

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

In re the Personal Restraint)	No. _____
)	
of)	PERSONAL RESTRAINT
)	PETITION
D'MARCUS GEORGE,)	
<u>Petitioner.</u>)	

A. STATUS OF PETITIONER

Comes now the Petitioner, D'MARCUS GEORGE, by and through his attorney, Kathryn Russell Selk of RUSSELL SELK LAW OFFICE, and applies for relief from unlawful restraint. Mr. George is currently in custody in the state Department of Corrections serving a term of 235 months imposed by the Honorable Judge Ronald E. Culpepper in Pierce County Superior Court after a trial in September of 2014. Judgment and Sentence (attached as Appendix A).

B. INFORMATION REQUIRED UNDER RAP 16.4

1. First trial and first appeal

a. In 2009, Mr. George was tried by jury in front of

the Honorable Judge Katherine Stolz on an amended information which accused Mr. George of count I: first-degree premeditated murder and second-degree felony murder based on assault, with both charges alleged with firearm enhancements. Amended Information (attached as Appendix B). For count 1, the jury found Mr. George not guilty of first-degree murder as charged, were unable to agree on the lesser included of second-degree murder but found him guilty of the lesser crime of first-degree manslaughter and of being armed with a firearm during the crime. 2009 Verdict Forms (attached as Appendix C). For count 2, the jury found Mr. George guilty of second-degree felony murder as charged, also finding by special verdict that George was armed with a firearm. App. C.

b. After sentencing, Mr. George appealed. 2009 Judgment and Sentence (attached as Appendix D); 2009 Notice of Appeal (attached as Appendix E). On April 8, 2011, a two-judge majority of Division Two of the court of appeals reversed the convictions in a published opinion. See State v. George, 161 Wn. App. 86, 94, 249 P.3d 202, review denied, 172 Wn.2d 1007 (2011) (attached as Appendix F). The state's Petition for Review was denied

and the Mandate issued for that appeal on September 20, 2011. See 2011 Mandate (attached as Appendix G).

2. The second trial, second appeal and correction

a. On remand, the state filed a second amended information charging count 1: second-degree intentional murder (with a firearm enhancement) and count 2: second-degree felony murder with a predicate of either first- or second-degree assault (with a firearm enhancement). See Second Amended Information, (attached as Appendix H).

b. The retrial was held before the Honorable Judge Ronald E. Culpepper on August 11-14, 18-21, 25-28, September 2-4, 2014, after which the jury convicted Mr. George of both counts as charged. Clerk's Minutes (attached as Appendix I); 2014 Verdict Forms (attached as Appendix J). On September 19, 2014, Judge Culpepper imposed a sentence of 220 plus 60 months "flat time" for the sentencing enhancement on count I, the second-degree murder conviction. App. A.

c. Mr. George appealed. 2014 Notice of Appeal (attached as Appendix K). On February 22, 2017, the court of

appeals, Division Two, reversed and dismissed the conviction on count 2 as in violation of the state and federal prohibitions against double jeopardy, but affirmed the conviction on count I. 2017 Opinion (attached as Appendix L). Mr. George filed a Petition for Review which was denied by the Supreme Court on June 28, 2017. See 2017 Mandate (attached as Appendix M). The judgment and sentence was amended on July 31, 2017. Motion and Order (attached as Appendix N).

d. Petitioner has not previously sought relief by way of Personal Restraint Petition.

3. Information regarding prior counsel/indigency

a. Petitioner's appointed counsel for the 2009 trial was Ephraim Benjamin, WSBA #23616, whose office address is currently listed by the Washington State Bar Association directory as 3615 Steilacoom Blvd. SW, Suite 301, Lakewood, WA. 98499-4580. See WSBA website printout (attached as Appendix O); Notice of Appearance (attached as Appendix P).

b. For the appeal from the first trial, Mr. George's appointed counsel was Eric Nielsen, WSBA #12773, whose office

address is currently listed by the Washington State Bar Association directory as 1908 E. Madison St., Seattle, WA. 98122-2842. See Order of Indigency (attached as Appendix Q); Appointment (attached as Appendix R); WSBA website printout (attached as Appendix S).

c. Petitioner's appointed counsel for retrial was Barbara Corey, WSBA #11778, whose office address is currently listed by the Washington State Bar Association directory as 902 S. 10th St., Tacoma, WA. 98405-4537. See Notice of Appearance (attached as Appendix T); WSBA website printout (attached as Appendix U).

d. For his appeal from the second trial, Mr. George's appointed counsel was Kathryn Russell Selk, undersigned counsel, whose office address is currently 1037 Northeast 65th St. #176, Seattle, Washington, 98115. See Order of Indigency (attached as Appendix V); Appointment (attached as Appendix W).

4. Current situation

Mr. George is currently in custody under this cause number, housed under DOC # 870911 at Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, WA. 98326. See DOC Inmate Locator printout (attached as Appendix X).

E. OATH

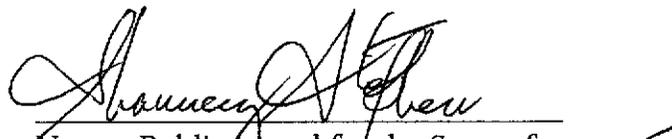
After being first duly sworn, on oath, I depose and say: That I am the attorney for the Petitioner, D'marcus George, that I have read the petition, know its contents, and I believe the petition is true.

DATED this 30th day of July, 2018.



Kathryn Russell Selk, WSBA No. 23879
Counsel for Petitioner

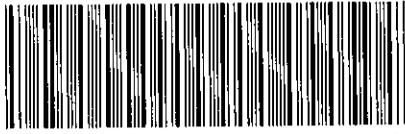
Subscribed and sworn to before me this 31st day of July, 2018.



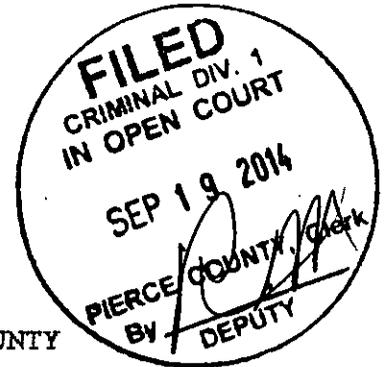
Notary Public in and for the State of
Washington, residing at King County

SHAUNCEY STEPHEN
Notary Public
State of Washington
My Appointment Expires
Mar 19, 2021

APPENDIX A



05-1-00143-9 43317179 JDSWCD 09-22-14



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 05-1-00143-9

vs

DMARCUS DEWITT GEORGE,

Defendant.

WARRANT OF COMMITMENT

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

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).

[X] 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).

September 19, 2014

Dated: ~~11-19-14~~

By direction of the Honorable

[Signature]

JUDGE
KEVIN STOCK

CLERK

By: *[Signature]*

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

SEP 22 2014
Date _____ By *[Signature]* Deputy

STATE OF WASHINGTON

ss:

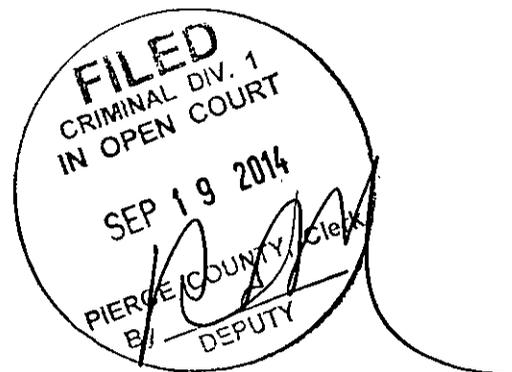
County of Pierce

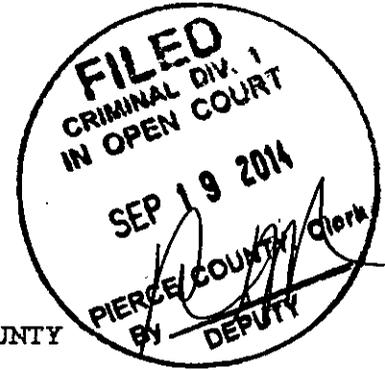
I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____, _____.

KEVIN STOCK, Clerk
By: _____ Deputy

dlc





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-00143-9

vs

JUDGMENT AND SENTENCE (J/S)

DMARCUS DEWITT GEORGE

Defendant.

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

SID: WA22034454
 DOB: 02/09/84

I. HEARING

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

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 09/04/14 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	MURDER 2 (D4)	9.41.010 9.94A.310 9.94A.510 9.94A.370 9.94A.530 9A.32.050(1)(a)	FASE	06/21/04	PCSD 041730972

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

as charged in the SECOND AMENDED Information

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

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	UPCS LESS 40 GRAMS	05/17/04	PIERCE, WA	12/23/03	A	MISD
2	UPOF UNDER 21 YOA	05/17/04	PIERCE, WA	12/23/03	A	MISD

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

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	0	XIV	123-220 MONTHS	60 MONTH FASE	183-280 MONTHS	LIFE

- 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.01.010.

[] The court considered the following factors:

[] the defendant's criminal history.

[] 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.

III. JUDGMENT

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

3.2 [X] The court DISMISSES without prejudice Count II, the guilty verdict for Murder 2° w/FASE, ~~defendant is found NOT GUILTY of Counts~~ on double jeopardy grounds given the conviction for Count I.

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RTNRJN \$ ~~4385.96~~ 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 \$ ~~110.00~~ 110.00 Criminal Filing Fee

FCM \$ _____ Fine

EXT \$ _____ Extradition Costs

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ 3675.96 Other Costs for: Extradition Costs

\$ _____ Other Costs for: _____

\$4385.96 ~~_____~~ TOTAL

[X] 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.

[X] is scheduled for 10/17/14

[X] RESTITUTION. Order Attached

JUDGMENT AND SENTENCE (JS)

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

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

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ Per 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 Family of Isaiah Clark (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life years (not to exceed the maximum statutory sentence).

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

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

02/14
11:09
02/22/2014
11:09
02/14
11:09

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):

175 months on Count I _____ months on Count _____
_____ months on Count _____ months on Count _____
_____ months on Count _____ 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:

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

Sentence enhancements in Count# _____ shall run
[] concurrent [] consecutive to each other.
Sentence enhancements in Count# I shall be served
[X] flat time [] subject to earned good time credit

Actual number of months of total confinement ordered is: 235 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: _____

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: ~~XXXXXX~~
credit for time served since 3.28.08 (arrested out of state)

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: ~~XXXXXX~~ 48 months for Count I

Count(s) _____ 36 months for Serious Violent Offenses

Count(s) _____ 18 months for Violent Offenses

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

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: _____

[] 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-WITHOLDING 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): XOOG

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.

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

5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 9.19.14

JUDGE

Print name

[Signature]
RONALD E. CULPEPPER

[Signature]

Deputy Prosecuting Attorney

Print name: Jesse Williams

WSB # 35543

[Signature]

Attorney for Defendant

Print name: Barbara Corey

WSB # 11778

[Signature]

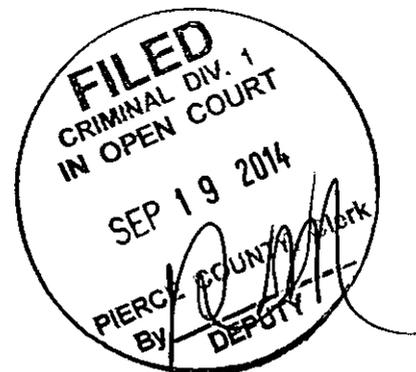
Defendant

Print name: _____

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

Defendant's signature: _____

[Signature]



CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 05-1-00143-9

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

CourtSmart

Court Reporter

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IDENTIFICATION OF DEFENDANT

SID No. WA22034454
(If no SID take fingerprint card for State Patrol)

Date of Birth 02/09/84

FBI No. 394811DC6

Local ID No. 20033582016

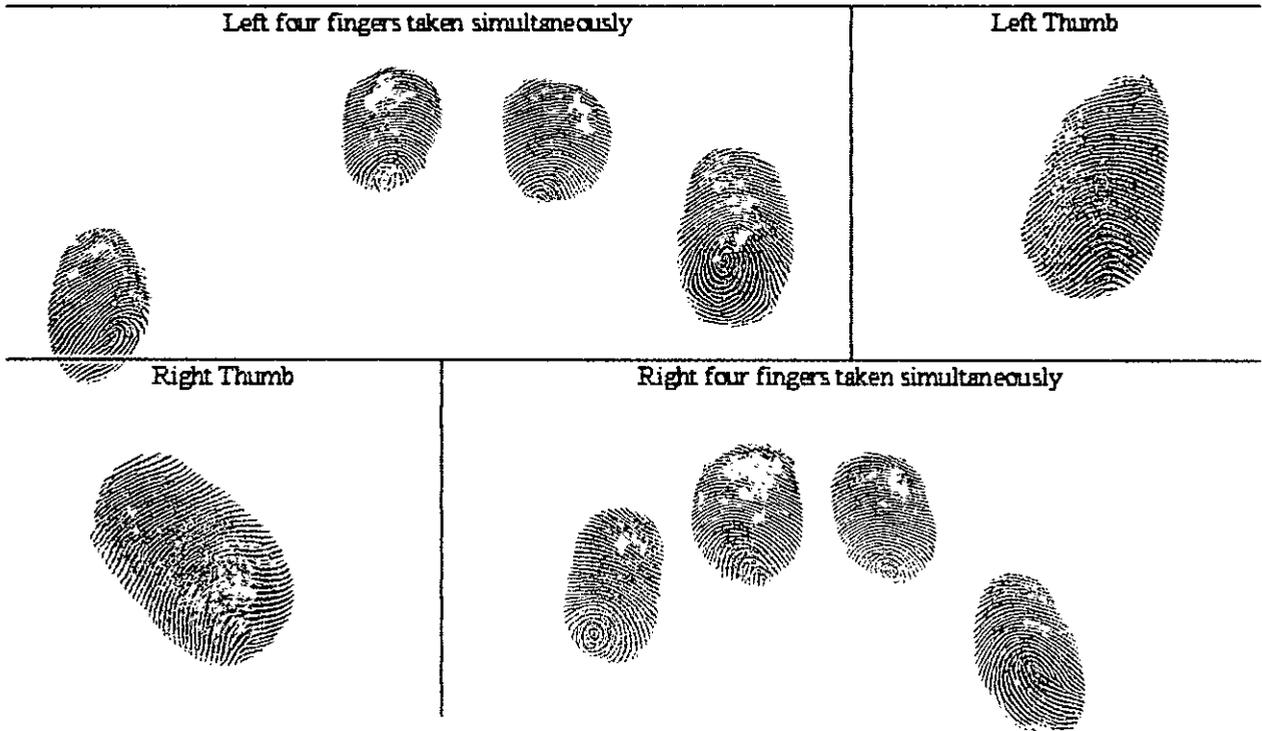
PCN No. 540562920

Other

Alias name, SSN, DOB: _____

Race:	<input type="checkbox"/> Asian/Pacific Islander	<input checked="" type="checkbox"/> Black/African-American	<input type="checkbox"/> Caucasian	Ethnicity:	<input type="checkbox"/> Hispanic	Sex:	<input checked="" type="checkbox"/> Male
	<input type="checkbox"/> Native American	<input type="checkbox"/> Other: :		<input checked="" type="checkbox"/> Non-Hispanic	<input type="checkbox"/> 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, Patricia M. Keenan Dated 09.19.14

DEFENDANT'S SIGNATURE: _____

DEFENDANT'S ADDRESS: _____

APPENDIX "F"

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

- ~~serious violent offense~~ Murder 2^o /FASE
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

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

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

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

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

The offender shall pay community placement fees as determined by DOC:

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

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

The Court may also order any of the following special conditions:

(I) The offender shall remain within, or outside of, a specified geographical boundary: _____

per DOC

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: see §4.3

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

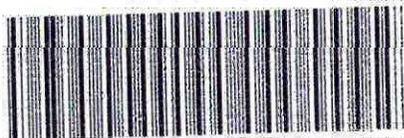
(IV) The offender shall not consume alcohol; _____

(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: _____

APPENDIX B



05-1-00143-9 31140260 AMINF 12-23-08

FILED
IN COUNTY CLERK'S OFFICE
DEC 23 2008
PIERCE COUNTY CLERK
KEVIN STOCK, COUNTY CLERK
RY... BRINGTON
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-00143-9

vs.

DMARCUS DEWITT GEORGE,

AMENDED INFORMATION

Defendant.

DOB: 2/9/1984
PCN#:

SEX : MALE
SID#: 22034454

RACE: BLACK
DOL#: WA.GEORGDD167CZ

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DMARCUS DEWITT GEORGE of the crime of MURDER IN THE FIRST DEGREE, committed as follows:

That DMARCUS DEWITT GEORGE, in the State of Washington, on or about the 21st day of June, 2004, did unlawfully and feloniously, with premeditated intent to cause the death of another person, did shoot Isaiah Clark, thereby causing the death of Isaiah Clark, a human being, on or about the 21st day of June, 2004, and during said conduct, and in the commission thereof, the defendant and/or an accomplice was armed with a firearm as defined in RCW 9.41.010, to-wit: a handgun, thereby invoking the provisions of RCW 9.94A.310/9.94A.510, and adding time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, contrary to RCW 9A.32.030(1)(a), and against the peace and dignity of the State of Washington.

COUNT II

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DMARCUS DEWITT GEORGE of the crime of MURDER IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or



1 plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to
2 separate proof of one charge from proof of the others, committed as follows:

3 That DMARCUS DEWITT GEORGE, in the State of Washington, on or about the 21st day of
4 June, 2004, did unlawfully and feloniously, while committing or attempting to commit the crime of
5 Assault in the First Degree or Assault in the Second Degree, and in the course of and in furtherance of
6 said crime or in immediate flight therefrom, did shoot Isaiah Clark, and thereby causing the death of
7 Isaiah Clark, a human being, not a participant in said crime, on or about the 21st day of June, 2004,
8 contrary to RCW 9A.32.050(1)(b), and against the peace and dignity of the State of Washington.

9 DATED this 22nd day of December, 2008.

10 PIERCE COUNTY SHERIFF
11 WA02700

GERALD A. HORNE
Pierce County Prosecuting Attorney

12 tjb

13 By:



14 KATHLEEN PROCTOR
15 Deputy Prosecuting Attorney
16 WSB#: 14811

APPENDIX C



05-1-00143-9 31485072 VRD 02-12-09

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

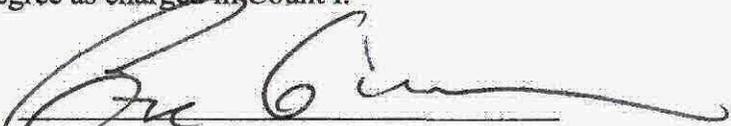
DMARCUS DEWITT GEORGE

Defendant.

CAUSE NO. 05-1-00143-9

VERDICT FORM A
(COUNT I)

We, the jury, find the defendant NOT GUILTY (Not Guilty, Guilty, or Unable to agree) of the crime of murder in the first degree as charged in Count I.


PRESIDING JUROR

FILED
DEPT. 2
IN OPEN COURT
FEB 12 2009
Pierce County Clerk
By  DEPUTY



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DMARCUS DEWITT GEORGE

Defendant.

CAUSE NO. 05-1-00143-9

**VERDICT FORM B
(COUNT I)**

We, the jury, having found the defendant DMARCUS DEWITT GEORGE not guilty of the crime of murder in the first degree as charged, or being unable to unanimously agree as to that charge, find the defendant UNABLE TO AGREE (Not Guilty, Guilty, or Unable to agree) of the crime of the lesser degree crime of murder in the second degree.



[Signature]
PRESIDING JUROR



05-1-00143-9 31465075 VRD 02-12-09

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DMARCUS DEWITT GEORGE

Defendant.

CAUSE NO. 05-1-00143-9

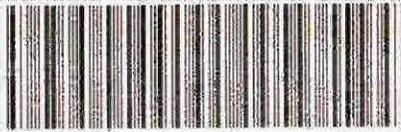
VERDICT FORM C
(COUNT I)

We, the jury, having found the defendant DMARCUS DEWITT GEORGE not guilty of the crime of murder in the first degree as charged, or the lesser degree crime of murder in the second degree, or being unable to unanimously agree as to those charges, find the defendant

Guilty (Not Guilty, Guilty, or Unable to agree) of the crime of the lesser crime of manslaughter in the first degree.



[Signature]
PRESIDING JUROR



05-1-00143-9 31485085 SVRD 02-12-09

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DMARCUS DEWITT GEORGE

Defendant.

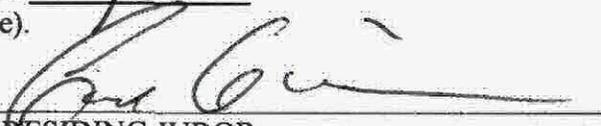
CAUSE NO. 05-1-00143-9

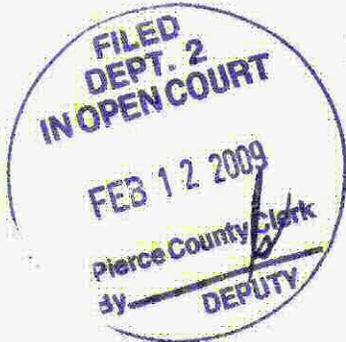
SPECIAL VERDICT FORM

We, the jury, return a special verdict by answering as follows:

Was the defendant Dmarcus Dewitt George armed with a firearm at the time of the commission of the crime in Count I?

ANSWER: Yes
(Yes, No, or Unable to agree).


PRESIDING JUROR





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DMARCUS DEWITT GEORGE

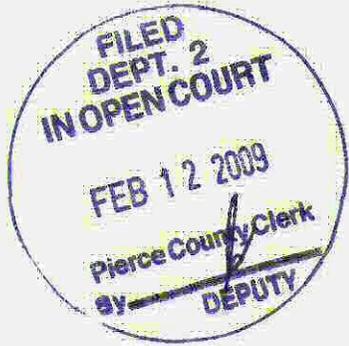
Defendant.

CAUSE NO. 05-1-00143-9

VERDICT FORM A
(COUNT II)

We, the jury, find the defendant Guilty (Not Guilty, Guilty, or Unable to agree) of the crime of felony murder in the second degree as charged in Count II.


PRESIDING JUROR





05-1-00143-9 31485086 SVRD 02-12-09

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DMARCUS DEWITT GEORGE

Defendant.

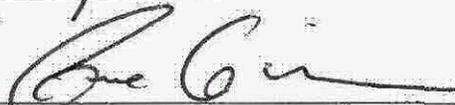
CAUSE NO. 05-1-00143-9

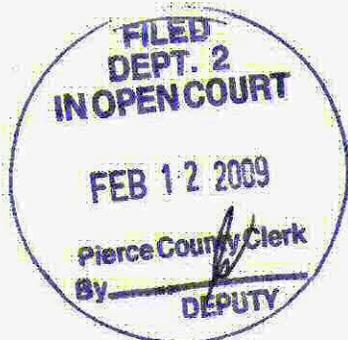
SPECIAL VERDICT FORM
(Count II)

We, the jury, return a special verdict by answering as follows:

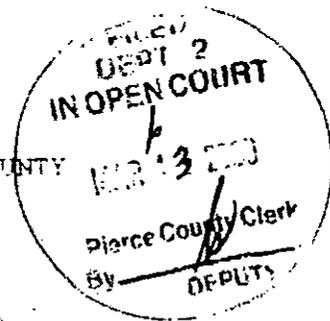
Was the defendant DMARCUS DEWITT GEORGE armed with a firearm at the time of the commission of the crime in Count II?

ANSWER: yes
(Yes, No, or Unable to agree).


PRESIDING JUROR



APPENDIX D



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-00143-9

vs

JUDGMENT AND SENTENCE (JS)

DMARCUS DEWITT GEORGE

Defendant,

- Prison RCW 9.94A.712 Prison Confinement
- Jail One Year or Less **MAR 16 2009**
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Breaking The Cycle (BTC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

SHD: 22034454
DOB: 02/09/1984

I. HEARING

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

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 02/12/2009 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
II	MURDER IN THE SECOND DEGREE, (D5)	9A.32.050(1)(b) 9.41.010 9.94A.310/9.94A.510 9.94A.370/9.94A.530	FASE	06/21/04	041730972

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

A special verdict/finding for use of firearm was returned on Count(s) II RCW 9.94A.602, 9.94A.533.

09-9-033dd-7

05-1-00143-9

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.525):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	UPCS<40 GRAMS	05/17/04	PIERCE	12/23/03	A	MISD
2	UPDF<21 YEARS	05/17/04	PIERCE	12/23/03	A	MISE

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

2.3 SENTENCING DATA:

COUNT NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
II	0	XIV	123-220	FASE 66 MOS.	183-280 MOS.	LIFE/SOL

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

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

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

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

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

05-1-00143-9

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows:

220 months plus 60 months base, 24 -48 months community custody; \$500 DVPA, \$3,675.46 extradition costs, restitution; no contact order with victim's family; 110 HUNG FEE; \$100 DNA COSTS
10,622.92

III. JUDGMENT

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

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court (Pierce County Clerk, 950 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTW/RIN \$ 10,622.92 Restitution to CRIME VICTIMS COMPENSATION FUND

\$ _____ 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

PUE \$ _____ Court-Appointed Attorney Fees and Defense Costs

FRC \$ 110.00 Criminal Filing Fee

FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ 3,675.46 Other Costs for EXTRADITION

\$ _____ Other Costs for _____

\$15,008.88 TOTAL

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

shall be set by the prosecutor.

is scheduled for _____

RESTITUTION Order Attached

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 month commencing _____ 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.

05-1-00143-9

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 **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 VICTIM'S FAMILY (name, DOB) 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:**

4.4a **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):

220 months on Count II months on Count _____
_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____

05-1-00143-9

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:

60 months on Count No II months on Count No
months on Count No months on Count No
months on Count No months on Count No

Sentence enhancements in Counts shall run:
[] concurrent [] consecutive to each other.
Sentence enhancements in Counts shall be served:
[X] flat time [] subject to earned good time credit

Actual number of months of total confinement ordered is: 280

(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 9A.04.080. 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, VII(CSA) 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 9A.04.080:

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 9A.04.005. 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:

CREDIT FOR TIME SERVED SINCE 3/28/08 - ARRESTED OUT OF STATE.

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

Count for months
Count for months
Count for months

[X] COMMUNITY CUSTODY is ordered as follows:

Count II for a range from: 24 to 48 Months
Count for a range from: to Months

05-1-00143-9

Court _____ for a range from: _____ to _____ Months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offense not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor, or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

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) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC, and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The 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 defendant shall not consume any alcohol.
- Defendant shall have no contact with: _____
- Defendant shall remain within outside of a specified geographical boundary, to wit: _____
- Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8))
- The defendant shall participate in the following crime-related treatment or counseling services: _____
- The defendant shall undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.
- The defendant shall comply with the following crime-related prohibitions: _____

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Other conditions may be imposed by the court or DOC during community custody, or are set forth here:

[] For sentences imposed under RCW 9 94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days

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(d) and RCW 9 94A.753(d).

CS-1-00143-9

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

5.4 RESTITUTION HEARING.

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

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

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

Rec'd to S in open Court

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: 03/13/09

JUDGE

Print name: _____

[Handwritten signature]

Kathleen Proctor

Deputy Prosecuting Attorney

Print name: KATHLEEN PROCTOR
WSB # 14811

Attorney for Defendant

Print name: _____

IN OPEN COURT
MAR 13 2009
Pierce County Clerk
By _____ DEPUTY

23616

Refuses to Sign.

Defendant

Print name: _____

05-1-00143-9

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VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.046; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.05(a) or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: Refused to Sign -

Court read in open court.

05-1-00143-9

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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 05-1-00143-9

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

Carla Higgins

Court Reporter

APPENDIX "F"

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

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

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

The offender shall work at Department of Corrections approved education, employment, under community sentence.

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.

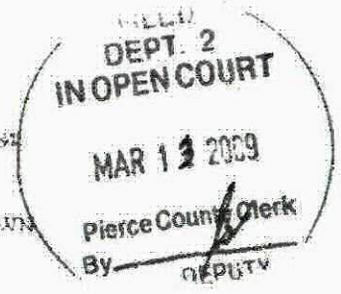
The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- (I) The offender shall remain within, or outside of, a specified geographical boundary _____
- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____
- (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: _____

05-1-00143-9

IDENTIFICATION OF DEFENDANT



SID No 22034454 Date of Birth 02/09/1964
(If no SID take fingerprint card for State Patrol)

FBI No 394811DC6 Local ID No UNKNOWN

PCN No UNKNOWN Other

Alias name, SSN, DOB:

Race			Ethnicity:	Sex	
<input type="checkbox"/> Asian/Pacific Islander	<input checked="" type="checkbox"/> Black/African-American	<input type="checkbox"/> Caucasian	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Male	
<input type="checkbox"/> Native American	<input type="checkbox"/> Other	<input type="checkbox"/> None	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Female	

FINGERPRINTS

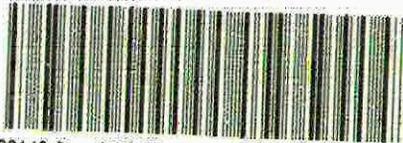
Left four fingers taken simultaneously	Left Thumb
<i>B</i>	
Right Thumb	Right four fingers taken simultaneously

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, L. Slipman Dated: 3/13/09

DEFENDANT'S SIGNATURE: Refused to sign

DEFENDANT'S ADDRESS _____

APPENDIX E



05-1-00143-9 31750543 NACA 03-26-09

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAR 25 2009 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
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**IN THE PIERCE COUNTY SUPERIOR COURT
IN AND FOR THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

NO. 05-1-00143-9

Plaintiff,

**NOTICE OF APPEAL TO COURT OF
APPEALS
DIVISION TWO**

v.

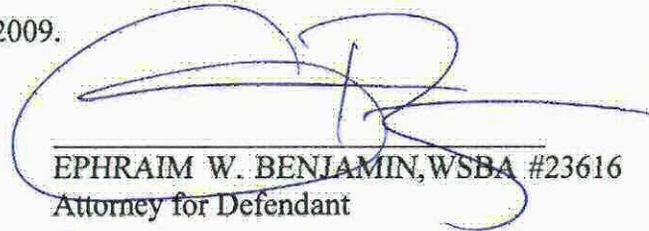
DMARCUS DEWITT GEORGE,

Defendant.

Defendant seeks review by the designated appellate court of the trial and sentencing in this matter entered on March 13, 2009.

A copy of the decision is attached to this notice.

DATED this 17th day of March, 2009.


EPHRAIM W. BENJAMIN, WSBA #23616
Attorney for Defendant


Dmarcus Dewitt George, Defendant
C/O Washington State Dept. of Corrections

APPENDIX F

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

Dmarcus dewitt George,

Appellant.

No. 39085-0- II

PUBLISHED OPINION

Hunt, J. — DMarcus Dewitt George appeals his jury conviction for second degree felony murder. He argues that we should reverse and remand for a new trial because the trial court committed the following errors: (1) failing to instruct on self-defense to permit the jury to consider whether his actions were based on a reasonable apprehension of great bodily harm and imminent threat; (2) excluding his testimony as speculative; (3) excluding his testimony as hearsay; and (4) admitting evidence of prior bad acts that impermissibly showed his criminal propensity. In his Statement of Additional Grounds (SAG),¹ he argues that our review should be limited to whether his attorney's brief made a prima facie showing of reversible error because the

¹ RAP 10.10.

State did not file a timely brief. Holding that the trial court erred in thwarting George's attempt to present self-defense, we reverse and remand for a new trial.

FACTS

I. Homicide

On the evening of June 21, 2004, DMarcus Dewitt George slept in the backseat of his best friend Freddie McGrew's car while McGrew pulled into a Shell station to buy gasoline.² McGrew's girlfriend, Tamrah Dickman, who sat in the front seat, observed people in a car that was just leaving, looking intently at McGrew's car. McGrew went into the minimart to pay before pumping the gas.

After McGrew exited the minimart, one of the men Dickman had observed in the car pulling away, Rickie Millender, walked up to McGrew and blocked his path, confronting him with questions about a mutual friend's brutal killing, at which McGrew had been present. McGrew was able to move past Millender, but Millender patted down McGrew's stomach, waist, and neck as McGrew pumped gas. McGrew tried to get back into his car to leave, but Millender prevented him from closing the door. McGrew was able to get "one leg and half of his body into the vehicle" before Millender punched him in the mouth. IX VRP at 1068. After Millender punched him, McGrew jumped back out of the car, and an altercation between the two men ensued in the parking lot.³

² Post-conviction, on appeal, we view the facts in the light most favorable to the defendant. *State v. Jelle*, 21 Wn. App. 872, 873, 587 P.2d 595 (1978).

³ Most of the witnesses at the gas station described a fistfight. One, however, described only a verbal confrontation.

At about the time McGrew reached the gas pump, Dickman observed two other men she did not know standing side-by-side near the gas station's minimart. Alarmed, Dickman woke George from the backseat in time for him to see Millender confront and pat down McGrew and to observe the two other men standing nearby. George did not know any of these people; but he had previously experienced persons shooting at him while he was in McGrew's company, and he understood that the confrontation was about the murdered friend. George exited the car to assist McGrew. One of the two⁴ men standing by the minimart, Isaiah Clark, stopped George and spoke to him when George tried to walk around the back of the car to reach McGrew and Millender.

George did not know Clark, and he felt intimidated because Clark was bigger and had bloodshot eyes, making him appear to be "high." X VRP at 1210. Clark was 6' tall and weighed over 200 pounds;⁵ George was 6'1" tall and weighed only 160 pounds. George at first stood still. Then he began retreating toward the open car door from which he had just exited when Clark hit him on the back left side of his head, causing him (George) to fall halfway into the car. The strength of Clark's blow made George think that "[Clark] had hit [him] with something." XI VRP at 1288.

"[H]oping [to] scare [Clark]," XI VRP at 1234, who was on top of him, George reached

⁴ The record identifies the other man only as the "white guy." X VRP at 1193.

⁵ At autopsy, Clark's body weighed 207 lbs. Although the medical examiner's report lists Clark's weight as 229 pounds, the examiner testified that Clark had likely weighed about 275 pounds during the incident. The examiner then describes Clark as "[s]ix feet, over 200 pounds." VIII VRP at 886.

inside the car for his gun in the pocket of his jacket, which was on the backseat. George held the gun in his right hand between himself and Clark, hoping that Clark would see the gun, be frightened, and stop. But Clark, unresponsive to the gun, gripped George's left forearm and tried to drag him out of McGrew's car. Tightening his grip on George's arm, Clark continued to pull George out of the car.

Although George remembered pointing the gun, he did not remember pulling the trigger the first time. He did, however, remember thinking that he "was going to die," that he was "kind of helpless," and that he was "shocked" when he heard the first shot. XI VRP at 1237. George fired the gun a total of four times. When the shooting stopped, George felt Clark's grip release. George, Dickman, and McGrew got back into McGrew's car and drove away. Clark died from these gunshot injuries.

II. Procedure

In 2008, police arrested George in Virginia and returned him to Tacoma for trial. The State charged him with first degree murder, or, in the alternative, second degree felony murder based on first or second degree assault. He proceeded to a jury trial.

A. Instructions

George proposed standard self-defense instructions, which the trial court rejected.⁶ The

⁶ George requested and the trial court refused to give the following jury instructions:

Manslaughter—Second Degree—Criminal Negligence—Definition.

11 Washington Practice: Washington Pattern Jury Instructions: Criminal 28.05 (3d ed. 2008) (WPIC).

Manslaughter—Second Degree—Criminal Negligence—Elements. WPIC 28.06.

Excusable Homicide—Definition. WPIC 15.01.

Great Personal Injury—Justifiable Homicide—Justifiable Deadly Force in Self-

trial court also deleted from its standard homicide instructions any references to self-defense or

Defense—Definition. WPIC 2.04.01.

Justifiable Homicide—Defense of Self and Others. WPIC 16.02.

Justifiable Homicide—Resistance To Felony. WPIC 16.03.

Aggressor—Defense of Self. WPIC 16.04.

Necessary—Definition. WPIC 16.05.

Justifiable Homicide—Actual Danger Not Necessary. WPIC 16.07.

No Duty To Retreat. WPIC 16.08.

Self-defense Reimbursement—Oral Introductory Instruction. WPIC 17.06.

Self-defense Reimbursement—Concluding Instruction. WPIC 17.06.01.

justifiable homicide.⁷

The trial court ruled that (1) George had not met his burden to introduce evidence showing that he had subjectively believed, in good faith, that he was in imminent danger of great bodily harm when he grabbed his gun from the backseat of McGrew's car and pulled the trigger; (2) although George claimed he had never been "so scared in his life," his fear was not objectively reasonable, VRP (Feb. 10, 2009) at 1379, especially in light of the medical examiner's testimony that Clark was shot in the back in a downward direction, indicating that Clark had been retreating or on his knees at some point when he was shot; and (3) "the fatal lethal force to Mr. Clark was not justified under these circumstances." VRP (Feb. 10, 2009) at 1383. George took exception to the trial court's rulings, arguing that it had misstated the medical examiner's evidence and was improperly "putting itself in the position of the trier of fact." VRP (Feb. 10, 2009) at 1384.

B. Convictions and Sentencing

In addition to first degree murder, the trial court instructed the jury on the lesser crimes of

⁷ The trial court deleted reference to justifiable homicide and self-defense (denoted here with strike-through) from the following WPIC instructions it gave to the jury:

Murder—Second Degree—Intentional—Definition. [WPIC] 27.01:

A person commits the crime of murder in the second degree when with intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person [~~unless the killing is excusable~~]{or}{justifiable}].

Clerk's Papers (CP) at 41.

Manslaughter—First Degree—Reckless—Definition. WPIC 28.01:

A person commits the crime of manslaughter in the first degree when he or she recklessly causes the death of another person [~~unless the killing is excusable~~]{or}{justifiable}].

CP at 43.

intentional murder and manslaughter. In the alternative, the trial court instructed the jury on felony murder based on assault. The trial court gave the jury no instructions on George's self-defense theory. Nevertheless, the jury acquitted George of first degree murder and was unable to reach a verdict on intentional second degree murder. Instead, the jury found him guilty of first degree manslaughter, count I, or in the alternative, second degree felony murder, count II. The jury also found that George had been armed with a firearm while committing either alternative charge.

Noting the firearm, the trial court sentenced George to the top of the standard range: 220 months of confinement for felony murder, plus an additional 60 months for the firearm enhancement. George appeals.

ANALYSIS

I. Self-Defense Instruction

George argues that the trial court committed reversible error by refusing to instruct the jury on the law of self-defense because there was some evidence which, if believed by the jury, would have shown that George acted on a reasonable apprehension of great bodily harm and imminent threat. We agree.

A. Standard of Review

The standard of review for a trial court's refusal to instruct the jury on self-defense depends on whether the reason for such refusal was based on fact or law. *State v. Walker*, 136 Wn.2d 767, 771-72, 966 P.2d 883 (1998).

If the trial court refused to give a self-defense instruction because it found no evidence supporting the defendant's subjective belief of imminent danger of great bodily harm, an issue of fact, the standard of review is abuse of discretion. If the trial court refused to give a self-defense instruction because it found *no reasonable person in the defendant's shoes would have acted as the defendant acted*, an issue of law, the standard of review is de novo.

State v. Read, 147 Wn.2d 238, 243, 53 P.3d 26 (2002) (citing *Walker*, 136 Wn.2d at 771-72) (emphasis added). This second "reasonable person" test involves interrelated issues of law and fact because the court must place itself in the defendant's shoes and analyze the facts and circumstances known to the defendant but then determine what a reasonable person would do. *Read*, 147 Wn.2d at 243.

Here, the trial court refused to give a self-defense instruction to the jury, not because of a factual dispute, which is reviewable only for abuse of discretion. Rather, the trial court ruled as a matter of law that, despite how George had subjectively perceived the situation, he did not meet the objective "reasonable person" test. VRP (Feb. 10, 2009) at 1385. Therefore, we review de novo the trial court's refusal to give George's requested self-defense instructions. *Walker*, 136 Wn.2d at 771-772 (citing *State v. Lucky*, 128 Wn.2d 727, 731, 912 P.2d 483 (1996), *overruled on other grounds by State v. Berlin*, 133 Wn.2d. 541, 544, 947 P.2d 700 (1997)). In so doing, we consider the factual evidence in the light most favorable to George. *State v. Jelle*, 21 Wn.

App. 872, 873, 587 P.2d 595 (1978).

B. The Defendant's Burden: Some Evidence of Self-Defense

When a defendant in a murder prosecution claims self-defense and asks the trial court to instruct the jury on self-defense, the defendant has the burden of introducing some evidence demonstrating that (1) the killing occurred in circumstances amounting to defense of life, and (2) he had a reasonable apprehension of great bodily harm and imminent danger. RCW 9A.16.050⁸; *State v. Walden*, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997). The trial court must view the evidence in the light most favorable to the defendant. *State v. Callahan*, 87 Wn. App. 925, 933, 943 P.2d 676 (1997). The defendant's burden of "some evidence" of self-defense is a low burden. *State v. Janes*, 121 Wn.2d 220, 237, 850 P.2d 495 (1993). Indeed, the evidence need not even create a reasonable doubt.⁹ *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983). But a self-defense instruction is not available to an aggressor. *Walden*, 131 Wn.2d at

⁸ RCW 9A.16.050 provides:

Homicide is also justifiable when committed either: (1) In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother, or sister, or of any other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or (2) In the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling, or other place of abode, in which he is.

⁹ But, if

there is no reasonable ground for the person attacked . . . to believe that his person is in imminent danger of death or great bodily harm, and it appears to him that only an ordinary battery is all that is intended, he has no right to repel a threatened assault by the use of a deadly weapon in a deadly manner.

Walden, 131 Wn.2d at 475.

482-83.

The trial court determines whether the jury should receive a self-defense instruction by applying a mixed analysis, with both subjective and objective components. *Read*, 147 Wn.2d at 242-43; *Janes*, 121 Wn.2d at 238. The subjective component requires the trial court to place itself in the defendant's shoes and to view the defendant's actions in light of all the facts and circumstances known to the defendant. *Walker*, 136 Wn.2d at 772. The objective component requires the trial court to determine what a reasonably prudent person would have done in the defendant's situation. *Walker*, 136 Wn.2d at 772-73. The imminent threat of great bodily harm does not actually have to be present, so long as a reasonable person in the defendant's situation could have believed that such threat was present. *See State v. LeFaber*, 128 Wn.2d 896, 900-01, 913 P.2d 369 (1996), *abrogated on other grounds by State v. O'Hara*, 167 Wn.2d 91 (2009). Thus, considering both the subjective and objective components, the trial court must determine (1) whether the defendant produced any evidence to support the claim he or she subjectively believed, in good faith, that he or she was in imminent danger of great bodily harm; and (2) whether this belief, viewed objectively, was reasonable. *Walker*, 136 Wn.2d at 773.

George argues that, taken in the light most favorable to him, he produced sufficient evidence that his fear was reasonable. We agree. Examining this issue de novo, the subjective component requires us to place ourselves in George's shoes and to view his actions in light of all the facts and circumstances known to him. *Walker*, 136 Wn.2d at 772. George encountered Clark after being abruptly awakened by calls for help from his best friend's girlfriend (Dickman).

George awoke to see Millender confronting his best friend, apparently checking McGrew for weapons, and punching him. Although George did not know the people confronting McGrew or himself, he quickly understood that the confrontation and Millender's anger with McGrew concerned the murder of Millender's friend, which frightened George even more.

George testified that he felt intimidated by Clark's expression, larger size, and bloodshot eyes, from which George concluded that Clark was under the influence of drugs. George rightly understood Clark to be acting in support of Millender and believed that Clark carried a weapon, particularly after Clark hit him so hard that he believed Clark must have hit him with an object. Clark's blow caused George to fall; and although that blow was not by itself life-threatening, the danger appeared to be rapidly escalating. George felt that under the circumstances, he "was going to die." XI VRP at 1234.

George, who had been unarmed, had fallen halfway into McGrew's vehicle. With the larger Clark on top of him, George retrieved his gun from his jacket on the backseat and pointed it at Clark, hoping that Clark would be afraid and thus stop his attack. But Clark showed no fear of the gun, and George fired. Clark's grip on George's arm then tightened, and Clark pulled George out of the vehicle, causing George to feel even more fearful, recalling, "I just remember his face just coming at me." XI VRP at 1238. So George fired again. Clark did not let go of George until all the shots were fired.

Considering these facts, we find unpersuasive the State's comparisons to *Walker*, in which the facts differ markedly.¹⁰ *Walker*, for example, was a willing participant, who intentionally engaged in mutual combat with the victim. Having previously discovered his wife's affair, *Walker* initially confronted his wife's lover in the lover's yard across the street. The man pushed *Walker* back with his stomach and "head-butted" him, after which *Walker* returned to his own home. *Walker*, 136 Wn.2d at 769. *Walker* had no reasonable grounds to fear great bodily harm from this man. *Walker*, 136 Wn.2d at 778. Yet, despite some cooling-off time, in complete safety and in specific preparation for combat with his wife's lover, *Walker* purposefully armed himself with a knife, and chose to return outside. After, his rival called across the street to him, *Walker* accepted his invitation to reengage in a fight. *Walker*, 136 Wn.2d at 770.

Applying the *Walker* test here, we examine whether a reasonably prudent person would have acted as George did in his situation. *Walker*, 136 Wn.2d at 772-73. We note that an imminent threat of great bodily harm need not actually have been present, so long as a reasonable person in George's situation would have believed that such threat was present. *LeFaber*, 128 Wn.2d at 899-900. We weigh whether George reasonably felt an imminent threat of great bodily harm within the context of his circumstances: Dickman's waking up George with a plea for help; Millender's patting down McGrew, which implied armed violence; Millender's punching McGrew

¹⁰ The similar facts are not relevant to the critical "instigator" distinction: Like Clark, *Walker*'s victim was larger and stronger; thus, *Walker*, like George, armed himself, both asserting self-defense. *Walker*, 136 Wn.2d at 770. Unlike *Walker*, however, George did not instigate the fight that resulted in the death of the unarmed larger man.

and the ensuing scuffle between the two; the confrontation being about the murder of Millender's friend; George's previous experiences of people shooting at him; his belief that Clark was armed; and the larger Clark's advancing toward George, appearing to be under the influence of drugs, knocking George down with what George felt was some sort of object, and then getting on top of George halfway inside McGrew's car, into which George had fallen, and pulling George back outside the car. In *Walker*, the Supreme Court affirmed the trial court's refusal of Walker's requested self-defense instructions, holding that no evidence supported Walker's claimed fear of great bodily harm and, "[i]n essence, Walker took a knife to a fistfight." *Walker*, 136 Wn.2d at 776. Here, in contrast, from George's point of view, a potentially deadly encounter came to him.

The facts as they reasonably appeared to George, namely an "imminent threat" of great bodily harm, outweigh the facts emphasized by the trial court, namely Clark's limited physical battery of George. In its reasoning, the trial court discounted the contextual circumstances. For example, the trial court said, "Not a blow that was with sufficient force to cause him to lose consciousness, but a blow that simply knocked him either off his feet or into the car." VRP (Feb. 10, 2009) at 1381. Imminent threat is not necessarily an immediate threat but instead acknowledges the circumstance of "hanging threateningly over one's head; menacingly near." *Janes*, 121 Wn.2d at 241 (quoting Webster's Third New International Dictionary 1130, 1129 (1976)).

Nor does imminent threat require any actual physical assault, let alone an attempted lethal assault. *Janes*, 121 Wn.2d at 241 (citing *Walker*, 40 Wn. App. 658, 663, 700 P.2d 1168 (1985)

review denied, 104 Wn.2d 1012 (1985)). Here, as the trial court correctly opined, “[Y]ou don’t shoot somebody for hitting you.” VRP (Feb. 10, 2009) at 1382. Nevertheless, the trial court mischaracterized the situation as it appeared to George, especially by incorrectly assuming that Clark’s initial physical battery of George offered the only justification for his fear. George, in contrast, justified his fear by showing dangerous circumstances with the danger escalating.

George’s trial counsel expressly objected to the trial court’s refusal to give the jury a self-defense instruction, stating, “I believe the Court is putting itself into the position of the trier of fact . . . as far as whether or not my client was acting in self-defense.” VRP (Feb. 10, 2009) at 1384-85. We agree. It is not the trial court’s prerogative to resolve the question of whether a defendant in fact acted in self-defense. George’s evidence ultimately may not have been sufficient to create a reasonable doubt in the jury’s mind about the charged homicide; nevertheless, a trial court may not deny a self-defense instruction where credible evidence exists to support giving such instruction. *McCullum*, 98 Wn.2d at 488.

To ensure due process to a criminal defendant, a trial court must provide considerable latitude in presenting his theory of his case; more specifically, a trial court should deny a requested jury instruction that presents a defendant’s theory of self-defense only where the defense theory is completely unsupported by evidence, which was not the case here. *State v. Barnes*, 153 Wn.2d 378, 382, 103 P.3d 1219 (2005). We recently articulated the constitutional due process aspects of a defendant’s right to present his theory of the case in the context of jury instructions as follows:

Due process requires that jury instructions (1) allow the parties to argue all

theories of their respective cases supported by sufficient evidence, (2) fully instruct the jury on the defense theory, (3) inform the jury of the applicable law, and (4) give the jury discretion to decide questions of fact.

State v. Koch, 157 Wn. App. 20, 33, 237 P.3d 287 (2010) (citations omitted), *review denied*, 245 P.3d 773 (2011). Consistent with the Supreme Court’s decision in *Barnes*, we held that “at the very least, the instructions must reflect a defense arguably supported by the evidence.” *Koch*, 157 Wn. App. at 33 (citing *Barnes*, 153 Wn.2d at 382).

Acknowledging George’s well-settled constitutional right to present his theory of self-defense, sufficiently supported by the record, and examining the record de novo in the light most favorable to him, we hold that (1) George’s evidence of his fear of imminent death or great bodily harm was objectively reasonable; and (2) therefore, it was reversible error for the trial court to refuse to instruct the jury on self-defense, thereby precluding the jury from considering whether George acted in self-defense when he shot Clark.

II. Evidentiary Rulings

For the first time on appeal, George makes three evidentiary arguments, which, he acknowledges, “standing alone, do not warrant reversal.” Br. of Appellant at 2. Although these evidentiary questions are generally likely to arise during retrial on remand, their context will surely differ. Therefore, we neither address nor rule on these non-prejudicial, unpreserved evidentiary issues.

III. Additional Arguments

Relying on *State v. Wilburn*, 51 Wn. App. 827, 829-30, 755 P.2d 842 (1988), George argues in his SAG that, because the State did not file a timely brief as required by RAP 10.2(c), we should limit our review to whether his attorney's brief made a prima facie showing of reversible error and that we should sanction the State. This argument fails.

First, the State did not violate RAP 10.2(c). Instead, the State moved for an extension of time to file its brief, attached a detailed affidavit in support, and served George a copy of its motion. We granted this motion, just as we granted George's motion for an extension of time to file his brief under RAP 18.8.

Next, even if the State had not timely filed its brief, George confuses his argument that the State filed a late brief with circumstances where a party fails to file any brief, in which case RAP 11.2(a) bars that party from presenting oral argument. Moreover, in arguing that where the respondent has failed to file a brief, we must limit review to whether the appellant's brief makes a prima facie showing of reversible error, the precedent on which George relies has been superseded.¹¹ In *Adams v. Dep't. of Labor and Indus.*, 128 Wn.2d 224, 905 P.2d 1220 (1995), our Supreme Court held that where a party fails to submit a brief, an appellate court (1) is entitled to make its decision based on oral argument, argument in the parties' briefs, and the record before it; and (2) is no longer confined to reviewing whether the appellant has made prima facie showing of reversible error. *Adams*, 128 Wn.2d at 229. Here, the State submitted a timely brief;

¹¹ See *State v. Wilburn*, 51 Wn. App. 827, 829-30, 755 P.2d 842 (1988), superseded by *Adams v. Dep't. of Labor and Indus.*, 128 Wn.2d 224, 229, 905 P.2d 1220 (1995).

No. 39085-0-II

thus, no sanctions are appropriate, and there is no corresponding need to curtail our decision making process.

Reversed and remanded for a new trial.

Hunt, J.

I concur:

Van Deren, J.

Armstrong, J. (dissenting) — Because I do not agree that George established he was entitled to a self-defense instruction, I respectfully dissent.

A defendant cannot present a self-defense instruction to the jury without first producing some evidence that he feared an imminent threat of great bodily harm and that his fear was objectively reasonable. *See State v. Walker*, 136 Wn.2d 767, 772-73, 966 P.2d 883 (1998). “The importance of the objective portion of the inquiry cannot be underestimated. Absent the reference point of a reasonably prudent person, a defendant’s subjective beliefs would always justify the homicide.” *Walker*, 136 Wn.2d at 772. A simple battery cannot justify the taking of a human life unless the facts of a particular case show a reasonable person in the defendant’s shoes could have reasonably believed that great bodily harm would result from the battery. *Walker*, 136 Wn.2d at 774-75. If there is no reasonable ground for the person attacked to believe that he “is in imminent danger of death or great bodily harm, and it appears to him that only an ordinary battery is all that is intended,” then he has no right to repel the assault with deadly force. *Walker*, 136 Wn.2d at 777 (quoting *State v. Walden*, 131 Wn.2d 469, 475, 932 P.2d 1237 (1997)) (emphasis omitted).

Here, George produced no evidence demonstrating that his fear that Clark posed an imminent threat of death or great bodily harm was objectively reasonable. George shot Clark four times after Clark punched him once in the head and attempted to drag him out of the van. George did not know Clark and had no history with him, Clark made no verbal threats from which George could infer that he intended more than a simple battery, and George never saw Clark or any other

No. 39085-0-II

person produce a weapon. That the confrontation was related to the murder of a friend, a violent incident that occurred in another time and place, and that Millender patted down McGrew and failed to uncover a weapon, does not make it more likely that *Clark* was armed or posed an imminent threat of death or great bodily harm to *George*. Because George failed to offer any evidence from which a reasonable person could conclude that Clark intended anything beyond an ordinary battery, I would affirm the trial court's finding that George's fear was not objectively reasonable.

Armstrong, P.J.

APPENDIX G

September 21 2011 9:41 AM

KEVIN STOCK
COUNTY CLERK
NO: 05-1-00143-9

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

DMARCUS GEORGE,

Appellant.

No. 39085-0-II

MANDATE

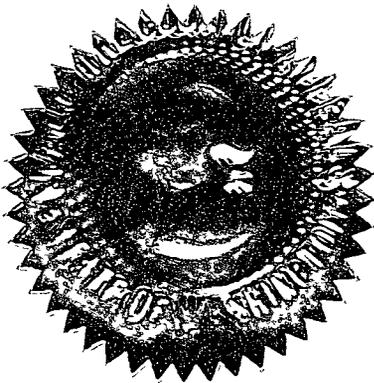
Pierce County Cause No.
05-1-00143-9

Court Action Required

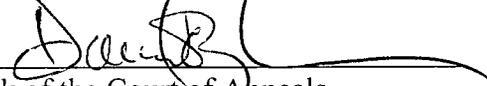
The State of Washington to: The Superior Court of the State of Washington
in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on April 8, 2011 became the decision terminating review of this court of the above entitled case on September 6, 2011. 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 20th day of September, 2011.


Clerk of the Court of Appeals,
State of Washington, Div. II

CASE #: 39085-0-II
State of Washington, Respondent v. Dmarcus George, Appellant
Mandate - Page

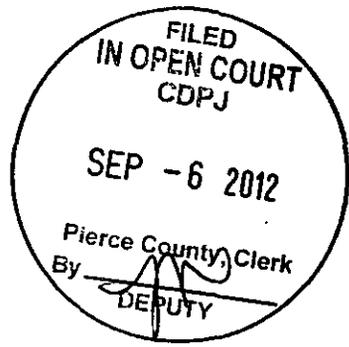
Hon. Katherine Stolz

Christopher Gibson
Nielsen Broman & Koch PLLC
1908 E Madison St
Seattle, WA, 98122-2842
gibsonc@nwattorney.net

Kathleen Proctor
Pierce County Prosecuting Atty Ofc
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2171
PCpatcecf@co.pierce.wa.us

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

APPENDIX H



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-00143-9

vs.

DMARCUS DEWITT GEORGE,

SECOND AMENDED INFORMATION

Defendant.

DOB: 2/9/1984
PCN#:

SEX : MALE
SID#: 22034454

RACE: BLACK
DOL#: WA GEORGDD167CZ

COUNT I

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

That DMARCUS DEWITT GEORGE, in the State of Washington, on or about the 21st day of June, 2004, did unlawfully and feloniously, with intent to cause the death of another person, Isaiah Clark, thereby causing the death of Isaiah Clark, a human being, and during said conduct, and in the commission thereof, the defendant and/or an accomplice was armed with a firearm as defined in RCW 9.41.010, to-wit: a handgun, thereby invoking the provisions of RCW 9.94A.310/9.94A.510, and adding time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, contrary to RCW 9A.32.050(1)(a), and against the peace and dignity of the State of Washington.

COUNT II

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

SECOND AMENDED INFORMATION-



ORIGINAL

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

1 That DMARCUS DEWITT GEORGE, in the State of Washington, on or about the 21st day of
2 June, 2004, did unlawfully and feloniously, while committing or attempting to commit the crime of
3 Assault in the First Degree or Assault in the Second Degree, and in the course of and in furtherance of
4 said crime or in immediate flight therefrom, did shoot Isaiah Clark, and thereby causing the death of
5 Isaiah Clark, a human being, not a participant in said crime, and during said conduct, and in the
6 commission thereof, the defendant and/or an accomplice was armed with a firearm as defined in RCW
7 9.41.010, to-wit: a handgun, thereby invoking the provisions of RCW 9.94A.310/9.94A.510, and adding
8 time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, contrary to RCW
9 9A.32.050(1)(b), and against the peace and dignity of the State of Washington.

10 DATED this 5th day of September, 2012.

11 PIERCE COUNTY SHERIFF
12 WA02700

13 MARK LINDQUIST
14 Pierce County Prosecuting Attorney

15 fcw

16 By: 
17 FRED C. WIST
18 Deputy Prosecuting Attorney
19 WSB#: 23057

APPENDIX I

0059
9446
9/9/2014



IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 05-1-00143-9

vs

Memorandum of Journal Entry

GEORGE, DMARCUS DEWITT

Judge/Commissioner: RONALD E. CULPEPPER
Court Reporter: KARLA JOHNSON
Judicial Assistant: ANGELA EDWARDS

KATHLEEN PROCTOR
BARBARA L. COREY

Prosecutor
Defense Attorney

Proceeding Set: JURY TRIAL
Proceeding Outcome: HELD
Resolution: Convict JV After Trial

Proceeding Date: Aug 11, 2014 9:00 AM

Clerk's Code: JTRIAL
Proceeding Outcome code: **HELD**
Resolution Outcome code:
Amended Resolucton code:

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON
vs
GEORGE, DMARCUS DEWITT

Cause Number: 05-1-00143-9
Memorandum of Journal Entry

Judge/Commissioner: RONALD E. CULPEPPER

MINUTES OF PROCEEDING

Start Date/Time: Aug 11, 2014 9:39 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 11, 2014 09:38 AM - This matter comes on today for trial. DPA Kathleen Proctor and Jesse Williams present on behalf of state. Defense attorneys Barbara Corey and Warren Corey Boulet present with/for defendant. Defendant present today incustody. Court addresses questoinnaires and second amended information. **09:40 AM** - Argument on state and defense proposed questionnaires. **10:01 AM** - Witnesses listed on questionnaire addressed. **10:08 AM** - Cross reference of changes to questionnaire by court/counsel for clarification. **10:09 AM** - State will make the changes and run copies of the questionnaire. Length of trial estimated at 3 weeks. **10:10 AM** - DPA Proctor addresses state witness scheduling issues. Dr. Howard addressed. Material witness now in PC jail on new charges. Witness Daniel Brooks addressed; hearing may be needed in re mental health status. Argument. Letter from wife of D. Brooks and nurse practitioner presented to court for review. Defense advises it does have a copy of these and asks they be made part of the record. Defense requesting hearing with this witness (s) outside the presence of jurors at some point. Court grants; will handle sometime Wednesday first in a.m or later in p.m. **10:20 AM** - 60 jurors will be brought up this p.m. for distribution of questionnaires.

**** STATE'S MOTIONS IN LIMINE **** #4 - reserved. #5 - reserved. #7 - reserved. #8 - granted. #9 - denied in part; will ask state to try to refer to "Mr. Clark" or "decedent". Defense argument in re same in re "what law enforcement uses" - denied. #11 - court directs state provide up-to-date conviction lists on witnesses. Defense asks up-to-date- conviction data through today. Granted. ** DPA Williams leaves courtroom - verdict in Dept 7 ** Court takes brief break to address a presiding issue.

End Date/Time: Aug 11, 2014 10:47 AM

MINUTES OF PROCEEDING

Start Date/Time: Aug 11, 2014 10:52 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 11, 2014 10:51 AM - Court reconvenes. #13 - reserved. #14 - duplicative/reserved. #15 - argument; reserved. #16 - granted in re case in chief; will readdress if takes the stand, outside jury presence. #17 - reserved. **11:02 AM** - #18 - argument; reserved.

11:04 AM - **** DEFENSE MOTIONS IN LIMINE **** (November set): #16 - reserved. #17 - Argument; reserved. **11:17 AM** - **Additional STATE'S MOTIONS IN LIMINE (in state's trial brief)** - #1 - granted. #2 - granted; no defense obj. #3 - granted; no defense obj. #4 - granted; no defense obj. State will admonish in re "gang" or refer to "nicknames". #5 - defense ask court to reserve; granted. #B - defense asks court to reserve. Court grants #B, with understanding that Atty Corey can re-open this issue if needed. #C - granted. #D - State advises it will not be calling Detective Wood. Argument. May readdress if called. **11:27 AM** - Detective Ames addressed by Atty Corey. Argument. **11:32 AM** - Court preliminarily excludes this evidence; if called, may readdress. **11:34 AM** - Court adjourns for lunch break.

End Date/Time: Aug 11, 2014 11:34 AM

Start Date/Time: Aug 11, 2014 2:00 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 11, 2014 02:00 PM - All parties present. 60 jurors escorted into courtroom for voir dire. Introductions. **02:00 PM** - Initial oath given. Court voir dire.

02:03 PM - Length of trial advised; conflicts addressed. **02:09 PM** - Court inclined to excuse 2nd week jurors; no objection by counsel; jurors #2, 11, 15, 16, 34 and 55; thanked and excused; directed to return to jury admin for further directives. Court voir dire continues. **02:16 PM** - Questionnaire addressed. Juror #12 asks for assistance in completing jury questionnaire/unable to write. Court directs JA to inquire of jury admin for assistance. **02:23 PM** - Jurors excused to return to jury administration to fill out jury questionnaires; return to jury admin tomorrow by 9am. **02:26 PM** - Jury to be empaneled by Wednesday pm. Defense asks that state to advise of next day's witness by end of day prior; granted. **02:27 PM** - Defense has no objection to excusing juror #56

MINUTES OF PROCEEDING

Start Date/Time: Aug 11, 2014 2:00 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

(reading juror conflict sheets). State has no objection. Court grants; juror #56 excused. JA advised jury admin to excuse. Juror #12 discussed; will individually inquire if necessary. **02:33 PM** - Court adjourned until 9am tomorrow morning.

End Date/Time: Aug 11, 2014 2:33 PM**Start Date/Time: Aug 12, 2014 9:31 AM**

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 12, 2014 09:30 AM - All parties present. **Juror #22 excused by stipulation**; car accident last night. Juror #44 addressed. Discussion in re jurors to be brought up for individual inquiry. **09:35 AM** - Jurors 1,5,7,12,13,18,19,20,25,33,42 and 57 will be brought up for individual inquiry. **09:45 AM** - Jurors brought out individually beginning with juror #1. **10:12 AM** - Defense challenge for cause in re juror #5; argument by defense/state. Court denies challenge for cause in re juror #5. **10:19 AM** - After inquiry of **juror #7, court excuses for cause**; no objections. **10:49 AM** - Court takes an a.m. break.

End Date/Time: Aug 12, 2014 10:49 AM**Start Date/Time: Aug 12, 2014 10:58 AM**

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

12:07 PM - August 12, 2014 10:57 AM - Court reconvenes. Atty Corey advises that her co counsel, Warren Corey Boulet will not be present this pm; case in Olympia. Individual inquiry proceeds. Juror #20 seated in jury box. **11:14 AM** - After inquiry, defense moves to excuse juror # 25 for cause; state obj. Court denies defense motion. **11:21 AM** - After inquiry, defense moves to excuse juror #33 for cause; State obj. Court grants motion; juror #33 excused for cause. **11:22 AM** - After inquiry, court is inclined to excuse juror #42 for cause/hardship; no objections. Court excuses juror #42 for cause. **11:28 AM** - Court compares notes with counsel as to jurors excused up to this point.

11:37 AM - 49 remaining jurors escorted into courtroom for continued voir dire. Court inquires

 MINUTES OF PROCEEDING

Start Date/Time: Aug 12, 2014 10:58 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

of juror #44 (familiar w/ judge and attorney for a witness). Court voir dire continues. **12:06 PM** - Court releases jurors for lunch break; cautionary instructions reiterated; directed to return to jury administration by 1:15 pm. Court addresses issue of "race" as brought up during individual inquiry by two jurors and whether it should be addressed during voir dire. Court hears from counsel. DPA Proctor suggests addressing "dog allergies" as juror #12 (during individual inquiry) is seeking to bring in a service dog if seated. Atty Corey suggests inquiring about former employment of retired jurors. Court adjourns for lunch.

End Date/Time: Aug 12, 2014 12:11 PM

Start Date/Time: Aug 12, 2014 1:35 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 12, 2014 01:35 PM - Court reconvenes. Atty Corey addresses court in re "service dog" request; mentioning size of dog to jurors. Court notes. No state objection to court mentioning.

01:37 PM - DPA Proctor addresses subpoena for federal employees (witness/nurse). **01:43 PM** -

Jurors escorted into jury room for continued voir dire. Court advises potential jurors of possible large service dog and any allergies.. no issue advised. **01:44 PM** - Court voir dire continues. **01:**

47 PM - STATE VOIR DIRE BY DPA JESSE WILLIAMS .02:03 PM - Atty Corey objection to state

instructing jury; sustained. **02:14 PM - DEFENSE VOIR DIRE BY ATTY BARBARA COREY. 02:**

34 PM - DPA Proctor objection; sustained/rephrase. **02:35 PM - 2ND ROUND STATE VOIR DIRE**

BY DPA KATHLEEN PROCTOR. 02:37 PM - Atty Corey objection to asking questions that are fact

specific/asking jury to speculate; sustained. **03:02 PM** - Court takes a pm break; cautionary instructions reiterated.

End Date/Time: Aug 12, 2014 3:02 PM

Start Date/Time: Aug 12, 2014 3:18 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 12, 2014 03:18 PM - Court reconvenes. Parties/jurors all returned and seated. DEFENSE 2ND ROUND JURY VOIR DIRE BY ATTY COREY.

MINUTES OF PROCEEDING

Start Date/Time: Aug 12, 2014 3:18 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

03:53 PM - STATE 3RD ROUND VOIR DIRE BY DPA JESSE WILLIAMS. 03:54 PM - Atty Corey objections to type of questions; covered by motions in limine; overruled.

04:07 PM - Sidebar at court's request. 04:08 PM - Jurors released for the day; cautionary instructions reiterated. Directed to report to jury admin by 9:15 a.m. tomorrow morning.

Juror #12 asked to remain in courtroom. Court advises juror #12 that after discussing w/ counsel; ok for him to bring in service dog tomorrow if he wishes. Sidebar issue put on record. **04:11 PM - Court adjourns for the day.**

End Date/Time: Aug 12, 2014 4:14 PM

Start Date/Time: Aug 13, 2014 9:30 AM

Judicial Assistant: Dan Vessels

Court Reporter: KARLA JOHNSON

August 13, 2014 09:30AM - DPA Kathleen Proctor and Jesse Williams present on behalf of state. Defense attorneys Barbara Corey and Warren Corey Boulet present with/for defendant. 09:38 AM - Court addresses parties regarding Juror Conflict slip from Juror #40. Parties respond. 09:41 AM - Jury Venire seated. Court addresses Jury Venire regarding conflict slips. 09:42 AM - Court thanks and excuses Juror #58. 09:43 AM - Court addresses Jury Venire regarding additional scheduling conflicts. 09:47 AM - Court takes brief recess to allow Jury Venire to take restroom break.

09:55 AM - Court reconvenes. 09:55 AM - Attorney Barbara Corey resumes Voir Dire. 10:23 AM - Objection by DPA Proctor to question proposed by attorney Corey. Attorney Corey to rephrase question and resume Voir Dire. 10:28 AM - DPA Proctor resumes Voir Dire. 10:50 AM - Attorney Barbara resumes Voir Dire. 10:59 AM - Court addresses jury venire regarding jury selection process. 11:01 AM - Court inquires with parties regarding challenges for Cause. Parties respond and note they have no challenges for cause. 11:02 AM - Court takes brief recess to allow parties to review and discuss peremptory challenges.

MINUTES OF PROCEEDING

Start Date/Time: Aug 13, 2014 9:30 AM

Judicial Assistant: Dan Vessels

Court Reporter: KARLA JOHNSON

End Date/Time: Aug 13, 2014 11:10 AM

Start Date/Time: Aug 13, 2014 11:32 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 13, 2014 11:31 AM - Sidebar at counsels request. Peremptories continue at counsel table. **11:39 AM** - Sidebar to discuss final panel. **11:45 AM** - Court addresses re impaneled jurors. **11:46 AM** - Jurors empaneled as follows:

1, 4,8,9,10,12,13,17,18,20,24,28,31,32. Remaining jurors thanked and released; directed to return to jury admin for further directives. **11:49 AM - 14 member jury sworn**. Court gives oral preliminary instructions. **12:01 PM** - Jurors escorted in to jury room by JA for additional jury room instructions. Jurors released with cautionary instructions; directed to return to Dept 17 jury room by 1:15 pm.

End Date/Time: Aug 13, 2014 12:41 PM

Start Date/Time: Aug 13, 2014 1:58 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 13, 2014 01:58 PM - Court reconvenes. All parties present (Defense co-counsel, Warren Corey Boulet not present this pm).

01:58 PM - STATE OPENING STATEMENT BY DPA KATHLEEN PROCTOR.

02:13 PM - (Atty Warren Corey Boulet enters courtroom/joins defense counsel at this time).

02:23 PM - DEFENSE OPENING STATEMENT BY ATTY BARBARA COREY. 02:38 PM -

MINUTES OF PROCEEDING

Start Date/Time: Aug 13, 2014 1:58 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

DPA Proctor objects to nature of argument; sustained. **02:40 PM** - DPA Proctor objection - argumentative nature; sustained. **02:43 PM** - DPA Proctor objection - argumentative nature; sustained.

02:45 PM - Jurors excused; cautionary instructions reiterated. Directed to return to Dept 17 jury room by 9:10 tomorrow a.m. Court takes a break to await witness for hearing.

End Date/Time: Aug 13, 2014 2:50 PM

Start Date/Time: Aug 13, 2014 3:10 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 13, 2014 03:10 PM - Court reconvenes. Hearing in re the Availability of Witness Daniel Brooks proceeds. **03:10 PM - Alice Faye Brooks, wife of Witness Daniel Brooks, sworn/testified under direct examination by DPA Proctor.**

03:12 PM - Atty Corey objection - lack of foundation; overruled. **03:13 PM** - Atty Corey asks that questions be confined to a specific time period; overruled/but state cautioned.

 MINUTES OF PROCEEDING

Start Date/Time: Aug 13, 2014 3:10 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

03:20 PM - Cross examination by Atty B, Corey. 03:2 PM -Court inquires of witness for clarification. **03:29 PM** - Witness excused. State requests hearing from Dr. Ward; granted. State will look into scheduling. **03:32 PM** - Tomorrow's witness scheduling discussed. Court is adjourned; parties directed to return by 9am tomorrow or shortly thereafter.

End Date/Time: Aug 13, 2014 3:34 PM

Start Date/Time: Aug 14, 2014 9:33 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 14, 2014 09:32 AM - Court reconvenes. Court advises seated juror #14's service dog is present today; half day only. Seated juror #9 is unable to get child care for Monday, 8/18, this matter will be in recess that day. DPA Proctor addresses witnesses. We will plan to resume the Witness Availability hearing on Monday morning. Atty Corey addresses State marked exhibits (photos)/ duplicative - #79 and #80. #75 also addressed. **09:36 AM** - Court will not disallow use of any at this time.**09:39 AM** - Jurors seated in jury box.

09:40 AM - ST WIT John D. Howard, Forensic Pathologist/Medical Examiner - Spokane County, sworn/testified under direct examination by DPA Williams. 09:45 AM - ST EXH #91 presented to witness for i.d./reference. **09:47 AM** - Witness presented with ST EXH's #99-102, 90, 89,86,85,81,84,83,82,77,76,78,80,79,88,87,75 and 74 for i.d./reference.

09:48 AM - State offers. Atty B. Corey request brief voir dire - granted. Addresses ST EXH's # 99 - #102. No objection by defense. **Court admits ST EXH's as listed above.** DPA Williams renames all he is offering for defense. Court admits. Atty Corey objection - compound question; overruled. **09:58 AM** - DPA Williams seeks to publish admitted exhibits listed above; granted. Request withdrawn at this time. **10:13 AM** - Previously admitted ST EXH's 99, 74, 100 and 101 presented to witness for i.d. - State seeks to publish to jury by passing; granted. **10:16 AM** - Previously admitted ST EXH #75, 87, 88 published on ELMO.

MINUTES OF PROCEEDING

Start Date/Time: Aug 14, 2014 9:33 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

10:20 AM - ST EXH #43A presented to witness for i.d./ offered. No defense obj. **Court admits ST EXH #43A.** Witness presented with presented with previously admitted ST EXH's # 79,80 and 76. ST EXH #76 published on ELMO. Previously admitted ST EXH's #79 and #80 published on ELMO. **10:24 AM** - Previously admitted ST EXH #77 presented to witness for i.d./ referral; published on ELMO. **10:28 AM** - ST EXH #43C presented to witness for i.d.; offered. No defense objection. **Court admits ST EXH #43C.** Previously admitted ST EXH's #82-#84, presented to witness for i.d. Published on ELMO. Previously admitted ST EXH #81 and #78 presented to witness for i.d. ST EXH #81 published on ELMO. **10:33 AM** - ST EXH #43B presented to witness for i.d.; offered. No defense obj. **Court admits ST EXH #43B.** Previously admitted ST EXH #'s 85, 86 and 89 presented to witness for i.d. ST EXH #86 published on ELMO. ST EXH #89 published on ELMO. **10:37 AM** - Previously admitted ST EXH #90 presented to witness for i.d.; published on ELMO. **10:39 AM** - ELMO turned projector off. **10:46 AM** - Court takes an a.m. break.

End Date/Time: Aug 14, 2014 10:47 AM

Start Date/Time: Aug 14, 2014 11:05 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 14, 2014 11:04 AM - Court reconvenes. Jurors seated in jury box. Witness Howard retakes the witness stand. **Cross examination by Atty B. Corey.** 11:14 AM - DPA Williams objection (2) - sustained as to form of question/overruled. **11:15 AM** - DPA Williams objection to this line of questioning; sustained. Same objection; sustained.

11:21 AM - Re-direct by DPA Williams. **11:25 AM** - Atty B. Corey objection; beyond scope; overruled. **11:25 AM** - Atty B. Corey objection - beyond scope. State re-asks question. Same

MINUTES OF PROCEEDING

Start Date/Time: Aug 14, 2014 11:05 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

objection ; overruled. **11:28 AM** - Atty B. Corey objection; speculation/lack of relevance; if not speculating, overruled - state re-states question. Atty B. Corey objection - vague; overruled.

11:29 AM - Re-cross by Atty B. Corey. 11:31 AM - DPA Williams objection - sustained as irrelevant. **11:31 AM** - Atty Williams objection - asking witness to answer legal question; sustained. **11:36 AM** - Witness excused. No further state witnesses available this morning. Court excuses jurors with cautionary instructions; directed to return to Dept 17 by 1:20 p.m. Monday's adjournment reiterated. Court advised that Dept 17 will be covering in CDPJ on Monday; any hearing w/ witness Brooks will take place there.

End Date/Time: Aug 14, 2014 11:39 AM

Start Date/Time: Aug 14, 2014 1:38 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 14, 2014 01:38 PM - Court reconvenes. All parties present. (defense co-counsel not present). DPA Proctor presents a subpoena for the V.A. witness (Availability Hearing) ; signed. **01:39 PM** - JA calls CDPJ pit to have Atty Corey Boulet return to courtroom/trial. Court waits. Arrival. **01:43 PM - ST WIT Wahkeyta Rogers, sister of alleged victim, sworn/testified** under direct examination by DPA Proctor. **01:46 PM** - ST EXH #3 presented to witness for i.d. Offered; No defense objection. **Court admits ST EXH #3.** Motion to publish; granted. Witness shows ST EXH #3 to jury from witness stand.

01:47 PM - Cross examination by Atty W. Corey Boulet. State addresses court; Witness Rogers asks to remain in courtroom at this point; no objection; granted.

01:48 PM - ST WIT Wellington ("Bob") Hom, retired PCS Officer, sworn/testified under direct examination by DPA Proctor. **01:51 PM** - ST EXH #63, incident report, presented to witness for i.d./referral when necessary to refresh memory. **02:00 PM** - Atty B. Corey objection - hearsay; sustained. **02:02 PM** - ST EXH #63 presented to witness to allow to refresh memory.

MINUTES OF PROCEEDING

Start Date/Time: Aug 14, 2014 1:38 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

02:08 PM - Cross examination by Atty B. Corey. 02:10 PM - DEF EXH #103 (C.A.D.) presented to witness for i.d./referral. **02:12 PM** - Atty Corey requests permission to give witness a magnifying glass for assistance if reading document; granted. DPA Proctor provides pair of readers. **02:16 PM** - DPA Proctor objection - form of question; sustained. **02:19 PM** - DEF EXH #104 marked; presented to witness for i.d./referral.

02:27 PM - DEF EXH #105 (diagram of scene) marked; drawn by ST WIT Hom. **02:35 PM** - DPA Proctor objection to witness drawing any "cars" on diagram if he cannot recall details - sustained - may have witness re-draw on re-direct; cautions witness not to speculate.

02:39 PM - DPA Proctor objection - speculation (witness previously stated he had no recollection); sustained. **02:42 PM** - Atty Corey offers DEF EXH #105 for illustrative purposes only; no objection. **Court admits DEF EXH #105 for illustrative purposes.**

02:43 PM - Re-direct by DPA Proctor. **02:47 PM** - ST EXH #63 again provided to witness Hom to refresh memory. **02:49 PM** - DEF EXH #103 presented to witness for referral/refresh memory. **02:50 PM - Re-cross by Atty B. Corey.** **02:56 PM** - DPA Proctor obj - past scope of re-direct; sustained as to last question. Witness excused. Court excuses jurors to Dept 17 jury room for pm break; cautionary instructions reiterated. Court inquires of defense in re terminology - "prior trial". Court takes break.

End Date/Time: Aug 14, 2014 3:00 PM

Start Date/Time: Aug 14, 2014 3:16 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

03:48 PM - August 14, 2014 03:15 PM - Court reconvenes. Jurors seated in jury box. **ST WIT**

MINUTES OF PROCEEDING

Start Date/Time: Aug 14, 2014 3:16 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

Laura Devereaux (fka Kitchen) , legal assistant Pierce County Prosecutor's Office/witness at scene of crime, sworn/testified under direct examination by DPA Proctor. **03:17 PM** - Atty B.Corey objection - leading; Court to hear entire question; overruled. ST EXH #1 presented to witness for i.d. Offers for demonstrative purposes only; No objection by defense if details foundation will be laid later; **Court admits ST EXH #1 for demonstrative purposes.**

03:22 PM - Previously admitted ST EXH #3 presented to witness for i.d./unable to i.d.

03:40 PM - ST EXH #66 presented to witness for i.d./referral. **03:40 PM** - Atty B. Corey objection to witness being asked to "read" her statement to self; sustained. **03:43 PM** - ST EXH # 106 presented to witness for i.d./refresh memory. **03:43 PM** - ST EXH #106 again presented to witness; Atty Corey objection - was not asked if she had recollection; overruled.

03:48 PM - Witness will resume on Tuesday, 8/19, for cross examination by defense, as court will be adjourned on this case on Monday. Court gives cautionary instructions and direct jurors to be back in Dept 17 jury room on Tuesday, 8/19 by 9am.

Court inquires.. State advised testimony from VA nurse practitioner on Availability Hearing, will be Monday, 8/18 at 9:15 (in CDPJ). DPA Williams addresses court in re when defense transcripts will be provided or if they will be used. Atty Corey requests to know what witnesses will be called on Tuesday. DPA Proctor addresses criminal histories on witnesses has been completed and provided to opposing counsel. Atty Corey advises she has a bail hearing on Monday morning. DPA Williams addresses court in re rule of completeness request/opposing counsel. DPA Proctor suggests witness Devereaux leave courtroom at this time; granted. Further argument. Court is adjourned.

MINUTES OF PROCEEDING

Start Date/Time: Aug 14, 2014 3:16 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

End Date/Time: Aug 14, 2014 3:55 PM

Start Date/Time: Aug 18, 2014 9:29 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: ANN-MARIE ALLISON

August 18, 2014 09:29 AM - * Witness Availability Hearing continues /being held in CDPJ *

DPA Proctor present on behalf of state. Atty Barbara Corey and Atty Warren Corey Boulet present with/for in custody deft. ST WIT Paul Spataro, Psychiatric Nurse Practitioner/VA, sworn/ testifies under direct examiantion by DPA Proctor. **09:32 AM** - Atty Corey objection - no knowledge of heart condition; generally sustained, but will allow some inquiry. **09:33 AM** - Atty Corey objection - lack of foundation; overruled if able to answer. **09:34 AM** - No cross examination. **09:35 AM** - State advises in re testimony by Dr. Ward/Cardiologist; will know later today.

09:35 AM - Court adjourns until tomorrow a.m.

End Date/Time: Aug 18, 2014 9:36 AM

Start Date/Time: Aug 19, 2014 10:20 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 19, 2014 10:20 AM - All parties present. (Delay as defense attorneys had matters in CDPJ). ST Wit Laura Devereaux retakes the witness stand. Jurors seated in jury box. **Witness Devereaux resworn/testifies under cross examination by Atty B. Corey.** Witness Devereaux asked to step up to easel; asked to draw diagram of incident scene; marked as DEF EXH #108.

10:45 AM - Atty B. Corey offers DEF EXH #108 for illustrative purposes only; no state objection. **Court admits DEF EXH #108 for illustrative purposes.** State asks that witness sign and date exhibit - granted/done.

MINUTES OF PROCEEDING

Start Date/Time: Aug 19, 2014 10:20 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

10:56 AM - Re-direct by DPA Proctor. 10:57 AM - ST EXH #106 presented to witness for i.d./ referral. Offers; no defense objection. **Court admits ST EXH #106. State seeks to publish on ELMO - granted.** 10:58 AM - Defense obj - asked/answered on direct; overruled. 11:03 AM - Atty B. Corey obj - leading; sustained. ST EXH #110 presented to witness for referral. **11:07 AM - Re-cross by Atty B. Corey.** 11:13 AM - DPA Proctor objection - beyond the scope of redirect. Court asks to re-hear question; sustained.

11:17 AM - ST WIT Monica Johnson, sworn/testified under direct examination by DPA Williams. 11:19 AM - Atty B. Corey asks that court direct to ask specific questions versus narrative - granted. 11:22 AM - ST EXH #1, previously admitted, set on easel for witness referral. 11:24 AM - Atty Corey obj - leading; overruled. 11:33 AM - Witness i.d.'s defendant at counsel table for the record.

11:34 AM - Atty Corey objection; asked/answered - overruled. 11:36 AM - Atty Corey objection - answer not related to facts; overruled. 11:38 AM - Atty Corey objection - opinion testimony; improper - overruled. Same obj - outside case law; overruled. 11:39 AM - Atty Corey asks that these descriptions be stricken; overruled. 11:52 AM - Atty Corey objection - calls for speculation; sustained, also leading. 11:54 AM - Atty Corey - leading; overruled. 11:56 AM - Atty Corey obj. 11:56 AM - Atty Corey interjects; this may be a good time to break for lunch. Witness excused from witness stand/courtroom; to resume at 1:30 pm. Jurors excused to Dept 17 jury room; cautionary instructions reiterated. 11:58 AM - Atty Corey addresses court in witness statement in direct exam, wherein her objections were overruled; feels comments unfairly prejudicial. Asserts a "gang" term was used ("homey"); feels in violation of pre trial rulings. References state's opening statement. 12:01 PM - State argument by DPA Williams. 12:03 PM - Asks that court admonish Atty Corey as she is making constant audible "sighs". Noted. 12:04 PM - Reply argument by Atty Corey. **Court denies defense motions for mistrial.** Court asks state to instruct witness in re gang issues. This pm's witness scheduling addressed. 12:06 PM - Court is adjourned for lunch break.

End Date/Time: Aug 19, 2014 12:06 PM

MINUTES OF PROCEEDING

Start Date/Time: Aug 19, 2014 1:42 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 19, 2014 01:41 PM - Court reconvenes. DPA Proctor addresses court; has not received info from defense in re defendant's testimony. Court directs defense to make available to state by tomorrow morning. Jurors seated in jury box. Witness Johnson retakes the witness stand for continued direct examination by DPA Williams. **01:43 PM** - ST EXH #60 presented to witness; asked to read to self.

01:44 PM - Atty Corey asks that if witness memory is refreshed after referral, to then lay document down and then proceed; granted. **01:45 PM** - Atty Corey objection - hearsay; overruled.

01:45 PM - Same objection; court not sure yet if an issue. **01:46 PM** - ST EXH #51 (plastic bag containing a transcript and mini cassette tape); transcript presented to witness, referred to page 5 and asked to review. Atty Corey objection - hearsay; court asks to review transcript, page 5. **01:48 PM** - Defense objection of hearsay; overruled. **01:48 PM** - Court asks jurors to step into Dept 17 jury room. Court and counsel discuss objection and referral of witness and court to page 5 and what witness said on witness stand (that was not on page 5). **01:52 PM - Atty Corey motion for mistrial; no cure, prejudicial.**

01:54 PM - State argument by DPA Williams. **01:56 PM** - Atty Corey reply argument. State response; will sign stipulation. Atty Corey responds. **01:59 PM** - Court inquires of DPA Williams as to suggestions as to curative instruction. DPA Williams suggests a stipulation. Court takes a break to allow counsel to confer/draft language in a proposed stipulation.

End Date/Time: Aug 19, 2014 2:02 PM

Start Date/Time: Aug 19, 2014 2:32 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 19, 2014 02:31 PM - Court reconvenes. State has provided defense with it's proposed stipulation; reads to court. **02:32 PM** - Defense response by Atty B. Corey; reviews stipulation.

MINUTES OF PROCEEDING

Start Date/Time: Aug 19, 2014 2:32 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

Court inquires of state in re "McGrew". **02:35 PM** - Atty B. Corey continued response; reiterates defense feels this is an error that calls for mistrial. **02:38 PM** - Atty B. Corey requests time to speak with DAC M. High briefly; granted.

End Date/Time: Aug 19, 2014 2:38 PM

Start Date/Time: Aug 19, 2014 2:54 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 19, 2014 02:53 PM - Court recovenes. Atty Corey does not join in the state's propped stipulation. Court/state review defense proposed curative instruction. **02:54 PM** - Argument by Atty Corey.

02:58 PM - State argument by DPA Willilams; argues on behalf of his proposed curative instruction. Court interjects with it's suggestion for curative instruction; state has no objection to court's suggestion.

02:59 PM - Court inquires of Atty B. Corey; opposed to any curative instruction; mistrial sought. Asking leave to draft brief to bring motion for reconsideration; granted. Court drafts curative instruction it suggested. Court reporter reads last question/answer into the record. **03:01 PM** - Atty Corey asks to have the witness be brought into courtroom and reminded to listen to questions carefully; state objects; will remind witness. Court repeats the curative instruction it will read. Court denies defense motion for mistrial. **03:04 PM** - Jurors seated. **Court reads curative instruction to jury.**

03:05 PM - ST WIT Johnson retakes the witness stand. Direct examination by DPA Williams continues. **03:07 PM** - Atty Corey objection - hearsay; overruled. **03:09 PM** - ST EXH #48 (envelope that includes 48A, 48B and 48C) presented to witness for i.d./referral. Offers ST EXH # 48. Defense has no obj to ST EXH's 48A, 48B and 48C. State clarifies - only offering 48A and 48C. **Court admits ST EXH #48A and #48C. ST EXH #48A published on ELMO.** 03:13 PM -

MINUTES OF PROCEEDING

Start Date/Time: Aug 19, 2014 2:54 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

Witness asked to read the "admonishment" aloud (from ST EXH #48A). **03:13 PM** - ST EXH #48C handed to witness. **03:14 PM** - Atty Corey objection - leading; overruled. **03:15 PM** - ST EXH #48C published on ELMO. **03:16 PM** - ELMO turned off.

03:16 PM - Cross examination by Atty B. Corey. **03:22 PM** - Witness asked to step down and draw a diagram of incident scene on easel pad (marked as DEF EXH #11). **03:28 PM** - Atty B. Corey offers DEF EXH #111 for illustrative purposes. No state objection. **Court admits DEF EXH #111 for illustrative purposes.** **03:31 PM** - DEF EXH #112 presented to witness; asked to read page 3 of 6. JA asked to re-staple document so page numbers are visible by witness. **03:34 PM** - DPA Williams objection - not an accurate word for word recap; Atty Corey will re-ask. **03:36 PM** - DPA Williams objection - mistating. Court asks to re-hear. DPA Williams reiterates objection. Court asks Atty Corey to re-read section. **03:40 PM** - Witness directed to page 5 of 6 of DEF EXH #112; asked to read section to self. **03:47 PM** - DPA Williams objection - speculation; sustained. **04:04 PM** - Atty Corey suggests good point to break for the day. **Sidebar at court's request.** **04:05 PM** - Court excuses ST WIT Johnson for the day and take next witness out of order as expected to be short. **04:06 PM - ST WIT Michael Clark, brother of victim, sworn/testified** under direct examination by DPA Proctor.

04:11 PM - Cross examination by Atty Warren Corey Boulet. **04:11 PM** - DPA Proctor asks last answer be stricken; moves to strike. Court advises jury to disregard last response. **04:12 PM** - Witness excused. **Sidebar at court's request.** **04:13 PM** - Jurors excused for the day; cautionary instructions reiterated; directed to return to Dept 17 jury room by 9am tomorrow morning. **04:14 PM** - Sidebar issues put on record.

End Date/Time: Aug 19, 2014 4:18 PM

Start Date/Time: Aug 20, 2014 9:18 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

09:28 AM - August 20, 2014 09:18 AM - Court reconvenes. All parties present. Witness Johnson is not present yet, but another witness is present. **09:19 AM** - Atty B. Corey addresses

MINUTES OF PROCEEDING

Start Date/Time: Aug 20, 2014 9:18 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

admitted ST EXH #48C (montage); year of 1998 shows on document; seeking to redact. DPA Williams addresses; not objecting, but unsure if needed. **09:22 AM** - Court does not find necessary; request denied. **09:23 AM** - Atty B. Corey addresses D. Heishman. **09:28 AM** - Jurors seated in jury box. **ST WIT Brett C. Beal, former Shell station clerk, sworn/testified** under direct examination by DPA Proctor. **09:33 AM** - ST EXH #58 presented to witness for i.d./reference. **09:34 AM** - ST EXH #1, previously admitted for demonstrative purposes, put on easel for witness reference. **09:37 AM** - ST EXH's #5 - 9 (photos) presented to witness for i.d. Offered. No defense objection. **Court admits ST EXH's #5 - 9.** ST EXH #5, #6, #9 published on ELMO. **09:58 AM** - ST EXH #49 (plastic bag containing 2 receipts) presented to witness for i.d./referral. **10:02 AM** - State offers. No defense objection. **Court admits ST EXH #49.** **10:12 AM** - Atty Warrent Corey Boulet objection.

10:24 AM - Cross examination by Atty Warren Corey Boulet. Witness asked to draw a diagram of scene on easel pad; marked as ST EXH #113. **10:41 AM** - ST EXH #49, previously admitted, presented to witness for referral. **10:41 AM** - DPA Proctor objection - form of question; re-phrased. **10:43 AM** - Witness asked to make an additional indication on diagram, ST EXH #113. **10:43 AM** - Atty Corey Boulet offers ST EXH #113 for illustrative purposes. State has no objection if witness will write his name/date on exhibit. **Court admits ST EXH #113 for illustrative purposes only.**

10:46 AM - Atty Corey Boulet requests court take it's morning break; granted. Jurors excused to Dept 17 jury room; cautionary instructions reiterated.

End Date/Time: Aug 20, 2014 10:47 AM

Start Date/Time: Aug 20, 2014 11:06 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

12:06 PM - August 20, 2014 11:05 AM - Court reconvenes. Witness Beal retakes the witness stand. Jurors reseated. **Cross examination continues by Atty Corey Boulet.**

MINUTES OF PROCEEDING

Start Date/Time: Aug 20, 2014 11:06 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

11:10 AM - Re-direct by DPA Proctor. 11:13 AM - Re-cross by Atty W. Corey Boulet. 11:14 AM - Witness excused.

11:14 AM - ST WIT Monica Johnson resworn/retakes the witness stand. Cross examination by Atty Corey continues. 11:17 AM - Witness referred to previously admitted (for illustrative only) ST EXH #1. 11:21 AM - Court takes a brief break per witness request; jurors asked to step into Dept 17 jury room. Court asks state to speak to witness and direct her to only answer questions asked and not volunteer statements. Length of trial/status addressed as jurors have inquired.

11:25 AM - Court reconvenes. Jurors seated in jury box. Cross continues. DPA Williams obj - asked/answered; court waiting for question. 11:29 AM - Re-direct by DPA Williams. 11:30 AM - ATty Corey objection - relevance; overruled. 11:31 AM - Atty Corey objection - relevance; overruled. 11:31 AM - Atty Corey objection - asked/answered; overruled. 11:32 AM - Witness handed transcript from ST EXH #51, for referral. Atty Corey objection - form of question; cease editorialization. Court asks to hear question again. Atty Corey objection - leading; sustained. Move to strike; overruled.

11:34 AM - Atty Corey objects to question; Court asks to hear question. Atty Corey objection - leading; sustained. 11:35 AM - Re-cross by Atty B. Corey. Witness excused.

11:36 AM - ST WIT Debra Heishman, retired PCS Detective, sworn/testified under direct examination by DPA Williams. 11:41 AM - ST EXH #114 marked (incident report) and presented to witness for i.d. 11:43 AM - Cross examination by Atty B. Corey. 11:45 AM - DPA Williams objection - misstates testimony; sustained/defense in agreement. 11:45 AM - Witness excused.

11:45 AM - ST WIT Gregory Hocking, retired PCS Accident Reconstructionist, sworn/testified under direct examination by DPA Williams. 11:57 AM - ST EXH #2 (board/diagram w/evidence locations marked) presented to witness for i.d.

MINUTES OF PROCEEDING

Start Date/Time: Aug 20, 2014 11:06 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

12:00 PM - Cross examination by Atty B. Corey. 12:04 PM - DPA Williams objection - form of question; sustained. 12:05 PM - Witness excused. Court excuses jurors for noon recess; cautionary instructions reiterated. Discussion of this pm's proceedints/witnesses expected. Court adjourns for lunch.

End Date/Time: Aug 20, 2014 12:06 PM

Start Date/Time: Aug 20, 2014 1:39 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 20, 2014 01:38 PM - Court reconvenes. Jurors seated in jury box. ST WIT James O'Hern, retired PCS Detective Sgt, sworn/testified under direct examination by DPA Proctor. 01:53 PM - Atty B. Corey objection - lack of first hand knowledge; hearsay; offered for the truth of the matter asserted; sustained. 01:55 PM - Atty B. Corey objection - calls for hearsay; overruled. 02:00 PM - ST EXH #70 (incident report) presented to witness for i.d.

02:04 PM - Atty B. Corey objection; asks that court excuse jury; obj sustained/will not excuse jury. Atty B. Corey objection - hearsay; Court excuses the jury into Dept 17 jury room; cautionary instructions reiterated. 02:06 PM - Defense objection addressed; court inquires of DPA Proctor. 02:07 PM - Court inquires of Atty B. Corey. 02:11 PM - DPA Proctor addresses in argument. Atty B. Corey further argument. 02:16 PM - Will allow a little "leading" to get to the point.

02:17 PM - Jurors re-seated. Direct examination continues. 02:20 PM - Witness asks to review his report to refresh his memory. 02:22 PM - Atty B. Corey objection - calls for hearsay; overruled. 02:23 PM - Atty B. Corey objection - hearsay; overruled.

02:24 PM - Atty B. Corey advises she has a motion to make. Court directs jurors to step into

MINUTES OF PROCEEDING

Start Date/Time: Aug 20, 2014 1:39 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

Dept 17 jury room. Court inquires if "Dickman" will be called. State is not; defense will.

02:25 PM - DPA Proctor explains situation to court. **02:28 PM** - Court inquires of Atty B. Corey.
02:28 PM - Atty B. Corey motion for mistrial (2nd); cumulative error. Addresses court.

02:29 PM - ST EXH #48C (montage) , previously admitted, addressed; handed to court. **02:32 PM** - State argument by DPA Proctor. Argument. **02:35 PM - Court denies defense (2nd) motion for mistrial.** **02:37 PM** - Jurors reseated in jury box; direct examination continues. Witness asks permission to review report to refresh memory. **02:39 PM** - ST EXH #s 28 - 38 (photos of vehicle) presented to witness for i.d. **02:42 PM** - Offered. No defense objection. **Court admits ST EXH #'s 28 - 38.** **02:44 PM** - ST EXH #53 (WSP request for lab exam document) presented to witness for i.d. **02:46 PM** - State offers. Defense obj - asks court to reserve ruling until relevant witness testifies; court in agreement. **02:47 PM** - Atty B.Corey objection - calls for hearsay. **02:51 PM** - Atty Corey obj - withdrawn. **02:56 PM** - Court takes a pm break; cautionary instructions reiterated.

End Date/Time: Aug 20, 2014 2:56 PM

Start Date/Time: Aug 20, 2014 3:10 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 20, 2014 03:09 PM -Court reconvenes. Jurors reseated in jury box. **Cross examination by Atty B. Corey.** 03:12 PM - DPA Proctor objection - no testimony that M.E.'s arrived at scene; Atty Corey stands corrected. 03:13 PM - DPA Proctor objection - unclear if

MINUTES OF PROCEEDING

Start Date/Time: Aug 20, 2014 3:10 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

referring to this case or others; sustained. **03:23 PM** - DPA Proctor objection - beyond scope of direct; overruled. **03:25 PM - Re-direct by DPA Proctor.**

03:27 PM - Re-cross by Atty B. Corey. 03:31 PM Follow up by DPA Proctor.

03:33 PM - Follow up by Atty B. Corey. DPA Proctor objects to commentary. Witness excused.

03:34 PM - ST WIT Chad Richardson, PCS Deputy/former PCS Accident Reconstructionist, sworn/testified under direct examination by DPA Williams. **03:42 PM** - ST EXH #1, previously admitted as demonstrative only, referred to. **03:43 PM** - ST EXH #2 referred to. **03:44 PM** - State offers. Atty W. Corey Boulet asks clarifying question. State inquires of witness to clarify. **03:45 PM** - State re-offers. No defense objection. **Court admits ST EXH #2.**

03:46 PM - Cross examination by Atty W. Corey Boulet. **03:47 PM - Re-direct by DPA Williams.** 03:48 PM - Witness excused. **03:48 PM** - Sidebar at court's request to discuss tomorrow's scheduling.

03:50 PM - Court excuses jurors for the day; directed to be in Dept. 17 jury room tomorrow by 9:20 pm tomorrow morning; will adjourn tomorrow around 3:30 pm due to court conflict. **03:51 PM** - Sidebar issue put on record. State intends to call witness Millender in the p.m. as his attorney Ann Stenberg is available then, deft is in custody here in P.C. Jail; advises there will be logistics issues. 609 issues w/ this witness. Detective Ames expected to testify on Monday; do we need an impeachment hearing? Atty B. Corey addresses court in that respect; believes a hearing is necessary outside jury presence. Court suggests first thing Monday morning. **03:58 PM** - Court adjourns for the day; to reconvene tomorrow at 9:30 a.m.

MINUTES OF PROCEEDING

Start Date/Time: Aug 20, 2014 3:10 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

End Date/Time: Aug 20, 2014 3:58 PM

Start Date/Time: Aug 21, 2014 9:40 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 21, 2014 09:40 AM - All parties present. Jurors seated in jury box. **ST WIT Michael Portmann, PCS Detective Sgt, sworn/testified** under direct examination by DPA Proctor.

09:44 AM - ST EXH #64 (incident report) presented to witness for i.d. **09:47 AM** - Witness refers to ST EXH #64 to refresh memory. **09:48 AM** - Atty B. Corey objection - hearsay; sustained. **09:48 AM** - ST EXH #41 presented to witness for i.d. **09:49 AM** - State offers. Defense obj - lack of foundation. Atty B. Corey requests to voir dire - denied; may cross exam. **Court admits ST EXH #41, over defense objection.**

09:50 AM - Cross examination by Atty B. Corey. **09:52 AM** - Atty B. Corey asks witness to open ST EXH #41; no state objection as long as is reflected in the record. Granted.

09:56 AM - DPA Proctor objection - relevance; sustained. **09:56 AM** - Same objection; overruled, if witness can answer.

09:57 AM - Re-direct by DPA Proctor. **09:57 AM** - Atty Corey - objection; state rephrases.

MINUTES OF PROCEEDING

Start Date/Time: Aug 21, 2014 9:40 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

10:00 AM - Re-cross by Atty Corey. 10:00 AM - DPA Proctor objection - calls for speculation; sustained. Witness excused.

10:01 AM - ST WIT Kari O'Neill, Forensic Scientist/Wash St Crime Lab Seattle/DNA section, sworn/testified under direct examination by DPA Williams. **10:06 AM - ST EXH #115**, report, presented to witness for i.d. **10:08 AM -** Witness seeks to refer to a report. Atty Corey asks that it be marked; granted. Due to time to copy, state continues with direct exam; will come back to issue that requires witness to refer to said report later. **10:12 AM -** Witness refers to ST EXH #115 to refresh memory.

10:17 AM - Cross examination by Atty B. Corey.

10:18 AM - Re-direct by DPA Williams. **10:18 AM -** Atty B. Corey asks to be heard; denied; witness may answer if able. **10:19 AM -** Re-cross by Atty B. Corey. DPA Williams objection - argumentative; sustained. **10:19 AM -** Court asks jurors to step into jury room. **10:20 AM -** Atty B. Corey addresses court: motion for mistrial. **10:23 AM -** State argument by DPA Williams. **10:25 AM -** Argument by Atty B. Corey. **10:27 AM - Court denies defense motion for mistrial (3rd).** **10:28 AM -** Atty B. Corey asks to take morning recess. Granted.

End Date/Time: Aug 21, 2014 10:29 AM

Start Date/Time: Aug 21, 2014 10:45 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 21, 2014 10:44 AM - Court reconvenes. DPA Proctor advises that Mrs. Patterson (observer in gallery) ran into juror #12 and his service dog, Enzo, during the break. Atty B. Corey has nothing to add. Court reiterates no contact with jurors. While court awaits Atty W. Corey Boulet, who had a matter in Municipal Court to take care of, defense motion to dismiss argued.

Atty Corey addresses/argues defense Motion to Dismiss; brief supplied to court at end of day yesterday. 8.3 (b), prosecutorial misconduct. 11:02 AM - State argument by DPA Williams. **11:07 AM -** Reply argument by Atty B. Corey. **11:13 AM -** DPA Williams addresses court. **11:13 AM -** Atty B. Corey addresses court. **11:15 AM -** DPA Williams argument. **11:15 AM - Court denies defense motion for mistrial and dismissal under 8.3 (b) in re this issue with Witness**

MINUTES OF PROCEEDING

Start Date/Time: Aug 21, 2014 10:45 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

M. Johnson. Photo montage issue addressed.

11:18 AM - Jurors seated in jury box. **ST WIT Brenda Lawrence, Forensic Scientist, Wash St Crime Lab/Firearms Examiner, Tacoma, sworn/testified** under direct examination by DPA Proctor. **11:24 AM** - Drawing on easel pad by witness marked as ST EXH #116.

End Date/Time: Aug 21, 2014 12:08 PM

Start Date/Time: Aug 21, 2014 1:40 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 21, 2014 01:40 PM- Court reconvenes. Witness Lawrence retakes the witness stand. Jurors seated in jury box. **Cross examination by Atty B. Corey.**01:44 PM - DPA Proctor objection - beyond scope/why is this is being asked of this witness; sustained.

01:44 PM - DPA Proctor objection - foundation; court will allow response if witness able to answer. **01:46 PM** - Witness refers to ST EXH #116 (drawing on easel pad).

01:50 PM - Re-direct by DPA Proctor. Witness excused. **01:51 PM** - Jurors excused to Dept 17 jury room to await next witness (in custody). Witness Millender's attorney, Atty Ann Stenberg present also. JA contacts jail for transport. **01:53 PM** - DPA Williams and Atty B. Corey review ST WIT O'Hern's testimony of yesterday. Court inquires of Atty Stenberg.

01:56 PM - Court takes a break to await witness Millender.

End Date/Time: Aug 21, 2014 1:56 PM

MINUTES OF PROCEEDING

Start Date/Time: Aug 21, 2014 2:18 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 21, 2014 02:17 PM - Court reconvenes. ST WIT Millender takes the witness stand. DPA Williams addresses court. Court inquires of witness Millender. Mr. Millender says he "pleads the 5th"; does not wish to answer any questions on the witness stand. DPA Williams addresses court; no criminal liability on which to make a 5th amendment claim. **02:19 PM** - Court inquires of Atty Stenberg, Mr. Millender's counsel in pending criminal charge.

02:23 PM - DPA Williams responds. 2 misdemeanor theft convictions of Millender addressed (in as far as admissible 609) from 2000 Lakewood/2010 Tac Muni. **02:25 PM** - Court inquires of Atty B. Corey; believes he has one other conviction; assistant looking into it. Court inquires of Atty Stenberg. Court reads part/explains rule 609 to witness Millender. Court direct all counsel not to mention any pending charges of Millender. **02:28 PM** - Witness Millender addresses court. DPA Williams inquires of Witness Millender in as far of any "bullying tactics" from state he is referencing. **02:33 PM** - Court inquires of Atty Stenberg. DPA on pending charges is E. Nohavec (14-1-02687-2). Court finds no 5th amendment issues here; witness will be required to answer questions asked of him by counsel. Witness Millender asks permission to speak to his attorney; court allows. Court takes a brief break.

End Date/Time: Aug 21, 2014 2:35 PM

Start Date/Time: Aug 21, 2014 2:39 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 21, 2014 02:38 PM - Court reconvenes. Court asks of there is any objection to allowing Atty Stenberg to stand next to her client at witness stand. Granted. Atty B. Corey wants to make sure juror with hearing device does not hear any communication between witness Millender and his attorney; close proximity. **02:40 PM** - Atty B. Corey addresses; if witness opens door to his past character, past history, etc, she will want to take up, outside presence of jury. Court directs attorneys to ask witness question only in re 6/21/2004. Atty Stenberg addresses in response. DPA Williams addresses witness Millender. Atty B. Corey interjects; court should direct witness,

MINUTES OF PROCEEDING

Start Date/Time: Aug 21, 2014 2:39 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

not DPA. DPA Williams addresses Millender.

02:46 PM - Jurors seated in jury box. **ST WIT Rickie G. Millender, Jr., sworn/testified** under direct examination by DPA Williams. **02:50 PM** - ST EXH #117 (transcript) presented to witness for i.d.

02:54 PM - ST EXH #118 (transcript of defense interview) presented to witness for i.d. **02:55 PM** - ST EXH #3 (in-life photo of I. Clark) presented to witness for i.d. **02:56 PM** - DPA Williams asks to take up an issue outside jury presence. Jurors asked to step into jury room. DPA Williams asks to have witness Millender step into hallway; no ruling. DPA Williams addresses court. Feels witness Millender is "refusing" to testify; finds sufficient testimony was given in defense interview. Atty B. Corey addresses court. Asks court to give witness Millender the weekend to weigh his options, then for court to use it's contempt powers.

02:59 PM - Court inquires of Atty Stenberg; advises starts a trial Monday morning in Dept 4. Court inquires/addresses witness Millender. Court makes note, after inquiring of attorneys, that witness had recollection during defense interview 3 months ago. It appears to court that there is a refusal to testify here today. DPA Proctor addresses in re "contempt" rules; time would be taken off his credit for time served, as deft is currently in custody. Court inquires of Atty B. Corey. DPA Williams in agreement to have defendant brought back on Monday morning. **03:04 PM** - Court defers finding of contempt until Monday morning. **03:06 PM** - Witness Millender is excused for the day. Court advises Atty Stenberg that we will need her first thing Monday morning, 8/25. Court will notify Dept 4 that Atty Stenberg will be a little late on Monday morning. Jurors brought into courtroom and excused; cautionary instructions reiterated. Directed to return on Monday, 8/25 by 9am. **03:16 PM** - JA returns from excusing jurors from jury room. Court/counsel in the midst of reviewing Witness O'Hern's testimony/transcript from yesterday. **03:21 PM** - Argument. **03:23 PM** - Court's ruling stands; no curative instruction will be given. **03:25 PM** - Court awaits call from Dr. Ward, Cardiologist, to finish Availability Hearing (of Dr. Ward) . Court directs state to not say a word to Dr. Ward about the facts of this trial; only health related questions of Dr. Brooks; does not find that confrontation applies here.

MINUTES OF PROCEEDING

Start Date/Time: Aug 21, 2014 2:39 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

03:26 PM - * AVAILABILITY HEARING CONTINUES *** ST WIT Dr. Needham Ward, Cardiologist, sworn/testifies (by telephonic appearance) under direct examination by DPA Proctor. (court initially verified w/ Dr. Ward that Dr. Brooks did sign a release of info). 03:31 PM - Cross examination by Atty B. Corey. 03:31 PM - DPA Proctor asks that court not declare Dr. Brooks unavailable based on the testimony of Dr. Ward. Next week remaining state witnesses addressed. 03:33 PM - Court inquires of defense witnesses. DPA Proctor asks for copies of any defense interviews or tapes that have not been transcribed and any notes. 03:35 PM - Court is adjourned until Monday morning, 8/25/14 at 9am.**

End Date/Time: Aug 21, 2014 3:36 PM

Start Date/Time: Aug 25, 2014 9:20 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 25, 2014 09:19 AM - All parties present. Witness schedule for today addressed. Witness Ames addressed; e-mail sent to parties from his attorney, Joan Mell. Witness Millender addressed; on his way from jail to continue testimony. 09:22 AM - Atty B. Corey addresses in re the case that witness Millender still refuses to testify; would request that the transcripts be admitted/certified. DPA Williams suggests stipulation. Court awaits Witness Millender and his attorney, Ann Stenberg.

End Date/Time: Aug 25, 2014 9:25 AM

Start Date/Time: Aug 25, 2014 9:33 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 25, 2014 09:32 AM - Court reconvenes. ST WIT Rickie Millender retakes the witness stand; court addresses/inquires of witness. Witness reads a written statement.

MINUTES OF PROCEEDING

Start Date/Time: Aug 25, 2014 9:33 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

09:35 AM - Witness addresses court; concerned for his and his familie's safety. Witness's pending charges/trial set to begin 9/2/14. Witness's intention today is to again, plead the 5th. **09:37 AM** - DPA Williams addresses/inquires of witness Millender. **09:42 AM** - Atty B. Corey inquires of witness. **09:45 AM** - Court will bring the jurors out. Atty B. Corey asks court to instruct the witness not to mention his concern for his safety. DPA Williams responds. Atty B. Corey in objection. Court's ruling stands; avoid that issue.

09:54 AM - After a brief break to allow witness to confer with his attorney, Atty Stenberg asks if there could be an "agreed" response as to why defendant is refusing to answer any inquires. DPA Williams suggesion. **09:57 AM** - Jurors seated in jury box. ST WIT Rickie Millender, Jr., sworn (will not "swear" for religious purposes; promises not to lie; inquired of by DPA Williams. All responses are "I refuse to answer". **09:59 AM** - Cross examination by Atty B. Corey. Response - "I refuse to answer". **10:00 AM** - Jurors asked to step into jury room briefly. Court finds witness in contempt; sanctions reserved. Court asks Atty Stenberg to keep in touch with witness in the case he changes his mind in re testifying. **10:01 AM** - Atty Stenberg excused. **10:03 AM** - Jurors reseated; **ST WIT Inga Carpenter, PCS Deputy, sworn/testifies** under direct examination by DPA Proctor. **10:05 AM** - ST EXH #65 (incident report) presented to witness for i.d. **10:06 AM** - Witness allowed to refer to report , ST EXH #65, to refresh memory. **10:09 AM** - ST EXH #1, previously admitted for demonstrative purposes only, placed on easel; witness asked to refer to.

10:18 AM - Cross examination by Atty W. Corey Boulet. 10:25 AM - Witness excused.

10:25 AM - ST WIT Ted Schlosser, retired PCS Forensic Investigator, sworn/testifies under direct examination by DPA Williams. **10:28 AM** - ST EXH #119 (incident report) presented to witness for i.d. **10:29 AM** - Witness referred to ST EXH #1, previously admitted for demonstrative purposes only. **10:32 AM** - ST EXH's #5 - #9, previously admitted, presented to witness for i.d. **10:33 AM** - ST EXH's #10 - #27 presented to witness for i.d. (photos). **10:35 AM** - Offered. Atty B. Corey objection - cumulative. Court reviews. **10:36AM - Court admits ST EXH #'s 10 - 27, over defense objection.** **10:37 AM** - ST EXH #39 (property sheet) presented to witness for i.d. **10:38 AM** - Witness referred to previously admitted ST EXH #2 (diagram on easel).

MINUTES OF PROCEEDING

Start Date/Time: Aug 25, 2014 9:33 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

10:39 AM - ST EXH #13 (photo prev admitted). presented to witness for i.d./published on ELMO. Witness supplied with laser pointer.

10:42 AM - ST EXH #42B (plastic bag containing spent bullet) presented to witness for i.d. Witness directed to open. **10:44 AM** - Offered. No defense obj. **Court admits ST EXH #42B.** **10:44 AM** - Att Corey objection - DPA testifying; court sustains as leading. Atty Corey moves to strike; denied. **10:45 AM** - ST EXH #42C (plastic baggie containing shell casing). State offers. No defense obj. **Court admits ST EXH #42C.** **10:47 AM** - ST EXH # 19 and 20, previously admitted, published on ELMO. ST EXH #42D, presented to witness for i.d. (shell casing in plastic bag) Offers; no defense obj. **Court admits ST EXH #42D.** **10:51 AM** - After i.d. by witness, state offers ST EXH #42E (live round in plastic bag) . No defense obj. **Court admits ST EXH #42E.** ST EXH's #23 and 24, previously admitted, published on ELMO. **10:53 AM** - ST EXH #42F presented to witness for i.d. (shell casing in plastic bag) **10:54 AM** - State offers. No defense obj. **Court admits ST EXH #42F.** ST EXH #25 - 27 published on ELMO. **10:56 AM** - ST EXH #42G (shell casing in plastic bag) presented to witness for i.d. Offered; no defense objection. **Court admits ST EXH #42G.** ST EXH #21, previously admitted, published on ELMO. **11:00 AM** - Atty Corey objection - leading; overruled. **11:02 AM** - ST EXH #41 (container containing projectile), previously admitted. presented to witness for i.d. **11:02 AM** - Atty Corey objection - hearsay; no personal knowledge; court asks to re-hear question. Witness allowed to refer to his report.

11:04 AM - Atty Corey objection; sustained. Atty Corey objection - calls for hearsay; overruled. Atty Corey objection - answer based on hearsay; overruled.

11:05 AM - Cross examination by Atty B. Corey. 11:08 AM - DPA Williams - objection.

11:09 AM - DPA Williams objection; witness has no independent knowledge of where persons were walking before he came on scene; sustained. **11:09 AM** - DPA Williams same obj - overruled, if able to answer. **11:13 AM** - ST EXH #14, previously admitted, published on ELMO. **11:15 AM** - Atty Williams objection - photo speaks for itself; sustained.

MINUTES OF PROCEEDING

Start Date/Time: Aug 25, 2014 9:33 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

11:17 AM - Same objection again twice; sustained. **11:20 AM** - Witness refers to ST EXH #2 on easel. **11:20 AM** - DPA Williams objection - vagueness. **11:25 AM - Re-direct by State.** Witness excused.

11:26 AM - Sidebar at court's request to discuss scheduling. **11:27 AM** - Court excuses jurors to jury room briefly. Court addresses. No further witnesses for this am. ST WIT Millender and 804 addressed. **11:29 AM** - DPA Williams proposed instruction addressed. Court reiterates, for the record, the circumstances of ST WIT Millender; Court finds him "unavailable" under 804 (a) (2), possibly(3)., prior testimony (transcript) may be used. Court addresses state proposed Instruction from civil WPIC 6.09. Court takes a brief break to allow Atty B. Corey to review WPIC 6.09.

11:43 AM - After brief break, court reconvenes. Sidebar issue put on record. Defense proposed instruction argued. Court will makes **11:51 AM** - Court breaks for lunch.

End Date/Time: Aug 25, 2014 11:51 AM

Start Date/Time: Aug 25, 2014 1:41 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 25, 2014 01:40 PM - Court reconvenes. Jurors reseated. **ST WIT Daniel W. Brooks, Jr., witness at scene, sworn/testifies** under direct examination by DPA Proctor. Witness referred to ST EXH #1, previously admitted as demonstrative only. ST EXH #61 (statement) presented to witness for i.d. **01:44 PM** - ST EXH #62 (transcript) presented to witness for i.d. **02:03 PM** - Atty B.Corey objection - non responsive/move to strike; sustained. Court cautions witness.

02:06 PM - Cross examination by Atty W. Corey Boulet.02:19 PM - Witness excused.

02:19 PM - Court excuses jurors into jury room. DPA Proctor advises court that she did

MINUTES OF PROCEEDING

Start Date/Time: Aug 25, 2014 1:41 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

instruct the witness (Brooks) not to mention the word "trial"; defense not questioning. No action. Next state witness (Detective Ames) addressed (Detective Ames is present with Attorney Joan Mell). Court inquires of DPA Proctor; will they be inquiring of Witness Ames in re anything after date of incident. DPA Proctor responds; will limit its questions to 2004.

02:24 PM - Atty B. Corey responds/argument; Dalsing/Mays cases (2010) referenced. **02:32 PM** - Reply argument by DPA Proctor. **02:35 PM** - Atty Joan Mell responds to DPA Proctor's inquiry.

02:36 PM - Court inquires of Detective Ames. Continued argument by Atty B. Corey.. **02:41 PM** - Response by DPA Proctor; asks court to find irrelevant and inadmissible. DPA Corey would like to call two prosecutors to testify in re character of Witness Ames. **02:43 PM** - Court addresses. Atty Corey asks court to defer ruling until she can get the info she is seeking. **02:47 PM** - Atty Joan Mell addresses court. **02:52 PM** - Court sustains DPA Proctor's objection to proposed cross examination by Atty Corey.

02:53 PM - Jurors seated. **ST WIT MICHAEL AMES, former PCS Detective, sworn/testifies** under direct examination by DPA Proctor. **02:55 PM** - ST EXH #69 (incident report) presented to witness for i.d. **02:57 PM** - Witness allowed to refer to his report to refresh his recollection. **02:59 PM** - Witness referred to ST EXH #1, diagram on easel (previously admitted as demonstrative only).

03:01 PM - Previously admitted ST EXH's (7 - 27) presented to witness for i.d. **03:02 PM** - Witness allowed to refer to his report to refresh recollection. **03:06 PM** - ST EXH #49, (receipts in plastic bag) previously admitted, presented to witness for i.d. **03:07 PM** - Witness allowed to refer to his report to refresh his memory. **03:19 PM** - Witness allowed to refer to report. ST EXH #48A, (admonishment) previously admitted, presented to witness for i.d. ST EXH #48C (montage), previously admitted, presented to witness for i.d. Atty B. Corey objection - calls for hearsay; court does not feel the answer to that question does. Atty Corey objects to any question calling for

MINUTES OF PROCEEDING

Start Date/Time: Aug 25, 2014 1:41 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

hearsay answer. Court reviews to report (ST EXH #69). **03:24 PM** - Court overrules defense objection. **03:24 PM** - Atty Corey objection; asked and answered; overruled. **03:25 PM** - Court excuses the jury for pm break; cautionary instructions reiterated.

End Date/Time: Aug 25, 2014 3:25 PM

Start Date/Time: Aug 25, 2014 3:44 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 25, 2014 03:43 PM - Court reconvenes. Witness Ames retakes the witness stand. Jurors seated in jury box.

03:44 PM - Cross examination by Atty B. Corey. **03:45 PM** - DEF EXH #103 (C.A.D.) presented to witness for i.d.

03:46 PM - DPA Proctor objection - does not believe witness is testifying from personal knowledge; court cautions witness. Witness allowed to refer to DEF EXH #103 to refresh memory.

03:47 PM - DPA Proctor objection - lack of foundation for DEF EXH #103; overruled. **03:57 PM** - DPA Proctor objection - not the evidence; court asks to re-state question.

04:05 PM - Re-direct by DPA Proctor. **04:05 PM** - Witness refers to diagram on easel, ST EXH #1, previously admitted as demonstrative only and presented with ST EXH #6, previously admitted, for referral. **04:07 PM** - Sidebar at court's request to discuss scheduling. **04:08 PM** - Court addresses jury in regards to tomorrow scheduling; pm tomorrow may not to reconvene until 2pm. Court excuses the jurors for the day. Sidebar issues put on record. **04:09 PM** - Atty Corey asks the questions of Wit Ames she would have asked (in front of the jury) if court had not ruled

 MINUTES OF PROCEEDING

Start Date/Time: Aug 25, 2014 3:44 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

irrelevant. **04:12 PM** - DPA Proctor interjects with obj - was only to be "impeachment evidence" elicited; sustained. **04:15 PM** - DPA Proctor - objection to form of question; sustained. DPA Proctor objection - overruled. DPA Proctor objection - sustained. Court addresses. **04:16 PM** - Atty Corey addresses.

04:17 PM - Atty Mell asks court for clarification in re scope of court's ruling. **04:18 PM** - Witness Ames inquires of Atty B. Corey. **04:18 PM** - State expects to finish it's case in chief tomorrow morning.

04:20 PM - Process of how court reporter will report the reading of the transcript (Witness Millender) tomorrow; state will have a reader; feels it should be reported. Defense agrees with state that it does need to be recorded. Court is adjourned until 9am tomorrow morning.

End Date/Time: Aug 25, 2014 4:22 PM

Start Date/Time: Aug 26, 2014 9:25 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 26, 2014 09:25 AM - All parties present. Jurors seated in jury box. Court reads agreed upon instruction to jurors. DPA Williams advises that a transcript of testimony ST WIT Rickie Millender will be read into the record; he will be reading the questions being asked; Jordan McCrite will be reading the answers by Wit Millender. ST EXH #117 presented to Ms. McCrite (transcript of testimony of Rickie Millender). Reading commences. ST EXH #3, previously admitted, published on ELMO (as indicated in the transcript). **09:31 AM** - Witness referred to ST EXH #1 (as indicated in the transcript). DPA Williams puts ST EXH #1 on easel. **09:33 AM** - ST EXH #30 (photo) referenced (as indicated in transcript). DPA Williams publishes ST EXH #30 on ELMO. Defense obj - speculation - overruled (as indicated in transcript. **09:36 AM** - (as indicated in transcript) Same obj - overruled. Same obj - overruled. Same obj - a little leading/overruled. **09:38 AM** - Defense obj - leading; overruled (as indicated in transcript). **09:42 AM** - Defense obj - leading; overruled (as indicated in transcript). **09:45 AM** - Defense obj - assumes facts not in evidence; overruled. (as indicated in transcript).

MINUTES OF PROCEEDING

Start Date/Time: Aug 26, 2014 9:25 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

09:47 AM - Cross examination by defense (read by DPA Williams). ** Atty B. Corey asks court to read stipulation in re Wit Millender's past convictions at this time. DPA Williams requests to be able to finish reading of testimony - granted. Reading continues **. **09:56 AM - DEF EXH #56** (drawing on easel paper per transcript) placed on easel by DPA Williams.

10:08 AM - Re-direct by State. Defense objection - asking witness to comment on credibility; overruled (as indicated in transcript). Witness (in transcript) referred to ST EXH #12 (photo). DPA Williams publishes ST EXH #12 on ELMO. **10:09 AM - ST EXH #1** placed on easel by DPA Williams; returns to transcript. **10:11 AM -** Reading of transcript ends. Court reads Stipulation as agreed upon, in re prior convictions of Wit Rickie Millender. **10:12 AM -** Stipulated instruction in re defendant prior testimony read to jurors by court. Jordan McCrite reads testimony of defendant, DMarcus George (ST EXH #120). DPA Williams reads questions asked. **10:15 AM -** Reading ends. Court excuses jurors briefly to allow counsel to review exhibit list prior to resting. **10:20 AM -** Court breaks.

End Date/Time: Aug 26, 2014 10:20 AM

Start Date/Time: Aug 26, 2014 11:02 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 26, 2014 11:02 AM - Court reconvenes. Atty Ann Stenberg now present; advises court/counsel that her client, Witness Millender, has not changed his position and still refuses to testify. Date of contempt motion for Mr. Millender discussed. DPA Proctor asks that next witness be instructed to only describe what he has seen; granted. **11:07 AM -** Jurors seated in jury box. State, by DPA Proctor, offers ST EXH #58 (diagram); no defense objection. **Court admits ST EXH #58.**

11:07 AM - STATE RESTS.

DEF WIT 11:08 AM - David L. Moore, Gas Station Tech, sworn/testifies under direct

MINUTES OF PROCEEDING

Start Date/Time: Aug 26, 2014 11:02 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

examination by Atty B. Corey. **11:14 AM** - DPA Proctor objects to motions witness is making; sustained.

11:19 AM - DEF EXH #121 marked (transcript); presented to witness; witness referred to page 979, lines 19 - 22; asked to read to self to refresh his memory. **11:23 AM** - Witness referred to and asked to read, to self, from page 978, line 5 to top of page 980, line 3. **11:22 AM** - DPA Proctor asks to be heard outside presence of jury; denied at this time. **11:33 AM** - DPA Proctor ask that the last response be stricken; granted; court cautions witness.

11:33 AM - Cross examination by DPA Proctor. ST EXH #6 (photo), previously admitted, presented to witness for i.d.; published on ELMO. ST EXH #1, previously admitted for demonstrative purposes only, placed on easel for witness reference.

11:39 AM - Re-direct by Atty B. Corey. **11:40 AM** - Court excuses jury for lunch until 1:50 pm today. **11:41 AM** - DPA B. Corey addresses; advises will have a motion for insufficiency. Defense witness Millender appearance addressed. Defense witnesses addressed. Jury instructions and disputes addressed. Defense may have a dispute with the "to convict" instructions. **11:45 AM** - Court adjourns for lunch break

End Date/Time: Aug 26, 2014 11:45 AM

Start Date/Time: Aug 26, 2014 3:06 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 26, 2014 03:05 PM - Court reconvenes. Defense attorney, B. Corey advises that witness Millender is uncooperative; provides a Motion and Declaration for Order for Arrest of Material Witness for witness Tamrah Dickman. Court hears from Atty B. Corey. **03:07 PM** - Court finds a willful failure to appear; authorizes a warrant. Atty Corey asks court to order state to assist in getting the warrant served. Court hears from state; DPA Proctor responds.

MINUTES OF PROCEEDING

Start Date/Time: Aug 26, 2014 3:06 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

03:10 PM - Copy of motion/decl for warrant given to state. Atty Corey to present warrant for signature. E-mail sent to Sheriff Pastor and Undersheriff, by court in regards to assistance of service of the warrant. **03:16 PM** - Court directs JA to release jurors for the day; direct to return by 9am tomorrow morning. Court breaks to allow drafting of warrant by Atty B. Corey.

End Date/Time: Aug 26, 2014 3:25 PM

Start Date/Time: Aug 27, 2014 9:31 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 27, 2014 09:31 AM - Court reconvenes. All parties present. Atty B. Corey advises that contact has been made with a detective in regards to material witness warrant issued yesterday for defense witness Tamrah Dickman; asking for a recess today to allow this witness to be picked up; critical witness. **09:33 AM** - Court reiterates he sent an e-mail to Sheriff Pastor in re assistance with material witness warrant; and the response recieved. **09:34 AM** - DPA Williams addresses court in regards to defense witness Tamrah Dickman; have been provided nothing in re to new information she may provide; 407. **09:38 AM** - DPA Williams suggests making good use of time and have defendant testify today and if found, witness Dickman testify when/if found. Atty B. Corey responds. **** off record **** - Atty B. Corey takes a call from Detective Portmann. **** 09:42 AM - ** back on record ****. Atty Corey relays info from a previous e-mail from witness Dickman, relaying her account of the incident.

09:46 AM - DPA Williams addresses; still confused as to why they have not recieved info under 407. Reiterates the suggestions to make good use of time this morning and have deft testify. Court inquires of Atty Corey of status of Detective Portmann's search for witness Dickman. Court advises that he will bring jurors out shortly and ask defense if they have their next witness. Atty Corey responds in objection/argument. Asks court to accommodate this reasonable request; to wait until it is known if witness Dickman will be found/testify before asking deft to excercise his rights at this point; seeking to recess for the day to await status. Court will be willing to wait 1/2 hour. Court directs JA to release jurors with cautionary instruction, for 1/2 hour. **09:54 AM** - Proposed state jury instruction review/argument. **10:00 AM** - Court takes a brief break.

End Date/Time: Aug 27, 2014 10:00 AM

 MINUTES OF PROCEEDING

Start Date/Time: Aug 27, 2014 10:29 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

1 August 27, 2014 10:28 AM - Court reconvenes. Instruction review/argument continues. **10:48 AM** - Court inquires of Atty Corey in re witness Dickman's anticipated testimony. DPA Williams, again, seeks an update on all anticipated testimony. Argument. **10:51 AM** - Instruction review/argument continues. **10:52 AM** - Defense proposed instruction review/argument. **10:59 AM** - Court is inclined to release the jurors for lunch break. Atty Corey asks that they be released for the day. DPA Williams addresses; is not their wish to hold witness Dickman in custody. **11:00 AM** - Court directs JA to release the jurors for lunch break, with an apology and instruct to return at 1:20 pm. **11:03 AM** - JA returns to courtroom; instruction argument ongoing. **11:06 AM** - Remaining instructions to be addressed after further testimony. Court inquires of Atty Corey in as far as any update from dectective. Atty Corey responds; relays info recieved around 10:46 a.m. today. Court is adjourned until 1:30 pm.

End Date/Time: Aug 27, 2014 11:13 AM

Start Date/Time: Aug 27, 2014 1:42 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 27, 2014 01:42 PM - All parties present. Atty B. Corey advises that Detective Portmann did make cell phone contact with witness Dickmann and understands and relayed would do her best to be here this pm (between 2:30 - 3pm). Court inquires further. **01:44 PM** - DPA Williams has no position; feels wasting juror time. **01:45 PM** - Atty Corey responds.

01:46 PM - Court directs JA to advise jurors a break is allowed until 2:30 pm. Atty B. Corey responds; asks that we find out jury conflicts after this Friday. Court adjourns until 2:30 pm.

End Date/Time: Aug 27, 2014 1:50 PM

MINUTES OF PROCEEDING

Start Date/Time: Aug 27, 2014 3:02 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 27, 2014 03:01 PM - Court reconvenes. Court addresses the e-mail received from Chief Adamson in re status of witness T. Dickman. Call from M. Portmann w/in the last 20 minutes indicated that witness was just coming off the Sprague Avenued exit and would be here soon.. Witness is still not presen.. Atty B. Corey asks courts permission to recess until tomorrow if witness Dickman does not appear soon. Feels confidnt that they will have here here tomorrow. DPA Williams addresses. **03:05 PM** - Juror conflicts addressed. Jail Officer in courtroom, interjects, to advise that witness Dickman may be entering courthouse right now. Court takes a brief recess to await.

End Date/Time: Aug 27, 2014 3:06 PM

MINUTES OF PROCEEDING

Start Date/Time: Aug 27, 2014 3:10 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 27, 2014 03:09 PM - Court reconvenes. ST WIT Tamrah Dickman appears in courtroom. Atty B. Corey advises that she has been told that this witness has advised she will take the 5th; seeks permission to inquire prior to jurors being seated. Granted. Deft sworn. Atty B. Corey and DPA Williams inquire of witness.

03:13 PM - DEF WIT Tamrah Dickman, witness at scene, sworn/testifies under direct examination by Atty B. Corey. Witness asked to draw a diagram of scene on easel pad; marked as DEF EXH #122. **03:26 PM** - ST EXH #30, previously admitted, presented to witness for i.d.; published on ELMO. **03:28 PM** - Atty B. Corey asks witness to make additional markings on DEF EXH #122. **03:32 PM** - Witness referred to DEF EXH #122; asked to make additional markings. **03:41 PM** - DPA Williams objection - mischaracterizing testimony; court asks to re-hear question. **03:48 PM** - Witness asks permission to step away from witness stand to demonstrate. **03:49 PM** - DPA Williams objection - leading; assumes facts not in evidence; overruled. **03:52 PM** - DPA objection - leading; sustained. **03:52 PM** - Same objection; court directs to finish the non leading question. DPA Williams objection of asked/answered, if repeating testimony - court directs to hear question. **03:54 PM** - DPA Williams objection - leading; sustained. DPA williams - objection - leading; sustained; court directs jury to disregard. DPA Williams objection - relevance; overruled.

04:03 PM - Cross examination by DPA Williams. Atty B. Corey objection - relevance; overruled. ST EXH #96 (transcript) presented to witness for i.d./referral. **04:05 PM** - Atty B. Corey objection - argumentative; sustained. **04:06 PM** - Referred to page 2; referred to page 19. Atty Corey asks that counsel allow witness to finish her answers. **04:09 PM** - ST EXH #96 is again presented to witness for referral; asked to review transcript/read to self. **04:13 PM** - Juror, Mr. Simon, asks court for brief break for service dog; granted. **04:15 PM** - Cross exam continues. **04:16 PM** - Atty B. Corey objection - not testimony of witness. Court directs to re-ask question. **04:17 PM** - Atty Corey objection - question is confusing. **04:18 PM** - ST EXH #96 presented to witness for referral. **04:19 PM** - Staple removed to allow witness to see page numbers. Referred to page 11. **04:20 PM** - Atty B. Corey objection - out of context, rule of completeness; court finds premature. Court advises defense can address on re-direct.

MINUTES OF PROCEEDING

Start Date/Time: Aug 27, 2014 3:10 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

04:24 PM - Atty B. Corey objection - argumentative and demeaning; court directs DPA Williams to ask proper questions. Atty Corey objection - DPA Williams can't direct witness to look at him.

04:25 PM - Atty Corey objection - state arguing with witness. Atty Corey - objection; asked/answered; overruled. **04:32 PM** - Atty Corey objection - argumentative; sustained/counsel giving his opinion - overruled. Sidebar. Court excuses jurors to make phone calls as court intends to finish this witness today. **04:38 PM** - Court inquires of Atty Corey of length of her re-direct.

End Date/Time: Aug 27, 2014 4:42 PM

Start Date/Time: Aug 27, 2014 4:49 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 27, 2014 04:49 PM - Court reconvenes. Witness still on stand. Jurors reseated. Re-direct by Atty Corey. **04:50 PM** - DPA Williams objection - hearsay; sustained.

04:52 PM - DPA Williams objection - overruled. **04:54 PM** - ST EXH #123, pages 1075 and 1076.. witness referred to; asked to read to self. **05:05 PM - Re-cross by DPA Williams.**

05:06 PM - Witness referred to page 19 of ST EXH #96. (**side note: at this time JA enters material witness warrant as "quashed" in LINX **) **05:08 PM** - ST EXH #123 presented to witness for referral. **05:10 PM** - Atty Corey objection - overruled. **05:12 PM** - Atty Corey -asked/answered - sustained. Atty Corey advises she has follow-up questions. Court excuses jurors into jury room to be excused for the day by JA; directed to return to jury room by 9:15 tomorrow morning. **05:13 PM** - Sidebar issue put on record. **05:14 PM** - Atty Corey advises she will be recalling this witness tomorrow morning; may need to recall witness O'Hern. Court addresses material witness warrant quash; due to the time, the quash won't get into South Sound system, but DPA Goodman will go to her office and get a quash to be able to give witness Dickman a copy before she leaves today. Court is adjourned.

MINUTES OF PROCEEDING

Start Date/Time: Aug 27, 2014 4:49 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

End Date/Time: Aug 27, 2014 5:17 PM

Start Date/Time: Aug 28, 2014 9:37 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 28, 2014 09:36 AM - All parties present. Court reconvenes. Atty Corey addresses court re continuing w/ Wit Dickman's testimony. Jurors seated in jury box. **DEF WIT T. Dickman retakes the witness stand**; resworn. **Re-redirect** by Atty B. Corey.

09:38 AM - DPA Williams objection - beyond scope of re-cross; overruled. **09:41 AM** - DPA Williams objection - asked/answered; court will allow question. **09:43 AM** - DPA Williams objection - relevance; sustained. **09:43 AM** - DPA Williams objection - objects to eliciting any substance of conversation with defense investigator - hearsay; court asks to hear the entire question. **09:44 AM** - DPA Williams objection - relevance; overruled.

09:46 AM - DPA Williams interjects; seeks clarification. **09:47 AM** - DPA Williams - objection in re line of impeachment. DPA Williams asks Atty Corey to refer to page referencing in ST EXH # 123; page 1062. Atty Corey approaches witness; asks witness to refer to ST EXH #123, page 1062 from line 16 to page 1063 thru line 10; read to self.

09:50 AM - Re-re-Cross examination by DPA Williams. **09:51 AM** - Atty Corey objection to state eliciting testimony of mental state of others; court cautions but does not concur with that happening. **09:52 AM** - Atty Corey seeks which page is being referred to; argument. **09:53 AM** - ST EXH #123 presented to witness; witness asked to read pages 1060 and 1061 to self.

09:56 AM - Witness asked to read page 1069 to self. **09:57 AM** - Atty Corey objects - testified to that yesterday and whether counsel has impeached her; overruled. Asks for a special instruction; court advises we can address later. **10:02 AM** - Atty Corey objection - beyond scope; badgering witness; court sustains as to beyond scope. **10:04 AM** - Atty Corey objection - beyond the scope; sustained as beyond the scope of today. **10:05 AM** - Atty Corey objection - sustained. **10:05 AM** - Atty Corey objection - beyond the scope; overruled. Same obj - overruled.

MINUTES OF PROCEEDING

Start Date/Time: Aug 28, 2014 9:37 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

10:05 AM - Witness referred to ST EXH #123, page 1136, line 16; asked to read to self. **10:07 AM** - Atty Corey objection - sustained. Atty Corey objection - court finds argumentative; sustained.

10:08 AM - Follow up inquiry by Atty Corey. DEF EXH #96, page 11 of 20; witness asked to read portion to self (page 11,12). **10:16 AM** - DPA Williams interjects with question of "are we on the same transcript" - Atty Corey moves to strike; granted. Atty Corey directs witness to page 12 of DEF EXH #96 - asks to re-read portion. DPA Williams asks for point of clarification of what's being read/read in entirety. Court asks Atty Corey to clarify/re-ask question. Witness again referred to DEF EXH #96, page 12; asked to read to self.

10:24 AM - Follow up inquiry by DPA Williams. Atty Corey objection - vague; overruled.

DPA Williams offers pages 11 and 12 of DEF EXH #96. Atty Corey seeks admission of DEF EXH #96 in it's entirety. No obj by state. State offers DEF EXH #96. Atty Corey asks court to reserve to address her request to also admit other transcript. Granted; court reserves at this time.

10:28 AM - Witness excused. Atty Corey asks for further follow-up; denied. Atty Corey asks to be heard outside presence of jury. Cites **Alaska v Davis**: Court asks jurors to step into jury room. Atty Corey addresses **Alaska v Davis**; DPA Williams responds. Court notes. Atty Corey advises she would be recalling witness O'Hern. DPA Williams advises that he has become aware that ST WIT Millender is now willing to testify. DPA Williams advises that state has no intention of recalling as it has ended it's case in chief; simply making a record. Court breaks for 5 minute break.

End Date/Time: Aug 28, 2014 10:34 AM

Start Date/Time: Aug 28, 2014 10:51 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 28, 2014 10:39 AM - Court reconvenes. Jurors seated in jury box. **DEF WIT Dmarcus George, defendant, sworn/testifies** under direct examination by Atty Corey.

MINUTES OF PROCEEDING

Start Date/Time: Aug 28, 2014 10:51 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

10:52 AM - DPA Williams objection - relevance; overruled. **11:03 AM** - ST EXH #1, previously admitted for demonstrative purposes only, placed on easel; witness asked to refer to exhibit. **11:11 AM** - Witness retakes the seat on witness stand. **11:25 AM** - Witness again refers to ST EXH #1. DPA Williams objection - leading. **11:30 AM** - Atty Corey asks permission to have witness stand and demonstrate gesture; granted. **11:34 AM** - DPA Williams asks that last question be repeated; granted. **11:36 AM** - DPA Williams objection - non responsive; court cautions witness to listen carefully to the question. **11:51 AM** - DPA Williams objection - asked/answered; court directs to re-ask question and cautions witness to listen carefully. **11:58 AM** - DPA Williams objection; non responsive and irrelevant; sustained. **11:59 AM** - DPA Williams objection - relevance; overruled. **12:04 PM** - Court excuses jurors for lunch break; directed to return by 1:20 pm. **12:05 PM** - Court addresses; Atty Corey believed that court should have awaited co counsel Atty Corey-Boulet prior to direct. Court gives overview. This pm's schedule addressed. Juror #3's conflict addressed. DPA Proctor suggests he be excused; DPA Williams suggests he be released as alternate #2 since juror #3 is going to be out of town.

End Date/Time: Aug 28, 2014 12:18 PM

Start Date/Time: Aug 28, 2014 1:48 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 28, 2014 01:35 PM - Court reconvenes. Issues of what state will be addressing on cross exam argued.

01:48 PM - DEF WIT George retakes the witness stand. Jurors seated in jury box.

Cross examination by DPA Williams. **01:51 PM** - ST EXH #125 (transcript) presented to witness for i.d.; referred to page 1179, line 12. **01:52 PM** - Referred to page 1215, line 13. **01:55 PM** - Witness referred to page 1264, line 1. **01:57 PM** - Atty Corey - objection calls for speculation; sustained. Atty Corey - objection - relevance; overruled. Atty Corey - objection - speculation; court asks to hear question again. **01:58 PM** - Atty Corey - objection speculation/irrelevance; overruled. **02:00 PM** - Atty Corey objection - badgering; sustained as to last question. **02:01 PM** - Atty Corey -

MINUTES OF PROCEEDING

Start Date/Time: Aug 28, 2014 1:48 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

objection to asking witness about one statement; overruled, proper subject for re-direct. **02:02 PM** - Atty Corey objection - asked/answered - no oral ruling. **02:03 PM** - Atty Corey objection - asked/answered; overruled. **02:06 PM** - Atty Corey objection - calls for speculation; overruled. **02:07 PM** - ST EXH #125 presented, again, to witness; referred to page 1297, bottom of page. **02:08 PM** - Witness again referred to page 1297, bottom of page. **02:09 PM** - Atty Corey objection - to form of questions; sustained as to introductory comment. **02:10 PM** - Atty Corey objection - asks to be heard; denied; Atty Corey asks be stricken - overruled. **02:11 PM** - DPA Williams ask to be heard outside jury presence - granted. Jurors asked to step into jury room. DPA Williams addresses court; in these proceedings parties have been referring to "prior hearing"; feels at this time it may be necessary to refer to prior "trial"; proceeds to explain/argument. **02:13 PM** - Atty Corey argument in objection. **02:14 PM** - Court denies state motion; both agreed, at outset, to use the term "prior hearing".

02:16 PM - Jurors reseated in jury box. Cross examination continues. **02:18 PM** - Atty Corey objection - overruled. **02:19 PM** - ST EXH #125 referred to; witness referred to page 1264, line 24; asked to read responses out loud. Atty Corey would like it known, for the record, that this testimony is "cross examination" of this witness - 2009. **02:24 PM** - Reading of transcript ends; cross continues. Witness referred to page 1304, near bottom of page; witness asked to read answer. **02:26 PM** - Atty Corey asks that state give witness to read this some 200 pages of testimony; denied. **02:30 PM** - Atty Corey objection - asks to be heard outside presence of jury; court will take up later; overrules objections. **02:36 PM** - Witness asked to turn to page 1236 (of ST EXH #125), line 15. **02:38 PM** - Witness asked to turn to page 1347, line 15. **02:40 PM** - Witness referred to page 1328, line .. Witness interjects with commentary. State asks court to direct witness to pick up transcript - granted. Witness, again referred to page 1328, line 17. **02:44 PM** - Atty Corey objection - witness is not a doctor. Court advises witness has answered. Witness referred to page 1280, line 8. **02:45 PM** - Atty Corey objection - relefance; overruled. **02:46 PM** - Atty Corey objection - irrelevant; sustained as also argumentative. **02:47 PM** - Atty Corey asks to address a motion prior to re-direct. Granted. Court asks jurors to step into jury room. **Atty Corey motion for mistrial or sanctions** - state made reference to "prior trial" instead of "prior proceeding" in conflict with court's ruling ; asserts willful misconduct. **02:50 PM** - DPA Williams addresses; apologizes; asserts no willful misconduct; slip of the tongue; unintentional in the heat of argument. **02:52 PM** - Court does not find willful misconduct. **02:53 PM** - Response argument by Atty Corey. **02:55 PM** -

MINUTES OF PROCEEDING

Start Date/Time: Aug 28, 2014 1:48 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

Reply by DPA Williams. Court inquires of his thoughts on a curative instruction or suggested solution. **02:57 PM** - DPA Proctor addresses court. **02:58 PM** - Court takes a 10 minute break to allow attorneys to weigh thoughts/suggestions.

End Date/Time: Aug 28, 2014 2:59 PM

Start Date/Time: Aug 28, 2014 3:10 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

August 28, 2014 03:10 PM - Court reconvenes. **Court DENIES defense motion for mistrial.** State has no suggestion for a curative instruction. Atty Corey addresses court with her suggestion.

03:13 PM - DPA Williams response in opposition. Court declines to give an instruction as suggested by Atty Corey. **03:15 PM** - Atty Corey addresses court. **03:20 PM** - Witness retakes the witness stand. Jurors reseated. **Re-direct by Atty Corey.** **03:27 PM** - Witness referred to ST EXH #123, page 1264, lines 5 - 13; asked to read to self. **03:34 PM** - DPA Williams objection - asked/answered; overruled. **03:36 PM** - DPA Williams objection - asked/answered; sustained.

03:37 PM - Re-cross by DPA Williams. Witness referred to ST EXH #123, referred to page 1177, line 17. Atty Corey obj - arguing with the witness; overruled. Atty Corey obj - sustained.

03:41 PM - Asked/answered - sustained. Asked/answered - overruled. **03:42 PM** - DPA Williams objection - asked/answered; sustained. **03:43 PM** - Atty Williams objection. Witness excused.

03:43 PM - ST REBUTTAL WIT James O'Hern, Retired Detective Sgt, sworn/testified under direct examination by DPA Proctor. **03:45 PM** - ST EXH #70 (incident report) presented to witness for i.d./referral if/when necessary. **03:47 PM** - Atty Corey Boulet objection - "went through

MINUTES OF PROCEEDING

Start Date/Time: Aug 28, 2014 3:10 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

this first time around" - overruled.

03:48 PM - Cross examination by Atty Warren Corey Boulet.

03:49 PM - Re-direct by DPA Proctor. 03:50 PM - No more state witnesses. No sur rebuttal witnesses from defense. Court addresses jurors; asks jurors to step into jury room to allow court/ counsel to discuss scheduling prior to them leaving.

03:51 PM - ST EXH #96 addressed. Court previously reserved on offer of this exhibit by state. Atty Corey argument in objection. **03:54 PM** - Court denies motion to admit transcript, DEF EXH # 96. Seated juror #3 addressed (has conflict beginning of 9/3 for 10 days). DPA Williams addresses with suggestion to use juror #3 as second alternate. **03:57 PM** - Atty Corey responds. **Court will designate seated juror #3 as 2nd alternate. Seated juror #13 will be 1st alternate.** Discussion in re rest of trial/scheduling. **04:03 PM** - Jurors reseated in jury box. Court releases jurors until Tuesday, 9/2 for commencement of closing arguments; directs to return by 10:15 a.m. Counsel agree to have JA inquire as to conflicts and if they inquire, we will accommodate.

End Date/Time: Aug 28, 2014 4:04 PM

Start Date/Time: Sep 2, 2014 9:09 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

September 2, 2014 09:19 AM - Parties present. (Defense co-counsel, Corey Boulet, not yet present in courtroom). Defense proposed curative instruction in re use of word "trial" in reference to prior trial addressed/argued by Atty B. Corey. **09:13 AM** - Argument by DPA Williams. **09:15 AM** - Atty Corey reply argument. **09:19 AM** - Court declines to give defense proposed curative instruction, over defense objection. Atty Corey asks court to preclude state from arguing about any testimony in "prior trial"; court grants; prohibits state from using word "trial".

MINUTES OF PROCEEDING

Start Date/Time: Sep 2, 2014 9:09 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

09:20 AM - Jury instruction review continues. Argument in re defense proposed lesser of Manslaughter 2nd. State has no objection to lesser of Manslaughter 1st; does not understand defense basis for negligence in regards to proposed lesser of Mans 2nd. **09:39 AM** - Court declines to give defense proposed lesser included of Manslaughter 2nd; finds no evidence to support only negligence; finds deliberate. Defense proposed #15 addressed; added language of "or are unable to agree"; given. **09:46 AM** - Argument continues. Court denies the three defense proposed instruction having to do with Manslaughter 2nd, of which proposed was denied. **09:49 AM** - Court gives State proposed 19 in lieu of Defense proposed 23. **09:50 AM** - Verdict forms for lesser addressed. Court takes a break to assemble final order of jury instructions.

End Date/Time: Sep 2, 2014 9:50 AM

Start Date/Time: Sep 2, 2014 10:32 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

September 2, 2014 10:32 AM - Court reconvenes. All parties present. After review of court's final proposed set/order of jury instructions, court reviews with counsel; numbers final set. **10:37 AM** - Argument by Atty Corey in regards to order/placement of "self defense" instruction. Order placement review continues. **10:47 AM** - 29 instructions; 6 verdict forms. **10:47 AM** - Attorneys review final numbered set. **10:52 AM** - Atty Corey advises that the court never addressed their objection of content of self defense instruction. Argument by DPA Williams. **10:57 AM** - Court will amend instruction 24; defense would like to add "an or another". DPA Williams argument. Court takes a break to allow JA to make final copies.

End Date/Time: Sep 2, 2014 11:00 AM

Start Date/Time: Sep 2, 2014 11:29 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

September 2, 2014 11:28 AM - Court reconvenes. Counsel agree on final copies. Formal objections/exceptions. State: - none. Defense: objection to #2, #9, #13, 22, failure to give Manslaughter 2nd. Court notes. #24 (self defense) addressed by court. **11:33 AM** - State suggests we break for lunch after the reading of the instructions; closing arguments after lunch.

MINUTES OF PROCEEDING

Start Date/Time: Sep 2, 2014 11:29 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

Defense in agreement.

11:37 AM - Jurors seated in jury box. **JURY INSTRUCTIONS READ BY COURT.** 11:56 AM - Court breaks for lunch; cautionary instructions reiterated. Seated juror #1 has dental appointment at 2:30. At court's direction, JA inquires of seated juror #1 as to if she can reschedule her dental appointment; JA returns; juror #1 indicates she cannot. We will hear state closing today and defense closing tomorrow morning. State brings up fact that seated juror #3, who has been deemed as the 2nd alternate, will now not be able to hear defense closing as he is out of town on 9/3. **12:01 PM** - No objection to allowing seated juror #3, 2nd alternate, be excused now. JA directed to thank and release juror #3.

End Date/Time: Sep 2, 2014 12:03 PM

Start Date/Time: Sep 2, 2014 1:06 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

September 2, 2014 01:06 PM - Court reconvenes. All parties present. Jurors seated in jury box. Seated juror #3 addressed; court formally thanks and excuses from trial due to his vacation conflict. Juror #3 had inquired of JA as to if he could observe state's closing; addressed. No objection by any counsel as long as juror instructed to have no contact w/ any of the seated jurors. granted. Juror sits in gallery.

01:08 PM - STATE CLOSING ARGUMENT BY DPA JESSE WILLIAMS. 01:15 PM - Atty Corey objection to "puzzle" analogy; overruled; noted. **01:17 PM** - Same objection; court overrules at this time; cautions. At same time, state objects to speaking objections. **01:30 PM** - Atty Corey objection - argument that is contrary to the law; overruled. **01:54 PM** - Atty Corey objection; asks to be heard. **Sidebar suggested by court.** **01:55 PM** - State closing arguments continue. **01:56 PM** - Atty Corey asks for a sidebar; seeks the curative instruction previously argued; court denies request for curative instruction as discussed earlier. **02:04 PM** - Defense prefers to start it's closing tomorrow morning without interruption. Court releases jurors with cautionary instructions. Directs jurors to return to jury room by 8:50 a.m. tomorrow. **02:05 PM - Issue of sidebar addressed for**

MINUTES OF PROCEEDING

Start Date/Time: Sep 2, 2014 1:06 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

the record. DPA Corey motion for mistrial/argument; willful and intention error. Puzzle analogy also addressed. **02:13 PM** - State argument. **02:19 PM** - Court denies defense motion for mistrial; court will entertain reviewing a curative instruction tomorrow morning. Atty Corey would like to offer their proposed curative instruction offered this morning; court ruling stands on that proposed curative instruction - denied. Defense would like to review the record (have court reporter read back the record. Court adjourns and counsel may confer w/ court reporter.

02:22 PM - Back on record. Atty Corey re-addresses. Attorney in courtroom took notes on what state said during closing arguments that is basis of defense motion for mistrial. (reference to "2009 (sign for "not" - = sign w/ a slash) self defense" in state slide used in state closing arguments. Atty Corey re-opens her motion for mistrial. Denied. Court will review any curative instruction proposed.

End Date/Time: Sep 2, 2014 2:27 PM

Start Date/Time: Sep 3, 2014 9:58 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

September 3, 2014 09:57 AM - All parties present. (with exception of Atty W. Corey Boulet). Atty B. Corey renews defense motion for mistrial addressed yesterday as court reporter has supplied a printout of the statements made by state in closing that are in dispute; asserts state opened door.

10:01 AM - Response argument by DPA Jesse Williams. **10:05 AM** - Reply argument by defense; will be expounding on issue. **10:07 AM** - Response by state. **10:08 AM** - Atty Corey seeks court to give curative instruction proposed yesterday; denied. Defense motion for mistrial - denied. Cannot mention court of appeals decision re Dept 2/jury instruction. **10:10 AM** - ST EXH # 106 (admitted on 8/19/14 and which was unable to be located this morning) addressed. Copy brought in by state and substituted/remarked; no defense objection.

MINUTES OF PROCEEDING

Start Date/Time: Sep 3, 2014 9:58 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

10:13 AM - Jurors seated in jury box.

DEFENSE CLOSING ARGUMENTS BY ATTY B. COREY. 10:17 AM -(*Atty W. Corey Boulet enters courtroom at this time *) **10:23 AM** - DPA Williams objection; facts not in evidence. Atty Corey objection to speaking objection. Court overrules state objection. **11:12 AM** - Court takes an a.m. break before state rebuttal.

End Date/Time: Sep 3, 2014 11:13 AM

Start Date/Time: Sep 3, 2014 11:27 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

September 3, 2014 11:26 AM - Court reconvenes. Jurors reseated in jury box.

STATE REBUTTAL ARGUMENT BY DPA KATHLEEN PROCTOR.

11:32 AM - Atty Corey objection - overruled; closing argument. **11:34 AM** - Atty Corey objection; misstatement of the evidence; overruled.

11:37 AM - Atty Corey objection - overruled. **11:42 AM** - Atty Corey objection - inference of 404(b) evidence; overruled.

11:44 AM - Atty Corey objection - misstatement of evidence; overruled. Atty Corey objection-

MINUTES OF PROCEEDING

Start Date/Time: Sep 3, 2014 11:27 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

misstating instruction; overruled.

11:47 AM - Atty Corey objection - misstatement of testimony; overruled. **11:49 AM** - Atty Corey - objection to misstatement of law; overruled.

11:51 AM - Atty Corey objection - misstatement of evidence; overruled. **11:52 AM** - Court addresses jury in regards to deliberations.

11:53 AM - 1st alternate advised; seated juror #13; instruction. **11:54 AM** - Jurors excused to jury deliberation room. **12:01 PM** - JA returns. Exhibit list review; counsel sign off on list. Court adjourns for lunch break. JA delivers original set of jury instructions and all admitted exhibits. Deliberations commence.

End Date/Time: Sep 3, 2014 12:07 PM

Start Date/Time: Sep 3, 2014 12:40 PM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: NOT ON RECORD

September 3, 2014 12:40 PM - Lunch delivered to jurors; lunch deliberations continue.

01:02 PM - JA answers knock from jury. Jurors advise taking a break. Deliberations cease.

01:16 PM - Jurors all back from break; deliberations continue. **04:33 PM** - JA answers knock from jury door; jurors decide to cease deliberations for the day; will return by 9am tomorrow morning; cautionary instructions reiterated.

End Date/Time: Sep 3, 2014 4:34 PM

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON
 VS
 GEORGE, DMARCUS DEWITT

Cause Number: 05-1-00143-9
Memorandum of Journal Entry

Judge/Commissioner: RONALD E. CULPEPPER

MINUTES OF PROCEEDING

Start Date/Time: Sep 4, 2014 9:09 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: NOT ON RECORD

September 4, 2014 09:09 AM - Jurors present. Deliberation continues. **09:37 AM** - JA answers knock from jurors. Verdicts reached. JA contacts parties to return to courtroom.

End Date/Time: Sep 4, 2014 9:37 AM

Start Date/Time: Sep 4, 2014 10:17 AM

Judicial Assistant: ANGELA EDWARDS

Court Reporter: KARLA JOHNSON

September 4, 2014 10:17 AM - All parties present. Court advises parties that verdict was reached/time.

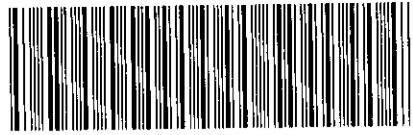
10:20 AM - Jurors seated. Court addresses. Court identifies presiding juror, seated juror #11, who hands envelope containing original jury instructions/verdict forms to JA. JA hands forth envelope to court. Court opens envelope and verdicts read.

Count 1/A - GUILTY. Court inquires of presiding juror, seated juror #11 - unanimous. Count 1/A/Special Verdict Form - YES. Court inquires - unanimous. Count 1/B - not reached; Count 1/B/Spec Verdict - not reached. Count 2 - GUILTY; inquires - unanimous. Count 2/Special Verdict Form - YES - unanimous. Court thanks and excuses jurors. **Sentencing set for 9/19/14 at 3:30 pm. (Dept 17 on recess, however Judge Culpepper will come in to handle; will most likely be held in the CD's).** No bail hold pending sentencing.

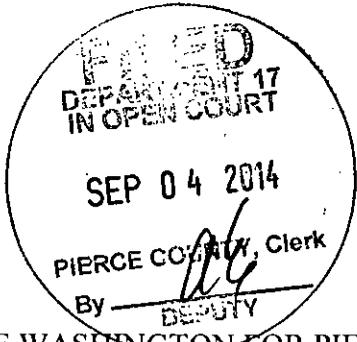
End Date/Time: Sep 4, 2014 10:29 AM

APPENDIX J

0079



05-1-00143-9 43244943 VRD 09-08-14



ORIGINAL

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,

vs.

DMARCUS DEWITT GEORGE,
Defendant.

CAUSE NO. 05-1-00143-9

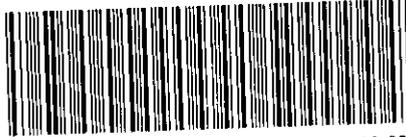
COUNT I
VERDICT FORM A

We, the jury, find the defendant, Dmarcus Dewitt George, GUILTY
(fill in the blank with the words "Not Guilty" or "Guilty") of the crime of murder in the
second degree as charged in Count I.

[Signature]
PRESIDING JUROR

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,

CAUSE NO. 05-1-00143-9

vs.

DMARCUS DEWITT GEORGE,

COUNT I
VERDICT FORM A
SPECIAL VERDICT FORM

Defendant.

We, the jury, having found the defendant guilty of the crime of second degree murder as charged in Count I, return a special verdict by answering as follows:

QUESTION: Was the defendant armed with a firearm at the time of the commission of the crime in Count I?

ANSWER: YES (Write "yes" or "no")

PRESIDING JUROR

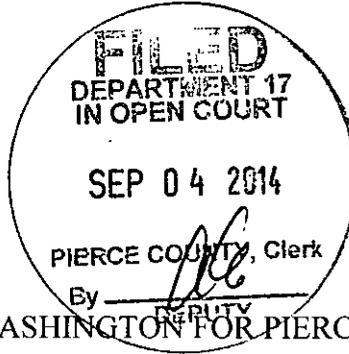
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05-1-00143-9 43245009 VRD 09-08-14



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
DMARCUS DEWITT GEORGE,
Defendant.

CAUSE NO. 05-1-00143-9

VERDICT FORM FOR COUNT II

We, the jury, find the defendant, Dmarcus Dewitt George, GUILTY
(fill in the blank with the words "Not Guilty" or "Guilty") of the crime of murder in the
second degree as charged in Count II.

[Signature]
PRESIDING JUROR

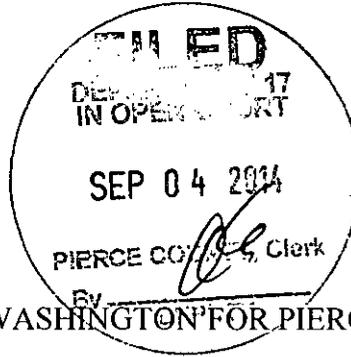
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05-1-00143-9 43245012 SVRD 09-08-14

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
DMARCUS DEWITT GEORGE,
Defendant.

CAUSE NO. 05-1-00143-9
SPECIAL VERDICT FORM FOR
COUNT II

We, the jury, having found the defendant guilty of the crime of second degree murder as charged in Count II, return a special verdict by answering as follows:

QUESTION: Was the defendant armed with a firearm at the time of the commission of the crime in Count II?

ANSWER: YES (Write "yes" or "no")

PRESIDING JUROR

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9/9/2014

APPENDIX K

September 23 2014 8:30 AM

KEVIN STOCK
COUNTY CLERK
NO: 05-1-00143-9

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5 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
6 **IN AND FOR PIERCE COUNTY**

7 STATE OF WASHINGTON,

8 Plaintiff,

9
10 vs.

11 DMARCUS DEWITT GEORGE,

12 Defendant.

CAUSE NO. 05-1-00143-9

NOTICE OF APPEAL

13
14 DMARCUS DEWITT GEORGE, the defendant herein, seeks review by the Court of
15 Appeals, Division II of the trial and judgment in his case following his convictions and
16 sentencing in his case of : Murder in the Second Degree. A copy of the Judgment and Sentence
17 is attached hereto.
18

19
20 DATED this 22nd day of September, 2014.

21
22
23 /s/BARBARA COREY, WSBA#11778
24 Attorney for Defendant
barbara@bcoreylaw.com

25 CERTIFICATE OF SERVICE:

26 I declare under penalty of perjury under the laws
27 Of the State of Washington that the following is a true
28 and correct: That on this date, I delivered via ABC- Legal
Messenger and email, a copy of this Document to: Pierce County Prosecutor's
Office, 930 Tacoma Ave So, Room 946, Tacoma, Washington 98402

29 9/22/14

/s/Kim Redford
Legal Assistant
kim@bcoreylaw.com

30
31
32 NOTICE OF APPEAL
Page 1

Law Offices of Barbara Corey, PLLC
902 South 10th Street
Tacoma, WA 98405
253-779-0844

APPENDIX L

February 22, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

DMARCUS D. GEORGE,

Appellant.

No. 46705-4-II

UNPUBLISHED OPINION

SUTTON, J. — A jury found Dmarcus George guilty of two counts of second degree murder for the death of Isaiah Clark. The trial court dismissed the jury’s guilty verdict on the felony murder charge and sentenced George to a standard range sentence. George appeals, arguing that (1) repeated instances of evidentiary irregularities and prosecutorial misconduct deprived him of a fair trial, (2) the trial court violated double jeopardy by only dismissing the felony murder conviction conditionally, and (3) the case should be remanded to allow George to seek an exceptional sentence downward based on his youth at the time of the crime. We affirm George’s conviction and sentence for second degree murder but remand to the trial court to strike the language in George’s judgment and sentence which refers to the jury’s guilty verdict on count II, the felony murder charge.

FACTS

I. BACKGROUND

On June 21, 2004, George, Fred McGrew, and Tamrah Dickson arrived at a gas station in Tacoma. George was asleep in the backseat of the car. While McGrew was trying to get gas, he

was confronted by Rickie Millender. When Millender confronted McGrew, Dickson woke George. Millender's friend, Clark, was with Millender at the gas station. George shot Clark four times. Clark died of his injuries.

George fled the state. Four years later, George was arrested and extradited to Washington. The State charged George with one count of first degree premeditated murder and one count of second degree felony murder. Both counts included a firearm enhancement. At George's first trial, the trial court denied his motion to instruct the jury on self-defense. *State v. George*, 161 Wn. App. 86, 92-93, 249 P.3d 202 (2011). A jury found George guilty of the lesser included offense of first degree manslaughter and second degree felony murder. *George*, 161 Wn. App. at 94. George appealed. *George*, 161 Wn. App. at 94. This court reversed the trial court's ruling to not instruct the jury on self-defense and remanded the case for a new trial. *George*, 161 Wn. App. at 101-02.

On September 6, 2012, the State filed an amended information charging George with one count of second degree intentional murder (count I) and one count of second degree felony murder (count II). Both counts included a firearm enhancement. Prior to George's second trial, the trial court also ruled that George's first trial would be referred to as a "prior hearing" rather than a "prior trial." Verbatim Report of Proceedings (VRP) (Aug. 19, 2014) at 5.

II. CURRENT JURY TRIAL

George's second trial began in August 2014. Laura Devereaux, who witnessed the shooting, testified that when she arrived at the gas station she observed McGrew and Millender being loud, but she was not concerned. The verbal confrontation began to escalate, but there was no physical altercation. Then Devereaux heard a gunshot and saw a man later identified as Clark

“hit the ground.” VRP (Aug. 14, 2014) at 623. Devereaux ran into the gas station to tell the attendant to call the police. When she came back outside, a man and woman were standing over Clark’s body going through his pockets. Devereaux did not see either of them take anything from the pockets.

Monica Johnson, who witnessed the shooting, testified that when she arrived at the gas station, she could hear individuals arguing near a Cutlass. As Johnson was walking into the store, she walked by a man, later identified as Clark, standing off to the side and she asked what was happening. Clark just shrugged. Johnson walked into the store to pay for her gas and noticed that the arguing was escalating. As the arguing got louder, Johnson saw a man get out of the Cutlass and pull a gun. Johnson identified George as the man she saw exit the Cutlass. Almost immediately after exiting the car, George began shooting Clark.

Johnson testified that she would never forget the look on George’s face when he shot Clark. The State asked what the look was and the following exchange took place:

[JOHNSON]: It was a very menacing, very –

Ms. Corey: Objection, Your Honor, to that opinion, conclusion.

The Court: Well, overruled.

Ms. Corey: It’s improper demeanor testimony.

Court: Overruled.

So, the question again was?

[STATE]: You said the look on the defendant’s face was menacing?

[JOHNSON]: Yes.

Ms. Corey: Your Honor, I’m going to object. This is testimony that is outside of case law.

[STATE]: You’re Honor, I’m going to –

Court: Overruled. So, the question is what, Mr. Williams?

[STATE]: You said you saw the defendant's face and he had a menacing look on his face?

[JOHNSON]: Yes.

[STATE]: Can you help us understand what you mean by that?

[JOHNSON]: There was no fear on the face. It was more – it was just a nonchalant. It was – it was a monster. It was nonchalant, like it was nothing to it. I'll never forget it.

Ms. Corey: Objection, Your Honor. I ask that these descriptions be stricken.

Court: Well, overruled. You can certainly cross-examine her about this.

VRP (Aug. 19, 2014) at 63-64. Johnson also testified that, right before Clark was shot, he was not doing anything except standing near the car.

At the trial court's next recess, George moved for a mistrial based on Johnson's comments, specifically that Johnson called George a "monster." VRP (Aug.19, 2014) at 80. Although the trial court noted that the specific use of the word "monster" was unfortunate, the trial court also ruled that the answer was not responsive to the question. The trial court denied George's motion for a mistrial.

Later during Johnson's testimony, the State asked Johnson to refresh her memory with transcripts from an interview she gave in the original investigation. Specifically, the State asked Johnson to review a page of the transcript to refresh her memory as to what was said by a man she saw rummaging through Clark's pockets after he was shot. Johnson responded:

I recall, after reading the statement I gave the next day, that he had also said, "This is the same guys who shot my home boys a certain time ago, a week ago," or to that effect.

VRP (Aug. 19, 2014) at 94. The trial court immediately dismissed the jury. The trial court clarified that the statement the witness gave was actually on a different page than the State had asked Johnson to review.

George moved for another mistrial arguing that the statement was improper ER 404(b) evidence that was too prejudicial to be cured without a new trial. The State responded that it would agree to a stipulation that there was no evidence that George had participated in any shooting before June 21, 2004. The trial court denied George's motion for a mistrial. Instead, the trial court gave the jury the following curative instruction:

Now, you are to disregard the last statement of Ms. Johnson. Statements made by others in the presence of a witness and repeated by that witness may be inaccurate. There is no evidence that Dmarcus George participated in any shooting that occurred prior to June 21st, 2004.

VRP (Aug. 19, 2014) at 116.

Michael Clark,¹ Isaiah Clark's older brother, testified that, on the day of the shooting, Clark's friend Millender came to his mother's house and told him that Clark had been shot. During cross-examination, George asked what Millender's demeanor was when he arrived at the house. Michael responded, "He was upset, saying that he shot him like their other friend who had been shot before." VRP (Aug. 19, 2014) at 163. The State objected and asked the trial court to strike the response. The trial court agreed and instructed the jury to disregard the statement.

At trial, George testified that, when Dickson woke him up, she was scared and concerned Millender was going to do something to McGrew. George saw Millender confront McGrew and began exiting the car. George intended to try to diffuse the situation, but Clark began approaching

¹ We refer to Michael Clark by his first name for clarity. We intend no disrespect.

the car. George testified that Clark made “a gesture with his hand around his waist and at the time I perceived he had a weapon, so I stopped.” VRP (Aug. 28, 2014) at 70. Then, when George saw McGrew start to get in the car, George turned around to get in the backseat. As George bent down to get in the car, Clark hit him in the back of the head. George testified that “[i]t felt like he hit me with a piece of metal.” VRP (Aug. 28, 2014) at 78. And, because he already believed that Clark had a weapon, George believed Clark had hit him with a gun. At that point, George testified that he believed he was going to die, so he reached for his firearm and shot Clark multiple times.

During cross-examination, the State had George read portions of his testimony from the first trial.² Before introducing the specific statements George made, the State asked if George understood how serious the stakes were at the time he made the statements. George objected and the State asked to be heard outside the presence of the jury. The State informed the trial court that it wanted to inform the jury that George had testified at a prior trial so that the jury would understand that the stakes were just as high when George made his original statement as they were at the current trial. George objected. The trial court sustained the objection and explained that the prior trial would be referred to as a proceeding or hearing, and that the rules for how to refer to the prior trial would not be changed at this late stage of the trial.

The State questioned George about whether he had made previous statements about seeing Clark with a gun and the following exchange took place:

[STATE]: I’m going to read the question [from the 2009 transcript]. Please read the answer you gave. “And you don’t see a gun or any weapon in [Clark’s] hand?” Your response, please?

[GEORGE]: “I didn’t see one, but I did – like I wasn’t trying to look. I didn’t know if he had one. I didn’t know.”

² The testimony was admitted as a statement of party opponent.

[STATE]: So, again, this would have been another opportune time for you to say that you saw him making a motion with his waistband or that when he punched you, you thought it was a gun that he clubbed you with or that when you were in the car struggling, you thought you saw a gun?

[GEORGE]: I believe I did say that he hit m[e] with a hard object, but I left out everything about – I never said that I seen (sic) a gun. It appeared to me that he had a gun.

[STATE]: Is that what you said there?

[GEORGE]: No. This is what I've always said. I never said that I seen (sic) a gun. It appeared that he had a gun.

[STATE]: And, again, going back to your answer from 2009 –

[GEORGE]: I understand –

[STATE]: -- when you were asked if you saw a gun or any weapon in [Clark's] hand, your response was: "I didn't see one, but I didn't, like I wasn't trying to look. I didn't know if he had one. I didn't know."

That's your response, correct?

[GEORGE]: That's what it – that's what it says, sir.

VRP (Aug. 28, 2014) at 126-27.

Later, when George testified that he reached for his weapon because it appeared to him that Clark had a gun, the State asked, "[T]his is the weapon you didn't mention at the prior trial, right?" VRP (Aug. 28, 2014) at 129-30. The trial court asked the State to rephrase the question. The State then asked, "The weapon you're saying he had, now that you're saying he had, you didn't say that at the prior trial?" VRP (Aug. 28, 2014) at 130. George objected and asked to make a motion outside the presence of the jury based on "deliberate misconduct." VRP (Aug. 28, 2014) at 130. The trial court overruled the objection and informed George that it would hear the motion later.

The State's cross-examination of George concluded without further incident and the trial court excused the jury to hear George's motion. George moved for a mistrial and sanctions against the State based on the State's reference to the prior trial. The State apologized for using the word

“trial” and claimed it was “a slip of the tongue in the heat of questioning.” VRP (Aug, 28, 2014) at 143. The trial court determined that the prosecutor’s reference to the prior trial did not constitute deliberate misconduct and asked George for a proposed remedy. George responded that the only remedy was a mistrial because the entire trial strategy would have been different if he had known that the jury was going to be informed that there was a prior trial.

The trial court denied the motion for a mistrial because it did not believe the prosecutor’s statement constituted deliberate misconduct. However, the trial court invited George to propose any curative instructions that he believed would be helpful. George suggested that the trial court provide the jury with “a list of all the witnesses and a list of – they’ve heard many references to transcripts and statements – is that we give them a list, with regard to the transcripts, the date of the transcripts, whether the questions were asked on direct or cross or redirect or recross so that they know.” VRP (Aug. 28, 2014) at 150. The trial court declined to give the instruction because it would be “extraordinarily difficult to draft and would be extremely confusing to the jury.” VRP (Aug. 28, 2014) at 152. George declined to propose any other remedy short of a mistrial, which the trial court again denied.

III. CLOSING ARGUMENT

During closing argument, the prosecutor focused on the differences between George’s 2009 trial testimony and his current testimony—specifically, the prosecutor focused on George’s current testimony that Clarke was armed with a gun. George objected to these references twice during the prosecutor’s argument, and the trial court held a sidebar on each occasion. After the prosecutor finished his closing argument, the trial court excused the jury. George again moved for a mistrial based on his prior objections made during the prosecutor’s closing argument.

George argued that the prosecutor's arguments, that George did not raise self-defense in the prior court hearing, constituted deliberate misconduct. The trial court stated:

I did not understand [the prosecutor] to say self-defense wasn't raised as an issue before. [W]hat he said was very important things were at stake in 2009 and there was no testimony about Clark having a gun. That's what I understood him to say.

VRP (Sept. 2, 2014) at 105. The trial court denied the motion for a mistrial. After obtaining a transcript and the prosecutor's PowerPoint, George renewed the motion because he argued that the prosecutor had falsely argued to the jury that George had left out "the most important fact" in his 2009 testimony and that his 2009 testimony "was not self-defense." VRP (Sept. 2, 2014) at 113.

The trial court reiterated its understanding of the State's argument:

Well, I don't think he was stating that [George did not claim self-defense in 2009]. He was stating that the facts in 2009 didn't establish self-defense and he's saying he thinks your client then fabricated a story about the gun to try to get a better claim in self-defense. That's my understanding of his argument. Maybe I'm wrong. Whether the jury believes that, it's up to them.

VRP (Sept. 2, 2014) at 109-10. The trial court did not change its ruling on the motion for a mistrial. However, the trial court explicitly told George's counsel that she could tell the jury that George had testified in 2009 that he acted in self-defense. But the trial court also told defense counsel that she could not inform the jury that the prior conviction had been reversed because the prior trial court had denied George's instruction on self-defense and thus, the jury had not considered the claim of self-defense at the prior trial.

George also objected several times during the prosecutor's rebuttal closing argument. First, he objected because the prosecutor improperly argued about George's prior behavior with violence and being armed, which George argued was improper ER 404(b) evidence. Second, he

objected because he believed that the prosecutor misstated evidence regarding George's testimony at trial. Third, George objected because he believed the prosecutor misstated the law on self-defense. Fourth, George objected based on the prosecutor's misstatement of the evidence. The trial court overruled all these objections.

After the prosecutor finished his rebuttal closing argument, George moved for a fifth mistrial based on his prior objections to the rebuttal closing argument. The trial court made the following ruling:

I do not think that [the State] intentionally . . . or negligently misstated the law. The law is in the instructions. The jurors are told that. There are different inferences that could be made. [The State] is entitled to argue the inferences she thinks are made. You're entitled to argue the inferences you think can be made from the evidence. There may be more than one potential inference. So, again, I'm going to deny the motion for a mistrial.

VRP (Sept. 3, 2014) at 183. The trial court also reminded George that the jury was instructed that the law was given to them in the written instructions, not in the attorney's argument.

IV. VERDICT AND SENTENCING

The jury found George guilty of both counts of second degree murder. The jury also found that George was armed with a firearm at the time of the commission of the crime. The trial court entered judgment on the jury's verdict for count I. The judgment and sentence also states:

The court DISMISSES without prejudice Count II, the guilty verdict for Murder 2 [degree] w/FASE, on double jeopardy grounds given the conviction for Count I.

Clerk's Papers at 380. The State recommended a sentence at the high-end of the standard sentencing range. George asked that the trial court impose a low-end sentence. The trial court imposed a mid-range sentence of 175 months and the 60-month firearm sentencing enhancement. George appeals.

ANALYSIS

First, George appeals his conviction for second degree murder arguing that he was denied a fair trial based on repeated instances of prosecutorial misconduct and improperly admitted prejudicial evidence. Second, George argues that the trial court violated double jeopardy by entering judgment on both counts of second degree murder. Third, George argues that he is entitled to a new sentencing hearing so that he can ask the trial court for an exceptional sentence downward based on his youth at the time of the shooting.³

We affirm George's conviction because George has failed to establish any prejudicial error that deprived him of a fair trial. And George waived his challenge to his sentence by failing to request an exceptional sentence downward at his sentencing hearing. However, the trial court violated double jeopardy by referencing the verdict for count II in the judgment and sentence. Accordingly, we affirm George's conviction and sentence, but remand to the trial court to strike the reference to the jury's verdict on count II in the judgment and sentence.

I. FAIR TRIAL

George claims that

the scope, magnitude and complete pervasiveness of all of the misconduct and prejudicial evidence was so corrosive and complete that it ensured that no jurors could possibly have fairly determined the only real issue in the case - whether the prosecution met its burden of proving, beyond a reasonable doubt, that George did not act with self-defense.

³ George also argues that the trial court improperly instructed the jury as to the standard for self-defense as it relates to count II—felony murder. But George does not contend that the trial court improperly instructed the jury on the standard for self-defense on count I—intentional murder. Because we hold that George's conviction on count II must be dismissed, we do not address George's claim that the jury instructions for count II were erroneous.

Br. of Appellant at 24-25. Essentially, George argues that the cumulative error doctrine requires a reversal of his conviction. However, he does so without individually analyzing the merit of each individual alleged error. Contrary to George's assertion that, "[t]he facts regarding these issues are woven throughout trial and do not summarize neatly into categories, so the entire trial and all those errors must be reviewed at once," the alleged errors in this case are readily ascertainable and can be analyzed individually. Br. of Appellant at 10.

The errors here are either evidentiary irregularities or alleged instances of prosecutorial misconduct. Before turning to George's allegation of cumulative error, we address the merits of each alleged error individually to determine whether an error or misconduct occurred and the extent of the prejudice caused by the error or misconduct. Such an inquiry is necessary to determine whether the cumulative error doctrine applies and whether the cumulative errors in this case, if any, require reversal.

II. TRIAL IRREGULARITIES

During trial, George made several motions for a mistrial based on trial irregularities that occurred during testimony. Specifically, George argues that three specific trial irregularities support his cumulative error argument: (1) Johnson's testimony that George looked like a "monster" when he shot Clarke; (2) Johnson's testimony that someone at the gas station stated George and McGrew were the "same guys who shot my home boys"; and (3) Michael's testimony Millender told him Clark was shot "like their other friend who had been shot before." Johnson's testimony that George looked like a monster was not an error; however, the other two comments were errors and will be considered when evaluating his cumulative error argument.

A. “MONSTER” DESCRIPTION

George argues that Johnson’s description of George as a “monster” was an evidentiary error. George objected to the comment and asked that it be stricken from the record, but the trial court overruled the objection. George argues that the comment was prejudicial within the context of the entire trial. Because George has not established that the trial court improperly overruled his objection to the “monster” comment, he has failed to demonstrate an error that supports his cumulative error argument.

B. “SAME GUYS WHO SHOT MY HOME BOYS”

George also argues that Johnson’s testimony that someone stated, “This is the same guys who shot my home boys a certain time ago, a week ago,” supports his argument that there was cumulative error. VRP (Aug. 19, 2014) at 94. Here, there is no dispute that the trial court properly determined that the comment was improper. Although the individual prejudice caused by this error was cured by an instruction to the jury; because the statement was improper we will consider it when evaluating George’s cumulative error argument.

C. “Shot Him Like Their Other Friend Who Had Been Shot Before”

George also argues that Michael’s testimony that Millender told him Clark was shot “like their other friend who had been shot before,” was improper and prejudicial. VRP (Aug. 19, 2014) at 163. The statement was improper because the State objected to Michael’s testimony and the trial court sustained the objection. Because the statement was improper, we will consider it when evaluating George’s cumulative error argument.

III. PROSECUTORIAL MISCONDUCT

George also relies on seven alleged incidents of prosecutorial misconduct to support his cumulative error argument. A defendant alleging prosecutorial misconduct must show that the prosecutor's conduct was both improper and prejudicial. *State v. Emery*, 174 Wn.2d 741, 756, 278 P.3d 653 (2012). We will reverse for prosecutorial misconduct when there is a substantial likelihood that the misconduct affected the jury's verdict. *Emery*, 174 Wn.2d at 760. If a defendant fails to object to improper comments at trial, fails to request a curative instruction, or fails to move for a mistrial, we will not reverse unless the misconduct was so flagrant and ill-intentioned that no curative instruction could have obviated the prejudice engendered by the misconduct. *Emery*, 174 Wn.2d at 760-61. Before determining whether any of the alleged incidents of prosecutorial misconduct support George's cumulative error argument, we must determine which, if any, alleged incidents were actually improper.

A. REFERENCE TO PRIOR TRIAL

George alleges that the prosecutor engaged in misconduct by referring to the prior trial as a trial during George's testimony rather than a prior hearing. We agree. The trial court expressly instructed the attorneys to refer to the prior trial as a prior hearing. And the trial court reminded the prosecutor of this ruling during George's cross-examination. Despite this, the prosecutor referred to the prior trial as a trial two more times, directly violating the trial court's order. Although the trial court found that the prosecutor did not act deliberately, the prosecutor's reference to the prior trial as a trial, in direct violation of the trial court's order, was improper. Accordingly, the prosecutor's reference to the prior trial as a trial is an error that we will consider when evaluating George's cumulative error argument.

B. CLOSING ARGUMENT REGARDING CONFLICTS WITH 2009 TESTIMONY

George also argues that the prosecutor committed misconduct during closing argument by misstating the facts regarding George's 2009 testimony. During closing argument, prosecutors have wide latitude to argue all reasonable inferences from the evidence. *State v. Thorgerson*, 172 Wn.2d 438, 448, 258 P.3d 43 (2011). Here, the prosecutor's arguments were based on the properly admitted statements that George made in 2009. The prosecutor did not misstate the evidence presented at trial, therefore, the argument was not improper. Accordingly, the prosecutor's argument regarding the differences between George's current testimony and his 2009 testimony is not an error that supports George's cumulative error argument.

C. STATEMENT/SLIDE THAT GEORGE DID NOT ARGUE SELF-DEFENSE IN 2009

Similarly, George argues that the prosecutor improperly stated that George did not argue self-defense in 2009 by using a slide which stated "2009 \neq self-defense." Br. of Appellant at 20. However, the prosecutor was not stating that George never raised self-defense in 2009. Instead, the prosecutor was arguing that George's testimony in 2009 was insufficient to establish a claim of self-defense. This was a reasonable argument based on the evidence that was admitted at trial and was not improper. Accordingly, the prosecutor's slide and corresponding statement, that George's testimony in 2009 did not equal self-defense, is not an error that supports George's cumulative error argument.

D. STATEMENT THAT “WE DON’T CARE WHAT THE DEFENDANT SAYS”

George argues that the prosecutor misstated the law regarding self-defense when he argued that “we don’t care what the defendant says.” Br. of Appellant at 26. Because self-defense has both an objective and subjective element, the prosecutor did not misstate the law in his closing argument. Self-defense has both subjective and objective components. *George*, 161 Wn. App. at 96. The subjective component requires viewing the facts from the defendant’s point of view. *George*, 161 Wn. App. at 96. The objective component requires determining what a reasonably prudent person would have done in the circumstances. *George*, 161 Wn. App. at 96. Because both components must be satisfied, the subjective component is immaterial if the objective component is not satisfied. *See George*, 161 Wn. App. at 96.

Here, the prosecutor was arguing that, because a reasonable person would not have used deadly force in this situation, the jury did not need to consider whether George subjectively believed deadly force was appropriate. In other words, the prosecutor was arguing that because George failed to prove one component of self-defense, the jury did not need to consider the other component. This argument was reasonable within the context of the evidence presented at trial and was not improper. Accordingly, there was no error that supports George’s cumulative error argument.

E. ARGUMENT THAT CLARK MUST HAVE HAD A GUN TO ESTABLISH SELF-DEFENSE

George also argues that the prosecutor misstated the law in rebuttal argument by arguing to the jury that George could not establish a self-defense claim unless Clark had a gun at the time of the shooting. Although George is correct in stating that the law does not require George to prove that Clark had a gun in order to establish a self-defense claim, the prosecutor was not arguing

that the law required George to prove Clark had a gun. Rather the prosecutor was arguing that, based on the specific facts of the case, the facts would not support a self-defense claim unless Clarke had a gun. This argument is based on reasonable inferences drawn from the evidence presented at trial, therefore, it was not improper. The prosecutor's rebuttal argument that George could not establish a self-defense claim without proving Clark had a gun was not an error and this portion of the prosecutor's rebuttal argument does not support George's cumulative error argument.

F. ARGUMENT THAT GEORGE WAS USED TO GETTING SHOT AT

George argues that the prosecutor improperly presented ER 404(b) propensity evidence to the jury during rebuttal argument. Specifically, George argues that the prosecutor told the jury that George had been in several dangerous situations with McGrew and was used to being shot at. It is improper for a prosecutor to urge to jury to decide a case based on evidence outside the record. *State v. Pierce*, 169 Wn. App. 533, 553, 280 P.3d 1158 (2012), *remanded*, 2016 WL 7104032 (2016). However, this was not new propensity evidence that the prosecutor was trying to present during closing argument. Instead, it was argument based on evidence that was properly admitted during trial. Accordingly, the prosecutor's argument was not improper and this portion of the prosecutor's rebuttal argument does not support George's cumulative error argument.

G. USE OF "MONSTER" COMMENT IN CLOSING

Finally, George argues that the prosecutor committed misconduct by referring to Johnson's "monster" comment in closing argument, and by highlighting the comment on a slide during the argument. But this evidence was admitted at trial. And as explained above, George has provided no basis for establishing that the "monster" comment was improperly admitted evidence. The

prosecutor referred to a specific piece of evidence in closing argument which is not improper. George has provided no alternative explanation for why the prosecutor's argument based on evidence admitted at trial would be improper. Accordingly, the prosecutor's references to Johnson's "monster" comment were not improper and this is not an error that can support George's cumulative error argument.

IV. CUMULATIVE ERROR

George alleges that the combined effect of the alleged prosecutor misconduct and improper evidence deprived him of a fair trial under the cumulative error doctrine. "The cumulative error doctrine applies where a combination of trial errors denies the accused of a fair trial, even where any one of the errors, taken individually, would be harmless." *In re Pers. Restraint of Cross*, 180 Wn.2d 664, 690, 327 P.3d 660 (2014), *cert. denied*, 135 S. Ct. 1702 (2015). To support a cumulative error claim, the appellant must demonstrate multiple errors. *Cross*, 180 Wn.2d at 690-91.

After reviewing all of George's alleged evidentiary errors and instances of prosecutorial misconduct, we have determined that he has only identified three errors that will be considered in his cumulative error argument: (1) Johnson's spontaneous and nonresponsive statement that someone stated Clark was shot by the "same guys who shot my home boys;" (2) Michael's spontaneous and nonresponsive statement that "they shot him like their other friend who was shot before;" and (3) the prosecutor's reference to the prior trial. Even considered together, these three errors did not deprive George of his right to a fair trial.

The prejudice caused by the two spontaneous, nonresponsive witness statements resulted in the implication that George had been involved with other shootings. However, in addition to being instructed to disregard the improper statements, the jury was specifically instructed that there was no evidence that George had participated in shootings prior to shooting Clark. While multiple evidentiary errors may cause cumulative error because collectively the prejudice is too great for the jury to disregard, here, the specific prejudice caused by the errors was cured by an explicit jury instruction. Accordingly, the two comments, even when taken together, did not cause an enduring prejudice that denied George a fair trial.

In contrast to the evidentiary errors, the prosecutor's improper reference to the prior trial allegedly prejudiced George's trial strategy and preparation rather than directly prejudicing the jury. However, George has not explained, either at trial or on appeal, what specific prejudice was caused by the prosecutor's reference to the prior trial. Therefore, even though the prosecutor's direct violation of a court order was improper, it did not cause prejudice that requires reversal.

Based on the three alleged instances that we have determined were errors, George was not denied a fair trial. Accordingly, his cumulative error argument fails and we affirm his second degree murder conviction for count I—intentional murder.

V. DOUBLE JEOPARDY

George argues that the trial court violated double jeopardy by entering judgment on both count I—intentional murder and count II—felony murder. We review double jeopardy claims de novo. *State v. Hughes*, 166 Wn.2d 675, 681, 212 P.3d 558 (2009). Double jeopardy protects a defendant from receiving multiple punishments for the same offense. U.S. CONST. amend. V; *State v. Trujillo*, 112 Wn. App. 390, 409, 49 P.3d 935 (2002). “Therefore, where the jury returns

a verdict of guilty on each alternative charge, the court should enter a judgment on the greater offense only and sentence the defendant on that charge without reference to the verdict on the lesser offense.” *Trujillo*, 112 Wn. App. at 411.

Further, a trial court may violate double jeopardy by “conditionally vacating the lesser conviction while directing, in some form or another, that the conviction nonetheless remains valid.” *State v. Turner*, 169 Wn.2d 448, 464, 238 P.3d 461 (2010). In *Turner*, our Supreme Court specifically directed:

To assure that double jeopardy proscriptions are carefully observed, a judgment and sentence must not include any reference to the vacated conviction-nor may an order appended thereto include such a reference; similarly, no reference should be made to the vacated conviction at sentencing.

169 Wn.2d at 464-65.

Here, the trial court violated the directive in *Turner* by referring to the guilty verdict on count II in George’s judgment and sentence. Accordingly, we remand to the trial court to strike the language in George’s judgment and sentence which refers to the jury’s guilty verdict on count II.⁴

⁴ George also notes that the State mentioned both jury verdicts in its sentencing recommendations. In *Turner*, in addition to ordering the trial court to enter a corrected judgment and sentence, our Supreme Court ordered the trial court to “redact all references to any validity or import attributable to the vacated lesser conviction.” 169 Wn.2d at 466. Because we remand to the trial court to remove the references to the jury’s verdict on count II, we do not address this argument further.

VI. SENTENCING

Finally, George argues that, if we decline to reverse his conviction, we should remand to the trial court for resentencing to allow George to seek an exceptional sentence downward based on his youth at the time of the shooting. George relies on *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015), to argue that George is now entitled to use his youth at the time of the shooting to request an exceptional sentence downward. In *O'Dell*, our Supreme Court held that the trial court erred by refusing to consider an exceptional sentence downward based on its belief that it was prohibited from considering whether youth diminished the defendant's capacity to appreciate the wrongfulness of his conduct or conform his conduct to the requirements of the law. 183 Wn.2d at 696. Although George argues that his youth should be a factor to consider in evaluating his culpability, he has waived his challenge to his standard range sentence by failing to request an exceptional sentence downward at the time of sentencing. Therefore, we affirm George's standard range sentence.

Generally, a sentence within the standard sentence range for an offense may not be appealed. RCW 9.94A.585. Our courts have recognized an exception to this general rule in cases in which a defendant has requested an exceptional sentence, but the trial court imposed a standard range sentence based on its belief that it did not have the authority to grant an exceptional sentence. *See O'Dell*, 183 Wn.2d at 697. However, unlike the counsel in *O'Dell*, George did not ask the trial court to impose an exceptional sentence downward at sentencing. Therefore, George has failed to demonstrate that his standard range sentence is appealable.

We affirm George's conviction and sentence for second degree murder but remand to the trial court to strike the language in George's judgment and sentence which refers to the jury's guilty verdict on count II, the felony murder charge.

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

Sutton, J.

SUTTON, J.

We concur:

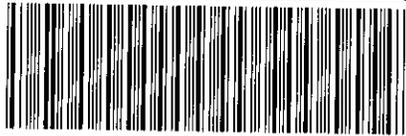
Byrnes, C.J.

BYRNES, C.J.

Maxa, J.

MAXA, J.

APPENDIX M



05-1-00143-9 49614007 MNDCA 07-24-17



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

05-1-00143-9

STATE OF WASHINGTON,

No. 46705-4-II

Respondent,

MANDATE

v.

Pierce County Cause No.
05-1-00143-9

DMARCUS DEWITT GEORGE,

Appellant.

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 February 22, 2017 became the decision terminating review of this court of the above entitled case on June 28, 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 5th day of July, 2017.

[Signature]

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

CASE #: 46705-4-II

State of Washington, Respondent v. Dmarcus George, Appellant

Mandate – Page 2

Hon. Ronald Culpepper

Kathleen Proctor
Pierce County Prosecuting Atty Ofc
930 Tacoma Ave S Rm 946
Tacoma, WA 98402-2171
kprocto@co.pierce.wa.us

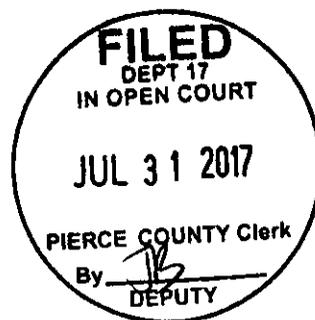
Kathryn A. Russell Selk
Russell Selk Law Office
1037 NE 65th St
Seattle, WA 98115-6655
KARSdroit@aol.com

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

APPENDIX N



05-1-00143-9 49675640 ORCJS 08-02-17



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-00143-9

vs.

DMARCUS DEWITT GEORGE,

MOTION AND ORDER CORRECTING
JUDGMENT AND SENTENCE

Defendant.

CLERKS ACTION REQUIRED

PCN: 540562920

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 September 19, 2014, pursuant to defendant's plea of guilty to the charge(s) of MURDER IN THE SECOND DEGREE; MURDER IN THE SECOND DEGREE, as follows:

1) That Page 3 of the Judgment and Sentence, 3.2 reflects "The court dismisses without prejudice Count II, the guilty verdict for Murder 2 with FASE, on double jeopardy grounds given the conviction for Count I" and that language should be stricken;

2) 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 September 19, 2014, be and the same is hereby corrected as follows:

1) Page 3 of the Judgment and Sentence, 3.2 is corrected as follows:

a) "The court dismisses without prejudice Count II, the guilty verdict for Murder 2 with FASE, on double jeopardy grounds given the conviction for Count I" is deleted.

2) 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

ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment filed on September 19, 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 31 day July, 2017. NUNC PRO TUNC to September 19, 2014.

Whishendall

JUDGE/COMMISSIONER

KARENA KIRKENDOLL

Presented by:

J. Williams

JESSE WILLIAMS

Deputy Prosecuting Attorney
WSB# 35543

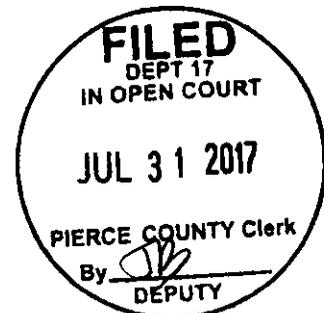
Approved as to form and Notice
Of Presentation Waived:

approved via e-mail date July 25, 2017

BARBARA L. COREY

Attorney for Defendant
WSB# 11778

dlc



APPENDIX O

▪ Legal Profile

Ephraim William Benjamin

License Number: 23616

License Type: Lawyer

Eligible To Practice: Yes

License Status: Active

WSBA Admit Date: 6/7/1994

Contact Information

Public/Mailing Address: 3615 Steilacoom Blvd SW Ste 301
Lakewood, WA 98499-4580
United States

Email: esqewb@aol.com

Phone: (253) 229-5406

Fax: (253) 267-0626

Website:

TDD:

Practice Information Identified by Legal Professional

Firm or Employer:

Office Type and Size: Solo in Shared Office or Suite

Practice Areas: Criminal

Languages Other Than English: None Specified

Professional Liability Insurance

Private Practice: Yes

Has Insurance? Yes - [Click for more info](#)

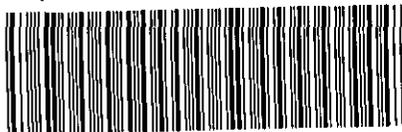
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Committees

Member of these committees/boards/panels:

None

APPENDIX P



05-1-00143-9 29495421 NTARD 04-04-08

FILED
IN COUNTY CLERK'S OFFICE

A.M. APR 03 2008 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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

STATE OF WASHINGTON,

NO. 05-1-00143-9

Plaintiff,

**NOTICE OF APPEARANCE
DEMAND FOR DISCOVERY**

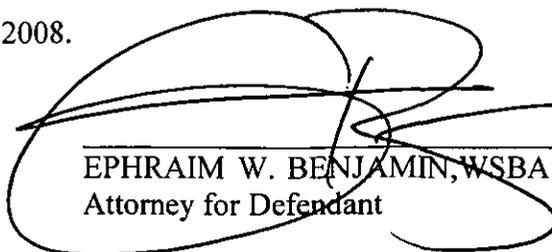
v.

DMARCUS GEORGE,

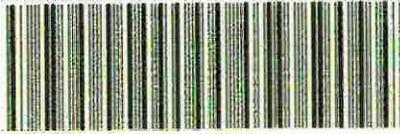
Defendant.

COMES NOW DMARCUS GEORGE, by and through his attorney of record, Ephraim W. Benjamin, who hereby enters his notice of appearance and furthermore enters a demand for discovery, pursuant to CrR 4.7. All further notices and papers may be served upon the attorney at the address listed below.

DATED this 3RD day of April, 2008.


EPHRAIM W. BENJAMIN, WSBA #23616
Attorney for Defendant

APPENDIX Q



05-1-00143-9 31750535 ORIND 03-26-09

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAR 25 2009 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
ST. DEPUTY

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

STATE OF WASHINGTON,

NO. 05-1-00143-9

Plaintiff,

ORDER OF INDIGENCY

v.

DMARCUS DEWITT GEORGE,

Defendant.

The court finds that the defendant lacks sufficient funds to prosecute an appeal and applicable law grants the defendant a right to review at public expense to the extent defined in this order.

The court orders the following:

1. The filing fee is waived.
2. Dmarcus Dewitt George, is entitled to counsel for review wholly at public expense.
3. The appellate court shall appoint counsel for review pursuant to RAP 15.2
4. Dmarcus Dewitt George is entitled to the following at public expense:
 - (a) Those portions of the verbatim report of proceedings reasonably necessary for review as follows: ALL PARTS OF TRIAL AND SENTENCING.

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- (b) A Copy of the following clerk's papers: ALL PAPERS
- (c) Preparation of original documents to be reproduced by the clerk as provided in rule 4.3(b).
- (d) Reproduction of briefs and other papers on review that are reproduced by the clerk of the appellate court.
- (e) The cost of transmitting the following cumbersome exhibits: ALL
- (f) Other items: Reserved for Appellate Counsel.

DATED this ^{25th} 17th day of March, 2009.

Katherine Stolz
 JUDGE KATHERINE STOLZ

Presented by:

Ephraim W. Benjamin
 EPHRAIM W. BENJAMIN, WSBA #23616
 Attorney for Defendant

FILED
 IN COUNTY CLERK'S OFFICE
 A.M. MAR 25 2009 P.M.
 PIERCE COUNTY, WASHINGTON
 KEVIN STOCK, County Clerk
 DEPUTY

APPENDIX R



05-1-00143-9 31787993 NTAPAC 04-01-09

To: <egaddis@co.pierce.wa.us>
Date: 4/1/2009 10:06:07 AM
Subject: OPD Case Appointment

The following indigent criminal case from your county is on appeal. The attorney listed below has been appointed to represent the defendant in this appeal.

Attorney: NIELSEN, ERIC
Attorney Bar No.: 12773
Court of Appeals Case No.: 39085-0
Court of Appeals Division: 2
Case Name: STATE VS. DMARCUS D. GEORGE
County: Pierce
Trial Court Case No.: ... 05-1-00143-9
Notice of Appeal Date: ... 03/25/2009
Case Type: All Other Cases

FILED
IN COUNTY CLERK'S OFFICE
A.M. APR -1 2009 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

This e-mail has been provided at your request for information purposes only.

Washington State Office of Public Defense

APPENDIX S

myWSBA

Legal Profile

Eric J. Nielsen

License Number: 12773

License Type: Lawyer

Eligible To Practice: Yes

License Status: Active

WSBA Admit Date: 11/2/1982

Contact Information

Public/Mailing Address: Nielsen Broman & Koch PLLC
1908 E Madison St
Seattle, WA 98122-2842
United States

Email:

Phone: (206) 623-2373

Fax: (206) 623-2488

Website:

TDD:

Practice Information Identified by Legal Professional

Firm or Employer: Nielsen Broman & Koch PLLC

Office Type and Size: 11-20 Lawyers in Firm

Practice Areas: Appellate, Criminal, Indian

Languages Other Than English: None Specified

Professional Liability Insurance

Private Practice: Yes

Has Insurance? Yes - [Click for more info](#)

Last Updated: 1/24/2018 8:00:00 AM

APPENDIX T

June 22 2012 8:30 AM

KEVIN STOCK
COUNTY CLERK
NO: 05-1-00143-9

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

STATE OF WASHINGTON,

Plaintiff,

vs.

DMARCUS DEWITT GEORGE,

Defendant.

CAUSE NO. 05-1-00143-9

NOTICE OF APPEARANCE &
DEMAND FOR DISCOVERY

TO: CLERK, PIERCE COUNTY SUPERIOR COURT
AND TO: PIERCE COUNTY PROSECUTOR'S OFFICE

PLEASE TAKE NOTICE that Barbara Corey makes her appearance for and behalf of the Defendant, DMARCUS DEWITT GEORGE, herein, and a copy of all pleadings should be served upon him at office address stated below.

FURTHER, PLEASE TAKE NOTICE that, pursuant to the authority of CrR 4.7, CrR 6.13(c)(2), the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and Article 1, Sections 3, 7, 29, and 30, and the Tenth Amendment to the Washington State Constitution;

THE DEFENDANT HEREBY makes the following demands, motions, and requests for discovery in the matter(s) pending under this Cause Number:

1. A written Bill of Particulars, including a description of all facts upon which the prosecution intends to rely to support the charge(s) pending against the Defendant, and a statement of the specific status under which the Defendant is charged;

1 2. Copies of any and all police or investigative reports and statements of claimed experts
2 made in connection with this particular case, including results of physical or mental examinations and
3 scientific tests, experiments, or comparisons made in connection with the Defendant's arrest;

4
5 3. The names and addresses of any and all persons whom the plaintiff intends to call as
6 witnesses at the hearing or trial, together with any and all written or recorded statements, and the
7 substance of any oral statements of such witnesses, together with a summary of the expected testimony of
8 any witness the Plaintiff intends to call if the substance of the expected testimony is not contained in the
9 materials otherwise provided;

10
11 4. Copies of any and all forms read to or signed by the Defendant containing information
12 regarding his rights;

13
14 5. Copies of any written or recorded statements and the substance of any oral statements
15 made by the Defendant, and take notice that the Defendant hereby demands a hearing pursuant to CrR 3.5
16 if the prosecution intends to offer any such statements in its case in chief;

17
18 6. A list of, copies of, and access to any books, papers, documents, photographs, or tangible
19 objects with the Prosecuting Attorney intends to use in the hearing or trial;

20 7. A list of all items or things which were obtained from or belonging to the Defendant,
21 regardless of whether the Prosecutor intends to introduce said items at hearing or trial;

22
23 8. A description of any other tangible evidence which the Plaintiff intends to use at the
24 hearing or trial which are not contained in the materials otherwise provided pursuant to these demands;

25 9. Copies of any photographs, recordings or video-tapes made of the Defendant or of the
26 crime scene for viewing by the Defendant and/or his attorney prior to trial;

27
28 10. Any record or prior criminal conviction known to the Prosecuting Attorney of the
29 Defendant and persons whom the Prosecuting Attorney intends to call as witnesses at the hearing or trial;

30 11. Any material or information within the Prosecutor's knowledge which tends to negate the
31 Defendant's guilt as to the offense charged;

APPENDIX U

myWSBA

Legal Profile

Barbara L. Corey

License Number: 11778

License Type: Lawyer

Eligible To Practice: Yes

License Status: Active

WSBA Admit Date: 10/27/1981

Contact Information

Public/Mailing Address: Law Offices of Barbara Corey
902 S 10th St
Tacoma, WA 98405-4537
United States

Email: barbara@bcoreylaw.com

Phone: (253) 779-0844

Fax: (253) 272-6439

Website: www.bcoreylaw.com

TDD:

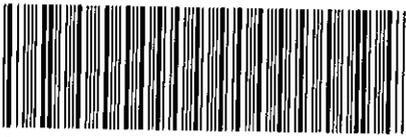
Practice Information Identified by Legal Professional

Private Practice: Yes

Has Insurance? Yes - [Click for more info](#)

Last Updated: 1/29/2018 8:00:00 AM

APPENDIX V



05-1-00143-9 43359869 ORIND 09-29-14



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

STATE OF WASHINGTON,

Plaintiff,

and

DMARCUS DEWITT GEORGE,

Defendant.

CAUSE NO. 05-1-00143-9

ORDER OF INDIGENCY

THIS MATTER having come before the court on the motion of the defendant,
DMARCUS DEWITT GEORGE and the Court having considered the written materials and
argument of counsel, based upon the grounds that the defendant lacks sufficient funds to
prosecute an appeal and that applicable law grants the defendant a right to review at public
expense to the extent defined in this order, NOW THEREFORE ORDERS:

1. DMarcus Dewitt George is entitled to the following at public expense:
 - a. An attorney
 - b. Copies of all papers in possession of the clerk regarding this matter as later requested by the defendant's attorney
 - c. Reproduction of all briefs and documents of court papers in review which are produced by the clerk of the appellate court.
 - d. Preparation of original documents by the Clerk as provided by RAP 14.3 (b).
 - e. The filing fee.

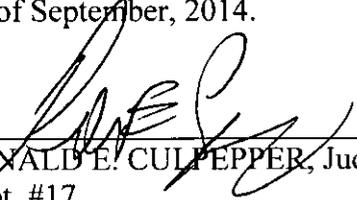
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f. The verbatim report of proceedings.

DONE IN OPEN COURT this 27th day of September, 2014.



RONALD E. CULPEPPER, Judge
Dept. #17

Presented by:



BARBARA COREY, WSBA #11778 #46341
Attorney for Defendant



APPENDIX W

0055
3321
10/3/2014



05-1-00143-9 43383380 NTAPAC 10-01-14

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ment

The following indigent criminal case from your county is on appeal. The attorney listed below has been appointed to represent the defendant in this appeal.

Attorney: RUSSELL SELK, KATHRYN
Attorney Bar No.: 23879
Court of Appeals Case No.: 46705-4
Court of Appeals Division: 2
Case Name: State v Dmarcus George
County: Pierce
Trial Court Case No.: ... 05-1-00143-9
Notice of Appeal Date: ... 09/23/2014
Case Type: All Other Cases

FILED
IN COUNTY CLERK'S OFFICE
A.M. OCT - 1 2014 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

This e-mail has been provided at your request for information purposes only.

Washington State Office of Public Defense

APPENDIX X



Inmate Search

To improve public safety the Department of Corrections publishes information about **currently incarcerated individuals**. All information provided through the application is subject to the agency's [Disclaimer and Terms of Use](#). You may [contact us](#) to obtain more information about current and former inmates and supervisees.

Enter a [DOC Number](#) or last name to browse for a specific inmate. Special characters and multi-word search terms cannot be used.

Inmate Search Results:

Search results display in ascending order based on DOC Number.

DOC Number:	870911
Offender Name:	GEORGE, DMARCUS D
Location:	Clallam Bay Corrections Center
SAVIN Notification:	Register to be notified

RUSSELL SELK LAW OFFICE

July 31, 2018 - 4:28 PM

Filing Personal Restraint Petition

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: Case Initiation
Trial Court Case Title: State of Washington Vs George, Dmarcus Dewitt ****cod****
Trial Court Case Number: 05-1-00143-9
Trial Court County: Pierce County Superior Court
Signing Judge:
Judgment Date: 07/31/2017

The following documents have been uploaded:

- PRP_Affidavit_Declaration_20180731161634D2202303_9357.pdf
This File Contains:
Affidavit/Declaration - Service
The Original File Name was georgebriefappcover12018fin.pdf
- PRP_Motion_20180731161634D2202303_3922.pdf
This File Contains:
Motion 1 - Other
The Original File Name was georgemtntransferdiv.pdf
- PRP_Motion_20180731161634D2202303_6633.pdf
This File Contains:
Motion 2 - Waive - Filing Fee
The Original File Name was georgefinances2018fin.pdf
- PRP_Other_20180731161634D2202303_2411.pdf
This File Contains:
Other - Appendices
The Original File Name was georgebriefappcover2.2018fin.pdf
- PRP_Personal_Restraint_Petition_20180731161634D2202303_0112.pdf
This File Contains:
Personal Restraint Petition
The Original File Name was georgeprp2018fin.pdf
- PRP_State_of_Finances_20180731161634D2202303_9248.pdf
This File Contains:
Statement of Finances
The Original File Name was georgebriefappcover3.2018fin.pdf
- PRP_Verification_by_Petitioner_20180731161634D2202303_7067.pdf
This File Contains:
Verification by Petitioner
The Original File Name was georgeprpbrieffin2018.pdf

A copy of the uploaded files will be sent to:

- KARSDroit@gmail.com

Comments:

Sender Name: Valerie Greenup - Email: valerie.russellselklaw@gmail.com

Filing on Behalf of: Kathryn A. Russell Selk - Email: KARSdroit@gmail.com (Alternate Email: Valerie.kathrynussellselk@gmail.com)

Address:

1037 NorthEast 65 th Stl PMB 176

Seattle, WA, 98115

Phone: (206) 782-3353

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