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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY   
DEPUTY

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

IN RE THE PERSONAL RESTRAINT  
PETITION OF:

33262-1

ALEXANDER N. RIOFTA  
Petitioner.

STATE'S RESPONSE TO PERSONAL  
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Must the petition be dismissed where the petitioner cannot show a constitutional error resulting in prejudice?

B. STATUS OF PETITIONER:

Petitioner, ALEXANDER N. RIOFTA, is restrained pursuant to a Judgment and Sentence (Appendix "A") entered in Pierce County Cause No. 00-1-00511-5 for the offense of Assault in the First Degree.

Defendant's conviction was affirmed in an unpublished opinion on September 2, 2003. *2003 Wash. App. LEXIS 1880.*

Defendant now comes before this court with his first personal restraint petition, arguing that due process entitles him to post-conviction DNA testing; or alternatively, that trial counsel was ineffective for failing to make a DNA request at trial.

1           1.     Facts as presented at trial.

2           On July 5, 1998, five people were shot dead and five more were shot and wounded at the  
3 Trang Dai Café in Tacoma, Washington. RP 240. Eight persons, including Veasna Sok, were  
4 subsequently arrested and accused of committing what became known in Tacoma as the Trang  
5 Dai Massacre.<sup>1</sup> RP 240. Veasna Sok was charged with five counts of aggravated murder and  
6 five counts of assault in the first degree. RP 241.

7           Veasna Sok subsequently entered into a plea agreement with the State that required him  
8 to testify against the other Trang Dai defendants. RP 241. Only two of the eight persons  
9 charged with committing the Trang Dai murders, Jimmie Chea and John Phet, ultimately went to  
10 trial on the charges.<sup>2</sup> After Veasna Sok agreed to testify for the State, Chea and Phet assaulted  
11 Veasna Sok in open court. RP 243. Despite the intimidation, Veasna Sok determined to keep his  
12 plea agreement with the State. RP 243.

13           Ratthana Sok is Veasna Sok's younger brother. RP 176. On January 27, 2000, while the  
14 Trang Dai case was still pending trial, Ratthana Sok left his home to walk to school at  
15 approximately 6:50 a.m. RP 177. It was dark outside, but there were lights illuminating the area  
16 outside of Sok's residence, particularly the driveway area in front of the garage. RP 189.

17           Sok walked out of the garage onto the driveway and noticed a Honda Civic parked in the  
18 street next to the driveway. RP 179-180, 188. It appeared to Sok that there were two or three  
19 people inside the car. RP 181.

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21  
22 <sup>1</sup> The State will refer to the prosecution of the defendants accused of committing the Trang Dai massacre as  
"the Trang Dai case" and will refer to those defendants as "the Trang Dai defendants."

23 <sup>2</sup> Three of the original eight Trang Dai defendants were murdered or committed suicide prior to trial.  
24 Another pled guilty as charged and was sentenced to life in prison without parole. Two others, including  
Veasna Sok, accepted plea bargains from the State and testified at the trial of Chea and Phet.

1 Defendant got out of the front passenger seat and approached Sok. RP 181. Defendant  
2 was wearing a white hat. RP 187, 192. Sok knew the defendant from prior meetings. RP 186.  
3 Sok and the defendant used to play basketball together at a local park. RP 186. Sok had also  
4 seen the defendant parked outside of his house several days prior. RP 190. Sok knew that the  
5 defendant's first name was "Alex." RP 187. Sok had known the defendant for four or five  
6 years. RP 202.

7 Sok was standing in his driveway as the defendant approached him. RP 181. Sok  
8 immediately recognized the defendant from prior meetings. RP 182. Defendant had his hands  
9 concealed in his pockets. RP 182.

10 Defendant asked Sok for a cigarette. RP 182. Sok responded, "I don't smoke." RP 182.  
11 Defendant pulled a chrome revolver out of his pocket. RP 182-183. Two or three feet separated  
12 Sok and the defendant. RP 183.

13 Defendant pointed the revolver at Sok's forehead. RP 183-84. Defendant started firing.  
14 RP 184. The first shot missed Sok's head. RP 184. Sok turned and ran towards his garage. RP  
15 184.

16 Sok heard a total of four to five shots fired as he ran. RP 185. Sok ran through the  
17 garage and into his house. RP 186. Sok's father tried to go outside but Sok told him not to  
18 because someone was shooting at him. RP 185-86. Sok and his father told Sok's mother to call  
19 the police. RP 186.

20 Police responded to the Sok residence at 6:59 a.m. RP 215. Police contacted Sok, who  
21 told them what had happened. RP 215-16. Sok told the police that "Alex" had shot at him. RP  
22 198-201, 220, 246, 274. Sok did not know Alex's last name. RP 198. Sok described the

1 defendant as 17-18-years-old, 5'2" to 5'3", with a moustache and shaved head. RP 204, 220,  
2 246. Sok's description matched the defendant's. RP 258.

3 Police examined the crime scene. RP 216. Police found a bullet hole next to the garage  
4 door, and another one over the garage door. RP 216, 245. Police found two bullet holes in a  
5 Ford Explorer parked in the garage. RP 216, 245. Police observed that an Acura Legend parked  
6 in the garage had also been struck by a bullet. RP 217-18, 245.

7 Police found a spent shell casing in the driveway. RP 218. Police also found a white hat  
8 in the driveway. RP 191-192, 219. Sok recognized the white hat as the one that the defendant  
9 had been wearing. RP 192.

10 Forensic investigator Hank Baarslag responded to the Sok residence to collect evidence.  
11 RP 226. Baarslag photographed the five bullet holes in the garage, Ford Explorer, and Acura  
12 Legend. RP 227. Baarslag recovered a spent slug in the driveway in front of the garage. RP  
13 230. Baarslag seized the white cap. RP 231-32.

14 Sok went to the police station with Detective Tom Davidson. RP 198, 247. Davidson  
15 asked the police computer to search its photo database for photos of Asian males named "Alex"  
16 or "Alexander." RP 247-248. Davidson showed Sok a number of photographs that the computer  
17 produced, including a photo of the defendant. RP 198, 248-249. Sok identified the defendant as  
18 the person who shot at him. RP 198. Sok told Detective Davidson, "That's him right there. I'm  
19 positive." RP 249.

20 Detective Davidson found the defendant's home address, which was approximately six  
21 blocks away from the Sok residence. RP 249-250. On January 28, 2000, Detective Davidson  
22 went to the defendant's residence and contacted him. RP 250. Detective Davidson told the  
23 defendant that he was under arrest for a shooting. RP 250. Defendant angrily responded, "I

1 didn't shoot no mother fucker yesterday. I was here drinking all night. I worked yesterday from  
2 – at the News Tribune from 1:00 to 5:30. I don't even own no gun, how could I shoot some  
3 mother fucker.” RP 251. The defendant was brought to the police station for an interview. RP  
4 252.

5 Defendant denied shooting at Ratthana Sok. RP 254. Defendant admitted that he knew  
6 Ratthana Sok and Veasna Sok. RP 254. Defendant admitted that he had visited the Sok  
7 residence on prior occasions. RP 256. Defendant admitted that he knew Trang Dai codefendants  
8 Jimmie Chea and Sarun Ngeth. RP 255-256. Defendant told Detective Davidson that “Veasna  
9 was a sucker for snitching on the Homeys, and that he deserved to get choked up in court for  
10 snitching on [Jimmie Chea].” RP 255. Defendant admitted that he had a photo and news article  
11 depicting all eight Trang Dai defendants. RP 257. Detective Davidson later obtained the  
12 newspaper clipping. RP 258.

13 On January 29, 2000, police recovered a stolen Honda Civic several blocks from the Sok  
14 residence. RP 268, 296-297. Detective Davidson contacted the owner of the car, Ali Saleh,  
15 several days after the shooting. RP 265. Saleh reported that someone had stolen his Honda  
16 Civic either the night of January 26 or the morning of January 27<sup>th</sup> (the date of the shooting). RP  
17 287. Saleh reported that he had a white hat in the car. RP 289. Saleh identified the white hat  
18 recovered from Sok's driveway as the hat he had left in his car. RP 289.

1           ARGUMENT:

2           1.     PETITIONER HAS NOT MET HIS BURDEN OF  
3                    SHOWING ACTUAL PREJUDICE ARISING  
4                    FROM AN ERROR OF CONSTITUTIONAL  
                      MAGNITUDE TO AVOID DISMISSAL OF THIS  
                      PETITION.

5           Personal restraint procedure has its origins in the State's habeas corpus remedy,  
6           guaranteed by article 4, section 4, of the State Constitution. Fundamental to the nature of habeas  
7           corpus relief is the principle that the writ will not serve as a substitute for appeal. A personal  
8           restraint petition, like a petition for a writ of habeas corpus, is not a substitute for an appeal. In  
9           re Hagler, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). Collateral relief undermines the  
10           principles of finality of litigation, degrades the prominence of the trial, and sometimes costs  
11           society the right to punish admitted offenders. These are significant costs, and they require that  
12           collateral relief be limited in state as well as federal courts. Hagler, Id.

13  
14           In this collateral action, the petitioner has the duty of showing constitutional error and  
15           that such error was actually prejudicial. The rule that constitutional errors must be shown to be  
16           harmless beyond a reasonable doubt has no application in the context of personal restraint  
17           petitions. In re Mercer, 108 Wn.2d 714, 718-21, 741 P.2d 559 (1987); Hagler, 97 Wn.2d at 825.  
18           Mere assertions are insufficient in a collateral action to demonstrate actual prejudice. Inferences,  
19           if any, must be drawn in favor of the validity of the judgment and sentence and not against it. In  
20           re Hagler, 97 Wn.2d at 825-26. To obtain collateral relief from an alleged nonconstitutional  
21           error, a petitioner must show "a fundamental defect which inherently results in a complete  
22           miscarriage of justice." In re Cook, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). This is a higher  
23           standard than the constitutional standard of actual prejudice. Id. at 810.

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

- 2 1. If a petitioner fails to meet the threshold burden of showing actual  
3 prejudice arising from constitutional error or a fundamental defect  
4 resulting in a miscarriage of justice, the petition must be  
5 dismissed;
- 6 2. If a petitioner makes at least a prima facie showing of actual  
7 prejudice, but the merits of the contentions cannot be determined  
8 solely on the record, the court should remand the petition for a full  
9 hearing on the merits or for a reference hearing pursuant to RAP  
10 16.11(a) and RAP 16.12;
- 11 3. If the court is convinced a petitioner has proven actual prejudicial  
12 error, the court should grant the personal restraint petition without  
13 remanding the cause for further hearing.

14 In re Hews, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

15 The petition must include a statement of the facts upon which the claim of unlawful  
16 restraint is based and the evidence available to support the factual allegations. RAP 16.7(a)(2);  
17 Petition of Williams, 111 Wn.2d 353, 365, 759 P.2d 436 (1988). If the petitioner fails to provide  
18 sufficient evidence to support his challenge, the petition must be dismissed. Williams at 364.  
19 Affidavits, transcripts and clerk's papers are readily available forms of evidence which a  
20 petitioner may employ to support his claims. Id. at 364-365. A reference hearing is not a  
21 substitute for the petitioner's failure to provide evidence to support his claims. As the Supreme  
22 Court stated, "the purpose of a reference hearing is to resolve genuine factual disputes, not to  
23 determine whether the petitioner actually has evidence to support his allegations." In re Rice,  
24 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). "Bald assertions and conclusory allegations will not  
25 support the holding of a hearing," but the dismissal of the petition. Rice at 886; Williams at  
364-365.

1 Here, because defendant has failed to meet his burden of showing actual prejudice arising  
2 from a constitutional error, the petition must be dismissed.

- 3  
4 a. Herrera dictates that there is no federal due process  
5 violation and defendant cannot make a showing of  
6 newly discovered evidence such to warrant a new  
7 trial.

8 Defendant argues that he is entitled to post-conviction DNA testing under the due process  
9 clause. Defendant's argument entirely overlooks the United State's Supreme Court ruling  
10 Herrera v. Collins.<sup>3</sup> Instead, the only possible avenue for DNA testing at this stage is through a  
11 colorable newly discovered evidence claim or under RCW 10.73.170. As outlined below, these  
12 arguments must fail as well.

13 In Herrera v. Collins, the Court held that absent an accompanying constitutional  
14 violation, a claim of "actual innocence" and the existence of newly discovered evidence is not a  
15 ground for relief under federal habeas law. The procedural facts of Herrera are remarkably  
16 similar to the case at bar. In Herrera, petitioner appealed his capital murder conviction alleging  
17 that the eyewitness identifications were unreliable and improperly admitted. 506 U.S. at 396.  
18 After his guilt was affirmed he filed a habeas petition, challenging the identifications offered  
19 against him at trial. Id. Petitioner filed a second petition, raising a claim of "actual innocence"  
20 based on newly discovered evidence in the form of affidavits of an attorney who represented  
21 petition's brother, and a former cellmate of his now deceased brother. Id. Both affidavits  
22

23  
24 <sup>3</sup> 506 U.S. 390, 401, 113 S.Ct. 853, 122 L.2d.2d 203 (1993).

1 claimed that petitioner's brother killed the victims. Id. This petition was rejected. Petitioner  
2 then filed his third petition, the one currently before the court, complaining that he is innocent  
3 and that his execution would violate the Eighth and Fourteenth Amendments. Id. at 397.  
4 Petitioner alleged that law enforcement withheld information contained in his affidavits filed in  
5 his petition in violation of Brady v. Maryland, 373 U.S. 83, 10 L.Ed.2d 215, 83 S.Ct. 1194  
6 (1963). Id. The lower Court of Appeals rejected petitioner's claim, finding that "[a]bsent an  
7 accompanying constitutional violation, . . . petitioner's claim of actual innocence was not  
8 cognizable because the existence merely of newly discovered evidence relevant to the guilt of a  
9 state prisoner is not a ground for relief on federal habeas corpus." 506 U.S. at 398 (quoting  
10 Townsend v. Sain, 372 U.S. 293, 317, 9 L.Ed.2d 770, 83 S.Ct. 745 (1963)).  
11

12 The Supreme Court agreed with the Court of Appeals, noting that "[c]laims of actual  
13 innocence based on newly discovered evidence have never been held to state a ground for federal  
14 habeas relief absent an independent constitutional violation occurring in the underlying state  
15 criminal proceeding." 506 U.S. at 400. In reaching this conclusion, the court highlighted the  
16 importance of finality in criminal proceedings, "[f]ew rulings would be more disruptive of our  
17 federal system than to provide for federal habeas review of freestanding claims of actual  
18 innocence." 506 U.S. at 400. The court also rejected Herrera's argument that Texas' 60 day time  
19 limit for filing motions for a new trial based on newly discovered evidence violated the  
20 principles of "fundamental fairness." Id. at 412.  
21

22 In the instant case, defendant fails to allege any independent constitutional violation  
23 occurring at the trial proceeding. Instead, he attempts to color a "newly discovered evidence"

1 claim as a “due process claim.” However, as Herrera makes clear, there is no due process claim  
2 where the only claim is newly discovered evidence and there are no procedural errors occurring  
3 at trial. The importance of Herrera in this area of jurisprudence was appropriately highlighted by  
4 the Nebraska Supreme Court: “Jurisdictions that have allowed DNA testing or evidence as part  
5 of postconviction proceedings either have broader statutory provisions than those in Nebraska,  
6 have found a constitutional right under their state constitution, *or were decided prior to the U.S.*  
7 *Supreme Court's decision in Herrera.*”<sup>4</sup>

8  
9 A similar due process claim was rejected by the Alaska Supreme Court in Osborne v.  
10 Alaska, 110 P.3d 986 (2005). In Osborne, defendant was convicted of kidnapping, first-degree  
11 assault, and two counts of first-degree sexual assault. Osborne filed a petition for post-  
12 conviction relief arguing that his counsel provided him ineffective assistance because she  
13 decided not to seek a significantly more advanced DNA testing on physical evidence (a less  
14 discriminating DNA test was run that showed the defendant’s DNA turned up in roughly one in  
15 seven of the population). 110 P.3d 987, 990. Osborne also claimed that due process rights  
16 required more DNA tests. The court rejected both claims. 110 P.3d at 992, 993. First pointing  
17 to the decision in Herrera, the Alaska court noted that of those courts that have granted a  
18 defendant’s request for post-conviction DNA testing, most of the cases were decided before  
19

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20 <sup>4</sup> State v. El-Tabech, 259 509; 610 N.W.2d 737 (2000) *citing*, (People v. Washington, 171 Ill. 2d 475, 665  
21 N.E.2d 1330, 216 Ill. Dec. 773 (1996) (based on state constitution); Summerville v. Warden, 229 Conn.  
22 397, 415, 641 A.2d 1356, 1365 (1994) (citing Conn. Gen. Stat. § 52-471(a), habeas statute providing that  
23 court must “dispose of the case as law and justice require”); Mebane v. State, 21 Kan. App. 2d 533, 902  
24 P.2d 494 (1995) (citing Kan. Stat. Ann. § 60-1507 which is broader postconviction act; Sewell v. State,  
25 *supra* (decided prior to Herrera v. Collins, 506 U.S. 390, 113 S. Ct. 853, 122 L. Ed. 2d 203 (1993)); People  
v. Callace, 151 Misc. 2d 464, 573 N.Y.S.2d 137 (1991) (decided prior to Herrera); Dabbs v. Vergari, 149  
Misc. 2d 844, 570 N.Y.S.2d 765 (1990) (decided prior to Herrera).

1 Herrera. 110 P.3d at 994. The Osborne court followed Herrera and found that there is no federal  
2 due process right to present post-conviction evidence of one's innocence. 110 P.3d 995.  
3 Instead, Osborne's only remedy was to make an argument under state law, arguing either State  
4 due process or a newly discovered evidence claim. Id.

5 Nor does defendant's claim under Brady<sup>5</sup> change the analysis or result. Because Brady  
6 was based on a federal due process claim, the argument must fail. See, Harvey v. Horan, 278  
7 F.3d 370, 378, (2002) (rejecting both petitioner's sec. 1983 claim and federal habeas claim to  
8 post conviction DNA testing under Brady).

9 Because there is no federal due process violation, defendant is left to argue his claim  
10 under State law. The only two arguable claims of relief come under either (i) RCW 10.73.170,  
11 or (ii) a "newly discovered evidence." Both claims are without merit.  
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23 <sup>5</sup> Brady v. Maryland, 373 U.S. 83, 10 L.Ed.2d 215, 83 S.Ct. 1194 (1963).

1                                    **i.        RCW 10.73.170<sup>6</sup>**

2                    This statute is the legislatively created mechanism for obtaining post-conviction DNA  
3 testing. As the plain language of the statute dictates, this is available only in instances where  
4 “DNA evidence was not admitted because the court ruled DNA testing did not meet acceptable  
5 scientific standards or DNA testing technology was not sufficiently developed to test the DNA  
6 evidence in the case.” RCW 10.73.170 (1). The clear intent of this statute was to create an  
7 avenue for those who were tried at a time when DNA evidence was not available at trial due to  
8 scientific or legal limitations.  
9

10                    What this statute underscores is that the legislature already contemplated a form of relief  
11 for those who were evidentiary limited at the time of trial. Defendant is not in such a position.  
12

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13                    <sup>6</sup>        § 10.73.170. DNA testing requests

- 14                    (1)        On or before December 31, 2004, a person in this state who has been convicted of a felony and is currently  
15 serving a term of imprisonment and who has been denied postconviction DNA testing may submit a request  
16 to the state Office of Public Defense, which will transmit the request to the county prosecutor in the county  
17 where the conviction was obtained for postconviction DNA testing, if DNA evidence was not admitted  
18 because the court ruled DNA testing did not meet acceptable scientific standards or DNA testing  
19 technology was not sufficiently developed to test the DNA evidence in the case. On and after January 1,  
20 2005, a person must raise the DNA issues at trial or on appeal.
- 21                    (2)        The prosecutor shall screen the request. The request shall be reviewed based upon the likelihood that the  
22 DNA evidence would demonstrate innocence on a more probable than not basis. The prosecutor shall  
23 inform the requestor and the state Office of Public Defense of the decision, and shall, in the case of an  
24 adverse decision, advise the requestor of appeal rights. Upon determining that testing should occur and the  
25 evidence still exists, the prosecutor shall request DNA testing by the Washington state patrol crime  
laboratory. Contact with victims shall be handled through victim/witness divisions.
- (3)        A person denied a request made pursuant to subsections (1) and (2) of this section has a right to appeal his  
or her request within thirty days of denial of the request by the prosecutor. The appeal shall be to the  
attorney general's office. If the attorney general's office determines that it is likely that the DNA testing  
would demonstrate innocence on a more probable than not basis, then the attorney general's office shall  
request DNA testing by the Washington state patrol crime laboratory.
- (4)        Notwithstanding any other provision of law, any biological material that has been secured in connection  
with a criminal case prior to July 22, 2001, may not be destroyed before January 1, 2005.

1 Prosecutor Gerald Horne properly denied this request and the Attorney General affirmed the  
2 decision. PRP – Appendix 6 (b) and 6 (i).

3 **ii. Newly discovered evidence.**

4 A petitioner may make a newly discovered evidence claim in a personal restraint petition  
5 if the proposed evidence “in the interest of justice requires” vacation of the conviction or  
6 sentence.” In re Lord, 123 Wn.2d 296, 319, 868 P.2d 835 (1994); RAP 16.4(c)(3). This is the  
7 same standard that applies to motion for a new trial. Id. Under that test, the defendant bears the  
8 burden of showing that the evidence:

- 9  
10 (1) will probably change the result of the trial; (2) was discovered  
11 since the trial; (3) could not have been discovered before trial by  
12 the exercise of due diligence; (4) is material; and (5) is not merely  
13 cumulative or impeaching.

14 Lord, 123 Wn.2d at 320 (*quoting, State v. Williams*, 96 Wn.2d 215, 223, 634 P.2d 868 (1981)).

15 The most notable hurdle that defendant cannot overcome in this case is number two, “was  
16 discovered since the trial or could not have been discovered before trial by the exercise of due  
17 diligence.” The hat and DNA technology were both available at the time of trial. Defendant  
18 chose not to pursue this at trial and now makes a request five years post-conviction. This request  
19 is the type of legal maneuvering that undermines the finality of the case. Defendant also fails to  
20 show how this evidence is “material” and will “probably” change the outcome of trial. The  
21 absence of defendant’s DNA material is hardly exculpatory. Defendant had possession of the hat  
22 for a short time frame. The hat belonged to the owner of the stolen vehicle. Likewise, the  
23 presence of someone else’s DNA proves nothing since the vehicle and hat were stolen.  
24 Defendant’s case is not like a rape or murder case where the presence of semen or blood of the

1 subject or victim may be dispositive of the entire case. Instead, it involves a hat worn by at least  
2 two persons that may not even contain any DNA material to test, and has since been admitted at  
3 a trial and handled by witnesses, attorneys and possibly jurors.

4 The majority of the cases defendant relies on in his petition involve criminal defendants  
5 who did not have DNA technology available at the time of trial. The case that defendant holds  
6 out as the backbone of his argument is easily distinguishable and questionable precedent. See  
7 PRP at 11-14, *citing* State v. Thomas, 245 N.J. Super. 428, 586 A.2d 250 (1991). In Thomas,  
8 defendant was convicted of first-degree kidnapping and the forcible rape of two teenage girls.  
9 Immediately following conviction he made a post-trial motion for DNA testing arguing that the  
10 prosecutor refused to conduct such testing and he could not afford the testing himself at the time  
11 of trial. 245 N.J. Super. At 431. At the time Thomas made his post-trial motion, *no New Jersey*  
12 *court had ruled on the admissibility of DNA testing*. The Thomas court went on to note that  
13 DNA testing had gained scientific and legal acceptance. 245 N.J. Super. 432-436. Based  
14 exclusively on this change in the legal and scientific landscape the court felt compelled to grant  
15 defendant's request for testing. Id. The court noted, "We do not believe that defendant can be  
16 burdened with having had to anticipate a scientific/judicial revolution." Id. at 435.

17  
18 First, Thomas predates the Supreme Court's decision in Herrera, *supra*. Second, the  
19 defendant in this case was not burdened with having to anticipate a scientific revolution. Instead,  
20 all of the evidence and science was available at the time of trial. Nothing in this case comes  
21 close to the facts and circumstance of Thomas. As argued above, nothing prevented defendant  
22 from making this request at the time of his trial. His request at this time comes too late and  
23

1 amounts to nothing more than an attempt to reopen and retry his case. This request is no  
2 different than a defendant's post-conviction request in a murder case for a second autopsy, a  
3 DUI defendant who requests blood analysis for the first time on appeal, a request for fingerprint  
4 analysis of a crime scene, and so on. If given the chance, as noted in Herrera, defendants could  
5 flood the courts with such post-conviction requests. Defendants and attorneys must know that  
6 the only time to try the facts and evidence of a case is at the trial level; unless something  
7 procedurally goes awry - - there is no second bite at the apple.

8  
9 If this court were to grant defendant his request it sets a very dangerous precedent. As  
10 Prosecutor Horne noted in his letter denying defendant's request for DNA testing, "[b]efore trial  
11 there was considerable downside risk to seeking testing. Now, having been convicted, your  
12 client runs no risk of seeking the testing." PRP, Appendix 6(b), Horne Letter at 2. A defendant  
13 could intentionally decide not to seek DNA testing at the trial, knowing very well that it could  
14 contain incriminating evidence. Then, having nothing to lose after a guilty verdict, a defendant  
15 would make a post-conviction request for such testing possibly allowing him a second time in  
16 front of the jury.

17 Defendant also claims that "due process" or "fundamental fairness" requires this testing  
18 because the State's case is weak. Again, under the newly discovered evidence bar, which is the  
19 proper legal framework, the strength or weakness of the State's case is not a consideration. Even  
20 if this were an appropriate analysis, the State's case against the defendant was strong.

21  
22 First the State presented evidence of a motive. It was the State's position that the assault  
23 in this case was an act of intimidation against the victim and victim's brother, Veasna Sok. RP

1 243. The intimidation and threat of witnesses was a real issue in the Trang Dai case. The assault  
2 against Rathana Sok, Veasna Sok's younger brother, occurred while the Trang Dai case was still  
3 pending trial. RP 177. The defendant not only knew the Trang Dai defendants, Jimmie Chea  
4 and Sarun Ngeth, he believed that Veasna was a "sucker for snitching on the Homeys, and that  
5 he deserved to get choked up in court for snitching on [Jimmie Chea]." RP 255. The defendant  
6 followed the case and the defendants, keeping a newspaper clipping on the defendants. RP 257-  
7 58. Defendant also knew Ratthana Sok and Veasna Sok. RP 254.

8  
9 Contrary to defendant's argument, the eyewitness identification in this case was strong  
10 given that the suspect and victim knew each other and the victim was able to get a good view of  
11 defendant's face. Sok repeatedly testified that he got a "good look" at the defendant's face. RP  
12 189, 201, 211. Sok's testimony that he saw the defendant's face clearly was corroborated by  
13 other evidence. Sok was standing in his own driveway, which was well-lit. 3RP 189. A  
14 floodlight on top of the garage illuminated the driveway, and there was also a nearby streetlight  
15 providing additional illumination. 3RP 189. Sok observed the defendant get out of a car parked  
16 in the street in front of the Sok residence. 3RP 181. Defendant walked towards Sok. 3RP 181.  
17 Sok immediately recognized the defendant as "Alex," a person he had known for years. 3RP  
18 186. Defendant approached to within two to three feet of Sok, giving Sok an excellent  
19 opportunity to view the defendant's face. 3RP 183. Defendant spoke to Sok, asking for  
20 cigarettes, allowing Sok to hear a voice that was familiar to him. 3RP 182. It was confirmed  
21 defendant did in fact did smoke cigarettes. RP 257. Sok's opportunity to view and identify the  
22 defendant was very good. Sok was also adamant that the person was "Alex," telling both Officer  
23

1 Keen and Detective Davidson that "Alex" shot him. Defendant repeatedly claims in his brief  
2 that Sok told Officer Keen that the shooter "looked like Alex," but the record reflects that Sok  
3 repeatedly testified that he told Officer Keen that the shooter was Alex. RP 199-201.

4 Sok's description of the defendant prior to viewing a photo of him was very accurate.  
5 Sok described the shooter as a 17-18-year old Cambodian male named Alex, 5'2" to 5'3", 125-  
6 130 lbs., with a moustache and shaved head. 3RP 204, 220, 246. Defendant is a 22-year-old,  
7 mixed Korean/Filipino male named Alex, 5'2", 125 lbs., with a moustache and shaved head. RP  
8 258. Sok's description of the defendant could not have been any more accurate given the  
9 circumstances. An attached booking photo at the time of arrest shows the accurateness of the  
10 victim's description. Appendix B.

11  
12 Sok's level of certainty when presented with a photo of the defendant was 100%. Sok  
13 looked at the photo and told Detective Davidson, "That's him right there. I'm positive." 3RP  
14 249.

15 The State also presented physical evidence in the form of the get-a-way car. The stolen  
16 vehicle involved in the shooting was found several blocks from the defendant's residence and  
17 within a one block walking distance if you cut through a field to the defendant's house. RP 268.  
18 The defendant lived only six blocks away from the Sok residence. RP 249-50.

19 Defendant was also seen walking by the victim's home just days before the shooting. RP  
20 190. Defendant told officer that Sok had probably identified him because he was the only one  
21 that walked up and down his street everyday. RP 255. When arrested, defendant asked if he was  
22 the only suspect even though officers had not told him that there were other people in the car at  
23 the time of the shooting. RP 257.

1 The defendant attempts to strengthen the materiality of his DNA request by proffering an  
2 unsworn letter from counsel for Jimmee Chea, Kristi Minchau, asserting that her client told her  
3 that Mr. Riofta was innocent and knew the identification of the real shooter. This unsworn  
4 statement offers little to the defendant's case. The source of the information, Jimmee Chea, is  
5 suspect and untrustworthy given his motivation for trying to exonerate someone who attempted  
6 to assist in the intimidation of one of the witnesses against him. A court should consider the  
7 untrustworthy character of such affidavits when considering whether such new evidence *will*  
8 *probably* change the outcome of a trial. See State v. Wicker, 10 Wn.App. 905, 909, 520 P.2d  
9 1404 (1974). Even more suspect is the fact that Chea fails to state who the actual perpetrator is.

11  
12 b. Defendant was not denied his right to compulsory process and  
13 there is no such right post-conviction.

14 Defendant asserts that his right to compulsory process is being denied. First, when  
15 analyzing a right to discovery claim, courts look to the traditional due process analysis  
16 framework and not confrontation or compulsory process law. State v. Knutson, 121 Wn.2d 766,  
17 854 P.2d 617 (1993) (*citing* Pennsylvania v. Ritchie, 480 U.S. 39, 94 L.Ed.2d 40, 107 S.Ct. 989  
18 (1987)). As argued *supra* there is no due process violation here because defendant was afforded  
19 all of the due process he was entitled to at the time of trial. No one prevented the defendant  
20 from obtaining a DNA analysis of the hat below.

21 Instead, citing no authority, defendant appears to argue that there is a general post-  
22 conviction right to compulsory process. However, a defendant has no constitutional right to  
23 either counsel or discovery in making a collateral attack. In Re Davis, 152 Wn.2d 647, 755, 101

1 P.3d 1 (2004). Any discovery rights that are afforded are a creature of statute or court rule. Id.  
2 Generally, in post-conviction evidence gathering is limited to that provided under RAP 16 .11  
3 and 16.12. Because defendant's claim cannot fall under this umbrella his right to compulsory  
4 process must fail.

5 c. Defendant was not denied effective assistance of counsel  
6 where there are legitimate tactical reasons for not seeking  
7 DNA testing.

8 The defendant's claim of ineffective assistance of counsel was already considered and  
9 rejected by this court on direct appeal. A defendant may not recast the same issue as an  
10 ineffective assistance claim; simply recasting an argument in that manner does not create a new  
11 ground for relief or constitute good cause for reconsidering the previously rejected claim. In re  
12 Personal Restraint of Benn, 134 Wn.2d 868, 906, 952 P.2d 116 (1998).

13 Assuming *arguendo* that the defendant may recast his ineffective assistance of counsel  
14 claim, there is no merit to his argument where the defense attorney's choice to not seek DNA is a  
15 legitimate trial tactic.

16 The right to effective assistance of counsel is the right "to require the prosecution's case to  
17 survive the crucible of meaningful adversarial testing." United States v. Cronin, 466 U.S. 648,  
18 656, 80 L.Ed.2d 657, 104 S.Ct. 2045 (1984). When such a true adversarial proceeding has been  
19 conducted, even if defense counsel made demonstrable errors in judgment or tactics, the testing  
20 envisioned by the Sixth Amendment has occurred. Id. "The essence of an ineffective assistance  
21 claim is that counsel's unprofessional errors so upset the adversarial balance between defense and  
22 prosecution that the trial was rendered unfair and the verdict rendered suspect." Kimmelman v.  
23 Morrison, 477 U.S. 365, 374, 91 L.Ed.2d 305, 106 S.Ct. 2574, 2582 (1986).

1 To demonstrate ineffective assistance of counsel, a defendant must satisfy the two-prong  
2 test laid out in Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674  
3 (1984). First, a defendant must demonstrate that his attorney's representation fell below an  
4 objective standard of reasonableness. Second, a defendant must show that he or she was  
5 prejudiced by the deficient representation. Prejudice exists if "there is a reasonable probability  
6 that, except for counsel's unprofessional errors, the result of the proceeding would have been  
7 different." State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). There is a strong  
8 presumption that a defendant received effective representation. State v. Brett, 126 Wn.2d 136,  
9 198, 892 P.2d 29 (1995), cert. denied, 516 U.S. 1121, 133 L.Ed.2d 858, 116 S.Ct. 931 (1996). A  
10 defendant carries the burden of demonstrating that there was no legitimate strategic or tactical  
11 rationale for the challenged attorney conduct. McFarland, 127 Wn.2d at 336.

12 A presumption of counsel's competence can be overcome by showing counsel failed to  
13 conduct appropriate investigations, adequately prepare for trial, or subpoena necessary witnesses.  
14 State v. Maurice, 79 Wn. App. 541, 544, 903 P.2d 514 (1995). The standard of review for  
15 effective assistance of counsel is whether, after examining the whole record, the court can  
16 conclude that defendant received effective representation and a fair trial. State v. Ciskie, 110  
17 Wn.2d 263, 751 P.2d 1165 (1988). An appellate court is unlikely to find ineffective assistance  
18 on the basis of one alleged mistake. State v. Carpenter, 52 Wn. App. 680, 684-685, 763 P.2d 455  
19 (1988).

20 Judicial scrutiny of a defense attorney's performance must be "highly deferential in order to  
21 eliminate the distorting effects of hindsight." Strickland, 466 U.S. at 689. The reviewing court  
22 must judge the reasonableness of counsel's actions "on the facts of the particular case, viewed as  
23

1 of the time of counsel's conduct." Id. at 690; State v. Benn, 120 Wn.2d 631, 633, 845 P.2d 289  
2 (1993).

3 Post-conviction admissions of ineffectiveness by trial counsel have been viewed with  
4 skepticism by the appellate courts. Ineffectiveness is a question which the courts must decide  
5 and "so admissions of deficient performance by attorneys are not decisive." Harris v. Dugger,  
6 874 F.2d 756, 761 n.4 (11th Cir. 1989).

7 The reviewing court will defer to counsel's strategic decision to present, or to forego, a  
8 particular defense theory when the decision falls within the wide range of professionally  
9 competent assistance. Strickland, 466 U.S. at 489.

10 Here, there were many legitimate tactical reasons for not seeking DNA analysis. The first  
11 and most obvious is that such testing could have resulted in inculpatory evidence rather than  
12 exculpatory evidence for his client. Second, the presence or absence of the defendant's DNA  
13 was not indicative of defendant's innocence. The absence of his DNA could easily have been  
14 explained away by the fact that the hat belonged to someone else.

15 Defendant's reliance on State v. Hicks is misplaced. See PRP at 24 (citing State v. Hicks,  
16 195 Wis.2d 620, 536 N.W.2d 487 (1995). In Hicks, the defendant was charged with burglary,  
17 robbery and second degree sexual assault. 536 N.W.2d at 621. The State presented evidence of  
18 pubic hairs found after vacuum sweeping and Negro head hairs found on the victim's comforter.  
19 The crime lab expert stated that analysis of the hair showed that they were "consistent" with the  
20 samples provided by defendant. Id. at 489. Post trial defendant had DNA analysis performed  
21 and the results showed that one of the pubic hairs, when compared with Hick's DNA blood  
22 samples showed that defendant Hicks was not the source of the DNA from his specimen. The  
23 court reversed based on ineffective assistance of counsel based on the fact that counsel testified

1 he was aware that the hair samples would be a major issue in the case, and knew that the hair  
2 could be subject to DNA testing. Hicks, at 627, 628, 632. The appellate court rejected counsel's  
3 argument that his tactic was instead to try to get the evidence suppressed and not before the jury  
4 at all. Id. at 629.

5 In the instant case, the main issue was not the "hat" or fibers from the hat. The State did  
6 not rely on this piece of evidence as a major component in its case. Also, unlike Hicks, this was  
7 not a sexual assault case where the presence or absence of one's pubic hairs could be dispositive  
8 to the case.

9 Nor was there any "cumulative" defective representation in this case. Defendant attempts  
10 to argue that due to the cumulative nature of defense counsel's error below, reversal is required.  
11 See PRP at 27-28 (arguing that the failure to present eyewitness identification and the failure to  
12 raise competency was ineffective). However, this court already considered and rejected these  
13 very arguments on the direct appeal.

14 Moreover, defense counsel's performance should be examined in light of the strength in the  
15 State's case, not in the alleged weakness as defendant argues. See Argument Above at 16-18.

16 Finally, defendant's presentation of his trial counsel's affidavit regarding whether or not he  
17 would have sought DNA at the time of trial had he known about Jimmy Chea's statement sheds  
18 no light on his effectiveness at trial. (PRP – Appendix 7). A defense attorney can always  
19 conduct a guessing game as to a trial strategy post-conviction:

20 What decision [defense counsel] may have made if he had more  
21 information at the time is exactly the sort of Monday-morning  
22 quarterbacking the contemporary assessment rule forbids. It is  
23 meaningless...for [defense counsel] now to claim that he would have done  
things differently if only he had more information. With more  
information, Benjamin Franklin might have invented television.

1 Hendricks v. Calderon, 70 F.3d 1032, 1040 (C.A. 9, 1995).

2       Undoubtedly family members, convicted felons associated with a case and other biased  
3 persons will come forward with what they believe to be “innocence” information. It does  
4 nothing to change this court’s determination of whether what counsel did at the time of trial was  
5 reasonable.

6       Similarly, this court should not give any weight to the declaration of Mark Prothero  
7 regarding the use of forensic DNA and defense counsel’s trial abilities below. (PRP - Appendix  
8 9). As the Ninth Circuit aptly stated, “[t]here are many ways to be effective, and we must resile  
9 from present counsel’s attempt to lure us into the hindsight miasma that the Supreme Court has  
10 told us to avoid.” Smith v. Stewart, 140 F.3d 1263, 1273 (9<sup>th</sup> Cir. 1998).

11       Every trial attorney is going to examine, pursue, and attack a case in a different manner.  
12 Therefore, varying opinions do not shed light as to ineffectiveness; but rather, other ways to be  
13 effective. It is the court’s responsibility to evaluate the performance of trial counsel; it is not a  
14 matter of taking a poll among attorneys.

1  
2 C. CONCLUSION:

3 For the foregoing reasons, the State respectfully requests that this court deny defendant's  
4 post-conviction request for DNA testing where defendant has failed to demonstrate that this  
5 testing was unavailable to him at the time of trial.

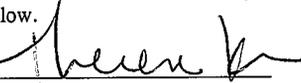
6 DATED: August 12, 2005.

7 GERALD A. HORNE  
Pierce County Prosecuting Attorney

8   
9 MICHELLE LUNA-GREEN  
Deputy Prosecuting Attorney  
10 WSB # 27088

11 Certificate of Service:

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

18 8.15.05 

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COURT OF APPEALS  
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STATE OF WASHINGTON  
BY  SHERIDY

# **APPENDIX “A”**

*Judgment and Sentence*



[ ] 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).

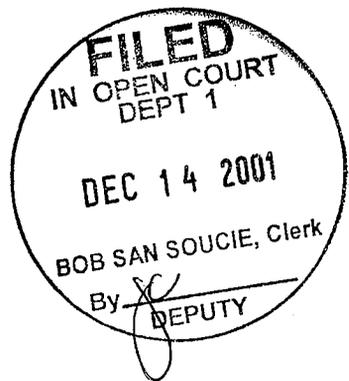
Dated: 12-14-01

By direction of the Honorable  
*[Signature]*  
JAMES R. ORLANDO  
JUDGE

BOB SAN SOUCIE  
CLERK  
*[Signature]*  
By: \_\_\_\_\_  
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date DEC 17 2001, *[Signature]*

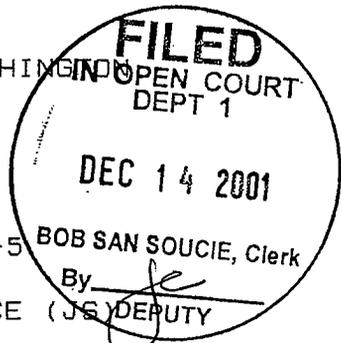


STATE OF WASHINGTON, County of Pierce  
ss: I, Ted Rutt, Clerk of the above  
entitled Court, do hereby certify that  
this foregoing instrument is a true and  
correct copy of the original now on file  
in my office.

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

TED RUTT, Clerk  
By: \_\_\_\_\_ Deputy

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



STATE OF WASHINGTON,  
Plaintiff,

CAUSE NO.00-1-00511-5  
JUDGMENT AND SENTENCE (JS) DEPUTY

vs.

ALEXANDER NAM RIOFTA,  
Defendant.

- Prison
- Jail One year or less
- First Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Breaking The Cycle (BTC)

DOB: 3/30/1977  
SID NO.: WA19426745

DEC 17 2001

I. HEARING

1.1 A sentencing hearing in this case was held on 12/14/01 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 11/30/2000 by

plea  jury-verdict  bench trial of:

Count No.: I  
Crime: Assault in the First Degree, Charge Code: (E23)  
RCW: 9A.36.011(1)(a)  
Date of Crime: 1/27/00  
Incident No.: 000270165

as charged in the Original Information.

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

01-9-16233-1

ENTERED  
JUDGMENT # \_\_\_\_\_

- 1
- 2
- 3
- 4 [X] A special verdict/finding for use of a **firearm** was returned on  
Count I. RCW 9.94A.125, .310.
- 5 [ ] A special verdict/finding for use of **deadly weapon other than a  
firearm** was returned on Count(s)\_\_\_\_.RCW 9.94A.125, .310.
- 6 [ ] A special verdict/finding of **sexual motivation** was returned on  
Count(s)\_\_\_\_. RCW 9.94A.127.
- 7 [ ] A special verdict/finding for **violation of the Uniform Controlled  
Substances Act** was returned on Count(s)\_\_\_\_, RCW 69.50.401 and RCW  
8 69.50.435, taking place in a school, school bus, or within 1000  
9 feet of the perimeter of a school grounds or within 1000 feet of a  
10 school bus route stop designated by the school district; or in a  
11 public park, public transit vehicle, or public transit stop  
shelter; or in, or within 1000 feet of the perimeter of, a civic  
12 center designated as a drug-free zone by a local government  
13 authority, or in a public housing project designated by a local  
14 government authority as a drug-free zone.
- 15 [ ] A special verdict/finding that the defendant committed a crime  
16 involving the manufacture of methamphetamine **when a juvenile was  
present in or upon the premises of manufacture** was returned on  
17 Count(s) \_\_\_\_\_. RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- 18 [ ] The defendant was convicted of **vehicular homicide** which was  
19 proximately caused by a person driving a vehicle while under the  
20 influence of intoxicating liquor or drug or by the operation of a  
21 vehicle in a reckless manner and is therefore a violent offense.  
RCW 9.94A.030.
- 22 [ ] This case involves **kidnapping** in the first degree, kidnapping in  
the second degree, or unlawful imprisonment as defined in chapter  
23 9A.40 RCW, where the victim is a minor and the offender is not the  
24 minor's parent. RCW 9A.44.130.
- 25 [ ] The court finds that the offender has a **chemical dependency** that  
has contributed to the offense(s). RCW 9.94A.129.
- 26 [ ] The crime charged in Count(s)\_\_\_\_\_involve(s) **domestic  
violence**.
- 27 [ ] Current offenses encompassing the same criminal conduct and  
counting as one crime in determining the offender score are  
(RCW 9.94A.400):
- 28
- [ ] Other current convictions listed under different cause numbers used  
in calculating the offender score are (list offense and cause  
number):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history  
for purposes of calculating the offender score are (RCW 9.94A.360):

NONE KNOWN OR CLAIMED.

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

[ ] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360

[ ] the court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

[ ] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

Count	Offender Score	Serious Level	Standard Range (w/o enhancement)	Plus Enhancement*	Total Standard Range	Maximum Term
I	0	XII	93-123	F	153-183	Life

\*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, (JP) Juvenile Present.

2.4 [ ] EXCEPTIONAL SENTENCE: Substantial and compelling reasons exist which justify an exceptional sentence [ ] above [ ] below the standard range for Count(s) \_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4. 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.142.

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

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

93 mo plus 60 mo FASE, CTS  
24 ~~base~~ mo comm placement, \$10 cc \$500 CUA4  
rest - DNA testing - N/C w victim

III. JUDGMENT

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

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

3.2 [ ] The Court DISMISSES Count(s) \_\_\_\_\_. [ ] The defendant is found NOT GUILTY of Count(s) \_\_\_\_\_.

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):

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

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

\$ 110 Victim assessment RCW 7.68.035

\$ 500 Court costs, including RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190

Criminal filing fee \$ \_\_\_\_\_

Witness costs \$ \_\_\_\_\_

Sheriff service fees \$ \_\_\_\_\_

Jury demand fee \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

\$ \_\_\_\_\_ Fees for court appointed attorney RCW 9.94A.030

\$ \_\_\_\_\_ Court appointed defense expert and other defense costs RCW 9.94A.030

\$ \_\_\_\_\_ Fine RCW 9A.20.021 [ ] VUCSA additional fine waived due to indigency RCW 69.50.430

\$ \_\_\_\_\_ Drug enforcement fund of \_\_\_\_\_ RCW 9.94A.030

\$ \_\_\_\_\_ Crime Lab fee [ ] deferred due to indigency RCW 43.43.690

\$ \_\_\_\_\_ Extradition costs RCW 9.94A.120

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

\$ \_\_\_\_\_ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430

\$ \_\_\_\_\_ Other costs for: \_\_\_\_\_

\$ 650 TOTAL RCW 9.94A.145

[ ] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed order may be entered. RCW 9.94A.142. A restitution hearing:

[  ] shall be set by the prosecutor - LO C  
[ ] is scheduled for \_\_\_\_\_

[ ] RESTITUTION. See attached order.

[ ] Restitution ordered above shall be paid jointly and severally with:

NAME OF OTHER DEFENDANT	CAUSE NUMBER	VICTIM NAME	AMOUNT-\$

[ ] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010.

[X] All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_. RCW 9.94A.145.

[ ] In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145.

[ ] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

[X] 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. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.2 [ ] HIV TESTING. The health Department or designee shall test and counsel the defendant for HIV as soon as possible and the

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

defendant shall fully cooperate in the testing.  
RCW 70.24.340.

DNA TESTING. The defendant shall have a blood 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.

4.3 The defendant shall not have contact with Phattaw SOK (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life years (not to exceed the maximum statutory sentence).  
 Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.4 OTHER: \_\_\_\_\_  
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\_\_\_\_\_

4.4(a) Bond is hereby exonerated.

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

(a) CONFINEMENT: RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

70 months on Count No. I \_\_\_\_\_ months on Count No. \_\_\_\_\_  
\_\_\_\_\_ months on Count No. \_\_\_\_\_ months on Count No. \_\_\_\_\_

(a)(i) CONFINEMENT (Sentence Enhancement): 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. 1 \_\_\_\_\_ months on Count No. \_\_\_\_\_  
\_\_\_\_\_ months on Count No. \_\_\_\_\_ months on Count No. \_\_\_\_\_

Sentence enhancements in Counts \_\_\_\_\_ shall run  
[ ] concurrent [ ] consecutive to each other.  
Sentence enhancements in Counts 1 shall be served  
[X] flat time [ ] subject to earned good time credit.

Actual number of months of total confinement ordered is 130.  
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3 above).

(b) CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.400. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon 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 that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. [ ] The sentence herein shall run consecutively to the felony sentence in cause number(s) \_\_\_\_\_

JUDGMENT AND SENTENCE(JS)  
(Prison)(6/2000)





TOP SECRET

00-1-00511-5

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JUDGMENT AND SENTENCE(JS)  
(Prison)(6/2000)

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Office of Prosecuting Attorney  
946 County-City Building  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400



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4 offense (e.g., kidnapping in the first degree, kidnapping in the second  
5 degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where  
6 the victim is a minor and you are not the minor's parent), you are  
7 required to register with the sheriff of the county of the State of  
8 Washington where you reside. If you are not a resident of Washington  
9 but you are a student in Washington or you are employed in Washington  
10 or you carry on a vocation in Washington, you must register with the  
11 sheriff of the county of your school, place of employment, or vocation.  
12 You must register immediately upon being sentenced unless you are in  
13 custody, in which case you must register within 24 hours of your  
14 release.

15  
16 If you leave the state following your sentencing or release from  
17 custody but later move back to Washington, you must register within 30  
18 days after moving to this state or within 24 hours after doing so if  
19 you are under the jurisdiction of this state's Department of  
20 Corrections. If you leave this state following your sentencing or  
21 release from custody but later while not a resident of Washington you  
22 become employed in Washington, carry out a vocation in Washington, or  
23 attend school in Washington, you must register within 30 days after  
24 starting school in this state or becoming employed or carrying out a  
25 vocation in this state, or within 24 hours after doing so if you are  
26 under the jurisdiction of the Department of Corrections.

27  
28 If you change your residence within a county, you must send written  
notice of your change of residence to the sheriff within 72 hours of  
moving. If you change your residence to a new county within this  
state, you must send written notice of your change of residence to the  
sheriff of your new county of residence at least 14 days before moving,  
register with that sheriff within 24 hours of moving and you must give  
written notice of your change of address to the sheriff of the county  
where last registered within 10 days of moving. If you move out of  
Washington State, you must also send written notice within 10 days of  
moving to the county sheriff with whom you last registered in  
Washington State.

If you are a resident of Washington and you are admitted to a public or  
private institution of higher education, you are required to notify the  
sheriff of the county of your residence of your intent to attend the  
institution within 10 days of enrolling or by the first business day  
after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register.  
Registration must occur within 24 hours of release in the county where  
you are being supervised if you do not have a residence at the time of  
your release from custody or within 14 days after ceasing to have a  
fixed residence. If you enter a different county and stay there for  
more than 24 hours, you will be required to register in the new county.  
You must also report in person to the sheriff of the county where you

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5.8 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Dec 14, 2001

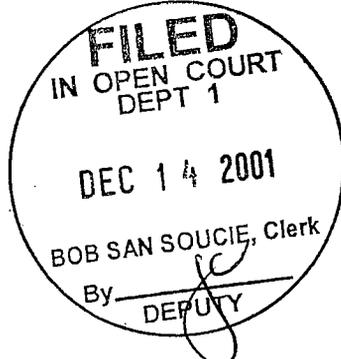
*[Signature]*  
\_\_\_\_\_

JUDGE Print Name:  
JAMES R. ORLANDO

*[Signature]*  
\_\_\_\_\_  
Deputy Prosecuting Attorney  
Print Name:  
WSB# 1674

*[Signature]*  
\_\_\_\_\_  
Attorney for Defendant  
Print name:  
WSB# 16709

X  
\_\_\_\_\_  
Defendant  
Print name:  
Alex Riapa



JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

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 committed after July 1, 1988 is also sentenced to one (1) year term of community placement on these conditions:

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

CERTIFICATE OF INTERPRETER

Interpreter signature/Print name: \_\_\_\_\_  
I am a certified interpreter of, or the court has found me otherwise  
qualified to interpret, the \_\_\_\_\_ language, which  
the defendant understands. I translated this Judgment and Sentence for  
the defendant into that language.

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 00-1-00511-5

I, Ted Rutt, 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 on this  
date: \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy  
Clerk

IDENTIFICATION OF DEFENDANT

SID No.: WA19426745 Date of Birth: 3/30/1977  
(If no SID take fingerprint card for WSP)

FBI No. 151947KB3 Local ID No. \_\_\_\_\_

PCN No. \_\_\_\_\_ Other \_\_\_\_\_

Alias name, SSN, DOB: \_\_\_\_\_

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

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

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, TED RUTT: \_\_\_\_\_, Deputy Clerk.

Dated: \_\_\_\_\_

DEFENDANT'S SIGNATURE: \_\_\_\_\_

Right four fingers taken simultaneously

Right thumb



Left four fingers taken simultaneously

Left thumb



FINGERPRINTS

## **APPENDIX "B"**

*Booking Photo*

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6  
7 IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
8 DIVISION II

9 IN RE PERSONAL RESTRAINT  
10 PETITION OF:

11 ALEXANDER RIOFTA,

12  
13 Petitioner.

NO. 33262-1

AFFIDAVIT OF IRENE BAUER

14 STATE OF WASHINGTON )

15 : ss.  
16 COUNTY OF PIERCE )

17 The undersigned, being first duly sworn upon oath, deposes and says:

- 18 1. That I am employed with the Pierce County Prosecutor's Office.  
19 2. That I have access to booking photos via the County's computer system –  
20 LINX.  
21 3. That the attached photo is a true and accurate print out of the above name  
22 defendant's booking photo in this case, 00-1-00511-5, on January 28, 2000,

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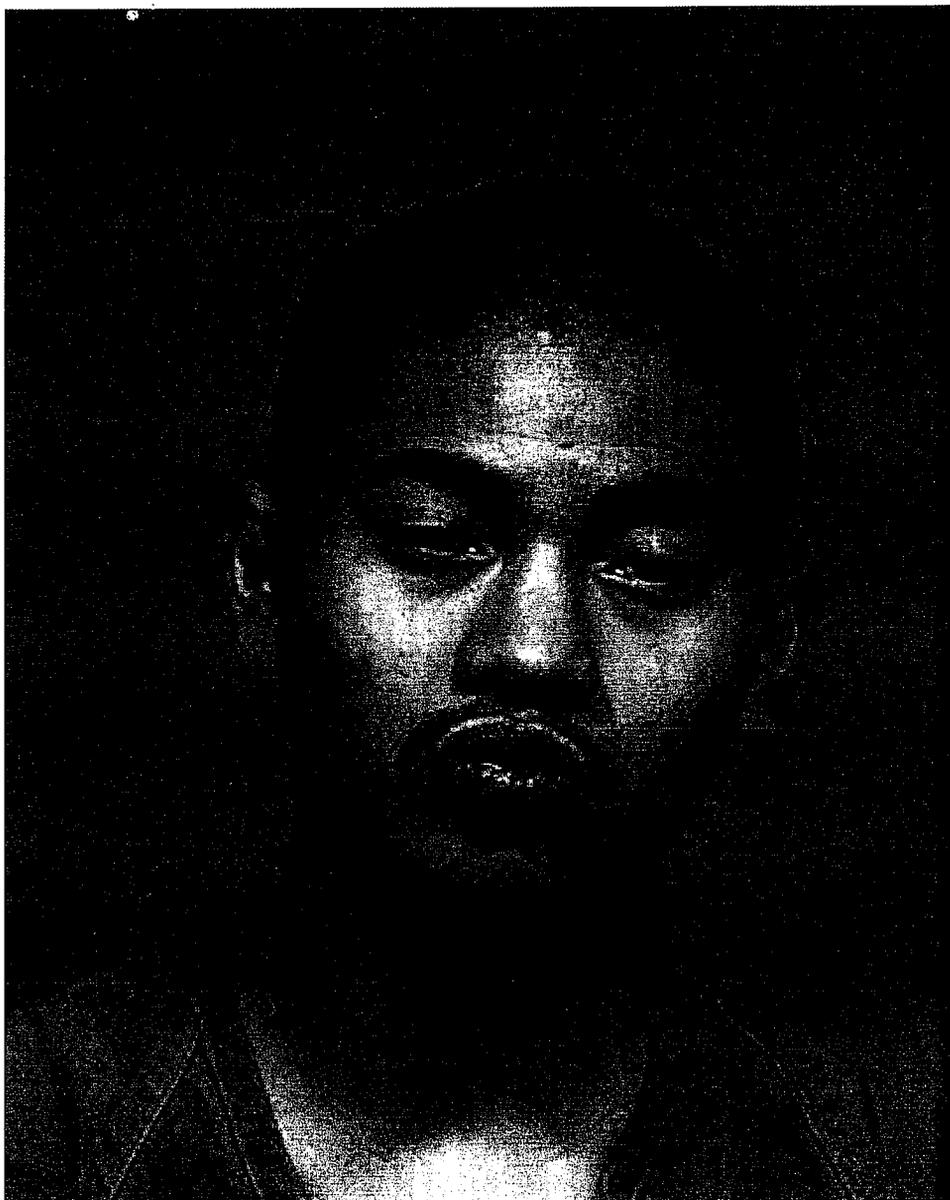
as accessed via LINX.

Further your affiant sayeth naught.

*Irene Bauer*  
IRENE BAUER

SUBSCRIBED AND SWORN to before me this 9<sup>TH</sup> day of August, 2005.

*Joni R. Peters*  
NOTARY PUBLIC, in and for the  
State of Washington, residing  
at *Tacoma*  
My Commission Expires: *9/5/05*



# **APPENDIX “C”**

*Verbatim Report of Proceedings*

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6 IN THE COURT OF APPEALS  
7 OF THE STATE OF WASHINGTON  
8 DIVISION II

9 IN RE PERSONAL RESTRAINT  
10 PETITION OF:

NO. 33262-1

11 ALEXANDER N. RIOFTA,

AFFIDAVIT OF HEATHER JOHNSON

12  
13 Petitioner.

14 STATE OF WASHINGTON )  
15 : ss.  
16 COUNTY OF PIERCE )

17 The undersigned, being first duly sworn upon oath, deposes and says:

- 18 1. I am employed with the Pierce County Prosecutor's Office as a legal  
19 assistant.  
20 2. That I have prepared Appendix "C." That this appendix is a true and  
21 accurate copy of the verbatim report of proceedings as filed in the  
22  
23  
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direct appeal in this matter.

Further your affiant sayeth naught.

*Heather Johnson*  
HEATHER JOHNSON

SUBSCRIBED AND SWORN to before me this 16<sup>TH</sup> day of August, 2005.



*Cynthia Ann Fankell*  
NOTARY PUBLIC, in and for the  
State of Washington, residing  
at Pierce  
My Commission Expires: 4/15/09

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IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	VERBATIM REPORT OF PROCEEDINGS
	)	Superior Court No. 00-1-00511-5
vs	)	Court of Appeals No. _____-II
	)	
ALEXANDER NAM RIOFTA,	)	Volume 2 of 2
	)	Pages 37 - 402
Defendant.	)	

APPEARANCES

PROSECUTING ATTORNEY in and for the County of Pierce, State of Washington, by MS. LISA WAGNER, Deputy Prosecuting Attorney, appeared on behalf of the State.

MR. E. ALLEN WALKER, Attorney at Law, 2607 Bridgeport Way West, Tacoma, Washington, appeared on behalf of the Defendant, who was present.

BE IT REMEMBERED that on the 27th, 28th, 29th and 30th days of November 2000, the above-captioned cause came on duly for hearing before the HONORABLE JAMES R. ORLANDO, Judge of the Superior Court in and for the County of Pierce, State of Washington; the following proceedings were had, to-wit:

COA # 82104	
Randy Kay York, CCR, RDR	Official Court Reporter
930 Tacoma Avenue South	Dept. 1, Superior Court
Tacoma, Washington 98402	(253) 798-7482

1 NOVEMBER 28, 2000

2 MORNING SESSION

3 (Jury not present.)

4 THE COURT: Okay. Are we ready for the jury?

5 MR. WALKER: I believe we are.

6 MS. WAGNER: Yes.

7 THE COURT: All right. Are you going to give your  
8 opening or reserve it?

9 MR. WALKER: I'll give it.

10 (Jury present.)

11 THE COURT: At this time I will ask that you please  
12 give your attention to Ms. Wagner, who will give the  
13 opening statement on behalf of the State.

14 MS. WAGNER: Thank you, Your Honor. Counsel.

15 Good morning.

16 JURORS: Good morning.

17 MS. WAGNER: I am going to try not to trip on this.  
18 In July 1998, several armed men walked into what is  
19 known as the Trang Dai Cafe here in Tacoma and began  
20 firing on patrons. Ultimately five of those patrons  
21 were killed and several of them were wounded.

22 Police investigation subsequently revealed that there  
23 were several people involved in this what's been  
24 described as a massacre, and eight people ultimately  
25 arrested. Of those eight persons arrested, one of them

Opening statement by Ms. Wagner

1 was a young Cambodian gentleman by the name of Veasna  
2 Sok. Veasna was arrested and subsequently charged with  
3 I believe five counts of aggravated murder.

4 After his arrest, at some point after his arrest,  
5 Veasna agreed to cooperate with the State and was  
6 willing to testify against some of his codefendants.  
7 Now, that was not an easy decision to make and that's  
8 evidenced by the fact after making the decision, he was  
9 assaulted in court by two of his codefendants. Now,  
10 despite this attack in court, Veasna Sok still agreed to  
11 cooperate with the State, stuck by his decision.

12 Well, in early January of this year, another incident  
13 occurred that had the effect of changing the mind of  
14 Veasna Sok. In the early morning hours of January 27 of  
15 this year, a young man, the defendant, approached Veasna  
16 Sok's younger brother, Ratthana Sok, outside of Ratthana  
17 Sok's home and he fired at him multiple times.

18 The evidence is going to show in the early morning  
19 hours January 27 of 2000, the defendant arrived at the  
20 residence of Ratthana Sok, and he arrived in a stolen  
21 1994 Honda. And the defendant was with several other  
22 people, who have never been identified in this case.

23 Now, the defendant knew Ratthana Sok's schedule  
24 because he was outside waiting early in the morning,  
25 when Ratthana Sok exited his house to go to school, as

1 he did every morning.

2 Ratthana exited the house at about 6:45 in the  
3 morning, and usual routine was to go through the garage,  
4 he left the garage door open, and went out to the front  
5 area. They have a gate across the driveway, and as  
6 Ratthana went out, was opening the gate, he noticed  
7 there was a Honda parked in front of his house parked in  
8 the street. He didn't pay much attention to it.

9 He did notice that there were several people in the  
10 car, and shortly thereafter, one of the people exited,  
11 and that person was the defendant. The defendant  
12 approached Ratthana, as he was opening the gate, and he  
13 asked him if he had a cigarette. Ratthana said, "No, I  
14 don't smoke," and he went about his business.

15 Well, very shortly thereafter, the defendant pulled  
16 out what Ratthana has described as a chrome revolver and  
17 he pointed it right at Ratthana.

18 And although the defendant was just a few inches  
19 away, actually the gun was a few inches away from  
20 Ratthana, he fired and he missed. And Ratthana turned  
21 and he ran. And he ran back towards the house, and he  
22 ran in the garage, between two cars that were parked  
23 within the garage. As he ran, he heard what he believed  
24 to be four or five gunshots.

25 Now, Ratthana managed to escape unharmed, although

1 you can't say the same thing about the house or the  
2 cars, because as you will hear testimony from Armin  
3 Keen, who was the first officer on the scene, and Hank  
4 Baarslag, who was forensic tech. with Tacoma Police  
5 Department, they found bullet holes. They found bullet  
6 holes in the garage, two above the garage and just to  
7 the side, and some bullet holes in the cars that were  
8 parked within the garage. And these are the cars that  
9 Ratthana Sok ran between to get back into the house.

10 There were no shell casings found at the scene, and  
11 you will hear testimony about the difference between  
12 revolver and semiautomatic pistol. In fact, a revolver  
13 doesn't leave shell casings, they stay within the gun.  
14 But a spent bullet was recovered. That was recovered  
15 just in front of the house, a bullet probably hit the  
16 house and dropped, and that's where it was located.

17 Now, as I said, the defendant arrived at Ratthana  
18 Sok's residence in a 1994 Honda. That Honda had been  
19 stolen the day before, stolen from a gentleman by the  
20 name of Ali Saleh, S-a-l-e-h. And he will come in here  
21 and he will testify that it was stolen in the late  
22 evening hours of January 26th or between late evening  
23 hours of the 26th and the early morning hours of the  
24 27th.

25 That car is important, because Ratthana Sok is going

1 to describe both the car, and he's going to describe the  
2 clothing that the defendant was wearing. And one of the  
3 things the defendant was wearing was a white hat. That  
4 hat was recovered at the scene; that hat had been in the  
5 Honda when it was stolen from Ali Saleh's residence and  
6 it ties the Honda to the scene; it ties the defendant to  
7 the scene. You will hear testimony from Mr. Saleh.

8 You will hear testimony from Miss Randi Wescott, who  
9 located the car about ten o'clock on the morning of the  
10 27th. The car was found in front of her residence, and  
11 Miss Wescott who lives blocks away from the defendant,  
12 so the stolen car that was used in the shooting was  
13 found only blocks from the defendant's residence.

14 Now, as I said, Ratthana Sok escaped without injury.  
15 And he did call police, and they arrived. And you will  
16 hear from them. Another person who arrived was  
17 Detective Tom Davidson, who is the lead detective, and  
18 he will testify in this case, also.

19 One of the things that officers were able to obtain  
20 from Ratthana Sok was a lot of information about the  
21 shooter, because Ratthana Sok knew the shooter. Several  
22 years earlier he and the defendant had played basketball  
23 together at People's Park. They were not friends, they  
24 didn't hang together, but he knew him. He could  
25 physically recognize him, and he knew his first name.

1 And that's what he told the police. He said it to  
2 Officer Keen, he said it to Detective Davidson. "I  
3 think his name is Alex."

4 Based upon the physical description they had and  
5 first name of Alex, the detectives brought Ratthana Sok  
6 to the police department, and they have a data base of  
7 thousands of pictures, and they are able to type in  
8 these parameters of Asian male with the name of Alex or  
9 Alexander. And what that did was bring up a display of  
10 photographs. Within that group of photographs, Ratthana  
11 Sok looked at one and said, "That's him, I'm positive  
12 that's the one that shot me." And that was the  
13 defendant, Alexander Riofta.

14 But with that information, Detectives are able to go  
15 to the defendant's house. They found out where he was  
16 living, went there the next day, January 28th. And they  
17 went there to arrest him. They knocked on the door, and  
18 the defendant answered the door, and they told him he  
19 was under arrest.

20 It was Detective Tom Davidson and Detective John  
21 Ringer who went to his house. When the defendant asked,  
22 "What am I under arrest for?" They said, "You are under  
23 arrest for the shooting." And the defendant immediately  
24 became hostile and abusive and started cursing at them,  
25 and said something to the effect of, "I don't even own

1 no gun, how could I shoot some, quote, mother fucker?"

2 Detectives chose not to interview the defendant right  
3 there at the house and took him to the station for an  
4 interview where he was advised of his rights, and he  
5 agreed to be interviewed. And you will hear from  
6 Detective Davidson about that interview. He's going to  
7 tell you statements the defendant made that afternoon.  
8 One of the statements was, "You know, if I was going to  
9 shoot someone, I would kill them, because I wouldn't be  
10 stupid enough to be identified."

11 And he talked about the Trang Dai murders, and he  
12 talked about Veasna Sok. And he said that Veasna was,  
13 quote, a sucker for snitching on his Homeys. And he  
14 also said that Veasna deserved to get, quote, choked up  
15 for snitching on his Homeys.

16 In addition to talking about Trang Dai, he also  
17 admitted knowing Veasna Sok, admitted going to his  
18 house, and he said that he walked by his house and sort  
19 of explained how the defendant knew the schedule of  
20 Ratthana Sok.

21 Now, the defendant also talked about a newspaper  
22 article that he had cut out and he had kept. And this  
23 is important, because of the way he described it. He  
24 said that he had a picture, and that -- he had a  
25 newspaper article that had a picture of all his, quote,

1 Homeys shown in that article. That article was later  
2 recovered by police, and you will see that article.

3 You will hear from these detectives; you will hear  
4 from Ratthana Sok, and from other people who arrived at  
5 the scene. What the evidence is going to show in this  
6 case, ladies and gentlemen, is that the defendant didn't  
7 have any involvement in the Trang Dai case, and we are  
8 not suggesting that he did. But what the defendant took  
9 it upon himself to do was to try and, quote, protect his  
10 Homeys. And he's served what can best be described as  
11 street justice.

12 And he tried to send a message to Veasna Sok. That  
13 message worked. Within a month of the shooting, Veasna  
14 Sok changed his mind and he no longer agreed to  
15 cooperate with the State.

16 Now, the defendant's charged with assault in the  
17 first degree while armed with a firearm. The evidence  
18 is going to show that beyond a reasonable doubt the  
19 defendant, on the morning of January 27th, did approach  
20 Ratthana Sok with a gun and did fire that gun at him  
21 several times. Fortunately missed.

22 When this case is over, I am going come back before  
23 you during closing argument and I am going to ask that  
24 you find the defendant guilty as charged of assault in  
25 the first degree while armed with a deadly weapon.

1 Thank you.

2 THE COURT: Thank you. At this time I will ask that  
3 you give your attention to Mr. Walker, who will give the  
4 opening statement on behalf of Mr. Riofta.

5 MR. WALKER: Thank you. May it please the court,  
6 counsel.

7 Good morning, again. Well, this is a case that  
8 involves lack of evidence on the State's part. As you  
9 heard, and as you will receive more instruction, the  
10 State bears a high burden. They have to prove beyond a  
11 reasonable doubt the guilt of someone who's accused of  
12 the crime, and that doubt can rise either from the  
13 evidence or from the lack of evidence.

14 And since this is a case of lack of evidence, I am  
15 going to ask you to, starting with the first witness,  
16 because that's when the defense case starts, really, pay  
17 attention to what the State doesn't prove, because  
18 there's a lot of things that they are not going to be  
19 able to prove, including the fact that my client is not  
20 guilty.

21 I am going to ask you to keep an open mind throughout  
22 this case, as the judge already has instructed you. Pay  
23 attention to really exactly what is stated by the  
24 witnesses; exactly what is stated by them. And see --  
25 pay attention to whether these witnesses are

1 exaggerating; they are maybe speculating, maybe they are  
2 connecting some dots that shouldn't be connected; maybe  
3 they are a little out of order, the connection.

4 Look specifically at how the identification evolved.  
5 Look at how that whole thing happened, and how  
6 reasonable that was, how pieces kind of got put  
7 together. Look at how that evolved. That's crucial.

8 Defense doesn't have to put on witnesses, but we are  
9 going to. My client's mother, Jennifer Saldana came  
10 home on the morning of the shooting, the 27th, I think  
11 it was, it was a Thursday, and she got home from work  
12 about 4:00 a.m. She checked on her son and went to bed.  
13 He was sleeping. Of course they don't sleep in the same  
14 room, so she wasn't there the whole time. But, you  
15 know, we are giving you what we can, what is reasonable  
16 for us to give you, what is all we can give you, and  
17 that is her.

18 Now, you are going to hear testimony, I believe, from  
19 the victim that he allegedly saw my client, although he  
20 didn't see his face, he admitted in a defense interview  
21 the day before the shooting, at about the same time.

22 Well, we do have an alibi witness, a witness who saw  
23 my client at that time. So he couldn't have been there  
24 the day before, as is stated by victim. The boyfriend  
25 of my client's sister, his name is Drew Folsom, he

1 happened to be at my client's mom's house. And he was  
2 getting some clothes for his girlfriend, for my client's  
3 sister, and he saw that my client was there at that  
4 time, about 7:00 a.m. on that Wednesday, the day before  
5 the shooting. So, we are giving you people as best we  
6 can that can account for my client's whereabouts.

7 Now, we also had another gentleman that we are going  
8 to give you that would have given you the whole --

9 MS. WAGNER: Objection, Your Honor.

10 MR. WALKER: -- whereabouts.

11 THE COURT: Sustained.

12 MR. WALKER: May we have a hearing outside the jury's  
13 presence? I need to talk about this.

14 THE COURT: Do you want to do it now or do you want  
15 to wait until after your opening statement is done?

16 MR. WALKER: I want it as part of my opening  
17 statement, Your Honor.

18 THE COURT: Folks, we will have you take a short  
19 break in the jury room.

20 (Jury not present.)

21 MS. WAGNER: Your Honor, I believe Mr. Walker was  
22 about to mention that he had someone on his witness list  
23 who has subsequently died, and I can't think of anything  
24 more inappropriate than to present what someone would  
25 have testified to and they are not available. There is

1 no deposition, there is nothing that can be presented,  
2 and this is simply improper argument.

3 MR. WALKER: Well, I think it's appropriate. He  
4 died. And I am not going to talk about what he said, I  
5 am just going to say that we had a witness that  
6 essentially could account for whereabouts of my client  
7 and there will be testimony to that effect. He was on  
8 the defense witness list. The court can take judicial  
9 notice of that.

10 And unfortunately he died. It wasn't somebody we  
11 came up with, "Oh, he died, so now we are going to make  
12 him a witness." He was on the defense witness list.

13 THE COURT: But he's never given a statement, never  
14 corroborated, so there is nothing the State could have  
15 cross-examined him on.

16 MR. WALKER: Okay. But, there is an exception to the  
17 hearsay rule for identifications made, and he has made  
18 an identification, and for that limited purpose, we can  
19 present that evidence.

20 MS. WAGNER: Identification of what?

21 MR. WALKER: That my client was there at --

22 THE COURT: Was where?

23 MR. WALKER: Was at home on 7:00 a.m. on the day of  
24 the shooting. That is an identification that is an  
25 exception to the hearsay rule.

1 MS. WAGNER: That is not a statement of  
2 identification.

3 MR. WALKER: Sure it is.

4 MS. WAGNER: That would be in complete abuse of the  
5 hearsay rules.

6 THE COURT: I am not going to allow it, Mr. Walker.

7 MR. WALKER: Okay, I have made my --

8 THE COURT: Some authority as the case progresses, I  
9 will certainly consider that, but I think that would be  
10 entirely improper in a case such as this.

11 MR. WALKER: Okay. I think I have made my offer of  
12 proof.

13 THE COURT: Okay. All right. So we can bring the  
14 jury back, and you can conclude without reference to the  
15 statements.

16 (Jury present.)

17 THE COURT: Okay, Mr. Walker, you may continue.

18 MR. WALKER: Thank you, Your Honor. Okay, just a  
19 couple of things I wanted to clarify from what the  
20 evidence really will show. My client did not tell the  
21 detective that he wanted the victim choked up, he said  
22 that the victim deserved to be choked up in court.

23 And my client is not a gang member. There is no  
24 evidence that he was a gang member. I think even the  
25 victim would corroborate that, from his knowledge of the

1 streets.

2 So, please, pay close attention to the wording of the  
3 witnesses, and at the resolution of the case, I am  
4 confident you will find my client not guilty.

5 Thank you.

6 THE COURT: Okay. Thank you. State ready to call  
7 its first witness?

8 MS. WAGNER: May I take a moment to set this up? Can  
9 you inquire of the jury members if they can all see?

10 THE COURT: Can everyone see the screen? Okay. I am  
11 going to come around so --

12 MS. WAGNER: I have got a few minutes before I get to  
13 that, I will advise the court.

14 State will call Ratthana Sok.

15 THE COURT: Come up here, please. If you will raise  
16 your right hand.

17 RATTHANA SOK

18 having been called as a witness by the State, being first  
19 duly sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. WAGNER:

22 Q Good morning. If you could focus towards me, keep your  
23 voice up so the jurors could hear you.

24 A Okay.

25 Q Please state your full name, spell your first and last

Testimony of Ratthana Sok

- 1 name for the court.
- 2 A First name Ratthana Sok, R-a-t-t-h-a-n-a, Ratthana, Sok,  
3 S-o-k, Sok.
- 4 Q Ratthana, how old are you?
- 5 A 17 years old.
- 6 Q Are you working or are you in school?
- 7 A I am in school.
- 8 Q Is that full-time?
- 9 A Full-time.
- 10 Q Are you still living at home?
- 11 A I am still living at home.
- 12 Q What's the address of your residence?
- 13 A 1609 East 67th Street, Portland Avenue.
- 14 Q How long have you lived there?
- 15 A Living there over ten years.
- 16 Q Ratthana, do you have a brother name Veasna Sok?
- 17 A Yes, I do.
- 18 Q Where is Veasna currently located?
- 19 A He's in here.
- 20 Q Is he in Pierce County Jail?
- 21 A Yeah, Pierce County Jail.
- 22 Q And he's -- to the best of your knowledge, is he facing  
23 charges related to the Trang Dai murders?
- 24 A Well, that I do not know. I mean, he's waiting for  
25 trial. That's about it, as far as I know.

1 Q Okay. Do you know how long he's been in custody?

2 A Yeah, for two years.

3 Q Ratthana, I would like to direct your attention to  
4 January 27th of this year, which was a Thursday. Do you  
5 remember that day?

6 A Yeah, I remember that day.

7 Q You testified you go to school every day. What time do  
8 you leave for school?

9 A Leave around 6:40. Between 6:40 and 6:50, open the  
10 garage.

11 Q Do you have a routine you follow?

12 A Yeah, every morning.

13 Q I would like to go ahead and have you describe for the  
14 jury your house in terms of what you have on the outside  
15 of the house and the driveway area. Do you have a --

16 A I got a fence around my house. And, well, do you want  
17 me to describe the routine just aloud or just --

18 Q Just right now, the fence, does that cross the driveway?

19 A Yeah, cross the driveway.

20 (Plf's Ex 1-10 marked.)

21 Q Ratthana, I am going show you what's been marked as  
22 Plaintiff's Exhibit 1 and ask if you can recognize that  
23 photograph.

24 A Yeah, I do.

25 Q What is that showing?

1 A My house.

2 Q Okay. And is that a fairly accurate depiction of your  
3 house?

4 A Yes.

5 MS. WAGNER: State would offer Plaintiff's 1.

6 MR. WALKER: No objection.

7 THE COURT: Exhibit 1 will be admitted.

8 MS. WAGNER: Your Honor, I will be displaying  
9 Plaintiff's 1.

10 THE COURT: All right.

11 Q (By Ms. Wagner) Ratthana, I don't know if you can see  
12 the screen; if not, if you could just step down right  
13 there, not block the jurors' views.

14 A Okay.

15 Q That's a picture of your house. Does that show the  
16 fence that goes around?

17 A Yes, shows the fence.

18 Q And do you have a gate that closes your driveway?

19 A Yes, I do.

20 Q At this point in the picture, the gate is open?

21 A Yeah, it's open.

22 Q Can you describe what your routine is in the morning?

23 A Routine is I open up the garage, I come up, open the  
24 fence.

25 Q Okay. Go ahead and take the seat, thank you. On

1 January 27th, what time do you think that you left your  
2 house?

3 A Out of my garage?

4 Q Yeah.

5 A Like at 6:40.

6 Q And you go through the garage. Do you leave the garage  
7 door open when you leave?

8 A Well, when I open the garage door, open the garage, open  
9 it, and I walk out, and the garage is still open.

10 THE COURT: Hold on just a second. Can I have you  
11 move the microphone back just a little bit? You don't  
12 need to talk right into it. Just talk naturally, okay?

13 THE WITNESS: All right.

14 Q (By Ms. Wagner) The morning of the 27th, did you have  
15 any cars parked in the garage?

16 A Yes, I got two cars, parents' cars.

17 Q What kind of cars are they?

18 A There is one Ford Explorer, is Acura Legend.

19 Q That morning on the 27th, when you walked out, did you  
20 notice anything out in the street?

21 A When I opened the garage, I walked out, I noticed there  
22 was a car parked by the street.

23 Q Where was it parked?

24 A It was --

25 Q I will show you Plaintiff's Exhibit 1 again. Ask that

1 show possibly where it was parked.

2 A You do you want me to look --

3 Q If you don't mind stepping down. Just kind of step to  
4 the side of the monitor there.

5 A It was parked right here. Inside.

6 Q For the benefit of the record, you are pointing to the  
7 street, to the right part of that picture?

8 A Yeah, right part.

9 Q And there's some bushes there?

10 A Yeah.

11 Q Okay. So, was it parked just to the right of your  
12 driveway, then, as you are looking at the photo?

13 A Parked up right here.

14 Q Which way was it facing?

15 A Facing down, downward.

16 Q So the front end was more towards the right?

17 A Yeah.

18 Q Thank you. Had you seen this Honda before?

19 A It was first time.

20 Q When you first saw it, could you see anyone inside the  
21 Honda?

22 A I didn't see nobody.

23 Q What did you continue to do?

24 A Well, I didn't really pay much attention to it, so I  
25 just got towards the gate and opened one side of the

1 gate. And I recognized the car as Honda Civic.

2 Q Honda?

3 A Honda Civic. So, he started coming out asked me for a  
4 cigarette.

5 Q Okay, who started coming out?

6 A It was him.

7 Q Okay. I am going to back you up a little bit. Could  
8 you see people inside the Honda?

9 A It was pretty dark and foggy. It was kind of like  
10 clear, but I could see people in there.

11 Q Could you identify any of them as they sat in the car?

12 A No.

13 Q How many do you think you saw in the car?

14 A Two or three.

15 Q You said someone got out of car, where did they get out  
16 of, what side?

17 A He got out of the front passenger. Passenger.

18 Q Did he go around the front or the back?

19 A Around the back.

20 Q Did he approach you?

21 A Yeah, he approached me.

22 Q Where were you standing when this person approached you?

23 A I was standing from about here in front of the driveway,  
24 at the driveway inside. Inside of the gate.

25 Q The person that approached you, did you recognize him

1 right away?

2 A I recognize him when he came up to me close. Recognize  
3 him right away.

4 Q I will go into that in a little more detail. Do you  
5 remember what he said to you, when he approached you?

6 A He asked me for a cigarette.

7 Q What did you tell him?

8 A Said, "I don't smoke."

9 Q Did you stop and talk to him?

10 A Huh uh. I just continued to go through my gate and --

11 Q What happened at that point?

12 A Pulled out a gun on me.

13 Q Where did he pull the gun from?

14 A From his pocket.

15 Q Okay. Now, I need you to describe the best you can, was  
16 he using his right or left hand?

17 A I think he was using his right. I can't remember that.

18 Q Do you remember what pocket he pulled it from?

19 A His -- both his hands was in the pocket.

20 Q And one of them came out with a gun?

21 A Yeah.

22 Q Do you think it was the right hand or do you --

23 A What I think is the right hand.

24 Q Did you get a good glimpse of the gun?

25 A Yes.

1 Q What is it you saw in terms of the gun?

2 A What I saw in terms of the gun was it was chrome.

3 Q Could you tell what type of gun?

4 A I couldn't tell the type revolver, chrome revolver.

5 Q Why did you think it was revolver?

6 A Because it was pointed straight to my forehead, and I  
7 could see the revolver.

8 Q I am sorry, the revolver?

9 A You know how revolver like -- like the side comes out  
10 when it comes out to you.

11 Q The cylinder part?

12 A Yeah, the cylinder part.

13 Q When this person pulled the gun on you, how far apart  
14 were you?

15 A It was -- how far apart? Or how far the gun was apart  
16 from me.

17 Q Initially you two, how far apart were you?

18 A Two or three feet.

19 Q Were you standing on opposite sides of the fence or were  
20 you in the driveway area with the gate open?

21 A I was in the driveway, but the gate is open.

22 Q Nothing blocking between you and this person?

23 A Yeah.

24 Q You were about two or three feet. Did he actually pull  
25 the gun and point it at you?

- 1 A That, yeah, he pulled the gun, pointed it right at my  
2 forehead.
- 3 Q What did you do at that point?
- 4 A I was in shock. I was in shock.
- 5 Q You were in shock?
- 6 A Yeah.
- 7 Q Did you say anything to this person?
- 8 A I didn't say anything.
- 9 Q Did he say anything to you?
- 10 A Huh uh.
- 11 Q What happened at that point?
- 12 A He started shooting, so then I ran inside the house.  
13 Somehow got inside house.
- 14 Q You testifying that the gun was fairly close to you. Do  
15 you remember him shooting at you?
- 16 A Yeah.
- 17 Q Where was the gun pointed, when he fired the first shot?
- 18 A It was around my forehead.
- 19 Q Obviously didn't hit you.
- 20 A Didn't hit me.
- 21 Q And you testified you turned and ran?
- 22 A Yeah.
- 23 Q Where is it you ran to?
- 24 A Ran towards the -- in between the car and the car.
- 25 Q Is this in your garage?

1 A Yeah.

2 Q Ratthana, I am going show you what has been marked  
3 Plaintiff's Exhibit 8, and ask you if you recognize this  
4 photograph.

5 A Yes.

6 Q And what is that? Depict something?

7 A The garage door open, and two of my car parked in there.

8 Q And are those the same two cars that were parked the  
9 morning of the 27th?

10 A Yes.

11 MS. WAGNER: State would offer Plaintiff's Exhibit 8.

12 MR. WALKER: No objection.

13 THE COURT: Plaintiff's 8?

14 MS. WAGNER: 8. Move to publish, Your Honor.

15 THE COURT: Granted. Exhibit 8 will be admitted.

16 Q (By Ms. Wagner) Ratthana, I am displaying for the jury  
17 this photograph. And you had a chance -- does that show  
18 the two cars that were parked there that morning?

19 A Yes.

20 Q Are those the two cars that you ran between?

21 A Yes.

22 Q As you were running, did you hear anything?

23 A I heard shots. Four or five.

24 Q Four or five shots?

25 A Yeah. Didn't turn around.

1 Q Had you turned -- when you initially turned and ran, did  
2 you ever turn and see what happened to the person who is  
3 shooting at you?

4 A No, I didn't.

5 Q Okay. You ran inside the house?

6 A Yes.

7 Q What did you do once you got inside the house?

8 A When I got -- when I opened the garage door, and then my  
9 dad tried to go out, told him not to go out, someone was  
10 shooting at me. So then we told my mom, "Call the  
11 cops." Then she called the cops. When the cops came --

12 MR. WALKER: Objection, Your Honor, I think the  
13 question's been answered. I think way past the answer.  
14 Involves hearsay.

15 THE COURT: I will overrule.

16 Q (By Ms. Wagner) You called the police. Did you stay  
17 inside until the police came?

18 A Yes.

19 Q Ratthana, I want to go back. You said that you  
20 recognize the person who shot at you. How is it you  
21 knew him or recognized him?

22 A I knew him when he came close-up to me.

23 Q About before that, where is it you knew him?

24 A Before that, used to play basketball together local  
25 park, kind of park by the church.

1 Q How long ago?

2 A Four or five years ago.

3 Q Were you friends with this person?

4 A Not friends, no.

5 Q Okay. And so you just knew him?

6 A Just knew him by name.

7 Q What was his name?

8 A Alex.

9 Q You pointed originally, but just for the benefit of the  
10 record, the person who shot at you that morning, do you  
11 recognize him in the courtroom today?

12 A Yes.

13 Q Could you point him out?

14 A Him.

15 Q Okay. Person in the yellow shirt?

16 A Yes.

17 MS. WAGNER: The record would reflect the witness has  
18 identified the defendant.

19 Q (By Ms. Wagner) Do you recall what the defendant was  
20 wearing that morning?

21 A He was wearing a black jacket, and navy blue jeans, and  
22 he had white hat on and a hood with the hat.

23 Q Do you remember anything about his face?

24 A Yeah, mustache.

25 Q In terms of his height, what do you remember about his

1 height?

2 A Probably like five-two, five-three.

3 Q His build?

4 A Skinny.

5 THE COURT: Mr. Sok, you need to keep your voice up,  
6 okay? I am having a hard time hearing you, I am sure  
7 the jurors are also.

8 THE WITNESS: Sorry.

9 Q (By Ms. Wagner) You testified that he was wearing a  
10 hat. Do you know if he got back into the car that you  
11 had seen him get out of initially, or did you have a  
12 chance to look back and see?

13 A I didn't have a chance to look back and see.

14 Q When you walked back out when the police arrived, was  
15 that Honda still --

16 A It was gone.

17 Q In terms of the Honda, what do you remember about the  
18 Honda?

19 A It was black Honda Civic, four door, and five star rim  
20 on it, sharp.

21 Q When you say five star rim, sharp. What do you mean?

22 A Like kind of a star.

23 Q Rims being in the wheels?

24 A Yeah, in the wheels.

25 Q So the pointed shape of a star?

1 A Yeah, yes.

2 Q I want to ask you about the lighting in that area.

3 First out on the street, are there any streetlights near  
4 by?

5 A There's two or three house down, there's streetlight by  
6 the house. Only streetlight.

7 Q How about on your house?

8 A My house there's one. Is a light where it reflects and  
9 if it shine on you, the light will open. Is on top of  
10 the garage.

11 Q Okay. And that morning in the early morning hours, was  
12 it light out yet?

13 A No.

14 Q Okay. You testified that the defendant got within two  
15 to three feet of you. Given the lighting situation, how  
16 well were you able to see his face?

17 A I saw it clearly.

18 Q And other than asking you for a cigarette, did the  
19 defendant make any other statements to you?

20 A No.

21 Q Now, you testified that you recognized him. You didn't  
22 try and have any conversation with him?

23 A No.

24 Q Other than that morning on the 27th, had you seen what  
25 you believed to be the defendant at your house on

1 another day?

2 A Yes.

3 Q When was that?

4 A I can't remember, but all I remember was it was like in  
5 the morning. My dad backed out the car, he was in front  
6 of the gate just wandering -- wandering around.

7 Q This was before the shooting?

8 A Yeah, before the shooting.

9 Q Do you know how long before the shooting?

10 A I can't remember.

11 Q Days, weeks?

12 A It was days.

13 Q So, couple days before the shooting?

14 A Yeah, yes.

15 Q Were you able to see the defendant's face on that day?

16 A No.

17 Q Why do you think it was the defendant, then?

18 A He had on the same outfit.

19 Q When?

20 A During when he came and shot at me.

21 Q Same clothes?

22 A Yeah. I recognize the same clothes.

23 Q Was there anything else about him that made you think it  
24 was the same person?

25 A No.

1 Q So, the person that you saw outside your house a couple  
2 days earlier had the same clothes on as the defendant --

3 A Yes.

4 Q -- on the 27th?

5 A Yes.

6 Q And a few days earlier, when this person was at your  
7 house, you said you didn't see his face.

8 A Yes.

9 Q When the police arrived, did you go out and talk to  
10 them?

11 A Yes.

12 Q Okay. Did you show the area where the shooting had  
13 occurred?

14 A Yes.

15 Q Were you there when some items of evidenced been  
16 recovered?

17 A Yes, I was there.

18 Q Do you remember something being found outside on the  
19 sidewalk?

20 A Yes.

21 Q What was that?

22 A It was a hat.

23 Q What color hat?

24 A It was a white hat.

25 Q Did you look at the hat?

1 THE COURT: All right. I'll sustain the objection at  
2 this point.

3 Q (By Ms. Wagner) When you were out examining the scene  
4 with the officers, did you observe any damage from  
5 bullets, either on the house or in the cars?

6 A Yes.

7 Q Where was the damage, if you recall?

8 A There was two on top of the garage, two on the big truck  
9 and one on the small car.

10 Q I will show you a few more pictures. You said there  
11 were two on top of the house. I am going to show you  
12 what has been marked as Plaintiff's Exhibit 4. Do you  
13 recognize that?

14 A Yes.

15 Q And is that your house?

16 A Yes.

17 Q It's difficult to see, but can you see the bullet holes  
18 you referred to?

19 A I can see one right here.

20 Q And you are pointing right above the house? And  
21 approximately where was the other one? Do you remember?

22 A I can't remember that one.

23 Q Okay. And is that an accurate depiction of your house?

24 A Yes.

25 MS. WAGNER: State would offer Plaintiff's 4.

1 MR. WALKER: No objection to 4.

2 THE COURT: 4 will be admitted.

3 MS. WAGNER: Move to publish, Your Honor.

4 THE COURT: Granted.

5 Q (By Ms. Wagner) Ratthana, I am going to ask you step  
6 down. This is going to be a little bit difficult to  
7 see, and you might actually want to look on the screen  
8 here. Have you step over here, be difficult to see on  
9 the photograph. But the one picture -- the one bullet  
10 hole you just pointed out, can you point to it on the  
11 screen?

12 A It was this one right here.

13 Q Okay. And you are pointing to a little spot on the  
14 lower left, actually middle of the photograph on the  
15 left side?

16 A Yes.

17 Q Just above the garage?

18 A Yes.

19 Q You also testified there was damage to the cars?

20 A Yes.

21 Q Okay. And with regard to the Ford Explorer, what is it  
22 you saw?

23 A It was two bullet in it.

24 Q Going to show you Plaintiff's Exhibit 7. Do you  
25 recognize that?

1 A Yes.

2 Q What does that show?

3 A Show my car, and there's a bullet in it.

4 Q Which car?

5 A The Ford Explorer.

6 Q And that is an accurate depiction of the car and then  
7 the bullet damage?

8 A Yes.

9 MS. WAGNER: State would offer Plaintiff's 7.

10 MR. WALKER: No objection.

11 THE COURT: Exhibit 7 will be admitted.

12 Q (By Ms. Wagner) Plaintiff's 5, do you recognize that?

13 A Yes.

14 Q What does that show?

15 A Side of the car.

16 Q Which car?

17 A The Ford Explorer.

18 Q Does that also show the bullet damage?

19 A Yes.

20 Q Where is that located?

21 A Right there.

22 Q That is an accurate depiction of the Ford?

23 A Yes.

24 MS. WAGNER: Offer plaintiff's 5.

25 MR. WALKER: No objection.

1 THE COURT: Exhibit 5 will be admitted.

2 Q (By Ms. Wagner) Finally, Plaintiff's 9, do you  
3 recognize that?

4 A Yes.

5 Q What does that?

6 A White Acura Legend.

7 Q Also parked in your garage?

8 A Parked in the garage.

9 Q Does it show the bullet damage? Where is that at?

10 A There.

11 Q Is that an accurate depiction of your Acura Legend?

12 A Yes.

13 MS. WAGNER: Offer Plaintiff's 9.

14 MR. WALKER: No objection.

15 THE COURT: Exhibit 9 will be admitted.

16 MS. WAGNER: Move to publish, Your Honor.

17 THE COURT: Granted.

18 Q (By Ms. Wagner) Ratthana, I am going to show you first  
19 Plaintiff's 7. Again, I would ask you to step down,  
20 please, if you want to go ahead and come over to the  
21 screen. Where is the bullet damage on the Ford here?

22 A Right here.

23 Q And you are pointing to the area just above the  
24 taillight there?

25 A Yes.

1 Q Okay. And on Plaintiff's 5, same thing. This is your  
2 Ford?

3 A Uh huh.

4 Q Where is the bullet damage there?

5 A Right here.

6 Q And you are pointing to a location just to the top left  
7 corner?

8 A Yes.

9 Q Finally on Plaintiff's 9, the Acura Legend, where is the  
10 bullet on that?

11 A Right here.

12 Q You are pointing to the bumper just to the left of the  
13 license?

14 A Yes.

15 MS. WAGNER: Thank you. Go ahead and have a seat.

16 Q (By Ms. Wagner) Ratthana, do you remember any bullets  
17 being recovered.

18 A There was one. That's it.

19 Q Showing you what has been marked as Plaintiff's  
20 Exhibit 6. Do you recognize that?

21 A Yes.

22 Q What is that showing?

23 A Show that there is a flashlight by the bullet -- on the  
24 bullet.

25 Q Do you remember where the bullet was recovered?

- 1 A Somewhere around there, I can't remember.
- 2 Q In terms of location, is this in front of your garage?
- 3 A Yes.
- 4 Q Thank you. When the officers arrived, were you able to  
5 give a description of first the Honda to them?
- 6 A Yes.
- 7 Q How about a description of the shooter?
- 8 A I did.
- 9 Q Do you remember saying anything about knowing the  
10 shooter's name?
- 11 A I just knew his name.
- 12 Q What name was that?
- 13 A Alex.
- 14 Q At some point, do you remember having a conversation  
15 with the Detective Tom Davidson?
- 16 A Yes.
- 17 Q Did he take you to the police station and show you a  
18 series of photographs?
- 19 A Yes.
- 20 Q And through that series of photographs, were you able to  
21 identify anyone?
- 22 A Yes.
- 23 Q Who did you identify?
- 24 A Alex.
- 25 Q And you identified him as the person who shot you?

1 A Yes.

2 Q Shot at you?

3 MS. WAGNER: Thank you.

4 I don't have anything further, Your Honor.

5 THE COURT: Mr. Walker?

6 MR. WALKER: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. WALKER:

9 Q Mr. Sok, right?

10 A Yes.

11 Q Okay. You recall talking to the police when they  
12 arrived after you had called them?

13 A Yes.

14 Q And you recall that you told Officer Keen, and I quote,  
15 "It looked like Alex."

16 A I can't remember that.

17 Q You don't remember that? What do you remember?

18 A I remember telling him that it was Alex.

19 Q Okay. So you don't remember that you said, "looked like  
20 Alex."

21 A What was that again?

22 Q You don't remember that?

23 A No, I said I just remember I told the officer that it  
24 was Alex.

25 Q Okay. Now, when this incident happened, you were asked

1 for a cigarette?

2 A Yes.

3 Q And you don't smoke, so you said you don't smoke?

4 A "I don't smoke."

5 Q Was it at that time that you saw the chrome barrel of  
6 the gun come out of the right coat -- of the suspect --

7 A He asked me first, and I said, "I don't smoke." And at  
8 that time, I saw him pull out --

9 Q So, right after he asked you, you said you don't smoke?

10 A Yes.

11 Q But you don't remember if it was the right side?

12 A I can't remember, but gun was out.

13 Q If you told the officer at the beginning it was the  
14 right side, would that be a correct thing that you told  
15 the officer?

16 A Yes.

17 Q That you told the first officer the truth. Is that  
18 right?

19 A Yeah.

20 Q So, if you told the first officer that it looked like  
21 Alex, then that would have been the truth, that it  
22 looked like Alex. Is that right?

23 A I didn't tell him it looked like Alex.

24 Q I know, but if you did?

25 A If I did. If I did, I would know I told him.

- 1 Q Say that again. I told him --
- 2 A If I did, I knew I would told him it looked like Alex.
- 3 Q I missed that again. Say it again.
- 4 A I said if I did, I knew that I told him it looked like  
5 Alex, then I did tell him that it looked like Alex.
- 6 Q So, in other words, you would have been telling that  
7 first officer the truth?
- 8 A Yeah, but I told him it was Alex.
- 9 Q Okay, that's all I am asking. Now, when you saw that  
10 chrome from that gun, were you focussed on the face of  
11 the suspect?
- 12 A I would -- all right, when he came up to me, I was  
13 focussed on his face.
- 14 Q No, no, that is not what I am asking. I am asking when  
15 you saw that chrome of that gun.
- 16 A Okay.
- 17 Q Were you focussed on the face of the suspect?
- 18 A No.
- 19 Q What were you focussed on?
- 20 A On a gun.
- 21 Q You were focussed on that gun, weren't you, and how the  
22 heck to get out of there, right?
- 23 A Yeah.
- 24 Q That's what you did.
- 25 A Yes.

- 1 Q As fast as you could?
- 2 A Yep.
- 3 Q When the suspect approached you, were you focussed on
- 4 the suspect's face?
- 5 A Yes.
- 6 Q You were? You were just looking at the suspect's face.
- 7 A I was looking at him. Head to bottom.
- 8 Q And that would have been a long time you had to focus on
- 9 his face; is that right?
- 10 A Yes.
- 11 Q How long?
- 12 A Four or five years.
- 13 Q No, I mean at the --
- 14 A Oh, for how long I seen his face --
- 15 Q On that Thursday --
- 16 A -- on that Thursday.
- 17 Q -- in January.
- 18 A I seen his face -- are you talking about how long I seen
- 19 his face?
- 20 Q Yeah.
- 21 A Couple minutes.
- 22 Q Couple minutes. Are you telling this court that it was
- 23 a couple minutes from the time that this suspect got out
- 24 of the car until he asked you for a cigarette?
- 25 A Yes.

1 Q It was a couple minutes?

2 A Yeah, but he came close to me. When he approach  
3 somebody, come up close to you --

4 Q I don't know how to use this thing. Let's see, just put  
5 it on there? Like so? Oh, that's cool, thanks.

6 Okay. Would you come, approach this picture? Okay.  
7 Now, when this suspect approached you, your gate was  
8 open; is that right?

9 A Yes, that's right.

10 Q You already had a chance to open it?

11 A Not the left side.

12 Q Half of it?

13 A Half of it.

14 Q Okay. And so, you wouldn't have been by your garage,  
15 would you?

16 A No, I was right here.

17 Q You were right here pretty close to where the fence was,  
18 right?

19 A Yes.

20 Q And half the fence was still --

21 A Yeah.

22 Q -- closed? You were going to open that, right?

23 A Yes, sir. May I sit down?

24 Q Please. As soon as you saw that gun, you immediately  
25 ran between those cars in your garage; is that right?

1 A Yes.

2 Q Now, you had an opportunity, Mr. Sok, to speak with  
3 Detective Davidson after you spoke with the first  
4 officer; is that right?

5 A Yes.

6 Q And you gave him a description.

7 A Yes.

8 Q And the description you gave was "17 or 18 years old,  
9 five-two or five-three, light build with a mustache and  
10 shaved head"; is that right?

11 A Yes.

12 Q Didn't really see the suspect's head, though, did you?

13 A I can't remember that.

14 Q You can't remember. Why can't you remember?

15 A Why can't I remember?

16 Q Uh huh.

17 A I just don't remember.

18 Q Would it be because the suspect had a hat on?

19 A I don't know.

20 Q Well, if you don't remember, why did you tell the  
21 detectives that there was a shaved head involved?

22 A Because my dad seen him.

23 Q Okay. Your dad seen him on that Thursday.

24 A Not on Thursday, but --

25 Q Okay, that's what I am asking. So your dad didn't see

1 him on that Thursday?

2 A No.

3 Q And yet you told the police that there was a shaved  
4 head.

5 A Yes.

6 Q Okay. That's really not what you saw.

7 A No.

8 Q Now, when you were talking to Detective Davidson, is it  
9 not correct that you told him that you had seen Alex the  
10 previous morning at about 7:15?

11 A Not at 7:15.

12 Q You didn't tell him that?

13 A Told him it was in the morning.

14 Q Previous morning.

15 A Previous morning.

16 Q Wasn't a couple days ago, was it?

17 A It was a couple days ago. I can't remember that.

18 Q Well, you told the detective it was the previous  
19 morning; is that true?

20 A If I said it, it is true.

21 Q Do you remember?

22 A Can't remember.

23 Q So, why did you testify to this court that it was a  
24 couple days before, if you don't remember? Why don't  
25 you say you don't remember? Do you know? Do you have a

1 response to that?

2 A I just remember what I remember. That's about it.

3 Q Okay. So, would it have been true, if you told  
4 Detective Davidson that it was the previous morning,  
5 that in fact it was the previous morning?

6 A Well, it is true, then.

7 Q Okay. So you really don't remember if it was couple  
8 days before?

9 A I don't --

10 Q Like you said -- you did in your direct testimony; is  
11 that correct?

12 A Correct.

13 Q Now, you gave an interview to the defense counsel; is  
14 that correct? Do you remember that?

15 A Yes.

16 Q Okay. And that would have been on about June 1st of  
17 this year; is that correct?

18 A Can't remember.

19 Q This summer?

20 A What is that?

21 Q This summer, right?

22 A I don't know. All I remember is just having a little  
23 meeting with -- down here there. Was this one lady  
24 typing something, too.

25 Q You remember there was a transcriber?

1 A Yeah.

2 Q Took down every word you said, right? And in that  
3 interview, you said that the subject had the same  
4 clothes Wednesday and Thursday; is that correct?

5 A Yes.

6 Q Now, do you recall in that interview that you were asked  
7 whether you were paying attention. You were with your  
8 dad on that Wednesday; right?

9 A In the car.

10 Q In the car getting ready to go to school, that is --

11 A Yes.

12 Q Okay. And your dad said, "Look at this guy walking back  
13 and forth"?

14 MS. WAGNER: Objection, calls for hearsay.

15 MR. WALKER: It's not for the truth of the matter,  
16 just background information to what he said.

17 THE COURT: Overruled.

18 MR. WALKER: Thank you.

19 Q (By Mr. Walker) Your dad said, "Look at this guy just  
20 walking back and forth." Do you recall that?

21 A Yes.

22 Q You said you didn't recognize that person; is that  
23 correct?

24 A Yes.

25 Q Now, in that interview, you were being questioned about

1           how tall the subject was. Do you recall that?

2           A    Yes.

3           Q    And do you recall saying, quote, "The cops said he was  
4           five-three or five-two." Do you recall saying that?

5           A    I recall saying that.

6           Q    Okay. You admitted at the interview, essentially, for  
7           the first time you hadn't seen the subject's face on  
8           that Wednesday; is that correct?

9           A    I can't remember.

10          Q    You can't remember. Okay.

11               MR. WALKER: May I approach, Your Honor?

12               THE COURT: Yes.

13          Q    (By Mr. Walker) Turning you to what --

14               MS. WAGNER: I think if counsel is going to --

15               MR. WALKER: I think I should mark this, shouldn't I?  
16               That might be easier.

17                               (Plf's Ex 11-14 marked.)

18                               (Dft's Ex 15 marked.)

19               THE COURT: Has the original been published yet?

20               MR. WALKER: I don't think so.

21               MS. WAGNER: No.

22          Q    (By Mr. Walker) Mr. Sok, this is defense Exhibit 15,  
23               it is a copy of the interview that you had on June 1st.  
24               Can you turn to page 18? Line 8. And would you read  
25               that for the jury?

1 A "He didn't see his face on Wednesday."

2 Q So that was the defense attorney question, right?

3 A Yes.

4 Q What was your answer?

5 A "I didn't see his face."

6 Q You didn't see his face. That is what you answered?

7 A On the report?

8 Q Right.

9 A Yes.

10 Q Thank you. I don't know if you will need this again.

11 Now, at that interview, you stated that you were telling  
12 the truth in this interview, right?

13 A Yes.

14 Q Okay. At that interview, you stated that the subject  
15 had a hat on and a hood. Do you recall that?

16 A Yes.

17 Q You also said that the subject had a mustache?

18 A Yes.

19 Q And how did you describe that mustache?

20 A It was dark mustache, looking down there.

21 Q And it was like what? Any animal's?

22 A Yeah, catfish, that's what I stated.

23 Q You said a cat, right?

24 A Yeah.

25 Q Not a catfish, a cat?

- 1 A I don't know, say that --
- 2 Q Pardon me?
- 3 A What does it say?
- 4 Q I will let you read it. Maybe I should just let you  
5 keep that up there. Turn to page 19, if you would, line  
6 two.
- 7 A Read it?
- 8 Q Well, just refresh your memory. You didn't say catfish,  
9 you said cat, right?
- 10 A No, I said, "It was just like a cat."
- 11 Q Now, you also said the subject had hair on his chin; is  
12 that correct?
- 13 A Yes.
- 14 Q Do you recall telling that to the detective?
- 15 A Yes.
- 16 Q You do? Do you recall it?
- 17 A Yeah.
- 18 Q That he had hair on his chin?
- 19 A Yeah.
- 20 Q Mr. Sok, isn't it true that really what you told the  
21 detective was only that the subject had a mustache and  
22 shaved head? Not anything about hair on the chin?
- 23 A What is that again?
- 24 Q Isn't it true that you only told the detective that the  
25 subject had a mustache and shaved head; nothing about

1 hair on the chin.

2 A Can't remember that. But I knew --

3 Q Okay.

4 A I remember saying that he did have some mustache on the  
5 chin.

6 Q On the chin?

7 A Well, around here.

8 Q Hair on the chin?

9 A Yeah.

10 Q To the detective?

11 A Can't remember.

12 Q Okay. You don't remember?

13 A I don't.

14 Q So -- all right.

15 MR. WALKER: All I have at this time, Your Honor.

16 THE COURT: Okay. Redirect?

17 REDIRECT EXAMINATION

18 BY MS. WAGNER:

19 Q Ratthana, your testimony was that when the defendant  
20 initially approached you, you were focusing on sort of  
21 his face and his body.

22 A Yes.

23 Q At that point, you had a good look at him?

24 A Yes.

25 Q And you had a brief moment when he asked you for a

1 cigarette. How close were you when he was asking for a  
2 cigarette?

3 A We were two or three feet away from each other.

4 Q Did you have a good look at his face then?

5 A Yes.

6 Q Is that when you recognized him as Alex?

7 A Yes.

8 Q It was after he pulled the gun that your focus changed  
9 towards the gun?

10 A Yes.

11 Q Your testimony earlier was that you knew a person  
12 wearing the same clothes had been in front of your  
13 house, and your testimony was that it was before the  
14 shooting a couple days before the shooting?

15 A Yes.

16 Q As you sit here today, do you remember if it was the  
17 actual day before the shooting or two or three days? Do  
18 you remember?

19 A I can't remember.

20 Q Okay. And you have maintained that you didn't see his  
21 face on that day, the previous time.

22 A Yes.

23 Q But it was the clothing that made you recognize him the  
24 second time?

25 A Yes.

1 MS. WAGNER: Actually, that's all I have, Your Honor.

2 THE COURT: Recross?

3 MR. WALKER: Very, very brief.

4 RECROSS EXAMINATION

5 BY MR. WALKER:

6 Q Mr. Sok, is your memory better today or was it better  
7 the day of the incident?

8 A What is that again?

9 Q Is your memory better today or the date of the incident?

10 A Better when it was at the day of the incident.

11 Q Okay. That's what I was wondering. I should probably  
12 get that back from you. Thank you.

13 MR. WALKER: All I have, Your Honor.

14 MS. WAGNER: Nothing further.

15 THE COURT: Okay. Mr. Sok, you may step down. I  
16 need you to come around over here and sign a witness  
17 form for us.

18 (Witness excused.)

19 MS. WAGNER: Going to check my next witnesses.

20 THE COURT: I am going to have the jury take a break  
21 at this point. So we will give you about a 15 minute  
22 recess. Remember the cautionary instruction not to  
23 discuss the case between yourselves or with anyone else.  
24 You can leave the jury room during your recess, if you  
25 want to go out in the hallway, get a coffee or pop or

1 something, but just be back in there by eleven o'clock.

2 Okay?

3 (Recess taken.)

4 (Jury not present.)

5 THE COURT: Get the jury.

6 (Jury present.)

7 THE COURT: Miss Wagner?

8 MS. WAGNER: State will call Officer Armin Keen.

9 ARMIN KEEN

10 having been called as a witness by the State, being first  
11 duly sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. WAGNER:

14 Q Good morning. For the record, could you please state:  
15 your full name, spell your last name?

16 A Armin Keen, K-e-e-n.

17 Q Where are you currently employed?

18 A City of Tacoma police department.

19 Q How long have you been with the department?

20 A Just over 20 years.

21 Q What is your current rank?

22 A Police patrol officer.

23 Q What are your duties as a patrol officer?

24 A I work the street.

25 Q Work alone or with a partner?

1 A By myself.

2 Q Okay. Officer, I would like to direct your attention to  
3 the early morning hours of January 27th. Did you  
4 respond to the scene of a shooting that morning?

5 A I did.

6 Q Where did you respond to?

7 A To 1609 East 67th Street in the City of Tacoma.

8 Q In Tacoma, Washington?

9 A Correct.

10 Q And what was the nature of the dispatch that sent you  
11 there?

12 A I was dispatched on a drive-by shooting that had just  
13 occurred.

14 Q When did you receive the dispatch, do you recall?

15 A Approximately 6:59 a.m.

16 Q When did you respond or actually get to the scene?

17 A I don't have that written down.

18 Q Can you estimate how long it took for you to get there?

19 A Less than five.

20 Q Okay. In this area where you responded to, is it a  
21 residential area?

22 A Yes, it is.

23 Q When you arrived at the scene, who did you contact?

24 A I contacted Mr. Sok, S-o-k.

25 Q Is that Ratthana Sok?

1 A Yes, it is.

2 Q And was he able to provide you information about what  
3 had just occurred?

4 A Yes, he did.

5 Q Did you have a chance to view the area where he said the  
6 shooting occurred?

7 A I did.

8 Q And while you were reviewing that, first of all, did you  
9 observe any evidence of bullets striking any part of the  
10 house or cars?

11 A I did.

12 Q What do you recall seeing?

13 A There was what appeared to be a bullet hole to the right  
14 or the east side of the overhead door. There appeared  
15 to be what I thought was a bullet hole above the  
16 overhead door. And there was what appeared to be two  
17 bullet holes in Explorer. I think there was an Explorer  
18 SUV that was inside the garage.

19 Q Officer, can I show you first what's been admitted as  
20 Plaintiff's Exhibit 4, and ask you to step down since  
21 you won't be able to see from up there? And I will  
22 have -- it might be easier if you come down to the  
23 screen down here, unless you can see it on there.

24 A I can see it up here.

25 Q Okay, can you point out where you recall seeing the

1 bullet holes?

2 A Appears to be one here, and I think the only one is a  
3 little bit lower.

4 Q Going to be difficult to see on the screen.

5 A Here it is. Right here.

6 Q You are pointing to the right of the open door?

7 A That's correct.

8 Q And you referenced the Ford Explorer. Showing you  
9 what's been admitted as Plaintiff's 7. Where's the  
10 damage that you saw on that?

11 A Right here.

12 Q Just above the taillight there?

13 A Yes.

14 Q And you also said there was something else in the Ford  
15 Explorer. Do you see that on that photo? This is  
16 Plaintiff's 5.

17 A This is the back of the vehicle, looking from the  
18 passenger side. There was a -- appeared to be a hole or  
19 fresh damage up here.

20 Q Do you recall any fresh damage on the Acura located in  
21 the garage?

22 A Yes, I do.

23 Q Showing what you has been admitted as Plaintiff's 9,  
24 what do you recall seeing on that Acura?

25 A What appeared to be a fresh gouge on the bumper of the

1 Acura.

2 Q The bumper to the left of the license plate?

3 A That's correct.

4 Q In terms of evidence that was recovered at the scene,  
5 did you recover any shell casings or spent bullets?

6 A I did not, no.

7 Q Did you see anything?

8 A Yes.

9 Q What is it you observed there?

10 A Was a shell casing on the driveway.

11 Q Was it a casing or bullet?

12 A Casing.

13 Q I am going to show you what's been -- actually, go ahead  
14 and if you could take a seat, please.

15 I will show you what has been marked as Plaintiff's  
16 Exhibit 6. Do you recognize that photograph?

17 A Yes, I do.

18 Q And that is your flashlight in the photograph?

19 A It is.

20 Q What is it sitting next to?.

21 A To a spent cartridge.

22 Q Did you use the flashlight to mark that?

23 A Yes, so no one -- number one, so nobody would disturb it  
24 prior to forensics getting there.

25 Q Out on the -- past the driveway area, the sidewalk area,

1 do you recall recovering or seeing any items of  
2 evidence?

3 A Yes.

4 Q What is it you saw up there?

5 A Just to the east of the driveway on the sidewalk there  
6 was a white baseball type hat on the ground.

7 Q Did you recover the hat yourself?

8 A No, I did not.

9 Q Did you mark it or point it out in any way?

10 A I pointed it out to the forensic technician, when he  
11 arrived.

12 Q Showing you what has been marked as Plaintiff's  
13 Exhibit 10.

14 A Yes.

15 Q Do you recognize what that depicts?

16 A That's the east side of the driveway and the hat laying  
17 on the sidewalk.

18 Q And you said that you did not recover these items of  
19 evidence. Why didn't you take them into evidence?

20 A I wanted them photographed.

21 Q And who would do that?

22 A The forensic technician.

23 Q Do you recall who responded?

24 A Technician Baarslag.

25 Q When you spoke to Ratthana Sok, was he able to give you

1 a description of the person who shot at him?

2 A Yes, he did.

3 Q Physical description?

4 A Yes.

5 Q How about clothing?

6 A Yes.

7 Q Did he also indicate whether he knew the name of the  
8 person?

9 A He made a statement, said it looked like Alex.

10 Q And he used the name Alex?

11 A Correct.

12 Q And in terms of the physical description, did he make  
13 mention of the person wearing a hat?

14 A Yes, he did.

15 Q And on the height, what did he indicate for the height?

16 A Height was five foot two.

17 Q And weight?

18 A 125 to 130.

19 Q Did you ask him about facial hair?

20 A I did.

21 Q Do you remember if he said anything about that?

22 A I don't recall if he said anything about facial hair.

23 Q While you were at the Sok residence speaking with  
24 Ratthana Sok, did you learn about Ratthana Sok and  
25 Veasna Sok?

1 A That is his brother?

2 Q Yes.

3 A Yes.

4 Q Okay. And were you aware that Veasna Sok had some  
5 connection to the Trang Dai matter?

6 A His mother told me, after I had been there for awhile.

7 Q Based upon that information, did you make a phone call  
8 to a detective?

9 A I did.

10 Q What detective did you call?

11 A Detective Davidson.

12 Q Why did you call him?

13 A Mrs. Sok said that she had already been in contact with  
14 Detective Davidson and felt that he should know what was  
15 going on now.

16 Q Okay. Were you there when the forensic technician,  
17 Mr. Baarslag, arrived?

18 A Yes, I was.

19 Q And you indicated that you had marked these items of  
20 evidence. Did you ensure that they were pointed out to  
21 him?

22 A Yes, I did.

23 Q Were you also present when Detective Davidson arrived?

24 A Yes, I was.

25 Q And the following day, were you present after the

1 defendant was arrested?

2 A I went to the house with Detective Davidson. Yes.

3 Q And was your role to transport the defendant from the  
4 house to the police station?

5 A That's correct.

6 Q And other than that, did you have any other contact with  
7 the defendant?

8 A No, I did not.

9 MS. WAGNER: Thank you. I have nothing further.

10 THE COURT: Mr. Walker?

11 MR. WALKER: Thank you.

12 CROSS-EXAMINATION

13 BY MR. WALKER:

14 Q Officer, so you were the first one to the scene?

15 A That's correct.

16 Q Now, what's the purpose of the police report?

17 A To write down what had happened at the scene.

18 Q Okay. Descriptions are particularly important when you  
19 are the first one at the scene; is that fair?

20 A True.

21 Q So, that's why, is it not, that when you took  
22 information down from Mr. Sok, you made sure that that's  
23 exactly what he said; is that correct?

24 A That's correct.

25 Q And that's why you put in quotations, "It looked like

1 Alex," because that's exactly what he said; is that  
2 correct?

3 A That's what he said, yes.

4 Q And you also put down there on your description, did you  
5 not, that subject was 17 or 18 years old? Is that  
6 correct?

7 A Yes. I am sorry.

8 Q And you actually put "white race"; is that correct?

9 A Correct.

10 Q Now, you also put in there that Mr. Sok told you that  
11 after he was asked about a cigarette and told that he  
12 didn't smoke, that he saw the chrome barrel of a gun  
13 come out of the right coat of the suspect; is that  
14 correct? Page three.

15 A Yes.

16 Q And he essentially immediately ran as soon as he saw  
17 that.

18 A Yes.

19 Q And as far as your description is concerned, there's  
20 nothing in there about a mustache, right?

21 A Not on the report, no.

22 Q And there's nothing in there about facial hair.

23 A No.

24 MR. WALKER: All I have.

25

## 1 REDIRECT EXAMINATION.

2 BY MS. WAGNER:

3 Q Do you remember if he said anything about that?

4 A I don't recall.

5 MS. WAGNER: That's all I have.

6 MR. WALKER: Briefly.

## 7 RECROSS EXAMINATION

8 BY MR. WALKER:

9 Q You put down in the description everything that you  
10 questioned Mr. Sok about as far as a description of the  
11 suspect; is that correct?

12 A Yes.

13 MR. WALKER: All I have.

14 MS. WAGNER: Nothing further.

15 THE COURT: All right, thank you. You may step down.

16 (Witness excused.)

17 MS. WAGNER: State will call Hank Baarslag.

## 18 HANK BAARSLAG

19 having been called as a witness by the State, being first  
20 duly sworn, was examined and testified as follows:

## 21 DIRECT EXAMINATION

22 BY MS. WAGNER:

23 Q Good morning.

24 A Good morning.

25 Q For the record, please state your full name and spell

1 your last name?

2 A Hank Baarslag, B-a-a-r-s-l-a-g.

3 Q Where are you currently employed?

4 A Tacoma Police Department.

5 Q In what capacity?

6 A Forensic specialist.

7 Q How long have you been a forensic specialist?

8 A 22 years.

9 Q What are the duties of a forensic specialist?

10 A Respond to crime scenes to photograph the scene, to  
11 collect evidence, to document the scene overall.

12 Q What sort of training have you received in relation to  
13 your duties?

14 A FBI schools, basic fingerprint school, Washington State  
15 Criminal Justice Training Commission Crime Scene  
16 Investigation School. Several photographic schools put  
17 on by Kodak and Nikon and others.

18 Q And what sort of training or experience do you have with  
19 firearms and casings, spent bullets, that sort of thing?

20 A I have basic experience with firearms.

21 Q Such as something taught within the Criminal Justice  
22 Training Commission or --

23 A No. What I learned in the military.

24 Q Okay.

25 THE COURT: Excuse me, just a second Miss Wagner, is

1           that gentleman with you?

2           MS. WAGNER: He's an employee, he's not a witness.

3           THE COURT: Not a witness. Thank you, go ahead.

4           Q    (By Ms. Wagner) Mr. Baarslag, I would like to go ahead  
5           and direct your attention to the morning of January 27th  
6           of this year. Did you respond to a crime scene on, I  
7           think, East 69th?

8           A    I did.

9           Q    How were you called to that crime scene?

10          A    By Officer Keen.

11          Q    What time did you receive the call?

12          A    When I received the call at 7:10 in the morning.

13          Q    What time did you arrive?

14          A    I arrived at 7:38 in the morning.

15          Q    Once you got there, who did you initially contact?

16          A    Officer Keen.

17          Q    And did Mr. or Officer Keen give you a description of  
18          what had happened?

19          A    Basic description, yes.

20          Q    Once you got there, were any items of evidence pointed  
21          out to you?

22          A    Yes, there were.

23          Q    What was pointed out to you?

24          A    Several holes in the residence, in the garage, which  
25          Officer Keen believed to be bullet impact holes.

1 Q Did you observe those yourself?

2 A I did.

3 Q Did you agree with that assessment?

4 A I did.

5 Q And did you take photographs of those items, those  
6 bullet holes?

7 A I did.

8 Q Showing you -- and I am going to ask that you step  
9 down -- showing what you has been admitted as  
10 Plaintiff's Exhibit 4, do you recognize this photograph?

11 A Yes, I do. It's a photograph I took of the exterior of  
12 the garage of the residence. It's almost extreme east  
13 end of the face of the garage.

14 Q And I know it's difficult to see on the screen, but the  
15 bullet holes that you referred to, are they shown in  
16 this photograph?

17 A Yes.

18 Q And I don't know if you want to use the screen or come  
19 down here, if it's any easier could you point out --

20 A This was one.

21 Q You are referring to just above the garage?

22 A Just above the garage opening, yes.

23 Q Okay.

24 A This is one. This was a second one.

25 Q Now, you are pointing to another one just to the right.

1 of the first one a little higher above?

2 A That's correct.

3 Q And where was the third one you saw?

4 A That one is right there.

5 Q Okay. You are pointing to a spot just to the right of  
6 the open garage door?

7 A Yes.

8 Q And if you could stay there. Did you see any damage to  
9 the vehicles?

10 A I did.

11 Q Showing you first what's been admitted as Plaintiff's  
12 Exhibit 7. Do you recognize that photograph?

13 A That's the rear end of the Ford Explorer that was  
14 located in the garage.

15 Q Going to ask you to step a little more to the side, not  
16 block the jurors' view. That's a photograph you took?

17 A Yes, it is.

18 Q Does that show one of the bullet holes?

19 A It does.

20 Q Where is that?

21 A Right there at the hole.

22 Q Just above the lights there?

23 A Above the taillight, yes.

24 Q Did you observe anything else on that Ford Explorer?

25 A I did.

1 Q And showing you what's been admitted as Plaintiff's 5,  
2 this is a photograph you took?

3 A It is, yes.

4 Q What does this depict?

5 A This depicts a bullet impact at the top of the vehicle.

6 Q And where is that?

7 A Right there.

8 Q Just at the corner edge of the top of the vehicle?

9 A Yes.

10 Q Do you remember a second vehicle being in the garage?

11 A I do.

12 Q What was that?

13 A It was a white Honda Acura.

14 Q Showing you what has been admitted as Plaintiff's  
15 Exhibit 9. Do you recognize that?

16 A That's the vehicle that was in the garage next to the  
17 Ford Explorer, yes.

18 Q Did you also take that photo?

19 A I did.

20 Q And is there any bullet impact depicted on that?

21 A Yes, there is.

22 Q Where is that?

23 A It's right there on the bumper.

24 Q Just to the left of the license?

25 A Yes.

1 Q Was there evidence located just outside of the garage?

2 A There was, yes.

3 Q What was located there?

4 A It was a spent slug.

5 Q When you say slug, what do you mean?

6 A Bullet.

7 Q I am going to show you what's been marked as Plaintiff's  
8 Exhibit 6 and ask if you can recognize that.

9 A I do, it's a photograph I took of spent bullet on the  
10 driveway just outside the opening of the garage.

11 Q That is an accurate depiction of that scene?

12 A Yes, it is.

13 MS. WAGNER: State would offer Plaintiff's 6.

14 MR. WALKER: No objection.

15 THE COURT: 6 will be admitted.

16 MS. WAGNER: Move to publish.

17 THE COURT: Granted.

18 Q (By Ms. Wagner) Mr. Baarslag, if you could point out  
19 to the jury what you referred to when you say the spent  
20 slug.

21 A This.

22 Q You are pointing to the item next to the flashlight?

23 A Yes.

24 Q You can see the license plate that is the Ford Explorer?

25 A That is, yes.

1 Q That was located just outside the garage?

2 A The spent slug?

3 Q Yeah.

4 A Yes.

5 Q And one more item. Do you recall seeing something out  
6 in the sidewalk?

7 A I do.

8 Q What was that?

9 A It was a white cap.

10 Q Did you take a photograph of that?

11 A I did.

12 Q Showing you what has been marked as Plaintiff's 10, do  
13 you recognize that?

14 A That's the cap that I photographed on the sidewalk just  
15 east of the residence.

16 MS. WAGNER: State would offer Plaintiff's 10.

17 MR. WALKER: No objection.

18 THE COURT: 10 will be admitted.

19 MS. WAGNER: Move to have publish.

20 THE COURT: Granted.

21 Q (By Ms. Wagner) Mr. Baarslag, if you would give the  
22 jury where this is in relation to the house?

23 A This is the driveway to the residence. Coming from the  
24 street into the driveway, and this is the sidewalk.

25 Looking east from the driveway.

1 Q And in relation to showing you what has been admitted  
2 Plaintiff's 1, if you could put this hat in the  
3 photograph, approximately where would it have been  
4 located?

5 A Right there.

6 Q You are pointing to the sidewalk area in front of the  
7 fence?

8 A Yes.

9 Q Thank you. You can go ahead and grab a seat. The spent  
10 bullet and the hat, did you take those items into  
11 evidence?

12 A Yes.

13 Q Showing you first what's been marked as Plaintiff's  
14 Exhibit 13. Ask you to take a look at that. Do you  
15 recognize that?

16 A I recognize my writing, the case number on the outside  
17 of the paper bag.

18 Q And that case number refers to which case?

19 A The case that I proceeded to take the photographs of.

20 Q And go ahead, if you could open that. Do you recognize  
21 that?

22 A That's the cap I collected from the sidewalk there.

23 MS. WAGNER: The State would offer Plaintiff's 13.

24 MR. WALKER: No objection, Your Honor.

25 THE COURT: Exhibit 13 will be admitted. Is the cap

1           itself marked or just the bag?

2           MS. WAGNER: The bag. Just the bag, Your Honor.

3           THE COURT: Okay.

4           MS. WAGNER: Thank you. If you could go ahead and  
5           put that back in the bag.

6           Q    (By Ms. Wagner) And the spent slug found outside the  
7           garage, did you also recover that?

8           A    Excuse me, yes, I did.

9           Q    And showing you what has been marked Plaintiff's Exhibit  
10          11. Do you recognize that?

11          A    I do.

12          Q    And how do you recognize it?

13          A    By my writing of the case number on the outside of the  
14          envelope.

15          Q    That is the same case number that's on the outside bag  
16          with the hat, Plaintiff's 13?

17          A    Yes, it is.

18          Q    Could you please open that? Do you want scissors?

19          A    I have a knife here.

20          Q    And what's inside Plaintiff's 13 -- or I am sorry --

21          THE COURT: 11.

22          MS. WAGNER: Thank you.

23          A    Spent bullet.

24          Q    (By Ms. Wagner) Is that the one you recovered outside  
25          the garage?

1 A Yes, it is.

2 MS. WAGNER: State would offer Plaintiff's 11.

3 MR. WALKER: No objection.

4 THE COURT: Exhibit 11 will be admitted.

5 Q (By Ms. Wagner) Mr. Baarslag, when you -- could you  
6 explain when you say "spent bullet," something actually  
7 been fired from a gun?

8 A Yes.

9 Q Can you tell by the way it looked whether it hit  
10 anything and dropped?

11 A Well, in my opinion, it's deformed so, it did strike  
12 something after leaving the gun.

13 Q Okay. Have you responded to crime scenes before where  
14 you have recovered shell casings?

15 A Yes I have.

16 Q What is a shell casing?

17 A Casing is the device that contained the powder which,  
18 when the weapon is fired, powder ignites inside the  
19 casing to expel the bullet from the gun. The casing  
20 does not go with a bullet, it stays -- in some cases it  
21 will stay with the gun.

22 Q In what cases does the casing stay with the gun?

23 A In the case of a handgun, it would be what they call a  
24 revolver. It's a style of weapon in which the live  
25 bullets, the unfired rounds, are placed in a cylinder

1 which rotates to bring each successive bullet up to the  
2 firing position.

3 Q So, when the bullet is fired, the casing remains within  
4 the cylinder?

5 A In that type of weapon, yes.

6 Q So, the situation is wherever you recover casings at the  
7 scene, those were fired from what type of gun?

8 A That would be what they call a semiautomatic pistol, in  
9 which they would be ejected or forcibly thrown from the  
10 weapon upon firing of the -- of that round.

11 Q And generally how many bullets will a revolver hold?

12 A Generally they hold six. Some weapons hold five, and  
13 some have been up to nine.

14 MS. WAGNER: Thank you, I have nothing further.

15 THE COURT: Any questions, Mr. Walker?

16 MR. WALKER: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. WALKER:

19 Q Did you check the evidence for fingerprints?

20 A No.

21 Q You didn't?

22 A No.

23 Q You didn't find any fingerprints on the hat or anything.

24 A No.

25 MR. WALKER: Okay, that's all I have.

## REDIRECT EXAMINATION

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BY MS. WAGNER:

Q Mr. Baarslag, with regard to fingerprints, first on an expended bullet, what are the difficulties involved in trying to find fingerprints on an expended bullet?

A Well, it depends on what the bullet struck after it was fired from the weapon. Probability is high that it would strike something or some things, and in which case would remove evidence fingerprint and other evidence from the bullet.

Q Okay. And the heated gases that expand a bullet, does that have any effect on whether a fingerprint can be recovered from a bullet?

A I don't have any knowledge of that.

Q And in terms of cloth, the hat, what are the difficulties in recovering a fingerprint from cloth?

A It would be almost impossible to recover fingerprint from cloth, from fabric.

Q Why is that?

A Because it's not a surface that would lend itself to retaining the detail that would be in a fingerprint such as on a piece of glass, piece of polished metal or any other very smooth hard surface.

MS. WAGNER: Thank you.

THE COURT: Anything else?

## REXCROSS EXAMINATION

1  
2 BY MR. WALKER:

3 Q Well, bullet casings are pretty hard surface, right?

4 A The metal, yes.

5 Q How do you load a firearm, such as the casings you  
6 recovered?

7 A Are you speaking of revolver or semiautomatic?

8 Q What kind of -- the bullet was from what kind of weapon?

9 A I have no idea.

10 Q Okay. For semiautomatic, how do you load that?

11 A How do you load a semiautomatic?

12 Q Right.

13 A Well, generally, they are loaded into a metal device,  
14 sheet metal device, which is called a clip, and they're  
15 pressed in one by one to increasingly press against a  
16 spring that's pressing back against them until the  
17 maximum number of rounds can be put in that clip.

18 Q So you have got to put them in one at a time?

19 A One at a time, yes.

20 Q And so it's possible to get a fingerprint from even a  
21 spent casing?

22 A Yes.

23 MR. WALKER: All I have.  
24  
25

## 1 FURTHER REDIRECT EXAMINATION

2 BY MS. WAGNER:

3 Q Let's be very clear about this. What you recovered,  
4 Plaintiff's 13, I believe. The weapon, what is it, 11?

5 A Number 11.

6 Q That is a spent bullet, not a casing; correct?

7 A That's correct.

8 Q And again, for the benefit of the jury, what's the  
9 difference between the casing and a bullet?10 A Bullet is the part that leaves the gun to strike the  
11 intended target. The casing is the container of the  
12 powder, which actually upon ignition expels the bullet  
13 from the gun.14 Q And it's the casing that, at least in the situation of  
15 the revolver, goes with the gun?

16 A That's correct.

17 Q In someone's loading the bullet, fingerprints are likely  
18 on the casing?

19 A Most likely, yes.

20 MR. WALKER: No follow up.

21 THE COURT: Thank you. You may step down.

22 (Witness excused.)

23 THE COURT: Do we have all the exhibits?

24 MS. WAGNER: State will next call Detective Tom  
25 Davidson.

1 THE COURT: Folks, if you want to stand up take a  
2 quick stretch, you can do so while we are waiting for  
3 the long walk from the back door.

4 TOM DAVIDSON

5 having been called as a witness by the State, being first  
6 duly sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. WAGNER:

9 Q Good morning, Detective.

10 A Good morning.

11 Q For the record, would you please state your full name  
12 spell your last name?

13 A Tom Davidson, D-a-v-i-d-s-o-n.

14 Q Where are you currently employed?

15 A Tacoma Police Department.

16 Q How long have you been with the department?

17 A 20 years.

18 Q What is your current rank?

19 A Detective.

20 Q And any particular area?

21 A I work the homicide assault unit.

22 Q And how long have you been assigned as a homicide  
23 detective?

24 A Since 1994.

25 Q Detective, back in July 1998, were you assigned as the

1 lead detective on the Trang Dai murder case?

2 A Yes.

3 Q And what does it mean to be the lead detective?

4 A Well, I oversee all aspects of the investigation. It's  
5 my responsibility to make sure that the case is  
6 investigated fully. Being the lead, I do, you know, the  
7 majority of the work myself, and then those tasks that  
8 get farmed out to other people, I have to make sure that  
9 they are all followed up on appropriately.

10 Q And when specifically did the Trang Dai killings occur?

11 A In the early morning hours of July 5 of 1998.

12 Q With regard to those murders, how many people were  
13 killed in that cafe that morning?

14 A Five.

15 Q How many others were wounded?

16 A Five others.

17 Q Subsequent investigation revealed that several people  
18 were involved in this?

19 A Yes.

20 Q How many people were ultimately arrested?

21 A Eight.

22 Q And of the persons arrested, was one of them a young  
23 male by the name of Veasna Sok?

24 A Yes.

25 Q Veasna Sok, what was he ultimately charged with, if you

1 know?

2 A He's charged with five counts of aggravated murder, and  
3 five counts of first degree assault.

4 Q And is that case still pending?

5 A Yes.

6 Q As the lead detective in the case, do you have regular  
7 contact with the prosecutor who's handling the case?

8 A Yes.

9 Q So, are you familiar with what's happened with the  
10 Trang Dai case since it's been charged?

11 A Yes.

12 Q In about May of 1999, did Veasna Sok, one of the  
13 defendants, agree to cooperate with the State?

14 A Yes.

15 Q What was -- I don't want to go into the details but, in  
16 essence, what was the agreement?

17 A Well, the agreement was for testimony against the other  
18 charged codefendants for a specific jail sentence.

19 Q A few months after Veasna Sok agreed to cooperate with  
20 the State, did an incident occur with some of the other  
21 codefendants in court?

22 A Yes, it did.

23 MR. WALKER: Objection, relevancy.

24 MS. WAGNER: Probably would need to argue this,

25 Your Honor.

1 THE COURT: Okay. Folks, you are going to have to  
2 take a brief trip to the jury room, and we will call you  
3 back as quickly as we can.

4 (Jury not present.)

5 MS. WAGNER: Your Honor, I made mention of this in my  
6 opening statement. This is simply the incident where  
7 Veasna Sok was assaulted by codefendants and that's all  
8 I intend to go into. Just that the assault occurred.  
9 And despite that, he still maintained his agreement to  
10 cooperate with the State.

11 MR. WALKER: Don't they have to show that has some  
12 tie to my client? What's the relevance? Don't they  
13 have to show that my client would have knowledge of  
14 that? I don't think the newspaper article they are  
15 going to produce even speaks to that.

16 THE COURT: Well, I'll allow, I guess, a limited  
17 entry into that area. I think it's relevant to the  
18 State's theory that it wasn't until the most recent  
19 attempted assault upon the younger brother that Veasna  
20 pulled back from his cooperation. That's my  
21 understanding of the theory.

22 MS. WAGNER: That is, and I don't intend to go into  
23 any more than that.

24 THE COURT: Let's bring the jury back.

25 (Jury present.)

1 THE COURT: Okay.

2 MS. WAGNER: Thank you, Your Honor.

3 Q (By Ms. Wagner) Detective, a few months after Veasna  
4 Sok agreed to testify, did an incident occur between  
5 Veasna and two of his codefendants?

6 A Yes, it did.

7 Q And what occurred, just a brief statement of what  
8 happened?

9 A He was assaulted in the courtroom by two of his  
10 codefendants during a hearing.

11 Q And what were the name of the two codefendants?

12 A Jimmie Chea and Johnny Phet.

13 Q And Jimmie Chea, does he have a nickname?

14 A Cricket.

15 Q And Johnny, does he have a nickname?

16 A Yes, Little Clumsy.

17 Q Despite that assault, did Veasna Sok still abide by his  
18 agreement to cooperate with the State at that time?

19 A He did, yes.

20 Q I want to focus your attention to January 27 of this  
21 year. Did you learn of a shooting relating to Veasna  
22 Sok's brother, Ratthana Sok?

23 A Yes.

24 Q Did you respond to the shooting that day?

25 A Yes, I did.

1 Q Where was that at?

2 A 1609 East 67th Street.

3 Q Now, given you're a homicide detective, were you  
4 assigned to investigate the shooting just because it's  
5 the relationship between Veasna and Ratthana?

6 A Yes.

7 Q Okay. Did you then become the lead detective for this  
8 shooting on January 27th?

9 A Yes.

10 Q Although I am going to go into some detail about the  
11 investigation, let me ask you this: After the shooting,  
12 within a short time after the shooting, did Veasna Sok  
13 change his mind about cooperating with the State?

14 A Yes, he did.

15 Q About how long after the shooting?

16 A I'm not sure exactly, but it was not very long at all.

17 Q Couple weeks?

18 A I believe so.

19 Q Okay. Once you learned of the shooting at Ratthana  
20 Sok's house, did you respond to the house?

21 A Yes.

22 Q And did you have contact with Ratthana Sok?

23 A Yes, I did.

24 Q Who was at the scene when you responded?

25 A Patrol Officer Armin Keen was there; my partner,

1 Detective John Ringer, accompanied me to the scene. And  
2 I believe Forensics Officer Baarslag was there as well  
3 as Ratthana's father and member of the community, a  
4 family friend.

5 Q Did you see any of the damage that had been caused by  
6 the shooting? Did you observe that yourself?

7 A Yes.

8 Q What do you remember seeing?

9 A There were two bullet holes in the back of the Ford  
10 Explorer that had been parked in their garage. I also  
11 saw two bullet holes in the siding of the garage, one  
12 above the garage door, and one as you are looking at it,  
13 to the right side, which would have been the east side.

14 Q Do remember damage to a white Acura that was there?

15 A Yes. There was a mark on the bumper that we thought  
16 could have possibly been caused by a bullet or  
17 ricocheting bullet.

18 Q Did you have the opportunity to interview Ratthana Sok  
19 at that time?

20 A Yes.

21 Q Was he able to provide you with a description of the  
22 person who shot at him?

23 A Yes.

24 Q Did he give you any indication that he knew who this  
25 person was?

- 1 A Yes, he did.
- 2 Q And what was that indication that he was able to give  
3 you?
- 4 A He told me that the person that shot at him was someone  
5 he knew by the name of Alex.
- 6 Q Did Ratthana Sok mention the vehicle that the defendant  
7 had been in prior to the shooting?
- 8 A Yes.
- 9 Q What was that vehicle?
- 10 A A newer Honda Civic. He said it was black in color. He  
11 said it had five star sharp wheels, is what he called  
12 those.
- 13 Q And clothing, was he able to give the clothing  
14 description?
- 15 A Yes.
- 16 Q What about the physical description?
- 17 A Yes. He said the suspect was a Cambodian male, 17 to 18  
18 years of age, five-two to five-three, 125 to 130 pounds,  
19 with a shaved head and a mustache.
- 20 Q Do you know -- at this point, did you have any idea who  
21 the shooter was, other than you had the name of Alex?
- 22 A No, I did not.
- 23 Q Did Ratthana Sok provide you with some information that  
24 he had seen someone he thought might have been the  
25 shooter in the neighborhood prior to the shooting?

1 A Yes.

2 Q And what did he tell you about when he saw this person?

3 A He said that was the day before.

4 Q Okay.

5 A At 7:15 in the morning.

6 Q Did Ratthana indicate whether he knew if Alex lived in  
7 the neighborhood or not?

8 A He said he was not sure where he lived, but he felt he  
9 lived in the neighborhood somewhere.

10 Q Given that you had this information about a physical  
11 description, possible name, did you make a decision  
12 about taking Ratthana to the police station to show him  
13 a display of photographs?

14 A Yes.

15 Q Okay. And was that done on a system that has a data  
16 base of thousands of photographs?

17 A Yes.

18 Q And in terms of how you bring up the information, can  
19 you type in different parameters?

20 A Yes.

21 Q And the initial parameters that you typed in, what were  
22 they?

23 A Initial parameters were the first name of Alex, spelled  
24 A-l-e-x, race Asian, and sex male.

25 Q Did that bring up a group of photographs?

- 1 A Yes.
- 2 Q Do you recall how many photographs?
- 3 A It brought up 12 photographs.
- 4 Q And some were duplicative?
- 5 A Yes, depicting five different people.
- 6 Q Did Ratthana view those?
- 7 A Yes.
- 8 Q Was he able to pick anyone out as the person who shot at  
9 him?
- 10 A No, said he wasn't there.
- 11 Q Did you then change the parameters?
- 12 A Yes, I did.
- 13 Q What did you type in next?
- 14 A I then changed the first name from Alex to Alexander,  
15 same race, Asian, and sex male. That brought up 24  
16 photographs depicting seven different people. Now, some  
17 of those people were the same that came up in the first  
18 12.
- 19 Q Did Ratthana view that series of photographs?
- 20 A Yes, he did.
- 21 Q Were all the photographs displayed on the same screen?
- 22 A Yes, they were.
- 23 Q Okay. Within this second batch of photographs, was he  
24 able to identify anyone?
- 25 A Yes.

1 Q And what was his identification?

2 A He identified the defendant, Mr. Riofta.

3 Q How positive was Ratthana Sok in his identification?

4 A Well, to quote him, he said, "That's him right there,  
5 I'm positive."

6 MR. WALKER: Your Honor, could we have a side-bar?

7 (Conference off-the-record.)

8 THE COURT: Apparently needs to use the rest room.

9 (Defendant left the courtroom.)

10 JUROR: May we stand up?

11 THE COURT: Sure.

12 (Defendant returned.)

13 MR. WALKER: Thank you, Your Honor.

14 Q (By Ms. Wagner) Detective Davidson, after Ratthana Sok  
15 looked at the picture of the defense, identified him,  
16 were you able to find an address for the defendant?

17 A Yes.

18 Q Where was that address? Or what was the address, I  
19 should say.

20 A It was --

21 Q Do you need to refer to your notes?

22 A Let me look at my report real quick. 609 East  
23 Grandview.

24 Q In relation to Ratthana Sok's residence, how close is  
25 that?

1 A Well, that would be -- Ratthana's address is in the 1600  
2 block of East 67th; Homestead would be approximately the  
3 2200 block, and he lives in the 6600 block. So just  
4 about six blocks due east.

5 Q And once you had the defendant's name and address, did  
6 you decide to make contact with him?

7 A Yes.

8 Q What was your purpose of contacting him?

9 A To arrest him.

10 Q When was this done?

11 A January 28th, following day.

12 Q Did anyone go with you?

13 A Yes.

14 Q Who was that?

15 A Detective Ringer and Patrol Officer Keen.

16 Q When you went to the defendant's residence, I'm assuming  
17 you knocked on the door?

18 A Yes.

19 Q Who appeared at the door?

20 A The defendant did.

21 Q And did you advise him why you were there?

22 A He invited us inside. I introduced myself, asked if we  
23 could come in. He said sure. And once inside, I  
24 informed him he was under arrest. And he asked what  
25 for, and I told him a shooting that had occurred

1 yesterday.

2 Q And let me stop you. I know you have made head gestures  
3 toward the defendant. The person you arrested on  
4 January 28th, is he present in the courtroom today?

5 A Yes, the defendant.

6 Q And pointing to the gentleman in the yellow shirt?

7 A Yellow shirt, yes.

8 MS. WAGNER: Record will reflect the witness has  
9 identified the defendant.

10 Q (By Ms. Wagner) And is he the same person who was  
11 pointed out in the photograph by Ratthana Sok?

12 A Yes, he is.

13 Q When you advised the defendant that he was being placed  
14 under arrest for a shooting that had just occurred the  
15 day before, what was his response?

16 A He yelled, "I didn't shoot no mother fucker yesterday.  
17 I was here drinking all night. I worked yesterday  
18 from -- at The News Tribune from 1:00 to 5:30. I don't  
19 even own no gun, how could I shoot some mother fucker?"

20 Q What was his demeanor at this time?

21 A He was very angry.

22 Q At that point, did you make a decision to interview him  
23 at the house, or to try and conduct an interview later?

24 A No, we were going to conduct an interview later down at  
25 the station.

1 Q Did you have the defendant taken to the station?

2 A Yes.

3 Q And who transported him there?

4 A Patrol Officer Keen.

5 Q Once he was at the station, did you conduct an interview  
6 at that time?

7 A I did.

8 Q And prior to beginning the interview, did you advise him  
9 of his rights?

10 A Yes, I did.

11 Q Did he agree to speak to you?

12 A Yes, he did.

13 Q I should ask you: Prior to leaving the defendant's  
14 residence, did you have the opportunity to speak to his  
15 mother, Jennifer Saldana?

16 A Yes, I did.

17 Q I don't want you to go into the details of what she  
18 said, but did she provide you with some information  
19 about what she knew of the defendant's whereabouts that  
20 morning?

21 A Yes.

22 Q Or, I am sorry, the previous morning?

23 A Yes.

24 Q Okay. When you began the interview with the defendant,  
25 did you ask him to account for his activities on

1 January 27th?

2 A Yes, I did.

3 Q Okay. And if need be, you might need to refer to your  
4 report, but what did he tell you that he did on the  
5 27th?

6 A He said that he left his home at about 11:00 in the  
7 morning and caught the bus down to the Red Apple Market,  
8 which is down on 56th and South Tacoma Way. He said he  
9 phoned his boss from there, his boss at The News  
10 Tribune. He said he picked him up next-door to the Red  
11 Apple at Bob's Burger Barn and they went out to Parkland  
12 where he worked going door-to-door, I believe,  
13 Mr. Riofta had a hard time explaining exactly what he  
14 was doing, but I believe it was some type of sales.

15 Went door-to-door and he said from 1:00 in the  
16 afternoon until 5:30, at which time he said his boss  
17 took him, at his request, and dropped him off at 44th  
18 and Portland Avenue.

19 He had phoned a friend named Danny Williams, who  
20 eventually met him there. He said they walked around  
21 for a bit, got a beer somewhere on 72nd Street, and that  
22 he then walked home and he said he arrived home at about  
23 8:30, nine o'clock.

24 Q So, that's the day of the shooting, and he began his  
25 activities at eleven o'clock that morning?

- 1 A Correct.
- 2 Q Okay. Did you ask the defendant what he had done the  
3 previous night, Wednesday January 26th?
- 4 A Yes, I did.
- 5 Q What is it that he told you?
- 6 A He stated he had visited with friends named Isaac and  
7 Marty in Salishan, and that he then had walked home from  
8 their house, arrived home at approximately, I believe he  
9 said, somewhere around 10:30, eleven o'clock.
- 10 Q At about this point in the interview, did you advise the  
11 defendant that Ratthana Sok was the person who had been  
12 shot at early in the morning on the 27th?
- 13 A Yes.
- 14 Q And what if anything was his response?
- 15 A He said he didn't shoot at him.
- 16 Q Did he make a statement about if he had shot at someone?
- 17 A Yes.
- 18 Q What is it he said?
- 19 A He said, "If I had shot at someone, I would kill them.  
20 I am not stupid enough to get identified."
- 21 Q Did the defendant make any comment about why he couldn't  
22 possibly have been named as the suspect of shooting  
23 Ratthana Sok?
- 24 A Yes, he did.
- 25 Q What did he say?

1 A He said Ratthana Sok had probably identified him because  
2 he was the only one that walked up and down his street  
3 everyday.

4 Q Did he also make mention about a conspiracy?

5 A Yes. He said it was all a bullshit conspiracy.  
6 Although I asked him what he meant, he couldn't explain  
7 that.

8 Q Did you ask the defendant if he had ever been to the Sok  
9 residence before?

10 A Yes.

11 Q What did he tell you?

12 A He said he had. He said he had been there to visit  
13 Ratthana's brother Veasna before Veasna got arrested.

14 Q When the defendant was speaking about Veasna, did he  
15 make any comments about Veasna's then situation in jail?

16 A Yes. He stated that Veasna was a sucker for snitching  
17 on the Homeys, and that he deserved to get choked up in  
18 court for snitching on Cricket.

19 Q Who was Cricket?

20 A Jimmie Chea.

21 Q One of the Trang Dai codefendants?

22 A Correct.

23 Q Did the defendant indicate whether he knew cricket or  
24 Jimmie Chea?

25 A Yes. He said he had known him for a minute. That's

1           what he said.

2           Q    Did he indicate that he knew someone else better?

3           A    Yes.  He said he knew one of the other-codefendants  
4           better.  He called him Chewy.

5           Q    Who is Chewy?

6           A    Chewy is Ngeth, N-g-e-t-h.

7           Q    And what is the first name?

8           A    Sarun.

9           Q    Sarun.  Also Sarun is one of the Trang Dai defendants?

10          A    Yes, he is.

11          Q    What, if anything, did the defendant say about Chewy in  
12          terms of his knowledge of him or acquaintance with him?

13          A    Well, he said he used to hang out with him, but that he  
14          quit hanging out with him because he had a reputation  
15          for shooting people.

16          Q    That Chewy had a reputation for shooting people?

17          A    Correct.

18          Q    Did he indicate whether he had any recent contact with  
19          either Cricket or Chewy?

20          A    I don't -- I believe he said he hadn't had any contact  
21          with them recently.

22          Q    During the person or interview with the defendant, did  
23          he make mention of a newspaper article?

24          A    Yes, he did.

25          Q    What did he tell you?

1 A He said it was a newspaper article that depicted -- in  
2 his words, it had the pictures of all the Homeys.

3 Q In terms of the newspaper article, did he indicate where  
4 that was located?

5 A Yes. At his house.

6 Q At some point during the interview at about this time,  
7 did he, the defendant, ask you a question about some  
8 other suspects in this shooting on January 27th?

9 A Yes.

10 Q What is it he asked you?

11 A He asked if -- he asked if he was the only suspect.

12 Q And prior to him asking that, had you made any mention  
13 to the defendant that Ratthana Sok had seen other people  
14 in the car?

15 A I hadn't even mentioned the car.

16 Q Okay. What did the defendant say he was wearing on  
17 Thursday the 27th?

18 A He said a red flannel shirt, a black colored T-shirt, I  
19 believe, underneath, khaki pants. And I can't -- black  
20 shoes I think he said.

21 Q And during the course of your interview with the  
22 defendant, did you make any observations about whether  
23 he was left or right-handed?

24 A Yes. He signed his rights form with his right hand.

25 Q And did you observe whether he smoked cigarettes?

1 A Yes, he did.

2 Q He did smoke?

3 A Yes.

4 Q In terms of his physical appearance, what observations  
5 did you make in terms of his physical description?

6 A Well, he was 22 years old at that time. Five-foot-two,  
7 125 pounds, with a mustache and a shaved head.

8 Q In terms of the newspaper article, did the defendant  
9 agree to allow you to search his residence?

10 A Yes.

11 Q And after completing your interview with the defendant,  
12 did you in fact search his residence?

13 A Yes, I did.

14 Q Were you able to recover that newspaper article?

15 A Yes, I was.

16 Q Did you take that into evidence?

17 A Yes.

18 Q Detective, I am going to show you what has been marked  
19 as Plaintiff's Exhibit 12, and I have taken this out of  
20 the bag, but do you recognize this?

21 A Yes.

22 Q And how is it you recognize it?

23 A Well, this is the newspaper article depicting the eight  
24 defendants in the Trang Dai case.

25 Q That is the article you took into evidence?

1 A This is the article I took into evidence from Alex  
2 Riofta's house, yes.

3 Q And was that placed in the plastic bag?

4 A Yes.

5 Q Does that contain -- the plastic bag contain the case  
6 number for this case?

7 A Yes, it does.

8 MS. WAGNER: State would offer Plaintiff's 12.

9 MR. WALKER: Your Honor, could we take that up after  
10 the lunch hour?

11 THE COURT: Okay.

12 MS. WAGNER: This might actually be a good time for a  
13 break, Your Honor.

14 THE COURT: Yes.

15 Folks, I am going to have you take the noon recess at  
16 this point. We will have you back no later than 1:30.  
17 We will try to get started right at 1:30. Again, the  
18 same cautionary instruction about not discussing the  
19 case with anyone.

20 (Jury not present.)

21 MS. WAGNER: Your Honor, in terms of my witnesses  
22 this afternoon, actually going to go fairly quickly. I  
23 had one witness lined up, Randi Wescott. When I spoke  
24 to her last night, she thought she would be able to  
25 switch shifts on her job. She left me a message this

1 morning, she's having some difficulty. I am asking my  
2 paralegal to follow-up. I don't know if she's gotten  
3 through to her.

4 Officer Karl, who recovered the stolen car, had a  
5 surgery consult at one o'clock this afternoon. I might  
6 be able to get him in this afternoon. And then I have  
7 Ali Saleh. I believe I will be able to get him in.  
8 Finish up with Detective Davidson. If I can get them  
9 all in, I will be done this afternoon, otherwise might  
10 be a delay until tomorrow morning.

11 MR. WALKER: Going pretty quick. I told my witnesses  
12 Wednesday, so only problem is the records. My assistant  
13 is working on that. I might have to call the  
14 prosecutor, if I get desperate. She's the one that  
15 subpoenaed the stuff, but hopefully that won't be  
16 necessary.

17 THE COURT: Okay. You had something on the newspaper  
18 article.

19 MR. WALKER: Just that --

20 THE COURT: Your instruction?

21 MR. WALKER: Just the instruction. I dictated it  
22 last night, my assistant was doing it today, so I will  
23 bring that.

24 THE COURT: All right. Okay, with that, we will  
25 resume at 1:30. And I had forgotten yesterday, I have a

1 settlement conference today at four o'clock. I will  
2 keep them waiting a little bit, if we are in the middle  
3 of a witness.

4 MS. WAGNER: Okay.

5 THE COURT: I do need to get to them probably no  
6 later than 4:15.

7 MR. WALKER: Okay.

8 THE COURT: See you back at 1:30.

9 (Recess taken.)

10  
11 AFTERNOON SESSION

12  
13 (Jury not present.)

14 MS. WAGNER: Good afternoon, Your Honor.

15 MR. WALKER: Good afternoon, Your Honor.

16 THE COURT: To pick up first the issue of the  
17 defendant's proposed jury instruction. Have you seen  
18 that?

19 MS. WAGNER: The limiting instruction?

20 THE COURT: Yes.

21 MS. WAGNER: I did; I don't have any objection to  
22 that.

23 THE COURT: Okay.

24 MR. WALKER: So I know it has been requested to have  
25 admitted, the article. Are you just going to read that

1 instruction when it's admitted, then?

2 THE COURT: Ms. Wagner is that --

3 MS. WAGNER: I am sorry?

4 THE COURT: For me to give the limiting instruction  
5 when the article is admitted.

6 MS. WAGNER: I think that would be appropriate,  
7 Your Honor.

8 MR. WALKER: Great.

9 THE COURT: All right, then, I won't address the  
10 other proposed jury instructions until later.

11 MS. WAGNER: Yeah.

12 THE COURT: Okay?

13 MS. WAGNER: Your Honor, with regard to my witnesses,  
14 I have Mr. Ali Saleh coming in this afternoon. I spoke  
15 to him at noon, he was coming down from Seattle. What I  
16 would ask the court, he will go on after Detective  
17 Davidson. If I could have a brief recess just to make  
18 sure he's out here. My other witness, Miss Randi  
19 Wescott. I did confirm she was not able to get off of  
20 work. Her boss confirmed that. I am wonder if the  
21 court would start a little bit early tomorrow morning.  
22 She has an appointment in the morning, she thought if we  
23 started nine-ish, around there, her testimony will be  
24 very quick, I can get her done, she can go off to her  
25 appointment, and I believe I could put Officer Karl on

1 after that. Get through with this.

2 THE COURT: Mr. Walker?

3 MR. WALKER: No objection.

4 THE COURT: Okay. We will start tomorrow at 9:00.

5 Just want to put another matter on the record. My  
6 judicial assistant received a phone call over the noon  
7 hour from someone who identified herself as Mr. Riofta's  
8 sister wanting to know when the hearing was scheduled.  
9 And she advised the person that there was actually a  
10 trial and it was occurring at this time. So, we should  
11 be aware of that communication. Okay?

12 MS. WAGNER: In terms, then, Your Honor, this  
13 afternoon, I will -- at the end of Mr. Saleh's  
14 testimony, that will be it for the witnesses this  
15 afternoon.

16 THE COURT: Okay. All right? Let's go ahead and get  
17 the jury in and we can start.

18 (Jury present.)

19 THE COURT: Okay, please be seated. Welcome back.

20 We will continue with Detective Davidson.

21 MS. WAGNER: Your Honor, I had made a motion to admit  
22 Plaintiff's 12.

23 MR. WALKER: I have no objection, subject to the  
24 court's instruction.

25 THE COURT: All right. Are you planning to publish

1 this to the --

2 MS. WAGNER: Not at this time, Your Honor.

3 THE COURT: Okay. Exhibit 12, you have heard  
4 reference to as the newspaper article. I am going to  
5 read you an instruction at this point as to what  
6 ultimately you are to do with that newspaper article.

7 You are instructed that you are not to consider any  
8 information provided to you in the newspaper article  
9 submitted into evidence involving the Trang Dai incident  
10 except as to whether it is relevant to the issue in this  
11 case involving an alleged motive and for no other  
12 purpose.

13 Okay?

14 MS. WAGNER: Is the court admitting --

15 THE COURT: Yes. I will admit Exhibit 12.

16 MS. WAGNER: Thank you.

17 Q (By Ms. Wagner) Good afternoon, again, Detective.

18 A Good afternoon.

19 Q You indicated that you have obtained the article from  
20 the defendant's residence. Did you, during the search  
21 of that residence, ever locate the weapon used in the  
22 shooting?

23 A No.

24 Q And during the course of your search of the residence,  
25 did you have an opportunity to speak to the defendant's

1 mother, Miss Saldana?

2 A Yes.

3 Q Did you show her that newspaper article?

4 A Yes.

5 Q Without going into the details of it, was Miss Saldana  
6 able to provide you with some information with regard to  
7 one of the persons shown in that article?

8 A Yes.

9 Q You were aware that a newer Honda was used or had  
10 transported the defendant to the shooting?

11 A Yes.

12 Q And did you become aware of a Honda being recovered a  
13 few days after the shooting?

14 A Yes.

15 Q Who was the owner of that Honda, if you recall?

16 A Mr. Ali Saleh, I believe.

17 Q Did you have occasion to speak to Mr. Saleh or Saleh?

18 A Yes.

19 Q When was that?

20 A It was several days after I had arrested Mr. Riofta.

21 Q And you had knowledge that outside of the victim's  
22 residence, actually on the sidewalk between where the  
23 car would have been parked and the house, a white hat  
24 had been recovered?

25 A Yes.

1 Q Did you speak to Mr. Saleh about that white hat?

2 A Well, what I asked Mr. Saleh was: Had the suspects that  
3 had stolen his car, taken anything from the car or left  
4 anything that belonged to them behind in the car? And  
5 he stated --

6 MR. WALKER: Objection, that would be hearsay.

7 THE COURT: Sustained.

8 Q (By Ms. Wagner) Without going into the details  
9 provided by Mr. Saleh, you did question him --

10 A Yes.

11 Q -- about a white hat?

12 A Yes.

13 Q Was he able to provide you with information about a hat?

14 A Yes.

15 MR. WALKER: Objection, based on hearsay.

16 THE COURT: Overruled.

17 Q (By Ms. Wagner) Did you have an opportunity to view  
18 the Honda --

19 A Yes.

20 Q -- belonging to Mr. Saleh?

21 A Yes.

22 Q Where was that viewed at?

23 A Burns Towing.

24 Q Showing you what has been marked Plaintiff's Exhibits 2  
25 and 3. Do you recognize what's depicted in those

1 photos?

2 A Yes.

3 Q Okay. And how is it you recognize that?

4 A Well, I was there when the vehicle was processed, and  
5 these photographs were taken and these were photographs  
6 of Mr. Saleh's car.

7 Q You were present when they were taken?

8 A Yes.

9 Q And is that an accurate depiction in both photographs of  
10 the Honda belonging to Mr. Saleh?

11 A Yes.

12 MS. WAGNER: State would offer Plaintiff's 2 and 3.

13 MR. WALKER: I have no objection.

14 THE COURT: Exhibits 2 and 3 will be admitted.

15 MS. WAGNER: Move to publish, Your Honor.

16 THE COURT: Granted.

17 MS. WAGNER: Showing you first what is marked  
18 Plaintiff's 3, and next Plaintiff's Exhibit 2.

19 Q (By Ms. Wagner) Did you also have occasion to speak  
20 with the -- a woman, Miss Randi Wescott?

21 A Yes.

22 Q Do you know where the Honda was ultimately recovered at?

23 A Yes. Was on a cul-de-sac in front of -- may I check my  
24 report?

25 Q That would refresh your memory?

1 A Yes, I can't remember the exact address. It was  
2 recovered on the street in front of 2107 East 65th  
3 Street.

4 Q Do you know what day it was initially reported  
5 recovered?

6 A Officer recovered the vehicle on the 29th.

7 Q Had it been discovered prior to that time?

8 A Yes.

9 Q When was it discovered in front of that location?

10 A I believe Miss Wescott stated that she had seen --

11 MR. WALKER: Objection, Your Honor, this is hearsay.

12 THE COURT: Sustained.

13 Q (By Ms. Wagner) With regard to the location where the  
14 Honda was recovered, are you familiar with that location  
15 in relation to the defendant's residence?

16 A Yes.

17 Q How close is that where the Honda was recovered from the  
18 defendant's residence?

19 A Well, if you take the streets, it's within a few blocks.  
20 However, there's a field you can cut through which takes  
21 you almost -- not very far at all, maybe a block.

22 Q Okay. The field between where it was recovered and the  
23 defendant's residence?

24 A Yes.

25 Q Was the Honda processed for latent fingerprints?

1 A Yes, it was.

2 Q Were any recovered?

3 A No.

4 Q You testified there in the course of your interview with  
5 the defendant he provided you with the names of several  
6 people he had been with after eleven o'clock on the  
7 27th?

8 A Yes, yes, yes.

9 Q Or contact -- did you make an effort to contact those  
10 people?

11 A I did.

12 Q Were you able to find anyone during the course of your  
13 investigation who had had knowledge of the defendant's  
14 activities prior to eleven o'clock on the 27th?

15 A No.

16 MR. WALKER: Your Honor, I guess I have to object,  
17 move to strike for relevancy. A.m. or p.m.? Maybe it's  
18 the form of the question.

19 THE COURT: Can we have some clarification on  
20 specific time period that you are talking about?

21 MS. WAGNER: I am referring to 11:00 in the morning  
22 on the 27th.

23 MR. WALKER: I'll withdraw any objection, based on  
24 that clarification.

25 THE COURT: All right.

1 THE WITNESS: No, I wasn't able to find that.

2 MS. WAGNER: That's all I have at this time,  
3 Your Honor. I may have to recall Detective Davidson,  
4 but for the time being, I have no other questions.

5 THE COURT: Okay.

6 CROSS-EXAMINATION

7 BY MR. WALKER:

8 Q Detective, did you speak to my client's mother's  
9 husband?

10 A She said that he was suffering from diminished capacity.  
11 I had her ask him if he remembered anything about the  
12 26th or 27th, and he said no.

13 Q Well, let's talk about your report here. You spoke with  
14 the victim the same day that the incident happened.

15 A Yes.

16 Q And he gave you some information --

17 A Yes.

18 Q -- about a suspect.

19 A Yes.

20 Q 17 or 18 years old.

21 A Yes.

22 Q Now, Mr. Riofta is not 17 or 18 years old, is he?

23 A No.

24 Q How old is he?

25 A Well, he was 22 at that time.

1 Q How old is he?

2 A 23 now.

3 Q When you arrested him, it was a month before his  
4 birthday, so almost 23, right?

5 A Yes.

6 Q Okay. And you were told by Mr. Sok, the victim, that  
7 the subject had a mustache.

8 A Yes.

9 Q And a shaved head.

10 A Yes.

11 Q But then you were also told that the subject was wearing  
12 a hat at the time.

13 A There was a hat, yes, that had been left at the scene.

14 Q Well, in your report -- would you refer to your report  
15 pages -- bottom page 1, top of page 2?

16 A Where is that now?

17 Q Bottom of page 1, top of page 2.

18 A Yes.

19 Q Does it not say, "Sok described the shooter as a  
20 Cambodian male, 17, 18 years of age, five-two or  
21 five-three, 125 to 130 with mustache and shaved head"?

22 A Yes.

23 Q That's how he described him?

24 A Yes.

25 Q So, it wasn't really relevant there was a hat there, as

1 far as his description; is that correct?

2 A No, it is not, because he also said he was wearing baggy  
3 blue jeans, black cotton button-up, gloves -- black  
4 gloves, white cap, which had been found at the scene.

5 Q He said that afterwards?

6 A Yeah, when I was getting the description from him.

7 Q Now, so you said the guy was bald, and he had a hat --

8 A Shaved head, and a hat, yes.

9 Q Did he say, "I saw he was bald" or not?

10 A He said he had a shaved head. That's what he said.

11 Q Did he say he saw that he was bald?

12 A I am telling you he said, "He had a shaved head."

13 Q I am not asking --

14 A That's what he said.

15 Q But did he say also that he had seen at that time that  
16 the subject was bald?

17 A I didn't ask him specifically.

18 Q Okay. That's what I was asking.

19 A Okay.

20 Q He didn't say anything about facial hair on the chin,  
21 did he?

22 A No.

23 Q And did he not tell you that he had seen the subject the  
24 day before the shooting, the morning before the  
25 shooting?

1 A Yes, he did.

2 Q And he didn't say, "I don't remember if it was two or  
3 three days," he said "the previous morning"; is that  
4 correct?

5 A Yes.

6 Q Isn't it true that you were able to obtain some  
7 information Mr. Riofta is not a gang member?

8 MS. WAGNER: Objection, Your Honor.

9 MR. WALKER: I think it was opened up.

10 THE COURT: Well --

11 MS. WAGNER: I have --

12 THE COURT: I am going to sustain the objection to  
13 the form of that question. You can maybe lay some  
14 foundation on that.

15 Q (By Mr. Walker) Do you have any -- you don't have any  
16 information that he is a gang member, do you?

17 A No.

18 Q Thank you. Mr. Riofta cooperated with you by giving you  
19 a statement?

20 A Yes.

21 Q And by allowing you to search his home?

22 A Yes.

23 Q Now, the victim told you that Alex had done it. That's  
24 what he told you.

25 A Correct.

1 Q He didn't tell you that it was somebody who looked like  
2 Alex.

3 A He said it was Alex.

4 Q And so, you didn't do a photo montage, did you?

5 A No.

6 Q You just typed in Alex, Asian male. That's what you  
7 typed in, right?

8 A At first, yes.

9 Q Okay. And then that didn't get a response until you put  
10 Alexander --

11 A Correct.

12 Q -- Asian male?

13 A Correct.

14 Q Okay. So, you didn't give the victim any instructions  
15 that you would normally give for a photo montage,  
16 correct?

17 A Correct.

18 Q What would those instructions be for a photo montage?

19 A Well, basically if you are viewing a photo montage, you  
20 instruct the person who is looking at it -- keep in  
21 mind, most of the time people looking at photo montages  
22 are looking for a suspect in a case that they don't  
23 know.

24 In this case, Mr. Riofta -- or excuse me, Mr. Sok  
25 knew Mr. Riofta. But in the case of an unknown suspect,

1 you give the admonishment that, you know, we show black  
2 and white photo montages, they are six photographs, one  
3 picture is the suspect and five others that look very  
4 similar to the suspect.

5 We instruct them that the pictures are in black and  
6 white, so they may not depict the true complexion of a  
7 person who could appear lighter or darker; the pictures  
8 may not be up-to-date, so appearances can change; also  
9 that you are to -- that the suspect may or may not be  
10 pictured, and you are basically to draw no conclusions  
11 just because you see a photograph in a line-up.

12 Q So, there was none of those warnings given.

13 A No.

14 Q But you could have prepared photo montages in this case;  
15 is that not true?

16 A Well, it would have been difficult, but like I say, he  
17 knew him. So --

18 Q Okay. Well, assuming that he didn't know him, you could  
19 have made photo montages?

20 A If you want to assume he didn't know him, I could have.

21 Q You could have taken whatever pictures that your  
22 computer gave you of Alex and Alexander and made photo  
23 montages of those pictures, could you not have?

24 A I could have, yes.

25 Q How long would that have taken?

1 A Well, it usually takes about 20 to 30 minutes to put  
2 together a good -- you know, one good photo line-up in  
3 this case.

4 Q So, to do all of them, it would have taken less than one  
5 full day; is that correct?

6 A Oh, yeah, sure.

7 Q Isn't it true your report has really no reference to  
8 this conversation that you had with the spouse of my  
9 client's mother?

10 A Pardon me?

11 Q Your police report has no reference to --

12 A No, it's in there.

13 Q Is it? What page?

14 A Sure. Bottom of page 9. "Saldana," that's Mr. Riofta's  
15 mother, "is married, but she said her husband, Adam, had  
16 a stroke recently, was diminished mentally. She asked  
17 him if he remembered anything about yesterday and he  
18 said no."

19 Q Why didn't you ask him?

20 A Well, she asked him. We were all right there. She said  
21 he was, you know, diminished mentally. I didn't see the  
22 need. She asked him and he said no, anyway.

23 Q You didn't see the need, okay. What race is Mr. Riofta?

24 A He said he was Korean and Filipino.

25 Q Any information that contrasts that?

1 A No.

2 Q When you are taking Mr. Riofta's statement, he told you  
3 he had no conflict with Sok; is that not true?

4 A With Ratthana Sok?

5 Q Right.

6 A Yes.

7 Q Detective, did you get the opportunity to review any  
8 phone records of Mr. Riofta's or not?

9 A Yes, yes, I did.

10 Q You did?

11 A Sure.

12 Q His cell phone?

13 A Yes.

14 Q Is it not true that he had made no phone calls before  
15 say 11:00 a.m. on the date of the shooting?

16 A I believe that's correct, yes.

17 Q There was pretty much a steady stream of phone calls  
18 from about 11:00 a.m. on; is that not true?

19 A I don't know about a steady stream. I do know there  
20 were no phone calls prior to that.

21 Q Isn't that true with the 26th, also?

22 A I don't remember; I don't recall that.

23 Q I wonder if I was to have you review that date if that  
24 would help your recollection.

25 A Sure.

1 Q Of course I have got to find it.

2 (Dft's Ex 17 marked.)

3 Q (By Mr. Walker) These are records the prosecutor  
4 subpoenaed or did you subpoena them?

5 A I don't recall, one of us did.

6 Q One of you did.

7 A Sure.

8 Q I am handing you what has been marked as Defense's  
9 Exhibit 17. Does that ring a bell?

10 A Yes.

11 Q What's the date of that phone record?

12 A It looks like it's -- I don't know orient here. Looks  
13 like it's January, late in the evening January 25th, and  
14 then the afternoon of the 26th up until the evening.

15 Q Okay. What's the first phone call on the 26th?

16 A 12:35 p.m.

17 Q Thank you. That does refresh your memory, right?

18 A Yes.

19 Q Okay. Now, when you arrested Mr. Riofta, that was the  
20 day after the shooting, right?

21 A Correct.

22 Q Did you check him for powder burns?

23 A We don't do those tests anymore.

24 Q Okay. So you didn't?

25 A We don't -- the State lab does not do them. We don't do

1           them. They are unreliable.

2           Q    They have become unreliable?

3           A    Haven't been reliable for years. We haven't done that  
4           test for years.

5           MR. WALKER: All I have.

6           THE COURT: Miss Wagner?

7                           REDIRECT EXAMINATION

8           BY MS. WAGNER:

9           Q    Following up on that last question about the gun shot  
10           residue test, you had a day lapse between the shooting  
11           and when you picked up the defendant.

12          A    Yes.

13          Q    What sort of actions could he have taken that would have  
14           made that test unreliable?

15          A    Well, if assuming the tests were reliable in the first  
16           place, he could have you know showered, washed his  
17           hands, done a number of things, you know.

18          Q    And the test itself?

19          A    Changed clothes.

20          Q    How long has it been since it has been used by state  
21           patrol crime lab?

22          A    Oh, gosh, I believe we got a memo from them in '96 or  
23           '97, and we haven't used it since then.

24          Q    Okay. With regard to the photo montage, could you  
25           describe to the jury the normal situation which you

1 would actually put together a formal photo montage?

2 A Yes. What you do is you have a suspect's photograph and  
3 you plug that into the computer. And the physical  
4 description of the suspect, age, height, weight, hair  
5 style, length, facial hair, whether or not they have  
6 glasses or whatnot, all that is input in when you put  
7 the suspect in there.

8 Then the computer generates a number of pictures. It  
9 can be up to 500 of people that, you know, at least fit  
10 those general parameters, and then what we do is scroll  
11 through all of those photographs and get people who look  
12 very similar to the suspect.

13 A lot of times you can get people to have, you know,  
14 same basic age and height and weight and hair length but  
15 yet they really don't look alike. So we scroll through  
16 and try to do as good a job as you can.

17 Q You will put together a series of six photographs?

18 A Yes.

19 Q In a typical situation where montage is used, if I could  
20 do a hypothetical, you have a bank robber, teller gives  
21 a description. Through investigation, someone is  
22 arrested and this person has been unknown to the teller.

23 That is a situation where you might present a  
24 montage?

25 A Yes.

1 Q Okay. And so, again, that would be a situation where  
2 the victim didn't know the suspect and you are trying to  
3 see: Can you pick out the suspect within this group of  
4 photos?

5 A Correct.

6 Q What was different about this situation that precluded  
7 you from doing a montage?

8 A Well --

9 MR. WALKER: Objection to the form of the question.  
10 He's already testified he could have done a montage.

11 MS. WAGNER: Precluded might be a bad word.

12 Q (By Ms. Wagner) Well, you made a decision not to do a  
13 montage.

14 A Yes. I made that decision based on the fact that  
15 Mr. Sok knew -- well, he didn't know Mr. Riofta's last  
16 name; he knew him, had seen him, had been at their house  
17 before. He just didn't know his last name. So this was  
18 not a case where I was looking for an unknown suspect, I  
19 was actually looking for someone known to Mr. Sok, he  
20 just didn't have the last name.

21 Q And even with this system that you used, Mr. Sok had to  
22 view a series of photographs. Although some of them  
23 were duplicative, he still had several different people  
24 to look at?

25 A Oh, yes.

1 Q And Mr. Walker had asked you that would you have been  
2 able to put together a montage, if Mr. Sok didn't know  
3 the defendant, but that puts us back to square one  
4 doesn't it?

5 A Yes.

6 Q If he hadn't known the first name, or if he didn't know  
7 him at all, you would still be out there looking for a  
8 suspect.

9 A Correct.

10 MR. WALKER: Objection, move to strike, based on  
11 speculation.

12 THE COURT: Overruled.

13 Q (By Ms. Wagner) Mr. Walker asked you about the  
14 defendant's statement to you that he had no conflict  
15 with Ratthana Sok.

16 A Yes.

17 Q And he said that during his interview with you?

18 A Yes.

19 Q Although he had no conflict with Ratthana Sok, did he  
20 during the course of the interview with him, make  
21 several statements about Veasna Sok?

22 A Yes, he did.

23 Q You have already testified about those statements?

24 A Yes.

25 Q What was his demeanor when he made these comments about

1 Veasna Sok?

2 A Well, it was clear he didn't like Veasna or what Veasna  
3 had done, as far as giving a statement against --

4 MR. WALKER: Your Honor, I have to object. I don't  
5 think this goes to his demeanor.

6 THE COURT: Sustained.

7 Q (By Ms. Wagner) In terms of demeanor, was there a  
8 visible anger in his voice or affect?

9 A Animosity, yes.

10 Q And with regard to the defendant's mother asking the  
11 father, defendant's father, about any memory he had of  
12 what happened on the 27th, you indicated you didn't feel  
13 a need to go further than that?

14 A No, she asked him if he remembered anything, and he said  
15 no.

16 Q You thought that answered any questions you might have?

17 A Yes.

18 MS. WAGNER: Nothing further.

19 RE-CROSS EXAMINATION

20 BY MR. WALKER:

21 Q You are aware this gentleman has passed away, right?

22 A Yes, I was told that.

23 Q Okay. Now, the advantage of a photo montage is that you  
24 have the computer putting together physical features  
25 that are consistent with the description given; is that

- 1 correct?
- 2 A With a known suspect.
- 3 Q Yeah, with a known description.
- 4 A Well, you have to have -- you have to have a person to  
5 start with to match him to those, you just don't --
- 6 Q Right.
- 7 A -- input physical descriptions into a computer and  
8 expect you are going to get, you know, six people and  
9 one of them is going to be your suspect.
- 10 Q But if you just type in somebody's name, you are not  
11 going to have people with similar --
- 12 A Oh, yes, because when they are.
- 13 Q Necessarily similar features?
- 14 A Oh, yeah, when their name pops up, all their -- see, at  
15 the time their photographs are entered into the  
16 computer, their names are also entered, and their  
17 physical descriptions are entered. And when you punch  
18 in someone's name, all that stuff comes up. So the  
19 computer automatically has all that information, you  
20 don't input it again.
- 21 Q Okay.
- 22 A It's there.
- 23 Q Right. And then if you do a photo montage, you can have  
24 people that look like that individual's features so you  
25 can have a fair approach at whether the individual can

1 really identify the subject?

2 A Correct. But again you are dealing with -- like I say,  
3 you have to have a suspect.

4 Q Right.

5 A You know, to compare the others to.

6 Q Okay. You can't just do something out of the blue.

7 A Correct. Well, I guess you could, but it wouldn't be  
8 very effective.

9 MR. WALKER: Right. Okay. I guess you have answered  
10 my question. Thank you.

11 THE COURT: Anything else?

12 MS. WAGNER: No.

13 THE COURT: Thank you. You may step down.

14 (Witness excused.)

15 MS. WAGNER: If I could have a brief recess to check  
16 on my next witness, see if he got here.

17 THE COURT: Okay, all right. Why don't you check.  
18 If he's not here, I will let the jury take a little bit  
19 longer break.

20 MS. WAGNER: State will call Ali Saleh.  
21  
22  
23  
24  
25

1 ALI A. SALEH

2 having been called as a witness by the State, being first  
3 duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. WAGNER:

6 Q Good afternoon. Would you please state your full name  
7 and spell your first and last name for the record?

8 A First name is Ali Abdullah Saleh, A-l-i, first name,  
9 last name Saleh, S-a-l-e-h.

10 Q Mr. Saleh, do you live in the Pierce County area?

11 A Yeah the last two years.

12 Q Last two years?

13 A Yeah.

14 Q Okay. And where was your residence back in January of  
15 this year?

16 A In Seattle. Seattle.

17 Q Seattle?

18 A Yeah.

19 Q Did you have a place on South Union?

20 A Yes, we do.

21 Q Okay. And in January, were you living there?

22 A I just moved in the day when my car was stolen.

23 Q You had just moved in?

24 A Yeah, just moved in that night.

25 Q Okay. Do you have a job that takes you out of state for

1 long periods of time?

2 A Yes.

3 Q What is it you do?

4 A I'm a merchant marine, seaman.

5 Q Merchant marine?

6 A Yeah.

7 Q I want to go ahead and focus your attention on January  
8 of this year. Did you own a 1994 Honda?

9 A Yes.

10 Q What type of Honda?

11 A Blue Honda, four doors.

12 Q Honda Civic?

13 A Honda Civic, yeah.

14 Q You indicated it was stolen. Do you remember what day  
15 it was stolen?

16 A I am not sure, because I just moved in the 26th, and I  
17 got up the next morning, the 27th, and I was looking  
18 around, you know, around the apartment, I couldn't find  
19 it.

20 Q Okay.

21 A Took it between midnight or something, I don't know  
22 when.

23 Q Okay. So you last saw it on January 26th of this year?

24 A Yes.

25 Q What hour of the morning on the 27th did you get up and

1 find out that it was not there?

2 A Around about 7:00, 7:30 in the morning.

3 Q So, it had been taken somewhere between those hours?

4 A Right.

5 Q Mr. Saleh, I am going show you what has been marked  
6 Plaintiff's Exhibits 2 and 3. Do you recognize the car?

7 A Yes. That's my car.

8 Q That's your car?

9 A Yeah.

10 Q In both photographs?

11 A Yes.

12 Q Was your car ever recovered?

13 A Yeah. Yes, it did.

14 Q When it was recovered, did you get it back?

15 A I got it back about two weeks later, after I got it all  
16 fixed up and everything.

17 Q Was there damage done to the ignition area?

18 A Yes, about the wheel, stereo, speakers and the side,  
19 driver's side.

20 Q And can you be more specific in terms of the residence  
21 from which your car was stolen, where was it at?

22 A It was 3228 South Union Avenue commonplace.

23 Q South Union?

24 A South Union.

25 Q When your car was stolen, do you recall you had a hat

1 inside the car?

2 A I got about two or three of them. One white one was  
3 from the union.

4 Q White hat?

5 A Yeah, white hat. We --

6 Q Was that hat in the car when you recovered it?

7 A Yes -- no, not when I recovered, no. When I park it, it  
8 was there.

9 Q I am going to show you what has been marked Plaintiff's  
10 Exhibit 13. Do you recognize the hat?

11 A Yes, that's my hat.

12 Q That was in your car?

13 A It was in the car in the back seat.

14 Q When it was stolen?

15 A Yes.

16 Q Okay. Did you report your car stolen to the police?

17 A Yes.

18 Q What day did you report it stolen on?

19 A 27th, in the morning. Yeah.

20 Q And that's January of this year?

21 A Yeah, January.

22 MS. WAGNER: Thank you, I have nothing further.

23 THE COURT: Any questions?

24 MR. WALKER: No questions, Your Honor.

25 THE COURT: Okay. Thank you, you are excused. We

1 have a witness sheet for you to sign over here, please,  
2 if you will come around.

3 (Witness excused.)

4 MS. WAGNER: That's all I have for this afternoon,  
5 Your Honor.

6 THE COURT: Members of the jury, you are going -- I  
7 am going to give you the rest of the afternoon off so  
8 you can start your Christmas shopping, or do something  
9 more healthy than that, if you want, less expensive.

10 We have made arrangements to start tomorrow morning  
11 at 9:00. Is that going to present a hardship to anyone?  
12 We have one witness that has some schedule conflicts and  
13 so if we start tomorrow at 9:00, we should be able to  
14 take care of her.

15 So, I will excuse you for the balance of the  
16 afternoon today, make sure you take all of your things,  
17 when leaving the jury room. Again, the same admonition  
18 about not taking talking about the case with anyone, not  
19 letting anyone approach you and talk to you about it.  
20 And we will see you tomorrow morning at nine o'clock.  
21 Okay? Thank you.

22 (Jury not present.)

23 THE COURT: Anything else we need to take up?

24 MS. WAGNER: Not from the State.

25 MR. WALKER: I don't know when you want to talk about

1 jury instructions.

2 MS. WAGNER: I am going to need a chance to look over  
3 the lesser includeds, I will try and be ready tomorrow.

4 THE COURT: He has lesser included, and also has a  
5 different reasonable doubt.

6 MS. WAGNER: Reasonable doubt, yeah.

7 THE COURT: I have mixed feelings about that. I gave  
8 it in a recent case where the State requested it and it  
9 conflicts with the introductory reasonable doubt  
10 instruction already given to them. That's my concern,  
11 is you have now given them sort of two different things.  
12 I don't know if they understand that they may mean the  
13 same thing, but -- so we will take that up after you  
14 have had a chance to review the instructions.

15 We will see you tomorrow morning at nine o'clock.

16 Okay?

17 MS. WAGNER: Thank you.

18 MR. WALKER: Thank you, Your Honor.

19 (Recess taken.)  
20  
21  
22  
23  
24  
25

1 NOVEMBER 29, 2000

2 MORNING SESSION

3 (Jury not present.)

4 THE COURT: Anything we need to talk about before we  
5 bring in the jurors?

6 MS. WAGNER: No, I have got just two witnesses this  
7 morning. Your Honor, Miss Wescott is here, Officer Karl  
8 will be next. He called me; I told him to get here as  
9 soon as possible. He thought he might be five minutes  
10 late, I am hoping he will be here by the time I am done  
11 with Miss Wescott.

12 THE COURT: Then do you have anyone else?

13 MS. WAGNER: I will rest.

14 THE COURT: Mr. Walker, are you ready with your  
15 witnesses?

16 MR. WALKER: One of them is here; hopefully the  
17 others will be here.

18 THE COURT: All right. Let's go ahead and get the  
19 jurors.

20 (Jury present.)

21 THE COURT: Please be seated. Good morning.

22 JURORS: Good morning.

23 THE COURT: Okay, Ms. Wagner.

24 MS. WAGNER: Thank you. The State will call Randi  
25 Wescott.

1 RANDI WESCOTT

2 having been called as a witness by the State, being first  
3 duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. WAGNER:

6 Q Good morning. Would you please state your full name,  
7 spell your last name for the record?

8 A Randi Wescott, W-e-s-c-o-t-t.

9 Q Miss Wescott, are you currently employed?

10 A Yes.

11 Q And do you currently live in the Pierce County area?

12 A Yes.

13 Q I would like to direct your attention back to January of  
14 this year. Were you living in a residence on East 65th?

15 A Yes.

16 Q What was the specific address of that residence?

17 A 2107 East 65th.

18 Q 2107?

19 A Yes.

20 Q And specifically on January 27th of this year, do you  
21 recall seeing a Honda in front of your residence?

22 A Yes.

23 Q Do you recall anything about the Honda? Was it an older  
24 model or newer model?

25 A Oh, it was probably in its '80s, I don't know, '90s.

1 Q When did you first observe the Honda in front of your  
2 residence?

3 A The morning I was getting up to go to work, I was  
4 leaving my home.

5 Q On what day?

6 A I believe it was on a Wednesday or Thursday. I can't  
7 remember. Wednesday.

8 Q Okay. Did you make a report to the police on that day  
9 or did you wait a couple days?

10 A Waited a couple days. It was by our mailbox, and it set  
11 there for a couple days. And we found a note on our  
12 mailbox said they weren't going to deliver our mail any  
13 further, if we didn't move the car. I assumed they  
14 thought it was our car. So, we called the police  
15 department.

16 Q When you contacted the police, did they ask you to  
17 provide a license plate number of the vehicle?

18 A Yes.

19 Q And did you do that?

20 A Yes.

21 Q I don't suppose you recall anything about the license  
22 plate at this time?

23 A Not that long ago.

24 Q Let me ask this. Once you did call the police, do you  
25 recall what day you contacted them?

1 A It was a couple days after I noticed the car, so  
2 probably a couple days later.

3 Q About the 29th of January, does that sound --

4 A Yeah, probably.

5 Q Once you contacted the police, how quickly did they come  
6 out?

7 A Oh, they were there right away.

8 Q And was the car then removed?

9 A Yes.

10 MS. WAGNER: Thank you, I have nothing further.

11 THE COURT: Any questions?

12 MR. WALKER: No, Your Honor.

13 THE COURT: Okay. Thank you. You may step down. We  
14 have a witness sheet we need you to sign, if you will  
15 come around front.

16 (Witness excused.)

17 MS. WAGNER: Your Honor, while she does that, I would  
18 like to make sure my next witness is here.

19 Your Honor, I know my next witness is on the way. I  
20 hoped he would be here by now. May I have a brief  
21 recess? It should be just another minute or two.

22 THE COURT: Okay, folks, I will have you go to the  
23 jury room for a couple minutes while we wait for the  
24 next witness. Okay? Thank you.

25 (Recess taken.)

(Jury present.)

1 THE COURT: Okay, Miss Wagner.

2 MS. WAGNER: Thank you, Your Honor. State will call  
3 Officer Chris Karl.  
4

5 CHRIS KARL

6 having been called as a witness by the State, being first  
7 duly sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. WAGNER:

10 Q Good morning. For the record, please state your full  
11 name.

12 A Officer Chris Karl, K-a-r-l.

13 Q Where are you currently employed?

14 A With the City of Tacoma police department.

15 Q How long have you been with the department?

16 A I have been there eight years now.

17 Q And what is your rank?-

18 A I am a patrol officer.

19 Q As part of your duties as a patrol officer, do you  
20 respond to reports of recovered vehicles?

21 A Yes, ma'am, it is.

22 Q I would like to direct your attention, then, to  
23 January 29 of this year. Did you respond to a stolen  
24 vehicle recovery?

25 A Yes, ma'am. About 7:40 p.m. I was dispatched to a

1 stolen vehicle recovery.

2 Q Where was that at?

3 A On the east side of town. It was 2107 East 65th.-

4 Q 2107?

5 A Yes, ma'am.

6 Q What was the vehicle that had been recovered?

7 A It was a newer blue Honda Civic, actual plate on the  
8 vehicle, referring to the report, is 966-FDL, Washington  
9 plate.

10 Q Did you actually have contact with that vehicle?

11 A Yes, ma'am, I did.

12 Q Showing you what has been admitted as Plaintiff's 2 and  
13 3, do you recognize the vehicle depicted in those  
14 photos?

15 A Yes, ma'am. This was the stolen vehicle I was  
16 dispatched to recover in front of the residence.

17 Q Thank you. Did you contact the residents at 2107?

18 A Yes, ma'am. I pulled up behind the vehicle, the  
19 resident came out and contacted me, actually.

20 Q Did you learn that the vehicle had actually been parked  
21 there for a couple days?

22 A Yes, ma'am. He stated the vehicle had been there for  
23 two days, since the 27th.

24 Q Thank you. And was the vehicle then impounded?

25 A Yes, ma'am, it was.

1 MS. WAGNER: Thank you. I have nothing further,  
2 Your Honor?

3 THE COURT: Mr. Walker?

4 MR. WALKER: No questions, Your Honor.

5 (Witness excused.)

6 THE COURT: Okay.

7 MS. WAGNER: Your Honor, at this time, the State  
8 rests.

9 MR. WALKER: Your Honor, I call Jennifer Saldana.

10 THE COURT: Members of the jury, at this point in the  
11 trial, the State has rested. That means they are  
12 finished putting on their testimony except for any  
13 rebuttal testimony you may hear. Mr. Walker is going to  
14 call his first witness.

15 JENNIFER SALDANA

16 having been called as a witness by the Defendant, being  
17 first duly sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WALKER:

20 Q Please state your name for the record.

21 A State --

22 Q Please state your name for the record.

23 A Jennifer Saldana.

24 Q Jennifer Saldana?

25 A Yes.

1 Q Spell your last name, please.

2 A S-a-l-d-a-n-a.

3 Q Okay, keep your voice up. You're nervous today, right?

4 A Yes.

5 Q That's okay. Where do you live, Miss Saldana?

6 A 6609 East Grandview.

7 Q East what?

8 A East Grandview.

9 Q Grandview?

10 A Yes.

11 Q Is that here in Tacoma?

12 A Yes.

13 Q How long have you lived there?

14 A 15 years. Almost 16 years.

15 Q Okay. And what's your occupation?

16 A I work in a bar.

17 Q At what?

18 A I work in a bar.

19 Q I can't understand you. Say that again.

20 A The club.

21 Q Okay. And what hours do you work?

22 A I work 6:30 to two o'clock.

23 Q And who lives at your home with you?

24 A My husband, ex -- I mean, he died, but he died September  
25 14th.

1 Q Okay. So he lived with -- through until September 14th?

2 A Yes.

3 Q Anyone else?

4 A And Alex and me, three.

5 Q Alex and who?

6 A Alex and me.

7 Q So just Alex and you live there now, right?

8 A Yeah.

9 Q Okay. And your husband lived there until he passed  
10 away?

11 A Yes.

12 Q Okay. Now, you recall --

13 THE COURT: Let me stop you for just a second. Are  
14 all of the jurors able to hear and understand  
15 Miss Saldana?

16 JUROR: Barely.

17 THE COURT: If at any point you don't, let me know.  
18 Perhaps we should make arrangements to get an  
19 interpreter down here, but -- so take your time and ask  
20 the questions slowly.

21 MR. WALKER: Thank you, and I appreciate the jury  
22 raising their hand if they don't understand anything.

23 Q (By Mr. Walker) Okay, now, do you remember the day  
24 your son was arrested?

25 A Yes.

1 Q Okay. The day before that, what day of the week was  
2 that, do you remember?

3 A Thursday and Friday -- Friday they came, arrest him,  
4 nine o'clock. And Thursday -- that Wednesday night I  
5 worked. I work Wednesday, Thursday, Friday and Sunday  
6 is my schedule.

7 Q Okay.

8 A I came in the morning --

9 Q What time did you get back from work?

10 A Around three o'clock, 3:30 because --

11 Q Okay. Let's just make sure the jury understands. Was  
12 this Wednesday night?

13 A Wednesday night.

14 Q And Thursday morning?

15 A Thursday morning. Yeah. So I came in.

16 Q Okay?

17 A The house almost four o'clock and then clean up. Then I  
18 go heat the bathroom. There is my make-up stuff there,  
19 dresser. I always go in there and clean up the face.  
20 Then I see him sleeping. I saw him sleeping there  
21 four o'clock.

22 Q So, it was about four o'clock when you --

23 A Yeah, yeah.

24 Q You said you cleaned up?

25 A Yeah.

- 1 Q Just a little bit?
- 2 A Take off the make-up and stuff.
- 3 Q Oh, okay.
- 4 A That's what.
- 5 Q Okay. You washed your face?
- 6 A Yeah.
- 7 Q And Alex was asleep?
- 8 A Yeah.
- 9 Q Okay. When's the next time you saw him?
- 10 A And then he left side, my bed right side door was open.
- 11 I can hear everything in and out. I can hear, but I
- 12 sleeping -- I was asleep eleven o'clock --
- 13 eleven o'clock he asked me about the money. He had to
- 14 go to work. So I give him some money to -- I see him.
- 15 Q Okay. If I understand you, he was sleeping at 4:00 a.m.
- 16 when you got there.
- 17 A Yeah.
- 18 Q And then you saw him at about 11:00 that morning?
- 19 A 11:00, yeah.
- 20 Q Where did you see him?
- 21 A He's in my bedroom.
- 22 Q So, he just came in to -- I --
- 23 A Yeah, he came in the bedroom. He wanted money for pass.
- 24 Q Bus money for work?
- 25 A Yeah, yeah.

1 Q Where did he work?

2 A He say he first day he going to work News Tribune, is  
3 what he told me.

4 Q So, he went to work that afternoon --

5 A Yeah.

6 Q -- for the News Tribune?

7 A Yeah.

8 Q Okay. Is there anything about your house that would  
9 assist you in knowing if people are coming and going?

10 Do you have an alarm system?

11 A I don't have alarm system, but my husband was -- the  
12 house bathroom is left side in the hallway, and he can  
13 see everything. My husband he can see everything who is  
14 going in the bathroom, take a shower or something.

15 Q How can he see everything? What do you mean?

16 A He's right there, sit there same spot.

17 Q That is --

18 A He get up early in the morning everyday. Saying he get  
19 up sometime three o'clock, when I come from work, he's  
20 already awake, so he drink coffee and waiting. Pick up  
21 the paper -- probably about eight o'clock, he pick up  
22 the paper, then reading the paper.

23 Q Where's he seated, what room?

24 A He's sitting in the TV room.

25 Q Oh, the front room?

1 A Yeah.

2 Q Okay. Do you sleep with your door open?

3 A Yeah, door's open. I can hear somebody ring the bell or  
4 somebody take a shower or hallway walking around. I  
5 hear even when phone I have in the bathroom somebody  
6 call, that wake me up.

7 Q So, if somebody were -- like if Alex were to leave,  
8 would you be able to hear that?

9 A Yeah, I heard the doors he going out. I can hear the  
10 doors, because very close.

11 Q The front door?

12 A Yeah.

13 Q Okay.

14 (Dft's Ex 18 marked.)

15 Q Miss Riofta, I am going to hand you Defense Exhibit 18,  
16 if you could look at that. Look through the whole thing  
17 there. You read English, right?

18 A Yeah, December 18th.

19 Q Okay. I don't care about the dates right now. What is  
20 that document? Miss Riofta, do you know what that  
21 document is?

22 THE COURT: Saldana.

23 MR. WALKER: I know that, I am sorry.

24 Q (By Mr. Walker) Ma'am, do you know what that document  
25 is?

1 A I don't know.

2 Q Okay, let me see if I can help you here. What does it  
3 say right there?

4 A Oh, US West.

5 Q US West. Okay. Do you know what this document is now?

6 A Phone bill.

7 Q Whose phone bill is that?

8 A This phone bill is -- this my phone bill.

9 Q That is your phone bill?

10 A Yeah.

11 Q Who's it addressed to?

12 A Alexander. He had a cell phone.

13 Q So, that is his cell phone bill?

14 A Yeah, yeah, yeah, cell phone.

15 Q Who received that in the mail?

16 A I receive that.

17 Q You did.

18 A Yeah.

19 Q What did you do with that?

20 A I open up, and keep the thing, keep the bill.

21 Q You opened it up and --

22 A I looked at it.

23 Q You looked at it?

24 A Yeah, how much --

25 Q Did you give it to the defense attorney?

1 A Yeah, I did.

2 MR. WALKER: Move for admission of Defense 18.

3 MS. WAGNER: May I voir dire, Your Honor?

4 THE COURT: Uh huh.

5 VOIR DIRE EXAMINATION

6 BY MS. WAGNER:

7 Q Miss Saldana, this is not your phone bill? It is not  
8 for your phone?

9 A This my phone bill and his phone bill.

10 Q I am sorry, it's for?

11 A My phone bill and his phone bill.

12 Q It's both of your phone bills? Is your name on there  
13 somewhere?

14 A Wait a minute. Alexander Riofta. This is his phone  
15 bill, yes, I am sorry.

16 Q It's -- okay. Was the phone bill addressed to your son?

17 A To my -- yes.

18 Q It was addressed to your son?

19 A Yes.

20 Q Alexander?

21 A Yes.

22 Q It's his phone bill?

23 A Yeah.

24 Q And you think it's for his cell phone?

25 A Yeah.

1 Q Okay. But it's not yours?

2 A No. I pay my bills so --

3 Q I am sorry?

4 A Come to my name, Jennifer Saldana, but this is  
5 Alexander.

6 Q And it was addressed to him?

7 A Yeah.

8 MS. WAGNER: I would object based upon foundation,  
9 Your Honor.

10 MR. WALKER: Your Honor, she's the one that received  
11 it, she opened it, I think goes to weight.

12 THE COURT: I am not going to admit the exhibit.

13 MR. WALKER: Your Honor, I am going to hand forward  
14 for marking certification from Qwest about the  
15 subpoenaed records the prosecutor received.

16 MS. WAGNER: We should take this up outside the  
17 presence of the jury, Your Honor.

18 THE COURT: Okay. Folks we will have you step in the  
19 jury room, same precautionary instruction about not  
20 discussing the case.

21 (Jury not present.)

22 (Dft's Ex 19 marked.)

23 MS. WAGNER: Your Honor, this morning Mr. Walker  
24 presented me with this. I believe it will be the same  
25 affidavit he has handed to you.

1 MR. WALKER: Right.

2 THE COURT: I haven't seen it yet. Will you hand it  
3 up, Janet?

4 MS. WAGNER: This is it in its entirety. There is no  
5 documents attached from this. There is an affidavit  
6 from Melissa Weyer, I have no idea what it is referring  
7 to since there are no documents attached to it. I  
8 believe Mr. Walker wants to use this, somehow suggest  
9 that the separate documents sent to Alexander Riofta are  
10 somehow that she's certified, that that's them, but this  
11 did not come with those documents I have no idea what  
12 this is referring to.

13 MR. WALKER: Let me explain. Pursuant to a  
14 conversation I had with the prosecutor, and when the  
15 prosecutor informed me she would not stipulate to the  
16 subpoenaed documents that her office received were  
17 admissible pursuant to ER 902, I got ahold of the phone  
18 company and had them certify that the documents they  
19 sent to the prosecutor's involving the dates submitted,  
20 number 4 of this affidavit, were valid and were  
21 authentic documents on behalf of the phone company.

22 MS. WAGNER: I don't see where it says that anywhere  
23 in this affidavit, unless I am missing it. And it also  
24 says 902 (h) that documents accompanied by certificate  
25 acknowledgment. I haven't seen documents accompanying

1 this certificate.

2 MR. WALKER: I think we have substantial compliance.  
3 I think we also have sufficient indicia of reliability.

4 THE COURT: Let me ask you: What is it that you are  
5 trying to get admitted?

6 MR. WALKER: I was going to just have this marked.  
7 We already have one exhibit marked. I don't want the  
8 whole records admitted.

9 THE COURT: Well, Exhibit 17 was the phone record  
10 that you asked --

11 MR. WALKER: Right.

12 THE COURT: -- the detective about.

13 MR. WALKER: Right.

14 THE COURT: That document was not admitted.

15 MR. WALKER: Right, not yet, because I hadn't asked  
16 for it to be. I wanted the certificate so that's what  
17 it involves.

18 THE COURT: Is there anything other than Exhibit 17?

19 MR. WALKER: Just I am going to have this marked,  
20 it's from the same discovery I received from the  
21 prosecutor, same -- it's the same records that were  
22 subpoenaed by the prosecutor's office.

23 I don't know what more I could do, foundation I  
24 guess, I could call Ed Murphy as a witness, if that is  
25 what -- I think they have substantial compliance with

1 the rule. I think my client has a right to effective  
2 assistance of counsel, and I think this is appropriate.  
3 I don't think there's a colorable issue as to whether  
4 these records that the prosecutor subpoenaed are  
5 legitimate.

6 MS. WAGNER: First of all, I have no idea if our  
7 office subpoenaed them. I took over in June, it had  
8 gone on obviously since January. I don't know who  
9 subpoenaed these documents, simply trying to get someone  
10 from our office saying, "Yeah, we subpoenaed some  
11 documents," does not lay appropriate foundation. No  
12 documents accompanied this affidavit.

13 You would still need to bring in someone who could  
14 qualify as business record -- keeper of the business  
15 records to say, "Yes, these records are kept in the  
16 normal course; these are the records that we pulled, and  
17 they are attributed to this particular phone number."

18 We don't have any relevance. We don't have it  
19 established that we have a specific phone number that's  
20 attached to a phone. I mean, the foundation simply  
21 hasn't been laid in this case.

22 MR. WALKER: Your Honor, here's the subpoena by Ed  
23 Murphy for these records.

24 MS. WAGNER: Doesn't lay the foundation.

25 THE COURT: Okay, Mr. Walker, what is the relevance?

1 MR. WALKER: Circumstantial evidence my client was  
2 not out and about at that time, because there were no  
3 phone calls made.

4 THE COURT: I think the detective already testified  
5 to that.

6 MR. WALKER: I know, it is corroboration for that. I  
7 think the jury should be entitled to see the  
8 corroboration.

9 (Dft's Ex 20 marked.).

10 MS. WAGNER: If he lays the appropriate foundation;  
11 he hasn't done that.

12 THE COURT: Well, is there a way for you to get ahold  
13 of this witness and have her attach the record that  
14 she's trying to certify? I mean, I --

15 MR. WALKER: Yeah, we could get ahold of her and have  
16 her do that. It is not going to be a quick process. I  
17 think it's a waste of court time, when it's obvious what  
18 has happened. In the alternative, I could call my  
19 client for the limited purpose of having the phone bill  
20 admitted, which is the same information.

21 MS. WAGNER: Then do so. Because there has been no  
22 evidence presented that this phone bill belongs to a  
23 particular phone number that belongs to Alexander  
24 Riofta.

25 MR. WALKER: But if I do so, I want it clear that

1           what the purpose and scope of my bringing him is, and I  
2           would appreciate the court allowing me to call him,  
3           without cross-examining except as involves this  
4           particular issue that I would be presenting. And I  
5           think it is allowable to present records received from  
6           the prosecutor's office, essentially, that's  
7           authenticated right there.

8           MS. WAGNER: No, it is not. I don't believe counsel  
9           can cite to any authority that would suggest that. He  
10          still has to abide by the rules and go by the proper  
11          foundation.

12          THE COURT: I don't think that there's any particular  
13          ability to get the documents in without laying a proper  
14          business record foundation.

15          If you can get Ms. Weyer to in fact specify what  
16          documents that she's referring to in her affidavit, I  
17          would allow the Exhibit 17 to be admitted, and also  
18          Exhibit 20. But I -- there's still no connection to  
19          Mr. Riofta on this document. All this is --

20          MR. WALKER: Sorry, Your Honor --

21          THE COURT: -- is a print-out of a series of phone  
22          numbers, and without any indication that it belongs to  
23          Mr. Riofta.

24          MR. WALKER: And I thought that paragraph 4 of the  
25          affidavit, although certainly vague, met the minimal --

1 would meet the minimal criteria, considering the facts  
2 of this case.

3 THE COURT: I am assuming that when she says these  
4 are copies of the records made available, that's she's  
5 referring to things that were already sent. But, that's  
6 kind of a big assumption. So, if you can get a  
7 supplemental affidavit from her prior to the time this  
8 case goes to the jury, I will consider that. Otherwise,  
9 officer's testimony, Detective Davidson's testimony, is  
10 going to have to be the evidence.

11 MR. WALKER: Well, unless I call my client. Is the  
12 court willing to limit the prosecution's examination? I  
13 think that's required, to the scope of the direct  
14 involving this issue only? Unless the prosecution has  
15 some authority that I am not aware of.

16 MS. WAGNER: I have -- I am an officer of the court,  
17 I am certainly aware of my obligations, how to conduct a  
18 trial.

19 MR. WALKER: That's not --

20 THE COURT: Well, that's your other option,  
21 obviously.

22 MR. WALKER: Okay, thanks.

23 THE COURT: Okay? So let's go ahead and bring the  
24 jury back. I guess I am wondering, do you have much  
25 more with Ms. Saldana?

1 MR. WALKER: No.

2 THE COURT: Okay, because she's having some  
3 difficulties communicating. I think the jurors have  
4 been able to understand everything she said so far. If  
5 you go beyond this, I don't want to have them lost.

6 MR. WALKER: No, I think I pretty much have her.

7 THE COURT: Is your other witness here?

8 MR. WALKER: I hope so. Want me to go check?

9 (Jury present.)

10 THE COURT: Okay, please be seated.

11 MR. WALKER: Your Honor, that's all the questions I  
12 have of this witness at this time.

13 THE COURT: All right. Ms. Wagner, any questions?

14 MS. WAGNER: Just a couple questions, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. WAGNER:

17 Q Good morning, ma'am. Do you remember talking to  
18 Detective Davidson?

19 A Yes.

20 Q Okay. And like you told the jury, you told Detective  
21 Davidson that you got home and saw your son asleep --

22 A Yeah, yeah.

23 Q -- about 4:00?

24 A Yes.

25 Q Do you remember telling him that after you looked in on

1 your son, you fell asleep and the next thing you  
2 remember was that he woke you up at about 11:20 in the  
3 morning?

4 A No, eleven o'clock. I told him 11:00 -- around 11:00 he  
5 come in my bed, so -- wake me up, so he want some money.

6 Q You don't think that you told Detective Davidson that it  
7 was 11:20?

8 A No, eleven o'clock. I am sure 11:00.

9 Q But you were asleep during that entire time between when  
10 you fell asleep at around 4:00 and when --

11 A 4:00 sleep. He around. I lay down but I can see he's  
12 coming.

13 Q Ma'am?

14 A Yes.

15 Q Do you remember telling the detective that you fell  
16 asleep, and the next thing you knew, your son was waking  
17 you up?

18 A Yeah.

19 Q You remember saying that?

20 A Yeah.

21 MS. WAGNER: Okay, thank you. I have nothing  
22 further, Your Honor.

23 THE COURT: Anything else?

24 MR. WALKER: No more questions of this witness.

25 THE COURT: Thank you, you may step down.

1 (Witness excused.)

2 MR. WALKER: Ma'am, I believe you need to sign a --

3 THE COURT: Do you want to check and see if your  
4 other witness is here?

5 MR. WALKER: Yes, Your Honor.

6 THE COURT: Sir, if you will come all the way up here  
7 to the witness chair, please.

8 DREW FOLSOM

9 having been called as a witness by the Defendant, being  
10 first duly sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WALKER:

13 Q Please state your name for the record.

14 A Drew Folsom.

15 Q Spell your last name please.

16 A F-o-l-s-o-m.

17 Q And, Drew what is your educational background?

18 A My educational background? I graduated from the  
19 University of Washington in 1989. BA political science.

20 Q Poli-sci?

21 A Yeah.

22 Q And what is your profession?

23 A I'm a land use technician for the City of Bellevue.

24 Q And what responsibilities do you have with that?

25 A I do legal noticing for the city. If you do any land

1 use projects, you have public commitment to notice them.  
2 So I make sure that they are in the paper, signs are up,  
3 and that we do reporting. Plus, I do other legal-- I  
4 file legal documents with King County recorder's office.

5 Q Do you have another job?

6 A I do. I work part-time for Reality Check, secret  
7 shopper company where they go in and provide a service  
8 for restaurants and other service industries where they  
9 go and they secretly act like a customer and they then  
10 fill out a series of ratings that they then send in to  
11 the company so they can see how their employees are  
12 doing.

13 Q And how long have you been employed doing that?

14 A About five or six years.

15 Q What about for the city?

16 A For the city, I have worked there it will be three years  
17 this March.

18 Q And you know Mr. Riofta?

19 A Yes, I do.

20 Q How so?

21 A He is the boyfriend of my girlfriend Kathryn Riofta.

22 Q He's the brother?

23 A He's the brother of my girlfriend, Kathryn Riofta.

24 Q Okay. How long have you been going out with his sister?

25 A About five years, a little bit over.

1 Q All right. So, a long-term relationship?

2 A Yes.

3 Q Have you ever been to Alex's mom's home?

4 A Yes, I have.

5 Q How often?

6 A Oh, I have been there probably at least 20, 30 times. I  
7 mean, quite often. Yeah, at least that many times.

8 Q How often do you and your girlfriend go there?

9 A We have been there -- I mean, usually about once -- once  
10 a month or so.

11 Q Okay. When is your birthday?

12 A My birthday is January 25th.

13 Q What did you do the day after -- or I should say the  
14 morning after your birthday?

15 A The morning after my birthday, I went down to Shari's  
16 Restaurant on 72nd down there.

17 Q Why did you do that?

18 A Because I -- well, there's two reasons. One, I wanted  
19 to check out the restaurant for Reality Check. They  
20 were doing a series of Shari's type restaurants, like  
21 Denny's, IHOP, things like that. And I wanted to check  
22 out Shari's to see if they were going to give them more  
23 information, in case they were going to get Shari's as a  
24 client.

25 So, I wanted to go down and do like not actually a

1 form, it's just you are checking out so then you can  
2 approach the Shari's organization and say: Do you want  
3 to hire this service on? So --

4 Q Why would you do that? Is that advantageous for you?

5 A Yeah. A, if they hire Shari's on, I have a lot more  
6 work that I can do for the company, and B, they also  
7 then pay me for the work that I did that morning. So --

8 Q What if it doesn't pan out?

9 A Then I -- well, then I ate a breakfast that I paid for  
10 myself. I mean, it's not -- I was going down there  
11 anyway.

12 Q So, kind of like an investment venture for you to check  
13 these places out?

14 A Well, normally I would say on, you know, most of the  
15 time, when I check something out, it's because I have  
16 been assigned it. But, yeah, sometimes I will go check  
17 out other. More companies that Reality Check gets, the  
18 more work that I get.

19 So, I will go check out a restaurant, even if I am  
20 not assigned it, because it's to my advantage to have  
21 more business for that company.

22 Q Okay. What time did you go to Shari's?

23 A I arrived there about 5:45 a.m. So, I was there quarter  
24 to 6:00, and then I ate.

25 Q Do you notice what time they open?

1 A They are 24 hours. They are a 24-hour restaurant.

2 Q How long did it take you to eat?

3 A Took me 45 minutes, so I left there at 6:30.

4 Q Where did you go from there?

5 A From there, I went to Kathryn's mother's house.

6 Q Kathryn Riofta?

7 A Yeah, Jennifer Saldana's home.

8 Q Okay. What did you do there?

9 A There I was going to pick up some pants for Kathryn. We  
10 had had dinner the night before we went to Pegasus Pizza  
11 to celebrate my birthday and she was -- she couldn't fit  
12 into her pants, I mean, anymore, the ones that she had.  
13 So she wanted to get -- she was kind of complaining  
14 about it. And I was like, well, I can go down, pick up  
15 some pants for you rather than having you, you know --

16 Q So you essentially kill two birds with one stone, right?

17 A Yeah, I mean, yeah. Both -- not only did I hopefully  
18 get some business for our company, but hopefully got  
19 some pants my girlfriend could fit into. So --

20 Q Who did you see at Jennifer's house that morning?

21 A I saw -- Alex that morning was the only person that I  
22 actually saw.

23 Q Where was he?

24 A He was asleep.

25 Q Where?

- 1 A In his bedroom. What -- in his bedroom.
- 2 Q How did you happen to see him?
- 3 A Well, I entered in the house -- if you know what the  
4 house lays out, you enter in the front door.
- 5 Q Actually, you know what? Why don't I have you do a  
6 description on the board for me, if you could. How is  
7 your artistic ability?
- 8 A I'm okay.
- 9 Q Go ahead and grab one of those pens and lay it out for  
10 us, if you would.
- 11 A Okay.
- 12 Q You can turn that facing the jury, if you would. Thank  
13 you.
- 14 A Do you want me to put --
- 15 Q I can't hear you.
- 16 A Do you want me to label anything on there?
- 17 Q Please. And tell us what you are labeling.
- 18 A Okay. This is -- these are doors. That's a symbol  
19 right here is what I have used for the doors.
- 20 Q Okay. And what you have there, you have Alex's bedroom  
21 marked, you have spare bedroom marked, then you have  
22 what?
- 23 A This is the bathroom.
- 24 Q Okay.
- 25 A Jennifer and Adam shared that bedroom at the time.

- 1 Q Right.
- 2 A This is the hallway right here. This is also a hallway  
3 right here.
- 4 Q Right. And you have -- is that "sewing room?"
- 5 A I didn't know what to call it, sitting room.
- 6 Q Oh, I can't read that far.
- 7 A Not the living room, where you watch TV, but the room  
8 that there is a piano there.
- 9 Q Okay.
- 10 A A couch.
- 11 Q And the kitchen?
- 12 A And the kitchen. And this is the living room. And  
13 there's a wall that goes right here. So -- the TV is  
14 here, and there's like a couch here, and a chair that's  
15 here.
- 16 Q Okay. And then the garage is below that?
- 17 A Yeah, that's the garage.
- 18 Q And the front door?
- 19 A Front door is there. And this is their driveway.
- 20 Q And did you see Adam at that time that you were there on  
21 the 26th?
- 22 A I didn't. So --
- 23 Q Okay.
- 24 A I'm pretty sure the TV was on. I know the light was on  
25 in that room, but I didn't see him.

1 Q Okay. And --

2 A And I didn't go down there.

3 Q You didn't go there. So about what time would you have  
4 arrived at Miss Saldana's home?

5 A It would have been right around 6:45. I spent about 10  
6 or 15 minutes there, so I can't -- I am not as sure when  
7 I arrived there exactly as when I left. When I left it  
8 was right around 7:00, because I remember thinking: I  
9 got to make it up to Bellevue in an hour.

10 Q Why is that?

11 A Because I had to be to work at 8:00, and we had a land  
12 use meeting every Wednesday morning from 8:00 to 9:30.

13 Q Did you make it to work on time?

14 A Well, pretty close. I was like five minutes late.

15 Q Nobody noticed?

16 A It wasn't that big of a deal.

17 Q Okay. How did you come about to actually see Alex while  
18 you were there?

19 A Well, I entered in this door here, the front door. And  
20 I went down the hallway. And up until this time, I  
21 never really had been in Alex's room when he was around.  
22 I pretty much, you know --

23 MS. WAGNER: Object, non-responsive, Your Honor.

24 THE COURT: Overruled.

25 A I pretty much just didn't go in there. So, only time I

1 had been in there was --

2 MS. WAGNER: Again, Your Honor, I object to this.

3 THE COURT: You can ask another question.

4 Q (By Mr. Walker) We have to ask a question.

5 A Okay.

6 Q So, you had never been there when Alex was physically in  
7 there --

8 A Not in that room, no.

9 Q -- in that room. Okay. And so what happened next?

10 A So, I went down the hallway, turned on this light here,  
11 went into this room.

12 Q So, you were going towards Alex's bedroom which is --

13 A Which is this room right here.

14 Q Which is the far room?

15 A So I went to my right, and I am going to my left, and  
16 the bathroom is right here.

17 Q Okay. You have passed the bathroom.

18 A So I went beyond the bathroom, and I went through this  
19 room here.

20 Q Alex's bedroom?

21 A Alex's bedroom.

22 Q Okay.

23 A I turned on the light.

24 Q You didn't realize he was there?

25 A No, I didn't realize he was there. So, I turned on the

1 light, which is right here, and then I just, you know,  
2 looked casually to my right, and I was -- you know, I  
3 almost jumped when I saw there was a person there.

4 So --

5 Q Did you see any response from him to you being there or  
6 to the light being on?

7 A I didn't, no, I did not.

8 Q Did you hear him snoring?

9 A I -- I -- I don't remember any snoring. I remember  
10 breathing. You know, it was obvious there was -- but I  
11 don't remember what you classify as --

12 Q What was that?

13 A Well, heavy breathing. But I don't -- I wouldn't call  
14 it snoring.

15 Q Okay. What did you do next?

16 A Turned off the light real quick, and then I went out of  
17 the room for a second, and -- but I knew that the pants  
18 that I wanted to get were in that room.

19 Q Why did you know that?

20 A Because I had been in there before with Kathryn when  
21 Alex wasn't there. Jennifer kept all of her -- she has  
22 like a makeup stand in there, so she kept her makeup in  
23 that room, she kept basically all of her spare clothing  
24 in that room. So I had been there rummaging through the  
25 closet with Kathryn before when she's coming down to

1 look and see what she wants to borrow from her mom.

2 So -- that's what I had come to know that room as was  
3 the place that they keep spare clothing, so --

4 Q What about Alex's clothes?

5 A I don't know where he keeps his clothes. I --

6 Q Never had --

7 A I never seen his clothes in there.

8 Q Never had to rummage for his clothes?

9 A No, no.

10 Q So, how did it go?

11 A So, then went back into the room, into the closet, and  
12 at this point I was just using the hall light here  
13 shines pretty much illuminates this part of the room, so  
14 I could get by with that.

15 And I went in there, searched for a pair of pants I  
16 thought were the ones; took them back out here into the  
17 light, held them up to the hall light to make sure that  
18 they were the Anne Taylor pants I was looking for.

19 Q Were they?

20 A Yeah, those ones were, by the way.

21 Q Okay.

22 A Then I went back in and spent some more time looking  
23 through the closet and found the other pair of pants I  
24 was looking for, took them back out in the hallway, made  
25 sure they were the right pair.

1 Q Were they?

2 A They were.

3 Q Okay.

4 A And then I -- I can't remember if I used the bathroom or  
5 not, but then I left.

6 Q That's about all you did.

7 A Yeah. I just grabbed them and then I left.

8 Q So, you left about what time, do you know?

9 A Well, that was seven o'clock, because when I got back  
10 into the car, I was like: I hope I don't run into any  
11 serious traffic or else I am going to be really late  
12 coming up to Bellevue from there.

13 MR. WALKER: Thank you. You can have a seat.

14 That's all the questions I have at this time,  
15 Your Honor.

16 THE COURT: Miss Wagner?

17 MS. WAGNER: Thank you.

18 CROSS-EXAMINATION

19 BY MS. WAGNER:

20 Q Good morning, Mr. Folsom.

21 A Good morning.

22 Q Sir, do you live in Seattle?

23 A I do, yes.

24 Q What part of Seattle?

25 A Capital Hill.

1 Q And you did this mystery shopper thing, no one at  
2 Reality Check asked you to go to Shari's Restaurant; is  
3 that true?

4 A That is correct.

5 Q And you weren't going to get paid for this?

6 A Well, I wasn't for sure going to get paid for this.

7 Q Sir, isn't it true Reality Check does not encourage its  
8 employees to go into mystery shops on their own without  
9 being first asked to do that?

10 A Not to my knowledge, no.

11 Q So, it is your belief they do encourage that?

12 A Yeah, I mean, I have done shops, many shops, for them  
13 before, so -- and I have done a couple where I  
14 haven't -- I haven't been encouraged; that is correct.

15 Q Did you keep any receipts of your visit to Shari's?

16 A I didn't, no.

17 Q Did you submit anything to Reality Check about your  
18 visit?

19 A I just gave like -- it wasn't actual form, it was just  
20 my notes on it. It wasn't a form that I filled out or  
21 anything. I didn't keep my receipts because at that  
22 time for Reality Check they encouraged you not to keep  
23 your receipts. Just recently probably in the last six  
24 months they have encouraged you to keep your receipts.

25 Q So, on January 26, you took it upon yourself to drive

1 from Capital Hill to go to Shari's Restaurant down on  
2 Tacoma Avenue prior to having to be at work at 8:00 in  
3 the morning; is that true?

4 A Yes, because I was already --

5 Q Okay, I just need you to listen to my question.

6 A Okay.

7 Q I need you to listen to the question.

8 A I am listening.

9 Q There are Shari's Restaurants north of Tacoma, aren't  
10 there?

11 A I imagine. I don't know.

12 Q There's Shari's Restaurants in Seattle, aren't there?

13 A I do not know where one is.

14 Q So at 5:45 in the morning, you undertook it upon  
15 yourself, without being asked to do so, go down to the  
16 Shari's Restaurant on 72nd and Tacoma.

17 A On my way to Kathryn's mother's house, yes.

18 Q And in terms of going to Kathryn's mom's house,  
19 Miss Saldana's house, you didn't call in advance and  
20 tell them you were coming, did you?

21 A No, I didn't.

22 Q Okay. And you entered their house at what, 6:45 in the  
23 morning --

24 A Uh huh.

25 Q -- 6:30 in the morning some time there. And they didn't

1 know you were coming, did they?

2 A No, they didn't.

3 Q You didn't ring the doorbell?

4 A No.

5 Q And you just walked right in.

6 A With Kathryn's key, yeah.

7 Q And when you walked in there, Miss Saldana didn't wake  
8 up and come out and get you, did she?

9 A No, she didn't.

10 Q And you at some point had that hall light on?

11 A Yes.

12 Q Okay. And at that time, during the however long you  
13 were in that house, 10, 15 minutes, and you may have  
14 used the rest room, no one came out, no one woke up?

15 A No.

16 Q And after that, you simply left.

17 A Correct, yes.

18 Q Now, you've described where the bedrooms are. Do you  
19 know where the phones are in the house?

20 A I know one phone is in the living room. I don't know if  
21 there's other phones in the house or not.

22 Q And again this was on Wednesday, January 26th, that you  
23 undertook this?

24 A Uh huh.

25 Q And the person that was sleeping in the bed -- in this

1 bedroom, did you see their face?

2 A I saw the side. They were -- they were in what I think  
3 you would call the fetal position where I saw the side  
4 of their face.

5 Q And again you had to be at work at eight o'clock that  
6 morning back up in Bellevue.

7 A Yes.

8 MS. WAGNER: Thank you, I have nothing further.

9 MR. WALKER: I do have a couple more questions.

10 REDIRECT EXAMINATION

11 BY MR. WALKER:

12 Q Do you always call Saldana's residence before coming?

13 A No. Actually usually I would say at least half the time  
14 we don't.

15 Q Okay. Reality Check pays whether or not they requested  
16 you to check out a particular restaurant, if they go  
17 with it; is that right?

18 A If they use the form. You know, if they end up signing  
19 the restaurant and use my visit, they would pay me, yes.

20 MR. WALKER: That's all I have, Your Honor.

21 MS. WAGNER: Nothing further.

22 THE COURT: Okay, thank you. You may step down.

23 (Witness excused.)

24 THE COURT: We have a document we need you to sign  
25 over here, Mr. Folsom.

1 THE WITNESS: Okay.

2 MR. WALKER: Thank you, Mr. Folsom.

3 Your Honor, I am going to call Alexander Riofta.

4 ALEXANDER NAM RIOFTA

5 the Defendant herein, having been called as a witness, being  
6 first duly sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. WALKER:

9 Q Please state your name for the record I have?

10 A Alexander Nam Riofta.

11 Q Spell your last name.

12 A R-i-o-f-t-a.

13 Q Mr. Riofta, I am going to hand you what has been marked  
14 as Defense Exhibit 18 and ask that you look this over.  
15 What is it?

16 A Cellular phone bill for the last past three months I had  
17 the phone.

18 Q What months?

19 A January, December, November, October.

20 Q Okay. And have you reviewed that bill previously for  
21 accuracy?

22 A Kind of skimmed over, but not really.

23 Q Did you see any inaccuracies in it?

24 A No, just the simple phone bill for January.

25 Q Okay. To the best of your knowledge, is it accurate?

1 A For January, yes, it is.

2 MR. WALKER: Move for admission of 18.

3 MS. WAGNER: No objection, Your Honor.

4 THE COURT: Exhibit 18 will be admitted.

5 MR. WALKER: That's all the questions I have.

6 MS. WAGNER: I have no questions.

7 THE COURT: Okay. Thank you. You may step down.

8 (Witness excused.)

9 MR. WALKER: I rest, Your Honor.

10 THE COURT: Okay. Okay, members of the jury, it's  
11 about 10 after 10:00, we all need to synchronize our  
12 watches, that's what I am using for purposes of our  
13 recess. We are going to need about probably a half hour  
14 to go over some final jury instructions.

15 We will call you back in, read the instructions to  
16 you, and then you will hear closing arguments after  
17 that. So, I would like you all back at 10:40 back in  
18 the jury room. You can leave if you want to go out and  
19 get coffee or take a break, walk around, feel free to do  
20 that as long as you are back there by 10:40. Okay?

21 (Jury not present.)

22 THE COURT: Okay. Back on my desk back there are the  
23 prosecutor's proposed jury instructions.

24 All right, Ms. Wagner, any changes to your proposed  
25 instructions?

1 MS. WAGNER: Not to mine, Your Honor, it would be  
2 more with regard to the defendant's proposed.

3 THE COURT: Okay.

4 MS. WAGNER: I read through his, and I did some  
5 research on the case law last night. As much as I would  
6 love to object to giving a lesser, I -- given the  
7 current case law, particularly I think the State vs.  
8 Fernandez-Medina, the defendant is probably entitled to  
9 it.

10 My concern is Mr. Walker has not added an additional  
11 definition of assault that would include the  
12 apprehension of fear, which I believe is required for  
13 the Assault 2. As presented, the jury is not  
14 sufficiently instructed about the definition of assault.

15 There's also not a special verdict form for was he  
16 armed with a deadly weapon or firearm while committing  
17 Assault in the Second Degree.

18 I am also objecting to the defendant's proposed not  
19 numbered but I will assume first instruction with regard  
20 to the reasonable doubt instruction. And I think he  
21 included a deadly weapon definition that should already  
22 be in. I Mean -- yeah, it is. And then the concluding  
23 instruction is going to have to be changed.

24 THE COURT: It would seem that the -- it would seem  
25 like the complete assault definition, which is in

1 WPIC 35.50 should be given, if we are going to give the  
2 lesser included, or at least that portion pertaining to  
3 the Assault 2, which is the --

4 MS. WAGNER: Reasonable apprehension.

5 THE COURT: Right. The last paragraph of that  
6 instruction. Okay, Mr. Walker?

7 MR. WALKER: Given the State's concession lesser  
8 included is appropriate, certainly I don't have any  
9 disagreement with the few parameters that the prosecutor  
10 mentioned. I guess the only real argument we have is on  
11 the reasonable doubt instruction.

12 THE COURT: Okay, let me hear from you, then.

13 MR. WALKER: What I propose is the newest, in my  
14 opinion best, attempt by the WPIC makers to put together  
15 an instructive -- an instruction for the reasonable  
16 doubt instruction, which is probably the most important  
17 instruction, which isn't confusing, which isn't -- which  
18 is easier to understand. I guess the prosecutors also  
19 request it at times.

20 The old one I know is always objected to by  
21 prosecutors. I think it is much more fair, much more  
22 clear. The abiding belief language in the State's  
23 proposed instruction is confusing. Sure it means the  
24 same, but to the average person, it's confusing. This  
25 is much more objective, and I think the court should go

1 with it. I don't think there's much risk of confusion  
2 from the fact that the opening instruction included the  
3 language of abiding belief. Certainly that's something  
4 the prosecutor can argue, but I just think it's a better  
5 definition.

6 THE COURT: Miss Wagner?

7 MS. WAGNER: I am sure the court's aware of the  
8 State's position on this. I think we are on -- in the  
9 first instruction, I think it is very clear, I don't  
10 think it is confusing, it is the standard of burden  
11 throughout. I know the court said another prosecutor  
12 recommended it, I certainly don't. But it's --

13 THE COURT: I think she wished she hadn't either,  
14 frankly.

15 MS. WAGNER: That would be my guess. It's  
16 discretionary with the court, obviously, but I think the  
17 newer one is more confusing to the jury.

18 THE COURT: My understanding is after the Castle  
19 decision came down, the WPIC committee met and they  
20 elected not to adopt the alternate version at a  
21 subsequent opportunity to do that. This language --  
22 they adopted the Castle language from the court of  
23 appeals, but I think there was some disagreement with  
24 the committee itself as to formally doing this.

25 So, I am going to take a look at the update that's on

1 line and see if there have been any additional changes  
2 to that. We do need to get the complete assault  
3 definition, which includes the reasonable apprehension,  
4 and I'm assuming that probably your office would have  
5 that.

6 MS. WAGNER: Yeah, and then the special verdict form  
7 for the Assault 2, changing the concluding instruction.

8 THE COURT: If we can get one of those.

9 MS. WAGNER: Yeah. If the court will give me an  
10 opportunity to go up to my office and crank out that.

11 THE COURT: All right, and I will take a look at the  
12 case law and the on-line update on the WPIC, which of  
13 those we will use.

14 Any other than those items, Mr. Walker?

15 MR. WALKER: No, Your Honor.

16 THE COURT: I think also give the limiting  
17 instruction that we also had on the newspaper. I think  
18 they should have that as well.

19 MR. WALKER: Okay. I think I have some extras of  
20 that.

21 THE COURT: Miss Wagner, do you have the original  
22 uncited set?

23 MS. WAGNER: No, I will bring those down with me. I  
24 will get those and bring them down with a whole packet.

25 THE COURT: All right, we will be at recess.

1 (Recess taken.)

2 (Jury not present.)

3 MS. WAGNER: Your Honor, the packet that you handed  
4 us didn't have the concluding instruction.

5 THE COURT: I have two of those attached to it now.

6 MS. WAGNER: Okay.

7 THE COURT: Let me just, I guess, ask a question  
8 regarding the defendant's testifying, since --

9 MS. WAGNER: Since he did testify.

10 THE COURT: -- he did testify, I don't think that's  
11 appropriate to give that.

12 MR. WALKER: Well, you know, I would leave that up to  
13 the court. I don't mind if you do give it, because all  
14 it was was a foundational thing. Obviously prosecutor  
15 knows the parameters for argument there. I will do  
16 whatever the court --

17 THE COURT: How do you want to handle --

18 MS. WAGNER: I understand Mr. Walker's concern,  
19 because I am sure he will want to argue that, you know,  
20 above and beyond what he did testify to, and he's not  
21 compelled to. Probably makes some sense to have that  
22 instruction.

23 THE COURT: Okay. All right, then, let me tell you  
24 the instructions that I intend to give, then I will let  
25 you take your exceptions to that.

1           Instruction No. 1 is the standard WPIC instruction  
2           on, "It is your duty to determine which facts have been  
3           proved in the case," two page instruction.

4           Instruction No. 2, I did go read the State vs. Castle  
5           opinion. I reread the WPIC 4.018 simplified, actually  
6           revised version, and I am going to give the version that  
7           Mr. Walker proposed. I note that in that -- in State  
8           vs. Castle, it was a defendant that appealed that case,  
9           argued that this instruction was improper. So, I will  
10          leave it up to you. It has some language obviously that  
11          may be beneficial, but it was actually an instruction  
12          that the defendant objected to in State vs. Castle.

13          MR. WALKER: Sometimes we appeal when we lose on that  
14          instruction. I appreciate the court agreeing to give  
15          it.

16          THE COURT: You want to use this instruction?

17          MR. WALKER: Yes.

18          THE COURT: Number 3, "Evidence may be either direct  
19          or circumstantial."

20          Number 4 is, "the defendant's not compelled to  
21          testify."

22          Number 5 is, "The weight and credibility of any out  
23          of court statements."

24          Number 6 is, "A person commits the crime of assault  
25          in the first degree."

1           Number 7 is the great bodily harm definition.

2           Number 8 is, "A person acts with intent or  
3 intentionally."

4           Number 9 is, "An assault is an intentional shooting  
5 of another person." This also has the reasonable  
6 apprehension language at the bottom of it in the last  
7 paragraph.

8           Number 10 is, "To convict the defendant of assault in  
9 the first degree."

10          Number 11 is the deadly weapon definition.

11          Number 12, "If you are not satisfied beyond a  
12 reasonable doubt defendant is guilty of the crime  
13 charged, you may be found guilty of any lesser crime."

14          Number 13 is the crime of assault in the second  
15 degree definition.

16          14, "To convict the defendant of the crime of assault  
17 in the second degree."

18          Number 15, "For purpose of a special verdict, the  
19 state must prove beyond a reasonable doubt the defendant  
20 was armed with a firearm."

21          Number 16 is, "The jurors have a duty to discuss the  
22 case with one another."

23          Number 17 is the definition, "Upon retiring to the  
24 jury room to select a presiding juror," and also the  
25 instruction on his how to handle the two verdict forms

1 and the two special verdict forms.

2 And last items here are Verdict Form A, which is the  
3 assault first degree; Verdict Form B, which is the  
4 lesser degree finding on assault second; Special Verdict  
5 Form A and Special Verdict Form B.

6 Ms. Wagner, any exceptions to those instructions as  
7 proposed?

8 MS. WAGNER: I take an exception to the giving of the  
9 beyond a reasonable doubt instruction proposed by the  
10 defense. And I guess I want to clarify: I did submit  
11 instructions at the court's request to "fix" may not be  
12 the best word, but to make sure that the defense's  
13 proposed lesser includeds were correct. Although I am  
14 not endorsing them, I did submit them at the court's  
15 request.

16 THE COURT: Do you have those?

17 MS. WAGNER: I should probably put some sort of --  
18 it's a package of 8 to include special verdict forms.

19 THE COURT: I know, the only -- the additional  
20 instruction I need to give is on the --

21 MR. WALKER: Limiting instruction.

22 THE COURT: -- limiting instruction. And I am going  
23 to number that 5-A. And on the additional instructions,  
24 Ms. Wagner, that you prepared, I am just writing on the  
25 face of that, "Prosecutor's second set of proposed."

1 MS. WAGNER: That's my concern, Your Honor, I am not  
2 proposing them. Although I agreed that the lesser  
3 should be included, I am not offering them, I didn't  
4 propose them.

5 THE COURT: Okay, all right, I will indicate for the  
6 record that they were prepared at the request of the  
7 court.

8 MS. WAGNER: Thank you.

9 THE COURT: And I did go back and actually pull the  
10 Fernandez-Medina, Supreme Court opinion, which is  
11 on-line from August 24th of 2000. I don't necessarily  
12 agree with the analysis in there.

13 MS. WAGNER: Nor do I, but I think it's --

14 THE COURT: Appears to be that is the current case  
15 law which allows defendant who presents an alibi defense  
16 to really argue almost any theory of the case based upon  
17 the evidence that's there, including the ability to  
18 request lesser degree instructions, which this is in  
19 this particular case.

20 MR. WALKER: Great case.

21 THE COURT: Okay. Any additional exceptions,  
22 Ms. Wagner?

23 MS. WAGNER: No, Your Honor.

24 THE COURT: Mr. Walker?

25 MR. WALKER: No exceptions, thanks, Your Honor.

1 THE COURT: All right. Then what I will do, we will  
2 start at one o'clock with the instructions and with  
3 closing. We will get copies made of these instructions  
4 for each of you, and also for the -- I will run six sets  
5 for the jurors, and then we will go from there.

6 MR. WALKER: Okay if I leave my stuff here again?

7 (Recess taken.)

8  
9 AFTERNOON SESSION

10  
11 (Jury not present.)

12 THE COURT: I have up here the stipulation and order  
13 regarding jury separation. I intend to hold them until  
14 4:30, if they haven't reached any kind of verdict, then  
15 we will let them go.

16 And this says that we can excuse the jury in the  
17 absence of the parties, plaintiff's attorney, defense's  
18 attorney, also the defendant. And are you agreeable  
19 with that Mr. Walker?

20 MR. WALKER: Yes, Your Honor.

21 MS. WAGNER: When will we be given the alternates,  
22 you pick just randomly?

23 THE COURT: We will put all of the name and their  
24 badge number, their red badge number, in the box, and  
25 Janet will pick two after argument.

1 MS. WAGNER: Okay.

2 THE COURT: Okay? Are you ready?

3 MR. WALKER: Yes.

4 THE COURT: Do you have the original instructions for  
5 me to read? Thank you.

6 MR. WALKER: Could we get our copies, too?

7 THE COURT: Oh, I am sorry.

8 MR. WALKER: Thank you.

9 (Jury present.)

10 THE COURT: Please be seated.

11 Okay, members of the jury, at this time I am going to  
12 read the concluding instructions to you. This is a  
13 packet of about 16 or 17 instructions, bear with me as I  
14 read through them. We will give you sets of the  
15 instructions to have back in the jury room.

16 Instruction No. 1: It is your duty to determine  
17 which facts have been proved in this case from the  
18 evidence produced in court. It also is your duty to  
19 accept the law from the court, regardless of what you  
20 personally believe the law is or ought to be. You are  
21 to apply the law to the facts and in this way decide the  
22 case.

23 The order in which these instructions are given has  
24 no significance as to their relative importance. The  
25 attorneys may properly discuss any specific instructions

1 they think are particularly significant. You should  
2 consider the instructions as a whole and should not  
3 place undue emphasis on any particular instruction or  
4 part thereof.

5 A charge has been made by the prosecuting attorney by  
6 filing a document called an Information informing the  
7 defendant of the charge. You are not to consider the  
8 filing of the Information or its contents as proof of  
9 the matters charged.

10 The only evidence you are to consider consists of the  
11 testimony of the witnesses and the exhibits admitted  
12 into evidence. It has been my duty to rule on the  
13 admissibility of evidence. You must not concern  
14 yourselves with the reason for these rulings. You will  
15 disregard any evidence that either was not admitted or  
16 that was stricken by the court.

17 You will not be provided with a written copy of  
18 testimony during your deliberations. Any exhibits  
19 admitted into evidence will go to the jury room with you  
20 during your deliberations.

21 In determining whether any proposition has been  
22 proved, you should consider all of the evidence  
23 introduced by all parties bearing on the question.  
24 Every party is entitled to the benefit of the evidence,  
25 whether produced by that party or by another party.

1           You are the sole judges of the credibility of the  
2 witnesses and of what weight is to be given the  
3 testimony of each. In considering the testimony of any  
4 witness, you may take into account the opportunity and  
5 ability of the witness to observe, the witness's memory  
6 and manner while testifying, any interest, bias or  
7 prejudice the witness may have, the reasonableness of  
8 the testimony of the witness, considered in light of all  
9 of the evidence, and any other factors that bear on  
10 believability and weight.

11           The attorneys' remarks, statements and arguments are  
12 intended to help you understand the evidence and apply  
13 the law. They are not evidence. Disregard any remark,  
14 statement or argument that is not supported by the  
15 evidence or the law as stated by the court.

16           The attorneys have the right and duty to make any  
17 objections that they deem appropriate. These objections  
18 should not influence you and you should make no  
19 assumptions because of objections by the attorneys.

20           The law does not permit a judge to comment on the  
21 evidence in any way. A judge comments on the evidence  
22 if the judge indicates by words or conduct a personal  
23 opinion as to the weight or believability of the  
24 testimony of a witness or of other evidence.

25           Although I have not intentionally done so, if it

1 appears to you that I have made a comment during the  
2 trial or in giving these instructions, you must  
3 disregard the apparent comment entirely.

4 You have nothing whatever to do with any punishment  
5 that may be imposed in case of a violation of law. The  
6 fact that punishment may follow conviction cannot be  
7 considered by you, except insofar as it may tend to make  
8 you careful.

9 You are officers of the court and must act  
10 impartially and with an earnest desire to determine and  
11 declare the proper verdict. Throughout your  
12 deliberations you will permit neither sympathy nor  
13 prejudice to influence your verdict.

14 Instruction No. 2: The defendant has entered a plea  
15 of not guilty. That plea puts in issue every element of  
16 the crime charged. The State is the plaintiff and has  
17 the burden of proving each element of the crime beyond a  
18 reasonable doubt. The defendant has no burden of  
19 proving that a reasonable doubt exists.

20 A defendant is presumed innocent. This presumption  
21 continues throughout the entire trial unless you find --  
22 excuse me, unless during your deliberations you find it  
23 has been overcome by the evidence beyond a reasonable  
24 doubt.

25 A reasonable doubt is one for which a reason exists

1 and may arise from the evidence or lack of evidence.  
2 Proof beyond a reasonable doubt is proof that leaves you  
3 firmly convinced of the defendant's guilt.

4 There are very few things in this world that we know  
5 with absolute certainty, and in criminal cases, the law  
6 does not require proof that overcomes every possible  
7 doubt.

8 If, based on your consideration of the evidence, you  
9 are firmly convinced that the defendant is guilty of the  
10 crime charged, you must find him guilty; if, on the  
11 other hand, you think there is a real possibility that  
12 he is not guilty, you must give him the benefit of the  
13 doubt and find him not guilty.

14 Instruction 3: Evidence may be either direct or  
15 circumstantial. Direct evidence is that given by a  
16 witness who testifies concerning facts that he or she  
17 has directly observed or perceived through the senses.

18 Circumstantial evidence is evidence of facts or  
19 circumstances from which the existence or non-existence  
20 of other facts may be reasonably inferred from common  
21 experience.

22 The law makes no distinction between the weight to be  
23 given to either direct or circumstantial evidence. One  
24 is not necessarily more or less valuable than the other.

25 Instruction 4: The defendant is not compelled to

1 testify. And the fact that the defendant has not  
2 testified cannot be used to infer guilt or prejudice him  
3 in any way.

4 Instruction 5: You may give such weight and  
5 credibility to any alleged out-of-court statements of  
6 the defendant as you see fit, taking into consideration  
7 the surrounding circumstances.

8 Instruction 5-A: You are instructed that you are not  
9 to consider any information provided to you in the  
10 newspaper article submitted into evidence involving  
11 Trang Dai incident, except as to whether it is relevant  
12 to the issue in this case involving an alleged motive  
13 and for no other purpose.

14 Instruction 6: A person commits the crime of assault  
15 in the first degree when, with intent to inflict great  
16 bodily harm, he or she assaults another with a firearm  
17 or with any deadly weapon, or by any force or means  
18 likely to produce great bodily harm or death.

19 Instruction 7: Great bodily harm means bodily injury  
20 which creates probability of death, or which causes  
21 significant serious permanent disfigurement, or that  
22 causes a significant permanent loss or impairment of any  
23 bodily part or organ.

24 Instruction No. 8: A person acts with intent or  
25 intentionally when acting with the objective or purpose

1 to accomplish a result which constitutes a crime.

2 Instruction 9: An assault is an intentional shooting  
3 of another person, with unlawful force, that is harmful  
4 or offensive regardless of whether any physical injury  
5 is done to the person. A shooting is offensive, if the  
6 shooting would offend an ordinary person who is not  
7 unduly sensitive.

8 An assault is also an act, with unlawful force, done  
9 with intent to inflict bodily injury upon another,  
10 tending but failing to accomplish it and accompanied  
11 with the apparent present ability to inflict the bodily  
12 injury if not prevented. It is not necessary that  
13 bodily injury be inflicted.

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

20 Instruction No. 10: To convict the defendant of the  
21 crime of assault in the first degree, each of the  
22 following elements of the crime must be proved beyond a  
23 reasonable doubt: Number one, that on or about the 27th  
24 day of January, 2000, the defendant assaulted Ratthana  
25 Sok; number two, that the assault was committed with a

1 firearm or with a deadly weapon, or by a force or means  
2 likely to produce great bodily harm or death; number  
3 three, that the defendant acted with intent to inflict  
4 great bodily harm; and, number four, that the acts  
5 occurred in the State of Washington.

6 If you find from the evidence that each of these  
7 elements has been proved beyond a reasonable doubt, then  
8 it will be your duty to return a verdict of guilty. On  
9 the other hand if, after weighing all of the evidence,  
10 you have a reasonable doubt as to any one of these  
11 elements, then it will be your duty to return a verdict  
12 of not guilty.

13 The term deadly weapon -- excuse me, this is  
14 Instruction 11: The term deadly weapon includes any  
15 firearm, whether loaded or not.

16 Instruction 12: If you are not satisfied beyond a  
17 reasonable doubt that the defendant is guilty of the  
18 crime charged, the defendant may be found guilty of any  
19 lesser crime, the commission of which is necessarily  
20 included in the crime charged, if the evidence is  
21 sufficient to establish the defendant's guilt of such  
22 lesser crime beyond a reasonable doubt.

23 The crime of assault in the first degree necessarily  
24 includes the lesser crime of assault in the second  
25 degree. When a crime has been proven against a person

1 and there exists a reasonable doubt as to which of two  
2 or more degrees that person is guilty, he or she should  
3 be convicted only of the lowest degree.

4 Instruction 13: A person commits the crime of  
5 assault in the second degree when, under circumstances  
6 not amounting to assault in the first degree, he or she  
7 assaults another with a deadly weapon.

8 Instruction 14: To convict the Defendant Alexander  
9 Riofta of the crime of assault in the second degree,  
10 each of the following elements of the crime must be  
11 proved beyond a reasonable doubt: Number one, that on  
12 or about the 27th day of January 2000, the defendant  
13 assaulted Ratthana Sok with a deadly weapon; and, number  
14 two, that the acts occurred in the State of Washington.

15 If you find from the evidence that each of these  
16 elements has been proved beyond a reasonable doubt, then  
17 it will be your duty to return a verdict of guilty. On  
18 the other hand, if after weighing all of the evidence,  
19 you have a reasonable doubt as to any of these elements,  
20 then it will be your duty to return a verdict of not  
21 guilty.

22 Instruction 15: For purposes of a special verdict,  
23 the State must prove, beyond a reasonable doubt, that  
24 the defendant was armed with a firearm at the time of  
25 the commission of the crime of assault in the first

1 degree or the lesser included crime of assault in the  
2 second degree. A firearm is a weapon or device from  
3 which a projectile may be fired by an explosive such as  
4 gunpowder.

5 Instruction 16: As jurors, you have a duty to  
6 discuss the case with one another and to deliberate in  
7 an effort to reach a unanimous verdict. Each of you  
8 must decide the case for yourself, but only after you  
9 consider the evidence impartially with your fellow  
10 jurors.

11 During your deliberations, you should not hesitate to  
12 re-examine your own views and change your opinion, if  
13 you become convinced that it is wrong; however, you  
14 should not change your honest belief as to the weight or  
15 effect of the evidence, solely because of the opinions  
16 of your fellow jurors or for the mere purpose of  
17 returning a verdict.

18 Instruction 17: Upon retiring to the jury room for  
19 your deliberation of this case, your first duty is to  
20 select a presiding juror. It is his or her duty to see  
21 that discussion is carried on in a sensible and orderly  
22 fashion, that the issues submitted for your decision are  
23 fully and fairly discussed, and that every juror has an  
24 opportunity to be heard and to participate in the  
25 deliberations upon each question before the jury.

1           You will be furnished with all of the exhibits  
2 admitted in evidence, these instructions and two verdict  
3 forms, A and B. When completing the verdict forms, you  
4 will first consider the crime -- there is a typo here --  
5 I am inserting "the crime of assault first degree, as  
6 charged."

7           If you unanimously agree in the verdict, you must  
8 fill in the blank in Verdict Form A the words not guilty  
9 or the word guilty, according to the decision you reach.  
10 If you cannot agree on a verdict, do not fill in the  
11 blank provided in Verdict Form A.

12           If you find the defendant guilty on Verdict Form A,  
13 do not use Verdict Form B. If you find the defendant  
14 not guilty of the crime of assault in the first degree,  
15 or if, after full and careful consideration of the  
16 evidence, you cannot agree on that crime, you will  
17 consider the lesser crime of assault in the second  
18 degree.

19           If you unanimously agree on a verdict, you must fill  
20 in the blank provided in Verdict Form B the words not  
21 guilty or the word guilty, according to the decision you  
22 reach. If you cannot agree on a verdict, do not fill in  
23 the blank provided in Verdict Form B.

24           If you find the defendant guilty of the crime of  
25 assault, but have a reasonable doubt as to which of two

1 or more degrees of that crime the defendant is guilty,  
2 it is your duty to -- excuse me, it is your duty to find  
3 the defendant not guilty on the Verdict Form A and to  
4 find the defendant guilty of the lesser included crime  
5 of assault in the second degree on Verdict Form B.

6 You will also be furnished with special verdict  
7 forms. If you find the defendant not guilty of assault  
8 in the first degree or assault in the second degree, do  
9 not use the special verdict forms.

10 If you find the defendant guilty of assault in the  
11 first degree, you will then use special Verdict Form A  
12 and fill in the blank with the answer yes or no  
13 according to the decision you reach.

14 If you find the defendant not guilty of assault in  
15 the first degree, but guilty of assault in the second  
16 degree, you will then use Verdict Form B and fill in the  
17 blank with the answer yes or no according to the  
18 decision you reach.

19 Since this is a criminal case, each of you must agree  
20 for you to return a verdict. When all of you have so  
21 agreed, fill in the proper form of verdict or verdicts  
22 to express your decision. The presiding juror will sign  
23 it and notify the judicial assistant who will conduct  
24 you into court to declare your verdict.

25 All right, at this time I will ask that you direct

1 your attention to Miss Wagner, who will give the closing  
2 argument on behalf of the State.

3 MS. WAGNER: Thank you, Your Honor. Counsel.

4 Good afternoon. As you are well aware, the defendant  
5 is charged with assault in the first degree while armed  
6 with a firearm. The court read to you what's been  
7 referred to as the "to convict" instruction and you will  
8 get a copy of that. You will get the whole packet of  
9 instructions.

10 What it comes down to is that the State has to prove  
11 each and every one of the four elements listed in that  
12 to convict instruction in order for you to find the  
13 defendant guilty of assault in the first degree.

14 Now the four elements are: One, on or about  
15 January 27th, the defendant assaulted Ratthana Sok;  
16 second, that the assault was committed with a firearm or  
17 with a deadly weapon, or by a force or means likely to  
18 produce great bodily harm; third, that the defendant  
19 acted with the intent to produce great bodily harm or to  
20 inflict great bodily harm; and, finally, that the acts  
21 occurred in the State of Washington. The State has to  
22 prove each one of those -- every one of those elements.

23 Now a couple of these are pretty easy. We know that  
24 the acts occurred in the State of Washington,  
25 specifically in Tacoma, Washington. So that fourth

1 element is satisfied, that's uncontroverted.

2 The second element, which is that the assault was  
3 committed with a firearm, deadly weapon, or other means  
4 likely to produce great bodily harm. Clearly been  
5 established, beyond a reasonable doubt, that Ratthana  
6 Sok was fired upon with a gun. Look at the evidence  
7 that was presented. First and foremost, you have  
8 Ratthana Sok's own eyewitness testimony, and he came in  
9 here and he told you, just like he told the officers,  
10 that the person who shot at him had pulled out a chrome  
11 revolver, which is a firearm.

12 There's a lot of evidence supporting not only that a  
13 firearm was used, but that it was a revolver. Remember  
14 the testimony of Hank Baarslag, the forensic specialist.  
15 He said that a revolver, when it fires, does not expend  
16 the shell casings, unlike a semiautomatic handgun. In  
17 this cause, there were no shell casings that were  
18 recovered at the scene. That supports the fact that  
19 this was a revolver.

20 You have the testimony of Hank Baarslag, Detective  
21 Davidson and Armin Keen about the bullet holes that were  
22 found in the house and in the cars. And you have the  
23 pictures. These will be sent back to you in the jury  
24 room.

25 Remember we have three bullet holes in the house, two

1           above and one to the side. You have got three bullet  
2           holes in the two different cars. You have two of them  
3           on the Ford Explorer and one on the Honda. It was  
4           Mr. Baarslag's testimony that revolver generally holds  
5           five to six shots. We have six shots accounted for, six  
6           of the bullet holes.

7           It was Ratthana Sok's testimony that after that first  
8           shot, when he started running, he heard four to five  
9           shots. Again, this all goes to support, A, it was a  
10          firearm, and B, that it was a chrome revolver. And that  
11          corroborates with Ratthana Sok's testimony.

12          One other item of evidence we have this was a  
13          firearm, that spent bullet. Again you will get that  
14          back in the jury room. And Hank Baarslag testified that  
15          this is something that was fired from a gun. It was  
16          deformed, so likely hit something before it hit the  
17          ground. And we know where it landed, which was right in  
18          front of the garage. And that was the exact area where  
19          Ratthana Sok ran to.

20          If it hit something, it's likely that it hit above  
21          the garage, because we have that bullet hole directly  
22          above the garage door, and it fell and it laid there  
23          right at the base of the garage.

24          So we have more than enough evidence to show that it  
25          was a firearm used to shoot Ratthana Sok on

1 January 27th.

2 That really leaves us with the first and third  
3 elements, and this is really the heart of the case. The  
4 first element is: On or about January 27th, it was the  
5 defendant who assaulted Ratthana Sok. And that third  
6 element is: That he acted with intent to inflict great  
7 bodily harm. This again is the heart of the case.

8 Well, we know the act occurred January 27th. That's  
9 uncontroverted. The question becomes: Was it the  
10 defendant, and did he act with that intent? Let's look  
11 at the evidence that we have showing that he was in fact  
12 the Defendant Alexander Riofta.

13 First and foremost, you have Ratthana Sok's  
14 testimony. He came in here and he told you, "It was  
15 Alexander Riofta that shot at me." He pointed right at  
16 him. He had made a previous identification when he was  
17 presented with an array of photographs.

18 Now, he was so sure that it was Ratthana Sok because  
19 he knew him. He knew him because they had played  
20 basketball earlier at People's Park. It had been  
21 several years, but he knew him enough to recognize him,  
22 and he knew his first name. He just remembered him as  
23 being Alex.

24 And with that information, and with the physical  
25 description he was able to provide the detectives, they

1 had enough information to tie some information, type  
2 some parameters into their computer data base, and sheer  
3 luck, they were able to bring up a photograph of the  
4 defendant.

5 Remember the testimony of Detective Davidson. You  
6 had two different displays of photographs. First screen  
7 Ratthana Sok looked at said, "No, he's not in there."  
8 But that second screen, he saw the picture of the  
9 defendant, he said, "That's him, I'm positive." You  
10 have positive ID on the same day of the shooting,  
11 positive ID in court yesterday, that the defendant was  
12 the one who shot at Ratthana Sok.

13 Physical description that Ratthana gave matches the  
14 defendant. Five-two, about 125 pounds, mustache, shaved  
15 head.

16 You do have to ask yourself: Well, he also talked  
17 about or testified that the defendant or shooter was  
18 wearing that white hat. And we have that white hat in  
19 evidence. How could he know it was a shaved head?

20 You can consider the fact that the defendant, by his  
21 own admission, walked by Ratthana Sok's house on a daily  
22 basis. And I will go into that in more detail. He  
23 admitted he went by there daily. It is entirely  
24 possible Sok saw the defendant on more recent occasions  
25 and just didn't think about it, but saw that shaved

1 head, and that went into the description.

2       Regardless, the rest of that description is extremely  
3 accurate. That's what allowed Detective Tom Davidson to  
4 go to his computer and put in his parameters and bring  
5 up that photograph. And once we had that photograph, we  
6 had a name. Once we had a name, we had someone that the  
7 detectives could go and contact, place under arrest,  
8 because Ratthana Sok was positive, "This is the man who  
9 shot me."

10       That's what Detective Davidson did. On the following  
11 day, in the morning of January 28, he went and arrested  
12 Alexander Riofta. Now, the defendant's reaction and his  
13 whole demeanor that day is very interesting, as are his  
14 comments. If you remember Detective Davidson's  
15 testimony, when he arrested the defendant, the defendant  
16 wanted to know why he was under arrest. He said he was  
17 told he was under arrest for shooting.

18       Well, the defendant didn't ask any of the basic  
19 questions: Who? What? Why? When? Where? He said,  
20 "I didn't shoot no mother fucker. I don't even own a  
21 gun, I was home the night before. I was drinking. I  
22 didn't leave until 11:00. I went to work. I don't own  
23 a gun. How could I shoot some mother fucker?" That was  
24 his response. He was angry when he said it; he was  
25 hostile.

1           And from there, the detectives took him down to the  
2 station for an interview. And it was during that  
3 interview that he made a lot of very interesting  
4 comments. And you have to consider those statements  
5 that he gave to Detective Davidson that day.

6           First of all, it's important to note that the  
7 defendant cannot account in his statement to the  
8 detective for his activities prior to about  
9 eleven o'clock that day. He just said he was home.

10          He gave the detective the names of all these people  
11 he was with on January 27th. And the detective  
12 testified he contacted them. None of them could account  
13 for the defendant's activities prior to eleven o'clock  
14 on the 27th.

15          The defendant's own mother, here on the stand this  
16 morning, couldn't account for his activities prior to  
17 January 27th. And although she tried to say that if he  
18 had left, she would have woken up, think about Drew  
19 Folsom's testimony. He says he was there at the house  
20 the day before, he was rooting around in bedrooms,  
21 turning lights on in the hallway. You saw the pictures  
22 up there, that hallway light would have shined right  
23 into Jennifer's bedroom. She didn't come out, she  
24 didn't wake up. Would she have known if the defendant  
25 left or is that a mother trying to protect her son?

1 But regardless, there's no accounting for the  
2 defendant's activities prior to eleven o'clock that day.  
3 Jennifer Saldana testified she last saw her son sleeping  
4 at 4:00 a.m. He had ample time between that time, when  
5 she last saw him and she next saw him, to go and commit  
6 the shooting. And you know he did, because we have the  
7 testimony.

8 It's interesting to note that when the defendant was  
9 told by Detective Davidson that it was Ratthana Sok who  
10 had been shot at, statement to Detective Davidson was,  
11 "If I were going to shoot at someone, I would kill them,  
12 because I am not stupid enough to get caught." He  
13 didn't deny shooting at Ratthana Sok. What he said  
14 basically was, "Well, if I had shot at him, I would have  
15 killed him, because I am not stupid enough to get  
16 caught."

17 Well, the evidence clearly shows he shot at Ratthana  
18 Sok, but fortunately he's just a bad shot. When you go  
19 back to the jury room, look at those pictures and think  
20 about the path that Ratthana Sok took when he was  
21 evading those bullets. He said he took off and he ran  
22 into that open garage between those cars. Where do you  
23 have the bullets? You have them surrounding a pattern,  
24 the very place Ratthana Sok was running.

25 This is not a man who is shooting into the ground,

1 shooting into the air, or just trying to scare someone.  
2 He's aiming. He's just a bad shot, because he's  
3 shooting with a little revolver, and he just didn't hit  
4 Ratthana Sok.

5 But that statement to the detective is very  
6 important. He was asked by the detective why Ratthana  
7 Sok would have named him as a suspect. He said, "Well,  
8 maybe because I am the only one that walks up and down  
9 his street everyday." That's an interesting comment.  
10 One of the things we know is, whoever shot Ratthana Sok,  
11 knew Ratthana's schedule. They knew that Ratthana would  
12 be out there early that morning, because they were  
13 waiting. Those people in the Honda were waiting for  
14 Ratthana at 6:45 in the morning. So someone knew his  
15 schedule. By the defendant's own admission, he walks by  
16 his house every single day.

17 We know that he knows Ratthana. He admitted being at  
18 Veasna Sok's house before, which is the same house  
19 Ratthana lived in. We know the defendant knows  
20 Ratthana, he knew Veasna, and knew where he lived, and  
21 he admits walking by the house every single day.

22 A very interesting comment that the defendant made  
23 was asking a question of the detective, and he asked if  
24 any other suspects had been arrested. Now, remember I  
25 asked detective Davidson if he had said anything about

1 the fact that Ratthana Sok saw other people in the car,  
2 and he said, "No, I hadn't even told him about the car."

3 Why would the defendant ask about other suspects,  
4 unless he's very well aware of the fact that there were  
5 other people in that car that morning? It's a very  
6 interesting question. I think you have to consider that  
7 to show the defendant's mind-set, because I think it's  
8 evidence of guilt that you have to consider in this  
9 particular case.

10 He said that this was all bullshit conspiracy, but  
11 when asked or pressed, he couldn't give a single  
12 explanation why he thought it was conspiracy.

13 In addition to all those comments, he made a lot of  
14 statements about the Trang Dai case and about Veasna  
15 Sok. And that's probably the most important thing to  
16 consider in this case. As I said before, there's no  
17 suggestion here that the defendant was involved in the  
18 Trang Dai killings, I don't want to any way to give you  
19 that impression. But what is very clear from the  
20 testimony presented in this case is that the defendant  
21 had more than an average or common interest in the  
22 Trang Dai case.

23 The State submits to you that the defendant had such  
24 an interest in Trang Dai, such an anger about what  
25 Ratthana Sok's brother was doing in Trang Dai, that he

1 felt the need to send a message to Veasna Sok, and he  
2 was going to send that message by shooting his brother.  
3 "You testify, this is what's happening." That's what  
4 this case is about.

5 How do we know about the defendant's anger? Look at  
6 the things he said. He talked about the fact that  
7 Veasna Sok was a sucker for snitching on his Homeys. He  
8 said that Veasna Sok deserved to get choked up in court  
9 for testifying against his Homeys. He keeps using that  
10 word "his Homeys."

11 When he talked about that incident he deserved to get  
12 choked up in court. He was talking about the incident  
13 where Veasna Sok was assaulted in court by two of the  
14 codefendants in the Trang Dai case. He's interested  
15 enough in this case to know those facts. He considers  
16 the codefendants in the Trang Dai case his Homeys, and  
17 he's angry enough at Veasna Sok that he thinks he  
18 deserved everything he got. And those are pretty  
19 interesting comments.

20 The defendant talked about knowing -- I believe he  
21 said he knew Cricket and he knew Chewy. And Detective  
22 Davidson told you I believe Cricket was Jimmie Chea and  
23 Chewy was Sarun, and these are two of the codefendants.  
24 And the defendant admitted knowing these two, and he  
25 also admitted knowing Veasna.

1           The defendant also commented about the fact that he  
2 had a newspaper article that he had kept, and that  
3 newspaper article showed the pictures of all his Homeys.  
4 And you will get this newspaper article back in the jury  
5 room. And this is Plaintiff's Exhibit 12. There, along  
6 the top, are the pictures he's referring to, the  
7 Trang Dai defendants, the very people that the defendant  
8 refers to as his Homeys. And you have got to take that  
9 into account when you go back into that jury room and  
10 deliberate about why the defendant did this.

11           State submits to you, again, he was sending a  
12 message. He took it upon himself, maybe with the  
13 assistance of these other people who have not been  
14 identified, but he was going to get across to Veasna Sok  
15 one way or the other, "Don't testify." Whether that  
16 meant shooting the brother, that was his intent clearly.

17           When you look at all of the evidence, and there's  
18 other evidence that I will go into, it's clear that it  
19 was the defendant who shot at Ratthana Sok on  
20 January 27th.

21           And the other piece of evidence that's very important  
22 in this case that ties the defendant to the shooting is  
23 that Honda. That Honda that was stolen sometime between  
24 the evening hours of January 26 and the early morning  
25 hours of January 27th. Ali Saleh's Honda. That's the

1 Honda that was at the residence in Ratthana Sok's  
2 residence that morning. We know it was his Honda  
3 because of the hat. And Ali Saleh identified that hat  
4 had been in his car, when it was stolen.

5 Ratthana Sok told you the defendant was wearing a  
6 white hat, when he shot at him. And that hat was left  
7 behind.

8 What's interesting about that car is where it was  
9 located. And Detective Davidson told you the location,  
10 as did Randi Wescott and Officer Karl. It was found, I  
11 believe, on 65th. And when I asked Detective Davidson  
12 where that location was in relation to the defendant's  
13 residence, he said about a block. And he said, more  
14 importantly, that there was a field between where that  
15 car was found and the defendant's residence. You get  
16 out of the car, you walk across the field, he's home.  
17 What an amazing coincidence that the very car that was  
18 used in the shooting ends up across the field from the  
19 defendant's house.

20 This isn't coincidence, ladies and gentlemen, it's  
21 circumstantial evidence. And you have to consider all  
22 of this evidence, because the State has presented both  
23 direct and circumstantial evidence that it is the  
24 defendant who shot at Ratthana Sok on January 27th of  
25 this year.

1           The court read to you a packet of instructions, and  
2 they got -- probably got very confusing, because they  
3 include what's known as a lesser included instruction.  
4 And I want to talk about that very briefly.

5           The State submits that the defendant is guilty of  
6 Assault in the First Degree, not Assault in the Second  
7 Degree. But one of the things you have to do, is go  
8 back there, deliberate first and foremost on the crime  
9 that's charged, Assault 1. If, for some reason, you are  
10 not able to come to an agreement on that charge, or if  
11 you find him not guilty of the Assault 1, you then have  
12 to consider the lesser included of Assault in the Second  
13 Degree.

14          Assault in the Second Degree occurs when you assault  
15 someone with a deadly weapon, and it's your intent to  
16 create an apprehension or fear in that person. Now the  
17 State submits to you that the defendant's intent on  
18 January 27th was to inflict great bodily harm. As I  
19 said before, he wasn't shooting into the ground, he  
20 wasn't shooting into the air, he was tracking Ratthana  
21 Sok as Ratthana Sok fled from him. This is someone who  
22 his intent is to actually shoot and hit. Not just to  
23 create an apprehension or fear.

24          But you do have to consider, for some reason, you  
25 can't reach an agreement on the Assault 1, go to the

1 Assault 2.

2 The other verdict forms that you are going to be  
3 presented with relate to special verdict form. If you  
4 find the defendant guilty of either the Assault 1 or  
5 Assault 2, you have to go to these verdict forms and  
6 answer the question, "Was he armed with a firearm during  
7 the commission of either of those crimes?" Well, that's  
8 been pretty well established. He shot at Ratthana Sok  
9 on January 27th; that was a firearm. The bullets were  
10 expended from the firearm, that's pretty clear. Easy  
11 one to answer on that.

12 You will also be given an instruction about  
13 reasonable doubt. Reasonable doubt is -- obviously we  
14 have gone through this. State has to prove each and  
15 every element beyond a reasonable doubt.

16 Reasonable doubt is a doubt for which a reason  
17 exists. State does not have to prove this case beyond  
18 all doubt. That's very important. But if you go back  
19 there, and if you are firmly convinced of the  
20 defendant's guilt on the assault in the first degree  
21 charge, you have to find him guilty. But, again, it's  
22 not proof beyond all doubt.

23 State submits to you that it has proved, beyond a  
24 reasonable doubt, the defendant's guilty of the crime of  
25 Assault in the First Degree. You should return a

1 verdict of guilty to that crime.

2 Thank you.

3 THE COURT: Thank you. At this time I would ask that  
4 you give your attention to Mr. Walker, who will give the  
5 closing argument on behalf of Mr. Riofta.

6 MR. WALKER: Thank you, Your Honor. Counsel.

7 Good afternoon. Okay, first I want to go through  
8 some of these instructions with you, kind of highlight a  
9 few things. As it says in the first instruction, you  
10 are the judges of the credibility. That's important in  
11 this case. This case has a couple of issues about  
12 credibility, and I will talk a little more about that,  
13 State's witnesses in particular. Although, all parties  
14 are to be given or to be afforded the use of all the  
15 evidence, all the testimony, certainly credibility is  
16 very important in this case.

17 Memory, lack of memory, the manner while testifying,  
18 whether they're conveniently saying, "I don't remember,"  
19 as soon as questioned about anything. That's not a very  
20 good "manner while testifying."

21 The ability to observe, bias, interest, prejudice and  
22 the reasonableness of the testimony, among whatever  
23 other factors of credibility. You must act impartially.  
24 And that's it for the first instruction.

25 Second instruction -- I am not going to go through

1 all of these -- second instruction is the reasonable  
2 doubt instruction. Essentially your standard.  
3 Defendant has no burden of proving even that a  
4 reasonable doubt exists. I don't have to even prove  
5 that. The State has to prove beyond a reasonable doubt  
6 it's case, and Mr. Riofta is presumed innocent unless  
7 and until there's proof beyond that, beyond a reasonable  
8 doubt, which can arise from the evidence or the lack of  
9 evidence.

10 Okay. You have to be firmly convinced of defendant's  
11 guilt. Now, if you have a doubt, not just some  
12 pie-in-the-sky, but if there is a reason -- if there is  
13 a reason, and the -- for your doubt, then it hasn't been  
14 proved. That's the end of the case. Not guilty's the  
15 answer, period. That's the standard.

16 As it says here, an accused person is given the  
17 benefit of the doubt. And then it's your duty to find  
18 him not guilty, period. And obviously there is a lot of  
19 doubt in this case. Talk about that in a minute.

20 I skipped Instruction No. 3.

21 Number 4: Defendant's not compelled to testify, and  
22 the fact he has not testified cannot be used to infer  
23 guilt or prejudice him in any way.

24 He did give some perfunctory testimony about -- so I  
25 could get this foundation established for this exhibit

1 which you will have the opportunity to review. And it's  
2 just documentation about what the detective testified  
3 about, essentially, that, no, there were no phone calls  
4 on my client's cell phone in the morning of either that  
5 Wednesday or Thursday. And you can look at that and see  
6 there was a number of phone calls after 11:00,  
7 twelve o'clock each day.

8 Okay. Did I get off track there? I will get off,  
9 recover later, hopefully.

10 Let's see, Instruction 10. Okay. Since this is one  
11 of the instructions, again my client's not guilty. The  
12 evidence is really weak in this case. Not even a close  
13 case. But the issue between first degree and second  
14 degree assault essentially is element number 3 on the  
15 Instruction 10. Somebody's going to remember that. I  
16 wouldn't remember it, but I bet you one of you jurors  
17 will remember that. The intent of the shooter. Not  
18 Mr. Riofta, the shooter.

19 That's the difference between 1 and 2. Because  
20 essentially if the shooter was just scaring the victim,  
21 or really wasn't intending to hurt the victim, if they  
22 were just shooting -- and I guess you could infer that  
23 it was just a scare, since the State has to prove its  
24 case beyond a reasonable doubt, any doubt.

25 MS. WAGNER: I am going to object to this --

1 MR. WALKER: The fact that --

2 MS. WAGNER: -- it's a mischaracterization of the  
3 law. It is not beyond any doubt.

4 MR. WALKER: Any reasonable doubts.

5 THE COURT: Jurors will be instructed to refer to the  
6 instructions on that point of law.

7 MR. WALKER: Any reasonable doubt, is what I meant.  
8 Thanks for helping me out there.

9 The real issue here is whether there was intent to  
10 inflict great bodily harm, if you are looking at between  
11 first and second degree. So, the fact that the victim  
12 said that the shooter was two to three feet away, that's  
13 pretty hard to miss, unless that's what he intended. So  
14 I guess that's the main issue there.

15 That's not really what I am talking about, because  
16 the ID is so incredibly weak.

17 Let's see, juror number -- Instruction 12 -- oh, the  
18 other thing is between that first and second degree,  
19 Instruction 12, last paragraph. "When a crime has been  
20 proven against a person, and there exists a reasonable  
21 doubt which of two or more degrees that person is  
22 guilty, he should be convicted only of the lowest  
23 degree." So if there's a question between the two  
24 degrees, you have to go with the lesser degree.

25 And Number 16, I think I talked about this in the

1 beginning, I am sure you will remember. Each of you is  
2 trying this case individually. Now, it's your duty to  
3 deliberate in order to attempt to reach a unanimous  
4 verdict, but you have to stick with what you believe  
5 after fully and fairly deliberating, and re-examining  
6 your views and changing your opinions, if you become  
7 convinced you are wrong. It is an individual thing.  
8 That's what Instruction 16 talks about. That's all the  
9 instructions I am going to talk about with you.

10 Now I am going to talk to you briefly about some of  
11 what the prosecutor said. Unfortunately this is the  
12 only chance to do that. Since the State has the burden  
13 of proof, they get the last word. So, you can, I guess,  
14 infer that I might have something more to say, if the  
15 law didn't require the State to have that burden.

16 Okay. When you are considering -- one of the  
17 instructions talked about when you are considering  
18 out-of-court statements made by the accused, consider  
19 the circumstances. And I would like you to consider  
20 those. Number one, where was the tape recording so we  
21 really know exactly how --

22 MS. WAGNER: Objection, Your Honor, there was  
23 absolutely no evidence presented to this jury about any  
24 of that.

25 MR. WALKER: Your Honor, it's argument. I am arguing

1 the circumstances favor the defense.

2 THE COURT: I'll sustain the objection.

3 MR. WALKER: Okay, look at the circumstances. We  
4 have no corroboration whatsoever to what the detective  
5 says. We don't know -- it's not like I wrote down -- I  
6 mean who could write down exactly what your questions  
7 are for I don't know how long he said. You will  
8 remember, maybe an hour of questioning. We don't know  
9 what the context was for each question, we have no --  
10 absolutely no understanding of what that was.

11 This is a homicide detective, experienced detective.  
12 Getting the big cases, the Trang Dai massacre. He knows  
13 what he's doing. He knows what answer he's looking for.  
14 He knows how to frame those questions to get those  
15 answers. He's an expert in that. He's tricky.

16 MS. WAGNER: Objection, Your Honor.

17 MR. WALKER: I think it's fair argument.

18 THE COURT: I am going to sustain the objection.

19 MR. WALKER: Well, if you look at how the -- we are  
20 going to talk about this -- the evolution of this  
21 identification took place, then maybe -- maybe you will  
22 agree with Mr. Riofta it is a conspiracy.

23 Someone having more than, quote, mere interest, in  
24 the Trang Dai incident isn't motive. Certainly isn't  
25 proof beyond a reasonable doubt. I think it's fair to

1 argue that's an exaggeration.

2 Now, let's talk a little more. We are going to go  
3 back to this a few times. Evolution of this  
4 identification. Was this identification of someone who  
5 looked like Alex -- because Mr. Riofta walks around the  
6 neighborhood, gets his exercise, is that why? Does that  
7 explain why Officer Keen is told -- and he quotes what  
8 was written, "It looked like Alex." And then the  
9 detective is given a different description, "It was  
10 Alex," is the difference.

11 Where's that -- where is that identification from?  
12 We have the suspect wearing a white cap, and the suspect  
13 was wearing the same clothes on Wednesday as he was on  
14 Thursday, but the cap wasn't even stolen until the car  
15 was stolen the evening of the -- before the shooting or  
16 sometime that evening, the car theft victim didn't know  
17 exactly when, but he knew it was that evening.

18 Is that why Mr. Sok was able to identify Mr. Riofta's  
19 photograph? And by the way, the photograph was not  
20 given in a montage. No warnings as to how fairly to  
21 look at this thing. That's troublesome.

22 And when Mr. Riofta was talking under his  
23 interrogation with the officer, detective, homicide  
24 detective, he didn't just tell the detective what he was  
25 doing before, he told him the whole schedule. He said,

1 "Yesterday afternoon I was working for the TNT."

2 How is a person going to feel when they are being  
3 arrested for a shooting? That's going to give some  
4 feelings that aren't exactly thrilled. It's not a  
5 thrilling prospect to be arrested for some shooting.  
6 Why, you are going to be angry, maybe you are going to  
7 say a few cuss words.

8 Now, if you are a single young man, it's not unusual  
9 to not be able to account for every single minute, every  
10 single hour of the day. He -- you know, we did give you  
11 a reasonable accounting of his whereabouts. He was  
12 showing the cell phone -- records from the cell phone  
13 are circumstantial evidence that he wasn't out and  
14 about. There's not a phone call at those times that the  
15 State is saying there's not an accounting for. That is  
16 circumstantial evidence of that -- that he wasn't out,  
17 he was in bed.

18 And I guess that's somewhat a fair point, that the  
19 mom didn't hear Mr. Folsom the morning before; maybe she  
20 would have heard him. But certainly the contrast wasn't  
21 proved either.

22 Okay, now we are going to cover what I haven't  
23 covered yet, hopefully not twice. Well, maybe we will  
24 do it twice. I will try not to be too cumulative about  
25 it, I will say that.

1 Statement given by Sok to Keen -- Officer Keen. That  
2 is not proof beyond a reasonable doubt. In fact, that's  
3 not even -- if there was a lower standard, that is not  
4 even enough proof for a lower standard. It looks like  
5 Alex, quote. That's in quotes. That's what was said.  
6 This isn't a close case.

7 Doesn't experience, when you are looking at  
8 credibility, tell us that what happens is things get  
9 exaggerated. They get bigger. That's how lies work,  
10 then you have got to try to cover it up, but then  
11 sometimes you get caught in those lies.

12 Story did get bigger, didn't it? No facial hair in  
13 the description given to Officer Keen. Detective  
14 Davidson gets a mustache. And then under the scrutiny  
15 of a defense interview, we also add some "cat hair" to  
16 the chin. The story got bigger and bigger and bigger on  
17 the identification. It is not a pretty evolution. This  
18 is not the level of evidence required to convict a  
19 person of a crime. It's minimal evidence at best.

20 During that scrutinized interview from the defense,  
21 Mr. Sok admits he didn't see the face of this individual  
22 that he told Officer or Detective Davidson that he saw  
23 on the Wednesday, the day before. And he said the day  
24 before, "7:15 a.m." There's another credibility issue  
25 there.

1           Now, the detective misstated something. He said  
2           that -- he was kind of in the heat of his testimony, he  
3           said that Sok had been to the Riofta residence I think  
4           what he meant to say was --

5           MS. WAGNER: I am going to object.

6           MR. WALKER: -- detective told him --

7           MS. WAGNER: Your Honor --

8           MR. WALKER: This is argument, Your Honor.

9           MS. WAGNER: If the detective made a statement, it as  
10          improper to infer what he thinks he likely said or was  
11          going to say.

12          THE COURT: Jury will rely on their collective memory  
13          of the testimony presented.

14          MR. WALKER: What did Sok say? Sok said, or  
15          according to the detective, that he didn't know where  
16          Mr. Riofta lived, he knew he lived in the neighborhood.  
17          He didn't know where he lived, never been there. You  
18          can bet that Sok would have testified to that, if he  
19          had. That was just a reversal in the heat of testimony.

20          Now, look at -- here's a minor thing, but if you look  
21          at the bias and context, I think it's important a little  
22          difference, small. Sok's testifying one of the first  
23          questions, "How many people did you see in that car  
24          outside your gate? Two or three?" How can you see two  
25          or three people? You can't see two or three people.

1 You either saw two or you saw three. He's just  
2 testifying to a large extent based on speculation, isn't  
3 he?

4 Sok claims to Detective Davidson suspect was both  
5 bald and wearing a cap? Is Sok's identification based  
6 upon speculation, based upon him having seen Mr. Riofta  
7 in the neighborhood? And since it looked like him,  
8 let's speculate that it was him, and that's where it  
9 went.

10 And speaking of credibility, why was Detective  
11 Davidson so sensitive about that questioning? That goes  
12 to his motive, his bias. He had a bias there in this  
13 incident. This is an important thing for him. He's the  
14 lead detective. We have already covered that, so we can  
15 skip that.

16 Interesting that Sok told Detective Davidson 7:15  
17 Wednesday before that he saw the subject, same clothes  
18 in his mind, but didn't Sok testify that he was on his  
19 way to school? So I am not sure about his scheduling  
20 there. Think about what the testimony was about that.

21 Okay, we already talked about how there was no photo  
22 montage, so we have no idea on fairness as, you know,  
23 similar pictures? I mean, that's why you do a photo  
24 montage, to make sure it is the suspect.

25 No fingerprint evidence.

1           We have a newspaper article. Lot of young men, lot  
2 of Asian young men, are interested in this incident and  
3 clipped the newspaper. That doesn't prove motive.

4           Lot of people in the community have a problem with  
5 snitching. That doesn't prove motive.

6           You heard essentially uncontroverted testimony that  
7 at 4:00 a.m. on the Thursday Mr. Riofta was sleeping.  
8 Okay? And then at 11:00, thereabouts, 11:00, 11:20,  
9 whatever it was, somewhere around there -- wasn't 7:00  
10 a.m., 6:30 a.m., was not -- he wakes his mom up. And we  
11 have Sok, whose credibility is just none, essentially,  
12 very limited, who tells Davidson the day before: I saw  
13 the same guy, but I didn't see his face. He doesn't say  
14 that until June 1 when questioned by defense.

15           But then he has the -- well, I think it's problematic  
16 that he and the State are saying: Well, maybe it was  
17 another day. Isn't that problematic? It's pretty much  
18 nailed down by Detective Davidson that he gave a  
19 specifying date and time, and now he's coming in to  
20 court and saying: It might have been another day? Is  
21 that because -- because the defense can prove that  
22 Mr. Riofta wasn't there on Wednesday? Is it because  
23 Mr. Sok has a bias? Is it because his identification is  
24 based upon speculation?

25           Mr. Riofta is not a gang member, we know that.

1           What was -- when Sok was being shot at, what was his  
2 attention to? The suspect asks him for cigarette -- not  
3 exactly you are going to look at somebody's face for.  
4 And then he sees the chrome, that's what Officer Keen  
5 said he was told. Sees the chrome from the weapon.

6           Now, think about someone who is looking -- Mr. Sok  
7 who is looking at a weapon. He is not going to be  
8 focusing on somebody's face. And I think he more or  
9 less testified he was out of there. He was looking at  
10 the gun, he was looking at how to get out of there.

11          Well, I thank you for your time. Certainly you have  
12 much more ability to deliberate this, and certainly  
13 didn't intend to cover all the points that I could. I  
14 am certain the prosecutor will bring up some position,  
15 and I don't get a chance to talk about that, so I will  
16 leave that to you.

17          I think it is obvious that identification was based  
18 on speculation. My client is not guilty, and I am  
19 asking to you return a not guilty verdict.

20          Thank you.

21          THE COURT: Okay, Miss Wagner?

22          MS. WAGNER: Mr. Walker is correct on one thing, I do  
23 bear the burden of proof, State does. Because of that,  
24 I have this final opportunity to speak to you. And I  
25 won't rehash everything that I said, but it is my

1 opportunity to respond to some things brought up by  
2 Mr. Walker. So I apologize, this will be a little bit  
3 disjointed.

4 Mr. Walker continually harped on one thing:  
5 Credibility and bias. Now, what single item of evidence  
6 was ever presented in this case that suggested that  
7 Ratthana Sok had any bias against the defendant?  
8 Nothing. You heard nothing that would suggest that he  
9 had any reason to lie about this case; that he had any  
10 reason to point out the defendant out of some sort of  
11 vengeance or any other perceived slight that had  
12 occurred. It just doesn't exist.

13 The reason that Ratthana Sok pointed out the  
14 defendant is because the defendant is the one who shot  
15 him, plain and simple. There's been no evidence to  
16 present that has suggested that he had a reason for  
17 lying.

18 Mr. Walker asked you what opportunity did he have to  
19 view? He had plenty of opportunity, because the  
20 defendant got out of that car, approached him and asked  
21 him for a cigarette. Of course he's going look at his  
22 face, that's all you need, because he knows the  
23 defendant.

24 It might be a different situation if you're a clerk  
25 at a store, and you have never seen this person before,

1 you only have a quick glimpse. But as soon as the  
2 defendant approached, asked for that cigarette, that's  
3 when the recognition kicked in and he knew the  
4 defendant, plain and simple. He played basketball with  
5 him; the defendant had been in his house before. He  
6 knew who the defendant was.

7 Mr. Walker suggested that this phone bill is evidence  
8 of the defendant's innocence. Well, a couple things to  
9 consider about that. One, we know that there's phones  
10 in the defendant's house. Could have used a phone. But  
11 the question is: Was there a reason to use the phone?  
12 Could have been all preplanned. If you are out there  
13 shooting someone, are you using your cell phone? Likely  
14 not.

15 Because what probably happened is that right after  
16 that shooting, the defendant and whoever else was in  
17 that car went and dumped that car, the defendant hopped  
18 out, went across the field and went home and stayed  
19 there until about eleven o'clock, when he woke up his  
20 mom and said, "I have got to get out of here." Simple  
21 as that. There was no need to use the cell phone.  
22 That's no evidence whatsoever of the defendant's, quote,  
23 innocence. It just doesn't stack up in this particular  
24 case.

25 Mr. Walker kept harping on the fact that Mr. Sok's

1 credibility was nil. And there's no evidence of that.

2 He also said that the ID was weak. What was weak  
3 about that identification? Pointing at a picture  
4 saying, "That's him, I am positive," where is the  
5 weakness in that identification? Where is the weakness  
6 in the identification that Ratthana Sok made yesterday  
7 in court, here, when before I even asked the question,  
8 he's looking at the defendant saying, "That's the one,  
9 that's the one who shot me." There's no weakness there,  
10 none whatsoever. That's identification of a man who  
11 knew exactly who shot at him and came in here and  
12 testified about that and told you what he saw.

13 Now Detective Davidson's testimony, as much as  
14 Mr. Walker would like to attack it, it's uncontroverted.  
15 There's no evidence that Detective Davidson lied or had  
16 a bias, misrepresented what the defendant said.

17 In his cross-examination of Detective Davidson, did  
18 Mr. Walker bring out a single misrepresentation on  
19 behalf of Detective Davidson? He didn't, because it  
20 didn't exist. And if he did, if there was some  
21 misrepresentation on behalf of Detective Davidson, it  
22 would have been brought out, but it wasn't.

23 So you have to consider that when you take into  
24 account Mr. Walker's statements to you, and both my  
25 argument here and Mr. Walker's argument is nothing more

1 than that. It's not evidence. The only evidence that  
2 you have is what was presented on the stand, and those  
3 exhibits, and that's what you have to consider in this  
4 particular case.

5 We have a cap. Mr. Walker made a comment about the  
6 fact, "Well, how could the defendant have been wearing  
7 that white cap the day before since the car was stolen  
8 that night? You never heard any testimony that  
9 suggested that Ratthana Sok said that the defendant or  
10 whoever that person was was wearing a white cap. He  
11 said it was the other clothes.

12 And if Ratthana Sok is going to lie about this, if  
13 he's going to make up this grand and glorious lies, why  
14 not say, "It was the defendant for sure that I saw at my  
15 house the day before"? He didn't, he just said someone  
16 that was wearing similar clothes was at any house the  
17 day before.

18 And the other thing, if he's going to lie about the  
19 defendant, why not give the police the full name? Why  
20 not -- why say, "It was Alex, you know, someone I knew  
21 but I only knew his name as Alex." If you are going to  
22 come up with this great lie, give them all the  
23 information you can so there's a guaranteed arrested in  
24 this case. But he didn't.

25 And it was good police work and good luck that

1 allowed the police to come up with that photograph of  
2 Alexander Riofta and allowed Ratthana Sok to make this  
3 positive pick of the defendant.

4 Question about the montage, we went through this  
5 probably more than you wanted to hear with Detective  
6 Davidson. But you heard the situations under which a  
7 montage is created. Your classic situation is the bank  
8 teller or the store clerk robbed by someone they have  
9 never seen before; a suspect is caught, so detectives  
10 put together a montage with the suspect and five other  
11 photographs.

12 That's done in the situations where the victim  
13 doesn't know the suspect. That's not what we had here,  
14 so there was no reason to go to that montage.

15 When Detective Davidson went to that computer, and  
16 started typing in information, he had no idea if a  
17 picture would come up. But, again, it's good police  
18 work. And it just so happened that a picture did come  
19 up that Ratthana Sok was able to look at.

20 In terms of the facial hair, what Officer Keen told  
21 you was that he didn't remember if Ratthana Sok said  
22 anything about the facial hair. Ratthana Sok definitely  
23 did say things about the facial hair to both Detective  
24 Davidson and later in interview, which was that he's got  
25 the mustache and sort of light beard sort of thing. And

1 you can get a good look at the defendant, what he has  
2 now. But the victim has always mentioned the facial  
3 hair.

4 In terms of the timing of the person that was at  
5 Ratthana Sok's house the day before the shooting, a  
6 couple things: Again, Ratthana Sok has never said  
7 positively it was the defendant. He also said in terms  
8 of his schedule simply that he left -- he exits his  
9 house every morning at 6:45 to open the gates, not that  
10 he leaves the house in the car at 6:45, only that he  
11 opens the gates. So the scheduling is not messed up in  
12 any way by this idea it might have happened at 7:10 in  
13 the morning.

14 Again, you have to consider what reason does Ratthana  
15 Sok have to lie in this case? Because nothing that has  
16 been presented to you would suggest he had motive or  
17 bias or reason to lie. Bias is something like the  
18 defendant's mother testifying, mother protecting her  
19 son. But there's absolutely no real relationship that  
20 has been presented to you that suggests that Ratthana  
21 Sok had something, you know that he had to do to get  
22 even with the defendant. Just doesn't exist.

23 What you do have is good, solid evidence that the  
24 defendant is the one who shot at Ratthana Sok on the  
25 morning of January 27th. You have good, solid evidence

1           that the defendant was trying to inflict great bodily  
2           harm.

3           If he just wanted to scare him, pull the gun out and  
4           warn him, let him run, that's not what happened. He  
5           pulled that gun out and he started firing within a few  
6           feet of Ratthana Sok. He started firing and he followed  
7           him, as he ran into that garage.

8           What you have is assault. You have Assault in the  
9           First Degree, and you have the fact that the defendant  
10          was armed with a firearm, and defendant was guilty of  
11          that crime. Thank you.

12          THE COURT: Okay. Members of the jury, as you know,  
13          there are 14 of you. Our law requires that 12 of you  
14          deliberate. So we have two people that will not  
15          actually be deliberating in this case. We are going to  
16          pick two numbers out of the box, and those two people  
17          will be excused from deliberations.

18          That doesn't mean you are free to talk about the  
19          case, because if something were to happen with one of  
20          the deliberating jurors, you would have to step in in  
21          place of that deliberating juror and the deliberations  
22          would start all over again. So it's important that you  
23          not talk about the case until you are told that there  
24          was an actual verdict reached in the case, or that the  
25          jurors were excused. Okay?

1           So at this time we will pick out two numbers, and I  
2 will connect them to your jury badge. They don't  
3 reflect the seats, but actually your jury badge number,  
4 the red badge numbers you came in with originally.

5           First one is Lisa Jaremko, juror number 18. And the  
6 second one is juror number 5, Ms. Tui. Two of you have  
7 been selected as alternates. You will only be back to  
8 the case if something happens with the rest of the  
9 jurors. So thank you for your time in the case. We  
10 have some certificates acknowledging your efforts in the  
11 case up to this point. If you have any items of  
12 personal property in the jury room, I would ask that you  
13 get them at this time, and then we will have you leave.  
14 Okay? Thank you. Want to go ahead and check? If you  
15 don't, you are free to go.

16           As soon as the jury room is clear, I will have the  
17 remaining jurors go in there. You will get a copy of  
18 the -- actually you will get the original set of  
19 instructions, as well as six copies to kind of share  
20 between yourselves to work through, and also you will  
21 get the exhibits shortly, as soon as Janet brings them  
22 in to you. Okay? So as soon as she comes back, I will  
23 have you go in there.

24           And in terms of time on deliberation, ordinarily I  
25 don't keep jurors after 4:30, so at 4:30, if you have

1 not reached a verdict, you will be excused. Okay?

2 MS. WAGNER: Will you be starting up at 9:00 or 9:30,  
3 if you are not able to reach a verdict?

4 THE COURT: Probably have them come back at  
5 nine o'clock tomorrow.

6 Maybe they have moved in or something. I was getting  
7 worried about you.

8 Okay, if you want to retire to the jury room at this  
9 time, we will be in with the instructions and the  
10 exhibits shortly. Don't start the deliberations until  
11 you actually get the instructions and the exhibits.  
12 Okay?

13 (Jury not present.)

14 THE COURT: Okay. Is that all of them? We are set?  
15 Okay.

16 MS. WAGNER: I will be at my extension, 4933.

17 THE COURT: The only thing, you know, that -- I guess  
18 the only issue that may arise, if they have a question,  
19 Mr. Walker, are you going to be available some place?

20 MR. WALKER: Yes.

21 THE COURT: Okay. How quickly?

22 (One juror present.)

23 JUROR: Excuse me, one of the gals left their book,  
24 Janet, the gal in purple.

25 THE CLERK: I will be right in.

1 (Jury not present.)

2 MR. WALKER: Within 20 minutes.

3 THE COURT: Okay.

4 MR. WALKER: Maybe we can just deal with it over the  
5 phone, if it is not too serious.

6 THE COURT: What I will do is we will call each of  
7 you, if there is a question, and inform you of the  
8 question, and then we can decide whether you want to  
9 come down and be here and have the defendant here.

10 MS. WAGNER: Okay.

11 THE COURT: Okay? Thank you.

12 MR. WALKER: Thank you.

13 THE COURT: Okay, Janet, here's the original  
14 instructions for them. And you have the six copies?

15 THE CLERK: Yes.

16 THE COURT: Okay, just tell them make sure they use  
17 the original for their verdicts.

18 THE CLERK: Right, and to knock if they need  
19 something.

20 (Recess taken.)

21 (Jury present. Defendant and  
22 attorneys are not present.)

23 THE COURT: All right, it's about 4:30, and we are  
24 going to excuse you for the balance of the day. You  
25 know the cautionary instruction about not discussing the

1 case with anyone.

2 We will see you back here tomorrow morning at  
3 nine o'clock. You can come directly into the jury room.  
4 Don't start deliberating until you are all present. And  
5 in the morning, you will be furnished with the  
6 instructions and the exhibits once again.

7 So make sure you have all your personal effects with  
8 you and we will see you tomorrow morning. Okay? Thank  
9 you.

10 JUROR: Thank you.

11 (Recess taken.)

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1 NOVEMBER 30, 2000

2 AFTERNOON SESSION

3 (Jury not present. Defendant  
4 and attorneys are present.)

5 THE COURT: Please be seated.

6 MR. WALKER: Good morning -- afternoon.

7 THE COURT: Get the jurors.

8 (Jury present.)

9 THE COURT: Okay, please be seated.

10 Will the presiding juror please stand? Has the jury  
11 reached a verdict in this case.

12 JUROR NO. 5: Yes, we have.

13 THE COURT: Have the verdict forms been completed  
14 that reflect that verdict?

15 JUROR NO. 5: Yes, they have.

16 THE COURT: Hand them to my judicial assistant,  
17 please.

18 After I read the verdicts, I am going to ask each of  
19 you two questions. I am going to ask if this is your  
20 individual verdict and does it reflect the verdict of  
21 the jury, because all of you have to agree for it to be  
22 unanimous, so you will need to answer each of those  
23 questions independently, and I will just go, starting  
24 with juror number 1, okay?

25 All right, in the matter of the State of Washington

Verdict

1 vs. Alexander Riofta, cause number 00-1-00511-5: We,  
2 the jury, find the defendant guilty of the crime of  
3 Assault in the First Degree, as charged in Count I. And  
4 that's signed M. Reddekopp, presiding juror.

5 There is a special Verdict Form A: We, the jury,  
6 return a special verdict by answering as follows: Was  
7 the defendant, Alexander Riofta, armed with a firearm at  
8 the time of the commission of Assault in the First  
9 Degree? The answer is: Yes. And that is also by M.  
10 Reddekopp, presiding juror.

11 Starting first with Juror No. 1, is that your verdict  
12 and the verdict of the jury?

13 JUROR NO. 1: Yes.

14 THE COURT: Juror No. 2, is that your verdict and the  
15 verdict of the jury?

16 JUROR NO. 2: Yes.

17 THE COURT: Juror 3, is that your verdict and the  
18 verdict of the jury?

19 JUROR NO. 3: Yes.

20 THE COURT: Ms. Reddekopp, is that your verdict and  
21 the verdict of the jury?

22 JUROR NO. 5: Yes.

23 THE COURT: Next juror, you are number 6, is this  
24 your verdict and the verdict of the jury?

25 JUROR NO. 6: Yes.

1 THE COURT: Starting with juror in seat number 7, is  
2 this your verdict and the verdict of the jury?

3 JUROR NO. 7: Yes.

4 THE COURT: Juror No. 8, is this your verdict and the  
5 verdict of the jury?

6 JUROR NO. 8: Yes.

7 THE COURT: This is your verdict and the verdict of  
8 the jury?

9 JUROR NO. 9: Yes.

10 THE COURT: Is this your verdict and the verdict of  
11 the jury?

12 JUROR NO. 10: Yes.

13 THE COURT: Juror 11, is this your verdict and the  
14 verdict of the jury?

15 JUROR NO. 11: Yes.

16 THE COURT: Starting front, Juror 13, is this your  
17 verdict and verdict of the jury?

18 JUROR NO. 13: Yes.

19 THE COURT: Juror 14, is this your verdict and the  
20 verdict of the jury?

21 JUROR NO. 14: Yes.

22 THE COURT: The verdict forms, as completed, will be  
23 accepted and filed in this case.

24 Members of the jury, we have some certificates  
25 thanking you for your service on the jury in this case.

1 you, don't want anything left behind.

2 (Jury not present.)

3 MS. WAGNER: Your Honor, we will need to set a  
4 sentencing date. I don't know if the defense will be  
5 seeking a presentence investigation.

6 THE COURT: I think I would like to have one in this  
7 case.

8 MS. WAGNER: And we need to re-establish conditions  
9 of release. The bail previously had been set at  
10 \$50,000, and I ask, given the sentencing range the  
11 defendant will be facing, that that be upped to  
12 \$100,000.

13 THE COURT: Mr. Walker?

14 MR. WALKER: I think it's academic, he hasn't been  
15 able to post 50,000.

16 THE COURT: I will set bail at 100,000 at this point.

17 MS. WAGNER: May I come around?

18 THE COURT: Yes.

19 MS. WAGNER: I am not sure of the court's sentencing  
20 dates.

21 THE COURT: We will be looking at January, probably  
22 third week in January.

23 MR. WALKER: Is that within the time?

24 MS. WAGNER: 54 days total.

25 MR. WALKER: 54 days? Essentially, yeah, we have to

1 have it by about the 20th or so of January, I think.  
2 19th's a Friday.

3 THE COURT: I need to get a sentencing date about the  
4 third week of January -- actually probably the second  
5 week.

6 THE CLERK: 29th I think is the one we have, or the  
7 5th.

8 MS. WAGNER: We need to go a little bit before then.

9 THE CLERK: The 26th.

10 THE COURT: Of January? No, let's go the 12th.

11 MR. WALKER: Okay.

12 THE COURT: 12th of January. That will give us time  
13 to get a presentence report.

14 MS. WAGNER: Will you be in this courtroom,  
15 Your Honor.

16 THE COURT: Yes. That is sentencing with PSI, Janet.  
17 I have established conditions of release, increased the  
18 bail to \$100,000. That just needs to be filed.

19 That will be at 1:30 p.m. And the defendant needs to  
20 sign. Can you have the defendant sign?

21 MR. WALKER: Your Honor, I am going to put, "refused  
22 to sign," with the court's permission.

23 THE COURT: That's fine. The record will indicate  
24 that Mr. Riofta was given an opportunity to sign the  
25 order.

1 MR. WALKER: And I will provide him a copy of the  
2 order.

3 MS. WAGNER: Is anyone back there?

4 THE CLERK: I really don't know, I didn't stay to  
5 wait to see.

6 THE COURT: Thank you. We will be at recess.

7 (Recess taken.)  
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STATE OF WASHINGTON )  
 )  
COUNTY OF PIERCE )

I, Randy Kay York, Official Shorthand Reporter in  
and for the County of Pierce, State of Washington, do hereby  
certify that the foregoing proceedings were reported by me  
on said date(s) and reduced to typewritten form.

I further certify that the foregoing transcript of  
proceedings is a full, true and correct transcript of my  
machine shorthand notes of the aforementioned matter.

Dated this 28th day of January 2001.

*Randy Kay York*  
\_\_\_\_\_  
Randy Kay York, CCR, RDR  
CCR # YORK\*RK 492BL



00-1-00511-5 23658182 ORDY 09-06-05

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff

vs.

RIOFTA, ALEXANDER NAM,

Defendant

Cause No. 00-1-00511-5

*Order Denying Post-Conviction  
DNA Testing*

FILED  
IN OPEN COURT  
DEPT 1  
SEP 02 2005  
BY *[Signature]*

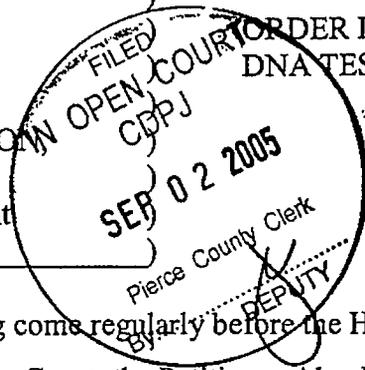
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

ALEXANDER NAM RIOFTA,  
Petitioner,

Superior Court No. 00-1-00511-5

vs.

STATE OF WASHINGTON  
Respondent



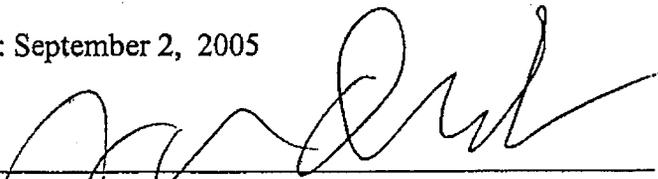
ORDER DENYING POST-CONVICTION  
DNA TESTING UNDER RCW 10.73.170

This matter having come regularly before the Honorable James Orlando, Judge of the Pierce County Superior Court; the Petitioner Alex Riofta appearing by and through his attorney Derek Johnson (Rule 9) and Jacqueline McMurtrie (Supervising Attorney); the Respondent, State of Washington appearing by and thorough Lisa Wagner, Deputy Prosecuting Attorney; the court having considered the record herein, as well as the argument of counsel, does now therefore make and enter the following:

**ORDER:**

It is ordered that Petitioner Riofta's motion for post-conviction DNA testing under RCW 10.73.170 is denied.

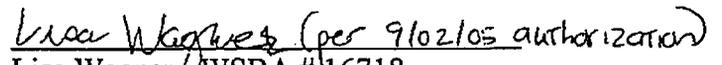
Dated: September 2, 2005

  
The Honorable James Orlando  
Pierce County Superior Court

Presented by:

Approved for entry:  
Notice of presentation waived:

  
Jacqueline McMurtrie, WSBA # 13587  
Attorney for Alex Riofta

  
Lisa Wagner, WSBA # 16718  
Deputy Prosecuting Attorney