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NO. 51979-8-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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STATE OF WASHINGTON,

Respondent,

v.

ROSS ANTHONY BURKE,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR CLARK COUNTY

CAUSE NO. 04-8-00119-1

THE HONORABLE DEREK J. VANDERWOOD

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**BRIEF OF APPELLANT**

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TABLE OF CONTENTS

|  | Page |
|--|------|
| A. <u>ASSIGNMENT OF ERROR</u> .....  | 1    |
| The Superior Court erred in ruling Juvenile Court is not a court of record and does not have authority to hear Appellant’s Motion to Restore his Firearm Rights.   |      |
| B. <u>ISSUES PRESENTED</u> .....   | 1    |
| I. Is the Juvenile Division of the Superior Court a court of record? .....   | 1    |
| II. If the Juvenile Division of the Superior Court is a court of record, does the Juvenile Division of the Superior Court have jurisdiction to restore the offender’s firearm rights after the offender turns 21 years of age? ..... | 1    |
| C. <u>STATEMENT OF THE CASE</u> .....  | 1    |
| D. <u>ARGUMENT</u> .....   | 3    |
| I. The Clark County Superior Court Juvenile Division a Court of Record .....   | 3    |
| II. The Juvenile Division of the Superior Court has Jurisdiction to Restore the Offender’s Firearm Rights After the Offender Turns 21 Years of Age .....   | 10   |
| E. <u>CONCLUSION</u> .....   | 17   |

**TABLE OF AUTHORITIES**

Page

**Washington State Supreme Court Cases:**

Dillenburg v. Maxwell, 70 Wn.2d 331, 413 P.2d 940 (1966)  
(Dillenburg I).....5,7, 8  
Dillenburg v. Maxwell, 70 Wn.2d 331, 422 P.2d 783 (1967)  
(Dillenburg II) .....7  
Seattle v. Filson, 98 Wn.2d 66, 653 P.2d 608 (1982).....9,10  
State v. Lamb, 175 Wn.2d 121, 285 P.3d 27 (2012) .....14,15  
State v. Maynard, 182 Wn.2d 253, 351 P.3d 159 (2015).....8  
State v. Posey, 161 Wn.2d 638, 167 P.3d 560 (2007) (Posey I) .....12,13  
State v. Posey, 174 Wn.2d 131, 272 P.3d (2012) (Posey II) .....13,14,15  
State v. Ring, 54 Wn.2d 250, 339 P.2d 461(1959) .....5  
State v. Werner, 129 Wn.2d 485, 918 P.2d 916 (1996) .....5  
State ex rel. Campbell v. Superior Court, 34 Wn.2d 771, 210 P.2d 123,  
(1949).....5,6  
State ex rel. Lytle v. Superior Court, 54 Wash. 378, 106 P. 464 (1909)....6

**Washington State Court of Appeals:**

State v. Golden, 112 Wn.App. 68, 47 P.3d 587 (2002) .....5,14  
State v. Pritchard, 79 Wn.App. 14, 900 P.2d 560 (1995) .....4

**Washington State Statutes:**

|                                 |             |
|---------------------------------|-------------|
| RCW 2.08.010 .....              | 4           |
| RCW 2.08.030 .....              | 3,4         |
| RCW 3 .....                     | 9           |
| RCW 3.02.010 .....              | 9           |
| RCW 9.41.040(4) .....           | 15          |
| RCW 9.41.040(4)(b)(i) .....     | 15          |
| RCW 9.41.040(4)(b)(i)(ii).....  | 12,15       |
| RCW 9.41.040(4)(b)(ii) .....    | 15          |
| RCW 9A.44.143(4).....           | 12          |
| RCW 13 .....                    | 8           |
| RCW 13.01 .....                 | 7           |
| RCW 13.04.021 .....             | 4           |
| RCW 13.04.030 .....             | 11          |
| RCW 13.04.030(1)(e)(v)(E) ..... | 11          |
| RCW 13.40 .....                 | 8           |
| RCW 13.40.300 .....             | 10,11,12,14 |
| RCW 35 .....                    | 9           |
| RCW 35A .....                   | 9           |

**Washington State Constitutional Provisions:**

Const. art. IV §5 .....6,8  
Const. art. IV §6 .....4  
Const. art. IV §11 .....3

**A. ASSIGNMENT OF ERROR**

The Superior Court erred in ruling the Juvenile Court is not a court of record and denied Appellant's Motion to Restore his Right to Bear Arms.

**B. ISSUES**

1. Is the Clark County Superior Court Juvenile Division a court of record?

2. If the Juvenile Division of the Clark County Superior Court is a court of record, does the Juvenile Division of the Superior Court have jurisdiction to hear matters under the juvenile cause number after the youth turns 18 or 21 years of age?

**C. STATEMENT OF THE CASE**

Appellant, Ross Anthony Burke, filed three Petitions for Restoration of Firearm Rights under three separate Juvenile Cause Numbers, which were all denied. A subsequent ruling by the Court of Appeals on July 12, 2018 consolidated the three cases under Appellate Number 51979-8-II for the purposes of this appeal. Appellate Number 51979-8-II is the Appellate Number for Scomis Number 04-8-00119-1.

Therefore, Mr. Burke's statement of the case will address the proceedings in Cause Number 04-8-00119-1, rather than all three cases.

On February 6, 2004, Appellant, Ross Anthony Burke, pled guilty in Clark County Juvenile Court, under Cause No. 04-8-00119-1, to the crime of Attempted Theft in the First Degree. (CP 8). A Disposition Order was entered on February 6, 2004. (CP 9). As a consequence of his adjudication, Appellant was prohibited from possessing a firearm.

On March 28, 2018 Appellant filed a Petition for Restoration of the Right to Own or Possess Firearms in the Juvenile Division of the Superior Court. (CP 14)

On April 18, 2018, Appellant's motions to restore his firearm rights were heard in juvenile court. The State filed a written Jurisdictional Response to Mr. Burke's Motion to Restore Firearm Rights arguing the Juvenile Court was not a "Court of Record" and due to Respondent's age, juvenile court did not have authority to act. (CP 17). On April 17, 2018 Mr. Burke filed a Memorandum in Response to the State's Jurisdictional argument. (CP 18). The Court ruled Juvenile Court was not a "Court of Record" and denied Appellant's motions for Restoration of the Right to Own or Possess Firearms and entered a written Order Denying

Respondent's Petition for Restoration of Right to Own or Possess Firearms on May 23, 2018. (CP 24). Mr. Burke timely filed his Notice of Appeal. (CP 25).

**D. ARGUMENT**

**I. ISSUE ONE:**

**IS THE CLARK COUNTY SUPERIOR COURT JUVENILE DIVISION A COURT OF RECORD?**

Yes, the Juvenile Court is a court of record since it is a division of the Superior Court. The statutes, the Washington State Constitution and the case-law support the fact Juvenile Court is a court of record.

The Washington State Constitution authorizes two courts of record, the Supreme Court and the Superior Court.

"The supreme court and the superior courts shall be courts of record, and the legislature shall have the power to provide that any of the courts of this state, excepting justices of the peace, shall be courts of record." Const. art. IV § 11.

The legislature also designates the Superior Court as a court of record. RCW 2.08.030.

"The superior courts are courts of record, and shall be always open, except on nonjudicial days. They shall hold their sessions at the county seats of the several counties, respectively, and at such other places within the county as are designated by the judge or judges thereof with the approval of the chief justice of the supreme court of this state and of the governing body of the county. They shall hold regular and special sessions in the several

counties of this state at such times as may be prescribed by the judge or judges thereof.” RCW 2.08.030.

RCW 2.08.010 and Const. art. IV § 6. also state: “the Superior Court shall have original jurisdiction ... in all criminal cases amounting to felony, and in all cases of misdemeanors not otherwise provided for by law; ...”

It is undisputed the Superior Court is a court of record. The question is whether a division or session of the Superior Court is a court of record.

When the legislature passed the Juvenile Justice Act in 1977, it also passed RCW 13.04.021, which provided that “[t]he juvenile court shall be a division of the Superior Court.” Even though the Constitution and the statutes refer to sessions of the Superior Court, State v. Pritchard, 79 Wn.App. 14, @18, 900 P.2d 560 (1995), held they were the same.

We hold the change of the term “session” to “division” is a distinction without a difference. The legislature has not subtracted from a Superior Court’s general jurisdiction and has not vested exclusive jurisdiction in any other court – the juvenile court is still a part of Superior Court.

The case-law has held that the juvenile division is not a separate court from Superior Court, but in fact are the same. State v. Golden, 112 Wn.App. 68, 47 P.3d 587 (2002), says it best in the following quote:

It is well settled that the juvenile court is simply a division of the Superior Court, not a separate constitutional court. State v. Werner, 129 Wn.2d 485, @ 492, 918 P.2d 916 (1996). The designation of a particular Superior Court department as the 'juvenile department' does not diminish the jurisdiction of other Superior Court departments to proceed in juvenile court matters. State ex rel. Campbell v. Superior Court, 34 Wn.2d 771, 775, 210 P.2d 123 (1949). The legislative creation of the juvenile court by statute was not intended to vest jurisdiction in a court other than the Superior Court. The juvenile court is still a part of Superior Court. State v. Werner, 129 Wn.2d 485, @492, 918 P.2d 916 (1996); Dillenburg v. Maxwell, 70 Wn.2d 331, 341, 413 P.2d 940 (1966) (Dillenburg I) (juvenile is "really the Superior Court or a department thereof") (quoting State v. Ring, 54 Wn.2d 250, 253, 339 P.2d 461 (1959)). State v. Golden, 112 Wn.App. 68, @ 73-74, 47 P.3d 587 (2002).

If juvenile court is a division of Superior Court, it is a Superior Court and as a Superior Court, is a court of record.

The first case that dealt with Sessions of the Superior Court was State ex rel. Campbell v. Superior Court, 34 Wn.2d 771, 210 P.2d 123, (1949). The case dealt with "Family Court Act" in 1949 which created procedures to have family court matters heard and resolved under the jurisdiction of the family court. Campbell was a party in a custody matter which had been filed prior to the act becoming effective, Campbell

petitioned the court to transfer the case to the family court. The King County presiding judge claimed he did not have authority and refused to transfer the case to the family court.

The court stated as follows:

There is in each of the organized counties of this state a superior court. Constitution, Art. IV, §5. There may be two or more judges, but there is only one superior court in each county. State ex rel. Lytle v. Superior Court, 54 Wash. 378, 103 P. 464 (1909). The superior court of each county has the same jurisdiction within that county that the superior court of every other county has within its county. Where there are two or more judges of the superior court in any county, their authority is identical, for, by that same section of the constitution, it is provided that: 'The judgments, decrees, orders, and proceedings of any session of the superior court held by any one or more of the judges of such court shall be equally effectual as if all the judges of said court presided at such session ...'

When a particular judge is designated as the "probate judge" or the "juvenile court judge" (a designation of a particular department as the "probate department" or the "juvenile court" would perhaps be less confusing), the other departments of the superior court in that county do not lose jurisdiction in probate and juvenile court matters. However, the exercise of that jurisdiction may be restricted or limited by statute or court rule, under another provision of the same section of our constitution which provides that: "In any county where there shall be more than one superior judge, ...the business of the court shall be so distributed and assigned by law, or, in the absence of legislation therefor, by such rules and orders of court as shall best promote and secure the convenient and expeditious transaction thereof. ..." State ex rel. Campbell v. Superior Court, 34 Wn.2d 771, @ 776, 210 P.2d 123, (1949).

Appellant submits the language above confirms each division, session or department of the Superior Court has the same jurisdiction as the Superior Court because they are a Superior Court, however the specific duties and or powers with respect to the jurisdiction may be restricted by the statute creating the department, division or session of the Superior Court.

Dillenburg v. Maxwell, 70 Wn.2d 331, 341, 413 P.2d 940 (1966) (Dillenburg I), rehearing Dillenburg v. Maxwell, 70 Wn.2d 349, 422 P.2d 783 (1967) (Dillenburg II), also held the juvenile court was a court of record where the duties are outlined by the statute. The case dealt with a youth charged with a felony and the juvenile division remanded the youth to adult court without a hearing and the remand order was signed by a probation officer rather than a superior court judge. After referring to excerpts from RCW 13.01, the juvenile court law at the time of Dillenburg, the court stated:

It is manifest from the foregoing excerpts that the legislature did not intend to establish, nor did it undertake to establish, a juvenile court separate and distinct from the Superior Court. Instead, it simply authorized the characterization of the Superior Court or a 'session' thereof, as a 'juvenile court' when processing those cases falling within the terms of the Juvenile Court Law."

Thus the statute did not divest, nor subtract from, the general jurisdiction of the Superior Courts, and it did not purport to vest

exclusive jurisdiction over dependent or delinquent children in any other forum or court.

At most, the statute, when read in its entirety, and in conjunction with the above quoted constitutional provisions, undertakes to distribute and assign a phase of the business of the superior court, as authorized by Const. art. IV §5, supra, and to prescribe the mode of procedure by which the superior court shall initiate, process and apply the remedies made available by the Juvenile Court Law for the treatment of dependent or delinquent children as those terms are defined by the statute. The Superior Court, therefore maintains and retains 'jurisdiction' over such cases being delimited procedurally, however, by statutory provision and due process concepts, as to the manner in which it may authorize the remedy of criminal prosecution in cases involving the commission of crimes by children covered by the statute. Dillenburg v. Maxwell, 70 Wn.2d 331, 352-353, 413 P.2d 940 (1966).

Appellant submits the juvenile court is a court of record who has jurisdictional authority pursuant to Title 13 of RCW. Specifically under RCW 13.40 it is limited to prosecuting youth who commit crimes prior to their eighteenth birthday. "The absolute prohibition we see to applying the Juvenile Justice Act is when the defendant allegedly committed the crime after the age of eighteen." State v. Maynard, 182 Wn.2d 253, @263, 351 P.3d 159 (2015).

Appellant submits the distinction of what is not a court of record has to do with inferior courts or courts of limited jurisdiction and not

whether a court is a division, session or department of the Superior Court.

Courts of limited jurisdiction are defined in RCW 3.02.010. "For purposes of this chapter, a court of limited jurisdiction is any court organized under Title 3, 35 or 35A RCW."

Title 3 deals with District Courts or courts of limited jurisdiction; Title 35 and 35A deal with municipalities and municipal courts.

City of Seattle v. Filson, 98 Wn.2d 66, 653 P.2d 608 (1982) was a case in which the defendant was charged with several crimes in Seattle Municipal Court. The defendant demanded a twelve person jury for their trial rather than a six person jury, claiming the Municipal Court was a court of record. The defendant argued that RALJ 9.1 "provided that judgments of limited jurisdiction shall be reviewed on the record transformed the inferior tribunals into 'courts of record'". Seattle v. Filson, 98 Wn.2d 66,@69, 653 P.2d 608 (1982).

The court ruled the above provision in RALJ 9.1 did not make the municipal court a court of record. "We hold that, despite the fact that an appeal from a court of limited jurisdiction may be taken on the record, it is not a court of record." .... Seattle v. Filson, 98 Wn.2d 66,@71, 653 P.2d 608 (1982).

The court also stated, "...it seems plain that the framers when they used the expression 'courts not of record', used it only to describe the kind of court they had in mind. That is, courts exercising jurisdiction inferior to that of the superior courts." Seattle v. Filson, 98 Wn.2d 66,@71, 653 P.2d 608 (1982).

Thus it is the inferior courts which are not courts of record such as the justices of the peace, municipal courts and district courts, which would be courts of limited jurisdiction.

The juvenile division of the Superior Court is a court of record, just like the probate division, the family law division, the civil division or criminal division of the Superior Court.

## **II. ISSUE TWO:**

### **IF THE JUVENILE DIVISION OF THE SUPERIOR COURT IS A COURT OF RECORD DOES THE JUVENILE DIVISION OF THE SUPERIOR COURT HAVE JURISDICTION TO RESTORE THE OFFENDER'S FIREARM RIGHTS AFTER THE OFFENDER TURNS 21 YEARS OF AGE?**

a) The jurisdiction of juvenile court in dealing with youth alleged to have committed a crime is found in RCW 13.40.300. RCW 13.40.300 states as follows:

(1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution

beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

(b) The juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition;

(c) Disposition has been held and an automatic extension is necessary to allow for the execution and enforcement of the court's order of disposition. If an order of disposition imposes commitment to the department, then jurisdiction is automatically extended to include a period of up to twelve months of parole, in no case extending beyond the offender's twenty-first birthday; or

(d) While proceedings are pending in a case in which jurisdiction has been transferred to the adult court pursuant to RCW 13.04.030, the juvenile turns eighteen years of age and is subsequently found not guilty of the charge for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense, and an automatic extension is necessary to impose the disposition as required by RCW 13.04.030(1)(e)(v)(E).

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment.

(4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older.

RCW 13.40.300 only limits the court's authority to adjudicate a youth who has been charged with a crime, enter a disposition order after the youth has been adjudicated, monitor the youth's performance on community supervision after a disposition order has been entered before he turns 21 years of age or confine a youth to a juvenile detention facility.

The Respondent submits there is no loss of juvenile jurisdiction if the youth is attempting to address specific issues with the disposition order such as his or her effort to restore firearm rights (RCW 9.41.040(4)(b)(i)(ii)), be relieved from the duty to register as a sex offender (RCW 9A.44.143(4)), collaterally attack his/her adjudication, or modify a mistaken disposition order issued by the juvenile court.

b) Three cases establish the distinction between what the court can and cannot do with juveniles adjudicated in the juvenile justice system.

State v. Posey, involved two appellate court cases. The first was State v. Posey, 161 Wn.2d 638, 167 P.3d 560 (2007) (Posey I), in which the juvenile was charged in adult court because one of the charges resulted in automatic decline of the youth to adult court (Assault I). After

trial the jury found him not guilty of Assault I and guilty of other crimes which resulted in automatic decline. The Court sentenced Posey in the adult division. Posey appealed and argued the court lacked jurisdiction to sentence him and that juvenile jurisdiction was automatically restored when he was found not guilty of the Assault I. The Supreme Court agreed stated that Posey's matter should have been returned to juvenile court for a decline hearing or sentencing.

The second Posey case, State v. Posey, 174 Wn.2d 131, 272 P.3d (2012) (Posey II), was the result of Posey I being sent back to the trial court for further proceedings. The plan was to sentence Posey in juvenile court after the matter was remanded by the Supreme Court. However, in the interim Posey turned 21 years of age and then Posey argued juvenile court did not have jurisdiction to sentence him because he was over 21 years of age. The sentencing court agreed and commented that she would convert the courtroom from a juvenile court to a superior court and proceeded to sentence Posey to a standard range disposition under the juvenile disposition standards of 60 – 80 weeks. The Supreme Court affirmed the trial court stating, "Where a person is no longer subject to the procedures governing juvenile adjudication, the superior court

retains such constitutional jurisdiction.” State v. Posey, 174 Wn.2d 131, @142, 272 P.3d (2012) (Posey II).

Posey is a perfect example of the jurisdictional mandates of RCW 13.40.300 limiting the juvenile court’s ability to enter a dispositional order after a youth turns 21.

State v. Golden, 112 Wn.App. 68, 47 P.3d 587 (2002), involved a youth who pleaded guilty to Arson when he was 10 years old in juvenile court. After he turned 18 years of age he committed a new crime and the State was going to include the Arson adjudication as criminal history for the new crime. Golden then filed a Motion in Superior Court to withdraw his guilty plea to the Arson charge. The Motion was addressed to the juvenile division and was filed under the juvenile cause number. The Superior Court concluded it had general jurisdiction to entertain the Motion and entered an Order granting the Motion to withdraw the 1992 plea.

State v. Lamb, 175 Wn.2d 121, 285 P.3d 27 (2012), is another case where the defendant was charged with Unlawful Possession of a Firearm based upon juvenile adjudications in 1991 when he was 11 years old. Lamb moved to withdraw his guilty plea in 2009 or 2010 on the 1991 matter. The Motion was filed under the juvenile cause number and the

court granted the Motion to withdraw the guilty plea. Footnote 1 of the opinion states as follows:

For ease of reference, we refer to the ‘trial court’ to describe both Lamb’s juvenile court and superior court proceedings that took place in 2009 and 2010. Cf. State v. Posey, 174 Wash.2d 131, 140-141, 272 P.3d 840 (2012) (noting that juvenile court is a division of the superior court). The same judge presided in both. State v. Lamb, 175 Wash.2d 121, @133, 285 P.3d 27 (2012).

Appellant submits the juvenile court matter was the Motion to Withdraw his Guilty Plea and the Superior Court proceeding was the new charge. In 2009, Lamb would have been approximately 28 to 30 years of age.

c) RCW 9.41.040: The plain language of RCW 9.41.040(4)(b)(i) and (ii) gives direction as to where the petition for reinstatement of a person’s firearm rights should be filed. The language of RCW 9.41.040(4) gives two alternatives.

“(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection only at:  
(i) The court of record that ordered the petitioner’s prohibition on possession of a firearm; or  
(ii) The Superior Court in the county in which the petitioner resides.”

This language makes it clear there are two choices, the first being the court that took away the person’s right to bear arms. The second

would be based upon two possibilities. The possibility is the court that issued the order prohibiting the right to bear arms was not a court of record, such as a District Court or Municipal Court, in which case the Superior Court of the persons' residence would be used. The second possibility is the court that issued the order prohibiting the right to bear arms was a court of record but the petitioner lives in another county, so the petitioner can seek restoration of firearm rights in the county where the petitioner resides.

In the current case, Mr. Burke's right to possess firearms was taken away by the Juvenile Division of the Superior Court of Clark County and that court should restore his rights.

d) Lastly, Appellant argues allowing the juvenile court to restore firearm rights to youth over 21 years of age would eliminate several practical and legal issues.

1) The complete process from adjudication to forfeiture of the right to bear arms, to the restoration of the right to bear arms would fall under one cause number eliminating the risk of confusion between different cause numbers with the agencies that are notified after firearm rights are restored, such as the state police. This creates consistency.

2) It eliminates inequality on how the statute is applied to different aged youth. A youth convicted of a crime when they are 10 to 15 years of age would be able to seek their right to restore their firearm rights under the same cause number because they would still be under the age of 21 years when they became eligible, however youths 16 years of age and older would not be eligible to file under the juvenile cause number because they would be 21 years of age or older when the 5 year waiting period would end.

3) It would avoid the argument that the court loses jurisdiction of a youth who files a petition in juvenile court to restore firearm rights before they turn 21 years of age, but the matter is not heard until after the youth turns 21 years of age.

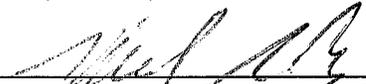
E. CONCLUSION

The Juvenile Division of the Superior Court is a court of record and as the court of record that prohibited the youth convicted of a felony

from possessing firearms is the proper court of record to restore that person's right to bear arms.

Dated this 5 day of October, 2018.

Respectively Submitted:

  
\_\_\_\_\_  
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**MICHAEL G BORGE**

**October 05, 2018 - 11:32 AM**

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