

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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

MARTAVIS SIMPSON,

Petitioner.

NO. 53897-1

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. STATUS OF PETITIONER:

Petitioner/Defendant, Martavis Simpson, is restrained pursuant to a Judgment and Sentence entered in Pierce County Cause No. 17-1-04830-7. App. at 1-13.

B. INTRODUCTION:

Identified by his victims and found in possession of the proceeds of the robbery, two loaded firearms, and text messages chronicling his crimes, the Defendant Simpson further incriminated himself to police. With the assistance of his attorney, the Defendant negotiated a sentence of approximately 25 years, thereby avoiding a likely life sentence. The court imposed the agreed upon sentence.

A year later, the Defendant argues that he did not understand the charges or the sentence recommendation. The claim does not meet any provision in CrR 7.8. The factual bases for this claim are contradicted in the record. The Defendant was also correctly advised that his use of a getaway car would result in a license revocation under RCW 46.20.285(4) and

that the jurisdictional element for a felony charged in a court of general jurisdiction is Washington state, not Pierce County.

After stipulating to his criminal history and offender score, the Defendant challenges his sentence. The claim fails to acknowledge, cite, or analyze the relevant statutes, e.g. RCW 9.94A.525(2)(b) and (8) and RCW 9.94A.533(3).

Finally, he claims that his attorney failed to investigate his case or to assist him in deciding whether to take the plea. The Defendant fails to recognize that he bears the burden of proof in a collateral attack. He provides no evidence in support of his bald assertions and conclusory allegations.

The petition must be dismissed as frivolous.

C. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Where a post-judgment challenge to the voluntariness of the plea is governed by CrR 7.8 and there is no challenge to the court's jurisdiction, is the judgment "void" so as to permit review under CrR 7.8(b)(4)?
2. Did the Defendant understand the amended charges and sentencing recommendation where he was repeatedly advised on the record and acknowledged his understanding in writing and orally?
3. Is the Defendant's challenge to the offender score and sentence without merit?
4. Was the Defendant correctly advised that his guilty plea would result in the revocation of his driver's license where he used a getaway vehicle in his crimes?
5. Was the Defendant correctly advised about the jurisdictional element in superior court?
6. Has the Defendant supported his claim of ineffective assistance counsel with more than bald assertions and conclusory allegations?

D. STATEMENT OF THE CASE:

On December 19, 2017, the Defendant Martavis Simpson and his co-defendant Cherise Mitchell robbed an AT&T store at gunpoint, locking three employees in the back inventory room and stealing 64 items (iPhones, iWatches, and Samsung 8s) valued at \$600 each. App. at 14. When Simpson and Mitchell were arrested, they were in possession of approximately \$19,000, methamphetamine, a stolen bank card, and two loaded handguns -- each with one in the chamber. CP 15. Messages on their cell phones indicated premeditation and the sale of the cell phones for \$19,000. *Id.* The Defendant made incriminating statements. *Id.*

The Defendant was charged with three counts of first-degree kidnapping, three counts of first-degree robbery, three counts of second-degree assault, first-degree burglary, and unlawful imprisonment. App. at 16-21. Ten of the eleven counts included firearm enhancements. *Id.*

Kidnapping in the first degree is a “serious violent offense.” RCW 9.94A.030(47)(a)(vi). Generally, sentences imposed on the same date run concurrently. RCW 9.94A.589(1)(a). However, serious violent offenses run consecutively to each other. RCW 9.94A.589(1)(b).

The term for a firearm enhancement depends on whether it enhances a class A, B, or C felony. RCW 9.94A.533(3)(a)-(c) (five years, three years, and 18 months). Those terms are doubled (ten years, 72 months, 36 months) if the offender was convicted of a firearm enhancement in the past. RCW 9.94A.533(3)(d). “Notwithstanding any other provision of law, all firearm enhancements [] are mandatory, shall be served in total¹ confinement, and shall run consecutively² to all other sentencing provisions including other firearm enhancements.” RCW 9.94A.533(3)(e).

¹ Because offenders cannot earn early release or “good time” on firearm enhancements, these sentences are sometimes referred to as “flat time.”

² There is an exception for juvenile offenders, which does not apply here. *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017); App. at 16 (Defendant was not a juvenile at the time of the offenses).

The Defendant Simpson had a prior conviction with a firearm enhancement, triggering the doubling statute. App. at 28 (referencing 2002 offense); CP 63 (2002 Assault 2 (FASE)³). He was charged with enhancements on seven class A offenses and three class B offenses. App. at 16-21; RCW 9A36.021(2)(a); RCW 9A.40.020(2); RCW 9A.52.050(2); RCW 9A.56.200(2).

Based on this information, the prosecutor calculated that the Defendant was facing an effective life sentence. CP 65 (88 years on the enhancements alone); App. At 28.

The Defendant pled guilty to an amended information. CP 27-37; App. at 22-27. This information added a robbery count against a fourth victim, Ian Reuther,⁴ committed a week earlier and a count of unlawful possession of a firearm in the first degree. App. at 23-24. Significantly, the amendment resulted in the dismissal of all the kidnapping counts (the “serious violent” offenses), one assault count, and most of the enhancements. *Id.* Firearm enhancements were only attached to two class B felonies and one class C felony. *Id.* The Defendant stipulated to an offender score of 9+. CP 63. The plea deal resulted in an agreed sentence of 25 years. App. at 28.

The most serious offenses were the robbery counts, resulting in ranges of 129-171 months. CP 28. The prosecutor recommended the low end on these counts. CP 30. The firearm enhancements added an additional 15 years of flat time. CP 30. The court sentenced the Defendant consistent with the parties’ agreement. App. at 6-7.

In his plea agreement, the Defendant signed and stipulated:

- 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.

CP 63-64 (emphasis added).

³ “FASE” indicates Fire Arm Sentencing Enhancement.

Almost a year after the sentence, the Defendant filed a motion to withdraw the guilty plea. CP 1-25. In the motion, the Defendant challenges his offender score and claims that prior offenses “washed.” CP 7, 17-21.

The trial court transferred the motion as a personal restraint petition together with the prosecutor’s response. CP 65-81.

E. ARGUMENT:

1. Standards of review in personal restraint petition.

The courts’ review of personal restraint petitions is constrained, and relief gained through collateral relief is extraordinary. *In re Fero*, 190 Wn. 2d 1, 14, 409 P.3d 214, 222 (2018). In a personal restraint petition, the burden of proof shifts to the petitioner. *In re Cook*, 114 Wn.2d 802, 814, 792 P.2d 506 (1990); *Hews v. Evans*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983). And there is a heightened showing of prejudice. *Fero*, 190 Wn.2d at 15.

Only certain claims are permitted. RCW 7.36.130. If the challenge is in the context of constitutional error, petitioners have a threshold burden of demonstrating actual and substantial prejudice or the petition will be dismissed. *Cook*, 114 Wn.2d at 810. The mere possibility of prejudice is insufficient. *In re Mercer*, 108 Wn.2d 714, 718, 741 P.2d 559 (1987). *See also In re Powell*, 117 Wn.2d 175, 184, 814 P.2d 635 (1991) (actual prejudice must be established by a preponderance of the evidence). Although a constitutional error is never considered harmless on direct appeal, such an alleged error is *not* presumed prejudicial for purposes of a personal restraint petition. *In re St. Pierre*, 118 Wn.2d 321, 328, 823 P.2d 492 (1992). If the petitioner fails to make a *prima facie* showing of prejudice, the petition will be dismissed. *In re Grigsby*, 121 Wn.2d 419, 423, 853 P.2d 901 (1993).

⁴ Count I names Marifel Osera as the victim; Count II names Brenda Short; Count III names Joshua Makahanaloo; and Count IV names Ian Reuther. App. at 22-24.

For non-constitutional claims, the preliminary showing is higher: the claimed error must constitute a fundamental defect which inherently results in a complete miscarriage of justice. *Cook*, 114 Wn.2d at 811.

Bald assertions and conclusory allegations will not support a personal restraint petition. *In re Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086, cert. denied 506 U.S. 958, 113 S. Ct. 421, 121 L. Ed. 2d 344 (1992). If the petitioner's allegations are based on matters outside the existing record, the petitioner must demonstrate competent, admissible evidence to establish the facts that entitle him to relief. *Id.*

2. The Court may not grant relief under the theory that the judgment is "void" under CrR 7.8(b)(4).

Under CrR 4.2(f), the court will permit a defendant to withdraw a plea "whenever it appears the withdrawal is necessary to correct a manifest injustice." This is a demanding standard requiring proof that is "obvious, directly observable, overt, not obscure." *State v. Bao Sheng Zhao*, 157 Wn.2d 188,197, 137 P.3d 835 (2006); *State v. Taylor*, 83 Wn.2d 594, 596-97, 521 P.2d 699 (1974) (the presence of greater safeguards in CrR 4.2 at the time of a plea of guilty mean that courts should exercise greater caution in setting aside a guilty plea once the safeguards have been employed) (the "manifest injustice" requirement has been recognized as a "demanding standard").

However, when a defendant challenges the voluntariness of his plea *post-sentencing*, his claim is governed by CrR 7.8. CrR 4.2(f); *State v. Lamb*, 175 Wn.2d 121, 128-29, 285 P.3d 27, 31 (2012) (finding "the manifest injustice standard of CrR 4.2(f) is insufficient when considering a postjudgment motion to withdraw a guilty plea" and the court abuses its discretion in failing to address CrR 7.8).

The Defendant argues that a judgment is “void” if the guilty plea was obtained “in violation of due process.” CP 4 (citing *State v. Olivera-Avila*, 89 Wn. App. 313, 319, 949 P.2d 824 (1997)). The authority cited does not apply to CrR 7.8 motions.

Olivera-Avila relied upon three cases: *State v. Ponce*, 93 Wn.2d 533, 611 P.2d 407 (1980), *State v. Holsworth*, 93 Wn.2d 148, 154, 607 P.2d 845 (1980), and *Upward v. State*, 38 Wn. App. 747, 689 P.2d 415 (1984). *Olivera-Avila*, 89 Wn. App. at 319. In each of those cases, the defendants challenged the use of an underlying conviction in a habitual traffic offender action. The court noted that “an attack in habitual criminal proceedings of involuntary guilty pleas is not collateral.” *Olivera-Avila*, 89 Wn. App. at 319 (citing *Holsworth*, 93 Wn.2d at 154).

... the attack in an habitual criminal proceeding on the use of pre-Boykin pleas is neither collateral nor retroactive. The challenge instead is to the present use of an invalid plea in a present criminal sentencing process.

Holsworth, 93 Wn.2d at 154. In other words, CrR 7.8 was not relevant in those cases, because the defendants were not making collateral challenges.

But the Defendant Simpson *is* making a collateral attack, and CrR 7.8 *does* apply. *Lamb*, 175 Wn.2d at 128-29. The *Olivera-Avila* opinion is a deviation from the general rule for very limited circumstances. Generally, an order is only void where the court lacks jurisdiction. *State v. Zavala-Reynoso*, 127 Wn. App. 119, 122, 110 P.3d 827 (2005).

... there is a vast difference between a judgment which is void and one which is merely erroneous. In 31 Am.Jur., Judgments, s 401, p. 66, it is said: ‘a void judgment should be clearly distinguished from one which is merely erroneous or voidable. There are many rights belonging to litigants-rights which a court may not properly deny, and yet it denied, they do not render the judgment void. Indeed, it is a general principle that where a court has jurisdiction over the person and the subject matter, no error in the exercise of such jurisdiction can make the judgment void, and that a judgment rendered by a court of competent jurisdiction is not void merely because there are irregularities or errors of law in connection therewith. This is true even if there is a fundamental error of law appearing upon the face of the record. Such a judgment is, under proper circumstances, voidable, but until avoided is regarded as valid.’

‘Obviously the power to decide includes the power to decide wrong, and an erroneous decision is as binding as one that is correct until set aside or corrected in a manner provided by law.’ Freeman on Judgments, 5th Ed., s 357, p. 744.

Dike v. Dike, 75 Wn.2d 1, 8, 448 P.2d 490 (1968) (emphasis added).

The Defendant does not claim that the superior court lacked jurisdiction over criminal offenses committed in Washington.

The Defendant has not relied upon the “catch-all” provision of CrR 7.8(b)(5) regarding “any reason justifying relief.” Nor does it apply here, where the circumstances used to justify relief existed at the time the judgment was entered. *State v. Smith*, 159 Wn. App. 694, 700, 247 P.3d 775 (2011).

The Defendant’s motion must be denied under CrR 7.8(b).

3. The plea was voluntary.

In the summary of the argument, mistitled “Facts,”⁵ the Defendant claims that the plea agreement was “rife with errors and inconsistencies.” CP 2. He argues that these “errors” prevented him from making a voluntary plea or demonstrate ineffective assistance of counsel. In fact, there are no errors.

a. The plea form did not misstate the crimes.

The Defendant claims the crimes charged were unclear. CP 6. He argues that the plea statement indicates that he was charged with “‘Assault x2’ without reference to degree of assault.” CP 6. This is not what it says on the plea form. The plea form indicates that the Defendant has been charged with the following crimes according to the 6/1/18 Amended Information:

- Robbery 1st (x4);
- Burglary 1;
- Assault 2 w/ FASE (x2);
- UPOF 1;
- Unlawful Imprisonment w/ FASE.

⁵ The Statement of the Case must include a reference to the record “for each factual statement” and be “without argument.” RAP 16.10(d); RAP 10.3(a)(5).

Assault 2 w/ FASE (x2)

CP 27. "Assault 2 w/ FASE (x2)" means two counts of assault in the second degree with firearm enhancements.

Additionally, the Defendant received and reviewed a copy of the Amended Information prior to pleading guilty. CP 27 (Defendant initialed paragraph 4(b) twice as to charges and elements). Defense counsel acknowledged receipt of the amended information. CP 44. He informed the court that he had "explained to Mr. Simpson what he's charged with in the Amended Information." CP 44. And both the prosecutor and judge repeated the information at the change of plea hearing. CP 43-44, 46-47.

The prosecutor began the proceedings by stating on the record that the charges included "two counts of assault in the second degree, firearm enhanced." CP 43-44. And the court read the counts into the record.

THE COURT: ... Count 6, assault in the second degree; Count 7, assault in the second degree;

....

Counts 6 and 7 each carry a maximum of 10 years in prison and a \$20,000 fine. Your standard sentence range is 63 to 84 months, plus 72 months enhancements – is that a firearm enhancement?

MS. KOOIMAN: On each one, yes, Your Honor, because he has the doubler. So each firearm on the Class Bs, instead of being three years, it's six years.

CP 46-47.

The Defendant's claim is not borne out by any part of the record.

b. The record demonstrates that the Defendant was not confused about prosecutor's sentence recommendation.

The Defendant's motion argues that "Mr. Simpson was unable to understand the offer or the resulting plea agreement." CP 4. When a defendant completes a plea statement and admits to reading, understanding, and signing it, this creates a strong presumption that the plea

is voluntary. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810, 811 (1998). A petitioner, who bears the burden of proof in a collateral attack, must present some evidence beyond a “bare allegation in [an] affidavit.” *State v. Osborne*, 102 Wn.2d 87, 97, 684 P.2d 683 (1984). Here the Defendant has not even provided a sworn affidavit with the motion. The record demonstrates that the Defendant was not confused.

At the change of plea, defense counsel informed the court that he had “gone over line-by-line, section-by-section, and explained to Mr. Simpson ... what the sentencing ranges are with regard to the respective counts, how they’re derived.” CP 44. The court recited the details for the Defendant as well. CP 47-48. And the Defendant informed the court he understood the sentence that goes with each crime. CP 48.

The court went over the sentencing recommendation. CP 49-50. The prosecutor also provided a summary:

It’s the 129 months from Count 1 through 4 for the rob 1s, and that’s the standard range time that he will have. And it will be followed with the 15 years of flat time from the three enhancements. So it’s a total of 25 years ... Or just above 25.

CP 49.

THE COURT: Any questions about any part of that recommendation?
THE DEFENDANT: No, ma’am.

CP 50.

The Defendant complains that there was a scrivener’s error in the plea form. CP 6. The four robberies are described in the recommendation paragraph as counts I-VI instead of I-IV. CP 30. The true meaning is apparent in context where the counts are listed as I-VI, V, VI-VII, VII, and IX. The letters I and V were merely inverted.

The scrivener’s error was not prejudicial. At the plea hearing, the court and prosecutor recited the recommendation. CP 49. Rather than 129 months for the first six counts, the prosecutor recommended less for counts 5 and 6. *Id.* And all counts ran concurrent to each

other. “Because, under the SRA, sentences run concurrently, a defendant is actually punished only for the offense that yields the highest offender score.” *State v. Lessley*, 118 Wn.2d 773, 781, 827 P.2d 996, 1000 (1992).

The Defendant alleges it “is far too late” to clarify any scrivener’s error at the change of plea hearing. CP 7. He provides no argument for this assertion. The plea hearing is the precise, right time when the court determines the Defendant’s understanding and ascertains the voluntariness of the plea. CrR 4.2(d). The court inquired, and the Defendant had no questions about the recommendation. CP 50. If he even noticed it, the Defendant was not confused by the scrivener’s error.

c. There was no error in the offender score or sentence.

The Defendant claims his plea was not knowing and voluntary, because the sentence was wrongly calculated. The Defendant entered into the plea agreement with stipulated offender score to gain the benefit of the negotiated sentence. By challenging the offender score and criminal history, the Defendant has breached his plea agreement, putting himself at risk of a life sentence.

The Defendant believes that he has discovered sentencing error after a “mere 20 minutes on Lexis.” CP 21. However, he only cites to a single section in the Sentencing Reform Act (SRA), a section which was recodified by the Laws of 2001, ch. 10, § 6. CP 18. Sentences are determined by the law in effect at the time the offense was committed, in this case 2017. RCW 9.94A.345; CP 22-27.

The SRA is a complex framework, difficult to navigate. *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 510, 198 P.3d 1021, 1029 (2009) (“made more complex each time the SRA is amended”); *State v. Rodriguez*, 183 Wn. App. 947, 954, 335 P.3d 448, 452 (2014). Because the State bears the burden in defending sentences on direct appeal, often after defense attorneys have withdrawn, prosecutors must be proficient in the SRA’s complexities. In this

case, there were two senior prosecuting attorneys double checking the sentence. App. at 30-31 (defense counsel had been a senior prosecuting attorney). There is no error.

After stipulating to a 9+ score, the Defendant claims that this calculation was error. CP 7. He believes he should have been scored at a 4. *Id.* He believes his prior criminal history washes. *Id.* He thinks that by amending the information, the prosecutor “appears to have conceded that the crimes constituted the same conduct with respect to each victim.” CP 21. Citing an abrogated case, he has decided that the antimerger statute is empty rhetoric. *Id.* Despite having the burden of proof in a collateral attack, the Defendant provides little to no analysis of the facts in his case. The failure of an appellant to argue a claim effectively waives the claim. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549, 553 (1992).

The Defendant argues there are more than ten years between the time of his prior felonies and the AT&T robbery such that his prior criminal history “washes.” CP 7. First, this is false. He has three convictions in 2009, two of which are felonies, which is eight years before the 2017 robberies. CP 63.

Second, this is not the rule. A class B felony only washes “if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, *the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.*” RCW 9.94A.525(2)(b). With offenses in 2000, 2001, 2009, and 2017, the Defendant has not gone ten years without new convictions. Therefore, none of the prior class B felonies wash.

The class C felonies do wash. RCW 9.94A.525(2)(c).

Because the juvenile theft is nonviolent, it remains at half a point which is not scorable. RCW 9.94A.525(8).

In other words, the countable prior felonies are:

- 2002 Assault 2 with firearm enhancement
- 2002 Driveby Shooting

Where the present conviction is a “violent” offense, other violent offenses will count as two points. RCW 9.94A.525(8). Robbery in the first degree is a class A felony, and therefore a “violent” offense. RCW 9.94A.030(56)(a)(i); RCW 9A.56.200(2). Both 2002 offenses are “violent” offenses. RCW 9.94A.030(56)(a) (viii) and (xii). Therefore, from the prior offenses alone, we already have four points.

The Defendant claims that by amending the information, the prosecutor intended that crimes against different victims should be considered the same crime. CP 21. This interpretation is not defensible. The amended information includes four robbery counts regarding four different, named victims occurring on two different days. Where the victims or the dates are different, the crimes do not encompass the same criminal conduct, and the offenses are scored separately. RCW 9.94A.589(1)(a). Each robbery count (I-IV) must be scored separately.

In scoring count I, there are at least 5 other violent scorable offenses: the two 2002 crimes and the three other robberies (II-IV). Because there is a double multiplier as to each, we have reached ten points already or 9+.

The court would also have discretion to score the burglary pursuant to RCW 9A.52.050 (antimerger statute). *State v. Lessley*, 118 Wn.2d 773, 781-82, 827 P.2d 996 (1992) (abrogating *State v. Dunbar*, 59 Wn. App. 447, 798 P.2d 306 (1990)). This would also be scored as two points, bringing the subtotal to 12 points. RCW 9.94A.030(56)(a)(i); RCW 9A.52.020(2).

Firearm enhancements are not separate “crimes” and therefore do not fall under an analysis of same criminal conduct. *State v. McGrew*, 156 Wn.App. 546, 552, 234 P.3d 268

(2010), *review denied* 170 Wn.2d 1003, 243 P.3d 226 (2010); *State v. Callihan*, 120 Wn. App. 620, 85 P.3d 979 (2004). “Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter.” RCW 9.94A.533(3)(e).

There is no error in the offender score or sentence.

d. The Defendant was correctly advised about the license suspension.

The Defendant initialed that he understood he would lose his driver’s license as a result of his guilty plea. CP 33 (citing RCW 46.20.285(4)).

The department shall revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of the driver’s conviction of any of the following offenses, when the conviction has become final:

...

(4) Any felony in the commission of which a motor vehicle is used;

RCW 46.20.285(4). His counsel informed the court that a car was used as a get-away vehicle. CP 53. A year later, the Defendant argues that this was misadvice and rendered his plea involuntary. CP 3, 21. Because he has been in prison longer than the one-year revocation, he cannot demonstrate prejudice. In any case, he was correctly advised. Transporting stolen property in a vehicle will support the revocation of a driver’s license. *State v. Dykstra*, 127 Wn. App. 1, 110 P.3d 758 (2005) (vehicle was used to transport stolen engine parts after disassembly).

In order for RCW 46.20.285(4) to apply, the relevant test is whether the felony had some reasonable relationship to the operation of a motor vehicle, or whether use of a motor vehicle *contributed* in some reasonable degree to the commission of the felony. *State v. Dupuis*, 168 Wn. App. 672, 675, 278 P.3d 683, 684 (2012). *See also State v. Batten*, 95 Wn.

App. 127. 129–30, 974 P.2d 879 (1999), *affirmed*, 140 Wn.2d 362, 997 P.2d 350 (2000) (“employed in accomplishing” the crime).

The Defendant relies upon distinguishable cases, where vehicles were not used to transport stolen property and flight was not used to cloak identity. CP 23. In *State v. Alcantar-Maldonado*, 184 Wn. App. 215, 219, 340 P.3d 859, 866 (2014), the defendant separated from his wife and moved out of the marital home pending the formalities of a divorce. *Alcantar-Maldonado*, 184 Wn. App. at 219. He continued to pay rent and utilities for the house where his daughter and estranged wife resided. *Id.* Driving by the house, he noticed an unfamiliar car parked outside. *Id.* “Out of his concern” for his daughter, the defendant forced his way into the home and assaulted and removed his wife’s new boyfriend. *Id.* at 219-21. The defendant then ordered witnesses not to call police before returning home. *Id.* at 221.

The court found “[t]he commission of the felony did not entail operation of a motor vehicle.” *Id.* at 229. The defendant did not drive to the house expecting to engage in an assault. And he did not drive away from the house to transport stolen property or to prevent identification or capture. The defendant used threats to prevent his identification and arrest, not flight. His wife provided police with the defendant’s address where he was promptly arrested. *Id.* at 221-22.

The Defendant Simpson throws up various strawman arguments, noting “[h]is car was not the subject of the crime charged, and the crime did not take place inside or from his car.” CP 23. However, his attorney never suggested that these were reasons that the statute applied. The Defendant does not address the proffered reason.

As his attorney succinctly stated, the Defendant employed a getaway car. Simpson and Mitchell used a rental car to flee the crime scene with a duffle bag of 64 devices and two firearms. The car was used to get far from the scene quickly and to transport stolen property and weapons without being seen. If the defendants had walked or run away, carrying the

duffle and in a state of excitement, any number of witnesses may have identified them. They may have been captured before they sold the devices. To prevent this, they employed a getaway car. The car contributed to the crime by cloaking their identity, facilitating their escape, and transporting stolen property.

His attorney properly advised him that, as a result of his guilty plea, his license would be revoked for one year.

- e. The guilty plea properly states that the jurisdictional element for charges in superior court is the state of Washington.

The Defendant claims that the county where the crime occurred is an element of the felonies. This is not the law.

The Defendant provides no legal authority in support of his claim. If a party fails to support argument with citation to legal authority, the court is entitled to presume that none exists. *Oregon Mut. Ins. Co. v. Barton*, 109 Wn. App. 405, 418, 36 P.3d 1065, 1071 (2001).

The defendant has a constitutional right to be tried in the county where the crime was committed. WASH. CONST. art. 1, sec. 22. This is known as venue. Venue, however, is not an element of the offense. *State v. Dent*, 123 Wn.2d 467, 479, 869 P.2d 392 (1994).

When a crime is charged in the superior court, the state must prove the jurisdictional element, i.e. that the crime occurred in the state of Washington. RCW 9A.04.030; *State v. L.J.M.*, 129 Wn.2d 386, 392, 918 P.2d 898, 902 (1996); *State v. Daniels*, 104 Wn. App. 271, 275, 16 P.3d 650, 651 (2001).

The Defendant confuses the superior court's jurisdiction with a district court's jurisdiction. When a crime is charged in a court of limited jurisdiction, then the prosecutor must prove that the crime occurred in the area of that court's jurisdiction. RCW 3.66.060. The jurisdictional element for felonies, which are charged in the superior court, is the state of Washington. There is no error.

4. The Defendant provides no evidence to support conclusory, unsworn allegations regarding his attorney's assistance.

A petitioner asserting ineffective assistance of appellate counsel must establish both deficient performance and actual prejudice. *In re Morris*, 176 Wn.2d 157, 166, 288 P.3d 1140, 1144 (2012). Actual prejudice is “a reasonable probability that, except for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Smith v. Murray*, 477 U.S. 527, 535–36, 106 S. Ct. 2661, 91 L. Ed. 2d 434 (1986) (applying the *Strickland* test to ineffective assistance of appellate counsel). In the context of a plea offer, counsel must discuss plea negotiations with the client and provide sufficient information for the client to make an informed decision. *In re McCready*, 100 Wn. App. 259, 263, 996 P.2d 658, 659 (2000).

There is a strong presumption that counsel’s representation was effective. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251, 1257 (1995).

The Defendant claims that his attorney misadvised him about the consequences of his plea. CP 10. This has been addressed *supra*. There was no misadvice. The Defendant understood that he was pleading guilty to crimes which took place in Washington, including two counts of assault in the second degree with firearm enhancements. He understood the recommended sentence and the effect a guilty plea would have on his driver’s license.

The Defendant argues that “it is unclear” how much time counsel spent reviewing the plea with him, that “it is unlikely” the Defendant was educated enough to follow, and that “it is unknown what other measures counsel took or failed to take.” CP 10. These claims fail to recognize that ***the Defendant has the burden of proof***. Mere queries as to privileged areas do not overcome the presumption of effectiveness and do not establish by a preponderance that his attorney “failed to actually and substantially assist him” in deciding to plead guilty.

The Defendant's motion claims his attorney did not hire a private investigator, conduct victim/witness interviews, view the evidence, "or make any other effort to investigate the allegations in the Information." CP 15. The motion is unsupported by any sworn affidavit. In this case, the Defendant would need to provide an affidavit from Michael Maltby as he is the only one who would know what investigation he made. *Cf. State v. A.N.J.*, 168 Wn.2d 91, 100-02, 225 P.3d 956 (2010) (in a timely motion to withdraw guilty plea, defense counsel testified as to the extent of his efforts prior to recommending a change of plea). The motion fails to demonstrate competent, admissible evidence to establish the allegations. Therefore, these are bald assertions and conclusory allegations which cannot support a personal restraint petition. *Rice*, 118 Wn.2d at 886.

F. CONCLUSION:

Based on the foregoing, the State respectfully requests this Court dismiss the petition as frivolous.

DATED: December 3, 2019.

MARY E. ROBNETT
Pierce County
Prosecuting Attorney


Teresa Chen
Deputy Prosecuting Attorney
WSB # 31762

Certificate of Service:

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

12/3/19
Date Signature

APPENDIX

APPENDIX: TABLE OF CONTENTS

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COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
III	ROBBERY IN THE FIRST DEGREE (AAA30)	9A.56.190 & 9A.56.200(1)(a)(i)(ii)(b)		12/19/17	1734700762 PCSD & 1735300651 PUYALLUP PD
IV	ROBBERY IN THE FIRST DEGREE (AAA30)	9A.56.190 & 9A.56.200(1)(a)(i)(ii)(b)		12/13/17	1734700762 PCSD & 1735300651 PUYALLUP PD
V	BURGLARY IN THE FIRST DEGREE (G2A)	9A.52.070(1)(a)(b)		12/19/17	1734700762 PCSD & 1735300651 PUYALLUP PD
VI	ASSAULT IN THE SECOND DEGREE (E53)	9A.36.021; 9.41.010; 9.94A.530; 9.94A.533	F	12/19/17	1734700762 PCSD & 1735300651 PUYALLUP PD
VII	ASSAULT IN THE SECOND DEGREE (E53)	9A.36.021; 9.41.010; 9.94A.530; 9.94A.533	F	12/19/17	1734700762 PCSD & 1735300651 PUYALLUP PD
VIII	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a)		12/19/17	1734700762 PCSD & 1735300651 PUYALLUP PD
IX	UNLAWFUL IMPRISONMENT (DDD1)	9A.40.040; 9.41.010; 9.94A.530; 9.94A.533	F	12/19/17	1734700762 PCSD & 1735300651 PUYALLUP PD

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

as charged in the AMENDED Information

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

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	THEFT 1	01/22/01	PIERCE, WA	07/09/00	J	NV
2	ATT ELUDE	01/22/01	PIERCE, WA	07/09/00	J	NV
3	ATT VEH PROWL 2	11/14/00	PIERCE, WA	07/09/00	J	MISD
4	UPCS	01/05/01	PIERCE, WA	10/01/00	J	MISD
5	ASSAULT 2 (FASE)	02/5/02	PIERCE, WA	06/26/01	A	V

6	DRIVE BY SHOOTING	02/5/02	PIERCE, WA	06/26/01	A	V
7	UPPA	09/29/09	PIERCE, WA	06/15/09	A	NV
8	NVOL		PIERCE, WA	12/30/00	A	MISD
9	ATT PSP 2	02/05/02	PIERCE, WA	10/12/01	A	MISD
10	OBSTRUCTION	09/29/09	PIERCE, WA	06/15/09	A	MISD

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

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	IX	129 - 171 MOS		129 - 171 MOS	LIFE/ \$50,000
II	9+	IX	129 - 171 MOS		129 - 171 MOS	LIFE/ \$50,000
III	9+	IX	129 - 171 MOS		129 - 171 MOS	LIFE/ \$50,000
IV	9+	IX	129 - 171 MOS		129 - 171 MOS	LIFE/ \$50,000
V	9+	VII	87 - 116 MOS		87 - 116 MOS	LIFE/ \$50,000
VI	9+	IV	63 - 84 MOS	72 MOS	135 - 156 MOS	10 YRS/ \$20,000
VII	9+	IV	63 - 84 MOS	72 MOS	135 - 156 MOS	10 YRS/ \$20,000
VIII	9+	VII	87 - 116 MOS		87 - 116 MOS	10 YRS/ \$20,000
IX	9+	III	51 - 60 MOS	36 MOS	87 - 96 MOS	5 YRS/ \$10,000

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):

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

2.6 **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9A.01.010.

The court considered the following factors:

the defendant's criminal history.

[] whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

evidence of the defendant's propensity for violence that would likely endanger persons.

[] other: _____

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

III JUDGMENT

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

3.2 [] 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 \$ loc 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 *previously collected*

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

FRC \$ 200.00 Criminal Filing Fee

FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 500 TOTAL

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.

Empty table with 7 rows and 2 columns.

4.4a 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 unless forfeited by agreement in which case no claim may be made. 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):

Table with 4 columns: months on Count, Roman numeral, months on Count, Roman numeral. Includes handwritten entries like 129, 116, 24, 48, 72, 36 and Roman numerals I through IX.

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:

Table with 4 columns: months on Count No, Roman numeral, months on Count No, Roman numeral. Includes handwritten entries like 72, 36 and Roman numerals IV, VII, IX.

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

Actual number of months of total confinement ordered is: 129 months + 180 months = 309

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

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

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

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

Confinement shall commence immediately unless otherwise set forth here: _____

(c) **Credit for Time Served.** The defendant shall receive credit for eligible time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served Subject to DOC Smerin time

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-V _____ 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)

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

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

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

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

consume no alcohol.

have no contact with: See NCOs, No Contact with Victim business

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

for NCO

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

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 17-1-04830-7

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

SUSAN ZIELIE

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: _____

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 NCO*

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

(IV) The offender shall not consume alcohol; _____

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

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

(VII) Other: _____

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IDENTIFICATION OF DEFENDANT

SID No. 20087718
(If no SID take fingerprint card for State Patrol)

Date of Birth 07/29/1984

FBI No. 258857VB9

Local ID No. UNKNOWN

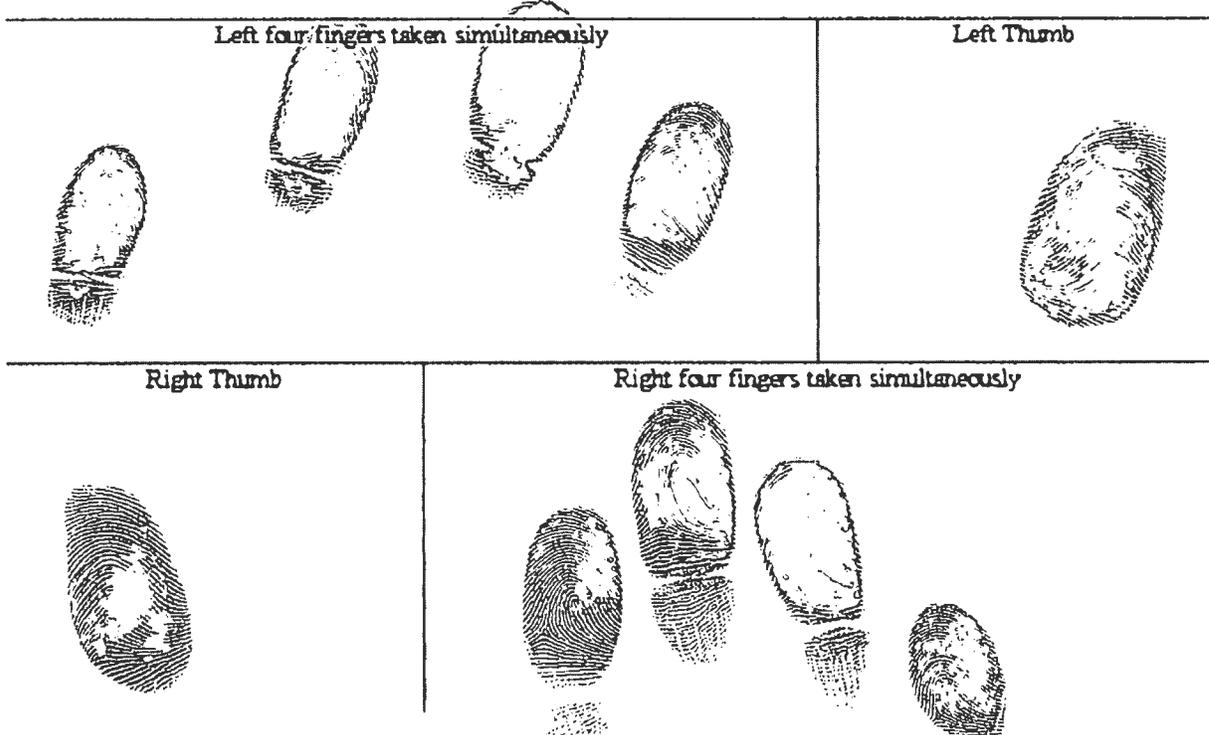
PCN No. 541965556

Other

Alias name, SSN, DOB: _____

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

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, _____

Dated: _____

DEFENDANT'S SIGNATURE:

[Handwritten Signature]

DEFENDANT'S ADDRESS:

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6/15/2018

December 21 2017 11:54 AM

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

KEVIN STOCK
COUNTY CLERK

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 17-1-04830-7

vs.

MARTAVIS TRAMAIN SIMPSON,

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE

Defendant.

TERRY LANE, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the PUYALLUP POLICE DEPARTMENT, incident number 1735300651;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 19th day of December, 2017, On 12/19/17, victims Marifel Osera, Brenda Short, and Joshua Makahanaloa were all working as employees of an AT&T Store at 4505 S. Meridian in Puyallup, WA. Shortly after 10:00am, a black male and a black female entered the store. They were later identified as the co-defendants, MARTAVIS SIMPSON and CHERISE MITCHELL, respectively. At the time the co-defendants entered, Ms. Short and Mr. Makahanaloa were on the sales floor, which is open to the public. At that same time, Ms. Osera was in the back of the store working on inventory. That back area is for employees only, and is closed to the public.

Once the co-defendants were in the store, Ms. Short greeted them, and they said they were "just looking." Ms. Short walked with them, deeper into the store, while Mr. Makahanaloa walked to the front of the store. SIMPSON followed Mr. Makahanaloa to the front of the store, then pulled a gun on him. At that point, MITCHELL pulled a gun on Ms. Short. Both co-defendants stated words to the effect of: "Don't do anything stupid. We don't want to hurt you." The co-defendants ordered Ms. Short and Mr. Makahanaloa to put their hands up and go into the back of the store. The co-defendants then followed the two employees while pointing the firearms at them.

Once in the back room, the co-defendants encountered Ms. Osera and ordered her to unlock the inventory room. She complied. The co-defendants ordered all three employees into the inventory room, at which point SIMPSON pulled out a gray duffle bag from a red pack he was carrying. He ordered the employees to fill the dufflebag with iPhones, iWatches and Samsung 8s. While the employees loaded the bag, the co-defendant pointed the firearms at them. SIMPSON ordered Ms. Osara to open the safe. She explained that it was time-delayed, to which SIMPSON replied with words to the effect of: "We don't have time for that. Once the bag was full, the co-defendants ordered the employees to stay in the inventory room and "not do anything stupid." MITCHELL ripped out the landline phone in the inventory room, and took the phone with her. The co-defendants shut the employees in the inventory room and fled the store. They got away with 64 devices, with an average value of \$600 each, according to the theft inventory.

After the employees were sure the co-defendants had left the store, they looked outside and saw the co-defendants leaving in a black Nissan Altima, Oregon license plate #270JGG. The police were called.

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -1

Police investigation revealed that the Altima had been rented from Enterprise Rental in Burien by MITCHELL. The car was to be returned at 10:00am. She had made contact with Enterprise at about 9:10am that same day, and told them she would not be able to return the car until between 12:00pm-4:00pm that day. Armed with that information, police put Enterprise under surveillance. The Altima, occupied by both co-defendants arrived at the Enterprise. They exited the Altima and started moving duffelbags and backpacks from the Altima to an Uber car that was waiting for them.

Both co-defendants were taken into custody. All three employees were shown photographic montages which included the co-defendants. Ms. Short and Ms. Osera positively identified MITCHELL as being the female suspect with about 95% certainty. Mr. Makahanaloa, however, was not sure, pointing to MITCHELL's photograph and saying it could have been her. Both Ms. Osera and Ms. Short positively identified SIMPSON as being the male suspect.

Police obtained a search warrant for items recovered from the co-defendants. On one of the co-defendant's phones, the police found photos of the AT&T store from the day before the robbery and earlier on the day of the robbery. On that phone, they also found text messages indicating advanced planning of the robbery, the fact that the robbery was successfully carried out, an inventory of the stolen phones and agreement to sell them for \$19,000, and a text saying "SWAT got us." SIMPSON was found in possession of \$9,461.67. MITCHELL was found in possession of \$9,400. The total of the cash they had was just shy of the \$19,000 that was the agreed upon price for the stolen merchandise. Also found on MITCHELL was an iPhone apparently matching the phone held by the female suspect during the robbery. That phone included a banner notification confirming recent Uber activity. She also had an Apple iWatch hidden in her bra, and a US Bank card in the name of "Gloria Wright." It should be noted that the Uber driver reported that "Gloria" was the name of the person requesting his services.

After advisement of rights, SIMPSON at first denied involvement. He then stated, however, that he had "really fucked up bad." When the officer asked him if the guns had been real. SIMPSON replied: "You already have the guns. You know the answer to that." At that time, the interrogating detective did not about any guns police had not found the guns. In fact, the police did find two guns during their search: a .40 caliber Springfield XD, loaded with 11 rounds in the magazine, and 1 round in the chamber; a 9mm Hi-Point, loaded with 7 rounds in the magazine, and 1 in the chamber.

MITCHELL declined to talk to police.

A review of the store surveillance video revealed that the co-defendants appeared to match the appearance of the suspects depicted in the video surveillance, both in clothing and appearance.

Methamphetamine was also discovered during the search. The co-defendants are hereby on notice of the State's intent to file additional charges related to controlled substance, identity theft and other charges.

Co-defendants are also hereby on notice of the State's intent to file an additional firearm enhancement on each felony that already has one, based on two guns being involved, depending upon results of legal research.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: December 21, 2017

PLACE: TACOMA, WA

/s/ TERRY LANE
TERRY LANE, WSB# 16708

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -2

December 21 2017 11:54 AM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 17-1-04830-7

vs.

MARTAVIS TRAMAIN SIMPSON,

INFORMATION

Defendant.

DOB: 7/29/1984
PCN#: 541965556

SEX : MALE
SID#: 20087718

RACE: BLACK
DOL#: WA SIMPSMT161M9

CO-DEF: CHERISE LAVON MITCHELL 17-1-04831-5

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MARTAVIS TRAMAIN SIMPSON of the crime of KIDNAPPING IN THE FIRST DEGREE, committed as follows:

That MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, did unlawfully and feloniously, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct Marifel Osera, contrary to RCW 9A.40.020(1)(b), and in the commission thereof the defendant, or an accomplice, was armed with 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 II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MARTAVIS TRAMAIN SIMPSON of the crime of KIDNAPPING 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

INFORMATION- 1

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 MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, did unlawfully and feloniously, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct Brenda Short, contrary to RCW 9A.40.020(1)(b), and in the commission thereof the defendant, or an accomplice, was armed with 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 MARTAVIS TRAMAIN SIMPSON of the crime of KIDNAPPING 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 MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, did unlawfully and feloniously, with intent to facilitate commission of a felony or flight thereafter, intentionally abduct Joshua Makahanaloo, contrary to RCW 9A.40.020(1)(b), and in the commission thereof the defendant, or an accomplice, was armed with 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 IV

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MARTAVIS TRAMAIN SIMPSON 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 MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, with the intent to commit theft did unlawfully and feloniously take personal property from the person or presence of another with an ownership, representative, or possessory interest in the property, against the person's will by use or threatened use of immediate force, violence or fear of injury to that person, or to the person or property of another, said force or fear being used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, was armed with a deadly weapon, or displayed what appeared

to be a firearm or other deadly weapon, or inflicted bodily injury upon Marifel Osera, or that such robbery was within and against a financial institution as defined in RCW 7.88.010 or 35.38.060., contrary to RCW 9A.56.190 and 9A.56.200(1)(a)(i)(ii)(iii)(b), and in the commission thereof the defendant, or an accomplice, was armed with 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 V

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MARTAVIS TRAMAIN SIMPSON 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 MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, with the intent to commit theft did unlawfully and feloniously take personal property from the person or presence of another with an ownership, representative, or possessory interest in the property, against the person's will by use or threatened use of immediate force, violence or fear of injury to that person, or to the person or property of another, said force or fear being used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, was armed with a deadly weapon, or displayed what appeared to be a firearm or other deadly weapon, or inflicted bodily injury upon Brenda Short, or that such robbery was within and against a financial institution as defined in RCW 7.88.010 or 35.38.060., contrary to RCW 9A.56.190 and 9A.56.200(1)(a)(i)(ii)(iii)(b), and in the commission thereof the defendant, or an accomplice, was armed with 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 VI

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MARTAVIS TRAMAIN SIMPSON 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 MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, with the intent to commit theft did unlawfully and feloniously take personal property

INFORMATION- 3

from the person or presence of another with an ownership, representative, or possessory interest in the property, against the person's will by use or threatened use of immediate force, violence or fear of injury to that person, or to the person or property of another, said force or fear being used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, was armed with a deadly weapon, or displayed what appeared to be a firearm or other deadly weapon, or inflicted bodily injury upon Joshua Makahanaloa, or that such robbery was within and against a financial institution as defined in RCW 7.88.010 or 35.38.060., contrary to RCW 9A.56.190 and 9A.56.200(1)(a)(i)(ii)(iii)(b), and in the commission thereof the defendant, or an accomplice, was armed with 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 VII

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

That MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, did unlawfully and feloniously, under circumstances not amounting to assault in the first degree, assault Marifel Osera with a deadly weapon, contrary to RCW 9A.36.021, and in the commission thereof the defendant, or an accomplice, was armed with 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 VIII

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

That MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, did unlawfully and feloniously, under circumstances not amounting to assault in the first degree, assault Brenda Short with a deadly weapon, contrary to RCW 9A.36.021, and in the commission thereof the defendant, or an accomplice, was armed with 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 IX

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

That MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, did unlawfully and feloniously, under circumstances not amounting to assault in the first degree, assault Joshua Makahanaloa with a deadly weapon, contrary to RCW 9A.36.021, and in the commission thereof the defendant, or an accomplice, was armed with 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 X

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MARTAVIS TRAMAIN SIMPSON of the crime of BURGLARY 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 MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, did unlawfully and feloniously, with intent to commit a crime against a person or property therein, enter or remain unlawfully in a building, located at 4505 S. Meridian in Puyallup, WA, and in entering or while in such building or in immediate flight therefrom, the defendant or another participant in the crime was armed with a deadly weapon and/or the defendant or another participant in the crime did intentionally assault Marifel Osera and/or Brenda Short and/or Joshua Makahanaloa, a person or persons therein, contrary to RCW 9A.52.020(1)(a)(b), and in the commission thereof the defendant, or an accomplice, was armed with 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 XI

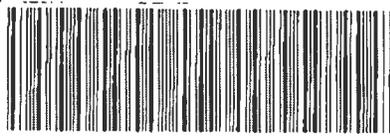
And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MARTAVIS TRAMAIN SIMPSON of the crime of INFORMATION- 5

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 17-1-04830-7

vs.

MARTAVIS TRAMAIN SIMPSON,

AMENDED INFORMATION

Defendant.

DOB: 7/29/1984
PCN#: 541965556

SEX : MALE
SID#: 20087718

RACE: BLACK
DOL#: WA SIMPSMT161M9

COUNT I

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

That MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, with the intent to commit theft did unlawfully and feloniously take personal property from the person or presence of another with an ownership, representative, or possessory interest in the property, against the person's will by use or threatened use of immediate force, violence or fear of injury to that person, or to the person or property of another, said force or fear being used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, was armed with a deadly weapon, or displayed what appeared to be a firearm or other deadly weapon, or inflicted bodily injury upon Marifel Osera, or that such robbery was within and against a financial institution as defined in RCW 7.88.010 or 35.38.060., contrary to RCW 9A.56.190 and 9A.56.200(1)(a)(i)(ii)(iii)(b), and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MARTAVIS TRAMAIN SIMPSON of the crime of ROBBERY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on

AMENDED INFORMATION- 1

ORIGINAL

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

1 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
2 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
3 proof of one charge from proof of the others, committed as follows:

4 That MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day
5 of December, 2017, with the intent to commit theft did unlawfully and feloniously take personal property
6 from the person or presence of another with an ownership, representative, or possessory interest in the
7 property, against the person's will by use or threatened use of immediate force, violence or fear of injury
8 to that person, or to the person or property of another, said force or fear being used to obtain or retain
9 possession of the property or to prevent or overcome resistance to the taking, and in the commission
10 thereof, or in immediate flight therefrom, was armed with a deadly weapon, or displayed what appeared
11 to be a firearm or other deadly weapon, or inflicted bodily injury upon Brenda Short, or that such robbery
12 was within and against a financial institution as defined in RCW 7.88.010 or 35.38.060., contrary to RCW
13 9A.56.190 and 9A.56.200(1)(a)(i)(ii)(iii)(b), and against the peace and dignity of the State of Washington.

14 COUNT III

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

21 That MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day
22 of December, 2017, with the intent to commit theft did unlawfully and feloniously take personal property
23 from the person or presence of another with an ownership, representative, or possessory interest in the
24 property, against the person's will by use or threatened use of immediate force, violence or fear of injury
to that person, or to the person or property of another, said force or fear being used to obtain or retain
possession of the property or to prevent or overcome resistance to the taking, and in the commission
thereof, or in immediate flight therefrom, was armed with a deadly weapon, or displayed what appeared
to be a firearm or other deadly weapon, or inflicted bodily injury upon Joshua MakahanaLoa, or that such
robbery was within and against a financial institution as defined in RCW 7.88.010 or 35.38.060., contrary
to RCW 9A.56.190 and 9A.56.200(1)(a)(i)(ii)(iii)(b), and against the peace and dignity of the State of
Washington.

COUNT IV

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
authority of the State of Washington, do accuse MARTAVIS TRAMAIN SIMPSON of the crime of
ROBBERY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on

AMENDED INFORMATION- 2

1 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
2 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
3 proof of one charge from proof of the others, committed as follows:

4 That MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 13th day
5 of December, 2017, with the intent to commit theft did unlawfully and feloniously take personal property
6 from the person or presence of another with an ownership, representative, or possessory interest in the
7 property, against the person's will by use or threatened use of immediate force, violence or fear of injury
8 to that person, or to the person or property of another, said force or fear being used to obtain or retain
9 possession of the property or to prevent or overcome resistance to the taking, and in the commission
10 thereof, or in immediate flight therefrom, was armed with a deadly weapon, or displayed what appeared
11 to be a firearm or other deadly weapon, or inflicted bodily injury upon Ian Reuther, or that such robbery
12 was within and against a financial institution as defined in RCW 7.88.010 or 35.38.060., contrary to RCW
13 9A.56.190 and 9A.56.200(1)(a)(i)(ii)(iii)(b), and against the peace and dignity of the State of Washington.

14 COUNT V

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

21 That MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day
22 of December, 2017, did unlawfully and feloniously, with intent to commit a crime against a person or
23 property therein, enter or remain unlawfully in a building, located at 4505 S. Meridian, Puyallup, and in
24 entering or while in such building or in immediate flight therefrom, the defendant or another participant in
the crime was armed with a firearm, a deadly weapon and/or the defendant or another participant in the
crime did intentionally assault Marifel Osera and/or Brenda Short and/or Joshua Makahanalao, a person
therein, contrary to RCW 9A.52.020(1)(a)(b), and against the peace and dignity of the State of
Washington.

COUNT VI

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

AMENDED INFORMATION- 3

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1 That MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day
 2 of December, 2017, did unlawfully and feloniously, under circumstances not amounting to assault in the
 3 first degree: (a) intentionally assault another and thereby recklessly inflict substantial bodily harm; (b)
 4 intentionally and unlawfully cause substantial bodily harm to an unborn quick child by intentionally and
 5 unlawfully inflicting any injury upon the mother of such child; (c) assault another with a deadly weapon;
 6 (d) with intent to inflict bodily harm, administer to or cause to be taken by another, poison or any other
 7 destructive or noxious substance; (e) with intent to commit a felony, assault another; (f) knowingly
 8 inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced
 9 by torture; or (g) assault another by strangulation or suffocation, contrary to RCW 9A.36.021, and in the
 10 commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: 9 mm Hi-point
 11 and/or .40 cal Springfield XD, that being a firearm as defined in RCW 9.41.010, and invoking the
 12 provisions of RCW 9.94A.530, and adding additional time to the presumptive sentence as provided in
 13 RCW 9.94A.533, and against the peace and dignity of the State of Washington.

14 COUNT VII

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

21 That MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day
 22 of December, 2017, did unlawfully and feloniously, under circumstances not amounting to assault in the
 23 first degree: (a) intentionally assault another and thereby recklessly inflict substantial bodily harm; (b)
 24 intentionally and unlawfully cause substantial bodily harm to an unborn quick child by intentionally and
 unlawfully inflicting any injury upon the mother of such child; (c) assault another with a deadly weapon;
 (d) with intent to inflict bodily harm, administer to or cause to be taken by another, poison or any other
 destructive or noxious substance; (e) with intent to commit a felony, assault another; (f) knowingly
 inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced
 by torture; or (g) assault another by strangulation or suffocation, contrary to RCW 9A.36.021, and in the
 commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: 9 mm Hi-point
 and/or .40 cal Springfield XD, 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 VIII

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MARTAVIS TRAMAIN SIMPSON of the crime of UNLAWFUL POSSESSION OF A FIREARM 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 MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, did unlawfully, feloniously, and knowingly own, have in his possession, or under his control a firearm, having been previously convicted in the State of Washington or elsewhere of a serious offense, as defined in RCW 9.41.010, contrary to RCW 9.41.040(1)(a), and against the peace and dignity of the State of Washington.

COUNT IX

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MARTAVIS TRAMAIN SIMPSON of the crime of UNLAWFUL IMPRISONMENT, 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 MARTAVIS TRAMAIN SIMPSON, in the State of Washington, on or about the 19th day of December, 2017, did unlawfully, feloniously, and knowingly restrain another person, to-wit: Marifel Osera and/or Brenda Short and/or Joshua Makahanalao, contrary to RCW 9A.40.040, and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: 9 mm Hi-point and/or .40 cal Springfield XD, that being a firearm as defined in RCW 9.41.010, and invoking the

1 provisions of RCW 9.94A.530, and adding additional time to the presumptive sentence as provided in
2 RCW 9.94A.533, and against the peace and dignity of the State of Washington.

3 DATED this 1st day of June, 2018.

4 PUYALLUP POLICE DEPARTMENT
5 WA02701

MARK LINDQUIST
Pierce County Prosecuting Attorney

6 lak

7 By: 
8 _____
9 LORI KOOIMAN
10 Deputy Prosecuting Attorney
11 WSB#: 30370
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17-1-04830-7 51420484 STPATTY 06-06-18



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 17-1-04830-7

vs.

MARTAVIS TRAMAIN SIMPSON,

PROSECUTOR'S STATEMENT
REGARDING AMENDED
INFORMATION

Defendant.

The State requests the Court to consider accepting a plea to the filing of an Amended Information pursuant to RCW 9.94A.431 for the following reasons: This resolution is the result of negotiations and is contingent on the co-defendant entering valid guilty pleas. The defendant is pleading guilty to numerous Most Serious Offenses, three of them are firearm enhanced. Due to the defendant's prior conviction in 2002 he is subject to the "doubler" enhancement on those offenses. Fortunately, in these incidents, no one was physically injured. Although this resolution is a significant reduction in time as the defendant was facing serious violent offenses that would run consecutive in addition to enhancement flat time of over 70 years, he is agreeing to essentially a 25 year sentence. The undersigned DPA contacted the individual victims and advised them of the resolution.

- | | |
|--|---|
| <input type="checkbox"/> Evidentiary problems exist which make conviction on the original charge doubtful. | <input type="checkbox"/> There is a probable effect on the witnesses in this case which justify an amendment. |
| <input type="checkbox"/> The nature and seriousness of the offense(s) charged justify an amendment. | <input type="checkbox"/> There were facts discovered which mitigate the seriousness of the defendant's conduct. |
| <input type="checkbox"/> The amendment corrects errors in the initial charging decision. | <input type="checkbox"/> The defendant has no criminal history or minimal criminal history. |
| <input type="checkbox"/> There was a request for a reduction by the victim | <input type="checkbox"/> The defendant cooperated in the investigation or |

028

and it was not the result of pressure from the defendant. prosecution of others whose criminal conduct is more serious or represents a greater public threat.

*Per RCW 9.94A.450

- There is no victim.
- The victim has been notified of the amended Information.
- The victim has not been notified of the amended Information.

Date

6/5/18

LORI KOOIMAN
Deputy Prosecuting Attorney
WSB # 30370

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Michael Maltby | Attorney at Law Former Senior Prosecuting Attorney

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A Very Great Lawyer!

Mr. Maltby has been working my case for several months. Through it all he has been very understanding and flexible with my schedule. He has much experience and presents himself in a professional manner. During trial Mr. Maltby was well organized and very prepared. He guided me through the whole thing and made me feel...

- *Cyrus, a Criminal Defense client, (5 star review)*

[Read All Client Reviews](#) >

Michael Maltby



Your Local Defender >

Contact Us

Call Us 360-888-9044

Michael Maltby | Attorney at Law

705 S. 9th Street

Suite 206

Tacoma, WA 98405

Fax: 253-212-9267

Email: michael.maltby@comcast.net

[Map and Directions](#)

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Michael Maltby | Pacific Northwest Criminal Defense Lawyer Former Senior Prosecuting Attorney

Don't let the stress of a criminal charge paralyze you. Things always seem worse then they are. Let Michael Maltby guide you through this difficult time in your life. We are here to help. We can make payments arrangements and our fees are very reasonable. Call today for a free consultation.



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Located in Tacoma, Washington, Michael Maltby serves Pierce, King, Thurston, Lewis, Kitsap and Mason Counties and surrounding areas. Call today for your criminal defense.

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PIERCE COUNTY PROSECUTING ATTORNEY

December 03, 2019 - 10:38 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53897-1
Appellate Court Case Title: Personal Restraint Petition of Martavis Tramain Simpson
Superior Court Case Number: 17-1-04830-7

The following documents have been uploaded:

- 538971_Personal_Restraint_Petition_20191203103738D2730285_8885.pdf
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Personal Restraint Petition - Response to PRP/PSP
The Original File Name was prp Simpson.pdf

A copy of the uploaded files will be sent to:

- jimoliverlaw@hotmail.com

Comments:

Sender Name: Therese Kahn - Email: tnichol@co.pierce.wa.us

Filing on Behalf of: Teresa Jeanne Chen - Email: teresa.chen@piercecountywa.gov (Alternate Email: PCpatcecf@piercecountywa.gov)

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930 Tacoma Ave S, Rm 946
Tacoma, WA, 98402
Phone: (253) 798-7400

Note: The Filing Id is 20191203103738D2730285