOS	147-176 MOS	LIFE
III	12	IX	129-171 MOS	60 MOS	199-231 MOS	LIFE
VI	8	IV	53-70 MOS	36 MOS	89-106 MOS	10 YRS
VIII	12	VII	87-116 MOS	60 MOS	147-176 MOS	LIFE
IX	12	IX	129-171 MOS	60 MOS	189-231 MOS	LIFE
XI	8	III	43-57 MOS	18 MOS	61-75 MOS	5 YRS
XII	8	VI	67-89 MOS	NONE	67-89 MOS	10 YRS
XIII	8	IV	53-70 MOS	36 MOS	89-106 MOS	10 YRS
LXXII	8	IV	53-70 MOS	12 MOS	53-70 MOS	10 YRS

Handwritten initials/signature

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

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

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

2.6 [ ] FELONY FIREARM OFFENDER REGISTRATION. The defendant committed a felony firearm offense as defined in RCW 9A.10.10.

[ ] The court considered the following factors:

[ ] the defendant's criminal history.

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 3 of 12

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- whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.
- evidence of the defendant's propensity for violence that would likely endanger persons.
- other: \_\_\_\_\_

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

*YJA*

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.  
*w/o prejudice Counts IV and X, the guilty verdicts for Assault 2° w/FASE,*

3.2  The court DISMISSES Counts \_\_\_\_\_ *+* ~~The defendant is found NOT GUILTY of Counts~~  
*on double jeopardy grounds given the convictions for Robbery 1° in Counts III and IX. The court dismisses w/o*  
*prejudice Counts VII, the Conspiracy to commit Burglary 1° w/FASE on double jeopardy grounds given*  
*the conviction for Count I. The court dismisses w/o prejudice Count V, the guilty verdict for Unlawful*  
IT IS ORDERED: *IV. SENTENCE AND ORDER*  
*Imprisonment, on double jeopardy grounds given the conviction for Count III, Robbery 1°*

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

JASS CODE

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

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

- \$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_
- \$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_
- \$ 500.00 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 8.1.14

RESTITUTION. Order Attached

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

All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ Per DOC per month

commencing. Per DOC 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 Soeung Lem, D.O.B. 3.7.54, Bora Kuch, D.O.B. 6.6.56, Fred Van Camp VI, D.O.B. 12.24.09, Fred Van Camp V, D.O.B. 3.1.82, Sidoung Chan Sok, D.O.B. 6.20.84, Boreyattana Lim Van Camp, D.O.B. 12.5.81, Remegio Fernandez, D.O.B. 12.19.47, Norma Fernandez, D.O.B. 8.24.48, Duoc Van Nguyen, D.O.B. 10.18.39, Thanh-My Thi Vu, D.O.B. 10.25.50, Thuy Nhi Hu, a.k.a., Thuy Nhi Ha, D.O.B. 3.8.71, Khuyen Le, D.O.B. 12.6.43, Than Ha, D.O.B. 10.10.40, Jessica Ha, D.O.B. 3.30.06, Daniel Ha, D.O.B. 10.20.08, Rany Eng, D.O.B. 10.10.61, Hing Yu, D.O.B. 1.1.28, Abby Chui, D.O.B. 6.20.04, Thiem Moo, D.O.B. 3.3.31, Hoang Dahn, D.O.B. 7.4.66, Sophea Dahn, D.O.B. 11.17.71, Aaron K. Dahn, D.O.B. 3.9.02, Andrew K. Dahn, D.O.B. 5.6.09, including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life (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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4.4a  All property is hereby forfeited

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

4.4b BOND IS HEREBY EXONERATED

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

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

<u>96.75</u> months on Count <u>I</u>	<u>53</u> months on Count <u>VI, XIII, LXXII</u>
<u>87</u> months on Count <u>II, VIII</u>	<u>43</u> months on Count <u>XI</u>
<u>129</u> months on Count <u>III, IX,</u>	_____ months on Count _____

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

<u>36</u> months on Count No <u>I</u>	<u>36</u> months on Count No <u>VI</u>
<u>60</u> months on Count No <u>II</u>	<u>60</u> months on Count No <u>VIII</u>
<u>60</u> months on Count No <u>III</u>	<u>60</u> months on Count No <u>IX</u>

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

18 months on Count No XI  
36 months on Count No XIII  
12 months on Count No. LXXII

Actual number of months of total confinement ordered is: 507 months

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

The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

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

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

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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: 664 days

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

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

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

The defendant shall be on community custody for:

Count(s) \_\_\_\_\_ 36 months for Serious Violent Offenses

Count(s) I, II, III, VIII, IX 18 months for Violent Offenses

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

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

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

Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

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

[ ] consume no alcohol.

have no contact with: see §4.3

remain  within  outside of a specified geographical boundary, to wit: per DOC

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

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

JUDGMENT AND SENTENCE (JS)

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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: \_\_\_\_\_

Other conditions: \_\_\_\_\_

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

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

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

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

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

V. NOTICES AND SIGNATURES

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

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

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

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

5.4 RESTITUTION HEARING.

Defendant waives any right to be present at any restitution hearing (sign initials): XAR

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

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

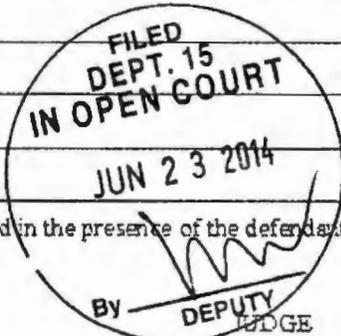
5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.

N/A

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

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

5.10 OTHER: \_\_\_\_\_



DONE in Open Court and in the presence of the defendant this date: \_\_\_\_\_

By \_\_\_\_\_ DEPUTY JUDGE

Print name \_\_\_\_\_

Thomas J. Feltnagle

Jesse Williams

Deputy Prosecuting Attorney

Print name: Jesse Williams

WSB # 35543

Vanessa C. Martin

Attorney for Defendant

Print name: Vanessa C. Martin

WSB # 37569

JUDGMENT AND SENTENCE (JS)

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**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 12-1-03305-8

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**

Cathy Schamus  
Court Reporter

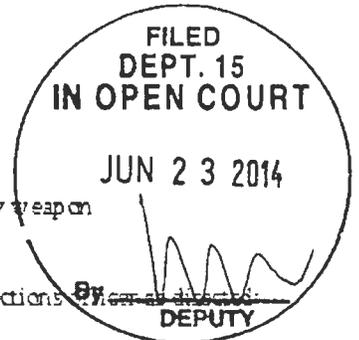
**Thomas J. Felnagle**



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.

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 DOC*

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: \_\_\_\_\_

*see §403*

(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: \_\_\_\_\_

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IDENTIFICATION OF DEFENDANT

SID No. WA24644582  
(If no SID take fingerprint card for State Patrol)

Date of Birth 02/01/1992

FBI No. 351287AD9

Local ID No. CHRI#20082002025

PCN No. 540795860

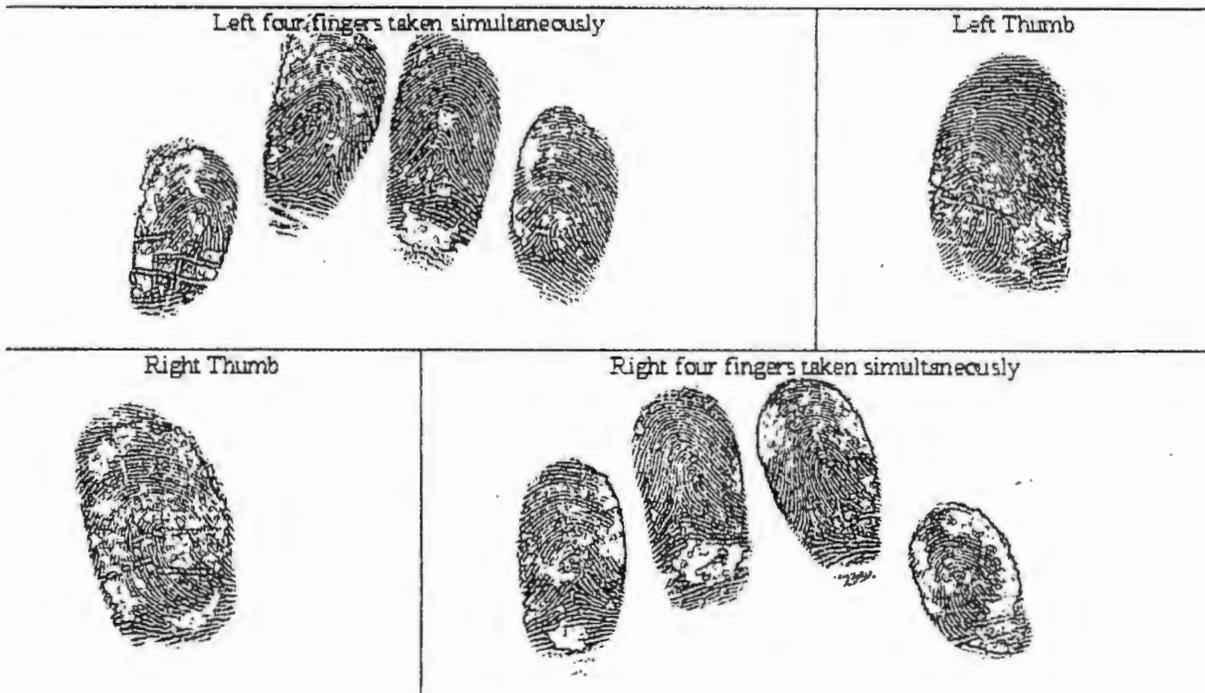
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Alias name, SSN, DOB:



<b>Race:</b>	<input checked="" type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/> Black/African-American	<input type="checkbox"/> Caucasian	<b>Ethnicity:</b>	<input type="checkbox"/> Hispanic	<b>Sex:</b>	<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: 23 June 14

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: POC

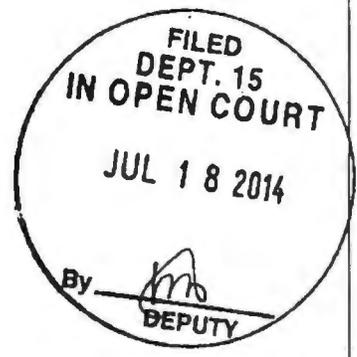
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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,		CAUSE NO. 12-1-03305-8
	Plaintiff,	
	vs.	
AZIAS DEMETRIUS ROSS,		MOTION AND ORDER CORRECTING JUDGMENT AND SENTENCE
	Defendant.	<b>CLERKS ACTION REQUIRED</b>

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 June 23, 2014, as follows:

- 1) That Page 2 of the Judgment and Sentence, 2.1 reflects Count LXXII and should note Count LXXI;
- 2) That Page 3 of the Judgment and Sentence, 2.3 reflects Count LXXII and should note Count LXXI;
- 3) That Page 6 of the Judgment and Sentence, 4.5 reflects Count LXXII and should note Count LXXI;
- 4) 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 June 23, 2014, be and the same is hereby corrected as follows:

1) Page 2 of the Judgment and Sentence, 2.1 is corrected as follows:

a) Count LXXII is deleted; and

b) Count LXXI is inserted in its stead.

2) Page 3 of the Judgment and Sentence, 2.3 is corrected as follows:

a) Count LXXII is deleted; and

b) Count LXXI is inserted in its stead.

3) Page 6 of the Judgment and Sentence, 4.5 is corrected as follows:

a) Count LXXII is deleted; and

b) Count LXXI is inserted in its stead.

4) All other terms and conditions of the original Judgment and Sentence shall remain in

full force and effect as if set forth in full herein. IT IS FURTHER

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12-1-03305-8

ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment filed on June 23, 2014 so that any one obtaining a certified copy of the judgment will also obtain a copy of this order.

DONE IN OPEN COURT this 18 day June, 2014. NUNC PRO TUNC to June 23, 2014.

*[Handwritten signature]*  
JUDGE

Thomas J. Felnagle

Presented by:

*[Handwritten signature]*  
JESSE WILLIAMS  
Deputy Prosecuting Attorney  
WSB# 33543

Approved as to form and Notice  
Of Presentation Waived:

*approved via e-mail dated June 30, 2014*  
Vanessa C Martin  
Attorney for Defendant  
WSB# 37568



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12-1-03305-8 50062983 ORCJS 10-10-17



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-03305-8

vs.

AZIAS DEMETRIUS ROSS,

Defendant.

MOTION AND ORDER CORRECTING JUDGMENT AND SENTENCE

**CLERKS ACTION REQUIRED**

PCN: 540795860

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 June 23, 2014, pursuant to defendant's convictions to the charge(s) of CONSPIRACY TO COMMIT BURGLARY IN THE FIRST DEGREE and ROBBERY IN THE FIRST DEGREE (Count I); BURGLARY IN THE FIRST DEGREE (Count II); ROBBERY IN THE FIRST DEGREE (Count III); TRAFFICKING IN STOLEN PROPERTY IN THE FIRST DEGREE (Count VI); BURGLARY IN THE FIRST DEGREE (Count VIII); ROBBERY IN THE FIRST DEGREE (Count IX); UNLAWFUL IMPRISONMENT (Count XI); THEFT OF A FIREARM (Count XII); TRAFFICKING IN STOLEN PROPERTY IN THE FIRST DEGREE (Count XIII); and TRAFFICKING IN THE STOLEN PROPERTY IN THE FIRST DEGREE (Count LXXII), as follows:

1  
2 1) On Page 3 of the Judgment and Sentence, paragraph 2.4, leaves the "exceptional  
3 sentence" and "below the standard range" boxes unchecked and these boxes should be checked.  
4 Further, under the "below the standard range" field, the language, "below the standard range for  
5 Counts I and XI and removing community custody (RCW 9.94A.701(9) for Counts I and XI in  
6 consideration of the statutory maximum and in order to accommodate the firearm sentencing  
7 enhancement" should be inserted in its stead;

8  
9 2) On Page 4 of the Judgment and Sentence, paragraph 3.2, states "w/o prejudice Counts  
10 IV and X" and should note "with prejudice Counts IV and X;"

11 3) On Page 6 of the Judgment and Sentence, paragraph 4.5, states "96.75 months" for  
12 Count I, and "43" months for Count XI, and should note "84 months" for Count I, and "42  
13 months" for Count XI;

14 4) On Page 7 of the Judgment and Sentence, paragraph 4.6, the "COMMUNITY  
15 CUSTODY" box is unchecked and this box should be checked;

16  
17 5) On Page 7 of the Judgment and Sentence, paragraph 4.6, community custody is  
18 ordered for Count I and Count XI, and this condition should be deleted for both those counts  
19 because imposing this condition would result in a sentence exceeding the statutory maximum for  
20 those counts;

21 6) On Pages 2, 3 and 6 of the Judgment and Sentence, paragraphs 2.1, 2.3 and 4.5, reflect  
22 "Count LXXII" and should reflect "Count LXXI;"

23 All other terms and conditions of the Judgment and Sentence are to remain in full force  
24 and effect as if set forth in full herein; and the court being in all things duly advised, Now,  
25 Therefore, It is hereby  
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ORDERED, ADJUDGED and DECREED that the Judgment and Sentence granted the defendant on June 23, 2014, be and the same is hereby corrected as follows:

1) On Page 3 of the Judgment and Sentence, paragraph 2.4:

a) "Exceptional sentence" and "below standard range" boxes are to be checked and additionally, in the "below the standard range" field, the language "below the standard range and removing community custody (RCW 9.94A.701(9) for Counts I and XI in consideration of the statutory maximum and in order to accommodate the firearm sentencing enhancement" is to be inserted;

2) On Page 4 of the Judgment and Sentence, paragraph 3.2:

- a) "without prejudice" wording is deleted; and  
b) "with prejudice" is inserted in its stead;

3) On Page 6 of the Judgment and Sentence, paragraph 4.5:

a) "96.75 months" for Count I, and "43 months" for Count XI, is deleted; and  
b) "84 months" for Count I, and "42 months" for Count XI, is inserted in its stead;

4) On Page 7 of the Judgment and Sentence, paragraph 4.6:

- a) The "COMMUNITY CUSTODY" box is to be checked; and  
b) The community custody requirement for Counts I and XI is deleted;

5) On Pages 2, 3 and 6 of the Judgment and Sentence, paragraphs 2.1, 2.3 and 4.5:

- a) Where "Count LXXII" is reflected, it is deleted; and  
b) Replaced with "Count LXXI" in its stead.

6) All other terms and conditions of the original Judgment and Sentence shall remain in full force and effect as if set forth in full herein. IT IS FURTHER

1  
2 ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment  
3 filed on June 23, 2014, so that any one obtaining a certified copy of the judgment will also obtain  
4 a copy of this order.  
5

6 DONE IN OPEN COURT this 6 day October, 2017. NUNC PRO TUNC to June  
7 23, 2014.  
8

9   
10 JUDGE/COMMISSIONER

11 GRETCHEN LEANDERSON

12 Presented by:

13   
14 GREGORY L GREER  
15 Deputy Prosecuting Attorney  
16 WSB# 22936

17 Approved as to form ~~and notice~~  
18 Of Presentation Waived:

19   
20 COREY EVAN PARKER  
21 Attorney for Defendant  
22 WSB# 40006  
23  
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KEVIN STOCK  
COUNTY CLERK  
NO: 12-1-03305-8

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

SOY OEUNG AND AZIAS ROSS,

Appellants.

No. 46425-0-II

MANDATE

Pierce County Cause Nos.  
12-1-03300-7 and 12-1-03305-8

**Court Action Required**

The State of Washington to: The Superior Court of the State of Washington  
in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on September 27, 2016 became the decision terminating review of this court of the above entitled case on February 8, 2017. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

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



IN TESTIMONY WHEREOF, I have hereunto set  
my hand and affixed the seal of said Court at  
Tacoma, this 13<sup>th</sup> day of February, 2017.

  
Derek M. Byrne  
Clerk of the Court of Appeals,  
State of Washington, Div. II

CASE #: 46425-0-II

State of Washington, Respondent v. Soy Oeung and Azias Ross, Appellants  
Mandate – Page 2

Hon. Elizabeth Martin, Dept 16  
Harry Steinmetz  
Vanessa Martin

Brian Neal Wasankari  
Pierce County Prosecuting Atty  
930 Tacoma Ave S Rm 946  
Tacoma, WA 98402-2171  
bwasank@co.pierce.wa.us

Oliver Ross Davis  
Washington Appellate Project  
1511 3rd Ave Ste 701  
Seattle, WA 98101-3647  
oliver@washapp.org

Jason Ruyf  
Pierce County Prosecutor's Office  
930 Tacoma Ave S Rm 946  
Tacoma, WA 98402-2102  
jruf@co.pierce.wa.us

Michelle Hyer  
Pierce County Prosecutor  
930 Tacoma Ave S Rm 946  
Tacoma, WA 98402-2102  
PCpatcecf@co.pierce.wa.us

Jennifer M Winkler  
Nielsen, Broman & Koch, PLLC  
1908 E Madison St  
Seattle, WA 98122-2842  
winklerj@nwattorney.net

WSP Identification & Criminal History Section  
ATTN: Quality Control Unit  
PO Box 42633  
Olympia, WA 98504-2633



12-1-03305-8 50062983 ORCJS 10-10-17



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-03305-8

vs.

AZIAS DEMETRIUS ROSS,

Defendant.

MOTION AND ORDER CORRECTING JUDGMENT AND SENTENCE

**CLERKS ACTION REQUIRED**

PCN: 540795860

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 June 23, 2014, pursuant to defendant's convictions to the charge(s) of CONSPIRACY TO COMMIT BURGLARY IN THE FIRST DEGREE and ROBBERY IN THE FIRST DEGREE (Count I); BURGLARY IN THE FIRST DEGREE (Count II); ROBBERY IN THE FIRST DEGREE (Count III); TRAFFICKING IN STOLEN PROPERTY IN THE FIRST DEGREE (Count VI); BURGLARY IN THE FIRST DEGREE (Count VIII); ROBBERY IN THE FIRST DEGREE (Count IX); UNLAWFUL IMPRISONMENT (Count XI); THEFT OF A FIREARM (Count XII); TRAFFICKING IN STOLEN PROPERTY IN THE FIRST DEGREE (Count XIII); and TRAFFICKING IN THE STOLEN PROPERTY IN THE FIRST DEGREE (Count LXXII), as follows:

1  
2 1) On Page 3 of the Judgment and Sentence, paragraph 2.4, leaves the "exceptional  
3 sentence" and "below the standard range" boxes unchecked and these boxes should be checked.  
4 Further, under the "below the standard range" field, the language, "below the standard range for  
5 Counts I and XI and removing community custody (RCW 9.94A.701(9) for Counts I and XI in  
6 consideration of the statutory maximum and in order to accommodate the firearm sentencing  
7 enhancement" should be inserted in its stead;

8  
9 2) On Page 4 of the Judgment and Sentence, paragraph 3.2, states "w/o prejudice Counts  
10 IV and X" and should note "with prejudice Counts IV and X;"

11 3) On Page 6 of the Judgment and Sentence, paragraph 4.5, states "96.75 months" for  
12 Count I, and "43" months for Count XI, and should note "84 months" for Count I, and "42  
13 months" for Count XI;

14 4) On Page 7 of the Judgment and Sentence, paragraph 4.6, the "COMMUNITY  
15 CUSTODY" box is unchecked and this box should be checked;

16  
17 5) On Page 7 of the Judgment and Sentence, paragraph 4.6, community custody is  
18 ordered for Count I and Count XI, and this condition should be deleted for both those counts  
19 because imposing this condition would result in a sentence exceeding the statutory maximum for  
20 those counts;

21 6) On Pages 2, 3 and 6 of the Judgment and Sentence, paragraphs 2.1, 2.3 and 4.5, reflect  
22 "Count LXXII" and should reflect "Count LXXI;"

23 All other terms and conditions of the Judgment and Sentence are to remain in full force  
24 and effect as if set forth in full herein; and the court being in all things duly advised, Now,  
25 Therefore, It is hereby  
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ORDERED, ADJUDGED and DECREED that the Judgment and Sentence granted the defendant on June 23, 2014, be and the same is hereby corrected as follows:

1) On Page 3 of the Judgment and Sentence, paragraph 2.4:

a) "Exceptional sentence" and "below standard range" boxes are to be checked and additionally, in the "below the standard range" field, the language "below the standard range and removing community custody (RCW 9.94A.701(9) for Counts I and XI in consideration of the statutory maximum and in order to accommodate the firearm sentencing enhancement" is to be inserted;

2) On Page 4 of the Judgment and Sentence, paragraph 3.2:

- a) "without prejudice" wording is deleted; and  
b) "with prejudice" is inserted in its stead;

3) On Page 6 of the Judgment and Sentence, paragraph 4.5:

a) "96.75 months" for Count I, and "43 months" for Count XI, is deleted; and  
b) "84 months" for Count I, and "42 months" for Count XI, is inserted in its stead;

4) On Page 7 of the Judgment and Sentence, paragraph 4.6:

- a) The "COMMUNITY CUSTODY" box is to be checked; and  
b) The community custody requirement for Counts I and XI is deleted;

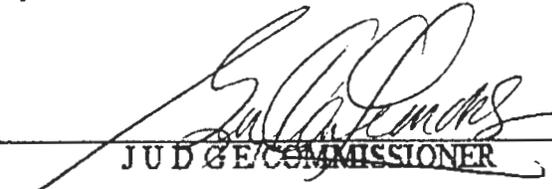
5) On Pages 2, 3 and 6 of the Judgment and Sentence, paragraphs 2.1, 2.3 and 4.5:

- a) Where "Count LXXII" is reflected, it is deleted; and  
b) Replaced with "Count LXXI" in its stead.

6) All other terms and conditions of the original Judgment and Sentence shall remain in full force and effect as if set forth in full herein. IT IS FURTHER

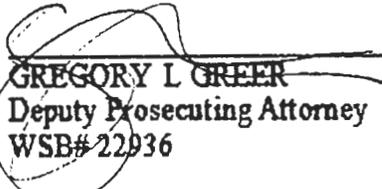
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2 ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment  
3 filed on June 23, 2014, so that any one obtaining a certified copy of the judgment will also obtain  
4 a copy of this order.  
5

6 DONE IN OPEN COURT this 6 day October, 2017. NUNC PRO TUNC to June  
7 23, 2014.  
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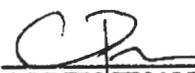
9   
10 JUDGE COMMISSIONER

11 GRETCHEN LEANDERSON

12 Presented by:

13   
14 GREGORY L GREER  
15 Deputy Prosecuting Attorney  
16 WSB# 22936

17 Approved as to form ~~and~~  
18 Of Presentation Waived:

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20 COREY EVAN PARKER  
21 Attorney for Defendant  
22 WSB# 40006

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12-1-03305-8 42148890 CTINJY 03-06-14

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NOS. 12-1-03300-7  
12-1-03305-8

vs.

SOY OEUNG,

AZIAS DEMETRIUS ROSS,

Defendants.



COURT'S INSTRUCTIONS TO THE JURY

DATED this 3<sup>rd</sup> day of March, 2014.

[Signature]  
JUDGE

Thomas J. Felnagle

ORIGINAL

0029

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

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

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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 including an eyewitness. 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.

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

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

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

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

INSTRUCTION NO. 2

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

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.

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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.

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INSTRUCTION NO. 4

A defendant is not compelled to testify, and the fact that a defendant has not testified cannot be used to infer guilt or prejudice him in any way.

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INSTRUCTION NO. 5

Det. Robert Baker testified, in part, as to statements made to him by Nolan Chouap, Soy Oeung and Azias Ross.

You are not to consider the evidence of Nolan Chouap's statement to Det. Baker against Soy Oeung or Azias Ross.

You are to consider the evidence of Soy Oeung's statement to Det. Baker as evidence against Soy Oeung and not as evidence against Azias Ross.

You are to consider the evidence of Azias Ross's statement to Det. Baker as evidence against Azias Ross and not as evidence against Soy Oeung.

0377

INSTRUCTION NO. 6

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she 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 or she either:

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

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

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INSTRUCTION NO. 7

The State must prove an accomplice had general knowledge of the charged crime. The State is not required to prove the accomplice had knowledge of every element of the charged crime.

Thus, the State must prove an accomplice in a charged crime of robbery in the first degree had general knowledge of the crime of "robbery." The State is not required to prove an accomplice had knowledge the robbery would be committed with a deadly weapon.

The State must prove an accomplice in a charged crime of burglary in the first degree had general knowledge of the crime of "burglary." The State is not required to prove an accomplice had knowledge the burglary would be committed with a deadly weapon.

The State must prove an accomplice in a charged crime of assault in the second degree had general knowledge of the crime of "assault." The State is not required to prove an accomplice had knowledge the assault would be committed with a deadly weapon.

Finally, the State must prove an accomplice in a a charged crime of theft of a firearm had general knowledge of the crime of "theft." The State is not required to prove an accomplice had knowledge a firearm would be taken during the theft.

INSTRUCTION NO. 7A

Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of a newspaper article admitted as Plaintiff's Exhibit 107A may be considered by you only for the purpose of evaluating defendant Azias Ross's reaction to this newspaper article. You may not consider it for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.

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INSTRUCTION NO. 7B

Burglary means to enter or remain unlawfully in a building with intent to commit a crime against a person or property therein.

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INSTRUCTION NO. 8

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

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INSTRUCTION NO. 9

A person commits the crime of conspiracy to commit burglary in the first degree, when, with intent that conduct constituting the crime of burglary in the first degree be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

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INSTRUCTION NO. 10

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

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INSTRUCTION NO. 11

A substantial step is conduct of the defendant that strongly indicates a criminal purpose.

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INSTRUCTION NO. 12

A person commits the crime of burglary in the first degree when he or she enters or remains unlawfully in a dwelling with intent to commit a crime against a person or property therein, and if, in entering or while in the building or in immediate flight therefrom, that person or an accomplice in the crime is armed with a deadly weapon.

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INSTRUCTION NO. 13

A person enters or remains unlawfully in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.

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INSTRUCTION NO. 14

Dwelling means any building or structure that is used or ordinarily used by a person for lodging.

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INSTRUCTION NO. 15

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

Deadly weapon also means any weapon, device, or instrument, which under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.

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INSTRUCTION NO. 16

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

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INSTRUCTION NO. 17

To convict the defendant Azias Ross of the crime of conspiracy to commit burglary in the first degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

---

(1) That on or about the 25<sup>th</sup> day of January, 2012, the defendant agreed with one or more persons to engage in or cause the performance of conduct constituting the crime of burglary in the first degree;

(2) That defendant made the agreement with the intent that such conduct be performed;

(3) That any one of the persons involved in the agreement took a substantial step in pursuance of the agreement; and

(4) That any of these acts occurred in the State of Washington.

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

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

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INSTRUCTION NO. 18

To convict the defendant Azias Ross of the crime of conspiracy to commit burglary in the first degree as charged in Count VII, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 27<sup>th</sup> day of April, 2012, the defendant agreed with one or more persons to engage in or cause the performance of conduct constituting the crime of burglary in the first degree;

(2) That defendant made the agreement with the intent that such conduct be performed;

(3) That any one of the persons involved in the agreement took a substantial step in pursuance of the agreement; and

(4) That any of these acts occurred in the State of Washington.

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

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

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INSTRUCTION NO. 19

To convict the defendant Azias Ross of the crime of conspiracy to commit burglary in the first degree as charged in Count LIX, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 26<sup>th</sup> day of August, 2012, the defendant agreed with one or more persons to engage in or cause the performance of conduct constituting the crime of burglary in the first degree;

(2) That defendant made the agreement with the intent that such conduct be performed;

(3) That any one of the persons involved in the agreement took a substantial step in pursuance of the agreement; and

(4) That any of these acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 20

To convict the defendant Soy Oeung of the crime of conspiracy to commit burglary in the first degree as charged in Count XIV, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 10<sup>th</sup> day of May, 2012, the defendant agreed with one or more persons to engage in or cause the performance of conduct constituting the crime of burglary in the first degree;

(2) That defendant made the agreement with the intent that such conduct be performed;

(3) That any one of the persons involved in the agreement took a substantial step in pursuance of the agreement; and

(4) That any of these acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 24

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

(1) That on or about the 25<sup>th</sup> day of January, 2012, the defendant or an accomplice entered or remained unlawfully in a dwelling;

(2) That the entering or remaining was with intent to commit a crime against a person or property therein;

(3) That in so entering or while in the building or in immediate flight from the building, the defendant or an accomplice was armed with a deadly weapon; and

(4) That any of these acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 22

To convict the defendant Azias Ross of the crime of burglary in the first degree as charged in Count VIII, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 27<sup>th</sup> day of April, 2012, the defendant or an accomplice entered or remained unlawfully in a dwelling;
- (2) That the entering or remaining was with intent to commit a crime against a person or property therein;
- (3) That in so entering or while in the building or in immediate flight from the building, the defendant or an accomplice was armed with a deadly weapon; and
- (4) That any of these acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 23

To convict the defendant Soy Oeung of the crime of burglary in the first degree as charged in Count XV, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 10<sup>th</sup> day of May, 2012, the defendant or an accomplice entered or remained unlawfully in a dwelling;

(2) That the entering or remaining was with intent to commit a crime against a person or property therein;

(3) That in so entering or while in the building or in immediate flight from the building, the defendant or an accomplice was armed with a deadly weapon; and

(4) That any of these acts occurred in the State of Washington.

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

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

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INSTRUCTION NO. 23A corrected

Each defendant is charged with burglary in the first degree (defendant Soy Oeung in Count XV and defendant Azias Ross in Counts II and VIII). If, after full and careful deliberation on a particular count of 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 included crime of residential burglary for that count.

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 lowest crime.

INSTRUCTION NO. 23B

A person commits the crime of residential burglary when he or she enters or remains unlawfully in a dwelling with intent to commit a crime against a person or property therein.

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INSTRUCTION NO. 23C

To convict the defendant Azias Ross of the lesser included crime of residential burglary as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25<sup>th</sup> day of January, 2012, the defendant or an accomplice entered or remained unlawfully in a dwelling;
- (2) That the entering or remaining was with intent to commit a crime against a person or property therein; and
- (3) That this act occurred in the State of Washington.

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

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

INSTRUCTION NO. 23D

To convict the defendant Azias Ross of the lesser included crime of residential burglary as charged in Count VIII, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 27<sup>th</sup> day of April, 2012, the defendant or an accomplice entered or remained unlawfully in a dwelling;

(2) That the entering or remaining was with intent to commit a crime against a person or property therein; and

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

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

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

INSTRUCTION NO. 23E corrected

To convict the defendant Soy Oeung of the lesser included crime of residential burglary as charged in Count XV, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 10th day of May, 2012, the defendant or an accomplice entered or remained unlawfully in a dwelling;
- (2) That the entering or remaining was with intent to commit a crime against a person or property therein; and
- (3) That this act occurred in the State of Washington.

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

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

**ORIGINAL**

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INSTRUCTION NO. 24

A person commits the crime of conspiracy to commit robbery in the first degree, when, with intent that conduct constituting the crime of robbery in the first degree be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

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INSTRUCTION NO. 25

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

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INSTRUCTION NO. 26

A person commits the crime of robbery when he unlawfully and with intent to commit theft thereof takes personal property from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person. 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 cases the degree of force is immaterial.

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3/10/2014

INSTRUCTION NO. 27

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.

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INSTRUCTION NO. 28

To convict the defendant Azias Ross of the crime of conspiracy to commit robbery in the first degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 25<sup>th</sup> day of January, 2012, the defendant agreed with one or more persons to engage in or cause the performance of conduct constituting the crime of robbery in the first degree;

(2) That the defendant made the agreement with the intent that such conduct be performed;

(3) That any one of the persons involved in the agreement took a substantial step in pursuance of the agreement; and

(4) That any of these acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 29

To convict the defendant Azias Ross of the crime of conspiracy to commit robbery in the first degree as charged in Count VII, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 27<sup>th</sup> day of April, 2012, the defendant agreed with one or more persons to engage in or cause the performance of conduct constituting the crime of robbery in the first degree;

(2) That the defendant made the agreement with the intent that such conduct be performed;

(3) That any one of the persons involved in the agreement took a substantial step in pursuance of the agreement; and

(4) That any of these acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 30

To convict the defendant Azias Ross of the crime of conspiracy to commit robbery in the first degree as charged in Count LIX, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 26<sup>th</sup> day of August, 2012, the defendant agreed with one or more persons to engage in or cause the performance of conduct constituting the crime of robbery in the first degree;

(2) That the defendant made the agreement with the intent that such conduct be performed;

(3) That any one of the persons involved in the agreement took a substantial step in pursuance of the agreement; and

(4) That any of these acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 31

To convict the defendant Soy Oeung of the crime of conspiracy to commit robbery in the first degree as charged in Count XIV, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 10<sup>th</sup> day of May, 2012, defendant Oeung agreed with one or more persons to engage in or cause the performance of conduct constituting the crime of robbery in the first degree;

(2) That the defendant made the agreement with the intent that such conduct be performed;

(3) That any one of the persons involved in the agreement took a substantial step in pursuance of the agreement; and

(4) That any of these acts occurred in the State of Washington.

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

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

0410

INSTRUCTION NO. 32

To convict the defendant Azias Ross of the crime of robbery in the first degree as charged in Count III, each of the following six elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25<sup>th</sup> day of January, 2012, the defendant or an accomplice unlawfully took personal property from Soung Lem;
- (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 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 or in immediate flight therefrom 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 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.

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INSTRUCTION NO. 33

To convict the defendant Azias Ross of the crime of robbery in the first degree as charged in Count IX, each of the following six elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 27<sup>th</sup> day of April, 2012, the defendant or an accomplice unlawfully took personal property from Bora Kuch;
- (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 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 or in immediate flight therefrom 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 has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

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

INSTRUCTION NO. 34

To convict the defendant Soy Oeung of the crime of robbery in the first degree as charged in Count XVI, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 10<sup>th</sup> day of May, 2012, the defendant or an accomplice unlawfully took personal property from Remegio Fernandez;
- (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 or in immediate flight therefrom 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 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.

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INSTRUCTION NO. 35

To convict the defendant Soy Oeung of the crime of robbery in the first degree as charged in Count XVII, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 10<sup>th</sup> day of May, 2012, the defendant or an accomplice unlawfully took personal property from Norma Fernandez;
- (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 or in immediate flight therefrom 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 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.

0414

INSTRUCTION NO. 36

A person commits the crime of assault in the second degree when he or she assaults another with a deadly weapon.

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INSTRUCTION NO. 32

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

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An assault is also an act done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

0416

INSTRUCTION NO. 38

To convict the defendant Azias Ross of the crime of assault in the second degree as charged in Count IV, each of the following elements of the crime must be proved

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beyond a reasonable doubt:

(1) That on or about the 25<sup>th</sup> day of January, 2012, the defendant or an accomplice assaulted Soeung Lem with a deadly weapon; and

(2) That this act 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 of these elements, then it will be your duty to return a verdict of not guilty.

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INSTRUCTION NO. 39

To convict the defendant Azias Ross of the crime of assault in the second degree as charged in Count X, each of the following elements of the crime must be proved

beyond a reasonable doubt:

(1) That on or about the 27<sup>th</sup> day of April, 2012, the defendant or an accomplice assaulted Bora Kuch with a deadly weapon; and

(2) That this act 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 of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 40

To convict the defendant Soy Oeung of the crime of assault in the second degree as charged in Count XVIII, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 10<sup>th</sup> day of May, 2012, the defendant or an accomplice assaulted Remegio Fernandez with a deadly weapon; and

(2) That this act 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 of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 41

To convict the defendant Soy Oeung of the crime of assault in the second degree as charged in Count XIX, each of the following elements of the crime must be proved beyond a reasonable doubt:

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(1) That on or about the 10<sup>th</sup> day of May, 2012, the defendant or an accomplice assaulted Norma Fernández with a deadly weapon; and

(2) That this act 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 of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 42

A person commits the crime of unlawful imprisonment when he or she knowingly restrains the movements of another person in a manner that substantially interferes with the other person's liberty if the restraint was without legal authority and either was

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without the other person's consent or was accomplished by physical force or intimidation.

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INSTRUCTION NO. 43

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

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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 is required to establish an element of a crime, the element is also established if a person acts intentionally.

INSTRUCTION NO. 44

To convict the defendant Azias Ross of the crime of unlawful imprisonment as charged in Count V, each of the following five elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25<sup>th</sup> day of January, the defendant or an accomplice restrained the movements of Soeung Lem in a manner that substantially interfered with her liberty;
- (2)(a) That such restraint was without the consent of Soeung Lem, or  
(b) was accomplished by physical force or intimidation; and
- (3) That such restraint was without legal authority;
- (4) That, with regard to elements (1), (2), and (3), the defendant or an accomplice acted knowingly; and
- (5) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (3), (4), and (5), and any of the alternative elements (2)(a) or (2)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (2)(a) or (2)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), or (5), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 45

To convict the defendant Azias Ross of the crime of unlawful imprisonment as charged in Count XI, each of the following five elements of the crime must be proved beyond a reasonable doubt:

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(1) That on or about the 27<sup>th</sup> day of April, the defendant or an accomplice restrained the movements of Bora Kuch in a manner that substantially interfered with her liberty;

(2)(a) That such restraint was without the consent of Bora Kuch, or

(b) was accomplished by physical force or intimidation; and

(3) That such restraint was without legal authority;

(4) That, with regard to elements (1), (2), and (3), the defendant or an accomplice acted knowingly; and

(5) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (3), (4), and (5), and any of the alternative elements (2)(a) or (2)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (2)(a) or (2)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), or (5), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 46

To convict the defendant Soy Oeung of the crime of unlawful imprisonment as charged in Count XX, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 10<sup>th</sup> day of May, 2012, the defendant or an accomplice restrained the movements of Remegio Fernandez in a manner that substantially interfered with his liberty;

(2)(a) That such restraint was without the consent of Remegio Fernandez, or  
(b) was accomplished by physical force or intimidation; and

(3) That such restraint was without legal authority;

(4) That, with regard to elements (1), (2), and (3), the defendant or an accomplice acted knowingly; and

(5) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (3), (4), and (5), and any of the alternative elements (2)(a) or (2)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (2)(a) or (2)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), or (5), then it will be your duty to return a verdict of not guilty.

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INSTRUCTION NO. 47 (Corrected)

To convict the defendant Soy Oeung of the crime of unlawful imprisonment as charged in Count XXI, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 10<sup>th</sup> day of May, 2012, the defendant or an accomplice restrained the movements of Norma Fernandez in a manner that substantially interfered with her liberty;

(2)(a) That such restraint was without the consent of the Norma Fernandez, or  
(b) accomplished by physical force or intimidation; and

(3) That such restraint was without legal authority;

(4) That, with regard to elements (1), (2), and (3), the defendant or an accomplice acted knowingly; and

(5) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (3), (4), and (5), and any of the alternative elements (2)(a) or (2)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (2)(a) or (2)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), or (5), then it will be your duty to return a verdict of not guilty.

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INSTRUCTION NO. 48

A person commits the crime of first degree trafficking in stolen property when he or she knowingly traffics in stolen property.

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INSTRUCTION NO. 49

“Traffic” means to possess stolen property with intent to sell or otherwise dispose of the property to another person.

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INSTRUCTION NO. 50

"Stolen property" means property that has been obtained by theft or robbery.

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INSTRUCTION NO. 51

To convict the defendant Azias Ross of the crime of trafficking in stolen property in the first degree as charged in Count VI, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25<sup>th</sup> day of January, 2012, the defendant or an accomplice did traffic in stolen property;
- (2) That the defendant or an accomplice acted with the knowledge that the property had been stolen; and
- (3) That the acts occurred in the State of Washington

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

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

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INSTRUCTION NO. 52

To convict the defendant Azias Ross of the crime of trafficking in stolen property in the first degree as charged in Count XIII, each of the following elements of the crime must be proved beyond a reasonable doubt:

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(1) That on or about the 27<sup>th</sup> day of April, 2012, the defendant or an accomplice did traffic in stolen property;

(2) That the defendant or an accomplice acted with the knowledge that the property had been stolen; and

(3) That the acts occurred in the State of Washington

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

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

INSTRUCTION NO. §3

To convict the defendant Azias Ross of the crime of trafficking in stolen property in the first degree as charged in Count LXXI, each of the following elements of the crime must be proved beyond a reasonable doubt:

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(1) That on or about the 26<sup>th</sup> day of August, 2012, the defendant or an accomplice did traffic in stolen property;

(2) That the defendant or an accomplice acted with the knowledge that the property had been stolen; and

(3) That the acts occurred in the State of Washington

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

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

INSTRUCTION NO. 54

To convict the defendant Soy Oeung of the crime of trafficking in stolen property in the first degree, as charged in Count XXIII, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 10<sup>th</sup> day of May, 2012, the defendant or an accomplice did traffic in stolen property;

(2) That the defendant or an accomplice acted with the knowledge that the property had been stolen; and

(3) That the acts occurred in the State of Washington

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

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

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INSTRUCTION NO. §§

A person commits the crime of theft of a firearm if he or she commits a theft of any firearm.

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INSTRUCTION NO. 56

To convict defendant Azias Ross of the crime of theft of a firearm as charged in Count XII, each of the following three elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about 27<sup>th</sup> day of April, 2012, the defendant Ross or an accomplice wrongfully obtained or exerted unauthorized control over a firearm belonging to another;
- (2) That the defendant or an accomplice intended to deprive the other person of the firearm; and
- (3) That this act occurred in the State of Washington.

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

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

INSTRUCTION NO. 57

To convict the defendant Soy Oeung of the crime of theft of a firearm as charged in Count XXII, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 10<sup>th</sup> day of May, 2012, the defendant or an accomplice wrongfully obtained or exerted unauthorized control over a firearm belonging to another;

(2) That the defendant or an accomplice intended to deprive the other person of the firearm; and

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

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

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

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INSTRUCTION NO. 58

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.

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INSTRUCTION NO. 59 (corrected)

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

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

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

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

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for each defendant. 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 and when you consider the crime of burglary in the first degree as charged in a particular count, if you unanimously agree on a verdict in that particular count, you must fill in the blank provided in that particular count's

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corresponding verdict form the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict in that particular count, do not fill in the blank provided in that particular count's corresponding verdict form.

If you find the defendant guilty of a particular count of burglary in the first degree, do not use the corresponding lesser included verdict form (residential burglary) for that particular crime. If you find the defendant not guilty of the particular charged crime of burglary 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 included crime of residential burglary for that particular count. If you unanimously agree on a verdict for that particular lesser included crime of residential burglary, you must fill in the blank provided in its corresponding verdict form 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 the verdict form for that particular lesser included crime.

You will also be given special verdict forms for certain counts. If you find the defendant not guilty of a particular count, do not use the corresponding special verdict form for that count. If you find the defendant guilty of a particular count, you will then use the special verdict form for that particular count. In order to answer a 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.

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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 form of verdict or verdicts to express your decision. The presiding juror must sign the verdict forms and notify the judicial assistant. The judicial assistant will bring you into court to declare your verdict.

INSTRUCTION NO. 60

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant, Azias Ross, was armed with a deadly weapon at the time of the commission of the crime in Counts I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XIII, LIX, and/or LXXI.

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant, Soy Oeung, was armed with a deadly weapon at the time of the commission of the crime in Counts XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, and/or XXIII.

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

A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.

In addition, a knife having a blade longer than three inches is a deadly weapon. Whether a knife having a blade less than three inches long is a deadly weapon is a question of fact that is for you to decide. A knife having a blade less than three inches is a deadly weapon if it has the capacity to inflict death and, from the manner in which it is used, is likely to produce or may easily produce death.

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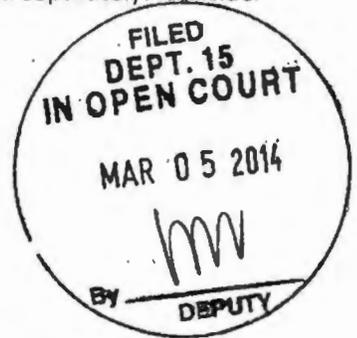
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INSTRUCTION NO. le1

A person traffics in stolen property when, at any point in-time, they or an accomplice possess stolen property with intent to sell or otherwise dispose of the property to another person.

You are not to give this instruction special importance just because it was provided separately. Consider it along with all of the instructions you have received.



[Handwritten Signature]  
JUDGE THOMAS J. FELNAGLE

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INSTRUCTION NO. 62

I am giving you replacement instructions. Heather will replace the current Instruction 23A with a new 23A and will replace the current Instruction 23E with a new 23E.

The only change is to the number of the count referred to in the Instructions. In each case, the reference to Count II is changed to Count XV.



Tom Felnagle  
JUDGE THOMAS J. FELNAGLE

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

STATE OF WASHINGTON,

Respondent.

v.

AZIAS ROSS,

Appellant.

NO. 51469-9-II

DECLARATION OF MARK VON  
WAHLDE

I, Mark von Wahlde, declare under penalty of perjury under the laws of the State of Washington, the following is true and correct:

1. That I am a Pierce County Deputy Prosecuting Attorney assigned to respond to the personal restraint petition filed in the instant cause.
2. I prepared the Appendix to respondent's brief in this personal restraint petition.
3. The warrant of commitment, judgment and sentence, July 18, 2014 order correcting judgment and sentence, October 6, 2017 motion and order correcting judgment and sentence, mandate, and court's instructions to the jury are documents which I

downloaded from the Pierce County Superior Court's LINX website. I did not alter them, other than to provide a Bates stamp on the bottom of the document for reference purposes. In all other respects those documents are duplicates of the documents on file with the Clerk of the Superior Court.

Dated: October 11, 2019

Signed at Tacoma, WA.



Mark von Wahlde

Certificate of Service:

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

Date                      Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

**October 11, 2019 - 4:26 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51469-9  
**Appellate Court Case Title:** State of Washington, Respondent v Azias Demetrius Ross, Appellant  
**Superior Court Case Number:** 12-1-03305-8

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