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No. 3370 4-5-II

In The
Washington State Court of Appeals
Division II

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DIVISION II
05 JUL 22 PM 12:18
STATE OF WASHINGTON
BY [Signature]
DEPUTY

In Re Personal Restraint of:

Robert Bonds,

Petitioner.

Personal Restraint Petition
Opening Brief

Robert Bonds
Petitioner/Pro-Se
HDSP
P.O. Box 650
Indian Springs, NV 89018

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I. Status of Petitioner

Robert Bonds [hereinafter petitioner] is currently in Custody of the Washington State Department of Corrections. Petitioner is serving sentences for 2 counts of first degree attempted murder 560-months, 87-months for felony possession of a firearm, with 2 5-year firearm enhancements. See Judgment and sentence attached herein as Appendix "A".

Petitioner is currently imprisoned at the High Desert State Prison in the state of Nevada. Petitioner was transferred to (HDSP) because of overcrowded Washington state prisons.

II. Procedural Facts

The events which resulted in charges being filed against petitioner and his co-defendant's Tonya Wilson, and Spencer Miller are set out in the Brief's filed on direct appeal in the consolidated appeals, and this court's opinion. See COA NO. 28847-8-II (consolidated), which is incorporated herein.

In summary, this case arose from the non-fatal shootings of Keith Harrell and Daron Edwards during a gun-fight at the AM/PM store in Tacoma Washington. 7 RP 61-62, 739. Appendix "B" attached.

(a) Summary of Direct Appeal

After petitioner's conviction, he timely appealed to this court. In an unpublished slip opinion, this court affirmed petitioner's convictions. COA NO. 28847-8-II.

Petitioner thereafter sought review in the Washington Supreme court, review was denied on both the principle Petition for Review, and a supplemental petition for Review submitted pro-se by petitioner. See Washington Supreme Court cause No. 75949-9.

Petitioner now brings this personal restraint petition challenging his convictions based upon ineffective assistance of appellate counsel. U.S.C.A. 6, 14. Wash. Const. Art., I § 22; Art., I § 13; Art. IV § 4 RAP 16.3-16, 15. Crawford v. Washington, 124 S.Ct. 1354 (2004).

III. Argument

- A. Mr. Bonds was not provided with his Sixth Amendment Right to Effective Appellate Counsel as Appellate Counsel Failed To Raise Trial counsel's effectiveness in failing to object to Hearsay statement's of co-defendant's who Never Testified at Trial.

[N]ominal representation on appeal as of right-like nominal representation at trial-does no suffice to render the proceedings constitutionally adequate; a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all.

Evitts v. Lucey, 105 S.Ct. 830, 836 (1985) (emphasis added).

Also see Smith v. Robbins, 528 U.S. 259 (2000); Douglas v. California, 372 U.S. 353 (1963).

At trial in the present case, numerous hearsay statements of petitioner's co-defendant's; Spencer Miller, and Tonya Wilson were admitted into evidence through the testimony of Detective Ringer. See RP 2392-2405; 2411; ~~2421~~32; 2433. 2438-41; 2445-56. Appendix "C" attached.

The trial court specifically ruled that the statements of Miller and Wilson would come in in the redacted form. RP 145-46 Appendix "D" attached. The unredacted form was more incriminating to petitioner. See RP 131-39; 149. Appendix "E" attached.

In Crawford v. Washington, the supreme court re-installed the traditional right to confrontation, which developed historically to prohibit the use of "ex parte examinations as evidence against the accused." Crawford, 124 S.Ct. at 1363; see also Bruton v. United States, 394 U.S. 123, 138, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968) (Stewart, J., concurring) ("[An] out-of-court accusation is universally conceded to be constitutionally inadmissible against the accused." (emphasis added); California v. Green, 399 U.S. 149, 179, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970) (Harlan J., concurring) ("[T]he confrontation clause was meant to constitutionalize a barrier against flagrant abuses," including trials by . . . absentee witnesses".) (emphasis added). When a declarant has given a "testimonial" statement, that statement may not be used against the defendant unless the declarant is available for cross-examination. Crawford, 124 S.Ct. at 1374 - Bockting v. Bayer, 399 F.3d 1010, 1022 (9th Cir. 2005).

Crawford defines "testimonial" statements as "ex parte in-court testimony or its functional equivalent - that is, material such as affidavits, custodial examinations, prior

testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially". Id., 124 S.Ct. at 1364 (emphasis added; quotation omitted).

Although the supreme court declined to give a "comprehensive" definition of when declarants would reasonably expect their statements to be used prosecutorially, Id., at 1374, the court did describe certain circumstances that cause statements to fit that mold. The open "[i]nvolvement of government officer's in the production of testimony with an eye toward trial" renders out-of-court statements testimonial. Id., 124 S.Ct. at 1367 n.7; See also Lilly v. Virginia, 527 U.S. 116, 137, 119 S.Ct. 1887, 144 L.Ed.2d 117 (1999) (Plurality opinion) ("when the government is involved in the statements' production and when the statements describe past events", the statements "implicate the core concerns of the old ex parte affidavit practice"). Similarly, "recorded statement[s] knowingly given in response to structured police questioning" qualify as testimonial statements Id., 124 S.Ct. at 1365 n. 4.

Both Spencer Miller's and Tonya Wilson's statements to police detectives clearly qualify as testimonial, even under a narrow standard. Id., 124 S.Ct. at 1364.

As noted, the unredacted statements of Spencer Miller, and Tonya Wilson (see Appendix "E") are clearly more incriminating to petitioner than the redacted statements,

they nonetheless are clearly "testimonial hearsay" which petitioner did not have an opportunity to confront. Id., 124 S.Ct. 1374.

Moreover, during closing arguments, the prosecutor linked petitioner to both co-defendant's statements by undoing the redaction. First, the prosecutor linked petitioner to Spencer Miller's statements by arguing:

the only additionally thing is to consider who had the motive to shoot, who had the motive, a reason to pull that trigger, who cared whether Daron Edwards was saying "fuck the hilltops; Robert Bonds, and Spencer Miller care because they are Hilltops and that kind of disrespect toward the gang, against Andre Bonds cannot be tolerated and is taken care of that night.

RP 2978-79; 3016. Appendix "F" attached.

Second, the prosecutor linked petitioner to the portion of Ms. Wilson's statement by arguing:

. . .the fact that he is summoned to the scene by Robert Bonds by Tonya Wilson by that phone call indicates to you that something is going to happen. It also indicates to you that it's not Andre Bonds who's the driving force behind this. It's not Andre Bonds who's out to avenge his honor after getting his - - this is Daron Edwards' words, an ass whipping at Browne's. It's not Andre Bonds who's the driving force. It's Tonya Wilson and Robert Bonds.

RP 3148-49 Appendix "G" attached.

Here, the prosecutor was successful in undoing the redaction by linking petitioner to co-defendants' Miller and Wilson's statements. As noted, the statements of Miller and

Wilson in their redacted form were clearly "testimonial hearsay" which petitioner did not have the opportunity to confront through cross examination. Although the redacted form was arguably non-incriminating, the unredacted form was clearly incriminating to petitioner, and the prosecutor was clearly successful in undoing the redaction and linking petitioner to his co-defendant's statements implicating petitioner's Sixth Amendment confrontation rights under Crawford v. Washington, 124 S.Ct. 1354 (2004)¹.

¹ Prior to the holding in Crawford, a co-defendant's statements incriminating a defendant violated the Sixth Amendment's confrontation clause. See Bruton, Id. Also see Lilly v. Virginia, 527 U.S. at 134; Douglas v. Alabama, 380 U.S. 400 (1965); Dutton v. Evans, 400 U.S. 74 (1970); Cruz v. New York, 481 U.S. 186 (1987); United States v. Glass, 128 F.3d 1398 (10th Cir. 1997) (The introduction of a co-defendant's incriminating statement violated Bruton); United States v. Peterson, 140 F.3d 819, 821-22 (9th Cir. 1998) (Bruton violation); United States v. Gonzalez, 183 F.3d 1315 (11th Cir. 1999) (admission of co-defendants' out-of-court statement violated confrontation); United States v. Beydler, 120 F.3d 985 (9th Cir. 1997) (unavailable witness incriminating the defendant was inadmissible hearsay); Monachelli v. Warden, 884 F.2d 749, 753 (3d Cir. 1989) (confrontation clause violated when witness testified to statements made by non-testifying co-defendants' implicating defendant); Gray v. Maryland, 523 U.S. 185, 192 (1998); Whelchel v. Washington, 232 F.3d 1197, 1205 (9th Cir. 2000) Robert v. Russell, 88 S.Ct. 1921 (1968)

In the present case, because the statements of petitioners co-defendants were inadmissible "testimonial hearsay" under caselaw existing prior and post Crawford, trial counsel's failure to object to it's admission in it's redacted form, and the prosecutor's closing argument which recinded the redaction, amounts to deficient performance of counsel which resulted in prejudice. See Strickland v. Washington, 466 U.S. 668 (1984). Also see Bolander v. Iowa, 978 F.2d 1079 (8th Cir. 1992) (Trial counsel's failure to object to the introduction of hearsay evidence constitutes ineffective assistance of counsel); Gochicoa v. Johnson, 53 F.Supp.2d 943 (W.D. Tex. 1999); Gains v. Thieret, 846 F.2d 402 (7th Cir. 1988) (failure to object to the introduction of hearsay evidence may constitute ineffective assistance of counsel); Lyons v. McCotter, 770 F.2d 529 (5th Cir. 1985) (Where counsel passes over clearly inadmissible evidence, which is prejudicial to defendant, it has no strategic value and constitutes ineffective assistance of counsel); Sager v. Maass, 84 F.3d 1212 (9th Cir. 1996) (counsel found ineffective for not objecting to inadmissible evidence); U.S. v. Cronin, 466 U.S. 648 (1984) Kimmelman v. Morrison, 477 U.S. 365 (1986).

Finally, because appellate counsel had an available and viable claim regarding trial counsel's failure to object to hearsay statements of co-defendant's Spencer Miller and Tonya

Wilson which came in through Detective Ringer, but failed to raise the claim on appeal, petition's Sixth and Fourteenth Amendment rights to effective assistance of counsel and due process of law are implicated. Evitts, Id.² U.S.C.A. 6, 14. Wash. Const. Art. I, § 3 and 22.

² Also see Delgado v. Lewis, 168 F.3d 1148 (9th Cir. 1999) (Appellate counsel ignored trial counsel's ineffective assistance claims which were legitimate, specific and compelling appellate issues); Grubbs v. Singletary, 900 F.Supp. 425 (M.D. Fla 1995) (appellate counsels failure to raise trial counsel's ineffectiveness on direct appeal may constitute ineffective assistance of counsel); Delgado v. Lewis, 223 F.3d 976, 980-82 (9th Cir. 2000) (counsel's failure to raise any arguable issues was ineffective assistance); Banks v. Reynolds, 54 F.3d 1508, 1515-16 (10th Cir. 1995) (counsel's failure to raise "clearly meritorious" issues on appeal constitutes ineffective assistance of counsel); U.S. v. Cook, 45 F.3d 388 (10th Cir. 1995) (appellate counsels failure to raise dead bang winner constitutes ineffective assistance of counsel); Clemmons v. Delo, 124 F.3d 944 (8th Cir. 1987) (appellate counsel's failure to raise confrontation clause claim on direct appeal, constitutes ineffective assistance of counsel); Mason v. Hanks, 97 F.3d 887 (7th Cir. 1996) (Appellate counsel's failure to raise issue of inadmissible hearsay evidence constituted ineffective assistance of counsel).

And because petitioner's claim is constitutional, to prevail he must demonstrate prejudice, rather than a complete miscarriage of justice - the requisite standard for most collateral claims. In Re Cook, 114 Wn.2d 802, 813, 792 P.2d 835 (1984). In Re Haverty, 101 Wn.2d 498, 504, 681 P.2d 835 (1984). Normally this means petitioner must show that it is more likely than not his rights were actually and substantially prejudiced. Cook, 114 Wn.2d at 814. He can meet this burden. As in Crawford, the co-defendant's here did not take the stand or testify, therefore, petitioner did not have an opportunity for cross examination as required by the Sixth Amendments confrontation clause, thus his rights were actually and substantially prejudiced, and the inherent prejudice is established by the constitutional error itself. See State v. Kitchen, 110 Wn.2d 403, 413, 756 P.2d 105 (1988); Reed v. Ross, 486 U.S. 1, 12 (1984) (prejudice exists where but for the error, defendant "might not have been convicted"); Murray v. Carrier, 477 U.S. 478, 494 (1986) ("[A] showing of pervasive actual prejudice can hardly be thought to constitute anything other than a showing that the prisoner was denied fundamental fairness at trial). Moreover, since there exists a reasonable probability of success or reversal on the issue appellate counsel should have raised, prejudice is established. See In Re Frampton, 726 P.2d 486, 45 Wn.App. 554 (1986); United States v. Frady, 456 U.S. 152, 102 S.Ct. 1584 (1982).

- B. Petitioner is unlawfully Restrained in violation of His State and Federal constitutionally Guaranteed Right of confrontation.

A Petitioner is under a "restraint" if the Petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is under some other disability resulting from a judgment or sentencing in a criminal case.

RAP 16.4(6). RAP 16.4(c) defines the circumstances under which a petitioner can demonstrate unlawful restraint. 2-Two apply here.

First, a petitioner is unlawful restrained if the conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding. . . was entered "in violation of the constitution of the United States or the constitution or laws of the state of Washington". Here, because petitioner was prosecuted in violation of the U.S. constitutions Sixth Amendments confrontation clause, and Wash. Const. Art I, § 2; 3; and 22 he is unlawfully restrained. RAP 16.4(c)(2).

Second, a petitioner is unlawfully restrained if the conditions or manner of the restraint of petitioner are in violation of the constitution or laws of the state of Washington. The manner of petitioner's restraint as just discussed, are in violation of the U.S. and Washington constitutional right of confrontation. RAP 16.4(c)(6). Moreover, in language that mirrors RCW 10.73.100(6), a petitioner is unlawfully restrained if "there has been a significant change in the law".

. . . material to his conviction . . . RAP 16.4 (c)(4). For the reasons stated, the U.S. Supreme court's decision in Crawford, Id., marks such a change.

IV. Conclusion

For the reasons stated, Robert Bonds conviction should be vacated [Reversed] and a new trial ordered.

Dated this 14 day of July, 2005.

Respectfully Submitted,

Robert Bonds

Robert Bonds

Pro-Se

HDSP

P.O Box 650

Indian Springs, NV 89018

APPENDIX "A"

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).

\$ 500 Victim assessment RCW 7.6B.035

\$ 110 Court costs, including RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190

Criminal filing fee \$ 110

Witness costs \$ _____

Sheriff service fees \$ _____

Jury demand fee \$ _____

Other \$ _____

\$ 500 Fees for court appointed attorney RCW 9.94A.030

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

\$ 365 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

\$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 3B.52.430

\$ _____ Other costs for: _____

\$ 1,175 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

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(Continued on next page)

court. An agreed order may be entered. RCW 9.94A.142. A
restitution hearing: *none*

[] shall be set by the prosecutor

[] is scheduled for *Tues 3 4:00*

[] RESTITUTION. See attached order.

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

<u>NAME OF OTHER DEFENDANT</u>	<u>CAUSE NUMBER</u>	<u>VICTIM NAME</u>	<u>AMOUNT-\$</u>
<i>Tanya Wilson</i>	<i>01-06020-1</i>	<i>Ruth Harrell</i> <i>Doris Edwards</i>	
<i>Spencer Miller</i>	<i>01-05476-9</i>	"	

[] 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 \$ *1230.00* 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. *6249.00 monthly payments, Tacoma - No. 98409*

[] 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 defendant shall fully cooperate in the testing.
RCW 70.24.340. *1122, 13th and 5th St Tacoma No. 98444*

[X] 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 43.43.784.

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(Felony) (6/2000)

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

[] Domestic Violence Protection Order or Antiharassment Order is
filed with this Judgment and Sentence.

4.4 OTHER: _____

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):

360 months on Count No. One 210 months on Count No. Two
87 months on Count No. Three _____ 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. One 60 months on Count No. Two
_____ months on Count No. _____ months on Count No. _____

Sentence enhancements in Counts 1 and 2 shall run
[] concurrent [] consecutive to each other.

Sentence enhancements in Counts 1 and 2 shall be served
[] flat time [] subject to earned good time credit.

Sentence enhancements on Counts 1 and 2 shall run consecutive to the base sentence.
Actual number of months of total confinement ordered is 680.
(And 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.~~

Counts 1 and 2 shall be served consecutively to all other sentences.
Counts 1 and 2 shall be served consecutively and Count 3 shall
be served concurrently.
The sentence herein shall run consecutively to all felony sentences in

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(CR Form 1) (A/2010)

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) _____

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 132 days

4.6 [X] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:
Count 1 for _____ months;
Count _____ for _____ months;
Count _____ for _____ months;

[X] COMMUNITY CUSTODY (post 6/30/00 offenses) is ordered as follows:
Count One for a range from 24 to 48 months;
Count Two for a range from 24 to 48 months;
Count _____ for a range from _____ to _____ months;

or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.120 for community placement/custody offenses-- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 49.50 or 59.52 RCW offense. Community custody follows a term for a sex offense. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[] The defendant shall not consume any alcohol.
[X] Defendant shall have no contact with: the victims per § 4.3 above
[] Defendant shall remain [] within [] outside of a specified geographical boundary, to-wit: _____

[] The defendant shall participate in the following crime-related treatment or counseling services: _____

[] The defendant shall undergo an evaluation for treatment for [] domestic violence [] substance abuse [] mental health [] anger management and fully comply with all recommended treatment.

[] The defendant shall comply with the following crime-related prohibitions: _____

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

4.7 [] WORK ETHIC CAMP. RCW 9.94A.137, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total

1
2
3 confinement. The conditions of community custody are stated in Section
4 4.6.

5 4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The
6 following areas are off limits to the defendant while under the
7 supervision of the County Jail or Department of Corrections:

8
9 **V. NOTICES AND SIGNATURES**

10 5.1. COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for
11 collateral attack on this judgment and sentence, including but not
12 limited to any personal restraint petition, state habeas corpus
13 petition, motion to vacate judgment, motion to withdraw guilty plea,
14 motion for new trial or motion to arrest judgment, must be filed within
15 one year of the final judgment in this matter, except as provided for
16 in RCW 10.73.100. RCW 10.73.090.

17 5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1,
18 2000, the defendant shall remain under the court's jurisdiction and the
19 supervision of the Department of Corrections for a period up to 10
20 years from the date of sentence or release from confinement, whichever
21 is longer, to assure payment of all legal financial obligations unless
22 the court extends the criminal judgment an additional 10 years. For an
23 offense committed on or after July 1, 2000, the court shall retain
24 jurisdiction over the offender, for the purposes of the offender's
25 compliance with payment of the legal financial obligations, until the
26 obligation is completely satisfied, regardless of the statutory maximum
27 for the crime. RCW 9.94A.145 and RCW 9.94A.120(13).

28 5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered
an immediate notice of payroll deduction in Section 4.1, you are
notified that the Department of Corrections may issue a notice of
payroll deduction without notice to you if you are more than 30 days
past due in monthly payments in an amount equal to or greater than the
amount payable for one month. RCW 9.94A.200010. Other income-
withholding action under RCW 9.94A may be taken without further notice.
RCW 9.94A.200030.

5.4. RESTITUTION HEARING.

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

5.5 Any violation of this Judgment and Sentence is punishable by up to
60 days of confinement per violation. RCW 9.94A.200.

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(Revision) (6/2000)

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

Cross off if not applicable:

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the State of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

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

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

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(felony) (57,000)

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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 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:

23rd of May 2002

Frank E. Culbertson
JUDGE Print Name:

[Signature]
Deputy Prosecuting Attorney
Print Name:
WSBH 1208

[Signature]
Attorney for Defendant
Print name:
WSBH 15196

[Signature]
Defendant
Print name:

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

1
2
3
4 **CERTIFICATE OF INTERPRETER**

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

10 **CERTIFICATE OF CLERK**

11 CAUSE NUMBER of this case: 01-1-06020-3

12 I, Bob San Soucie, Interim Clerk of this Court, certify that the
13 foregoing is a full, true and correct copy of the judgment and sentence
14 in the above-entitled action now on record in this office.

15 WITNESS my hand and seal of the said Superior Court affixed on this
16 date: _____

17 Clerk of said County and State, by: _____, Deputy
18 Clerk

19 **IDENTIFICATION OF DEFENDANT**

20 SID No.: WA14078044 Date of Birth: 11/11/1972
21 (If no SID take fingerprint card for WSP)

22 FBI No. 555948LAO Local ID No. _____

23 PCN No. _____ Other _____

24 Alias name, SSN, DOB: _____

25 Race: Ethnicity: Sex:
26
27 Asian/Pacific Islander Hispanic Male
28 Black/African-American Non-Hispanic Female
 Caucasian
 Native American
 Other: _____

29 by:

30 JUDGMENT AND SENTENCE (JS)
31 (only) (S/P/00)

FINGERPRINTS

Right four fingers taken simultaneously

Right thumb

Left four fingers taken simultaneously

Left thumb

I attest that I saw the same defendant who appeared in Court on this Document affix his or her fingerprints and signature thereto. Interim Clerk of the Court, BOB SAN SOUCIE:

[Signature], Deputy Clerk.

Dated: 5/17/2002

DEFENDANT'S SIGNATURE: REFUSED

DEFENDANT'S ADDRESS: _____

DEFENDANT'S PHONE#: _____

FINGERPRINTS

APPENDIX "C"

APPENDIX "C"

ORIGINAL
5/22/02

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE COUNTY FILED
CLERK'S OFFICE

A.M. FEB - 3 2003 P.M.

STATE OF WASHINGTON,)

Plaintiff,)

vs.)

SPENCER LEROY MILLER,)

ROBERT CHARLES BONDS, JR.,)

and TONYA ROCHELLE WILSON,)

Defendants,)

PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

No. ~~01-1-06020-3~~

01-1-06020-3

01-1-06021-2

COA NO. 28847-8-11

VOLUME XIV

FILED
COURT OF APPEALS
03 FEB 19 PM 3:17
STATE OF WASHINGTON

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 26th day of March, 2002, the above-captioned cause came on duly for hearing before the HONORABLE FRANK E. CUTHBERTSON, Superior Court Judge in and for the County of Pierce, State of Washington; the following proceedings were had, to-wit:

APPEARANCES

For the Plaintiff: JAMES SCHACHT
Deputy Prosecuting Attorney

For Defendant Miller: PHILLIP THORNTON
Attorney at Law

For Defendant Bonds: ROBERT MEYERS
Attorney at Law

For Defendant Wilson: SCOTT CANDOO
Attorney at Law

Reported by Kyle L. Steadman, RPR, CSR
CSR #STEADKL462RA

1 Q Okay. And was there a transcript generated from the
2 tape?

3 A There was.

4 Q Have you had a chance to compare the transcript to what
5 appears on the tape itself?

6 A Yes. I went back through with the transcript after I
7 got it back from the secretary and followed through on
8 the recording and made corrections and submitted it
9 again for corrections.

10 Q Okay. I'm going to hand you what's been marked for
11 identification as Exhibit No. 329.

12 MR. SCHACHT: Your Honor, may I approach?

13 THE COURT: Yes, you may.

14 Q (By Mr. Schacht) Is Exhibit 329 a true and correct
15 copy of the transcript of the taped statement given by
16 Spencer Miller?

17 A It appears to be.

18 MR. SCHACHT: Your Honor, with the Court's
19 permission, we would like to present the statement, and
20 this is discovery pages numbers 318 through 343. And
21 Your Honor, with the Court's permission, I would like
22 to have the detective read the statements that he said
23 on the tape and myself read the responses from Spencer
24 Miller.

25 MR. THORNTON: I have no objections.

1 THE COURT: We will allow you to do that.

2 MR. SCHACHT: Thank you.

3 Q (By Mr. Schacht) Detective, turn with me to the
4 first page which is marked for identification.
5 It's page 319.

6 A I'm there.

7 Q Starting at the top of the page with the words that you
8 first spoke on tape, would you read those verbatim to
9 the jury?

10 A "It is October 14th, 2001. I'm on case number
11 012870136. It's a shooting that took place at the
12 AM/PM, 11th and Sprague. I'm in the fourth floor
13 conference room with Detective Jean Miller, Detective
14 Wulf Werner and Spencer Miller. Mr. Miller, are you
15 aware this tape recorder is running?"

16 Q "Answer: Yes."

17 A "Do I have your permission to tape this?"

18 Q "You sure do."

19 A I'm going to start by advising you of your rights, and
20 I've advised you previously; isn't that correct?"

21 Q Detective, would you read that response. Mine is
22 obscured.

23 A The response was "Exactly. Right."

24 Q Okay.

25 A And then I go on. "Okay. You have the right to remain

1 silent. Do you understand that?"

2 Q "Answer: Yes."

3 A "Any statements that you do make can be used as
4 evidence against you in a court of law. Do you
5 understand that?"

6 Q "Answer: Yes."

7 A "You have the right at this time to talk to an attorney
8 of your choice and have your attorney present before
9 and during the questioning and the making of any
10 statement. Do you understand that?"

11 Q "Answer: Yes, I do."

12 A "If you cannot afford an attorney, you are entitled to
13 have one appointed for you, without cost to you and to
14 have the attorney present at any time during any
15 questioning and the making of any statement. Do you
16 understand that?"

17 Q "Answer: Yes, I do."

18 A "You may stop answering questions or ask for an
19 attorney at any time during any questioning or in the
20 making of any statement. Do you understand that?"

21 Q "Answer: Yes, I do."

22 A "Do you understand each of these rights which I have
23 explained to you?"

24 Q "Answer: Yes, I do."

25 A "Having been made fully aware of these rights, do you

1 voluntarily wish to answer questions now?"

2 Q "Answer: Yes, I do."

3 A "Okay. Taking you back to last evening, you were up in
4 the area of Browne's Star Grill?"

5 Q "Answer: Yes, I was."

6 A "What happened at Browne's Star Grill last night?"

7 Q "Answer: When I came around through the back to talk
8 with Fred Brown that was sitting between two cars
9 there, I had seen -- well, I observed Andre Bonds
10 coming out of Browne's through the back door, the
11 second back door. He didn't come out the one that you
12 usually go in. He came out the one by the garbage can
13 saying: Spencer Miller, I just got through piecing
14 these niggers up in here. I didn't know what he was
15 talking about, but he -- come to find out, I'd seen the
16 guy that you guys called Daron come out the door with
17 his mouth bloodied. And after that, Cory came out a
18 little bit after that and kept walking, and Daron and
19 that other guy, what's his name, Keith, whatever, they
20 were talking like: What's up? Let's go on and handle
21 this. By that time, Cory had walked off and kept going
22 like he was going to get something. So he came around,
23 like I said, he came around the back."

24 A "Okay. I need to slow you down a little bit here.
25 When we talk about Cory, do you know Cory's full name?"

- 1 Q "Answer: No, I don't."
- 2 A "Do you know him by any other names?"
- 3 Q "Answer: Monte, you said. You said Monte."
- 4 A "Is that -- do you know him by Monte?"
- 5 Q "Answer: No, I heard that, but I -- I only know him by
6 Cory."
- 7 A "Okay. Do you know what he was wearing?"
- 8 Q "Answer: A -- like a -- do you know if they did a
9 fisher cap that -- but this is like a cowboy's or
10 something. You know what I'm talking about? The fish
11 hat, but it was -- the round?"
- 12 A "The brim?"
- 13 Q "Answer: The brim kind. It was the floppy kind too,
14 you know, just put on his head. It was like a blue
15 right here and a light color here."
- 16 A "Light color on top?"
- 17 Q "Answer: Yeah. Light color. It had blue here, you
18 know, like blue but with the white trim and light --
19 light trimming, the same color as the top."
- 20 A "Okay. What else was he wearing?"
- 21 Q "Answer: Leather coat."
- 22 A "What color?"
- 23 Q "Answer: Black."
- 24 A "Pants?"
- 25 Q "Answer: Probably, I don't know. I wasn't -- black."

1 A "It was unintelligible."

2 Q "Could have been."

3 A "Okay."

4 Q "Dark blue jeans."

5 A "Okay: Do you remember what Andre was wearing?"

6 Q "Answer: At the time, he came out of Browne's, he was
7 wearing two pairs of gloves. He didn't have no coat
8 on; he just had on a striped shirt."

9 A "What color was the shirt?"

10 Q "Answer: Like a dark blue with stripes. It had
11 stripes, I think, with a color, a button color, just to
12 here. Wasn't full button, so it was just --"

13 A "And Andre's full name?"

14 Q "Answer: Andre Bonds."

15 A "Okay. Do you know him by a street name also?"

16 Q "Answer: Stretch."

17 A "Okay. So he's coming out. He tells you that he just
18 got it up with --"

19 Q "Answer: No. I just pieced this nigger up in there."

20 A "Okay."

21 Q "Answer: I know that cop."

22 A "Right."

23 Q "Answer: So, it was like he just got in a fight."

24 A "Then you said the person we showed you earlier --"

25 Q "Answer: Showed me of Daron?"

1 A "Of Daron."

2 Q "Answer: Shortly followed out."

3 A "Okay. And what happened then?"

4 Q "Answer: A little confrontation out there about,
5 what's going on, what you want to handle this. Let's
6 go do this. Let's go handle this. Stretch was like,
7 I'm cool. I already did what I had to, to you. I'm
8 sorry -- I did what I had to do to you. Let's chill
9 out, do you know what I'm saying, before the police
10 come? By that time, while he was over at his car, I
11 don't know what he was doing at his car. Andre, at his
12 car, he was just standing there like this. Like, you
13 know what I'm saying? What you talking about? But he
14 was like, what you talking about? What you want to do,
15 homeboy; I pieced you up. And homeboy was like, come.
16 Come see me over here. I'm not going to go where
17 you're at. Come see me over here, and he walked over a
18 little bit. Stretch walked over. By that time when
19 Stretch was walking from his car, from the back, I had
20 observed Cory; do you know what I'm saying? Back there
21 looking at Stretch, like, what's up now? Before he
22 caught the gun. Do you know what I'm saying? I'm
23 still --"

24 A "You saw him with the gun?"

25 Q "Answer: Yes."

1 A "Behind Browne's?"

2 Q "Answer: Same gun --"

3 MR. SCHACHT: Your Honor, I'm going to ask
4 the detective to read that line because part of mine is
5 obscured.

6 A "Same gun I seen him with at AM/PM. And was he near a
7 car at that time?"

8 Q "Answer: No. There was no cars back there at that
9 part by the medical place. He was on this side of the
10 street of Browne's, but there was no cars back there
11 parked like in those stalls so you could see him clear
12 as --"

13 A "Okay. And what did the gun look like?"

14 Q "Answer: It was a chrome -- a chrome like with black.
15 Black. It looked like a -- I don't know like a -- what
16 they call it, like graphite, but it looked -- it looked
17 more chrome. It might have been twotone. You never
18 know. But the top part of it was chrome."

19 Q "You're indicating it was a semiautomatic?"

20 Q "Answer: Yeah. Yeah."

21 A "Definitely?"

22 Q "Answer: Yeah."

23 A "Okay. Go ahead."

24 Q "Oh, anyway, well after he did that, Tone Bone was
25 yelling: Fool, don't you see the police over there?"

1 Quit that bullshit. He disappears through those
2 buildings, through those medical buildings. We still
3 talking. Daron and them get -- I don't even know where
4 they went. You know what I'm saying? They left.
5 There was no argument about fuck hilltop or fuck LA
6 then. He comes back to the front -- no, through the
7 back way, tank top on, walks in there.

8 A "Who came through?"

9 Q "Answer: Daron came back, but he came back three
10 times."

11 A "Okay. Came back."

12 Q "Answer: He came back through and walked through the
13 parking lot of Browne's. Walked through the back door,
14 went in. They said him and Andre got in a scuffle in
15 there. I can't see because I couldn't go in Browne's.
16 Anyway, ended up in the front, so I ran around to the
17 front. They're out there arguing. He's telling
18 Stretch put the fucking bottle down, bitch. Let's
19 handle this shit. You big old bitch. You can't
20 fucking see me. Just 'cause you punch my mouth don't
21 mean shit. You're weak. Let's get him up. Woo. Woo.
22 Woo. By that time, it wasn't no police. It was just
23 the security guards out there."

24 A "A large crowd?"

25 Q "Answer: Large crowd, about 16. No. No. I'd say

1 about 40 people. 40 people. Like people in Browne's
2 are even coming out. We were out there, you know what
3 I'm saying, like --"

4 A "Stretch had a bottle in his hand?"

5 Q "Answer: Yeah, like a Micky's bottle?"

6 A "Okay."

7 Q "Answer: A deuce deuce, so it might -- I don't know.
8 It might have been a Sprite bottle. I don't know what
9 it was, but it was green. So homeboy was telling him
10 "put the weapon down, bitch. Put the weapon down, so
11 I'm looking at Stretch like, you know what I'm saying?
12 Handle your business. Go ahead. Go head up with him.
13 You know what I'm saying? You said you pieced him up.
14 He was looking at me like, nah, these guys will try to
15 jump me. How do you know if somebody is going to jump
16 you, when you got your home boys out there? I guess,
17 like I said, he was scared. See what I'm saying?
18 Stretch was scared to fight him again because he
19 might -- he might have went and got pumped up. Do you
20 feel me, and like, come back and just dust Stretch off.
21 So anyway, by that time the security guards went back
22 in. There was two of them out there, Ace and another
23 one. The other one went back in. The younger one went
24 back in, and Ace was still standing there at the door
25 talking about people can't come back in here and he was

1 blocking people. You know what I mean? Can't come
2 back through this way, but I guess the other one called
3 the police, and they came real -- you know, to Browne's
4 out in the front real quick. Cars just started hitting
5 the block with their lights on, not fast just cause
6 they saw the crowd. Got out of the car. They got out
7 the car and people just started walking slow. You know
8 how we do it, walking slow away from them."

9 A "Which direction were you walking?"

10 Q "Answer: We walked towards the Dollar Store?"

11 A "So southbound on MLK?"

12 Q "Answer: More towards 19th. Yeah, going that way. We
13 were all walking in the, you know, a little crowd.
14 It's the corner but hits that corner right there on the
15 Dollar Store going back."

16 A "Headed west then?"

17 Q "Answer: Going on 12th, going towards Browne's again,
18 to the back. Right when we got to the alley Daron --
19 the guy that was going to take Daron -- was in the tank
20 top walked up further than everybody by, like, with a
21 few other people. He was with this guy named Bobby.
22 That's my homeboy's brother, Bobby. He was with him.
23 He was like trying to calm down, like, come on, man.
24 You're going to get hurt out here. You'll get hurt.
25 He just went off the blue like fuck Hilltop. This is

1 Compton. L-A. L-A. And I just like -- I said -- I
2 said, nigger, fuck Compton, fuck L-A, see what I'm
3 saying? I never did one time say you're going to get
4 yours or nothing. After that, he left, you know what
5 I'm saying?"

6 A "Well --"

7 Q "Answer: I'm just telling you, you know? I'm saying
8 how it went down. He walked off. No matter -- no
9 matter of fact, he walked by us. And he walked up the
10 street behind Stretch, and Stretch was going up the
11 street like -- do you know what I'm saying -- because
12 somebody kept saying Andre, they're running your name
13 right now. You better get out of here. So he starts
14 to pick up the pace; do you know what I'm saying? He's
15 tall. They're already going to come to him, but he,
16 you know, up the street -- I don't know where he went.
17 I went right back to talking to Spook again. Here
18 comes Daron. You know, matter of fact they said, he
19 come through the front this time; you know what I'm
20 saying? He came out back -- he came back outside. He
21 left. He was like, yeah, I'm going to get this shit
22 handled. I'm tired of getting jumped on or tired of
23 getting stole on like that, but I wasn't having nothing
24 to do with that, you know what I'm saying? He looked
25 right at me, you know what I'm saying? Him and that

1 dude -- what's his name, Keith -- they look right at me
2 and said -- you know what I'm saying? You ain't going
3 to do -- you ain't got shit to do with this. Do you
4 feel me? But I was just sticking up for mines, Ringer.
5 I told him, bottom line, fuck LA and fuck Compton. I
6 never did say we going to get yours or you know what
7 I'm saying? None of that. So it ended then at
8 Browne's?
9 A That should have been: "Then it ended then at
10 Browne's?"
11 Q I'm sorry. That was your question?
12 A Yeah.
13 Q "Answer: Huh?"
14 A "It ended then at Browne's?"
15 Q "Answer: Just the argument there. Everybody, you
16 know, dispersed and went back to what they was doing.
17 People were still sitting in their cars, you know, just
18 chilling. I got in Jerry's car, the Caprice, the smoke
19 gray Caprice was sitting there talking with him."
20 A "Did it have tinted windows?"
21 Q "Answer: Tinted windows. We were sitting in there and
22 we were talking. It was, like, man, what are you about
23 to do? I said, man, I just want to go up to AM/PM and
24 see what's going on, you know what I'm saying? I don't
25 drink. He said, you know, so I might go up there and

1 get me something to eat, a burger or something, so we
2 goes up to AM/PM. We got there holding this, pulled in
3 this stall right here."

4 A "You're talking second stall in from the store?"

5 Q "Answer: Yes."

6 A "Faced toward the carwash?"

7 Q "Answer: Yeah.."

8 A "So faced toward the south?"

9 Q "Answer: Yeah. Exactly."

10 A "Okay."

11 THE COURT: Stop. Okay. We are going to
12 take a brief break, and I will ask the jury to step out
13 for a second.

14 (WHEREUPON, the Jury was excused.)

15 THE COURT: Please be seated. We did, I
16 believe, it was Bruton redactions on these --

17 MR. SCHACHT: We did.

18 THE COURT: -- earlier. When we get to the
19 next passage, we get into some Jewana stuff, and I
20 wanted to, before we got there, wanted to raise it with
21 counsel, particularly where it says in the line: I was
22 already getting out of the car to go see what was up
23 with Jewana because, like you say, this all escalated
24 behind her, and there's a whole sentence there, and I
25 want to -- I'm not sure the Jewana stuff is probative.

1 MR. MEYERS: Great.

2 THE COURT: Skeptical?

3 MR. THORNTON: No. That's fine.

4 THE COURT: Okay. Good. Let's go for it.
5 Let's bring them back in.

6 MR. SCHACHT: I have done the same
7 highlighting --

8 THE COURT: Thank you.

9 MR. SCHACHT: -- on the exhibit.

10 THE COURT: Okay. Let's do this. At this
11 time, we will bring in the jury.

12 (WHEREUPON, the Jury entered the courtroom.)

13 THE COURT: Thank you. Please be seated.
14 Okay. At this time, we are going to continue the
15 direct examination. Mr. Schacht was on discovery page
16 327, which is 11 of 27 of the transcript of Mr. Miller.
17 Mr. Schacht and Detective Ringer, you can continue.

18 MR. SCHACHT: Thank you.

19 (Continuation of reading)

20 THE COURT: Okay. Stop. At this time I
21 want to see the lawyers at side bar.

22 (WHEREUPON, a side bar conference was held
23 between Court and Counsel.)

24 THE COURT: Okay. Thank you. We are on
25 discovery page 335. Mr. Schacht, you can continue.

1 A This is a copy of a report that I generated on October
2 17th after the second interview and the arrest of
3 Mr. Miller.

4 Q Does this report contain the substance of what
5 Mr. Miller told you in that second interview?

6 A It does.

7 Q Okay. As best we can, I'd like to go through the same
8 question and answer format and have you indicate what
9 it is that Mr. Miller told you on the 17th. Okay?

10 THE COURT: I'm sorry. What page of
11 discovery is this?

12 MR. SCHACHT: Your Honor, I'll be starting
13 with 70, and I'd ask the detective to hold on until I
14 ask the first question.

15 Q (By Mr. Schacht) First of all, did you do a
16 preinterview with Mr. Miller in the same way that you
17 had done with Mr. Miller previously?

18 A There was a preinterview.

19 Q Okay. And did he -- did you make reference to what he
20 had told you on the 14th?

21 A That is correct.

22 Q And did he repeat much of what he had told you on the
23 14th?

24 A He did.

25 Q Okay. Now, further, did you ask him questions about

1 MR. THORNTON: When we went to the 3.5
2 hearing, my understanding was he said Mutt-Mutt had
3 told him that the guns were disposed of at his cousins.

4 MR. SCHACHT: Your Honor, I don't recall
5 that it was anything having to do with Mutt-Mutt
6 telling him that. He knew where the guns went, because
7 they went to Mutt-Mutt's cousin up in Seattle and he
8 knew that and told the detective that.

9 THE COURT: Okay. I'm going to allow the
10 question. Bring the jury back in.

11 (WHEREUPON, the jury entered the courtroom.)

12 THE COURT: Thank you. Please be seated.
13 Okay. When we left, there was an objection about the
14 question posed by Mr. Schacht. The objection is
15 overruled. Mr. Schacht, do you want to restate the
16 question.

17 MR. SCHACHT: I'll restate.

18 THE COURT: Thank you.

19 Q (By Mr. Schacht) Did Defendant Spencer Miller say to
20 you what had happened to the gun after the shooting?

21 A He did.

22 Q Did he say that from personal knowledge?

23 A He did.

24 Q Okay. What did he say had become of the guns after the
25 shooting?

ORIGINAL
3/27/02

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE COUNTY FILED
CLERK'S OFFICE

A.M. FEB - 3 2003 P.M.

PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

STATE OF WASHINGTON,)
Plaintiff,)

vs.)

No. ~~01-1-06020-3~~

01-1-06020-3

01-1-06021-2

SPENCER LEROY MILLER,)
ROBERT CHARLES BONDS, JR.,)
and TONYA ROCHELLE WILSON,)

COA NO. 288478-1

Defendants,)

VOLUME XIV

FILED
COURT REPORTERS
03 FEB 19 PM 3:17
STATE OF WASHINGTON

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 26th day of March,
2002, the above-captioned cause came on duly for
hearing before the HONORABLE FRANK E. CUTHBERTSON,
Superior Court Judge in and for the County of Pierce,
State of Washington; the following proceedings were
had, to-wit:

APPEARANCES

For the Plaintiff: JAMES SCHACHT
Deputy Prosecuting Attorney

For Defendant Miller: PHILLIP THORNTON
Attorney at Law

For Defendant Bonds: ROBERT MEYERS
Attorney at Law

For Defendant Wilson: SCOTT CANDOO
Attorney at Law

Reported by Kyle L. Steadman, RPR, CSR
CSR #STEADKL462RA

1 Defendants have been here for some of the pretrial
2 motions which is why we have redacted out some of the
3 stuff and some of the statements because of the
4 defendants' rights not to incriminate themselves by
5 statements and things like that and the fact that the
6 co-defendants are not to incriminate each other, so
7 anyway our side bar was to make sure that we
8 effectively and correctly state what's in these
9 statements that are being read by Detective Ringer at
10 this point and to the extent there is anything that is
11 incorrect or has been read as incorrect, the defense
12 has an opportunity to cross-examine on those matters.
13 Let's continue. Let's proceed.

14 (WHEREUPON, the jury entered the courtroom.)

15 THE COURT: Thank you. Please be seated. I
16 hope you appreciate the fact that we are cognizant of
17 your need for exercise every several days. Anyway,
18 with that said, Mr. Schacht, your witness. Please
19 continue.

20 Q (By Mr. Schacht) During the investigation of this
21 case, did you also get a chance to interview Defendant
22 Tonya Wilson?

23 A I did.

24 Q Where did that interview take place?

25 A It took place on the fourth floor of the County-City

1 Building in the same room that Spencer Miller had been
2 interviewed, the Office of Criminal Investigation
3 Division.

4 Q Okay. What date did it take place on?

5 A November 16th, 2001.

6 Q Okay. I'm going to be handing you what's been marked
7 for identification as Exhibit 328.

8 MR. SCHACHT: Your Honor, may I approach?

9 THE COURT: Yes.

10 Q (By Mr. Schacht) Do you recognize that as a copy of
11 your police report from that interview?

12 A I do.

13 Q And in the course of making that police report, were
14 you recording the statements that Tonya Wilson made to
15 you on that occasion?

16 A Not on a tape recording, but they were recorded in
17 notes, note form, and then transferred to a report.

18 Q I guess I should rephrase that. Does your police
19 report contain the substance of what she told you that
20 day?

21 A Yes.

22 Q Okay. I'm going to direct your attention to page 3 of
23 that interview. First of all, did you advise
24 Ms. Wilson of her constitutional rights?

25 A She was advised.

1 Q And was another detective participating in the
2 interview?

3 A Detective Davidson was also present.

4 Q Now, in the course of asking her questions about the
5 incident, did you ask her whether or not she had been
6 consuming alcohol?

7 A We did.

8 Q Did she answer that?

9 A She stated she had not been drinking that night.

10 Q Did she make a statement about Keidra, who was another
11 person in the car, having been drinking that night?

12 A She did.

13 Q And what did she indicate about Keidra having been
14 drinking?

15 A Said Keidra was very drunk and was too drunk to drive.

16 Q Did she make a statement about taking the keys from
17 Keidra?

18 A Keidra handed the keys over to her and allowed her to
19 drive.

20 Q Did Ms. Wilson state about where they had parked when
21 they had arrived at the AM/PM?

22 A She did.

23 Q Did she identify what car it was that she was in?

24 A She did.

25 Q Okay. What car was it?

1 A She said it was a stationwagon, but it was in Keidra's
2 possession.

3 Q Okay. Now, did she indicate where that car was parked?

4 A She indicated where she had eventually parked the car,
5 yes.

6 Q Identify for us where that was.

7 A She said she ended up backing up against the rocks
8 along the north side of the store facing towards the
9 pumps.

10 Q Okay. Did she indicate why she had parked in that
11 position?

12 A She did.

13 Q Did she without -- well, did she indicate -- what did
14 she indicate about why she parked in that position?

15 MR. CANDOO: Objection, calls for hearsay.

16 THE COURT: Sustained.

17 MR. SCHACHT: Your Honor, I need to argue
18 this as well. Thank you.

19 THE COURT: Okay. Good-bye.

20 (WHEREUPON, the jury was excused.)

21 THE COURT: Yes, the objection by Mr.

22 Candoo.

23 MR. CANDOO: The objection, I can summarize
24 by saying, isn't it hearsay? Basically -- the reason
25 Mr. Schacht was having trouble phrasing the question is

1 because he knows to properly lead the witness you say
2 didn't somebody tell her, well, that's what the next
3 thing is going to happen, somebody told her, so it
4 seems like it's an out-of-court statement heard by a
5 witness for the truth of the matter asserted.

6 THE COURT: Okay. Thank you.

7 MR. SCHACHT: First of all, it's not hearsay
8 because it's not an assertion of any kind; it's neither
9 true nor false. Someone directed her to pull in there,
10 so it's not true nor false; it's not hearsay; it simply
11 does not meet the definition of hearsay under 801.

12 THE COURT: Okay.

13 MR. SCHACHT: I guess by further argument --
14 I've argued several times that not everything verbal
15 that comes out of someone's mouth is hearsay. This
16 falls into that category; this is a directive.

17 THE COURT: I'm going to -- upon further
18 argument, it doesn't appear that the statement goes to
19 the truth of the matter asserted, just what she
20 perceived at the time she was directed to do it, so
21 I'll allow it in, and that is that she was instructed
22 to pull in front of the rocks by somebody; she doesn't
23 know who.

24 MR. MEYERS: Your Honor, while the jury is
25 out, I just -- Detective Ringer again in the first

1 paragraph was adding information here. It's exactly
2 what we talked about in chambers.

3 THE COURT: What do you think he added?

4 MR. MEYERS: When he said that she was too
5 drunk to drive, and I don't know that that's -- you
6 know, that's his conclusion. He says that she took the
7 keys because Keidra was drunk. We then go to the
8 conclusion somehow she was too drunk to drive, and
9 that's going to impact later avenues of this case as to
10 what happened later in the evening, so I just -- I
11 would like to stick with the script, and if it says
12 that in there, then let's say that's what she said. If
13 it doesn't say it, there's no reason his conclusion
14 should be put in her mouth.

15 THE COURT: Okay. Two things: What it says
16 literally is that Keidra had handed the keys over to
17 Miss Wilson to drive because she, Keidra, was drunk,
18 which I think is fairly consistent with what Detective
19 Ringer testified to in this case. I would admonish the
20 witness, however, to stay as close as you can to the
21 script and not to embellish or add any conclusions that
22 aren't there. I think that what was said at this point
23 was reasonable, but I think we are walking close to the
24 edge on this.

25 THE WITNESS: Your Honor?

1 THE COURT: Yes.

2 THE WITNESS: If reading this jars my memory
3 on something, how should I handle that? Should that be
4 brought to Mr. Schacht's attention during the break
5 or --

6 THE COURT: Well, I think that poses a
7 different question, and then this writing is being used
8 to refresh your recollection. It's not the way we are
9 using it at this point. It's really allowing us to get
10 into statements by party opponents, and so this is a
11 little different, particularly since what we are trying
12 to do here is give the whole text of the statement
13 short of anything that would be self-incriminating;
14 that's why this is difficult, and I think once we --
15 what I would suggest is once we leave the document,
16 that Mr. Schacht can either inquire further or
17 certainly in some cases, the defense counsel will raise
18 issues on cross-examination, and you'll be able to
19 further explicate what you believed at the time was the
20 case.

21 MR. SCHACHT: Your Honor, could I just
22 indicate to the detective while he's on the stand in
23 open court, that I want to stay as close to what's
24 written in the police report as possible. If there are
25 additional things, then certainly we need to bring that

1 up outside of testimony in front of the jury, both for
2 Bruton issues and for 3.5 issues, so if there is
3 something like that, he'll bring that to my attention
4 after he finishes for the day, and I will certainly
5 bring that to the attention of counsel.

6 THE COURT: Thank you for the further
7 explanation, Mr. Schacht, because those were the other
8 two reasons -- I mean, we did carefully redact these to
9 avoid what are known as Bruton issues, as well as
10 Criminal Rule 3.5, so let's stay close to the script.
11 Let's bring in the jury.

12 (WHEREUPON, the jury entered the courtroom.)

13 THE COURT: Thank you. Please be seated.
14 Let's continue.

15 Q (By Mr. Schacht) Detective, once again, in the course
16 of the interview with Tonya Wilson, did she indicate to
17 you why she had backed in the car to the rock wall?

18 A She did.

19 Q What did she say about that reasoning?

20 A She said someone had told her to back into the rock
21 wall, but she couldn't remember who.

22 Q Okay. Did she make a further statement about having
23 left the car?

24 A She did.

25 Q Okay. Did she indicate to you where she went after she

- 1 left the car?
- 2 A She did.
- 3 Q Did she indicate what -- well, where did she go?
- 4 A She said she had gone to the front of the store where
5 she borrowed a cell phone.
- 6 Q Did she indicate who she borrowed it from?
- 7 A From one of the Strickland (phonetic) brothers.
- 8 Q Did she indicate whether or not she had made a phone
9 call using that phone that she borrowed from the
10 Strickland brothers?
- 11 A She did.
- 12 Q Who did she call when she used the phone?
- 13 A Said she called Stretch or Andre Bonds.
- 14 Q Was she able to remember any of the phone number that
15 she had dialed when she called Andre Bonds?
- 16 A She was.
- 17 Q What were the numbers that she was able to remember?
- 18 A Well, in response to being asked, she said that his
19 cell phone number ended with 2325.
- 20 Q Did she make further statements about Stretch arriving?
- 21 A She did.
- 22 Q And did she indicate when he had arrived at the AM/PM?
- 23 A She said a few minutes after she had called, he
24 arrived.
- 25 Q Okay. Did she indicate what car he was in?

- 1 A He arrived in his blue Tempo.
- 2 Q Did she tell you where he had parked?
- 3 A Said that he had parked in front of the store possibly
4 on five or six.
- 5 Q Did she make a statement about seeing Jewana Milligan
6 at the AM/PM?
- 7 A She did.
- 8 Q Did she indicate where Jewana Milligan was standing?
- 9 A She said she had seen her standing at the front door of
10 the store.
- 11 Q Okay. Did she tell you why she did not -- why did she
12 take note of Jewana Milligan being there?
- 13 A She noted Jewana's location because she doesn't get
14 along with Milligan.
- 15 Q Did she indicate also seeing a person identified as
16 Chris Robinson?
- 17 A She did.
- 18 Q Did she indicate where he was?
- 19 A She did.
- 20 Q Where was that at?
- 21 A She said he was in a blue mini van by pump three. He
22 was alone in the front passenger seat.
- 23 Q Did she indicate to you why she was paying attention to
24 Chris Robinson?
- 25 A Yes. She said that she was watching because she used

1 to, quote, "kick it with him."

2 Q Did she make a statement about seeing Renee Allen at
3 the AM/PM?

4 A She did.

5 Q Did she indicate where Renee Allen came when she came
6 to the AM/PM?

7 A She said she had seen Renee in her car parked directly
8 behind Stretch at the pumps.

9 Q Did she indicate what she, Tonya Wilson, had done with
10 respect to Renee Allen's car?

11 A She did.

12 Q What did she say about that?

13 A She said she walked over to Renee's car and talked with
14 Renee.

15 Q Did she make a statement about who was gathered around
16 Stretch's car?

17 A She did.

18 Q Okay. Did she make a statement as to who was also at
19 the front door?

20 A She did.

21 Q Okay. Now, did she identify -- and this would be a yes
22 or no question -- did she identify by name any of the
23 people at Stretch's car?

24 A Other than Stretch, no.

25 Q Okay. Did she identify by name any of the people at

- 1 the front door?
- 2 A No.
- 3 Q Did she indicate that she had gone back to the
4 stationwagon?
- 5 A She said she had.
- 6 Q Did she indicate that she, after going back to the
7 stationwagon, had proceeded to leave the lot?
- 8 A She stated that they ultimately left the lot.
- 9 Q In a car?
- 10 A Yes.
- 11 Q What car?
- 12 A In the stationwagon.
- 13 Q Did she indicate by what exit she left the lot?
- 14 A She did.
- 15 Q And what exit was that?
- 16 A The 11th Street.
- 17 Q Did she make reference to the phone booth?
- 18 A She did.
- 19 Q What did she say about the phone booth?
- 20 A She said as she was leaving toward 11th Street exit
21 just prior to reaching the phone booth, she heard
22 gunshots behind her.
- 23 Q Did she indicate how many gunshots she heard?
- 24 A She said she heard between 8 and 10 shots.
- 25 Q Did she indicate where those shots sounded like they

1 were coming from?

2 A They thought they were coming from the area of pump
3 five or six.

4 Q Did she indicate who she had last seen in the area of
5 pump five and six?

6 A She did.

7 Q What did she say about that?

8 A She said she had last seen Stretch in that area.

9 Q Did she make a statement about whether or not she had
10 actually seen with her own eyes somebody shooting?

11 A She did.

12 Q What did she say about that?

13 A She said she saw no one shooting, but she didn't look
14 in the mirror in an effort to see anyone.

15 Q Did she make a statement about whether or not Renee
16 Allen had left before she also left?

17 A She did.

18 Q What did she say about that?

19 A She said Renee Allen's car had left prior to her
20 leaving the stationwagon and definitely had left ahead
21 of the gunshots.

22 Q Did she make a statement about whether or not she had
23 seen Stretch leave the lot?

24 A She did.

25 Q What did she say about that?

1 A She said she had never seen Stretch leave.

2 Q Did she indicate where she went after she left the
3 AM/PM lot?

4 A She did.

5 Q Where did she go?

6 A She said she went westbound on South 11th Street and
7 went straight to Renee's house.

8 Q Did she make a statement about Stretch also arriving at
9 Renee Allen's house?

10 A She did.

11 Q What did she say about that?

12 A She said when they got there in the stationwagon,
13 Stretch was already there just pulling up and that he
14 had his break lights still on.

15 Q Did she indicate whether she had gone inside Renee
16 Allen's house?

17 A She did.

18 Q And did she also indicate whether the people in
19 Stretch's car also went in Renee Allen's house?

20 A She did.

21 Q Did she make a further statement later on about who had
22 come and gone from Renee Allen's house?

23 A She did.

24 Q And when she did so, did she identify who had come and
25 gone from Renee Allen's house? And that would be a yes

1 or no question.

2 A No.

3 Q Did she indicate what time she had arrived home that
4 evening?

5 A She did.

6 Q And what time was that?

7 A Approximately four in the morning.

8 Q And did she identify where home was?

9 A She did.

10 Q What was the address?

11 A 1729 South 43rd Street.

12 Q Did she make further statements with respect to what
13 had happened at Browne's?

14 A She did.

15 Q Did she give you statements about Stretch fighting at
16 Browne's?

17 A She did say Stretch had been fighting.

18 Q Did she identify who the person was that Stretch was
19 fighting with?

20 A Yes.

21 Q And what did she say about that?

22 A She said it was Cory and someone else who was
23 light-skinned.

24 Q Did she make a further statement about where she went
25 during the fight?

- 1 A She said she had ran outside.
- 2 Q Did she make a statement about a conversation she had
3 with Neechie?
- 4 A She did.
- 5 Q What did she say about that?
- 6 A She said she heard Neechie say: I'm going to make sure
7 they know they got a gun.
- 8 Q Did she make a statement about what she told Neechie in
9 reply?
- 10 A She did.
- 11 Q Did she tell Neechie to mind her own business?
- 12 A She did.
- 13 Q Did she make further statements about having had prior
14 problems with Neechie?
- 15 A She did.
- 16 Q And about having fought with Neechie before?
- 17 A Yes. She said on several occasions.
- 18 Q Did she indicate whether she had gone back inside?
- 19 A She did.
- 20 Q And what did she say about that?
- 21 A She said: I'm going to go back inside. She had argued
22 some more with Neechie, but nothing had come of it.
- 23 Q Did she make statements about Neechie spreading rumors?
- 24 A She did.
- 25 Q What did she say about that?

1 A She assumed that because of what Neechie had said
2 previously, she assumed that she was also spreading
3 rumors about them doing the shooting later at AM/PM.
4 Q Did she make a statement as to whether she had seen
5 Neechie at the AM/PM?
6 A She did.
7 Q What did she say about that?
8 A She said she had not seen Neechie at the AM/PM.
9 Q Did she make a statement as to whether or not she had
10 seen Mutt-Mutt or Darryl Henderson at the AM/PM?
11 A She said she had not seen Mutt-Mutt there.
12 Q Did she make a statement about Tiny D-loc?
13 A She said that she didn't know who Tiny D-loc was.
14 Q Did she make a further statement about the Strickland
15 brothers at the front door?
16 A She did.
17 Q And again, this is referring to being at the AM/PM,
18 correct?
19 A That's correct.
20 Q Okay. Did you ask her another question about the phone
21 that she had used?
22 A Yes, I did.
23 Q What did she say about that?
24 A She couldn't recall specifically which of the
25 Strickland brothers had loaned her the cell phone for

1 the call to Stretch.

2 Q Did she indicate how long total she was at the AM/PM?

3 A She thought all of about 15 minutes.

4 Q Did she indicate how long Stretch was at the AM/PM?

5 A She thought that he was only there about seven or eight
6 minutes.

7 Q Did she make a statement about it being raining that
8 night?

9 A She did.

10 Q What did she say about that?

11 A It was in response to asking about her car windows, and
12 she said that because it was drizzling, all her car
13 windows were up that night.

14 Q Did you ask her whether any shots had been fired from
15 her car?

16 A I did.

17 Q Did she respond to that question?

18 A She did.

19 Q What did she say about whether or not shots had been
20 fired from her car?

21 A She said there was no shots fired from her car.

22 Q Did she make a further statement about the video
23 cameras at the AM/PM?

24 A She did.

25 Q What did she say about that?

1 A She said the video camera should show no one fired out
2 of her car and there was no gun in her car.

3 Q Did she make a statement about knowing what gunfire
4 sounds like from a car?

5 A She did.

6 Q What did she say about that?

7 A She stated that she knows what the sound of gunfire is
8 when it is coming from her car as she's been in cars
9 before that gunshots have been fired out of.

10 Q Okay. Did she make a statement as to whether she had
11 seen Cory -- and this would be Cory Thomas, I take it,
12 correct?

13 A That's correct.

14 Q Whether she had seen Cory or any of the others of
15 Cory's group that night at the AM/PM?

16 A She stated she had not seen any of them.

17 Q Did she make a further statement about how long that
18 Keidra and Tasha had been at Renee's house?

19 A She said Keidra and Tasha had stayed at Renee's house
20 for only about 15 minutes.

21 Q Thank you. The date that you took the statement from
22 Tonya Wilson -- well, let me rephrase that. Did you
23 ever track down the tan stationwagon?

24 A We did.

25 Q And were you able to take photos of that car?

APPENDIX "D"

1 polygraph by Detective Barnes of the Pierce County
2 Sheriff's Department.

3 That polygraph was undertaken only after an
4 advisement of Mr. Miller's rights and Mr. Miller
5 agreed to undergo the polygraph examination. There
6 was a subsequent interview also following the
7 polygraph examination regarding some questionable
8 responses. He was not under arrest on the 17th
9 when he came in. He was under arrest after the
10 polygraph examination and after the brief
11 interview. He was then booked.

12 The Court finds that his statements will come
13 in in the redacted form as proper. I'd ask-- I am
14 going to do this in a lightly bifurcated way. I am
15 going to give you an opportunity to any particular
16 part of the interviewed statement. I reviewed the
17 redaction. I haven't heard any objection to the
18 redaction. I will give you an opportunity to do
19 that.

20 As to Ms. Wilson 11/16, 2001 statements,
21 undisputed facts are that the house was under
22 surveillance that she resided in at the time with
23 Mr. Bonds. Pat Nicholas was encountered by the
24 Tacoma Police Department. It is disputed whether
25 Pat Nicholas called them and asked them to come out

1 or whether the police asked them to come out.
2 Anyway, both Mr. Bonds and Ms. Wilson came out,
3 cited. There were no attempts to take any
4 statements from them at the scene of the arrest.
5 No statement were made at that time. Ms. Wilson
6 was brought to the CID interview room on the fourth
7 floor where she was subject to arrest while she was
8 in custody. She was advised of her rights. She
9 agreed knowingly, willfully, and voluntarily and in
10 an intelligent basis to waive her rights and talk
11 with the police at that time. She didn't appear to
12 be intoxicated or otherwise impaired or incompetent
13 and unable to understand her rights and so her
14 statements will come in in the redacted form as
15 well.

16 Is there any issue as to the manner in which
17 Mr. Schacht has redacted the statements by Ms.
18 Wilson and Mr. Miller?

19 MR. MEYERS: Yes, Your Honor. Robert
20 Meyers on behalf of Defendant Bonds.

21 I have gone over most of these with Mr.
22 Schacht, and I believe that most of them are
23 agreed. And the one that is not agreed, I will
24 point it out to you, Your Honor.

25 THE COURT: Okay. You are gonna have to

1 what he had done after he had heard the shots and where
2 he had gone?

3 A Yes, I did.

4 Q Okay. What did he tell you about what he had done
5 after the shots and where he had gone?

6 A Said he ran across the intersection there at Sprague
7 and had made his way over to Renee's house on Prospect
8 Street where he stayed for about 15 minutes or so.

9 Q Okay. Did you ask him who was at that house and did he
10 respond with a female?

11 A A female, yes.

12 Q Okay. By name, did he identify who she was?

13 A He said a gal named Jessica.

14 Q Did he also indicate a few other people were there as
15 well?

16 A He did.

17 Q Okay. Did you ask him or did another detective ask him
18 if there was anyone from the AM/PM at Renee's house?

19 A He was asked that.

20 Q Okay. And did he respond to that question?

21 A He did.

22 Q And what did he say in response to that question?

23 A He said that there was no one from the AM/PM at Renee's
24 house.

25 Q Was he asked questions about how he had gone to the

1 AM/PM?

2 A He was.

3 Q Okay. Did he answer those questions?

4 A He did.

5 Q What did he say about how he had gone to the AM/PM?

6 A Said he had gone to the AM/PM in Jerry Jackson's newer
7 gray Caprice.

8 Q Did he make a further statement about meeting a female
9 at the AM/PM?

10 A He did say that once they got to the AM/PM and Jerry
11 parked next to the pumps, that an unknown female had
12 hopped into the car with Jerry Jackson.

13 Q Did he say what he had done after she had gotten in the
14 car?

15 A He said he was out of the car at the next pump over
16 talking to Andre Bonds.

17 Q Did he indicate what Jerry Jackson had done at that
18 time?

19 A Said Jerry Jackson had pulled out of the spot and gone
20 off to park.

21 Q Okay. Did you ask questions about what Cory Thomas had
22 done when he got out of the car?

23 A I did.

24 Q And what did he respond about that?

25 A He continued to insist that Cory had gotten out of the

1 car with a gun in his hand and was holding it up in the
2 sky. He said he couldn't be certain that Cory had
3 actually fired a round, but stated he saw the -- after
4 the shots first went off, that Cory had brought the gun
5 down.

6 Q Okay. Did he indicate he saw that happen?

7 A He did.

8 Q Did he make a further statement about where Daron
9 Edwards was at the time the shooting started?

10 A He did.

11 Q Okay. Where did he say that Daron Edwards was at the
12 time the shooting started?

13 A Said when the shooting started, he thought Daron was
14 half sitting in his vehicle as if he was trying to get
15 out.

16 Q Did he make further statements about how long he had
17 been at the house on Prospect?

18 A He did.

19 Q What did he say about that?

20 A Said he had been there for approximately 15 minutes
21 before he left.

22 Q Did he indicate where he went after that?

23 A He did.

24 Q What location did he go to?

25 A Said he walked back on 12th Street to Browne's Star

1 Grill where he waited for people to come through.

2 Q Did he indicate then he went to 19th Street?

3 A He said he walked from there to 19th street where he
4 spent a couple hours --

5 Q Hold on. Hold on. Hold on. Did he make a further
6 statement about where he went after 19th Street?

7 A He stated they then walked toward 25th and MLK.

8 Q And did he indicate what he had done at that location?

9 A Said he walked back and forth between 25th and 19th
10 Street for many hours.

11 Q Okay. Did he indicate how he had made his way home?

12 A Said a person named Jason Valez gave him a ride home.

13 Q At what time did he arrive home?

14 A He thought he arrived home at 7 in the morning.

15 Q Okay. Did you ask further questions of Mr. Miller as
16 to whether he was hiding something?

17 A He was asked if he was hiding something.

18 Q Okay. And did he make further statements about who was
19 involved in the shooting at the AM/PM?

20 A He did.

21 Q Okay. Did he say something about that person knowing
22 something about his family?

23 A His quote was "They know too much about my family."

24 Q Okay. And did he identify a person who had done it?

25 A He identified a person who was involved, yes.

1 Q Okay. Was the person Darryl Henderson?

2 A It was.

3 Q And did he identify Darryl Henderson as Mutt-Mutt?

4 A He did.

5 Q Did he make further statements as to specifically what
6 Darryl Henderson had done?

7 A He did.

8 Q What did he say about what Darryl Henderson had done?

9 A One quote was, "I know Darryl went around to the
10 alley," end quote. He said: Darryl had been having
11 trouble with these guys, that when the victims pulled
12 up near the pumps, Darryl walked away from the area and
13 Andre Bonds, where he had been standing, headed toward
14 the phone booth on the north side of the lot. He said
15 that he had seen -- Darryl then headed up to the alley
16 where he'd shot from the alley.

17 Q Did he make a further statement about Darryl Henderson
18 and a gun?

19 A Yes, he did.

20 Q What did he say about that?

21 A He said Darryl Hendersen always packs a gun and that
22 night he had a brushed metal .38 with a brown handle
23 revolver.

24 Q Did he say what Darryl Henderson had told him?

25 MR. THORNTON: Objection, hearsay.

APPENDIX "E"

5-24-02
Appeal

FILED
COURT OF APPEALS

FILED
IN COUNTY CLERK'S OFFICE

02 NOV 13 AM 9:57

A.M. OCT 31 2002 P.M.

STATE OF WASHINGTON

PIERCE COUNTY, WASHINGTON
BOB SAN SOUCIE COUNTY CLERK
BY [Signature] DEPUTY

BY [Signature]
DEPUTY

ORIGINAL

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	
vs.	)	Superior Court Nos.
	)	01-1-06020-3
	)	01-1-05476-9
	)	01-1-06021-1
	)	Court of Appeals
ROBERT BONDS, SPENCER MILLER	)	Nos.
	)	(Consolidated to)
and TONYA WILSON,	)	28847-8-II
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS

PAGES 1-155

BE IT REMEMBERED that on the 25th day of February 2002, the following proceedings were held before the Honorable FRANK CUTHBERTSON, Judge of the Superior Court of the State of Washington, in and for the County of Pierce, sitting in Department 21.

The Plaintiff was represented by its attorney, JAMES SCHACHT;

The Defendant Robert Bonds was represented by his attorney, ROBERT G. MEYERS;

The Defendant Spencer Miller was represented by his attorney, PHILIP THORNTON;

The Defendant Tonya Wilson was represented by her attorney, SCOTT CANDOO;

WHEREUPON, the following proceedings were had, to wit:

CATHY D. SCHAMU, RPR, CCR
930 Tacoma Avenue South, Department 11
Official Court Reporter, (253) 798-6432

1 Q Where were you physically situated at the time you
2 did the advisement of rights with Mr. Miller?

3 A I was standing just outside the car. He was
4 seated, I believe, with his legs out.

5 Q Okay. Did you take a verbal statement from him
6 there at the scene?

7 A No. We did something else there first.

8 Q Tell the Court what that was.

9 A I explained to him why he was in handcuffs, the
10 AM/PM. And he made it clear he knew what I was
11 talking about. He nodded in agreement and stated
12 he was there but didn't participate. And I
13 informed him that we were interested in searching
14 his residence. I explained to him that we were
15 prepared to go attempt to get a search warrant.
16 And he said that was not necessary, that he was
17 willing to-- he would willingly give consent and
18 would also give consent for his vehicle that was
19 parked in front. So we took him back into the
20 residence, uncuffed him. And in the kitchen area
21 over a little table we filled out consent search
22 for the residence and then also for his vehicle.

23 Q I will be handing you what's been marked for
24 identification as Exhibit No. 7. I will show it to
25 the defense. And, again, for the record, this

1 would be discovery page 80.

2 Do you recognize Exhibit No. 7?

3 A I do.

4 Q Tell the Court what it is.

5 A This is the City of Tacoma police department form
6 for consent to search. And it's filled out. The
7 name is Spencer Miller for the address at 6715
8 South Monroe, Apartment No. A., and an '87 Ford
9 Thunderbird.

10 Q Did you participate in the search of the residence
11 and of the vehicle?

12 A Yes, I did.

13 Q Was anything of evidentiary value found during
14 either of those searches?

15 A Nothing was taken, but there was some note made of
16 something that became important later on.

17 Q Can you tell the Court what that item was.

18 A Mr. Miller pointed out the clothing that he had
19 worn the previous night. It was hanging over sort
20 of like a terrarium, aquarium in the living room.
21 It was a blue denim jacket and baggy blue jeans and
22 a blue denim hats. It had the pager still attached
23 to it. It had a wallet in it. He said those were
24 the clothes that he had worn the previous night.

25 Q Were those seized?

1 A They weren't.

2 Q Were they seized at a later time?

3 A No, they weren't.

4 Q During the time that you did the search, and up
5 until the time that we are talking with now, did
6 the defendant express to you any reservations or
7 any desire to terminate the contact?

8 A No, he didn't. He was very agreeable throughout.

9 Q And how would you generally describe his behavior
10 with you up until this point?

11 A I was very surprised because I hadn't seen him for
12 a year or so. And, you know, all my contacts
13 before he had always been intoxicated and very
14 obnoxious, threatening, things like that. On this
15 occasion here he was pleasant, he was joking. It
16 was a total about face from what I knew the old
17 Spencer Miller to be.

18 Q After the search did you proceed to a different
19 location for a formal interview?

20 A Yes.

21 Q What location was that?

22 A We came down to the county-city building, went to
23 the fourth floor, the office of the criminal
24 investigations division, and there went into an
25 interview room.

1 Q Now, did you take a taped statement from Mr.
2 Miller?

3 A Ultimately, we did.

4 Q Did you also interview him off tape?

5 A Yes. The majority of the interview would have been
6 before the taped statement.

7 Q Now, did you advise him of his Miranda rights a
8 second time during the course of the interview at
9 CID?

10 A Upon getting back into the offices, I showed him
11 again the form that he had already signed out at
12 the scene at his house, reminded him of that. He
13 said he understood his rights. We didn't actually
14 go through them again, but when we went to the
15 taped statement then on the tape we went through
16 the procedure of reading the rights on to the tape
17 asking him if he understood them and if he was
18 willing to waive them. He stated that he
19 understood and he did waive them.

20 Q Now, referring to the nontaped portion of the
21 interview, could you summarize for the Court what
22 it is that he told you about the shooting that you
23 were investigating?

24 A I will try. He stated that he had been at Brown's
25 earlier in the evening and had witnessed the

1 fights. There had been some yelling back and
2 forth, some insults toward the hilltop crip gang.
3 Some insults back toward Compton. He stated Andre
4 Bonds had come out the back door of Brown's and
5 stated he'd taken to this other guy. He ended up
6 going to AM/PM with Jerry Jackson. And Jerry
7 Jackson smoked gray Caprice. They had actually
8 parked at Pump No. 2. He and Jerry were in there.
9 He said at some point in time a black female had
10 gotten in the back seat of the car. He didn't know
11 who she was. Hadn't paid attention. And about the
12 time she got in, he got out. He stated the next
13 pump over Andre Bonds had backed in a little blue
14 Tempo. He was with a couple gals. He had gotten
15 out and they had talked around the front of the
16 car. The car to the left of Jerry Jackson's car he
17 stated belonged to Florida. It was a Gold
18 Caprice. He wasn't certain quite all who was in
19 that Caprice. But he had gone to the front of the
20 Tempo and had been talking with Andre Bonds and
21 Darrell Henderson. He said Peewee. Robert Bonds
22 had been in the immediate area there. He
23 definitely recalls him being in the back of that
24 Tempo. He said at some point in time he had seen
25 Juwana standing near the front door of the AM/PM.

1 He had gone that way to talk with her. And during
2 the course of talking with her he observed two
3 vehicles come in fairly fast to the AM/PM. One
4 being a black car that he couldn't specify what it
5 was. The other one being a silver Cadillac. He
6 said the silver Cadillac was the one he had seen at
7 Brown's earlier, knew that the people that had been
8 involved in the fight with Andre Bonds belonged to
9 the silver Cadillac. Put the silver Cadillac
10 nosing in-- into a parking spot or onto the strip
11 right next to the front door, nosed in at a 90
12 degree angle to the store. To the black car which
13 had come in first and nosed right up to Florida's
14 gold Caprice at the pumps. He said two guys got
15 out of the black car. He thought one was Corey
16 Thomas. He said Corey Thomas came out and he had a
17 gun in his hand and was holding it up in the air
18 like he was showing everybody. He said at that
19 point in time he started moving. He left Juwana's
20 position and went over toward what would be the
21 southeast-- southwest corner of the lot next to
22 Sprague. There was a white Blazer parked there.
23 He sort of stood behind the white Blazer and was
24 watching things. He said Corey seemed to go
25 through the lot a little bit, gun up in the air

1 just so everybody knew that he had a gun. He said
2 he wasn't watching a whole lot of the other people
3 going on, but knew that-- he said Stretch was
4 behind the blue Tempo, clearly didn't have a gun
5 because both of his hands were exposed. He
6 demonstrated that his hands were moving and there
7 was no gun in his hand. He stated that suddenly
8 gunfire broke out. He couldn't say directly that
9 Corey Thomas had fired a round. He seemed to try
10 to indicate that he thought Corey had started it,
11 but he said I can't say for certain that when he
12 was holding the gun up in his hand that he was
13 shooting the round or not. I said well, there was
14 a whole bunch of bullets around the victims. And
15 his explanation for that was as he was standing
16 behind the white Blazer watching, he observed
17 Peewee sneaking up behind the two victims. And
18 from a position 10 to 15 feet behind them opened
19 fire on the two victims. He was confident about
20 that. He said Peewee what he believed was a .45.
21 It was a .45 that he knew Peewee to have on
22 previous occasions.

23 Miller stated there was approximately 30 to 40
24 rounds that were fired. And he actually went into
25 the sound effects of a different caliber pop, pop,

1 pop, and boom, boom, boom. And indicated there was
2 multiple guns, multiple calibers being fired. He
3 stated that he fled across the intersection at
4 South 12th and Sprague, crossing the street looking
5 back as he was going. Didn't see where all the
6 gunfire was coming from. But from there he walked
7 over to Renee's house to Prospect Street where he
8 stayed for about 15 minutes. He then walked off
9 and walked back toward the area of Brown's. And
10 then walked south on MLK to the area of 19th and
11 25th, and dealing rock cocaine throughout the early
12 morning hours.

13 Q After he gave the oral statement which you've just
14 described, did you then take a taped statement?

15 A We did.

16 Q Was it your intent to record the substance of what
17 he had said in the oral statement and the taped
18 statement?

19 A. It was.

20 Q In your view, did you successfully do that?

21 A I believe so.

22 Q All right. You indicated that on the taped
23 statement that you read on the tape itself the
24 advisement of rights a second time?

25 A Yes, I did.

1 Q Is that a requirement that you are required to do
2 specifically for a taped statement?

3 A I don't know that it's a requirement, but we
4 require it of ourselves.

5 Q And, again, in that advisement of rights, was there
6 any reservation by Defendant Miller to give any
7 further statements on the tape?

8 A No. In fact, he was eager to put it on tape. And
9 at the conclusion he was eager take a polygraph
10 test.

11 Q With respect to the polygraph issue, did he suggest
12 that or did you suggest that to him?

13 A I think I may have suggested it. And his response
14 was well, let's get it going right now. Bring it
15 in here and let's hook me up right now. He was
16 confident that he would pass it.

17 Q After doing the taped statement with Defendant
18 Miller, was there any further contact with him that
19 day?

20 A The decision was made at that time to release him
21 in light of what he had said. I was less than
22 certain that we had the right person at that point
23 in time because of the conflicting stories. He was
24 actually given a ride home.

25 Q So he was not ultimately booked into the jail?

1 A Not that day, no.

2 Q During the time that you interviewed him out at the
3 scene at his house, was he in handcuffs or other
4 restraints at that time?

5 A He was in handcuffs for the most part. He was
6 taken out of handcuffs to fill out the consent to
7 search. And I don't recall whether he was put back
8 in handcuffs at that point in time.

9 Q What about at CID for the taped statement?

10 A He was unhandcuffed.

11 Q Unhandcuffed?

12 A Yes.

13 Q Did you consider that he was free to leave at that
14 time?

15 A No.

16 Q Now, after completing the taped statement and
17 returning Mr. Miller home, when was the next time
18 that you had contact with him?

19 A Well, I probably talked to him over the course of
20 the next couple days by phone. And he had asked
21 for me to arrange a polygraph. And I made a call
22 to Pierce County Deputy Keith Barnes immediately
23 and set one up for the 17th and informed Mr. Miller
24 at the earliest possible time. And the first
25 face-to-face contact after the initial interview

1 was done on the 17th.

2 Q Where did that take place?

3 A Took place in the-- on the first floor of this

4 County-City Building in the offices of Pierce

5 County Sheriff's Department.

6 Q And did Mr. Miller bring himself down to the

7 sheriff's department or did you go get him?

8 A No. He came on his own.

9 Q Okay. Describe for us the procedure that was

10 followed with respect to the polygraph and taking

11 further statements from Mr. Miller.

12 A Well, Keith Barnes ran the polygraph. And so

13 basically I just stayed out of the way. Took Mr.

14 Miller down to the first floor, introduced him to

15 Mr. Barnes. We talked briefly. And Mr. Barnes

16 actually ushered me out of the room and into a

17 viewing room off to the side of it.

18 Q Were you able to overhear what was said between the

19 two of them?

20 A Yes, I was.

21 Q Was any part of that contact an advisement of

22 rights?

23 A It was.

24 Q Who did the advisement of rights?

25 A Mr. Barnes started it by advising him of his

1 rights.

2 Q And you observed that?

3 A I did.

4 Q What was the defendant's response to the advisement
5 of rights?

6 A He was very agreeable, much like the previous time,
7 and was anxious to get on with the polygraph test.

8 Q Did he then take the polygraph test and participate
9 in the question and answer that was required for
10 that?

11 A He did.

12 Q Did you observe any reservation on his part about
13 continuing to participate?

14 A No. He never gave any indication he regretted
15 taking it or wanted out of it.

16 Q At the conclusion of the polygraph, did you
17 interview the defendant further?

18 A Ultimately I did. Initially I didn't. Initially I
19 stayed in the room while Mr. Barnes interviewed
20 him.

21 Q Okay. Tell us what the defendant said after the
22 polygraph.

23 A Mr. Barnes informed him that he had failed to--

24 MR. THORNTON: Objection. Move to
25 strike, Your Honor. Nonresponsive to the

1 question. The question was, what did Detective
2 Barnes ask of him?

3 MR. SCHACHT: Well, I guess I will
4 rephrase it in that way.

5 Q (By Mr. Schacht) What did the defendants say
6 during the interview portion after the polygraph?

7 A He admitted that he had been less than honest in
8 the previous interview, that he had left some
9 things out. Much of what he had told us he stated
10 was still true. He still put Peewee Bonds as
11 sneaking up behind the victims and shooting them in
12 the back. He still stated he had gone over to
13 Renee Allen's afterwards. But he stated that he
14 had left some things out and that's why he had
15 failed the polygraph.

16 Q What did he tell you that he had left out during
17 the initial interview you had done on the 14th?

18 A He stated he had left out the name of the one of
19 the shooters who had participated at the AM/PM.

20 Q Did he identify who that person was?

21 A He did.

22 Q Tell us what he said about that.

23 A He said it was Darrell Henderson, also known as
24 Mutt Mutt. He said that when the two carloads of
25 victims had pulled in, that Mutt Mutt had basically

1 expressed resolves and, I believe along the lines
2 of quote, fuck it. We will take care of this. And
3 had then walked off with another individual through
4 the parking lot, toward the north, toward the phone
5 booths. He said later Mutt Mutt had told him that
6 he had gone to the alley and that he had shot and
7 had seen one of the victims fall. He had said that
8 Mutt Mutt had told him he had went and handled his
9 business. He described a gun that Mutt Mutt had
10 that night. Said it was a .38 brushed metal
11 revolver with a brown handle. He stated that the
12 gun-- he said guns. The guns had been disposed of
13 at Mutt Mutt's residence-- cousin's house in
14 Seattle, and it would be unlikely that we would
15 find them after that. Later he recanted and said
16 one gun.

17 Q How long would you estimate that this interview
18 following the polygraph lasted?

19 A Half hour, 45 minutes, I think.

20 Q The summary that you've just given us of the
21 statements that he made that day, is that the
22 completion of what he had told you? Were there any
23 other-- I guess I should rephrase that.

24 Were there anything additional that he had
25 said on the 17th?

1 you or she at all?

2 A The only raising of that subject was in the reading
3 of the rights when I read that she had the right to
4 one present if she wanted one.

5 Q After advising of the rights, did you take a verbal
6 statement from her?

7 A Yes, I did.

8 Q If you would, please summarize what it is that she
9 told you during that interview?

10 A Well, she stated that she had gone to Brown's with
11 her boyfriend Robert Bonds, aka Peewee, with Kiedra
12 and Tasha in a funky-- an old funky cream colored
13 station wagon which belonged to an individual by
14 the name of Boinky.

15 She said she hadn't been drinking and it was
16 Kiedra-- Kiedra was actually in possession of the
17 car. And because Kiedra had been drinking heavily,
18 she handed the keys over to Tasha to drive. She
19 said she was in the driver's seat with Tasha in the
20 front passenger seat. Kiedra was behind her and
21 Robert Bonds was in the right rear passenger seat.

22 When they got to the AM/PM they started to
23 pull up in front of the store so she ended up
24 backing up against the rocks on the north side of
25 the store facing directly toward the pumps. She

1 was not certain who had told her to do that, but
2 she recalled somebody had told her to position the
3 car that way.

4 She stated that they were in the car and she
5 and Peewee were spoking a joint and she kept
6 emphasizing that Peewee didn't want to be at the
7 AM/PM. She stated she had left the car and went in
8 front of the store and she was borrowing a cell
9 phone from one of the Strickland brothers. And she
10 had called Stretch on his cell phone, asked her
11 what the number was and she could only recall the
12 last four. It was 2325.

13 She said while she was talking with Stretch
14 Peewee came over and took the phone and talked to
15 Stretch himself. She said there was no urgency in
16 the call. It's just that Peewee told Stretch he
17 didn't want to be there with the girls. She said
18 Peewee told Stretch to come to the AM/PM and meet
19 him there.

20 A few minutes later Stretch had actually
21 arrived in his blue Tempo and parked at the pumps
22 in front of the store, thought possibly Pump 5 or
23 6. She said Peewee was out of the car at the time
24 and was up in that immediate area of the pumps
25 talking to Stretch. She said there was two girls

1 in Stretch's car that she didn't know and her
2 concern was that Peewee might be attracted to one,
3 might end up getting flirtatious so she was keeping
4 an eye on Peewee and on the girls.

5 She observed Juwana Milligan there standing at
6 the front door of the store. She doesn't get along
7 with Milligan she said. She said there was a crowd
8 of people around Peewee and Stretch in the area of
9 the blue Tempo. She also said she was a little bit
10 distracted because she was looking at a blue van at
11 one of the pumps that had Chris Robinson in it, a
12 guy that goes by the aka of Chris Crazy. She said
13 that she used to kick it with him, was attracted to
14 him and she was watching him also.

15 She did recall seeing Renee Allan in a little
16 red car parked directly behind Stretch's car at the
17 pumps. She said she had gone over and talked to
18 Renee. Renee had told her that she had made
19 lasagna and had invited Tonya to come over after
20 they were done at the AM/PM.

21 At times she was very clear in what she was
22 describing. Other times she got evasive.

23 MR. CANDOO: Objection. That's not part
24 of any statement my client has made.

25 THE COURT: Sustained. I will disregard

1 that.

2 Q (By Mr. Schacht) I guess, let's focus on what she
3 said as opposed to the impression they had of her
4 statement.

5 What were the further statements that she
6 made?

7 A Well, I had asked her who was around Stretch's
8 car. And at that point in time she stated that she
9 was high and couldn't recall those things. She
10 said she had gone back to the station wagon and
11 Kiedra had wanted to leave as Tasha wasn't feeling
12 well. She said Peewee came back over to the car
13 and began to leave the lot. She stated that she
14 pulling out toward 11th Street, just prior to
15 reaching the phone booth, she heard gunshots
16 directly behind her. She said Kiedra and Tasha
17 were freaking out at that point in time saying go,
18 go, go. She said she heard at least eight to 10
19 shots and she thought they sounded like they were
20 in the area of Pump 5 or 6 where she had last seen
21 Stretch. She said she didn't see anyone shooting.
22 She said she didn't look in the mirror in an effort
23 to see if anyone was shooting.

24 She said that she had seen Renee leaving the
25 pumps prior to the gunshots. She didn't know if

1 Stretch had left prior to the gunshots or not. She
2 said she had gone out of the north side of the
3 AM/PM lot and taken a left on 11th Street, went
4 westbound and right down to Renee's house.

5 When she got there, Stretch was already there
6 and he was pulling up and had his brake lights on.
7 Stretch and the two girls in his car got out and
8 they went into the house with the occupants of the
9 station wagon she was driving. They were in the
10 house for some time playing video games and
11 watching the video channel.

12 Q Did she identify specifically who it was that came
13 to Renee's house?

14 A She identified Stretch and the two girls that she
15 didn't know, the occupants of her car and herself,
16 Robert Bonds, Tasha, and Kiedra. She also thought
17 that in the house was a girl named Tammy, her
18 cousin Jessica and Renee.

19 She said that she was high much of the night
20 and couldn't be certain whether there were others
21 there or not.

22 Q What about Spencer Miller?

23 A She did not recall seeing him there. She said that
24 Peewee had told her that he was there. She said
25 she didn't see either Spencer or Mutt Mutt at

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Renee's house.

THE COURT: Okay. I am going to cut it at this time. Do you have a lot more, Mr. Schacht?

MR. SCHACHT: Not a whole lot, but I do probably have five minutes at least.

THE COURT: Okay. Why don't we stop here.

Detective Ringer, you get to join us again in the morning.

Any other housekeeping matters before we recess for the day?

MR. SCHACHT: No, Your Honor.

THE COURT: Thank you. We are at recess until 9:30.

(Recess.)

APPENDIX "F"

ORIGINAL

02/02/02

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

FILED IN COUNTY CLERK'S OFFICE

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 SPENCER LEROY MILLER,)
 ROBERT CHARLES BONDS, JR.,)
 and TONYA ROCHELLE WILSON,)
)
 Defendants,)
)

A.M. FEB - 3 2003 P.M.
 PIERCE COUNTY, WASHINGTON
 BY KEVIN STOCK, County Clerk
 DEPUTY

No. ~~01-1-05476-9~~
 01-1-06020-3
 01-1-06021-2
 COA NO. 28847-8

VOLUME XVIII

VERBATIM REPORT OF PROCEEDINGS

FILED
 COURT OF APPEALS
 03 FEB 19 PM 3:19
 STATE OF WASHINGTON

BE IT REMEMBERED that on the 2nd day of April, 2002, the above-captioned cause came on duly for hearing before the HONORABLE FRANK E. CUTHBERTSON, Superior Court Judge in and for the County of Pierce, State of Washington; the following proceedings were had, to-wit:

APPEARANCES

For the Plaintiff: JAMES SCHACHT
 Deputy Prosecuting Attorney

For Defendant Miller: PHILLIP THORNTON
 Attorney at Law

For Defendant Bonds: ROBERT MEYERS
 Attorney at Law

For Defendant Wilson: SCOTT CANDOO
 Attorney at Law

Reported by Kyle L. Steadman, RPR, CSR
 CSR #STEADKL462RA

1 anything, and not care about it?

2 Now, think about what the testimony was about some
3 of the reasons why this shooting happened. What did
4 Daron Edwards do? He's at Browne's, and what does he
5 do? He mouths off about "Fuck, Hilltops." You know,
6 it's hard for us to say that even here in court, but
7 think about this, think about what it would be like to
8 go up to Browne's at 2 in the morning, and at Browne's
9 shout out: Fuck Hilltop. If any of you have any
10 thought about what it would be like personally to do
11 that, you know what reasonable doubt is.

12 An abiding belief in the truth that that mattered
13 to somebody because Daron Edwards did that. He did
14 that. And Spencer Miller in his statement to the
15 detective admits that it set him off. He will not
16 admit, would not admit during the statement that it
17 mattered to the point that he threatened to retaliate,
18 but he said it did matter, and he did respond to it,
19 and he did care about it.

20 Why? Because when you disrespect the gang in that
21 direct confrontational way, it matters to the gang. It
22 mattered to Robert Bonds. It matters that Daron
23 Edwards was attacking his co-leader, the man that he
24 cofounded the Hilltop Crips with. Daron Edwards took
25 him to the cleaners that night, and it mattered to

1 Andre Bonds; I'm sure it did. I'm sure Andre Bonds
2 didn't like the fact that he got beat up out in front
3 of his homeboys in front of Browne's in the middle of
4 Hilltop Crips territory. No one would like that.

5 What about Robert Bonds? Did it mean nothing him?
6 A very graphic indication that it did mean something to
7 him is the surveillance photos from Browne's. Again, I
8 don't think you've seen these, but if you look at
9 these, they're all timestamped; they show you in
10 sequence what happens, and in the course of one of
11 these photos, you see Andre Bonds headed out front and
12 guess who's right behind him? Robert Bonds. It did
13 matter to Robert Bonds.

14 It mattered that Andre was getting his ass beat,
15 and it mattered to him that someone would have the gall
16 to shout out Hilltop Crips. And he explained that. He
17 displayed that to Sabrina Stark and Raymond Sinclair,
18 and ultimately at the AM/PM, he took action as a result
19 of it. But you have to bear in mind the context in
20 which the shooting happened. The people who were
21 attacked here, Andre Bonds obviously was attacked, but
22 Andre Bonds also drove away from the AM/PM. Robert
23 Bonds did not. Robert Bonds stayed at the AM/PM.

24 Robert Bonds was the one who Cory Thomas went
25 towards with the gun. Robert Bonds is the one who at

1 of that. He admits that that stationwagon is there and
2 that it pulls out. Now, he admits that it's there. He
3 admits that Robert Bonds is there, and he only deviates
4 because he hates the cops and did not like to be
5 arrested. Homer Wells is one of the people there. He
6 came in and testified, and these are the people who are
7 going to do it.

8 The State can prove their case and has proved its
9 case through these witnesses. And when you go back and
10 when you look person by person, witness by witness,
11 compare the ballistic evidence, compare the videotape
12 evidence, look at it as a whole, you'll see that
13 they're all -- every one of these people as things
14 happened exactly in the same place that other people
15 did where they have no connection to. And the only
16 additional thing is to consider who had the motive to
17 shoot, who had a reason to pull that trigger, who cared
18 whether Daron Edwards was saying "fuck the hilltops.
19 Robert Bonds and Spencer Miller care because they are
20 Hilltops and that kind of disrespect toward the gang,
21 against Andre Bonds cannot be tolerated and is taken
22 care of that night.

23 I thank you for your attention. I'll get a chance
24 to respond to things that defense attorneys argue in
25 their closing argument, but this is going to be a long

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

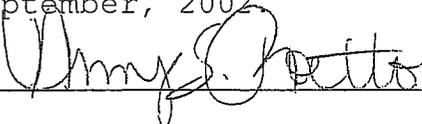
STATE OF WASHINGTON,)	
	)	No.
	)	01-1-06020-3
Petitioner,	)	01-1-05476-9
vs.	)	01-1-06021-1
)	
ROBERT CHARLES BONDS, SPENCER)	
LERoy MILLER, and TONYA WILSON,	)	COA No.
	)	28847-8-II
Respondents.)	

CERTIFICATE

STATE OF WASHINGTON)	
	)	ss
COUNTY OF KING)	

I, AMY S. ROETTO, Certified Court Reporter in the State of Washington, County of King, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

Dated this day of September, 2002



AMY S. ROETTO
Certified Court Reporter
CCR # 1941



APPENDIX "G"

ORIGINAL

Appeal 5/24/02

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

FILED IN COUNTY CLERK'S OFFICE

A.M. FEB - 3 2003 P.M.

STATE OF WASHINGTON,)
)
 Plaintiff,)

PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

vs.)

No. ~~01-1-05476-9~~
01-1-06020-3
01-1-06021-2

SPENCER LEROY MILLER,)
ROBERT CHARLES BONDS, JR.,)
and TONYA ROCHELLE WILSON,)

COA NO. 28847-8-II

Defendants,)

VOLUME IXX

VERBATIM REPORT OF PROCEEDINGS

FILED
COURT OF APPEALS
03 FEB 19 PM 3:18
STATE OF WASHINGTON
DEPUTY

BE IT REMEMBERED that on the 3rd day of April, 2002, the above-captioned cause came on duly for hearing before the HONORABLE FRANK E. CUTHBERTSON, Superior Court Judge in and for the County of Pierce, State of Washington; the following proceedings were had, to-wit:

APPEARANCES

- For the Plaintiff: JAMES SCHACHT
Deputy Prosecuting Attorney
- For Defendant Miller: PHILLIP THORNTON
Attorney at Law
- For Defendant Bonds: ROBERT MEYERS
Attorney at Law
- For Defendant Wilson: SCOTT CANDOO
Attorney at Law

Reported by Kyle L. Steadman, RPR, CSR
CSR #STEADKL462RA

1 he did -- what they did to Andre Bonds and what they
2 did to Robert Bonds. That's a direct challenge.
3 That's a direct challenge to their supremacy, and it's
4 a reason why they would finish what happened at
5 Browne's that night.

6 I'm going to go back to some of the closing
7 arguments that were done yesterday. I've already
8 talked about Judy Divens and the red Nissan. And I'm
9 not going to go back to that, but you know, the first
10 thing that I said to you is, look at all the
11 coincidences you have to buy as coincidences if these
12 defendants had nothing do with it.

13 I'd like to talk a little bit about what
14 Mr. Candoo argued to you. He set up sort of the same
15 thing that Mr. Meyers set up which is a little bit of
16 misdirection in the case. And what he sets up for you
17 is that Andre Bonds set up this. He says that's what
18 the State has tried to prove to you, that Andre Bonds
19 is behind this whole thing, that Andre Bonds directed
20 that this happened, that Andre Bonds made sure that the
21 victims would come down there with guns in this car,
22 that Andre Bonds did all this. That's not the case at
23 all.

24 What did Andre Bonds do? Well, we know that Andre
25 Bonds got into a fight. We know that Robert Bonds was

1 there to see the fight. We know that Daron Edwards got
2 the better of Andre Bonds during the fight. We know
3 that Andre Bonds was at the AM/PM. We also know from
4 the undisputed testimony of Timia Mitchell he wasn't at
5 the AM/PM immediately after Browne's, that he was
6 summoned to the AM/PM by somebody else. By who? Who
7 was it that called Andre Bonds? Who was it whose phone
8 call is reflected in the phone records? Who was it
9 that got him there, and what did Timia Mitchell report
10 when Andre Bonds got there? Okay.

11 Well, Tonya Wilson made that phone call, and it's
12 in her statement, she admits making the phone call, and
13 you've got the phone records to back it up. And Timia
14 Mitchell is in the car at the time the phone call is
15 received. She says they're on McKinley Avenue over on
16 the east side, having nothing do with the AM/PM.

17 A little aside here. Is there any question in
18 anyone's mind what Andre Bonds' intent is to do that
19 night? He has two women in the car, remember, not just
20 Timia Mitchell, but he's got her friend also in the
21 car, and they're almost to Timia Mitchell's house, but
22 they turn around. They do a U-turn and head back to
23 the AM/PM because of a phone call. Okay.

24 Now, they arrive at the AM/PM, and the first thing
25 that happens is Robert Bonds goes over and talks to

1 Andre Bonds. Timia Mitchell reported that, that the
2 two of them came together. A number of the other
3 witnesses also reported that Andre Bonds and Robert
4 Bonds and even Spencer Miller all get together just
5 before the shooting, as Andre Bonds arrives at the
6 scene, and you have the time frame for when Andre Bonds
7 received that phone call and when he arrived, and you
8 see him on the video going into the store.

9 Now, in the same way that a lot of the other
10 evidence in this case is not an accident, the fact that
11 he is summoned to the scene by Robert Bonds by Tonya
12 Wilson by that phone call indicates to you that
13 something is going to happen. It also indicates to you
14 that it's not Andre Bonds who's the driving force
15 behind this. It's not Andre Bonds who's out to avenge
16 his honor after getting his -- this is Daron Edwards'
17 words, an ass whipping at Browne's.

18 It's not Andre Bonds who's the driving force.
19 It's Tonya Wilson and Robert Bonds, and the interesting
20 thing about Andre Bonds is, look what he does when he's
21 there. He's there. He's getting chewed out by Keith
22 Harrell and Daron Edwards, and his car starts pulling
23 out. He jumps in it. And who cares about that? The
24 people behind him, the victims are watching Andre Bonds
25 leave. Andre Bonds is -- they just had this argument

1 with him. They're watching him leave. They got their
2 back to Robert Bonds. It's the perfect opportunity to
3 shoot someone in the back. It's the perfect
4 opportunity to take that chance and fire first, and
5 then drive the heck out of there. But it's very
6 important for you to waive Mr. Candoo's account that
7 Andre Bonds is behind this, that he set this up.
8 That's not consistent with this evidence at all. What
9 is consistent with it is that someone cared about what
10 happened to Andre Bonds. He was brought to the scene
11 and when he drove off, someone took care of business.

12 Now, turning to Mr. Thornton's comments, this is
13 going to be an admission to you. I'm not a dynamic
14 speaker. I'm just not. It's not my personality, but
15 Mr. Thornton, he's very dynamic. He's all over the
16 courtroom. He waves his arm. He pounds the table.
17 He's very excitable. He's very, very excitable. And
18 he says things. He says them quickly. He says things
19 quickly when he's cross-examining witnesses. He's very
20 into it. His approach to saying things to you doesn't
21 make it any more true than my approach in what I say to
22 you. And the jury instruction that talks about the
23 lawyers not -- words not being evidence, it applies to
24 him in the same way it applies to everybody else.

25 Now, that having been said, I want to have you

