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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

VENIAMIN RUSEV,

Petitioner.

NO. 52389-2-II

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Whether petitioner's ineffective assistance of counsel claims fail on the merits, where counsel's decision not to pursue self-defense was a legitimate trial strategy, counsel (wisely) did not advocate a losing same criminal conduct argument at sentencing, and counsel's decision not to seek an exceptional mitigated sentence was neither deficient nor prejudicial.
2. Whether petitioner fails to show prosecutorial misconduct occurred when the prosecutor's arguments, which were not objected to during trial, were neither improper nor prejudicial?
3. Whether petitioner's convictions for first degree robbery and first degree assault violate double jeopardy, where the Washington Supreme Court in

1 *Freeman* held that the legislature intended to punish first degree robbery
2 and first degree assault separately?

3
4 B. STATUS OF PETITIONER:

5 Petitioner, Veniamin Rusev, is restrained pursuant to a Judgment and Sentence
6 entered in Pierce County Cause Number 14-1-00779-7. Appendix A (2017). Petitioner was
7 found guilty following jury trial of two counts of robbery in the first degree and one count
8 of assault in the first degree. Appx. B. The jury also found petitioner or a person to whom
9 petitioner was acting as an accomplice was armed with a firearm during the crimes. Appx.
10 B. Sentencing was held on June 26, 2015. Appx. C. Petitioner stipulated to his offender
11 score. Appx. D. Petitioner's standard range as to his first degree robbery convictions was
12 51 to 68 months, and his standard range as to his first degree assault conviction was 129 to
13 171 months. Appx. C. All counts included a 60-month firearm sentencing enhancement.
14 Appx. C. The State asked the court to impose the high end of the standard range, and
15 defense counsel asked the court to impose the low end of the standard range. 18 RP 1954-
16 55, 1963-64. The court imposed a standard range sentence of 60 months on the first degree
17 robbery counts and 155 months on the first degree assault count, plus 180 months of
18 firearm sentencing enhancements, for a total of 335 months confinement.¹ Appx. C, ¶ 4.5.

19
20 Petitioner filed a direct appeal. Appx. E. The following facts are taken from the
21 court's unpublished opinion in the direct appeal. *State v. Rusev*, 198 Wn. App. 1046
22 (2017):

23 Ihor Onishchuk sold a Mercedes-Benz to his cousin, Oleg Mikhalchuk.
24 Oleg and his brother, Yaheni, were cousins of Ihor and his brother,
25 Dmytro. The Mikhalchuk brothers also knew Rusev. Oleg told Rusev

¹ Petitioner erroneously claims the court imposed the low end of the standard range. See PRP at 41. The record instead establishes the court imposed just over the midpoint of the standard range.

1 about some issues with the Mercedes not working properly. Rusev said he
2 “doesn't like people who are cheating the other people.” 7 Report of
Proceedings (RP) at 675.

3 Alesik, a close friend of Ihor and Dmytro, also knew Rusev. Rusev
4 worked on Alesik's Volvo. Alesik loaned Rusev his Volvo to drive for a
few months while Rusev fixed it.

5 On February 23, 2014, Alesik called Ihor and Dmytro, and asked them to
6 pick up the Volvo from Rusev. The brothers planned to go together, so
Ihor could drive his own car, and Dmytro could drive the Volvo to Alesik.
7 Alesik told Rusev over the phone that Ihor and Dmytro would pick up the
car, and reminded Rusev that he had previously met Ihor.

8 Before the brothers went to pick up the Volvo, Rusev told Vossler Blesch
9 that he did not like that Ihor sold Oleg a broken car. Rusev told Blesch that
he wanted to rob the brothers and scare them because they cheated their
10 own family. Rusev said he did not trust the brothers and asked Blesch to
stay. Blesch carried a firearm in his waistband and Rusev told Blesch to
11 reveal it when the brothers arrived, so they would see it and be
intimidated.²

12
13 When the brothers arrived at Rusev's, they drove into the alleyway behind
his garage. Rusev waited for them, standing in the doorway to the garage.
14 Rusev asked them if they were picking up the Volvo. He acted normal and
smiled at them. Rusev shook the brothers' hands.

15
16 When Dmytro entered the garage, he saw a stranger, Blesch, with a gun in
his waistband. After Ihor entered the garage, Rusev closed and locked the
17 door. Within seconds, Blesch pulled the gun out of his waistband and
pointed it at the brothers.

18
19 Ihor and Dmytro stood approximately five to seven feet away from Blesch
and Rusev. The brothers spoke in Russian with Rusev. Rusev spoke
aggressively and cursed. Blesch did not understand Russian, and could not
20 follow the conversation.

21 Rusev walked back and forth in front of the brothers. Blesch described
22 Rusev as circling them “kind of like a predator stalking his prey.” 10 RP at
977. Based on instruction from Rusev, Blesch “rack[ed] the slide” and
ejected a bullet out of the chamber of the gun to intimidate the brothers;
23 Rusev kicked it out of the way. 5 RP at 392.

24
25

² Later, Blesch testified that Rusev did not instruct him to bring the firearm, Blesch planned to bring it along.
Yet, Rusev clearly knew that Blesch had his gun with him. (Footnote in original)

1 Rusev demanded the brothers' wallets and cell phones, and Dmytro's
2 watch. Ihor tried to talk to Rusev in a friendly manner, but Rusev told him
3 to be quiet or he would kill them. Rusev gestured with his head to Blesch
4 to come closer with the gun. Blesch moved closer to them and gestured
5 with the gun for the brothers to hand the items over. The brothers obeyed.

6 Rusev took one wallet and put it on top of the Volvo and gave the other
7 wallet to Blesch. Rusev then demanded the brothers take off their jackets
8 and shoes. They again obeyed. Rusev also demanded their car keys; Ihor
9 handed them to Rusev. Rusev handed their phones and the keys to Blesch,
10 and Blesch put them in his jacket pocket.³ Blesch said to Rusev, "What the
11 hell?" 10 RP at 984. Rusev said something along the lines of "trust me."
12 10 RP at 985. Rusev finally ordered the brothers to take off their pants.
13 Ihor refused.

14 Rusev then asked Ihor, "[A]re you the owner of the Mercedes?" 9 RP at
15 810. Ihor agreed that he was the owner. Rusev picked up the wallet off the
16 Volvo, looked at Ihor's driver's license, and placed it back. Rusev phoned
17 Yaheni and asked Yaheni the name of his cousin. Yaheni responded,
18 "[I]hor Onishchuk." 7 RP at 571.

19 Ihor told Dmytro that they would not "leave this place alive," and that they
20 would need to get out of there at "any price." 5 RP at 397-98. When
21 Rusev hung up the phone, he began to walk behind the brothers. Ihor
22 grabbed Rusev and held him. Dmytro grabbed Rusev from behind and
23 tried to push the group towards the door to escape. Rusev cried out, "Voss,
24 help me." 10 RP at 995. While Dmytro tried to open the door, Blesch fired
25 the gun, striking and injuring Ihor.

Rusev seemed surprised that Blesch shot the gun and he told Blesch to
leave. Rusev told Dmytro that Blesch was not supposed to fire the gun, he
was only supposed to scare them. Ihor suffered a gunshot wound to the
neck, chest, and arm that caused a significant spinal cord injury, rendering
him a partial quadriplegic. He could move his hands, but nothing else from
the neck down.

Blesch turned himself into the police shortly thereafter. Blesch claimed
that he followed Rusev's lead throughout the incident. Blesch pled guilty
to assault in the first degree and two counts of robbery in the first degree.

After the shooting, law enforcement arrested Rusev. Rusev identified
Blesch as the shooter and stated that Blesch fled after shooting Ihor. An
officer noticed that when Rusev left the scene to receive medical attention
for an injury to his ear, he took a wallet out of his pocket, said that it was

³ Rusev never returned any of the items to Ihor or Dmytro. (Footnote in original)

1 not his, and dropped it on the ground. A forensic specialist found Ihor's
2 wallet on top of the Volvo in the garage.

3 The State charged Rusev as an accomplice to one count of assault in the
4 first degree and two counts of robbery in the first degree, each with
5 firearm enhancements.⁴

6 Appx. E.

7 In his direct appeal, petitioner claimed (1) insufficient evidence supported his
8 convictions, (2) the trial court erred in instructing the jury on first degree robbery and
9 accomplice liability, (3) the trial court erroneously imposed a mandatory minimum
10 sentence on the assault conviction, (4) convictions for second degree assault and first
11 degree robbery would violate jeopardy, and (5) he asked the court not to impose appellate
12 costs. Appx. E. Petitioner's convictions were affirmed, but the court remanded for
13 resentencing based on the trial court's erroneous imposition of a mandatory minimum
14 sentence. *Id.* The mandate issued on September 13, 2017. Appx. F. On remand, the trial
15 court imposed the same standard range sentence on each count. Appx. A.

16 Petitioner subsequently filed this timely personal restraint petition, alleging he
17 received ineffective assistance of counsel, the prosecutor committed misconduct during
18 trial, and his convictions for first degree robbery and first degree assault involving Ihor
19 violate double jeopardy. This response follows.

20 C. ARGUMENT:

21 Personal restraint procedure came from the State's habeas corpus remedy, which is
22 guaranteed by article 4, § 4 of the Washington State Constitution. *In re Pers. Restraint of*
23 *Hagler*, 97 Wn.2d 818, 823, 650 P.2d 1103 (1982). Collateral attack includes personal
24

25 _____
⁴ RCW 9A.56.190; RCW 9A.56.200(1)(a)(ii); RCW 9.41.010; RCW 9A.36.011(1)(a). (Footnote in original).

1 restraint petitions, motions to vacate judgment, and motions to withdraw guilty plea. RCW
2 10.73.090(2). Collateral attack by personal restraint petition is not, however, a substitute
3 for direct appeal. *In re Hagler*, 97 Wn.2d. at 824. “Collateral relief undermines the
4 principles of finality of litigation, degrades the prominence of the trial, and sometimes
5 costs society the right to punish admitted offenders.” *In re Hagler*, 97 Wn.2d at 824 (citing
6 *Engle v. Issac*, 456 U.S. 107, 102 S. Ct. 1558, 71 L. Ed. 2d 783 (1982)). These costs are
7 significant and require that collateral relief be limited in state as well as federal courts. *In*
8 *re Hagler*, 97 Wn.2d at 824.

9
10 In a collateral action, the petitioner must prove constitutional error resulted in
11 actual prejudice. Mere assertions are inadequate to demonstrate actual prejudice. The rule
12 constitutional error must be proven harmless beyond a reasonable doubt has no application.
13 *In re Pers. Restraint of Mercer*, 108 Wn.2d 714, 718-721, 741 P.2d 559 (1987); *In re*
14 *Hagler*, 97 Wn.2d at 825. A petitioner must show a fundamental defect resulted in a
15 complete miscarriage of justice to obtain collateral relief for alleged nonconstitutional
16 error. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). This is a
17 higher standard than actual prejudice. *Id.* at 810. Inferences must be drawn in favor of the
18 judgment’s validity. *In re Hagler*, 97 Wn.2d at 825-826.

19 Reviewing courts have three options in evaluating personal restraint petitions:

- 20 1. If a petitioner fails to meet the threshold burden of showing actual
21 prejudice from constitutional error or a fundamental defect resulting
22 in a miscarriage of justice, the petition must be dismissed;
- 23 2. If a petitioner makes a prima facie showing of actual prejudice or a
24 miscarriage of justice, but the merits cannot be determined on the
25 record, the court should remand for a hearing on the merits or for a
reference hearing pursuant to RAP 16.11(a) and RAP 16.12;

- 1 3. If the court is convinced a petitioner has proven actual prejudice
2 arising from constitutional error or a miscarriage of justice, the
3 petition should be granted.

4 ***In re Pers. Restraint of Hews***, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

5 1. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF
6 COUNSEL.

7 The right to effective assistance of counsel is the right “to require the prosecution’s
8 case to survive the crucible of meaningful adversarial testing.” ***United States v. Cronic***,
9 466 U.S. 648, 656, 104 S. Ct. 2045, 80 L. Ed. 2d 657 (1984). When such a true adversarial
10 proceeding has been conducted, even if defense counsel made demonstrable errors in
11 judgment or tactics, the testing envisioned by the Sixth Amendment of the United States
12 Constitution has occurred. *Id.* “The essence of an ineffective-assistance claim is that
13 counsel’s unprofessional errors so upset the adversarial balance between defense and
14 prosecution that the trial was rendered unfair and the verdict rendered suspect.”

15 ***Kimmelman v. Morrison***, 477 U.S. 365, 374, 106 S. Ct. 2574, 2582, 91 L. Ed. 2d 305
16 (1986).

17 To demonstrate ineffective assistance of counsel, a defendant must satisfy the two-
18 prong test laid out in ***Strickland v. Washington***, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.
19 Ed. 2d 674 (1984); *see also State v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987). First,
20 a defendant must demonstrate that his attorney’s representation fell below an objective
21 standard of reasonableness. Second, a defendant must show that he or she was prejudiced
22 by the deficient representation. Prejudice exists if “there is a reasonable probability that,
23 except for counsel’s unprofessional errors, the result of the proceeding would have been
24 different.” ***State v. McFarland***, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); *see also*,
25 ***Strickland***, 466 U.S. at 695 (“When a defendant challenges a conviction, the question is
 whether there is a reasonable probability that, absent the errors, the fact finder would have

1 had a reasonable doubt respecting guilt.”). There is a strong presumption that a defendant
2 received effective representation. *State v. Brett*, 126 Wn.2d 136, 198, 892 P.2d 29 (1995),
3 *cert. denied*, 516 U.S. 1121, 116 S. Ct. 931, 133 L. Ed. 2d 858 (1996); *Thomas*, 109
4 Wn.2d at 226.

5 The standard of review for effective assistance of counsel is whether, after
6 examining the whole record, the court can conclude that defendant received effective
7 representation and a fair trial. *State v. Ciskie*, 110 Wn.2d 263, 751 P.2d 1165 (1988). An
8 appellate court is unlikely to find ineffective assistance on the basis of one alleged
9 mistake. *State v. Carpenter*, 52 Wn. App. 680, 684-685, 763 P.2d 455 (1988). In addition
10 to proving his attorney’s deficient performance, the defendant must affirmatively
11 demonstrate prejudice, i.e. “that but for counsel’s unprofessional errors, the result would
12 have been different.” *Strickland*, 466 U.S. at 694.

13 When evaluating an ineffective assistance argument, the utmost deference must be
14 given to counsel’s tactical and strategic decisions. *In re Pers. Restraint of Elmore*, 162
15 Wn.2d 236, 257, 172 P.3d 335 (2007). A fair assessment of trial attorney performance
16 requires “every effort be made to eliminate the distorting effects of hindsight, to
17 reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct
18 from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689. “There are countless
19 ways to provide effective assistance in any given case. Even the best criminal defense
20 attorneys would not defend a particular client in the same way.” *Id.* at 690. The defendant
21 bears the burden of establishing the absence of any “conceivable” legitimate strategy or
22 tactic explaining counsel’s performance to rebut the strong presumption that counsel’s
23 performance was effective. *State v. Grier*, 171 Wn.2d 17, 42, 246 P.3d 1260 (2011).

1 A petitioner must demonstrate both prongs of the *Strickland* test,⁵ but a reviewing
2 court is not required to address both prongs of the test if the petitioner makes an
3 insufficient showing on either prong. *Thomas*, 109 Wn.2d 225-26.

4 Petitioner claims for the first time that he received ineffective assistance of counsel
5 during trial and sentencing. Petitioner's claims fail for the reasons set forth below.

- 6
7 a. Defense counsel's decision not to pursue self-defense was a
8 legitimate trial strategy and therefore cannot form the basis of
9 an ineffective assistance of counsel claim.

10 Petitioner claims his trial counsel was ineffective for failing to seek a self-defense
11 instruction as to assault charge.⁶ See PRP at 11-24. Where the claim of ineffective
12 assistance is based upon counsel's failure to request a particular jury instruction, the
13 petitioner must show he was entitled to the instruction, counsel's performance was
14 deficient in failing to request it, and the failure to request the instruction caused prejudice.
15 *State v. Thompson*, 169 Wn. App. 436, 495, 290 P.3d 996 (2012). To show prejudice,
16 petitioner must show a reasonable possibility that, but for counsel's purportedly deficient
17 conduct, the outcome of the proceeding would have been different. *Grier*, 171 Wn.2d at
18 34. "Generally, choosing a particular defense is a strategic decision 'for which there is no
19 correct answer, but only second guesses.'" *In re Pers. Restraint of Davis*, 152 Wn.2d 647,
20 745 101 P.3d 1 (2004) (quoting *Hendricks v. Calderon*, 70 F.3d 1032, 1041 (9th Cir.
21 1995)). Legitimate trial strategy and tactics cannot form the basis of a finding of deficient
22 performance. *Grier*, 171 Wn.2d at 33.

23
24 ⁵ A personal restraint petitioner who makes a successful ineffective assistance of counsel claim has
25 necessarily met his burden to show actual and substantial prejudice. See *In re Pers. Restraint of Crace*, 174
Wn.2d 835, 846-47, 280 P.3d 1102 (2012).

⁶ A defendant cannot claim self-defense as a defense to robbery. See *State v. Lewis*, 156 Wn. App. 230, 233
P.3d 891 (2010).

1 To raise the claim of self-defense, a defendant must first offer credible evidence
2 tending to prove self-defense. *State v. Dyson*, 90 Wn. App. 433, 438, 952, P.2d 1097
3 (1997). The burden then shifts to the State to prove the absence of self-defense beyond a
4 reasonable doubt. *State v. Miller*, 89 Wn. App. 364, 367-78, 949 P.2d 821 (1997). The use
5 of force is lawful when a person reasonably believes he or she is about to be injured, or by
6 another lawfully aiding him or her, in preventing or attempting to prevent an offense
7 against the person and when the force is not more than necessary. RCW 9A.16.020. RCW
8 9A.16.010(1) defines “necessary” to mean that “no reasonably effective alternative to the
9 use of force appeared to exist and that the amount of force used was reasonable to effect
10 the lawful purpose intended.”

12 “To establish self-defense, a defendant must produce evidence showing that he or
13 she had a good faith belief in the necessity of force and that that belief was objectively
14 reasonable.” *Dyson*, 90 Wn. App. at 438-39. Evidence of self-defense is viewed “from the
15 standpoint of a reasonably prudent person, knowing all the defendant knows and seeing all
16 the defendant sees.” *State v. Janes*, 121 Wn.2d 220, 238, 850 P.2d 495 (1993). This
17 approach incorporates both subjective and objective characteristics. *Id.*

19 The evidence must establish a confrontation or conflict, not instigated or provoked
20 by the defendant, which would induce a reasonable person, considering all the facts and
21 circumstances known to the defendant, to believe that there was imminent danger of great
22 bodily harm about to be inflicted. *State v. Walker*, 40 Wn. App. 658, 662, 700 P.2d 1168,
23 *review denied*, 104 Wn.2d 1012 (1985). While there need not be evidence of an actual
24 physical assault, there must be evidence of the appearance of danger prior to the use of
25 force. *Id.* A defendant who is the aggressor cannot invoke self-defense. *State v. George*,

1 161 Wn. App. 86, 96, 249 P.3d 202 (2011); *see also State v. Currie*, 74 Wn.2d 197, 199,
2 443 P.2d 808 (1968).

3 Here, defense counsel did not request a self-defense instruction and did not argue
4 self-defense to the jury.⁷ *See* Appx. G; 17 RP 1871-1912. Rather, counsel argued that
5 petitioner was not an accomplice to the assault, because he never intended for an assault to
6 occur.⁸ He argued that Vossler Blesch essentially went rogue and fired the gun in panic.

7 During closing argument, counsel stated,
8

9 As to the issue of the assault and the fight, I want you to imagine -- if I
10 understood Dmytro's testimony, they're wrestling him over to the door.
11 You'll recall Dmytro said I've got Rusev in front of me as a shield, and my
12 client's going to ask Vossler to shoot? Who does that? All he said was
13 Vossler, help. No one, when they're being used as shield, would say hey,
14 would you shoot the guy behind me? That's not going to happen. Again,
15 further inference that my client did not intend an assault to take place.

16 ...
17 [Vossler] expressly told us during the defense interview that he does not
18 know if Mr. Rusev knew he had a gun.

19 ...
20 Rusev did not ask Vossler to shoot. He just asked him to come to his aid.

21 ...
22 It's at that point that Vossler makes that comment that I've already
23 referenced. "Looking back on it, do you feel like those guys deserved to be
24 shot? Not even close. If I could have fully understand what was going on
25 in that situation, I didn't think any of this would have happened." A
horrible convergence of forces, not criminal intent.

17 RP 1904-05. *See also*, 17 RP 1881-82 (counsel discusses assault instruction); 1888-89
(arguing Vossler was shocked he had fired the gun and did so in panic; shooting was not
anticipated); 1891 (arguing defense had maintained a reasonable doubt that defendant did

⁷ To the extent petitioner argues the trial court erred in failing to instruct the jury on self-defense, even though defense counsel never proposed or requested a self-defense instruction, such an argument fails. A trial court cannot give an affirmative defense instruction over a defendant's objection, as it violates a defendant's right to control his/her defense. *See State v. Coristine*, 177 Wn.2d 370, 373, 300 P.3d 400 (2013) ("We hold that where a defendant chooses not to argue or invoke an affirmative defense, offering an instruction on the defense over the defendant's objection violates the Sixth Amendment to the United States Constitution."); *State v. Lynch*, 178 Wn.2d 487, 309 P.3d 482 (2013).

⁸ Petitioner was charged as an accomplice to the assault of Ihor. *See* Appx. H; Appx. I.

1 not intend an assault and did not know an assault was going to take place); 1899 (arguing
2 not enough time passed to allow for a plan to commit an assault); 1908-09 (arguing no one
3 expected the shooting to occur; Vossler acted because of a quick decision, not because of
4 defendant).

5 Defense counsel’s general denial argument was a legitimate trial strategy and did
6 not constitute deficient performance. A self-defense instruction would have been
7 inconsistent with the testimony of Blesch, who admitted his decision to shoot Ihor was a
8 mistake, and with petitioner’s statement to police that he did not feel it was reasonable for
9 Ihor to be shot. *See* 10 RP 995 (petitioner looked surprised and shocked that Blesch fired
10 the gun), 1041 (Blesch’s firing of gun was a horrible reaction), 1048 (Blesch did not feel
11 that Ihor deserved to be shot), 1055 (Blesch agrees he opened fire in panic), 1060 (Blesch
12 could not say petitioner wanted him to pull the trigger), 1073 (petitioner did not tell
13 Blesch to shoot); 14 RP 1636 (petitioner’s statement to police); Appx. J, page 29
14 (petitioner “definitely agree[s]” that it was not reasonable to shoot Ihor). *See also*, 5 RP
15 381-82 (the brothers were not armed); 5 RP 402 (petitioner told the shooter he was not
16 supposed to fire the gun); 9 RP 808 (neither brother was armed); 9 RP 816 (after gun
17 discharged, petitioner told shooter, “what did you do? You [were] not supposed to fire the
18 gun.”); 11 RP 1117 (Blesch never saw any weapons on the brothers).

19
20
21 Thus, there was no credible evidence that Blesch had an objectively reasonable
22 fear of imminent danger necessitating his use of force. *See* RCW 9A.16.020; *State v.*
23 *Walker*, 136 Wn.2d 767, 777, 966 P.2d 883 (1998). Trial counsel would have had a
24 difficult time arguing self-defense to the jury when the shooter himself did not feel his use
25

1 of force was reasonable or justified. On the other hand, the theory that defense counsel
2 chose was more consistent with Blesch's and petitioner's statements referenced above.

3 A self-defense claim would also have failed given the overwhelming evidence that
4 petitioner was the aggressor in the incident. *See George*, 161 Wn. App. at 96 (a defendant
5 who is the aggressor cannot invoke self-defense). Petitioner locked the door after the
6 Onishchuk brothers entered the garage. 5 RP 363; 14 RP 1618. Blesch was standing in the
7 garage armed with a firearm. 5 RP 366-67; 9 RP 790-92; 10 RP 965-69; 14 RP 1618-19.
8 Petitioner proceeded to demand the brothers' wallets, phones, and other personal property
9 while Blesch stood behind petitioner with the firearm. 5 RP 376-90; 9 RP 798-800; 10 RP
10 982-89; 14 RP 1618-19. *See also*, Appx. J,⁹ page 30 (petitioner initially did not tell police
11 about the wallets, etc, because he did not want to seem like the aggressor). Petitioner told
12 police his goal was to scare the brothers and intimidate them. 14 RP 1619. The Onishchuk
13 brothers subsequently grabbed petitioner in an attempt to save themselves. 5 RP 396-99; 9
14 RP 813-14, 819-20, 893, 896; 10 RP 993-95, 1021-22; 11 RP 1107-09; Appx. J, pages 20-
15 21. Petitioner provoked the incident, and thus self-defense was unavailable to him as a
16 matter of law.
17

18 Here, defense counsel pursued a legitimate trial strategy of general denial in not
19 requesting a self-defense instruction. The fact that this strategy was ultimately
20 unsuccessful does not establish ineffective assistance of counsel. "While it is easy in
21 retrospect to find fault with tactics and strategies that failed to gain an acquittal, the failure
22 of what initially appeared to be a valid approach does not render the action of trial counsel
23 reversible error." *State v. Renfro*, 96 Wn.2d 902, 909, 639 P.2d 737, *cert. denied*, 459
24

25 _____
⁹ Petitioner's statement to police is contained in Exhibit 283, attached hereto as Appendix J, which was shown to the jury during trial. *See* 14 RP 1627-30; Appx. K.

1 U.S. 842 (1982). Counsel is presumed to be effective, and petitioner must show an
2 absence of legitimate strategic reasons to support his counsel's challenged conduct.
3 *McFarland*, 127 Wn.2d at 335-36. See *State v. Garrett*, 124 Wn.2d 504, 520, 881 P.2d
4 185 (1994) (“[T]his court will not find ineffective assistance of counsel if ‘the actions of
5 counsel complained of go to the theory of the case or to trial tactics.’” (quoting *Renfro*, 96
6 Wn.2d at 909)). In light of the evidence adduced at trial, an attorney could reasonable
7 decide that petitioner's best defense was a general denial of accomplice liability.
8 Petitioner's attorney provided effective assistance, and petitioner fails to show an absence
9 of legitimate strategic reasons to support his attorney's conduct. Petitioner's claim of
10 ineffective assistance of counsel accordingly fails.
11

12 b. Defense counsel was not ineffective for not making a same
13 criminal conduct argument at sentencing, where such an
14 argument would have failed.

15 Crimes constitute the same criminal conduct when they “require the same criminal
16 intent, are committed at the same time and place, and involve the same victim.” RCW
17 9.94A.589(1)(a). “Unless all elements are present, the offenses must be counted
18 separately.” *State v. Chenoweth*, 185 Wn.2d 218, 220, 370 P.3d 6 (2016). The Legislature
19 intended the phrase “same criminal conduct” to be construed narrowly. *State v. Flake*, 76
20 Wn. App. 174, 180, 883 P.2d 341 (1994). Appellate courts review determinations of same
21 criminal conduct for abuse of discretion or misapplication of law. *State v. Graciano*, 176
22 Wn.2d 531, 535, 295 P.3d 219 (2013). Thus, “when the record supports only one
23 conclusion on whether crimes constitute the ‘same criminal conduct,’ a sentencing court
24 abuses its discretion in arriving at a contrary result.” *Id.* at 537-38 (emphasis added)
25

1 (internal citation omitted). However, “where the record adequately supports either
2 conclusion, the matter lies in the court’s discretion.” *Id.* at 538.

3 As articulated by the Washington Supreme Court:

4 Deciding whether crimes involve the same time, place, and victim often
5 involves determinations of fact. In keeping with this fact-based inquiry,
6 we have repeatedly observed that a court’s determination of same criminal
7 conduct will not be disturbed unless the sentencing court abuses its
8 discretion or misapplies the law.

9 *Chenoweth*, 185 Wn.2d at 220-21.

10 The defendant bears the burden of proving same criminal conduct. *Graciano*, 176
11 Wn.2d at 538-40. “[A] ‘same criminal conduct’ finding favors the defendant by lowering
12 the offender score below the presumed score... Because this finding favors the defendant,
13 it is the defendant who must establish the crimes constitute the same criminal conduct.”

14 *Graciano*, 176 Wn.2d at 539. *See also, State v. Lopez*, 142 Wn. App. 341, 351, 174 P.3d
15 1216 (2007) (“In determining a defendant’s offender score... two or more current
16 offenses... are presumed to count separately unless the trial court finds that the current
17 offenses encompass the same criminal conduct.”).

18 Where, as here, a defendant does not ask for a finding of same criminal conduct at
19 sentencing, and the trial court does not expressly make such a finding, then the reviewing
20 court treats the trial court’s calculation of the defendant’s offender score as an implicit
21 determination that his offenses did *not* constitute the same criminal conduct. *State v.*
22 *Channon*, 105 Wn. App. 869, 877, 20 P.3d 476 (2001) (citing *State v. Anderson*, 92 Wn.
23 App. 54, 62, 960 P.2d 975 (1998)).

24 Petitioner claims he received ineffective assistance of counsel based on his
25 attorney’s failure to argue that his convictions for first degree robbery and first degree

1 assault involving Ihor constituted the same criminal conduct. *See* PRP at 30-40. To
2 prevail, petitioner must show that (1) defense counsel’s performance was deficient and (2)
3 the trial court would have likely found his convictions constituted the same criminal
4 conduct. *Strickland*, 466 U.S. 668; *McFarland*, 127 Wn.2d at 334-35.

5 Here, petitioner convictions for first degree robbery and first degree assault
6 involving Ihor occurred at the same place (petitioner’s garage) and involved the same
7 victim. The acts, however, did not occur at the same time and did not have the same
8 criminal intent. Because the offenses do not meet all of the same criminal conduct
9 elements referenced in RCW 9.94A.589(1)(a), they must be counted separately.

10
11 *Chenoweth*, 185 Wn.2d at 220.

12 Two crimes share the same intent if, viewed objectively, the criminal intent did not
13 change from the first crime to the second. *State v. Lessley*, 118 Wn.2d 773, 777, 827 P.2d
14 996 (1992) (citing *State v. Dunaway*, 109 Wn.2d 207, 743 P.2d 1237 (1987)). To find the
15 objective intent, the courts should begin with the intent element of the crimes charged. *See*
16 *Flake*, 76 Wn. App. at 180; *Dunaway*, 109 Wn.2d at 216. “[I]n deciding if crimes
17 encompassed the same criminal conduct, trial courts should focus on the extent to which
18 the criminal intent, as objectively viewed, changed from one crime to the next.” *Dunaway*,
19 109 Wn.2d at 215. In this context, “the same objective criminal intent” can be “measured
20 by determining whether one crime furthered another.” *Lessley*, 118 Wn.2d at 778. When a
21 defendant has the time to “pause, reflect, and either cease his criminal activity or proceed
22 to commit a further criminal act,” and makes the decision to proceed, the defendant has
23 formed a new intent to commit the second act. *State v. Grantham*, 84 Wn. App. 854, 859,
24 932 P.2d 657 (1997). Moreover, if the “crimes were sequential, not simultaneous or
25

1 continuous,” the actor may be found to have established a separate criminal intent in the
2 intervening period. *State v. Tili*, 139 Wn.2d 107, 124, 985 P.2d 365 (1999) (quoting
3 *Grantham*, 84 Wn. App. at 859).

4 The intent to commit first degree robbery is different than the intent to commit first
5 degree assault. The crime of first degree robbery requires the intent to take personal
6 property of another from the person or presence of another. *See* RCW 9A.56.190. First
7 degree assault, on the other hand, requires the intent to inflict great bodily harm. RCW
8 9A.36.011. *See also, State v. Freeman*, 118 Wn. App. 365, 378, 76 P.3d 732 (2003)
9 (viewed objectively, the intent for robbery is the intent to deprive the victim of property,
10 whereas the intent for first degree assault is the intent to inflict great bodily harm). The
11 plain language of the two crimes shows that the objective intent is not the same.
12

13 Turning to the facts of this case, the shooting of Ihor did not further the robbery;
14 the robbery was already complete once Blesch fired the gun. The evidence established that
15 petitioner demanded Ihor’s and Dmytro’s wallets, phones, keys and clothing while Blesch
16 stood behind petitioner holding a firearm. 5 RP 376-90; 9 RP 798-800; 10 RP 982-89; 14
17 RP 1618-19. The Onishchuk brothers handed over the items demanded of them. They only
18 refused when petitioner demanded the brothers remove their pants. 5 RP 389-90; 9 RP
19 806-07. Petitioner then asked Ihor if he was the owner of the Mercedes and made a phone
20 call for verification. 5 RP 393-96; 9 RP 809-13. After the phone call, Ihor told his brother,
21 “[W]e are not going to leave this place alive today. 5 RP 396. Petitioner circled Ihor as if
22 to assault him, and Ihor grabbed petitioner to defend himself. 9 RP 813-14, 819-20. As
23 Dmytro and Ihor moved toward the door to escape while using petitioner as a shield,
24 Blesch fired the gun and struck Ihor. 5 RP 398-99; 9 RP 814, 824. The purpose of the
25

1 assault was not to rob Ihor. Rather, it was to interrupt Ihor's defensive actions. Blesch
2 fired the gun to aid petitioner. The criminal intent thus changed from the first crime (the
3 robbery) to the second (the assault). Moreover, the crimes were sequential, not
4 simultaneous, which further supports that each crime had separate criminal intent. *See Tili*,
5 139 Wn.2d at 124.

6 In *State v. Knight*, 176 Wn. App. 936, 941-42, 309 P.3d 776 (2013), defendant
7 Knight and her associates – Reese, Higashi, and Berniard – went to the home of James and
8 Charlene Sanders under the pretext of buying a wedding ring that was posted for sale on
9 Craigslist. Knight and Higashi initially entered the Sanders's home to look at the ring. *Id.*
10 at 942. Once inside, Higashi pulled out a handgun, and Knight and Higashi zip tied
11 James's and Charlene's hands behind their backs and proceeded to remove the Sanders
12 couple's wedding rings from their fingers. *Id.* Knight then signaled Reese and Berniard,
13 who both possessed loaded guns, to enter the Sanders home. *Id.* Knight and Higashi
14 proceeded to ransack the home while Berniard held a gun to Charlene's head and
15 demanded to know the location of the safe. *Id.* at 943. When Charlene said they did not
16 own a safe, Berniard kicked Charlene in the head and threatened to kill her and her children.
17 *Id.* at 943. Charlene eventually disclosed the location of a safe in the garage. *Id.* As
18 Berniard was leading James into the garage, James managed to break free of his restraints
19 and attacked Berniard. *Id.* Berniard shot James in the ear, rendering him unconscious. *Id.*
20 Berniard subsequently beat James and Charlene's son J.S., who tried to intervene on his
21 father's behalf, with the butt of a firearm, and either Reese or Berniard shot James
22 multiple times, causing his death. *Id.*

1 Knight was found guilty following jury trial of first degree felony murder of
2 James; first degree robbery of James; first degree robbery of Charlene; second degree
3 assault of Charlene; second degree assault of J.S.; and first degree burglary. *Knight*, 176
4 Wn. App. at 944-45, 947. Each charge alleged accomplice liability. *Id.* at 945. At
5 sentencing, Knight argued that all of her convictions constituted the same criminal
6 conduct. *Id.* at 947. The trial court disagreed and sentenced Knight on each count. *Id.* at
7 947, 960. On appeal, Knight claimed that the trial court erred in its same criminal conduct
8 analysis, including its analysis of the following crimes: (1) the first degree robbery and
9 felony murder of James, and (2) the first degree robbery and second degree assault of
10 Charlene. *Id.* at 959-60.

12 This Court disagreed with Knight. As to the robbery and murder of James, the
13 court affirmed that robbery and murder do not share the same criminal intent. *Id.* at 960.
14 Additionally, the court found that “James’s later murder did not further the commission of
15 either earlier robbery because both robberies were completed once Knight’s accomplice
16 took James’s and Charlene’s wedding rings, well before Bernard’s later assault of
17 Charlene and before Bernard and Reese brought the children downstairs.” *Id.* at 961.
18 Accordingly, the trial court did not abuse its discretion in finding the murder and robbery
19 of James did not occur at the “same time” for purposes of RCW 9.9A.589(1)(a). *Id.* at 961.

21 This Court also rejected Knight’s same criminal conduct argument as to the
22 robbery and assault of Charlene. The court held,

23 The robbery of Charlene was complete once Knight removed the ring
24 from Charlene’s finger while Higashi held the firearm. This later assault –
25 Bernard’s kicking Charlene in the head in an attempt to get the safe –
does not constitute the same criminal conduct as the earlier robbery
because...these two crimes did not occur at the same time. Thus, they

1 could not count as the same criminal conduct for offender score
2 purposes[.]

3 *Id.* at 961-62.

4 Here, as in *Knights*, petitioner's robbery and assault of Ihor do not constitute the
5 same criminal conduct. The robbery of Ihor was complete once petitioner took the
6 brothers' wallets, phones, keys and clothing items while Blesch held the firearm. The later
7 assault (i.e., the shooting) did not occur until Ihor and Dmytro grabbed petitioner and
8 attempted to flee. Thus, the crimes did not occur at the same time. Moreover, as
9 established above, robbery and first degree assault do not share the same criminal intent.
10 Therefore, the robbery and assault of Ihor could not count as the same criminal conduct
11 for offender score purposes.

12 Because the offenses do not constitute the same criminal conduct, defense counsel
13 was not deficient for failing to make a losing argument at sentencing. As in *Knights*, the
14 trial court would have rejected a same criminal conduct argument. Petitioner's ineffective
15 assistance of counsel claim accordingly fails.

16
17 c. Counsel was not deficient for not requesting an exceptional
18 mitigated sentence, and petitioner cannot show prejudice
19 where the trial court expressly stated the sentence it imposed
at the middle of the standard range was "fair punishment."

20 Under the Sentencing Reform Act of 1981 (SRA), a sentencing court must
21 generally impose a sentence within the standard range. RCW 9.94A.505(2)(a)(i); see *State*
22 *v. Graham*, 181 Wn.2d 878, 882, 337 P.3d 319 (2014). However, "[t]he court may impose
23 an exceptional sentence below the standard range if it finds that mitigating circumstances
24 are established by a preponderance of the evidence." RCW 9.94A.535(1). Such mitigating
25 circumstance include, "The operation of the multiple offense policy of RCW 9.94A.589

1 results in a presumptive sentence that is clearly excessive in light of the purpose of this
2 chapter, as expressed in RCW 9.94A.010.” RCW 9.94A.535(1)(g). *See also*, RCW
3 9.94A.010.

4 The SRA provides that a standard range sentence “shall not be appealed.” RCW
5 9.94A.585(1). “However, this prohibition does not bar a party’s right to challenge the
6 underlying legal conclusions and determinations by which a court comes to a particular
7 sentencing provision. Thus, it is well established that appellate review is still available for
8 the correction of legal errors or abuses of discretion in the determination of what sentence
9 applies.” *State v. Williams*, 149 Wn.2d 143, 147, 65 P.3d 1214 (2003) (internal citations
10 omitted). Here, petitioner encompasses his sentencing challenge within an ineffective
11 assistance of counsel claim. He claims counsel was ineffective for not advocating an
12 exceptional sentence below the standard range, because his sentence was “‘clearly
13 excessive’ in light of the multiple offense policy and the firearm enhancements.” *See* PRP
14 at 40-47. Petitioner fails to provide reasoned argument or any authority for his position
15 that his standard range sentence was “clearly excessive.” The record instead establishes
16 petitioner’s 335-month sentence was appropriate considering his intentional actions
17 caused an innocent party (Ihor) to become a partial quadriplegic.

18 Petitioner seems to argue the sentencing court could have imposed concurrent
19 firearm sentencing enhancements and cites *State v. McFarland*, 189 Wn.2d 47, 399 P.3d
20 1106 (2017) in support. *See* PRP at 43. *McFarland* is distinguishable from the present
21 matter. In that case, the defendant did not request an exceptional sentence despite facing
22 237 months confinement due to consecutively imposed firearm-related convictions based
23 on RCW 9.41.040(6) and 9.94A.589(1)(c). *McFarland*, 189 Wn.2d at 49-51. Both defense
24
25

1 counsel and the court erroneously believed an exceptional sentence was prohibited by law.
2 *Id.* at 49. The court imposed the low end of the standard range for each of the firearm-
3 related convictions and expressed some discomfort with its apparent lack of discretion in
4 imposing the sentence. *Id.* at 51, 58-59.

5 The Supreme Court reversed McFarland’s sentence, holding that when consecutive
6 sentences for multiple firearm-related convictions imposed under RCW 9.94A.589(1)(c)
7 results in a sentence that is “clearly excessive” under RCW 9.94A.535(1)(g), a sentencing
8 court has discretion to impose an exceptional, mitigated sentence by running the firearm-
9 related sentences concurrently. *McFarland*, 189 Wn.2d at 55. Notably, the *McFarland*
10 court distinguished between firearm-related *enhancements* and firearm-related *convictions*
11 and confined its holding to the latter. *Id.* at 55. Firearm-related convictions are specifically
12 referenced in RCW 9.94A.589;¹⁰ firearm-related enhancements are not. The *McFarland*
13 court remanded for resentencing, because the record seemed to suggest the possibility that
14 the sentencing court would have considered imposing an exceptional mitigated sentence
15 “had it properly understood its discretion to do so.” *Id.* at 59.

17 RCW 9.94A.533(3) governs firearm enhancements and provides that such
18 enhancements are mandatory “notwithstanding any other provision of law.” “[A]ll firearm
19 enhancements...are mandatory, shall be served in total confinement, and shall run
20 consecutively to all other sentencing provisions, including other firearm or deadly weapon
21 enhancements, for all offenses sentenced under this chapter.” RCW 9.94A.533(3)(e).

23 _____
24 ¹⁰ RCW 9.94A.589(1)(c) provides, “If an offender is convicted under RCW 9.41.040 for unlawful possession
25 of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a
stolen firearm, or both, the standard sentence range for each of these current offenses shall be determined by
using all other current and prior convictions, except other current convictions for the felony crimes listed in
this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for
each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully
possessed.”

1 Although in *McFarland* the court noted that RCW 9.41.040(6) also included
2 “[n]otwithstanding any other law” language, legislative history indicated that the “clear
3 effect” of the enactment of RCW 9.94A.589(1)(c) “was to bring sentences for firearm-
4 related *convictions* within the ‘multiple offense policy of RCW 9.94A.589.’” *McFarland*,
5 189 Wn.2d at 54-55. Firearm-related *enhancements* are not contemplated by the multiple
6 offense policy of RCW 9.94A.589. See RCW 9.94A.535(1)(g). In *State v. Brown*, 139
7 Wn.2d 20, 29, 983 P.2d 608 (1999), *overruled on other grounds by State v. Houston-*
8 *Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017),¹¹ the Washington Supreme Court held that
9 “[j]udicial discretion to impose an exceptional sentence does not extend to a deadly
10 weapon enhancement.” Under *Brown*, a sentencing court has no discretion to impose an
11 exceptional sentence for firearm enhancements for adult offenders.
12

13 Here, petitioner did not face consecutive sentences for multiple firearm-related
14 convictions, which under *McFarland* are subject to an exceptional mitigated sentence
15 where appropriate. He instead faced mandatory firearm-related enhancements. The
16 sentencing court had no discretion to shorten the duration of petitioner’s firearm
17 enhancements or run his enhancements concurrent to one another. Defense counsel was
18 thus not deficient for not requesting an exceptional mitigated sentence based on
19 petitioner’s multiple firearm enhancements.
20

21 However, even if the trial court could have imposed an exceptional sentence
22 downward based on RCW 9.94A.535(1)(g), petitioner fails to show that his counsel’s
23 failure to inform the court of this possibility prejudiced him. First, RCW 9.94A.535
24 permits a sentencing court to consider a downward departure from the standard range; it
25

¹¹ *Houston-Sconiers* overruled *Brown* only as to juvenile defendants. See *Houston-Sconiers*, 188 Wn.2d at 21.

1 does not mandate one. The court had discretion to impose an exceptional sentence
2 downward with or without counsel's request. It chose not to. Second, there is no indication
3 in the record that the trial court would have considered or imposed an exceptional
4 sentence downward.

5 During sentencing the court remarked,

6 This is a gruesome case. The victim didn't die maybe because of an inch
7 or two, but for many people with less character than this gentleman, you
8 could say his life is over... The Court will not forget when he said that he
9 hopes to walk again, and that is his goal. But for now, I can only imagine
10 his life. I won't say a living hell, but one that I don't think anybody in this
11 courtroom would ever want to experience... I don't think this was a benign
12 incident from the very beginning... A deliberate action was created by Mr.
13 Rusev to shake down these two individuals.

14 ...

15 A large stone or boulder was pushed down a mountain intentionally, and
16 Mr. Rusev may have not known or had any intent to have that boulder
17 crush anybody or hurt anybody, but once that boulder was pushed down
18 the mountain, there's no control. And whatever consequence occurs from
19 that action, Mr. Rusev has to accept responsibility for. And he pushed that
20 boulder down the mountain and he crushed somebody, and there needs to
21 be accountability for that.

22 ...

23 I think the jury decided fairly quickly that this is exactly what it appeared
24 to be, and that was an intimidation leading to a shot fired and had horrible
25 consequences.

18 RP 1965-67. The court proceeded to impose a sentence just over the midpoint of the
19 standard range for each count, plus the consecutive firearm sentencing enhancements. 18
20 RP 1968; Appx. A; Appx. C. The court told petitioner that although he had no prior
21 criminal history and appeared remorseful, "[Y]ou'll still be walking, you'll still be
22 brushing your teeth, and this gentleman has almost a life sentence in a wheelchair. *I think*
23 *that's a fair punishment for what occurred here.*" 18 RP 1968 (emphasis added).

24 The trial court did not question its authority to impose any type of sentence and
25 never expressed confusion as to the sentence it imposed. The trial court did not sentence

1 petitioner to the low end of the standard range and did not even suggest that it was an
2 option it was considering, let alone a departure downward. The court expressly stated it
3 that it imposed a punishment that it deemed fair based on petitioner's conduct and its
4 tragic consequences. 18 RP 1968. There is not even the slightest hint that the court
5 considered petitioner's presumptive sentence excessive. Petitioner's actions resulted in
6 Ihor Onishchuk becoming a partial quadriplegic, and Ihor is likely to face lifetime
7 complications from his condition. *See* 8 RP 765-72.

8
9 Defense counsel had no obligation to advocate for an exceptional mitigated
10 sentence. Defense counsel argued for a low end sentence and the court imposed the middle
11 of the standard range. There is absolutely no evidence in the record that the court would
12 have imposed an exceptional sentence below the standard range, and no evidence that the
13 court had any confusion as to its sentence. Petitioner cannot meet his burden of showing
14 deficient performance or prejudice. His claim of ineffective assistance of counsel thus
15 fails.

16
17 2. PETITIONER FAILS TO DEMONSTRATE PROSECUTORIAL
18 MISCONDUCT OCCURRED, AS THE PROSECUTOR'S
19 ARGUMENTS WERE NEITHER IMPROPER NOR
20 PREJUDICIAL.

21 Petitioner alleges multiple instances of prosecutorial misconduct. *See* PRP at 24-
22 29. "A personal restraint petitioner raising a prosecutorial misconduct claim must prove
23 the misconduct was either a constitutional error resulting in actual and substantial
24 prejudice or a fundamental defect resulting in a complete miscarriage of justice." *Matter*
25 *of Phelps*, 190 Wn.2d 155, 165, 410 P.3d 1142 (2018). To prove that a prosecutor's
actions constitute misconduct, a defendant must show that the prosecutor did not act in

1 good faith and the prosecutor's actions were improper. *State v. Manthie*, 39 Wn. App.
2 815, 820, 696 P.2d 33 (1985) (citing *State v. Weekly*, 41 Wn.2d 727, 252 P.2d 246
3 (1952)). A prosecuting attorney represents the people and presumptively acts with
4 impartiality in the interest of justice. *State v. Thorgerson*, 172 Wn.2d 438, 443, 258 P.3d
5 43 (2011) (citing *State v. Fisher*, 165 Wn.2d 727, 746, 202 P.3d 937 (2009)).

6 A defendant has the burden of establishing that the prosecutor's conduct was both
7 improper and prejudicial. *State v. Stenson*, 132 Wn.2d 668, 718, 940 P.2d 1239 (1997).
8 Even if the defendant proves that the conduct of the prosecutor was improper, the error
9 does not constitute prejudice unless the appellate court determines there is a substantial
10 likelihood the error affected the jury's verdict. *Id.* at 718-19. If a curative instruction could
11 have cured the error and the defense failed to request one, then reversal is not required.
12 *State v. Binkin*, 79 Wn. App. 284, 293-294, 902 P.2d 673 (1995), *overruled on other*
13 *grounds by State v. Kilgore*, 147 Wn.2d 288, 53 P.3d 974 (2002).

15 When reviewing an argument that has been challenged as improper, the court
16 should review the context of the whole argument, the issues in the case, the evidence
17 addressed in the argument and the instructions given to the jury. *State v. Russell*, 125
18 Wn.2d 24, 85-86, 882 P.2d 747 (1994). "Remarks of the prosecutor, even if they are
19 improper, are not grounds for reversal if they were invited or provoked by defense counsel
20 and are in reply to his or her acts and statements, unless the remarks are not a pertinent
21 reply or are so prejudicial that a curative instruction would be ineffective." *Russell*, 125
22 Wn.2d at 86. The prosecutor is entitled to make a fair response to the arguments of
23 defense counsel. *Id.* at 87.
24
25

1 Failure by the defendant to object to an improper remark constitutes a waiver of
2 that error unless the remark is deemed so “flagrant and ill-intentioned that it evinces an
3 enduring and resulting prejudice that could not have been neutralized by an admonition to
4 the jury.” *Stenson*, 132 Wn.2d at 719 (citing *State v. Gentry*, 125 Wn.2d 570, 593-594,
5 888 P.2d 1105 (1995)). “Under this heightened standard, the defendant must show that (1)
6 ‘no curative instruction would have obviated any prejudicial effect on the jury’ and (2) the
7 [error] resulted in prejudice that ‘had a substantial likelihood of affecting the jury
8 verdict.’” *State v. Emery*, 174 Wn.2d 741, 761, 278 P.3d 653 (2012) (quoting
9 *Thorgerson*, 172 Wn.2d at 455).

11 Failure to object or move for mistrial at the time of the argument “strongly
12 suggests to a court that the argument or event in question did not appear critically
13 prejudicial to an appellant in the context of the trial.” *State v. Swan*, 114 Wn.2d 613, 661,
14 790 P. 2d 610 (1990); *see also State v. Monday*, 171 Wn.2d 667, 679, 257 P.3d 551
15 (2011). “Accordingly, reviewing courts focus less on whether the prosecutor’s [error] was
16 flagrant or ill-intentioned and more on whether the resulting prejudice could have been
17 cured by an instruction.” *State v. Smiley*, 195 Wn. App. 185, 195, 379 P.3d 149 (2016).

18 Here, petitioner claims the prosecutor improperly appealed to the sympathies of
19 the jury, interjected her personal opinion as to the credibility of witnesses, and inserted her
20 own personal prestige and conclusions into the jury’s weighing of the evidence. *See PRP*
21 *at 26-28*. Petitioner did not object to any of these alleged instances of prosecutorial
22 misconduct below. Therefore, petitioner must overcome three hurdles. First, he must show
23 the prosecutor committed misconduct. Second, petitioner must show that misconduct was
24 flagrant and ill-intentioned and caused him prejudice incurable by a jury instruction.
25

1 Third, because he raises this issue in a personal restraint petition, petitioner must show the
2 prosecutor's flagrant and ill-intentioned misconduct caused him actual and substantial
3 prejudice. *Matter of Phelps*, 190 Wn.2d at 166. Petitioner fails to overcome each hurdle,
4 and his claims of prosecutorial misconduct fail.

5
6 a. The prosecutor properly began closing argument by
7 referencing the evidence adduced at trial.

8 A prosecutor has a duty to seek a verdict based on the evidence without appealing
9 to the jury's passion and prejudice. *State v. Echevarria*, 71 Wn. App. 595, 598, 860 P.2d
10 420 (1993). A prosecutor may not make statements that are unsupported by the evidence
11 or invite jurors to decide a case based on emotional appeals to their passion or prejudices.
12 *State v. Jones*, 71 Wn. App. 798, 807-08, 863 P.2d 85 (1993). A prosecutor is not barred
13 from referring to the repugnant nature of a crime but nevertheless retains the duty to
14 ensure a verdict "free of prejudice and based on reason." *State v. Clafin*, 38 Wn. App.
15 847, 849-50, 690 P.2d 1186 (1984). In closing argument, a prosecutor has wide latitude to
16 draw and express reasonable inferences from the evidence. *State v. Hoffman*, 116 Wn.2d
17 51, 94-95, 804 P.2d 577 (1991).

18 Petitioner argues the prosecutor improperly began her closing argument "with a
19 passionate appeal to the sympathies of the jury by invoking the emotional state of
20 Dmytro." PRP at 26. The prosecutor began her closing argument by stating,
21

22 As Dmytro Onishchuk held his brother in his arms applying pressure to
23 the gunshot wound, pleading with the defendant to call 911 for help, he
24 was terrified that his brother wasn't going to make it. The 73 days that Ihor
25 spent in the hospital unable to breathe on his own, unable to feel his lower
limbs and barely able to move his hands and his arms, was overwhelmed

1 knowing he would have to relearn every basic step and every basic action.
2 He spends every day fighting in the hopes of being able to walk again.

3 17 RP 1838. Petitioner did not object to the prosecutor's comments during trial.

4 In *State v. Fuller*, 169 Wn. App. 797, 803-05, 282 P.3d 126 (2012), the State
5 charged defendant Fuller with first degree murder for the stabbing death of cab driver
6 Mohamud Ahmed. During trial the State argued, over Fuller's objection, that Fuller:

7 [S]lashed Moham[u]d Ahmed's throat, stabbed him in the chest[,] and
8 almost severed his fingers. He left him to die, to bleed to death like a
9 wounded animal, alone in the dark in the cold and afraid. For what? Why
did he do this? What did Moham[u]d Ahmed do to deserve this?

10 He came to the United States to seek a better life for himself from a[war]
torn Somalia.

11
12 ... For that he suffered [Fuller's] hatred.

13 *Fuller*, 169 Wn. App. at 820-21.

14 Fuller argued on appeal that the prosecutor's argument constituted an improper
15 appeal to the jury's emotions. *Id.* at 820. This Court disagreed and held,

16 Here, the State's argument, although emotional, did not urge the jury to
17 convict based on emotion rather than the evidence and did not exhort the
jury to send a message to society. Instead, the State was commenting on the
18 evidence presented at trial in accordance with *Fisher*.¹² The evidence
showed that Ahmed's throat was slashed, he was stabbed in the chest, his
19 fingers were almost severed, and he bled to death in the cold. The evidence
also showed that Ahmed emigrated from Somalia, Fuller hated foreigners
20 for taking American jobs, and Fuller specifically hated King Cab for hiring
only Somali drivers. Accordingly, the State did not commit misconduct in
21 making this argument.

22 *Id.* at 821.

23 Similarly here, the State's argument, although emotional, did not urge the jury to
24 convict based on emotion rather than the evidence and did not urge the jury to send a

25 _____
¹² *State v. Fisher*, 165 Wn.2d 727, 747, 202 P.3d 937 (2009) (The State has wide latitude to comment on the evidence introduced at trial and to draw inferences from that evidence.).

1 message by finding petitioner guilty. The prosecutor's argument was based on the
2 evidence adduced at trial. Dmytro testified that he held Ihor after his brother was shot, and
3 he tried to apply pressure to Ihor's gunshot wound. 5 RP 400, 411-12. The two were
4 praying. 5 RP 400. Dmytro begged petitioner and the shooter to call 911. 5 RP 400-01.
5 *See also*, 5 RP 408 (Dmytro was holding his brother when police arrived); 9 RP 825
6 (Dmytro held Ihor and asked for help); 13 RP 1465-66 (Dmytro was emotional and
7 concerned for his brother).

8
9 Ihor testified that after he was shot, he was unable to move his limbs. 9 RP 827. He
10 spent two months in the hospital and was unable to breathe on his own. 9 RP 827. He also
11 required a feeding tube. 9 RP 831. Ihor was at St. Joe's Hospital from the date of the
12 shooting until March 26, 2014, and then he transferred to Good Samaritan Hospital for
13 rehabilitation where he "started everything from scratch because all the time that [he] was
14 in the hospital [he] wasn't able to elevate [his] had even one centimeter up." 9 RP 832-33.
15 Ihor believed he would be able to walk again and acknowledged he worked with physical
16 therapy everyday to try and get to that point. 9 RP 834-35. The prosecutor's statements
17 were supported by the evidence and were not improper.

18
19 However, even if the prosecutor's comments were improper, they were not so
20 flagrant and ill-intentioned that reversal is required. The comments were brief and
21 isolated. The court instructed the jury that "the lawyers' statements are not evidence" and
22 that they must reach their decision based on the facts proved and the law given and "not
23 on sympathy, prejudice, or personal evidence." Appx. I (Instruction No. 1). The jury is
24 presumed to follow the court's instructions. *State v. Stein*, 144 Wn.2d 236, 247, 27 P.3d
25 184 (2001). Thus, there could be no "substantial likelihood" that the prosecutor's

1 statements, even if construed as improper, “affected the jury’s verdict,” and therefore, the
2 remarks could not have been prejudicial. *State v. Yates*, 161 Wn.2d 714, 774, 168 P.3d
3 359 (2007). Moreover, any prejudice could easily have been alleviated by a proper
4 curative instruction had petitioner timely objected and requested one. Finally, petitioner
5 fails to demonstrate actual prejudice. Petitioner’s claim of prosecutorial misconduct
6 accordingly fails.

7
8 b. The prosecutor properly argued witness credibility during
9 closing argument.

10 A prosecutor enjoys reasonable latitude in arguing inferences from the evidence,
11 including inferences as to witness credibility. *State v. Warren*, 165 Wn.2d 17, 30, 195
12 P.3d 940 (2008) *cert. denied*, 556 U.S. 1192, 129 S. Ct. 2007, 173 L. Ed. 2d 1102 (2009);
13 *Stenson*, 132 Wn.2d at 727. An error only arises if the prosecutor clearly expresses a
14 personal opinion as to the credibility of a witness instead of arguing an inference from the
15 evidence. *Warren*, 165 Wn.2d at 30.

16 It is improper for a prosecutor to personally vouch for the credibility of a witness.
17 *Warren*, 165 Wn.2d at 30; *State v. Brett*, 126 Wn.2d 136, 175, 892 P.2d 29 (1995).
18 Vouching occurs when the State places the prestige of the government behind the witness
19 or indicates that information not presented to the jury supports the witness’s testimony.
20 *State v. Smith*, 162 Wn. App. 833, 849, 262 P.3d 72 (2011). However, on appeal, the
21 court will not find prejudicial error “unless it is clear and unmistakable that counsel is
22 expressing a personal opinion.” *Warren*, 165 Wn.2d at 30. *See State v. Sargent*, 40 Wn.
23 App. 340, 343-44, 698 P.2d 598 (1985) (prosecutor improperly stated personal belief by
24 telling the jury, “I believe [the witness]. I believe him”).
25

1 For example, in *State v. Anderson*, 153 Wn. App. 417, 430, 220 P.3d 1273 (2009),
2 the prosecutor made comments during closing argument that characterized the defendant's
3 testimony as "made up on the fly," "ridiculous," and "utterly and completely
4 preposterous." The prosecutor also remarked that State's witnesses were "just telling the
5 truth." *Id.* at 430. The court held that the comments did not constitute improper personal
6 opinions about either defendant's guilt or the witnesses' credibility. *Id.* at 431. The
7 prosecutor did not express his personal opinions about the case; rather, his comments were
8 intended to argue inferences from the evidence. *Id.* Thus, the comments did not constitute
9 prosecutorial misconduct

11 Here, petitioner claims the prosecutor improperly interjected her personal opinion
12 on witness credibility during closing argument. *See* PRP at 26-27 (citing 17 RP 1847-
13 1848). The prosecutor began her comments by reminding the jury that they are the "sole
14 judges of the credibility of each witness" and the "sole judges of the value or weight to be
15 given to testimony of each witness." 17 RP 1845-46. The prosecutor then argued,

16 Vossler Blesch, his credibility, he didn't get anything from the State in
17 return for coming in here to testify about this case. He got nothing. There's
18 no leniency, no nothing. He took the stand, and he testified of what he
19 recalled from the incident. Not an easy thing to do when you know that
20 you're the guy that shot somebody and put him in a wheelchair and to
21 testify against someone that you consider your brother, your best friend,
22 one of your best friends.

21 I submit to you that Vossler Blesch's testimony, although difficult at times
22 and back and forth at times, you look at what he told the detective and
23 what he testified to and what he told you about the actions, yeah, frantic
24 situation, but actively participated in it, actively participated in at the
25 request of the defendant. There for no other reason but the defendant. He
doesn't know these guys. He doesn't know the owner of the car. He doesn't
know the owner of the Mercedes. He doesn't know anything about these
guys and about this situation but for the information he received from the
defendant.

...

1 Back to Ihor's and Dmytro's testimony, I submit to you that it was
2 credible. There's an issue with Ihor. There's spots that he doesn't have a
3 memory of. He doesn't have a memory of ever doing anything that was
4 physically aggressive towards the defendant other than pushing him off to
5 the side. I submit to you that it's not a matter of his lying to you or being
6 deceptive to you or to the law enforcement when they came out to talk to
7 him or to defense counsel and myself when we went to talk to him. The
8 guy got shot in the back of the head, a traumatic experience. We talked
9 about that in voir dire. You go through a traumatic experience, people
10 focus on different things. People remember different things. It doesn't
11 mean that one is more credible than the other.

12 17 RP 1846-48.

13 The prosecutor's arguments were not improper. First, the prosecutor did not
14 expressly state her personal opinion as to the credibility of a witness. A reviewing court
15 will not find prejudicial error "unless it is clear and unmistakable that counsel is
16 expressing a personal opinion." *Warren*, 165 Wn.2d at 30. Second, prosecutors have wide
17 latitude to argue reasonable inferences from the evidence concerning witness credibility.
18 *Warren*, 165 Wn.2d at 30; *Stenson*, 132 Wn.2d at 727. The prosecutor here confined her
19 comments regarding the credibility of Blesch, Dmytro, and Ihor to their testimony and the
20 evidence introduced at trial.

21 However, because petitioner did not object to any of the prosecutor's remarks, he
22 waived any error unless the prosecutor's conduct was so flagrant and ill-intentioned that
23 an instruction could not have cured any resulting prejudice. *Emery*, 174 Wn.2d at 760-61.
24 Here, any prejudice could have been cured by a timely objection and curative instruction.
25 Moreover, the court instructed the jury that they were the "sole judges of the credibility of
each witness" and the "sole judges of the value or weight to be given to the testimony of
each witness." Appx. I (Instruction No. 1). Juries are presumed to follow their
instructions. *Stein*, 144 Wn.2d at 247. And again, there was no explicit statement of

1 personal opinion, so no prejudicial error occurred. Petitioner's claim of prosecutorial
2 misconduct accordingly fails.

3
4 c. The prosecutor's use of the phrase "I submit to you" was not
an improper expression of personal opinion.

5 "[A] prosecutor cannot use his or her position of power and prestige to sway the
6 jury and may not express an individual opinion of the defendant's guilt, independent of the
7 evidence actually in the case." *In re Pers. Restraint of Glasmann*, 175 Wn.2d 696, 706,
8 286 P.3d 673 (2012). "Prejudicial error does not occur until such time as it is *clear and*
9 *unmistakable that counsel is not arguing an inference from the evidence, but is expressing*
10 *a personal opinion.*" *State v. McKenzie*, 157 Wn.2d 44, 54, 134 P.3d 221 (2006)
11 (emphasis in original) (quoting *State v. Papadopoulos*, 34 Wn. App. 397, 400, 662 P.2d
12 59 (1983)).¹³

14 Petitioner argues the prosecutor repeatedly and improperly inserted her personal
15 prestige behind her conclusions whenever she stated, "I submit to you" during closing
16 argument. *See* PRP at 26-28 (citing 17 RP 1846, 1862-64, 1868-69, 1915, 1923). The
17 State fails to see how the phrase "I submit to you" constitutes prosecutorial misconduct,
18 and petitioner fails to provide any authority supporting his position. "I submit to you" was
19 just another way of saying "I am arguing to you." It should go without saying that a
20 prosecutor can argue to the jury during closing argument. In fact, a prosecutor has wide
21 latitude to draw and express reasonable inferences from the evidence during closing
22

23
24
25 ¹³ "It is not uncommon for statements to be made in final arguments which, standing alone, sound like an
expression of personal opinion. However, when judged in the light of the total argument, the issues in the
case, the evidence discussed during the argument, and the court's instructions, it is usually apparent that
counsel is trying to convince the jury of certain ultimate facts and conclusions to be drawn from the
evidence." *McKenzie*, 157 Wn.2d at 53-54 (quoting *Papadopoulos*, 34 Wn. App. at 400).

1 argument. *Hoffman*, 116 Wn.2d at 94–95. “I submit to you” was not an expression of the
2 prosecutor’s personal opinion as to the defendant’s guilt or the weight of the evidence.
3 Rather, in light of the total argument, it merely signaled that the prosecutor was trying to
4 convince the jury of facts and conclusions to be drawn from the evidence. *See McKenzie*,
5 157 Wn.2d at 53-54. The prosecutor’s arguments were proper.

6 Because petitioner did not object to the prosecutor's allegedly improper comments
7 during closing argument, he has to show that the comments were so flagrant and ill-
8 intentioned that no curative instruction could have cured the prejudice. First, no
9 prejudicial error occurred, because it is not “clear and unmistakable” that the prosecutor
10 was expressing her personal opinion. Second, had petitioner objected to the comments, the
11 trial court could have given a curative instruction admonishing the jury to disregard them.
12 The jury was already instructed that the “lawyers’ remarks, statements, and arguments are
13 intended to help you understand the evidence and apply the law...the lawyers’ statements
14 are not evidence.” Appx. I (Instruction No. 1). Again, juries are presumed to follow their
15 instructions. *Stein*, 144 Wn.2d at 247. Accordingly, petitioner cannot meet his burden to
16 show that the prosecutor's remarks were flagrant and ill-intentioned, or that they caused
17 actual prejudice, and his prosecutorial misconduct claim fails.
18
19

20 3. PURSUANT TO THE SUPREME COURT’S DECISION IN
21 ***FREEMAN***, PETITIONER’S CONVICTIONS FOR FIRST
22 DEGREE ROBBERY AND FIRST DEGREE ASSAULT DO NOT
VIOLATE DOUBLE JEOPARDY.

23 “No person shall be...twice put in jeopardy for the same offense.” Const. art. I, § 9;
24 accord U.S. Const. amend. V. The federal and state double jeopardy clauses prohibit the
25 imposition of multiple punishments for the same offense. *In re Pers. Restraint of Orange*,

1 152 Wn.2d 795, 815, 100 P.3d 291 (2004); *State v. Gocken*, 127 Wn.2d 95, 100, 109, 896
2 P.2d 1267 (1995). The standard of review for double jeopardy claims is de novo. *State v.*
3 *Freeman*, 153 Wn.2d 765, 770, 108 P.3d 753 (2005).

4 The legislature defines offenses and sets punishments. *Freeman*, 153 Wn.2d at
5 771. “Where a defendant’s act supports charges under two criminal statutes, a court
6 weighing a double jeopardy challenge must determine whether, in light of legislative
7 intent, the charged crimes constitute the same offense.” *In re Orange*, 152 Wn.2d at 815.

8
9 When the intent of the legislature is clear, the court may conclude that the
10 legislature intended to punish two offenses arising out of the same act separately.
11 *Freeman*, 153 Wn.2d at 771-72. If there is no clear statement of legislative intent, the
12 court may apply the “same evidence” or *Blockburger*¹⁴ test, which asks if the crimes are
13 the same in law and in fact. *Freeman*, 153 Wn.2d at 772. The court may also use the
14 merger doctrine to discern legislative intent where the degree of one offense is elevated by
15 conduct constituting a separate offense. *Freeman*, 153 Wn.2d at 772-73. Finally, “even if
16 on an abstract level two convictions appear to be the same offense or for charges that
17 would merge, if there is an independent purpose or effect to each, they may be punished as
18 separate offenses.” *Id.* at 773.

19
20 Petitioner claims his convictions for first degree robbery and first degree assault as
21 to Ihor violate double jeopardy. PRP at 47-48. However, in *Freeman*, the Washington
22 Supreme Court held that the legislature “did intend to punish first degree assault and first
23 degree robbery separately, as the ‘lesser’ crime has the greater standard range.” 153 Wn.2d
24 at 779-80. *Accord State v. S.S.Y.*, 170 Wn.2d 322, 331-32, 241 P.3d 781 (2010) (“Based

25

¹⁴ *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932).

1 on *Freeman* and the juvenile sentencing scheme, we conclude that the legislature intended
2 to punish first degree robbery and first degree assault as separate crimes.”). *Freeman*
3 controls here, and petitioner’s double jeopardy argument accordingly fails.

4 It is also worth noting that there was an independent purpose for the assault in this
5 case. See *Freeman*, 153 Wn.2d at 773. Here, Blesch fired the gun at Ihor in response to
6 Ihor’s attempt at self-help wherein he grabbed petitioner. See 5 RP 396-99; 8 RP 813-15;
7 10 RP 993-95. At that time the robbery was already completed. Blesch assaulted Ihor after
8 the robbery and did not commit the assault to facilitate the robbery. Ihor sustained an
9 independent injury from the robbery (i.e., the theft of his wallet, phone, car keys and
10 clothing); he suffered bullet wounds which rendered him a partial quadriplegic. See 8 RP
11 758, 765-67; 9 RP 824, 827, 834. Thus, Blesch’s shooting of Ihor had the independent
12 purpose of disrupting Ihor’s defensive “attack” of petitioner. Petitioner’s double jeopardy
13 claim should be dismissed.

14
15
16 D. CONCLUSIONS:

17 The State respectfully requests that this Court dismiss the petition, as petitioner
18 fails to demonstrate unlawful restraint. Petitioner received effective assistance of counsel,
19
20
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25

1 the prosecutor did not commit misconduct during trial, and petitioner's convictions for the
2 assault and robbery of Ihor do not violate double jeopardy.

3
4 DATED: February 27, 2019.

5 MARY ROBNETT
6 Pierce County
7 Prosecuting Attorney



8 BRITTA HALVERSON
9 Deputy Prosecuting Attorney
10 WSB #44108

11 Certificate of Service:

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

14 2/27/19 *J. Johnson*
15 Date Signature

APPENDIX “A”

Judgment and Sentence



14-1-00779-7 50134335 JDSWCD 10-20-17

Case Number: 14-1-00779-7 Date: February 21, 2017
SerialID: 1399552B-08CD-4228-ADC4-883C32402204
Certified By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 14-1-00779-7

vs.

VENLAMIN GEORGEV RUSEV,

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).

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).

WARRANT OF COMMITMENT -2

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

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10/20/2017
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[] 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).

JOHN R. HICKMAN

Dated: 10/20/17

By direction of the Honorable

[Signature]
JUDGE

KEVIN STOCK
CLERK

By: [Signature]
DEPUTY CLERK



CERTIFIED COPY DELIVERED TO SHERIFF
OCT 20 2017
Date 10/20/2017 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

dk

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as charged in the Original Information

- A special verdict/finding for use of firearm was returned on Count(s) I, II, and III 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):

NONE KNOWN OR CLAIMED

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	4	IX	51-68 MOS	60 MOS	111-128 MOS	LIFE 50 K
II	4	IX	51-68 MOS	60 MOS	111-128 MOS	LIFE 50 K
III	4	XII	129-171 MOS	60 MOS	189-231 MOS	LIFE 50 K

- 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 9.41.010.

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: Firearm used during incident

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RTNRJN \$ per order Restitution to: _____
\$ _____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

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

FRC \$ 200.00 Criminal Filing Fee

FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ _____ 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).

JUDGMENT AND SENTENCE (JS)

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

11 0007 11 10/20/2017 268811

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

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

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

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

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

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

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

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

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

4.3 **NO CONTACT**

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

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

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

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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: Subject to DOC calculation

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

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

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

The defendant shall be on community custody for:

Count(s) _____ 36 months for Serious Violent Offenses

Count(s) I, II & III 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: _____

IHOR ONISHCHUK 3-26-94 See NCO orders
DMYTKO ONISHCHUK 8-31-95

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 6 of 11

1
2 remain within outside of a specified geographical boundary, to wit: _____

3 not serve in any paid or volunteer capacity where he or she has control or supervision of minors under
4 13 years of age

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

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

8 comply with the following crime-related prohibitions: _____

9 Other conditions: _____

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

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

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

19 4.7 WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is
20 eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the
21 sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on
22 community custody for any remaining time of total confinement, subject to the conditions below. Violation
23 of the conditions of community custody may result in a return to total confinement for the balance of the
24 defendant's remaining time of total confinement. The conditions of community custody are stated above in
25 Section 4.6.

26 4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the
27 defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**
[] Defendant waives any right to be present at any restitution hearing (sign initials): _____
- 5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.
N/A
- 5.8 [] The court finds that 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.

1
2 **CERTIFICATE OF CLERK**

3 CAUSE NUMBER of this case: 14-1-00779-7

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

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

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

8
9 **IDENTIFICATION OF COURT REPORTER**

10 Kaedra Wakenshaw
11 Court Reporter

APPENDIX "F"

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

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

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

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

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

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

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

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

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

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

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

per CCO

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

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

(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: _____

10015
110/20/2017 11:26:88

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 21 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Rebecca Ahquin, Deputy.

Dated: February 21, 2019 12:51 PM



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

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: 1399552B-08CD-4228-ADC4-883C32402204**.

This document contains 14 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “B”

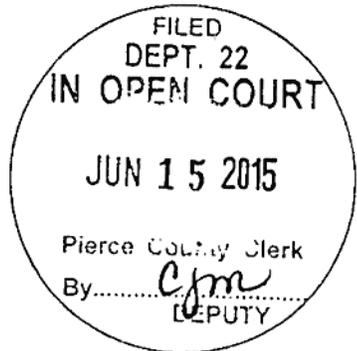
Verdict Forms

0245
7242
6/17/2015



14-1-00779-7 44836193 VRD 06-16-15

Case Number: 14-1-00779-7 Date: February 25, 2019
SerialID: ED3E418B-BF99-4CA3-8DF2-97487BCB4E83
Certified By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,

vs.

VENIAMIN GEORGEV RUSEV,
Defendant.

CAUSE NO. 14-1-00779-7

COUNT I-A
SPECIAL VERDICT FORM
FIREARM

We, the jury, having found the defendant guilty of the crime of Robbery in the First Degree, as charged in Count I-A, return a special verdict by answering as follows:

QUESTION: Was the defendant, or a person to whom the defendant was acting as an accomplice, armed with a firearm at the time of the commission of the crime in Count I-A?

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

[Signature]
PRESIDING JUROR

ORIGINAL

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 25 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: February 25, 2019 10:07 AM



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

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: ED3E418B-BF99-4CA3-8DF2-97487BCB4E83.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.



FILED
DEPT. 22
IN OPEN COURT

JUN 15 2015

Pierce County Clerk
By *Cjm*
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VENIAMIN GEORGEV RUSEV,

Defendant.

CAUSE NO. 14-1-00779-7

COUNT II-A
SPECIAL VERDICT FORM
FIREARM

We, the jury, having found the defendant guilty of the crime of Robbery in the First Degree, as charged in Count II-A, return a special verdict by answering as follows:

QUESTION: Was the defendant, or a person to whom the defendant was acting as an accomplice, armed with a firearm at the time of the commission of the crime in Count II-A?

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

Kate Hull

PRESIDING JUROR

ORIGINAL

0247

7242

5/17/2015

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 25 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: February 25, 2019 10:07 AM



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

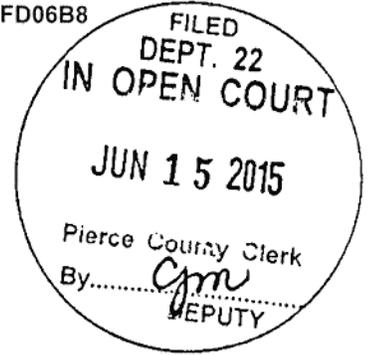
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enter SerialID: 70391182-E6E1-4A71-A8EC-E458CC3397BE.

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14-1-00779-7 44836219 VRD 06-16-15



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VENIAMIN GEORGEV RUSEV

Defendant.

CAUSE NO. 14-1-00779-7

COUNT III-A
SPECIAL VERDICT FORM
FIREARM

We, the jury, having found the defendant guilty of the crime of assault in the first degree, as charged in Count III-A, return a special verdict by answering as follows:

QUESTION: Was the defendant, or a person to whom the defendant was acting as an accomplice, armed with a firearm at the time of the commission of the crime in Count III-A?

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


PRESIDING JUROR

ORIGINAL

0249

7242

6/17/2015

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 25 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: February 25, 2019 10:07 AM



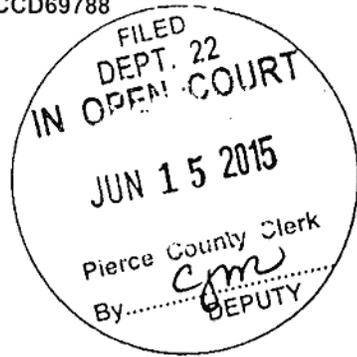
Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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enter SerialID: 0B1803A5-873D-4442-94E7-D4DCA7FD06B8.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

0243
7242
6/17/2015

Case Number: 14-1-00779-7 Date: February 25, 2019
SerialID: B10DB591-97D8-4C2B-9C98-2FABCCD69788
Certified By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-00779-7

vs.

VENIAMIN GEORGEV RUSEV

VERDICT FORM III-A

Defendant.

IHOR ONISHCHUK

We, the jury, find the defendant Guilty (write in Not Guilty or Guilty, or leave blank if unable to agree) of the crime of Assault in the First Degree as charged in Count III-A.

[Signature]
PRESIDING JUROR

ORIGINAL

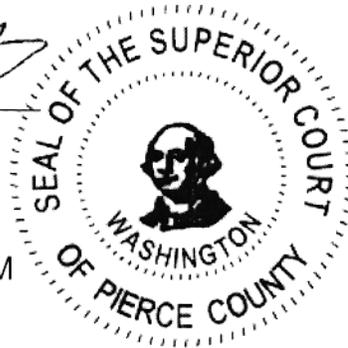
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 25 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: February 25, 2019 10:07 AM



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

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: B10DB591-97D8-4C2B-9C98-2FABCCD69788.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.



Case Number: 14-1-00779-7 Date: February 25, 2019
SerialID: 578315CB-B1AC-43C6-A43F-2F4EF49B3417
Certified By: Kevin Stock Pierce County Clerk, Washington

0039

7242

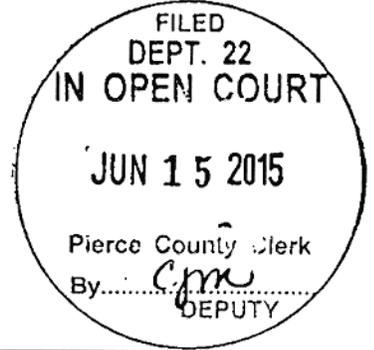
6/17/2015

COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.

CAUSE NO. 14-1-00779-7

COUNT I-A
VERDICT FORM
RE IHOR ONISHCHUK



VENIAMIN GEORGEV RUSEV,
Defendant.

We, the jury, find defendant, Guilty (write in "Not Guilty" or "Guilty") of the
crime of Robbery in the First Degree as charged in Count I-A.

Scott Hull
PRESIDING JUROR

ORIGINAL

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 25 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: February 25, 2019 10:07 AM



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

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 578315CB-B1AC-43C6-A43F-2F4EF49B3417.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.



14-1-00779-7 44836150 VRD 06-16-15

Case Number: 14-1-00779-7 Date: February 25, 2019
SerialID: 1813F4F1-50EF-4EDB-9803-A096F014C699
Certified By: Kevin Stock Pierce County Clerk, Washington

OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

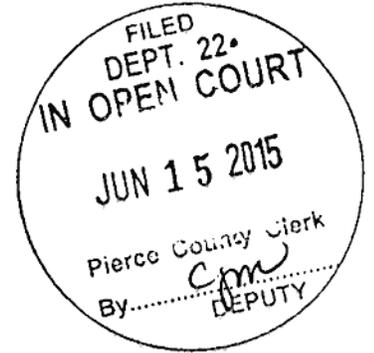
vs.

VENIAMIN GEORGEV RUSEV,

Defendant.

CAUSE NO. 14-1-00779-7

COUNT II-A
VERDICT FORM
DMYTRO ONISHCHUK



We, the jury, find defendant, Guilty (write in "Not Guilty" or "Guilty") of the
crime of Robbery in the First Degree as charged in Count II-A.

Dustin Hill
PRESIDING JUROR

ORIGINAL

0241 7242 6/17/2015

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 25 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: February 25, 2019 10:07 AM



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

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 1813F4F1-50EF-4EDB-9803-A096F014C699.

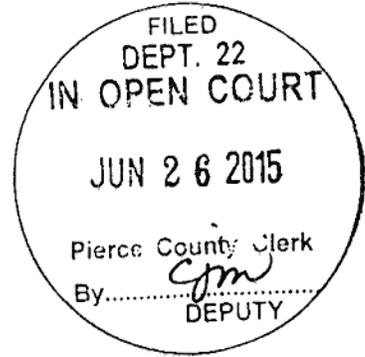
This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “C”

Judgment and Sentence (2015)



14-1-00779-7 44904683 JDSWCD 08-29-15



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 14-1-00779-7

vs

VENLAMIN GEORGEV RUSEV,

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).

Dated: 6/26/15

By direction of the Honorable **JOHN R. HICKMAN**
[Signature]
JUDGE

KEVIN STOCK
CLERK
By: [Signature]
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

JUN 29 2015 By [Signature] Deputy

STATE OF WASHINGTON

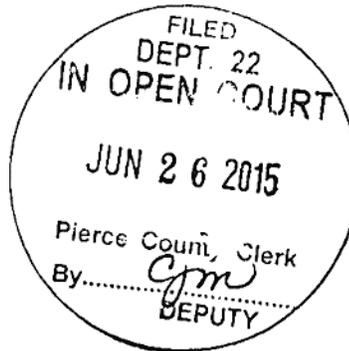
ss:

County of Pierce

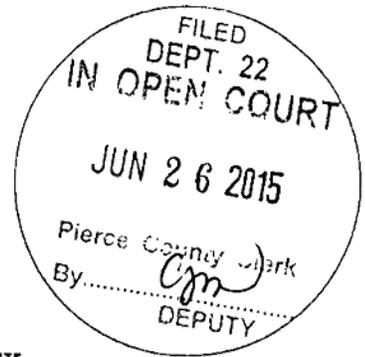
I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office. IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____.

KEVIN STOCK, Clerk
By: _____ Deputy

dk



7308005
6/29/2015



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-00779-7

vs.

JUDGMENT AND SENTENCE (J/S)

VENIAMIN GEORGEV RUSEV

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: WA27513601
 DOB: 01-27-1983

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 06-15-2015 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ROBBERY IN THE FIRST DEGREE (AAA2)	9A.56.190	FASE	2-23-14	TPD 140541021
II	ROBBERY IN THE FIRST DEGREE (AAA2)	9A.56.190	FASE	2-23-14	TPD 140541021
III	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a)	FASE	2-23-14	TPD 140541021

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

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

15-9-05838-1

as charged in the Original Information

- A special verdict/finding for use of firearm was returned on Count(s) I, II, and III 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):

NONE KNOWN OR CLAIMED

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	4	IX	51-68 MOS	60 MOS	111-128 MOS	LIFE 50 K
II	4	IX	51-68 MOS	60 MOS	111-128 MOS	LIFE 50 K
III	4	XII	129-171 MOS	60 MOS	189-231 MOS	LIFE 50 K

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.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: Pierced US60 during incident

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RTNRJN	\$ <u>LOC</u>	Restitution to: _____
	\$ _____	Restitution to: _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$ <u>500.00</u>	Crime Victim assessment
DNA	\$ <u>100.00</u>	DNA Database Fee
PUB	\$ <u>200</u>	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ <u>200.00</u>	Criminal Filing Fee
FCM	\$ _____	Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 800 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 7/31/15 @ 1:30 in Dept 22

RESTITUTION. Order Attached

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

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

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

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

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

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

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

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

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

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

4.3 **NO CONTACT**

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

[X] **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.

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):

60 months on Count I _____ months on Count _____

60 months on Count II _____ months on Count _____

155 months on Count III _____ 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 _____

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

60 months on Count No III _____ months on Count No _____

_____ months on Count No _____ months on Count No _____

_____ months on Count No _____ months on Count No _____

_____ months on Count No _____ months on Count No _____

Sentence enhancements in Counts I, II, III shall run
 concurrent consecutive to each other.
Sentence enhancements in Counts I, II, III shall be served
 flat time subject to earned good time credit

Actual number of months of total confinement ordered is: 155 + 180 months flat (335 months total)

(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) III contain(s) a mandatory minimum term of 60 months

1
2 **CONSECUTIVE/CONCURRENT SENTENCES.** RCW 9.94A.589. All counts shall be served
3 concurrently, except for the portion of those counts for which there is a special finding of a firearm, other
4 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: _____

5
6 The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to
7 the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony
8 sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for
9 the following cause numbers. RCW 9.94A.589: _____

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

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

14 4.6 [] **COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:

15 Count _____ for _____ months;

16 Count _____ for _____ months;

17 Count _____ for _____ months;

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

20 The defendant shall be on community custody for:

21 Count(s) _____ 36 months for Serious Violent Offenses

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

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

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

28 (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 NCO

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

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-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). V.R.
- 5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.
N/A
- 5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

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

5.10 OTHER: Comply with DNA Order, Xcos, payment of
LEOs CPO's directives, T/A Registration

DONE in Open Court and in the presence of the defendant this date: 6/26/15

JUDGE

Print name

John R. Hickman
John R. Hickman

[Signature]

Deputy Prosecuting Attorney

Print name: Lori Kosman

WSB # 30320

Attorney for Defendant

Print name: [Signature]

WSB # 143201

Defendant

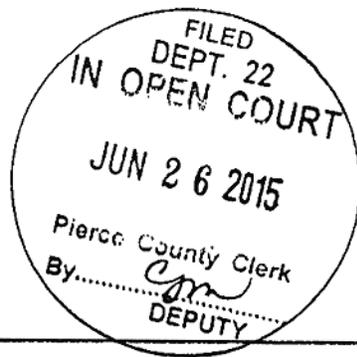
Print name: _____

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations

My right to vote may be permanently restored by one of the following for each felony conviction: 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 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: [Signature]



CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 14-1-00779-7

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

EMILY DIRTON

Court Reporter

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APPENDIX "F"

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

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

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

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

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

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

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

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

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

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

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

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

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

(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: _____

VOTING RIGHTS STATEMENT

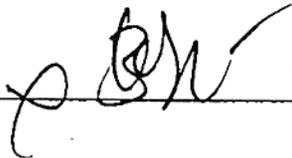
RCW 10.64.140: After conviction of a felony, or entry of a plea of guilty to a felony, your right to vote is immediately revoked and any existing voter registration is cancelled. Pursuant to RCW 29A.08.520 after you have completed all periods of incarceration imposed as a sentence, and after all community custody is completed and you are discharged by the Department of Corrections, your voting rights are automatically restored on a provisional basis. You must then reregister to be permitted to vote.

Failure to pay legal financial obligations, or comply with an agreed upon payment plan for those obligations, can result in your provisional voting right being revoked by the court.

Your right to vote may be fully restored by a) A certificate of discharge issued by the sentencing court, RCW 9.9A.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 either provisionally or fully restored is a class C felony, RCW 92A.84.660.

I acknowledge receipt and understanding of this information:

Defendant's signature: _____



14-1-00779-7

IDENTIFICATION OF DEFENDANT

SID No. WA27513601
(If no SID take fingerprint card for State Patrol)

Date of Birth 01-27-1983

FBI No. 810037TC4

Local ID No. CHRI# 20140642153

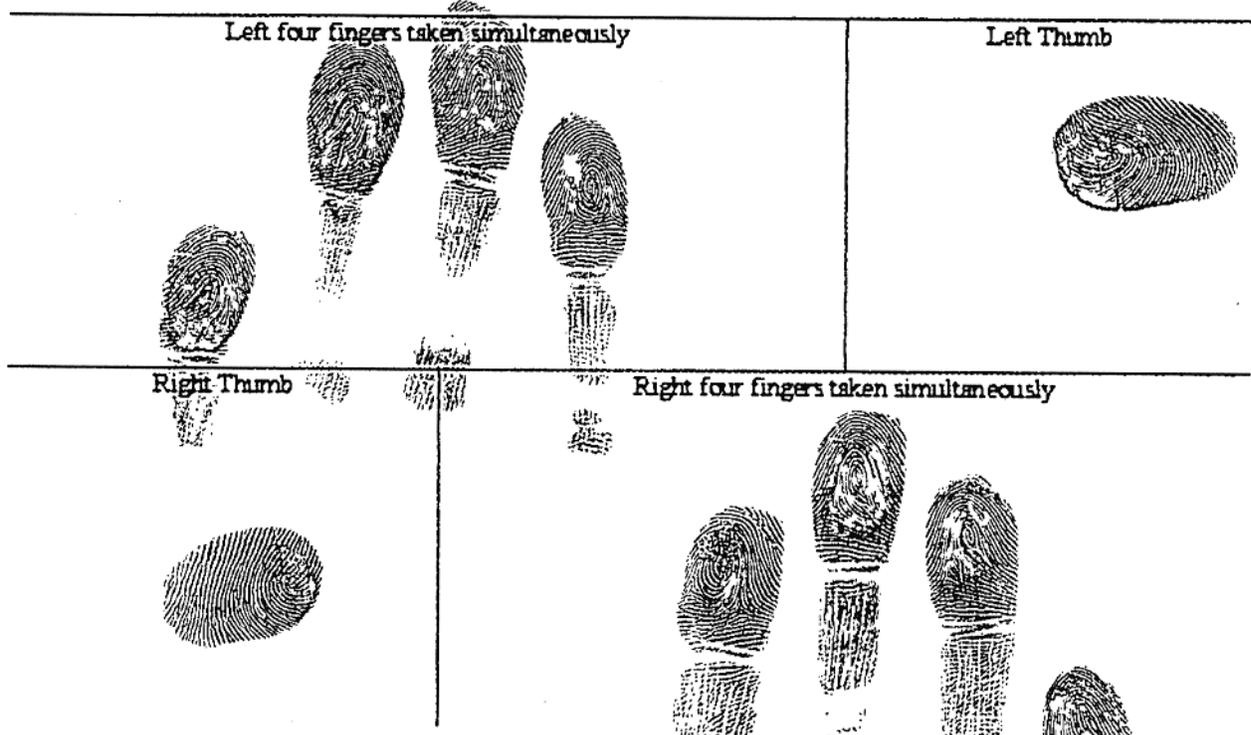
PCN No. 541159339

Other

Alias name, SSN, DOB: _____

Race: Asian/Pacific Islander Black/African-American Caucasian Native American Other: _____
Ethnicity: Hispanic Non-Hispanic
Sex: Male 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, _____

Dated: 6/26/15

DEFENDANT'S SIGNATURE: X [Signature]

DEFENDANT'S ADDRESS: _____

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 21 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Rebecca Ahquin, Deputy.

Dated: February 21, 2019 01:11 PM



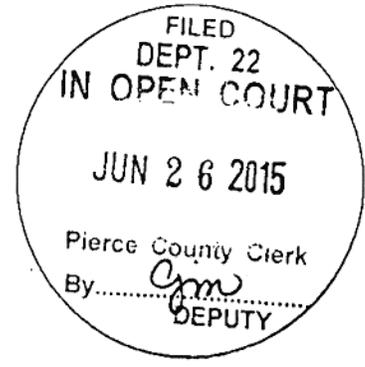
Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: F9B10F5A-18D6-4E86-A8B8-342C9004A5A3**.

This document contains 15 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX "D"

Stipulation on Prior Record and Offender Score



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-00779-7

vs.

VENLAMIN GEORGEV RUSEV,

STIPULATION ON PRIOR RECORD
AND OFFENDER SCORE
(Plea of Guilty).

Defendant.

Upon the entry of a plea of guilty in the above cause number, charge ROBBERY IN THE FIRST DEGREE; ROBBERY IN THE FIRST DEGREE; ASSAULT IN THE FIRST DEGREE, the defendant VENLAMIN GEORGEV RUSEV, hereby stipulates that the following prior convictions are His complete criminal history, are correct and that He is the person named in the convictions. The defendant further stipulates that any out-of-state convictions listed below are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525:

ALL CURRENT CONVICTIONS, THIS CAUSE NUMBER

Count	Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	A or J Adult Juv	Type of Crime	Class	Score by Ct	Felony or Misdemeanor
I	ROBBERY IN THE FIRST DEGREE		PIERCE CO. WA	2-23-14	A	V	A	EN/A II:2 III:2	FELONY
II	ROBBERY IN THE FIRST DEGREE		PIERCE CO. WA	2-23-14	A	V	A	I:2 II:N/A III:2	FELONY
III	ASSAULT IN THE FIRST DEGREE		PIERCE CO. WA	2-23-14	A	SV	A	I:2 II:2 III:N/A	FELONY

[] The defendant committed a current offense while on community placement (adds one point to score).
RCW 9.94A.525.

OTHER CURRENT CONVICTIONS, OTHER CAUSE NUMBERS (if any)
 None Known or Claimed, or.

PRIOR CONVICTIONS INCLUDED IN OFFENDER SCORE (if any)
 None Known or Claimed, or.

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	4	IX	51-68 MOS	60 MOS	111-128 MOS	LIFE 50 K
II	4	IX	51-68 MOS	60 MOS	111-128 MOS	LIFE 50 K
III	4	XII	129-171 MOS	60 MOS	189-231 MOS	LIFE 50 K

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

The defendant further stipulates:

- 1) Pursuant to *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.
- 2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty,
- 3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution;

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4) That none of the above criminal history convictions have "washed out" under RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated. If sentenced within the standard range, the defendant further waives any right to appeal or seek redress via any collateral attack based upon the above stated criminal history and/or offender score calculation.

Stipulated to this on the 26 day of June, 2015.



LORI KOOIMAN
Deputy Prosecuting Attorney
WSB # 30370



VENAMIN GEORGEV RUSEV



BRYAN HERSHMAN
WSB # 14380

dlk

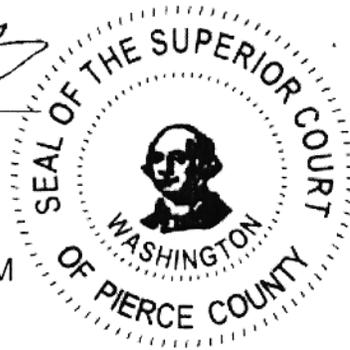
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 25 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: February 25, 2019 10:07 AM



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

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: AC6033A1-F18D-4057-A430-704D8433F241**.

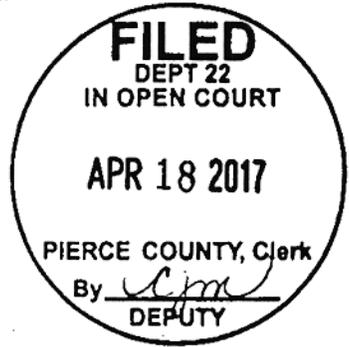
This document contains 3 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “E”

Court of Appeals Opinion



14-1-00779-7 49091819 CPOP 04-20-17



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

RUSEV, VENIAMIN GEORGEV,

Defendant.

Cause No. 14-1-00779-7

COURT OF APPEALS
DIVISION II

UNPUBLISHED OPINION

0008
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4/20/2017

Filed
Washington State
Court of Appeals
Division Two

April 18, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

VENIAMIN GEORGE RUSEV,

Appellant.

No. 47762-9-II

UNPUBLISHED OPINION

MELNICK, J. — Veniamin George Rusev appeals his conviction and sentence for assault in the first degree and two counts of robbery in the first degree.¹ We conclude that sufficient evidence supports Rusev's convictions and that the trial court properly instructed the jury on accomplice liability. We also conclude that the trial court gave the jury an improper "to convict" instruction on robbery; however, the error was harmless. The court further erred by imposing a mandatory minimum sentence on the assault charge. Based on our resolution of the case, we do not reach the double jeopardy issue, and because of newly amended RAP 14.2, we do not reach the issue of appellate costs.

We affirm, but remand for resentencing and order the trial court to strike the mandatory minimum sentence.

¹ Rusev assigns error to the trial court's imposition of trial costs without an inquiry into his ability to pay. However, because Rusev fails to provide us with any argument on the issue or citation to legal authority, we do not consider the issue. *State v. Harris*, 164 Wn. App. 377, 389 n.7, 263 P.3d 1276 (2011); RAP 10.3(a)(4).

4/20/2017 44 0009

47762-9-II

FACTS²

Ihor Onishchuk sold a Mercedes-Benz to his cousin, Oleg Mikhalchuk. Oleg and his brother, Yaheni, were cousins of Ihor and his brother, Dmytro. The Mikhalchuk brothers also knew Rusev. Oleg told Rusev about some issues with the Mercedes not working properly. Rusev said he "doesn't like people who are cheating the other people." 7 Report of Proceedings (RP) at 675.

Alesik, a close friend of Ihor and Dmytro, also knew Rusev. Rusev worked on Alesik's Volvo. Alesik loaned Rusev his Volvo to drive for a few months while Rusev fixed it.

On February 23, 2014, Alesik called Ihor and Dmytro, and asked them to pick up the Volvo from Rusev. The brothers planned to go together, so Ihor could drive his own car, and Dmytro could drive the Volvo to Alesik. Alesik told Rusev over the phone that Ihor and Dmytro would pick up the car, and reminded Rusev that he had previously met Ihor.

Before the brothers went to pick up the Volvo, Rusev told Vossler Blesch that he did not like that Ihor sold Oleg a broken car. Rusev told Blesch that he wanted to rob the brothers and scare them because they cheated their own family. Rusev said he did not trust the brothers and asked Blesch to stay. Blesch carried a firearm in his waistband and Rusev told Blesch to reveal it when the brothers arrived, so they would see it and be intimidated.³

² As the parties note in their briefs, the names of people involved in the case may be confusing and often have alternate spellings. For ease of reading, Veniamin Rusev and Vossler Blesch, the defendant and co-defendant, will be referred to by their last names. Because the victims shared the last name Onishchuk, they are referred to by their first names, Ihor and Dmytro. The brothers' cousins, Oleg and Yaheni Mikhalchuk, will also be referred to by their first names. Finally, Vitali Alesik, will be referred to by his last name. We intend no disrespect.

³ Later, Blesch testified that Rusev did not instruct him to bring the firearm, Blesch planned to bring it along. Yet, Rusev clearly knew that Blesch had his gun with him.

47762-9-11

When the brothers arrived at Rusev's, they drove into the alleyway behind his garage. Rusev waited for them, standing in the doorway to the garage. Rusev asked them if they were picking up the Volvo. He acted normal and smiled at them. Rusev shook the brothers' hands.

When Dmytro entered the garage, he saw a stranger, Blesch, with a gun in his waistband. After Ihor entered the garage, Rusev closed and locked the door. Within seconds, Blesch pulled the gun out of his waistband and pointed it at the brothers.

Ihor and Dmytro stood approximately five to seven feet away from Blesch and Rusev. The brothers spoke in Russian with Rusev. Rusev spoke aggressively and cursed. Blesch did not understand Russian, and could not follow the conversation.

Rusev walked back and forth in front of the brothers. Blesch described Rusev as circling them "kind of like a predator stalking his prey." 10 RP at 977. Based on instruction from Rusev, Blesch "rack[ed] the slide" and ejected a bullet out of the chamber of the gun to intimidate the brothers; Rusev kicked it out of the way. 5 RP at 392.

Rusev demanded the brothers' wallets and cell phones, and Dmytro's watch. Ihor tried to talk to Rusev in a friendly manner, but Rusev told him to be quiet or he would kill them. Rusev gestured with his head to Blesch to come closer with the gun. Blesch moved closer to them and gestured with the gun for the brothers to hand the items over. The brothers obeyed.

Rusev took one wallet and put it on top of the Volvo and gave the other wallet to Blesch. Rusev then demanded the brothers take off their jackets and shoes. They again obeyed. Rusev also demanded their car keys; Ihor handed them to Rusev. Rusev handed their phones and the keys to Blesch, and Blesch put them in his jacket pocket.⁴ Blesch said to Rusev, "What the hell?"

⁴ Rusev never returned any of the items to Ihor or Dmytro.

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4/20/2017

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10 RP at 984. Rusev said something along the lines of "trust me." 10 RP at 985. Rusev finally ordered the brothers to take off their pants. Ihor refused.

Rusev then asked Ihor, "[A]re you the owner of the Mercedes?" 9 RP at 810. Ihor agreed that he was the owner. Rusev picked up the wallet off the Volvo, looked at Ihor's driver's license, and placed it back. Rusev phoned Yaheni and asked Yaheni the name of his cousin. Yaheni responded, "I[h]or Onishchuk." 7 RP at 571.

Ihor told Dmytro that they would not "leave this place alive," and that they would need to get out of there at "any price." 5 RP at 397-98. When Rusev hung up the phone, he began to walk behind the brothers. Ihor grabbed Rusev and held him. Dmytro grabbed Rusev from behind and tried to push the group towards the door to escape. Rusev cried out, "Voss, help me." 10 RP at 995. While Dmytro tried to open the door, Blesch fired the gun, striking and injuring Ihor.

Rusev seemed surprised that Blesch shot the gun and he told Blesch to leave. Rusev told Dmytro that Blesch was not supposed to fire the gun, he was only supposed to scare them. Ihor suffered a gunshot wound to the neck, chest, and arm that caused a significant spinal cord injury, rendering him a partial quadriplegic. He could move his hands, but nothing else from the neck down.

Blesch turned himself into the police shortly thereafter. Blesch claimed that he followed Rusev's lead throughout the incident. Blesch pled guilty to assault in the first degree and two counts of robbery in the first degree.

After the shooting, law enforcement arrested Rusev. Rusev identified Blesch as the shooter and stated that Blesch fled after shooting Ihor. An officer noticed that when Rusev left the scene to receive medical attention for an injury to his ear, he took a wallet out of his pocket, said that it

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was not his, and dropped it on the ground. A forensic specialist found Ihor's wallet on top of the Volvo in the garage.

The State charged Rusev as an accomplice to one count of assault in the first degree and two counts of robbery in the first degree, each with firearm enhancements.⁵

The trial court instructed the jury on accomplice liability:

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

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

(1) Solicits, commands, encourages, or requests another person to commit the crime: or

(2) Aids or agrees to aid another person in planning or committing the crime.

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

Clerk's Papers (CP) at 131 (Instr. 5). Rusev did not object to this instruction.

The trial court instructed the jury on the elements of robbery in the first degree.⁶

To convict the defendant of the crime of robbery in the first degree as charged in Count IA [and II-A], each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 23rd day of February, 2014, the defendant or a person to whom the defendant was acting as an accomplice; unlawfully took personal property from Ihor Onishchuk [or Dmytro Onishchuk];

(2) That the defendant or a person to whom the defendant was acting as an accomplice, intended to commit theft of the property;

(3) That the taking was against Ihor Onishchuk's [or Dmytro Onishchuk's] will by the defendant's or a person to whom the defendant was acting as an accomplice, use or threatened use of immediate force, violence, or fear of injury to that person or to the person or property of another;

⁵ RCW 9A.56.190; RCW 9A.56.200(1)(a)(ii); RCW 9A.010; RCW 9A.36.011(1)(a).

⁶ The instructions were identical for both counts other than the name of the victim.

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(4) That force or fear was used by the defendant or a person to whom the defendant was acting as an accomplice, to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or a person to whom the defendant was acting as an accomplice, was armed with a deadly weapon or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or a person to whom the defendant was acting as an accomplice, displayed what appeared to be a firearm or other deadly weapon; and

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

CP at 139, 141 (Instr. 13, 14). Rusev took exception to these instructions because he argued that the court should include a theft instruction that stated there must have been an intent to permanently deprive the owner of the property as an element.

The jury found Rusev guilty of one count of assault in the first degree and two counts of robbery in the first degree. By special verdict, the jury found Rusev or the person to whom he acted as an accomplice, was armed with a firearm at the time of each of the three counts.

The trial court sentenced Rusev to 335 months of confinement. The trial court noted that the "confinement time on Count(s) III [assault] contain(s) a mandatory minimum term of 60 months." CP at 221. The trial court also entered an order of indigency. Rusev appeals.

ANALYSIS

I. SUFFICIENCY OF THE EVIDENCE

Rusev argues insufficient evidence supports his convictions for all counts. He argues that he did not know Blesch would assault Ihor. Rusev also argues that he did not take the property with an intent to steal and he did not retain possession of any of the property, and thus, insufficient evidence supports his convictions for robbery in the first degree. We disagree.

A. STANDARD OF REVIEW

To determine whether sufficient evidence supports a conviction, we view the evidence in the light most favorable to the State and determine whether any rational fact finder could have

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found the elements of the crime beyond a reasonable doubt. *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). “‘Substantial evidence’ is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise.” *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014).

“In claiming insufficient evidence, the defendant necessarily admits the truth of the State’s evidence and all reasonable inferences that can be drawn from it.” *State v. Drum*, 168 Wn.2d 23, 35, 225 P.3d 237 (2010). Any inferences “‘must be drawn in favor of the State and interpreted most strongly against the defendant.’” *Homan*, 181 Wn.2d at 106 (quoting *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)). In addition, we “‘must defer to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence.’” *Homan*, 181 Wn.2d at 106.

B. ASSAULT IN THE FIRST DEGREE

To convict Rusev of assault in the first degree, the State had to prove that with intent to inflict great bodily harm, Rusev, or an accomplice, assaulted Ihor with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death. RCW 9A.36.011(1)(a).

Because the State charged Rusev as an accomplice, the State had to prove that Rusev “‘must have known generally that he was facilitating an assault, even if only a simple, misdemeanor level assault, and need not have known that the principal was going to use deadly force or that the principal was armed.’” *State v. McChristian*, 158 Wn. App. 392, 401, 241 P.3d 468 (2010) (quoting *In re Pers. Restraint of Sarausad*, 109 Wn. App. 824, 836, 39 P.3d 308 (2001)). “In Washington, an accomplice need not be aware of the exact elements of the crime. As long as the defendant engaged in conduct that is ‘the crime,’ the defendant may be found guilty.” *State v. Berube*, 150 Wn.2d 498, 508-09, 79 P.3d 1144 (2003) (internal citation omitted).

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Here, it is undisputed that Blesch assaulted Ihor with a firearm and caused Ihor great bodily harm. Sufficient evidence shows that Rusev aided and abetted Blesch in the commission of an assault. Rusev arranged for the brothers to come to his house. He also arranged for Blesch to be present with his gun. Rusev said he wanted to scare the brothers. Rusev wanted Blesch to have the firearm and display it to the brothers as intimidation. Within seconds of the brothers entering the garage, Blesch displayed the gun and pointed it at them. After Blesch ejected a bullet, Rusev kicked it out of the way. Ihor tried to talk to Rusev in a friendly manner, but Rusev told him to be quiet or he would kill them. Rusev gestured to Blesch to get closer with the gun. Finally, Blesch intentionally shot at Ihor and severely injured him.

Based on the foregoing and the record as a whole, we conclude that sufficient evidence supports Rusev's conviction for assault in the first degree.

C. ROBBERY IN THE FIRST DEGREE

"A person is guilty of robbery in the first degree if (a) In the commission of a robbery or of immediate flight therefrom, he or she: . . . (ii) Displays what appears to be a firearm or other deadly weapon." RCW 9A.56.200(1). RCW 9A.56.190 defines robbery.

A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial.

RCW 9A.56.190.

Robbery requires the intent to commit a theft. RCW 9A.56.190. Theft is defined as wrongfully obtaining or exerting unauthorized control over the property of another with intent to deprive the person of such property. RCW 9A.56.020. The trial court instructed the jury that the definition of robbery includes the intent to commit theft.

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Rusev argues that the State had to prove an intent to permanently deprive the brothers of their property. “The crime of theft requires as one element an ‘intent to deprive.’” *State v. Crittenden*, 146 Wn. App. 361, 370, 189 P.3d 849 (2008) (quoting RCW 9A.56.202(1)(a)). The common law element of intent to permanently deprive is not required. The legislature purposefully omitted it. *State v. Komok*, 113 Wn.2d 810, 816-17, 783 P.2d 1061 (1989); *Crittenden*, 146 Wn. App. at 370. Rusev’s argument fails.

Because the State charged Rusev as an accomplice, the State also had to prove that Rusev had general knowledge of the crime of robbery. Rusev had to have knowledge that Blesch would take personal property from Ihor and Dmytro against their will with the threat of force with a deadly weapon.

Before the brothers arrived, Rusev told Blesch that he wanted to rob the brothers and scare them because they cheated their own family. Rusev told Blesch to reveal the firearm in his waistband when the brothers walked in so they would see it and be intimidated. Rusev demanded the brothers’ wallets and cell phones, and Dmytro’s watch. Blesch gestured with the gun for them to hand the items over. Rusev also demanded that they take off their jackets and shoes. Ihor and Dmytro gave the items to Rusev. Rusev demanded their car keys, and Ihor handed them to Rusev. Rusev handed their phones and the keys to Blesch, and Blesch put them in his jacket pocket. Rusev never returned the items to Ihor or Dmytro.

When considering the evidence in the light most favorable to the State, sufficient evidence supports Rusev’s convictions for both counts of robbery because Rusev and Blesch took personal items from each of the brothers by threatened force. Therefore, sufficient evidence supports all three of Rusev’s convictions.

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II. JURY INSTRUCTIONS

Rusev challenges two jury instructions on appeal. First, he argues that the trial court erred by instructing the jury on the to-convict instruction for robbery in the first degree because the instruction relieved the State of its burden to prove an essential element, that the brothers each had a possessory interest in the items taken from them. Rusev also argues that the trial court erred by instructing the jury on accomplice liability because the instruction relieved the State of its burden to prove that he committed an overt act.

We conclude that the trial court erred by instructing the jury on the to-convict robbery instruction, but the error was harmless. We also conclude that the trial court did not err with its accomplice liability instruction.

A. STANDARD OF REVIEW

Jury instructions are appropriate if they allow the parties to argue their theories of the case, do not mislead the jury, and do not misstate the law. *State v. Stevens*, 158 Wn.2d 304, 308, 143 P.3d 817 (2006). We review de novo whether the jury instructions adequately state the applicable law, in the context of the jury instructions as a whole. *State v. Levy*, 156 Wn.2d 709, 721, 132 P.3d 1076 (2006). “[J]ury instructions read as a whole must make the relevant legal standards manifestly apparent to the average juror.” *State v. Marquez*, 131 Wn. App. 566, 575, 127 P.3d 786 (2006).

B. ROBBERY TO-CONVICT INSTRUCTIONS

Rusev argues that an essential element of robbery is proving that the victim had a possessory interest in the property taken. He further argues that the robbery in the first degree to-convict instructions omitted this element and relieved the State of its burden to prove robbery.

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The essential elements of a crime are those that the prosecution must prove to sustain a conviction. *State v. Peterson*, 168 Wn.2d 763, 772, 230 P.3d 588 (2010). A “to convict” instruction must provide a correct statement of all the necessary elements. *State v. DeRyke*, 149 Wn.2d 906, 911, 73 P.3d 1000 (2003). “However, a criminal statute is not always conclusive regarding the elements of a crime. Courts may find nonstatutory, implied elements.” *State v. Richie*, 191 Wn. App. 916, 922, 365 P.3d 770 (2015).

Recently, this court held in *Richie* that whether the victim has an ownership or possessory interest in the property taken is an essential, implied element of robbery. 191 Wn. App. at 924. The to-convict instruction challenged in *Richie* followed WPIC 37.02,⁷ 191 Wn. App. at 928, as did the instructions in this case.

Richie concluded that this instruction’s language omitted the essential implied element of whether the victim of a robbery has an ownership, representative, or possessory interest in the property taken. 191 Wn. App. at 928-29. Accordingly, the court held that the trial court’s instruction relieved the State of its burden to prove every element of the crime. *Richie*, 191 Wn. App. at 928. The same is true in this case.

“[T]he omission of an essential element of a crime from the to-convict jury instructions may be subject to a harmless error analysis.” *Richie*, 191 Wn. App. at 929. “[A] defendant is entitled to a new trial unless the error can be declared harmless beyond a reasonable doubt.” *State v. Woods*, 138 Wn. App. 191, 202, 156 P.3d 309 (2007). “Such an omission is harmless when it is clear that it did not contribute to the verdict; for example, when uncontroverted evidence supports the omitted element.” *Richie*, 191 Wn. App. at 929. But the error is not harmless if “the

⁷ 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 37.02, at 667 (3d ed. 2008).

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evidence and instructions leave it ambiguous as to whether the jury could have convicted on improper grounds.” *Richie*, 191 Wn. App. at 929 (quoting *State v. Schaler*, 169 Wn.2d 274, 288, 236 P.3d 858 (2010)).

Here, the to-convict instruction omitted an essential implied element. But the evidence on this element was uncontroverted. Both Ihor and Dmytro testified that Rusev ordered them to hand over their items. In addition, there was testimony that one of the wallet’s contained Ihor’s driver’s license. As a result, we conclude that the instructional error was harmless beyond a reasonable doubt because it was uncontroverted that both victims had possessory interests in the property taken.

C. ACCOMPLICE LIABILITY INSTRUCTION

Rusev argues that the trial court erred by instructing the jury on accomplice liability because the instruction relieved the State of its burden to prove that he committed an overt act.

Rusev did not object to this instruction at trial. Generally, an appellate court may refuse to entertain a claim of error not raised before the trial court. RAP 2.5(a). However, we address claims of manifest error affecting a constitutional right. *State v. Gordon*, 172 Wn.2d 671, 677, 260 P.3d 884 (2011); RAP 2.5(a). “The failure to instruct a jury on every element of a charged crime is an error of constitutional magnitude.” *Gordon*, 172 Wn.2d at 677. Therefore, we address the issue.

Here, the instruction did not relieve the State of its burden because it made clear to the jury that Rusev needed more than passive assent to Blesch’s acts. The instruction stated that “more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.” CP at 131 (Instr. 5). In addition, other courts have upheld

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this same jury instruction. *Berube*, 150 Wn.2d at 508-09; *State v. Brown*, 147 Wn.2d 330, 338, 58 P.3d 889 (2002).

Therefore, we conclude that the trial court did not err by instructing the jury on accomplice liability because the instruction did not relieve the State of its burden.

III. MANDATORY MINIMUM SENTENCE

Rusev argues, and the State concedes, that the trial court denied his right to a jury trial by imposing a mandatory minimum sentence on the assault conviction. We agree that the trial court erred. Because the trial court may have imposed a different sentence knowing assault in the first degree did not have a mandatory minimum, we remand the case for resentencing.

Any error implicating a criminal defendant's Sixth Amendment right to a jury trial may be raised for the first time on appeal. *State v. Hughes*, 154 Wn.2d 118, 143, 110 P.3d 192 (2005), *abrogated on other grounds by Washington v. Recuenco*, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006). We review whether a sentence is legally erroneous de novo. *State v. Dyson*, 189 Wn. App. 215, 224, 360 P.3d 25 (2015), *review denied*, 184 Wn.2d 1038 (2016).

"[O]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Dyson*, 189 Wn. App. at 225 (citing *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)). This rule also applies when a trial court imposes a mandatory minimum sentence based on facts not inherent in the guilty verdict itself.⁸ *Alleyne v. United States*, ___ U.S. ___, 133 S. Ct. 2151, 2161, 186 L. Ed. 2d 314 (2013). Thus, "[a]ny fact

⁸ As an example, a person convicted of murder in the first degree must be sentenced to a mandatory minimum sentence of 20 years. RCW 9.94A.540. Other than a finding of guilty, no other jury finding is required to impose this sentence.

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that, by law, increases the penalty for a crime is an 'element' that must be submitted to the jury and found beyond a reasonable doubt." *Dyson*, 189 Wn. App. at 225.

In this case, in order to impose a mandatory minimum sentence of five years on the assault in the first degree charge, a jury would have to specially find that Rusev used force or means likely to result in death or that he intended to kill the victim. RCW 9.94A.540(1)(b). "Washington courts have held that RCW 9.94A.540's five-year mandatory minimum does not automatically attach to a first degree assault conviction." *Dyson*, 189 Wn. App. at 227. It "necessarily requires a separate factual finding beyond the jury's finding of guilt of first degree assault." *Dyson*, 189 Wn. App. at 227.

Here, the jury did not specially find that Rusev used force or means likely to result in death or intended to kill the victim, as required. Therefore, the trial court erred in imposing a mandatory minimum sentence.

IV. DOUBLE JEOPARDY

Rusev argues that because he should not have been convicted of assault in the first degree, and if this court remands for imposition of a sentence on assault in the second degree, that conviction should merge with the robbery in the first degree charge to avoid violating double jeopardy. Because we do not remand the case on the basis of insufficient evidence, we do not address this issue.

V. APPELLATE COSTS

Rusev asks us to not impose appellate costs, asserting that he does not have the ability to pay because he is indigent. Under *State v. Grant*, 196 Wn. App. 644, 650, 385 P.3d 184 (2016), a defendant is not required to address appellate costs in his or her briefing to preserve the ability to object to the imposition of costs after the State files a cost bill. A commissioner of this court will

47762-9-II

consider whether to award appellate costs in due course under the newly revised provisions of RAP 14.2 if the State decides to file a cost bill and if Rusev objects to that cost bill.

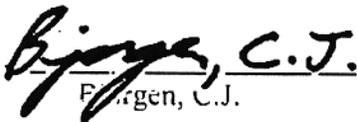
We affirm, but remand for resentencing.

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.

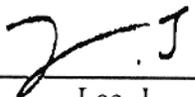


Melnick, J.

We concur:



Ferguson, C.J.



Lee, J.

4/20/2017 44 0023

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 21 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Rebecca Ahquin, Deputy.

Dated: February 21, 2019 12:51 PM



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APPENDIX “F”

Mandate

September 14 2017 9:44 AM

KEVIN STOCK
COUNTY CLERK
NO: 14-1-00779-7

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

VENIAMIN GEORGE RUSEV,

Appellant.

No. 47762-9-II

MANDATE

Pierce County Cause No.
14-1-00779-7

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 18, 2017 became the decision terminating review of this court of the above entitled case on September 6, 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 13th day of September, 2017.

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

Page 2
Mandate 47762-9-II

Michelle Hyer
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Hon. John R Hickman
Pierce County Superior Court Judge
930 Tacoma Ave South
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Veniamin Rusev
DOC#383818
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

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

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 21 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Rebecca Ahquin, Deputy.

Dated: February 21, 2019 12:51 PM



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

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APPENDIX “G”

Defense Proposed Instructions



14-1-00779-7 44835929 DFPIN 06-16-15

Case Number: 14-1-00779-7 Date: February 21, 2019
SerialID: F08D0A98-C93E-41C3-BDBB-0E9AD66519E0
Certified By: Kevin Stock Pierce County Clerk, Washington

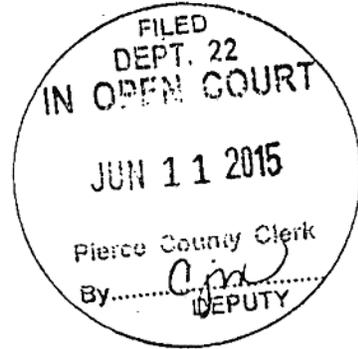
STATE OF WASHINGTON,

Plaintiff,

v.

VENIAMIN GEORGEV RUSEV,
Defendant.

NO. 14-1-00779-7



DEFENDANT'S PROPOSED INSTRUCTIONS
(Cited)

0113
7242
6/17/2015

Instruction No. _____

The defendant is not required to testify. You may not use the fact that the defendant has not testified to infer guilt or to prejudice *him* in any way.

WPIC 6.31 Defendant's Failure to Testify

0114

7342

5/17/2015

Instruction No. _____

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

0115

7242

6X17A2015

INSTRUCTION No. _____

A person commits the crime of robbery in the first degree when in the commission of a robbery or in immediate flight therefrom he or she is armed with a deadly weapon or displays what appears to be a firearm or other deadly weapon or inflicts bodily injury, with the intent to permanently deprive that person of that property.

WPIC 37.01 Robbery—First Degree—Definition

6/10/2015 7:04:30 AM

0117
7242
6017/2015

Instruction No. _____

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

(1) That on or about 2.23.14, the defendant unlawfully took personal property from the person or in the presence of another, to-wit: Ihor Onishchuk;

(2) That the defendant intended to commit theft of the property, from Ihor Onishchuk;

(3) That the defendant intended to permanently deprive the Ihor Onishchuk of the personal property;

(4) That the taking was against the will of Ihor Onishchuk by the defendant's use or threatened use of immediate force, violence, or fear of injury to that person;

(5) That force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

(6) That in the commission of these acts or in immediate flight therefrom the defendant (a) was armed with a deadly weapon or (b) that in the commission of these acts or in the immediate flight therefrom the defendant inflicted bodily injury; -and-

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

If you find from the evidence that elements (1), (2), (3), (4), (5), and (7) , and any of the alternative elements (6)(a) or (6)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (6)(a) or (6)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), (6), (7) then it will be your duty to return a verdict of not guilty.

WPIC 37.02 Robbery — First Degree — Elements — MODIFIED

6-11-7-2005 7:24:00

Instruction No. _____

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

- (1) That on or about 2.23.14, the defendant unlawfully took personal property from the person or in the presence of another, to-wit: Dmytro Onishchuk;
- (2) That the defendant intended to commit theft of the property, from Dmytro Onishchuk;
- (3) That the defendant intended to permanently deprive the Dmytro Onishchuk of the personal property;
- (4) That the taking was against the will of Dmytro Onishchuk by the defendant's use or threatened use of immediate force, violence, or fear of injury to that person;
- (5) That force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (6) That in the commission of these acts or in immediate flight therefrom the defendant (a) was armed with a deadly weapon or (b) that in the commission of these acts or in the immediate flight therefrom the defendant inflicted bodily injury; -and-
- (7) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2), (3), (4), (5), and (7) , and any of the alternative elements (6)(a) or (6)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (6)(a) or (6)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

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On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), (6), (7) then it will be your duty to return a verdict of not guilty.

WPIC 37.02 Robbery — First Degree — Elements — MODIFIED

6-11-7-2004-7040-8820

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INSTRUCTION No. _____

A person commits the crime of robbery in the second degree when he or she commits robbery, with the intent to permanently deprive that person of that property.

WPIC 37.03 Robbery—Second Degree—Definition-MODIFIED

INSTRUCTION No. _____

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

- (1) That on or about February 23rd, 2014 the defendant unlawfully took personal property from the person or in the presence of another, to wit: Ihor Onishchuk;
- (2) That the defendant intended to commit theft of the property, from Ihor Onishchuk;
- (3) That the taking was against the will of Ihor Onishchuk by the defendant's use or threatened use of immediate force, violence, or fear of injury to that person;
- (4) That force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (5) That the defendant intended to permanently deprive the person of the personal property.
- (6) That any of these acts occurred in the State of Washington.

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

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

WPIC 37.04 Robbery- Second Degree- Elements- MODIFIED

INSTRUCTION No. _____

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

- (1) That on or about February 23rd, 2014 the defendant unlawfully took personal property from the person or in the presence of another, to wit: Dmytro Onishchuk;
- (2) That the defendant intended to commit theft of the property, from Dmytro Onishchuk;
- (3) That the taking was against the will of Dmytro Onishchuk by the defendant's use or threatened use of immediate force, violence, or fear of injury to that person;
- (4) That force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (5) That the defendant intended to permanently deprive the person of the personal property.
- (6) That any of these acts occurred in the State of Washington.

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

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

WPIC 37.04 Robbery- Second Degree- Elements- MODIFIED

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INSTRUCTION No. _____

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

WPIC 79.01 Theft—Definition

5-10-7 / 00045
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State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 21 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Rebecca Ahquin, Deputy.

Dated: February 21, 2019 12:51 PM



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APPENDIX "H"

Information

February 25 2014 12:52 PM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-00779-7

vs.

VENIAMIN GEORGEV RUSEV,

INFORMATION

Defendant.

DOB: 1/27/1983

SEX : MALE

RACE: WHITE

PCN#: 541159339

SID#: UNKNOWN

DOL#: WA RUSEVVG170B7

CO-DEF: VOSSLER AURON BLESCH 14-1-00780-1

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse VENIAMIN GEORGEV RUSEV of the crime of ROBBERY IN THE FIRST DEGREE, committed as follows:

That VENIAMIN GEORGEV RUSEV, acting as an accomplice, in the State of Washington, on or about the 23rd day of February, 2014, did unlawfully and feloniously take personal property belonging to another with intent to steal from the person or in the presence of I. Onishchuk, the owner thereof or a person having dominion and control over said property, against such person's will by use or threatened use of immediate force, violence, or fear of injury to I. Onishchuk, said force or fear being used to obtain or retain possession of the property or to overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon, to-wit: a firearm, contrary to RCW 9A.56.190 and 9A.56.200(1)(a)(ii), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a firearm, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.530, and adding additional time to the presumptive sentence as provided in RCW 9.94A.533, and against the peace and dignity of the State of Washington.

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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 VENIAMIN GEORGEV RUSEV of the crime of ROBBERY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That VENIAMIN GEORGEV RUSEV, acting as an accomplice, in the State of Washington, on or about the 23rd day of February, 2014, did unlawfully and feloniously take personal property belonging to another with intent to steal from the person or in the presence of D. Onishchuk, the owner thereof or a person having dominion and control over said property, against such person's will by use or threatened use of immediate force, violence, or fear of injury to D. Onishchuk, said force or fear being used to obtain or retain possession of the property or to overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon, to-wit: a firearm, contrary to RCW 9A.56.190 and 9A.56.200(l)(a)(ii), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a firearm, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.530, and adding additional time to the presumptive sentence as provided in RCW 9.94A.533, and against the peace and dignity of the State of Washington.

COUNT III

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

That VENIAMIN GEORGEV RUSEV, acting as an accomplice, in the State of Washington, on or about the 23rd day of February, 2014, did unlawfully and feloniously, with intent to inflict great bodily harm, intentionally assault I. Onishchuk with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death, contrary to RCW 9A.36.011(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a firearm, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.530, and adding additional time to

1 the presumptive sentence as provided in RCW 9.94A.533, and against the peace and dignity of the State
2 of Washington.

3 DATED this 25th day of February, 2014.

4 TACOMA POLICE DEPARTMENT
WA02703

MARK LINDQUIST
Pierce County Prosecuting Attorney

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6 prc

By: /s/ PATRICK COOPER
PATRICK COOPER
Deputy Prosecuting Attorney
WSB#: 15190

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 21 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Rebecca Ahquin, Deputy.

Dated: February 21, 2019 01:11 PM



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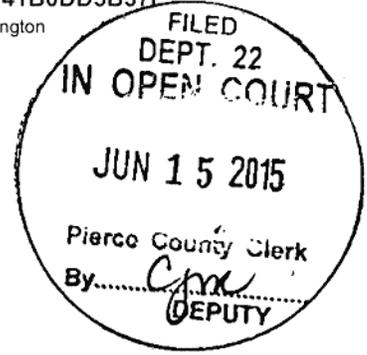
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APPENDIX “I”

Court’s Instructions to the Jury



14-1-00779-7 44836113 CTINJY 06-16-15



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
VENIAMIN GEORGEV RUSEV
Defendant.

CAUSE NO. 14-1-00779-7

COURT'S INSTRUCTIONS TO THE JURY

DATED this 17 day of June, 2015.

JUDGE

ORIGINAL

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6/17/2015

INSTRUCTION NO. 1

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

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

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

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

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

6/11/2019 7:04:00

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

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

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

You may have heard objections made by the lawyer to object to questions asked by another lawyer, and may should not influence you. Do not make any assumptions lawyer's objections.

Our state constitution prohibits a trial judge from would be improper for me to express, by words or condu

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of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

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

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

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

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INSTRUCTION NO. 2

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

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

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

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INSTRUCTION NO. 2A

The defendant is not required to testify. You may not use the fact that the defendant has not testified to infer guilt or to prejudice him in any way.

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INSTRUCTION NO. 3

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

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

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INSTRUCTION NO. 4

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

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INSTRUCTION NO. 5

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

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

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

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

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INSTRUCTION NO. 7

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

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

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INSTRUCTION NO. 8

A person commits the crime of robbery in the first degree when in the commission of a robbery or in immediate flight therefrom he or a person to whom the defendant was acting as an accomplice, is armed with a deadly weapon or displays what appears to be a firearm or other deadly weapon or inflicts bodily injury.

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INSTRUCTION NO. 9

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

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INSTRUCTION NO. 10

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

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INSTRUCTION NO. 11

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

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INSTRUCTION NO. 12

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

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INSTRUCTION NO. 13

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

(1) That on or about the 23rd day of February, 2014, the defendant or a person to whom the defendant was acting as an accomplice, unlawfully took personal property from Ihor Onishchuk;

(2) That the defendant or a person to whom the defendant was acting as an accomplice, intended to commit theft of the property;

(3) That the taking was against Ihor Onishchuk's will by the defendant's or a person to whom the defendant was acting as an accomplice, use or threatened use of immediate force, violence, or fear of injury to that person or to the person or property of another;

(4) That force or fear was used by the defendant or a person to whom the defendant was acting as an accomplice, to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or a person to whom the defendant was acting as an accomplice, was armed with a deadly weapon or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or a person to whom the defendant was acting as an accomplice, displayed what appeared to be a firearm or other deadly weapon; and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a) or (5)(b), have been proved beyond a reasonable doubt, then it will be

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your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a) or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

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INSTRUCTION NO. 14

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

(1) That on or about the 23rd day of February, 2014, the defendant or a person to whom the defendant was acting as an accomplice, unlawfully took personal property from Dmytro Onishchuk;

(2) That the defendant or a person to whom the defendant was acting as an accomplice, intended to commit theft of the property;

(3) That the taking was against Dmytro Onishchuk's will by the defendant's or a person to whom the defendant was acting as an accomplice, use or threatened use of immediate force, violence, or fear of injury to that person or to the person or property of another;

(4) That force or fear was used by the defendant or a person to whom the defendant was acting as an accomplice, to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or a person to whom the defendant was acting as an accomplice, was armed with a deadly weapon or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or a person to whom the defendant was acting as an accomplice, displayed what appeared to be a firearm or other deadly weapon; and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a) or (5)(b), have been proved beyond a reasonable doubt, then it will be

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your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a) or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

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INSTRUCTION NO. 15

The defendant is charged in count I-A with Robbery in the First Degree. If, after full and careful deliberation on this charge, you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crime of Robbery in the Second Degree.

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

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INSTRUCTION NO. 16

The defendant is charged in count II-A with Robbery in the First Degree. If, after full and careful deliberation on this charge, you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crime of Robbery in the Second Degree.

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

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INSTRUCTION NO. 17

A person commits the crime of robbery in the second degree when he or a person to whom the defendant was acting as an accomplice commits robbery.

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INSTRUCTION NO. 18

To convict the defendant of the crime of robbery in the second degree as charged in Count I-B, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 23rd day of February, 2014, the defendant or a person to whom the defendant was acting as an accomplice, unlawfully took personal property from Ihor Onishchuk;

(2) That the defendant or a person to whom the defendant was acting as an accomplice, intended to commit theft of the property;

(3) That the taking was against Ihor Onishchuk's will by the defendant's or a person to whom the defendant was acting as an accomplice, use or threatened use of immediate force, violence, or fear of injury to that person or to the person or property of another;

(4) That force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking; and

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

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

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

INSTRUCTION NO. 19

To convict the defendant of the crime of robbery in the second degree as charged in Count II-B, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 23rd day of February, 2014, the defendant or a person to whom the defendant was acting as an accomplice, unlawfully took personal property from Dmytro Onishchuk;

(2) That the defendant or a person to whom the defendant was acting as an accomplice, intended to commit theft of the property;

(3) That the taking was against Dmytro Onishchuk's will by the defendant's or a person to whom the defendant was acting as an accomplice, use or threatened use of immediate force, violence, or fear of injury to that person or to the person or property of another;

(4) That force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking; and

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

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

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

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6/17/2015

INSTRUCTION NO. 20

A person commits the crime of assault in the first degree when, with intent to inflict great bodily harm, he or a person to whom the defendant was acting as an accomplice, assaults another with a firearm.

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INSTRUCTION NO. 21

Great bodily harm means bodily injury that creates a probability of death, or that causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

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INSTRUCTION NO. 22

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

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

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INSTRUCTION NO. 23

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

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6/17/2015

INSTRUCTION NO. 24

To convict the defendant of the crime of assault in the first degree as to Count III-A, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 23rd day of February, 2014, the defendant or a person to whom the defendant was acting as an accomplice, assaulted Ihor Onishchuk;

(2) That the assault was committed with a firearm;

(3) That the defendant or a person to whom the defendant was acting as an accomplice, acted with intent to inflict great bodily harm; and

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

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

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

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INSTRUCTION NO. 25

The defendant is charged in count III-A with Assault in the First Degree. If, after full and careful deliberation on this charge, you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crime of Assault in the Second Degree.

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

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6/17/2015

INSTRUCTION NO. 26

A person commits the crime of assault in the second degree when he or a person to whom the defendant was acting as an accomplice, assaults another with a deadly weapon.

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644740045

INSTRUCTION NO. 27

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

0231

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6/17/2015

INSTRUCTION NO. 28

To convict the defendant of the crime of assault in the second degree as to Count III-B, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 23rd day of February, 2014, the defendant or a person to whom the defendant was acting as an accomplice, assaulted Ihor Onishchuk with a deadly weapon; and
- (2) That this act occurred in the State of Washington.

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

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

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549770015

INSTRUCTION NO. 29

You will also be given special verdict form for each crime. If you find the defendant not guilty of the crime, do not use the respective special verdict form for that count. If you find the defendant guilty of the crime, you will then use the special verdict form for the respective count and fill in the blank with the answer "yes" or "no" according to the decision(s) you reach. In order to answer the special verdict form(s) "yes," you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously agree that the answer to the question is "no," or if after full and fair consideration of the evidence you are not in agreement as to the answer, you must fill in the blank with the answer "no."

0233

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6/17/2015

INSTRUCTION NO. 30

For purposes of a special verdict, the State must prove beyond a reasonable doubt that the defendant was armed with a firearm at the time of the commission of the crime as charged in each count respectively.

If one participant in a crime is armed with a firearm, all accomplices to the participant are deemed to be so armed, even if only one firearm is involved.

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

0034
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6/17/2015

INSTRUCTION NO. 31

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

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

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

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

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

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6/17/2015

0036

You must fill in the blank provided in the verdict form the words “not guilty” or the word “guilty,” according to the decision you reach. If you are not able to reach a verdict, leave the verdict form blank.

3040

When completing the verdict forms with respect to Count I, you will first consider the crime of Robbery in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form I-A the words “not guilty” or the word “guilty,” according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in the verdict form.

5447/0015

If you find the defendant guilty on Verdict Form I-A, do not use Verdict Form I-B. If you find the defendant not guilty of the crime of Robbery in the First Degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Robbery in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form I-B the words “not guilty” or the word “guilty,” according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in the verdict form.

When completing the verdict forms with respect to Count II, you will first consider the crime of Robbery in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form II-A the words “not guilty” or the word “guilty,” according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in the verdict form.

If you find the defendant guilty on Verdict Form II-A, do not use Verdict Form II-B. If you find the defendant not guilty of the crime of Robbery in the First Degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser

crime of Robbery in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form I-B the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in the verdict form.

When completing the verdict forms with respect to Count III, you will first consider the crime of Assault in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form III-A the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in the verdict form.

If you find the defendant guilty on Verdict Form III-A, do not use Verdict Form III-B. If you find the defendant not guilty of the crime of Assault in the First Degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Assault in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form III-B the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in the verdict form.

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

0237

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6/17/2015

INSTRUCTION NO. 32

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

6/23/2015 7:04:42

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 21 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Rebecca Ahquin, Deputy.

Dated: February 21, 2019 12:51 PM



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

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 502095BF-6F48-4C2D-9D8E-C41B0DD5B37F.

This document contains 40 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “J”

Exhibit 283: Interview of Rusev

CERTIFIED COPY

14-1-00779-7

PLAINTIFF'S
EXHIBIT
283

PERCIVAL-BAYONNE, N. J.

**Interview of Veniamin Rusev
Case Number 14-0541021**

Larsen: This is Detective Ryan Larsen with the Tacoma Police Department. Today's date is February 24th, 2014. The time is 020, I'm sorry, 0402 hours. I'm in a second floor CID Interview Room with Veniamin Rusev. This is reference Case Number 14-0541021. Present in this interview is Detective Rock and we are interviewing Veniamin Rusev. Veniamin, are you aware this conversation's being recorded?

Rusev: Um, yes I am.

Larsen: And do we have your permission to record it?

Rusev: Yes you do.

Larsen: Okay. And Veniamin, you also go by the name Ben, is that correct?

Rusev: Yes, correct.

Larsen: Okay. And previous to this recording we talked off tape and we advised you of your constitutional rights. Is that correct?

Rusev: Yes.

Larsen: Okay. And wh, did you understand your rights when we explained 'em?

Rusev: Yes, I do understand the rights.

Larsen: Okay. We're gonna read 'em to you again for the purpose of the recording.
Okay?

Rusev: Okay.

Rock: You have the right to remain silent. Do you understand that?

Rusev: Yes I do.

Rock: Any statement that you do make can be used as evidence against you in a court of law. Do you understand that?

Rusev: Yes I do.

**Interview of Veniamin Rusev
Case Number 14-0541021**

- Rock: Any statement that you do make can be used as evidence against you in a court of law. Do you understand that?
- Rusev: Yes I do.
- Rock: You have the right at this time to talk to an attorney of your choice and to have your attorney present before and during questioning and the making of any statement. Do you understand that?
- Rusev: Yes I do.
- Rock: If you cannot afford an attorney, you're entitled to have one appointed for you, without cost to you, and have the attorney present at any time during any questioning and the making of any statement. Do you understand that?
- Rusev: Yes I do.
- Rock: Okay. You may stop answering questions or ask for an attorney at any time during any questioning and the making of any statement. Do you understand that?
- Rusev: Yes I do.
- Rock: Do you understand each of these rights I've explained to you?
- Rusev: Yes I do.
- Rock: Having been made fully aware of these rights, do you voluntarily wish to answer questions now?
- Rusev: Yes.
- Larsen: And we went over a couple things just previous to this recording and where is it . . . actually, can, why don't we start by you spelling your first and last name for me?
- Rusev: V-E-N-I-A-M-I-N, and the last name will be R-U-S-E-V.

Interview of Veniamin Rusev
Case Number 14-0541021

Larsen: And what's your date of birth?

Rusev: 01/27/83.

Larsen: Okay. And where are you currently living?

Rusev: Uh live in uh 501 East 34th Street, Tacoma, Washington. Uh, zip code 98404.

Larsen: Okay. And who are you living there with?

Rusev: I'm living with my younger brother.

Larsen: What's his name?

Rusev: Dmitriy Rusev.

Larsen: Same last name?

Rusev: Yes.

Larsen: Okay. And we talked about the events leading up to a shooting incident that occurred

Rusev: Yes.

Larsen: last night. Is that right?

Rusev: Yes.

Larsen: There were a couple people at your house before this incident, correct?

Rusev: Yes.

Larsen: Who was at your house before?

Rusev: Uh, first, the day before, was Saturday night, it was Vossler and my brother. They were working that night, so he came over on that day and at night, so he slept over for that night with us. And then about, from I believe, from 12:00 to 1:00, Anthony showed up, the, Anthony, the third guy.

Larsen: Okay. So Vossler shows up Saturday evening after work?

Rusev: Yes.

**Interview of Veniamin Rusev
Case Number 14-0541021**

Larsen: Where does he work?

Rusev: He works with my younger brother at Double Tree Hotel by (unintelligible).

Larsen: Double Tree, where, where is that at?

Rusev: That's located, I believe in South Center.

Larsen: South Center. And did you used to work there?

Rusev: Yes I did.

Larsen: How long have you known Vossler?

Rusev: About from maybe six to eight, last nine months when I was working there cause he came later on.

Larsen: How many years have you known him?

Rusev: Oh, all total from that? Maybe, cause I quit the hotel about, let me see, what, a year and a half, I would say close to two years that I know him.

Larsen: Okay. So you know Vossler's last name?

Rusev: Not quite.

Larsen: Okay.

Rusev: It's real hard to pronounce so I just never

Larsen: Is he Russian?

Rusev: No, he's Bosnian. Bosnian.

Larsen: Okay. So he's there Saturday after, after work?

Rusev: Yeah.

Larsen: So evening. He spe, spends, spends the night at your house. And did, did he bring anything with him?

Interview of Veniamin Rusev
Case Number 14-0541021

Rusev: Yeah, he brought his uh gun and we brought some ammo and uh he brought his uh and uh our plans were to go Sunday to go to the gun range and just practice shooting, you know, with all of the guys, you know.

Larsen: Okay. Did, what kind of gun is it, do you know?

Rusev: I believe it's a .45, but don't remember exactly the name. My brother's better with these stuff.

Larsen: So it's like an automatic or a revolver?

Rusev: It's automatic.

Larsen: Okay.

Rusev: It's definitely not a revolver.

Larsen: So Anthony . . . How do you know Anthony?

Rusev: Anthony's working with us at Double Tree, too, so I know him through, through work.

Larsen: Okay. So he comes over, you said between noon and 1:00 o'clock . . .

Rusev: About somewhere there

Larsen: . . . on Sunday?

Rusev: Yeah, on Sunday.

Larsen: And what do you guys, hang out all day?

Rusev: So yeah, we hang out, you know, uh drink some beers, you know, and play some games, you know, listen to some music. Uh . . .

Larsen: Okay. Who's all at the apartment?

Rusev: All the, all, all the time?

Larsen: No, no like, like from noon on Sunday.

Rusev: From noon on?

**Interview of Veniamin Rusev
Case Number 14-0541021**

Larsen: From, from about one . . . Well when, when Anthony arrives, how many people are at the apartment?

Rusev: Four, four people constantly. Four people.

Larsen: So, you got Anthony, Vossler . . .

Rusev: Vossler, Dmitriy . . .

Larsen: . . . Dmitriy and yourself?

Rusev: . . . and myself.

Larsen: Okay. And we talked about a vehicle that you had been working on over the past month or two?

Rusev: Yeah.

Larsen: What kind of vehicle is that?

Rusev: That is a 2001 Volvo, I believe it's a V70, XC, cross-country.

Larsen: Okay. And who owns that vehicle?

Rusev: That vehicle owns my relative. Uh his name is Vitali Alesik, I believe.

Larsen: Okay. And where does he live?

Rusev: He lives somewhere in Renton.

Larsen: Okay. So you've been working on this car for some time?

Rusev: Yes.

Larsen: A couple months?

Rusev: Yeah.

Larsen: And you, you explained that you're trying to sell the car for Vitali.

Rusev: For, for Vitali, yeah.

Larsen: And you were unsuccessful at selling it?

Interview of Veniamin Rusev
Case Number 14-0541021

Rusev: Uh, yeah. It had a couple more problems and the car that Vitali did not want to get rid of and I wasn't feeling right to sell it to somebody that's just gonna mess with it and plus he had the price so high. I told him he can try to sell it, you know, with that problem, but at least drop, cut the price in half so when he buys it, you know, get somebody to fix it, you know. But he didn't really want to listen to me and like I said, I called him Saturday and told him, you know, I'm not gonna sell your car so you can come pick it up.

Larsen: So this was a conversation you had with Vitali on a

Rusev: Saturday morning.

Larsen: . . . Saturday?

Rusev: Ear, early morning.

Larsen: And you told him to come pick up his car?

Rusev: Yeah.

Larsen: Okay. Did he come pick it up on Saturday?

Rusev: No he didn't. I never heard from him til Sunday about 5:00 o'clock or something, then he called.

Larsen: So Sunday about 5:00 o'clock he calls you and what, what goes on with that conversation?

Rusev: He's, he's asking me if I can help him bring the car to him and I'm telling him that uh I'm with the guys having fun and we, we don't have a sober driver, you know.

Larsen: Right.

Rusev: So he's gonna have to come pick it up, the car himself.

Larsen: So this is Sat, Sunday at 5:00 to 6:00 p.m.?

Interview of Veniamin Rusev
Case Number 14-0541021

Rusev: Something like that, yes.

Larsen: You told him you've been drinking, you can't drive the car to him and he'll have to come get it?

Rusev: Yeah.

Larsen: Okay.

Rusev: As far as I understood. He never did confirm it a hundred percent, but as far as I understood he said, Yeah, I'll come pick it up, or something like that.

Rock: Where does Vitali live at?

Rusev: Somewhere in Renton. Don't know exactly the, the address.

Rock: Renton?

Rusev: Yeah. (unintelligible) this, his address could be in the uh, on the registration on the Volvo.

Larsen: Okay. So, so, so between 5:00 and 6:00 p.m. yesterday, last night, you tell him that you can't drive. Does he make arrangements for somebody to pick up the car or is there a conversation about somebody coming over?

Rusev: Um, not for about, like I said, for about a hour I never heard from them. And then oh, oh (unintelligible) for the uh, soon as we hang up, then uh, he, he tells me give me a text, well he text me or he (unintelligible) on the phone, but he text me uh, uh I need your address.

Larsen: Okay.

Rusev: So I text him my address.

Larsen: Did you think that was weird cause he had been to your house before?

Rusev: Yeah, that was kinda little weird that he wanted my address. I, I, like I said, I thought that maybe he's somewhere in an unknown area, cause he's using his

Interview of Veniamin Rusev
Case Number 14-0541021

GPS on his phone and maybe he just wants to get out of the area, some shortcut or something, so

Larsen: Did he mention who might be coming over?

Rusev: Uh, he said that he's not gonna be by himself and never mentioned the name (unintelligible). I don't know exactly if he mentioned Ihor's name or not.

Larsen: So Ihor, is Ihor somebody you know?

Rusev: Uh, yeah it's somebody that I know, I've seen him a couple times with Vitali before.

Larsen: But he may have, he may have said that Ihor, Ihor was coming to get the car? Or, or did he say

Rusev: I, I definitely, last conversation when, when I had with him, I understood that he's coming with Ihor a hundred percent.

Larsen: Okay.

Rusev: Or, no Ihor, he's coming with somebody or Ihor, cause he, he wasn't sure who was gonna come in the second car.

Larsen: So at some point you, you realize that Ihor's coming over? Probably.

Rusev: Probably, with Vitali.

Larsen: With, with Vitali?

Rusev: I was expecting Ihor with Vitali for sure.

Larsen: You expected 'em to be together? Okay, so he, he texts you. Asks you for your address. You send him your address, right?

Rusev: Yeah.

Larsen: So what happens next?

**Interview of Veniamin Rusev
Case Number 14-0541021**

Rusev: Then uh passes some time. I'll say a good maybe forty-five minutes to 50 minutes or an hour.

Larsen: Okay.

Rusev: And Vitali calls and he says, We are here.

Larsen: Okay.

Rusev: And I see him on my front camera, there's a car pulled up and the Volvo's in the back, so I'm telling him, Pull in the back. The Volvo was in the back, so they get it from the back. He said okay.

Larsen: Okay, so what happens next?

Rusev: And um, then some running, I'm going straight uh back side of door to, you know, wait to open the door. At same time I kinda mention to Vossler, you know, the guy's coming to pick it up, the car. And, like I said, like that one, by the time I turned the lights on, you know, just by the time they turn around and

Rock: Speaking of Vossler, when he brought the gun over on Saturday night, how did he bring it over? Did he bring it in something? Did he have it on him?

Rusev: No, he had it in the, in the, everything in the case. Everything was in the case. Everything was packed. He never had it on him.

Rock: Like a plastic gun case?

Rusev: Yeah, yeah, with the plastic (unintelligible).

Rock: Was it common for him to walk around with the gun or is he usually safe with it and keeps it in a case?

Rusev: I always know that he's usually safe. Even the guy, like two months ago he had the safety star at, at Double Tree, you know.

Rock: Okay.

Interview of Veniamin Rusev
Case Number 14-0541021

Rock: So you tell the guys to come around back?

Rusev: Yeah.

Rock: And you're heading out towards the garage, walking through the apartment, cause it connects to the garage?

Rusev: Yes.

Rock: And Vossler says that he's gonna follow you?

Rusev: I just told him that. And I know the guys, it will take 'em awhile to get there, you know, so I, I believe I heard walk steps up there, but I did not pay attention, cause we had like music and (unintelligible) at same time, so . . . but I believe he was behind right at that time, or, or maybe he, he was just like walking later on, or maybe, I don't know. So can't tell exactly that he went straight after me or, you know, it took him awhile to get to that. But I know I went straight to the door and turned the lights on and opened the door for them guys.

Rock: Did you see him grab the gun before, or go into the gun case?

Rusev: Definitely not.

Rock: Where was the gun case at?

Rusev: The gun case was in the front of the entry door on the unit. It was right next to the boom box.

Rock: Could he have grabbed it without you seeing?

Rusev: Possibly.

Larsen: Okay. So you go out to the garage, you open up the door and, and who's out there?

Interview of Veniamin Rusev
Case Number 14-0541021

Rusev: First I see the passenger side open and Ihor comes out from the passenger side. And then I see that second guy that I've never seen comes out from uh, from uh driver's side door. And I'm expecting the third door would be open and Vitali to come out, cause it's dark and I've never seen that. So uh, oh before that, as soon as they tried to open the door . . . At first I tell 'em, you know, move the car forward cause you guys are gonna have to pull, uh pull the uh Volvo out.

Larsen: Okay.

Rusev: But I don't know, at first I saw the two doors opening first.

Larsen: Okay. So you, you tell 'em to move the car cause they're blocking the . . .

Rusev: The garage door.

Larsen: . . . the garage door where they . . .

Rusev: (unintelligible)

Larsen: . . . pull the Volvo out?

Rusev; Yes.

Larsen: Okay. So somebody obviously moves the car?

Rusev: Oh yeah, so what happens is uh he uh, the guy that I didn't know, he shuts the car off and he still, he walks to the door and then Ihor tells me, Okay, I'll move the car real quick. So he gets in. I let him in. And then Ihor moves the car and then he was last one that's coming in.

Larsen: Okay.

Rock: Was the garage door closed? The big sliding garage door that you had backed the car out of?

Rusev: Yeah it was closed. I never opened that door, cause I wanted to let 'em in first.

Rock: Okay. But you just opened like a man door, a, like a . . .

**Interview of Veniamin Rusev
Case Number 14-0541021**

Rusev: Yeah, like hand, yeah like a small door that has

Rock: Yeah.

Rusev: . . . right next to the door.

(whistling)

Larsen: Okay. So basically they come in. Do you, do you shut the door? Do you lock the door? What do you, what happens next?

Rusev: Yeah, I uh, as soon as uh Ihor comes in, I realized that at that point Vitali's not there already, and so we're gonna need, I need to, I'm gonna need to call and find out where is Vitali. And I, I just slammed the door as soon as uh Ihor comes in.

Larsen: So you kinda locked the door, locked 'em in?

Rusev: Yeah. Kinda like that.

Larsen: Okay. And so did you guys have a conversation at that point?

Rusev: Um, yes. I asked him about Vitali, you know, and they, they said, no Vitali sent us and said to pick up the car, you know.

Larsen: And what, what, what was your response?

Rusev: My response was um, It's not what Vitali told me.

Larsen: Okay.

Rusev: Is what, exactly my response. (unintelligible)

Larsen: And how did they take that?

Rusev: Uh, I believe uh, uh Ihor started, kinda started arguing. Most like kinda threw a couple of cuss words between that, and like it's something like, None of your business. Something like that, you know. And uh, I saw the little anger in him, you know.

Larsen: Were you guys talking in, in English?

Interview of Veniamin Rusev
Case Number 14-0541021

- Rusev: Oh no, in the Russian all the time. Cause they barely speak English.
- Larsen: Okay, so you're talking in Russian back and forth?
- Rusev: Yeah.
- Larsen: And you guys are using like foul language towards each other or . . . ?
- Rusev: Yeah, some cussing words, some foul language, yeah.
- Larsen: Okay, what happens next?
- Rusev: Uh, should I say the truth, like first time I
- Larsen: Yes, always choose the truth.
- Rusev: Yeah, yeah. Only. Uh, like I said, um, I noticed, I noticed that Ihor is more aggravated and I know Vossler is behind me and uh, I, at first I wanted to buy some time and I asked 'em to give me their phones, first, and I was a little surprised they were actually giving me the phones. And then I like, All right, I need some more, more time, whatever, so I ask them for their wallets. So while I was getting the phones, I was passing 'em towards Vossler in the back. I believe that I got the keys as well, for the car.
- Larsen: Okay.
- Rusev: And uh everything went, everything that went so fast, I noticed that Ihor was kinda coming over even closer and I, I did not want to get any between, like you know we're starting fights, and so I was like, you know, Take your shoes off. And they took their shoes off. I believe I did ask them to take the pants off, just kind of just, just kinda, you know, we'll throw on top, you know. But they, they never did when I first (unintelligible). This is what actually . . . Ihor (unintelligible) when I tell 'em take off their pants, the way he was kinda really

Interview of Veniamin Rusev
Case Number 14-0541021

close to me, enough to where he just started pushing me around. At the same time when I know Vossler was behind my back with the gun.

Larsen: Okay, so let, let me just back up a little bit. So basically, they come in. You lock the door and then there's . . . How many people are in the garage total?

Rusev: In the garage there's a total of four people.

Larsen: So there's yourself . . .

Rusev: Myself. Vosco.

Larsen: Vosco, who's also Vossler?

Rusev: Vossler.

Larsen: But you call him Vosco.

Rusev: Vosco, yeah.

Larsen: Okay. So you and, and Vosco, or Vossler, and then you have Ihor . . .

Rusev: Ihor.

Larsen: . . . and you have the other individual. Do you know his name?

Rusev: No.

Larsen: Okay

Rusev: I've never seen him before.

Larsen: You didn't know him, but you had met . . .

Rusev: Ihor before.

Larsen: Ihor . . .

Rusev: A couple of times.

Larsen: . . . a couple times?

Rusev: Yeah.

Interview of Veniamin Rusev
Case Number 14-0541021

Larsen: They come in, they say they're here to pick up the car. You say that that's not what . . .

Rusev: That's what Vitali said.

Larsen: . . . Vitali said. So . . .

Rusev: I was asking, asking for Vitali first.

Larsen: Okay. And then do you have words back and forth?

Rusev: Yes.

Rock: When they came in you locked the door behind them, correct?

Rusev: Yeah.

Rock: Okay.

Rusev: That was after I realized that Vitali's not coming in.

Larsen: Yeah. You locked . . .

Rusev: (unintelligible)

Larsen: . . . they come in, you lock the door. So you guys kinda exchange some words?

Rusev: Yeah.

Larsen: Was that before . . .

Rusev: After, what, what (unintelligible) you ask me. After they just got in?

Larsen: Yeah.

Rusev: Well this is after they just get in. Like I said, I just asked uh, asked him where's Vitali. That's when they kinda told me none of your business, you know, and uh Vitali told us to pick up the car. And then I was trying to tell 'em, that's not what Vitali told me.

Larsen: Right.

Rusev: This is after kinda rough words started coming out then.

Interview of Veniamin Rusev
Case Number 14-0541021

Larsen: Okay. And so at that point you, you asked them for some items?

Rusev: Personal items, yeah.

Larsen: Well what, you asked 'em for a

Rusev: Cell phones.

Larsen: . . . cell phones. Did they give 'em to you?

Rusev: Right away.

Larsen: They gave you . . . So they each gave you a cell phone?

Rusev: Yeah.

Larsen: What did you do with those cell phones?

Rusev: I passed them on to Vossler.

Larsen: Okay, so you passed them on to Vossler. What did you ask for next?

Rusev: Uh, for their wallets.

Larsen: Did they both give you their wallets?

Rusev: Yes.

Larsen: What'd you do with those?

Rusev: Uh I passed Vossler the wallets, but somehow my, one of the, well Ihor's wallet ended up in my pocket. (unintelligible) cause like I did not even turn around. Just give it. And one of 'em was kinda falling and that's, I put it in my pocket.

Larsen: What did you ask for next?

Rusev: Next I believe I asked for the car key and I believe the watch.

Larsen: Who gave you the car key?

Rusev: Uh, that guy. The guy that I never (unintelligible). I said just give me the car keys.

Larsen: The guy that you didn't know?

Interview of Veniamin Rusev
Case Number 14-0541021

Rusev: Yeah.

Larsen: Then who, who gave you the watch?

Rusev: The guy that I did not know.

Larsen: The same guy . . .

Rusev: Yeah.

Larsen: . . . that gave you the car keys?

Rusev: Yes, uh Ihor did not have them anymore. I just kinda looked at him. Like I said, I was trying to buy time, some of that, and I was kinda looking over and he has like a watch, you know.

Larsen: What did you do with the car key once they gave it to you?

Rusev: I, I gave 'em to Vosco again.

Larsen: So pretty much you're passing everything over to

Rusev: Yeah.

Larsen: . . . to Vossler?

Rusev: Yeah.

Larsen: What about the watch?

Rusev: Like I said, don't remember exactly the watch. I might have passed it to Vossler or I might have left it on the top of the roof on the Volvo. Cause they was kinda (unintelligible).

Larsen: Did you ask them to take off their jackets?

Rusev: (unintelligible) right at the beginning or at the end. Don't remember exactly when.

Larsen: Okay. What about their shoes?

**Interview of Veniamin Rusev
Case Number 14-0541021**

Rusev: Uh, yes. I asked them about their shoes as well. When I started noticing that Ihor was trying to breaking the distance, uh I asked him for the shoes as well.

Larsen: Did they take 'em off?

Rusev: Yes.

Larsen: Okay.

Rock: Did you look at Vossler at all when you were handing these items to him?

Rusev: No. I was kinda just passing them behind my back. Like I was kinda just, it was virtually like that

Larsen: And just say his hand. And for the purpose of the tape again, obviously see it, but you're, you're, you're motioning that you're reaching behind you?

Rusev: Yeah.

Larsen: So Vossler is behind you?

Rusev: Yeah. Probably like kinda this because I can see him a little bit in back.

Larsen: So, and you're, you're pointing to your, to your left side?

Rusev: Yeah, my left side. Yeah.

Larsen: For the purpose of this . . . obviously it can't see you, but you're, you're like with your left hand you're, you're reaching back behind you like you're passing something behind you?

Rusev: Yeah.

Larsen: But you could see him . . .

Rusev: (unintelligible)

Larsen: . . . out of the corner of your eye maybe?

Rusev: Yeah. I, I could definitely see his hand.

Larsen: Okay. Did you see anything in his hand?

Interview of Veniamin Rusev
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- Rusev: No. I see, I, like I said, while I'm thinking one of the wallets ended up in mine because I keep throwing, he keep catching all with one hand, you know. And then the third wallets do not fit or it just started falling, so I just decided to put it in my pocket.
- Larsen: Okay. And so they took their jackets off. Where did they put 'em? They give 'em to you
- Rusev: I grab 'em and put 'em on top of the uh Volvo.
- Larsen: Okay, what about their shoes?
- Rusev: They just took them off and just kicked them out.
- Larsen: They just kicked 'em off?
- Rusev: They're next to 'em. Yeah, next to 'em.
- Larsen: Okay. And then you asked them to take their pants off?
- Rusev: Uh yeah. I kinda (unintelligible), but I know they're not gonna do that. Like I said, I was trying to bullshit or buying some time, something to distract them more. Because like I said, I had noticed that Ihor was breaking, breaking the distance between me and him.
- Larsen: Okay.
- Rusev: An uh . . .
- Larsen: Okay. So Ihor, at this point he's breaking the distance?
- Rusev: He's breaking the distance when he start pushing me around.
- Larsen: So that, it's, so obviously when you, when you say he's breaking the distance, is he . . .
- Rusev: He, he started kinda getting closer toward me while I'm standing in one spot.
- Larsen: Is . . . Okay, so he's walking towards you . . .

Interview of Veniamin Rusev
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Rusev: Pretty much after, yeah, after he comes the, (unintelligible).

Larsen: And what's, what's he wearing at this point?

Rusev: Just his jeans and uh, without his, without his shoes.

Larsen: Jeans and, and like just in his, in his socks?

Rusev: Yeah, pretty much being, being in socks, yeah.

Larsen: Okay.

Rusev: But still has his shirt and everything else.

Larsen: Okay. So he, he walks, he's walking towards you. What happens next?

Rusev: Uh, he kinda pushed me, then I pushed him a little bit back, too, and then we just kinda started wrestling. Like I said, there was no fist by the face or anything like that. It was kind of a little wrestling, so uh, I don't remember, was it I first got on the ground, then he, kinda back and forth and around the garbage cans, you know, then close to that first door when he came in. And then while we're wrestling, out of nowhere just heard a gunshot. I, I, I felt it, the heat right to my left side right away.

Larsen: Was the big guy wrestling with you, too, or just you and Ihor?

Rusev: No, just me and Ihor. I'd never seen the big guy. Well all, while I, I remember while I was wrestling I was yelling, Vossler, Vossler, you know, somehow, cause he kept on punching and kind of got me in more, you know. And uh, I remember I just yelling his name a couple of times, you know.

Rock: And so as you guys are wrestling, you're kind of wrestling towards the man door from the middle?

Rusev: Yeah, from the middle.

Rock: The Volvo's kind of in the middle and now you're ending up kind of . . .

Interview of Veniamin Rusev
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- Rusev: We kinda got close to the, to the garbage cans, kind of went in a little circle and we came from the uh, I believe we came from the uh tables that is in the corner. Cause it had like a broken windshield glass in there, so kinda from there it (unintelligible). I don't remember exactly how. Yeah, something to that.
- Larsen: Okay. So you guys are kinda tussling and you're wrestling. No punches are being thrown?
- Rusev: None that I remember. I remember something in the stomach (unintelligible) but nothing, nothing big like I said.
- Larsen: Now, now, did he punch you?
- Rusev: Maybe a couple times he did, but like I said, nothing that it would hurt nowhere or say break my ribs.
- Larsen: Did you punch him at all, maybe?
- Rusev: Don't remember. It was mostly wrestling, why I keep saying wrestling, because mostly wrestling.
- Larsen: Okay. So, and now where are you guys standing in relation to the, to the car, the Volvo and the, and the doors?
- Rusev: We were . . . Right before I heard the shot is the only, because I would, I would remember where, where he fall, the-body. When he fall. We were by the door and by one of the first pole, the metal pole that sits right by the door.
- Larsen: Okay.
- Rusev: We were, we were right, maybe like, like this much off the pole.
- Larsen: Okay.
- Rusev: Near as I remember.
- Larsen: But you're mention, you're motioning with your hand about a foot?

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Case Number 14-0541021**

Rusev: Yeah.

Larsen: Is that about right?

Rusev: It's about, it's about a foot yes. It's about a foot.

Larsen: Okay, so you're right by the door?

Rusev: Yeah. Not close, say closer by the pole.

Larsen: Okay.

Rusev: The door is now more on the right side.

Larsen: Okay. So you're wrestling and you hear a gunshot?

Rusev: Yeah.

Larsen: How many gunshots do you hear?

Rusev: Only one.

Larsen: And you feel some pain?

Rusev: First I feel heat through my left side and then later on I felt some pain, like at first but it was numb, cause, then later on it just kinda get more and more pain.

Larsen: Okay. And did you know where the gunshot came from?

Rusev: Not, not first. Maybe a couple seconds. First, like I said, it was BOOM, like that, you know. I know, I know somewhere in the left, I just, the left side was the most. It's kinda hard, I couldn't hear at the beginning on the one side.

Larsen: Okay. What happens next? What happens?

Rusev: Um, I see Ihor's body just falling down and then his friends, his friend kinda jumped and kinda grabbed him a little bit and I been shot, look at his, his body, too, (unintelligible) first you can see we're kinda wrestling, then BOOM, he just shots. And Ihor, and Ihor kinda just literally dropping out of my hands. So I'm looking . . . His friend is coming in, he like, He shot him, he shot him. I'm like,

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What? While we're looking around, like I said, I just saw like this just briefly saw Vosco's uh that looked, kinda scared look, you know, and I'm looking back and then he said, uh his friends are, Let's call. Like call 9-1-1, you know. So at this time I'm gonna try to call a couple times 9-1-1, like twice I think.

Larsen: So you turn around and you see Vosco or Vossler, do you see him with a gun?

Rusev: Yeah. He was just sitting with the gun like that.

Larsen: Now this is the same gun that . . .

Rusev: Yeah, this is the same gun . . .

Larsen: . . . you guys were passing around earlier.

Rusev: . . . we were passing around earlier there.

Larsen: Okay, so do you know what hand he's holding it in?

Rusev: Don't remember exactly.

Larsen: Okay. Well you turn around, he's got a gun in his hand?

Rusev: Yeah.

Larsen: Does he say anything to you?

Rusev: No, nothing. He just has the (unintelligible) just sits in one spot, you know.

Larsen: Does Ihor say anything?

Rusev: No. He's just quiet. Like I said, I see him briefly, because uh his friend he keep saying, you know, Let's call 9-1-1, and then I saw there's a lot of blood, so then, then I went back to the, to Ihor, you know . . .

Larsen: Okay.

Rusev: . . . as I'm trying to call 9-1-1.

Rock: Ihor's, Ihor's friend is saying, Let's call 9-1-1?

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Rusev: First off he was the one that kinda rushed between, because I did not see there was like blood or anything, cause, cause I guess at first I was trying to figure out what's happening. I know I felt some pain in mine, you know. And then when I saw Ihor, I saw him, you know, there's more, more blood coming and then I (unintelligible) his friend saw more and more blood coming and then I saw that Ihor was hit.

Larsen: Okay. Did you talk to Vossler at all?

Rusev: Not at all . . . Not from that point. Like I said, the only thing with it is I saw his look when I, af, after it (unintelligible). And then what, and then I went back to the body and then I uh, by the time uh, like I said, I tried to call first, first time 9-1-1 and for some, my phone kinda glitched, and then I believe I saw him then, as soon as I tried to call the second time then uh 206 area code, just the code, just called me back. And I believe (unintelligible) or something. So I tried to call them back again, and then the second time it really goes through, you know. While, while this say, while I was dialing up is, I remember I heard uh just, while I was standing up, so I'm looking around. This is (unintelligible) I saw Vosco going that way, so I'm still trying to dial up and I believe after that, a little bit later, I had a went maybe half-way to the house and then went back, because I had to go back and talk to the, to the dispatcher of the phone, cause I had to be next to the body, next to Ihor.

Larsen: Okay, so you called 9-1-1 with, with your cell phone?

Rusev: Yes.

Larsen: Or with their cell phone?

Rusev: No, it was my cell phone. My phone.

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Larsen: And you, do you wait around til Medical Aid and the Police arrive?

Rusev: I was on the phone with the dispatcher all the time til you guys came.

Larsen: Okay.

Rock: And how about Vossler? Where'd he go.

Rusev: I believe I saw him running through the, our uh unit and then I never saw him after that.

Rock: And at first, just to be clear, you went like half-way into the unit, correct?

Rusev: As soon as I saw him, I realize that he's going that way, I kinda went halfway and then I like, I went I'm going back to these guys, so I went back to them. So I never, I never had a chance to talk to him or to chase him or anything, but I did went, I don't, I don't know exactly, but a couple steps inside . . . I definitely went to the steps.

Larsen: Okay.

Rock: So you called and the, you called 9-1-1, police show up. Do you have something in your hand when the police show up?

Rusev: Not at the moment. I believe I had uh, I had uh Ihor's wallet in my pocket.

Rock: Okay. And what did you do with that?

Rusev: Uh, Well when the guys, when the police said, you know, they said, they then said first, Put your hands out, you know. When uh, what happens is uh my brother was still inside the unit. So they were start asking me is there anybody else in there, you know, so I'm not sure if Vosco left or not and what had happened, so I'm telling about, telling the third person, and with the shooter, and then I remember that I have my brother in there, that Anthony is there, you know. And then the uh, then the, I told the cops that I can call, um call my brother and see, to

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have him come out from there. (unintelligible) to get in, to get in through the door, but it was locked. I guess my brother probably heard the shots and locked the second door that goes to the unit. So I called my brother and I told him that the police is outside, just put your hands up and come out of the, out of the unit. This is what he did. He came out.

Larsen: So how . . . You had, you had Ihor's wallet. Did you have it in your pocket or in your hand?

Rusev: I believe I had it in my jacket, down inside. And uh how I took it out is that when the police started questioning me, somebody said, Let me see what's in your wallet. And then started pulling everything out of wallet – my phone, my cigarettes, my uh, and like I said, Ihor's wallet.

Larsen: And just, did you drop it on the ground?

Rusev: Yeah, just kinda dropped it right in front of the police guys. And then, then my brother (unintelligible) his phone and I don't know if he had his wallet, (unintelligible).

Rock: What does your phone look like?

Rusev: My phone is uh kinda slight flip T-Mobile with a carbon fiber back on it. (unintelligible) sticker it. It had a orange sticker, a (unintelligible) orange sticker.

Rock: Did you and Vossler, before they showed up, did you guys discuss taking items from them? Robbing them?

Rusev: No, nothing like that. Like I said, the items were just kind of a clip at the moment. I, I never even thought that, let's say, like I said, I was expecting Vitali there, so I kinda had to think on the spot, like I said, those items were never even spoke to anything like that.

Interview of Veniamin Rusev
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Rock: What do you think was going through their mind when you were taking their items from 'em?

Rusev: Not real sure. I, all my goal was to scare them away so I can buy some time and find out what happened to Vitali. Like I said, uh because the, that story about my other friends had told me that this Ihor guy screwed him over like on almost six thousand dollars or something. So my, my, my point wasn't um I forget, what was the question, I lost, I got lost.

Rock: What do you think was going through their minds . . .

Rusev: Ahh.

Rock: . . . when you, when you asked them for their phone, their keys, their watch . . .

Rusev: I thought, I thought the fear, the fear that I was trying to kinda intimidated by, the, that uh it works, you know.

Rock: And, and then you asked them to take their clothing off?

Rusev: Yeah. Not their clothing, but um, yes the shoes and the pants. But the pants (unintelligible). Like I said, I said, because I, I insist for the, the wallet, the keys and the phones and the shoes. And for the pants, I literally said only once, you know, "and your pants" and it was I was kinda (unintelligible) you know, like a joke for that. It wasn't no, and they, they knew that I wasn't serious about that. But this is after the pants, this is when Ihor actually start physically coming, showing me that he actually was gonna do something, so

Rock: You were trying to scare 'em away? How come you didn't tell 'em, Get the hell out of here?

Rusev: Um, like I said, I'm not sure. I, I know Ihor. Right? I'm not sure who's the next guy. I don't know if they have a guns. If they came . . . Cause I never pat 'em in.

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So uh at first I was trying to buy time because I don't know if they know karate or not. Are they gonna beat the shit out of me? They gonna go (unintelligible) my brother, you know. Cause I now have a younger person there. So, I wanted to find out where's Vitali first. Cause I was afraid where's Vitali, why he's not, cause I just spoke to him on the phone. This way, this was the main person, where's, where's the owner of the car. Why they are here and not him. If, if you came and wanted, wanted the car. And like I said, there was that story about the Mercedes that, that's what kinda, just kinda sounded (unintelligible). And I was like, why . . . like I definitely felt something not right or

Rock: And, you know, you say that you and Ihor were just wrestling. It, it doesn't sound reasonable at all to shoot someone when two people are just wrestling. Would you agree with that?

Rusev: I definitely agree with that. I definitely agree with that. It was wrestling, like I said, it was slash maybe punch or two, you know, but most of it was wrestling, cause we knew Ihor, I knew Ihor personally. I saw him a couple of times and saw him with Vitali. So I knew, I don't want to hit him in the face or nothing like that, you know. He, just pushing, you know, hitting (unintelligible), maybe something like that, you know. Not exactly (unintelligible), but whatever's around it, you know.

Larsen: Previous to this recording we talked off tape and initially you told us one story. Is that correct?

Rusev: Yes, in the beginning, yes.

Larsen: And then afterwards you, you told us a little bit different story. Isn't that right?

Rusev: Yes.

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Larsen: And why is that?

Rusev: Um, I, I did not want to show, like I did not want to seem like uh, uh that, how, how to say it the right way . . . Uh, first, first, let's say, when I first went and talked to the cops, I was afraid what was going to happen to Vosco. I know he's my friend. And these guys, they pretty much nobody for me. I said, put it that way. That's why I kinda, I, I lie to them a little because, and plus the shock a little bit, but when the, when the policeman said, you know, (unintelligible) it kinda shook me up, like, you know, I need, I need the truth, you know. And I realized that I have to say the truth, whatever happen.

Larsen: Okay.

Rusev: Uh, here, here, when I said the first story I men, I did not mention, I did not mention just the part that I wanted to take their wallets and stuff like that. Um, I did not want to seem like, you know, like I was the aggressor on that point. Something like that. Cause, you know, I had my, my own view why I wanted to do that.

Larsen: Okay. And then you, you specifically asked us in, during the taping, you want me to tell you the truth, or something to that . . .

Rusev: Yeah.

Larsen: Is that where you're referring to . . .

Rusev: Taking the wallets and all that little stuff that happened.

Larsen: Right, and, and previously you didn't initially tell us the truth and then you told us later on?

Rusev: Yeah.

Larsen: Okay. I just wanted to

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Rusev: That, that, yeah, that part, just only, that's the only part that I did not mention or kinda trying to

Larsen: Okay. And when you didn't, you didn't know if you wanted us to, if we wanted you to tell us exactly like you did the first time, with not

Rusev: With not the truth. Like (unintelligible)

Larsen: And then tell us the truth later?

Rusev: Yeah.

Larsen: Yeah. Okay. And, and you realize that, you know, you wanted to tell us the truth, correct?

Rusev: Yes I did.

Larsen: Okay.

Rusev: Definitely. Yes, I did.

Rock: Where do you believe the other wallet, the phones, where do you believe those are now?

Rusev: I believe Vossler should have 'em. Well see, I don't . . . The two phones he should have 'em definitely. Keys from the BMW he should have, definitely. Cause I, I did not see 'em to put 'em anywhere. He should have 'em in his pocket or uh . . . and the only wallet I ended up having is Ihor's wallet, so I believe everything else should have, he should have. If the watch is not on the, on the Volvo, on top of the roof, so I, he should have it, too.

Larsen: Okay.

Rock: Is there anything that you can think of that we're leaving out or, or anything that you'd like to tell us?

Interview of Veniamin Rusev
Case Number 14-0541021

Rusev: I'm definitely pretty sure this is, this is it. This is all of it. Like I said, this is the only part that I kinda (unintelligible). Like I said, the reason was didn't want to be seen like I'm the aggressor (unintelligible). Cause like, like I said all I, I did it out, out of my own thoughts for, for a different reason. Just to buy some time, you know, so I can find out where Vitali is. Cause I know (unintelligible).

Larsen: Okay. So is everything you've told us here on the tape true, correct and to the best of your knowledge?

Rusev: Yes. It's a hundred percent true and a hundred percent to the best of my knowledge everything that I saw, everything I heard . . . Everything I see.

Larsen: And have we made any threats or promises to you?

Rusev: No.

Larsen: Regarding your statement?

Rusev: Not at all. Not at all.

Larsen: Okay. Okay. The time is 0439 hours and that'll conclude this taped statement.

End of Recording:

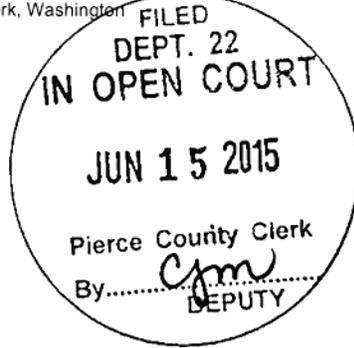
/sm



STATE OF WASHINGTON, 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
21st day of Feb., 20 19
Kevin Stock, Clerk
By Chloe H. [Signature] Deputy

APPENDIX “K”

Exhibit Record



14-1-00779-7 44836108 EXRV 06-16-15

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

RUSEV, VENIAMIN GEORGEV,

Defendant.

Cause No. 14-1-00779-7

EXHIBIT RECORD - TRIAL

6-16-15 all heard

P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	1	Photograph: Close up of Defendant with blood on left ear	Yes	No	Admitted	05/21/15	}
P	2	Photograph: Close up of left side of Defendant's head	Yes	No	Admitted	05/21/15	
P	3	Photograph: Close up of Defendant's left ear	Yes	No	Admitted Published	05/21/15 06/03/15	
P	4	Photograph: Close up of Defendant's left ear	Yes	No	Admitted	05/21/15	
P	5	Photograph: Close up of the backside of Defendant's left ear	Yes	No	Admitted	05/21/15	
P	6	Photograph: Man with head injuries and white jumpsuit on	Yes	No	Admitted/ Published	05/26/15	
P	7	Photograph: Close up on man with head injuries	Yes	No	Admitted/ Published	05/26/15	
P	8	Photograph: Same man in Exhibit 6, but without white jumpsuit on	Yes	No	Admitted/ Published	05/26/15	
P	9	Photograph: Right side view of man in Exhibit 8	Yes	No	Admitted/ Published	05/26/15	

0183 6/17/2015 7242

P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	10	Photograph: Left side view of man in Exhibit 8	Yes	No	Admitted/ Published	05/26/15	
P	11	Photograph: Tacoma Police Department Photo Slate	Yes	No	Admitted	05/21/15	
P	12	Photograph: Mexico Auto Repair – Front view	Yes	No	Admitted	05/21/15	
P	13	Photograph: Mexico Auto Repair – Front view	Yes	No	Admitted	05/21/15	
P	14	Photograph: Mexico Auto Repair – Front view	Yes	No	Admitted	05/21/15	
P	15	Photograph: Mexico Auto Repair – Side view and front view	Yes	No	Admitted	05/21/15	
P	16	Photograph: Mexico Auto Repair – Side view	Yes	No	Admitted	05/21/15	
P	17	Photograph: Mexico Auto Repair – Side view	Yes	No	Admitted	05/21/15	
P	18	Photograph: Blue BMW outside of Mexico Auto Repair	Yes	No	Admitted	05/21/15	
P	19	Photograph: Blue BMW, front end, lights on	Yes	No	Admitted	05/21/15	
P	20	Photograph: Blue BMW, passenger side, lights on	Yes	No	Admitted	05/21/15	
P	21	Photograph: Blue BMW Washington License Plate No. AKJ 2704	Yes	No	Admitted	05/21/15	
P	22	Photograph: Mexico Auto Repair – Entrance staircase	Yes	No	Admitted	05/21/15	
P	23	Photograph: Mexico Auto Repair – Entrance staircase. Closed garage door to the left.	Yes	No	Admitted	05/21/15	
P	24	Photograph: Mexico Auto Repair – Back garage door open.	Yes	No	Agreed/ Published	05/21/15	
P	25	Photograph: Mexico Auto Repair – Back garage door open, Volvo inside	Yes	No	Admitted Published	05/21/15 05/26/15	
P	26	Photograph: BMW X5 – Black in color Parked by Door "E"	Yes	No	Admitted	05/21/15	
P	27	Photograph: BMW Washington License Plate No. ANU 5765	Yes	No	Admitted	05/21/15	
P	28	Photograph: BMW X5 Rear End	Yes	No	Admitted	05/21/15	
P	29	Photograph: BMW X5 Front and side view	Yes	No	Admitted	05/21/15	
P	30	Photograph: BMW X5 Front view	Yes	No	Admitted	05/21/15	
P	31	Photograph: BMW X5 Passenger side view	Yes	No	Admitted	05/21/15	
P	32	Photograph: BMW X5 parked in front of building	Yes	No	Admitted	05/21/15	
P	33	Photograph: Entrance to alley and garage	Yes	No	Admitted	05/21/15	

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P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	34	Photograph: Entrance to alley and garage	Yes	No	Admitted	05/21/15	
P	35	Photograph: Inside of garage with Volvo	Yes	No	Admitted	05/21/15	
P	36	Photograph: Inside of garage with Volvo	Yes	No	Admitted	05/21/15	
P	37	Photograph: Tacoma Police Department Photo Slate					
P	38	Photograph: Residence "14464"					
P	39	Photograph: Living room, leather couch and loveseat					
P	40	Photograph: Nesting tables, gun case on smaller table, basketball underneath					
P	41	Photograph: Close up of gun case	Yes	No	Admitted	06/03/15	
P	42	Photograph: Glass coffee table with ashtray, Bic lighter, Marlboro cigarettes and wallet					
P	43	Photograph: Glass coffee table with Altoids, Marlboro cigarettes, lighter, Newport cigarettes, Robitussin box, Xbox controller, overflowing garbage can in background					
P	44	Photograph: Close up of gun case with yellow evidence marker "1"					
P	45	Photograph: Close up of gun case showing identification numbers					
P	46	Photograph: Coffee table with yellow evidence marker "2"					
P	47	Photograph: Cell phone with yellow evidence marker "2"					
P	48	Photograph: Open gun case, showing gun, and yellow evidence marker "1"					
P	49	Photograph: Close up of open gun case, showing bun, cleaner and one bullet	Yes	No	Admitted/ Published	06/03/15	
P	50	Photograph: Close up of gun clip opening					
P	51	Photograph: Close up of gun barrel					
P	52	Photograph: Close up of gun clip					
P	53	Photograph: Red Jordan tennis shoes	Yes	No	Agreed	06/03/15	
P	54	Photograph: Tower with video games					
P	55	Photograph: Ammunition behind tower	Yes	No	Admitted/ Published	06/03/15	
P	56	Photograph: Ammunition behind tower	Yes	No	Admitted	06/03/15	

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P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	57	Photograph: Close up of ammunition behind tower	Yes	No	Admitted	06/03/15	
P	58	Photograph: Ammunition with yellow evidence marker "5"	Yes	No	Admitted	06/03/15	
P	59	Photograph: Grocery bag with box of pistol cartridges with yellow evidence marker "9"	Yes	No	Admitted	06/03/15	
P	60	Photograph: Ashtray and wallet showing yellow evidence marker "8"					
P	61	Photograph: Ashtray with open wallet showing yellow evidence marker "8"					
P	62	Photograph: Washington Identification Card for Vossler Auron Blesch					
P	63	Photograph: Tacoma Police Department Photo Slate	Yes	No	Admitted	05/21/15	
P	64	Photograph: Open garage with Volvo inside	Yes	No	Agreed/ Published	05/21/15	
P	65	Photograph: Wide angle view of inside of garage, post incident	Yes	No	Admitted	05/21/15	
P	66	Photograph: Garage floor	Yes	No	Admitted	05/21/15	
P	67	Photograph: Inside of garage with Volvo	Yes	No	Admitted	05/21/15	
P	68	Photograph: Inside of garage with Volvo	Yes	No	Admitted	05/21/15	
P	69	Photograph: Garage , wallet on the floor, tennis shoes in background	Yes	No	Agreed/ Published	05/21/15	
P	70	Photograph: Garage, wallet on the floor, tennis shoes and garbage cans in background	Yes	No	Admitted	05/21/15	
P	71	Photograph: Garage, open door and stairs in background	Yes	No	Admitted	05/21/15	
P	72	Photograph: Garage, yellow ladder standing against wall, car parts in corner	Yes	No	Admitted	05/21/15	
P	73	Photograph: Driver's side view of Volvo station wagon	Yes	No	Admitted	05/21/15	
P	74	Photograph: Driver's side view of Volvo station wagon, showing open garage door	Yes	No	Admitted	05/21/15	
P	75	Photograph: Wide view of inside the garage, garbage cans in background	Yes	No	Admitted	05/21/15	
P	76	Photograph: Corner of garage, car parts on the floor, bike in the right corner	Yes	No	Admitted	05/21/15	
P	77	Photograph: Wooden stair case in garage	Yes	No	Admitted Published	05/21/15 06/03/15	
P	78	Photograph: Inside garage, Volvo to the left, bicycles to the right	Yes	No	Admitted	05/21/15	
P	79	Photograph: Volvo station wagon, rear and passenger side view	Yes	No	Admitted	05/21/15	

P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	80	Photograph: Volvo Washington License Plate 603 XRM	Yes	No	Admitted	05/21/15	
P	81	Photograph: Garage floor, showing wallet and tennis shoes, white door in background	Yes	No	Admitted	05/21/15	
P	82	Photograph: Wood shelving in garage	Yes	No	Admitted	05/21/15	
P	83	Photograph: Garbage cans and wood shelving in the background	Yes	No	Admitted	05/21/15	
P	84	Photograph: Tennis shoes on garage floor	Yes	No	Admitted	05/21/15	
P	85	Photograph: Tennis shoes on garage floor	Yes	No	Admitted	05/21/15	
P	86	Photograph: Tennis shoes on garage floor, blood by green hose to the left	Yes	No	Admitted	05/21/15	
P	87	Photograph: Large pool of blood	Yes	No	Agreed/ Published	05/21/15	
P	88	Photograph: Large pool of blood	Yes	No	Admitted	05/21/15	
P	89	Photograph: Large pool of blood	Yes	No	Admitted	05/21/15	
P	90	Photograph: Large pool of blood	Yes	No	Admitted Published	05/21/15 05/26/15	
P	91	Photograph: Close up of tennis shoes	Yes	No	Admitted	05/21/15	
P	92	Photograph: Close up of wallet	Yes	No	Admitted	05/21/15	
P	93	Photograph: Large pool of blood with yellow evidence marker "10"	Yes	No	Admitted	05/21/15	
P	94	Photograph: Bloody clothing with yellow evidence marker "11"	Yes	No	Admitted	05/21/15	
P	95	Photograph: Tennis shoes with yellow evidence marker "12". Yellow evidence marker "11" in the background. Yellow evidence markers "A" and "B"	Yes	No	Admitted Published	05/21/15 05/26/15	
P	96	Photograph: Close up of tennis shoes with yellow evidence marker "12"	Yes	No	Admitted	05/21/15	
P	97	Photograph: Wallet, on floor, with yellow evidence marker "14". Other yellow evidence markers showing "15", "13", "C" and "B"	Yes	No	Admitted/ Published	05/21/15	
P	98	Photograph: Yellow evidence marker "C"	Yes	No	Admitted	05/21/15	
P	99	Photograph: Yellow evidence marker "C" by footprints	Yes	No	Admitted	05/21/15	
P	100	Photograph: Wallet with yellow evidence marker "14"	Yes	No	Admitted	05/21/15	
P	101	Photograph: Black tennis shoes with yellow evidence marker "13"	Yes	No	Admitted Published	05/21/15 05/26/15	

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P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	102	Photograph: Dime with yellow evidence marker "15"	Yes	No	Admitted	05/21/15	
P	103	Photograph: Coat with yellow evidence markers "16", "17", and "18"	Yes	No	Admitted/ Published	05/21/15	
P	104	Photograph: Coat with yellow evidence markers "17" and "18"	Yes	No	Admitted Published	05/21/15 05/26/15	
P	105	Photograph: Coat with yellow evidence marker "18"	Yes	No	Admitted Published	05/21/15 05/26/15	
P	106	Photograph: Large pool of blood, clothing, and yellow evidence markers "10", "F", and "11"	Yes	No	Admitted	05/21/15	
P	107	Photograph: Footprint with evidence ruler and yellow evidence marker "F"	Yes	No	Admitted	05/21/15	
P	108	Photograph: Footprint with evidence ruler and yellow evidence marker "F"	Yes	No	Admitted	05/21/15	
P	109	Photograph: Open door, handicapped placard to the left of door frame, clothes hanging on rod in hallway	Yes	No	Admitted	05/21/15	
P	110	Photograph: Clothes hanging in hallway	Yes	No	Admitted	05/21/15	
P	111	Photograph: Tennis shoe with yellow evidence marker "12", yellow evidence marker "20" near casing, yellow evidence markers "F" and "aa" in the background	Yes	No	Admitted	05/21/15	
P	112	Photograph: Tennis shoe with yellow evidence marker "12" and yellow evidence marker "20" with casing	Yes	No	Admitted	05/21/15	
P	113	Photograph: Casing with yellow evidence marker "20"	Yes	No	Admitted	05/21/15	
P	114	Photograph: Hallway with light on	Yes	No	Admitted	05/21/15	
P	115	Photograph: Yellow evidence markers "D" and "E" on the hard wood floor, black dresser to the left, bed to the right. Keyboard further down the wall with guitars. Living room in background.	Yes	No	Admitted Published	05/21/15 06/03/15	
P	116	Photograph: Bedroom area with yellow evidence markers "D" and "E"	Yes	No	Admitted Published	05/21/15 06/03/15	
P	117	Photograph: Close up of blood foot prints with yellow evidence markers "D" and "E"	Yes	No	Admitted	05/21/15	
P	118	Photograph: Living room area	Yes	No	Admitted Published	05/21/15 06/03/15	
P	119	Photograph: Living room area	Yes	No	Admitted Published	05/21/15 06/03/15	
P	120	Photograph: Bloody foot prints with yellow evidence markers "D" and "E"	Yes	No	Admitted	05/21/15	
P	121	Photograph: Blood footprint with yellow evidence marker "D" - ruler to the side	Yes	No	Admitted	05/21/15	

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P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	122	Photograph: Evidence envelope containing wallet found on garage floor					
P	123	Photograph: Back of sealed evidence envelope					
P	124	Photograph: Black wallet to the right of the evidence envelope it is contained in	Yes	No	Admitted	06/04/15	
P	125	Photograph: Opened tri-fold wallet	Yes	No	Admitted	06/04/15	
P	126	Photograph: Close up of opened tri-fold wallet containing Ihor Onishchuk's driver's license	Yes	No	Admitted	06/04/15	
P	127	Photograph: Washington driver's license of Ihor Onishchuk	Yes	No	Admitted	06/04/15	
P	128	Photograph: Opened wallet showing cash	Yes	No	Admitted	06/04/15	
P	129	Photograph: Opened tri-fold wallet, receipts, four pennies and cash	Yes	No	Admitted	06/04/15	
P	130	Photograph: Opened tri-fold wallet, receipts, four pennies and cash	Yes	No	Admitted	06/04/15	
P	131	Photograph: Close up of \$204.00	Yes	No	Admitted	06/04/15	
P	132	Photograph: Red 2-door Honda, Washington License Plate No. ABX9499	Yes	No	Admitted	06/08/15	
P	133	Photograph: Tacoma Police Department Photo Slate					
P	134	Photograph: Evidence Identification Label MC#9 - Handgun, Semi-Auto					
P	135	Photograph: Handgun case - black					
P	136	Photograph: Pistol/Revolver Private Disposition/Transfer form for Seller Shiraz Alsamarrai to Vossler Blesch					
P	137	Photograph: Close up of Pistol/Revolver Private Disposition/Transfer form					
P	138	Photograph: Tacoma Police Department Photo Slate	Yes	No	Admitted	05/21/15	
P	139	Photograph: Evidence Brown Bag - MC#39	Yes	No	Admitted	05/21/15	
P	140	Photograph: Black Leather Jacket	Yes	No	Admitted	05/21/15	
P	141	Photograph: Ribbed Sweater with Blood Splatters on the Neck	Yes	No	Admitted	05/21/15	
P	142	Photograph: Front of Blue Jeans	Yes	No	Admitted	05/21/15	
P	143	Photograph: Back of Blue Jeans	Yes	No	Admitted	05/21/15	
P	144	Photograph: Evidence Brown Bag - MC#26	Yes	No	Admitted	05/21/15	
P	145	Photograph: Black Pair of Skechers Shoes	Yes	No	Admitted	05/21/15	

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P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn			Date	Rec'd by Clerk's Office
P	146	Photograph: Black Pair of Skechers Shoes	Yes	No	Admitted			05/21/15	
P	147	Photograph: Heals of Black Skechers Shoes	Yes	No	Admitted			05/21/15	
P	148	Photograph: Sole of Black Skechers Shoe	Yes	No	Admitted			05/21/15	
D	149	Large, white diagram drawn by Attorney Bryan Hershman, on May 20, 2015, 3:33 PM, during motion to exclude witness testimony							
P	150	Cad Incident Inquiry Complaint: 20140541021							
P	151	Tacoma Police Department Supplemental Report Incident No. 140541021.2							
P	152	Tacoma Police Department Supplemental Report Incident No. 140541021.13							
P	153	Tacoma Police Department Supplemental Report Incident No. 140541021.15							
P	154	Tacoma Police Department Advisement of Rights Rusev, Veniamin G. Officer Huebner							
P	155	DVD-R Video 14 054 1021	Yes	No	Agreed/ Published			05/21/15	
P	156	Tacoma Police Department Forensic Specialist Report							
P	157	Diagram Street Map and location of the garage	Yes	No	Admitted			05/21/15	
P	158	Diagram: Inside of the garage	Yes	No	Admitted/ Published			05/21/15	
P	159	Tacoma Police Department Supplemental Report Incident No. 140541021.8							
P	160	Tacoma Police Department Forensic Services Section Laboratory Report Items Processed: Clothing							
P	161	Tacoma Police Department Forensic Specialist Report							
D	162	Large, white diagram drawn by Attorney Bryan Hershman during the Defendant's opening statement on May 21, 2015							
P	163	MC #39: Clothing – Coat / Jacket	Yes	No	Admitted/ Published			05/21/15	

P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	164	MC #40: Clothing – Shirt	Yes	No	Admitted/ Published	05/21/15	
P	165	MC #41: Clothing – Shirt	Yes	No	Admitted/ Published	05/21/15	
P	166	MC #42: Clothing – Pants	Yes	No	Admitted/ Published	05/21/15	
P	167	MC #43: Clothing – Shoes	Yes	No	Admitted/ Published	05/21/15	
P	168	MC #18: Clothing – Pants	Yes	No	Admitted/ Published	06/04/15	
P	169	MC #19: Clothing – Shirt	Yes	No	Agreed/ Published	06/02/15	
P	170	MC #20: Clothing – Shoes	Yes	No	Admitted/ Published	06/04/15	
P	171	MC #21: Clothing – Shoes	Yes	No	Admitted/ Published	06/04/15	
P	172	MC #22: Personal – Wallet	Yes	No	Admitted/ Published	05/21/15	
P	173	MC #24: Jewelry – Watch	Yes	No	Admitted/ Published	05/21/15	
P	174	MC #25: Clothing – Fur Item	Yes	No	Admitted/ Published	06/04/15	
P	175	MC #26: Clothing – Fur Item	Yes	No	Admitted	06/04/15	
P	176	MC #27: Clothing – Other					
P	177	MC #28: Weapons – Ammunition	Yes	No	Admitted/ Published	05/21/15	
P	178	MC #4: Evidence - Bullet	Yes	No	Admitted/ Published	05/21/15	
P	179	Tacoma Police Department Property Report					
P	180	MC #9: Weapons – Firearms - Handgun	Yes	No	Agreed/ Published	06/03/15	
P	180 A	Gun, gun case and magazine	Yes	No	Agreed/ Published	06/03/15	
P	180 B	Evidence envelope contained in gun case					
P	181	MC #37: Cellular Phone	Yes	No	Admitted	06/04/14	
P	182	MC #38: Cellular Phone	Yes	No	Admitted	06/09/15	
P	183	MC #10: Cellular Phone					
P	184	MC #23 and #33: Money; Coins and Bills	Yes	No	Admitted	06/04/15	

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P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	185	Tacoma Police Department Supplemental Report Incident No. 140541021.19					
P	186	MC #32: Two swabs					
P	187	CD: South Sound 911 (Redacted – Track 1 Only) 02-23-14 to 02-24-14 14 054 1021	Yes	No	Admitted/ Published	05/26/15	
P	187 A	Stipulation read to the jury prior to publishing Plaintiff's Exhibit 187 above	Yes	No	Admitted	06/15/15	
P	187 B	CD: South Sound 911 (Full version w/multiple tracks) 02-23-14 to 02-24-14 14 054 1021					
P	188	Tacoma Police Department Supplemental Report Incident No. 140541021.1					
P	189	Transcript of Interview of Dmytro Onishchuk taken February 23, 2014					
P	190	Large, white diagram drawn by Dmytro Onishchuk during his direct examination on May 26, 2015	Yes	No	Illustrative Only	05/26/15	
D	191	Tacoma Police Department Supplemental Report Incident No. 140541021.35					
D	192	Tacoma Police Department Supplemental Report Incident No. 140541021.24					
D	193	Tacoma Police Department Supplemental Report Incident No. 140541021.5					
P	194	Tacoma Police Department Supplemental Report Incident No. 140541021.23					
P	195	Text Message: 10:38 am	Yes	No	Admitted	06/04/15	
P	196	Text Message: 10:39 am	Yes	No	Admitted	05/28/15	
P	197	Text Message: 10:43 am	Yes	No	Admitted	06/04/15	
P	198	Text Message: 10:44 am	Yes	No	Admitted	06/04/15	
P	199	Text Message: 10:48 am	Yes	No	Agreed	05/28/15	
P	200	Text Message: 10:49 am	Yes	No	Admitted	06/04/15	
P	201	Text Message: 10:49 am	Yes	No	Agreed	05/28/15	

P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	202	Text Message: 10:49 am	Yes	No	Admitted	06/04/15	
P	203	Text Message: 10:50 am	Yes	No	Agreed	05/28/15	
P	204	Text Message: 10:51 am	Yes	No	Admitted	06/04/15	
P	205	Text Message: 10:52 am	Yes	No	Admitted	06/04/15	
P	206	Text Message: 10:52 am	Yes	No	Admitted	06/04/15	
P	207	Text Message: 10:53 am	Yes	No	Admitted	06/04/15	
P	208	Tacoma Police Department Supplemental Report Incident No. 140541021.52					
P	209	Text Message: 10:37 am	Yes	No	Agreed	05/28/15	
D	210	Transcript -1 Page					
P	211	Transcript – Excerpt Verbatim Report of Proceedings Direct Examination of Aleh Mikhalchuk					
P	212	Tacoma Police Department Supplemental Report Incident No. 140541021.45					
P	213	Interview of Ihor Omishchuk Case Number #14-054-1021					
P	214	Excerpts of Ihor Onishchuk's medical records					
P	215	Photograph: Ihor Onishchuk's left ear scarring with ruler	Yes	No	Agreed/ Published	06/02/15	
P	216	Photograph: Ihor Onishchuk's torso scarring	Yes	No	Agreed/ Published	06/02/15	
P	217	Photograph: Ihor Onishchuk's right side torso scarring	Yes	No	Agreed/ Published	06/02/15	
P	218	Photograph: Ihor Onishchuk's under arm scarring	Yes	No	Agreed/ Published	06/02/15	
P	219	MC #31: Key	Yes	No	Admitted	06/03/15	
P	220	Tacoma Police Department Supplemental Report Incident No. 140541021.35					
P	221	Tacoma Police Department Supplemental Report Incident No. 140541021.45					

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P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	222	St. of WA v. Vossler Blesch Cause No. 14-1-00780-1 Prosecutor's Statement Regarding Amended Information Filed: January 23, 2015					
P	223	St. of WA v. Vossler Blesch Cause No. 14-1-00780-1 Amended Information Filed: January 23, 2015					
P	224	St. of WA v. Vossler Blesch Cause No. 14-1-00780-1 Plea Agreement Filed: January 23, 2015					
P	225	St. of WA v. Vossler Blesch Cause No. 14-1-00780-1 Statement of Defendant on Plea of Guilty to Non-Sex Offense Filed: January 23, 2015					
P	226	St. of WA v. Vossler Blesch Cause No. 14-1-00780-1 Defendant's Presentence Report Filed: March 4, 2015					
P	227	St. of WA v. Vossler Blesch Cause No. 14-1-00780-1 Warrant of Commitment Filed: March 6, 2015					
P	228	St. of WA v. Vossler Blesch Cause No. 14-1-00780-1 Order for Biological Sample Draw for DNA Identification Analysis Filed: March 6, 2015					
P	229	St. of WA v. Vossler Blesch Cause No. 14-1-00780-1 Advice of Right to Appeal Filed: March 6, 2015					
P	230	St. of WA v. Vossler Blesch Cause No. 14-1-00780-1 Order Prohibiting Contact as a Condition of Sentence re: Dmytro Onishchuk Filed: March 6, 2015					
P	231	St. of WA v. Vossler Blesch Cause No. 14-1-00780-1 Order Prohibiting Contact as a Condition of Sentence re: Ihor Onishchuk Filed: March 6, 2015					

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P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	232	St. of WA v. Vossler Blesch Cause No. 14-1-00780-1 Stipulation on Prior Record and Offender Score Filed: January 23, 2015					
P	233	Tacoma Police Department Supplemental Report Incident No. 140541021.30					
P	234	Tacoma Police Department Supplemental Report Incident No. 140541021.49					
P	235	Large, white diagram drawn by Vossler Blesch during direct examination on 6/3/15	Yes	No	Illustrative Only	06/03/15	
P	236	Tacoma Police Department Forensic Specialist Report					
P	237	Tacoma Police Department Forensic Services Section - Laboratory Report					
P	238	Tacoma Police Department Forensic Specialist Report					
P	239	Tacoma Police Department Forensic Specialist Report					
P	240	Tacoma Police Department Forensic Services Section - Laboratory Report					
P	241	Tacoma Police Department Supplemental Report Incident No. 140541021.33					
P	242	Tacoma Police Department Forensic Services Section - Laboratory Report					
P	243	Tacoma Police Department Supplemental Report Incident No. 140541021.18					
P	244	Tacoma Police Department Forensic Specialist Report					
P	245	Tacoma Police Department Forensic Specialist Report					
P	246	MC#11: Shirt	Yes	No	Admitted/ Published	06/04/15	
P	247	Photograph: Tacoma Police Department Photo Slate	Yes	No	Admitted	06/04/15	
P	248	Photograph: Tacoma Police Department Photo Slate	Yes	No	Admitted	06/04/15	
P	249	Photograph: Recliner loaded with clothes; clothes on floor	Yes	No	Admitted	06/04/15	
P	250	Photograph: Recliner loaded with clothes	Yes	No	Admitted/ Published	06/04/15	
P	251	Photograph: White shirt on ottoman	Yes	No	Admitted	06/04/15	

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P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	252	Photograph: Tacoma Police Department Photo Slate	Yes	No	Admitted	06/04/15	
P	253	Photograph: LG Cell Phone	Yes	No	Admitted	06/04/15	
P	254	Photograph: Tacoma Police Department Photo Slate	Yes	No	Admitted	06/04/15	
P	255	Photograph: White t-shirt with blood stain	Yes	No	Admitted	06/04/15	
P	256	Photograph: Close up of white t-shirt with blood stain (Front of shirt)	Yes	No	Admitted	06/04/15	
P	257	Photograph: White t-shirt logo - size XL	Yes	No	Admitted	06/04/15	
P	258	Photograph: White t-shirt with blood stain (Back of shirt)	Yes	No	Admitted	06/04/15	
P	259	Text Message: 11:05 am	Yes	No	Admitted	06/04/15	
P	260	Text Message: 10:42 am	Yes	No	Admitted	06/04/15	
P	261	Text Message: 10:44 am	Yes	No	Admitted	06/04/15	
P	262	Text Message: 10:45 am	Yes	No	Admitted	06/04/15	
P	263	Text Message: 10:47 am	Yes	No	Admitted	06/04/15	
P	264	Text Message: 10:48 am	Yes	No	Admitted	06/04/15	
P	265	Text Message: 11:00 am	Yes	No	Admitted	06/04/15	
P	266	Text Message: 11:00 am	Yes	No	Admitted	06/04/15	
P	267	Text Message: 11:01 am	Yes	No	Admitted	06/04/15	
P	268	Text Message: 10:44 am	Yes	No	Admitted	06/04/15	
P	269	Text Message: 10:38 am	Yes	No	Admitted	06/04/15	
P	270	Tacoma Police Department Supplemental Report Incident No. 140541021.25					
P	271	Tacoma Police Department Supplemental Report Incident No. 140541021.32					
P	272	Large, white diagram drawn by Dmitriy Rusev on June 4, 2015, during his direct examination	Yes	No	Illustrative Only	06/08/15	
P	273	MC #6: Clothing - Shirt	Yes	No	Admitted/ Published	06/09/15	
P	274	MC#7: Clothing - Pants	Yes	No	Admitted/ Published	06/09/15	

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P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	275	Washington State Patrol Crime Laboratory Report Johan E. Schoeman, Forensic Scientist					
P	276	Tacoma Police Department Supplemental Report Incident No. 140541021.22					
P	277	Tacoma Police Department Supplemental Report Incident No. 140541021.20					
P	278	Cellular Phone Records – Text Messages					
P	279	Cell Phone Inbox/Sent/Incoming	Yes	No	Admitted/ Published	06/08/15	
P	280	Cell Phone Outgoing	Yes	No	Admitted/ Published	06/08/15	
P	281	Tacoma Police Department Supplemental Report Incident No. 140541021.54					
P	282	Log of Calls/Texts	Yes	No	Admitted/ Published	06/09/15	
P	283	Transcript of Interview of Veniamin Rusev					
P	284	Tacoma Police Department Supplemental Report Incident No. 140541021.26					
P	285	Tacoma Police Department Supplemental Report Incident No. 140541021.24					
P	286	Advisement of Rights					
P	287	Tacoma Police Department Supplemental Report Incident No. 140541021.21					
P	288	Tacoma Police Department Supplemental Report Incident No. 140541021.27					
P	289	Tacoma Police Department Supplemental Report Incident No. 140541021.21					
P	290	Tacoma Police Department Supplemental Report Incident No. 140541021.34					
P	291	Tacoma Police Department Supplemental Report Incident No. 140541021.35					

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P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	292	Tacoma Police Department Supplemental Report Incident No. 140541021.37					
P	293	Tacoma Police Department Supplemental Report Incident No. 140541021.38					
P	294	Tacoma Police Department Supplemental Report Incident No. 140541021.39					
P	295	Tacoma Police Department Supplemental Report Incident No. 140541021.42					
P	296	Tacoma Police Department Supplemental Report Incident No. 140541021.43					
P	297	Tacoma Police Department Supplemental Report Incident No. 140541021.44					
P	298	Tacoma Police Department Supplemental Report Incident No. 140541021.49					
P	299	Tacoma Police Department Supplemental Report Incident No. 140541021.47					
P	300	Tacoma Police Department Supplemental Report Incident No. 140541021.46					
P	301	Pierce County Superior Court Search Warrant No. 14 1 50398 1					
P	302	Consent to Search Without Warrant					
P	303	Tacoma Police Department Supplemental Report Incident No. 140541021.36					
P	304	CD: Redacted version of Veniamen Rusev's audio statement	Yes	No	Admitted Published	06/09/15 06/10/15	
P	305	Instruction read to the jury on June 10, 2015, at 3:05 PM	Yes	No	Admitted	06/10/15	
P	306	Handwritten instruction that was actually read to the jury on June 10, 2015.					
P	307	Names and Relationships re: Witnesses	Yes	No	Admitted	06/15/15	
P	308	Stipulation as to Vossler Blesch's testimony	Yes	No	Admitted	06/15/15	

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 21 day of February, 2019



Kevin Stock, Pierce County Clerk

By /S/Rebecca Ahquin, Deputy.

Dated: February 21, 2019 01:11 PM



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

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: D125FEEC-BC3A-445E-A288-58AE9CCC7F88.

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

PIERCE COUNTY PROSECUTING ATTORNEY

February 27, 2019 - 2:32 PM

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Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52389-2
Appellate Court Case Title: Personal Restraint Petition of Veniamin G Rusev
Superior Court Case Number: 14-1-00779-7

The following documents have been uploaded:

- 523892_Personal_Restraint_Petition_20190227143236D2216599_7877.pdf
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Personal Restraint Petition - Response to PRP/PSP
The Original File Name was Rusev PRP Response.pdf

A copy of the uploaded files will be sent to:

- david@meryhewlaw.com

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