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THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE: PERSONAL RESTRAINT OF SALVADOR RIVERA

STATE OF WASHINGTON,

Respondent,

v.

SALVADOR RIVERA,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

PETITIONER'S SUPPLEMENTAL BRIEF
IN THE SUPREME COURT

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A. ISSUE FOR WHICH REVIEW HAS BEEN GRANTED.

The trial judge ordered Salvador Rivera serve an additional 60 months in prison pursuant to the "deadly weapon" finding by the jury and under the "deadly weapon clause," even though a deadly weapon enhancement is defined by statute to allow only 24 months of added prison time. The judge's sentencing order stemmed from the jury's special verdict that Rivera possessed "a deadly weapon" at the time of the crime. The special verdict finding rested, in turn, on an instruction that defined a "deadly weapon" for the jury.

The judge's lack of authority to impose 60 months imprisonment for a "deadly weapon" finding is demonstrated by several recent cases decided by this Court. The only remaining question is whether Rivera is entitled to relief because his direct appeal was final in 2002, and he raises this issue in a personal restraint petition. Because the recent cases explaining the judge's lack of authority to exceed the terms of the jury's verdict and statutory scheme are based on well-established law, and the judgment and sentence evidences the error on its face, Rivera's unquestionably erroneous sentence is unlawful and he is entitled to have the deadly weapon penalty reduced to 24 months.

B. STATEMENT OF THE CASE.

Salvador Rivera was accused of shooting another person and thereby committing first degree murder. Appendix, at 1-2.¹ The charging document further alleged Rivera or a co-defendant was "armed with a deadly weapon, to wit: a .22 caliber handgun, for purposes of the deadly weapon enhancement of RCW 9.94A.125 and 9.94A.310(3)(a)." Id.

In a special verdict form, the jury found Rivera was "armed with a deadly weapon." App. at 3. The jury instruction for the special verdict defined a "deadly weapon," and stated in part:

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime.

A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.

App. at 4.

¹ The attached Appendix contains the First Amended Information, Special Verdict Form, Jury Instruction 37 Defining the Special Verdict, and Judgment and Sentence. The documents are consecutively paginated and are referred to herein by the pertinent page number.

Under the heading "Findings," the judgment and sentence states, "The defendant was found GUILTY on October 13, 1998, by JURY VERDICT of: MURDER IN THE FIRST DEGREE (while armed with a deadly weapon)." App. at 5 (emphasis added). Below this finding, the court cited "RCW: 9A.32.030(1)(a), 9.94A.125, and 9.94A.310(3)(a)a." Id. The next finding entered by the court was: "(XX) With a special verdict/finding for use of a deadly weapon on Count(s): 1." App. at 6 (emphasis added).

Under the heading "Sentencing Data," the judgment and sentence provided: "(deadly weapon clause) 60 mos." Id. (emphasis added).

Under the heading "Judgment," the sentencing order states: "IT IS ADJUDGED that defendant is guilty of the crime(s) of: MURDER IN THE FIRST DEGREE (while armed with a deadly weapon)." App. at 7 (emphasis added). In the court's "Order" it wrote, "60 months for deadly weapon." App. at 8 (emphasis added). Identical language appears in the warrant of commitment. App. at 12.

Rivera filed a direct appeal, in which the Supreme Court denied review on May 1, 2002, and a mandate was issued on May 17, 2002. See COA 43839-5-1. On June 4, 2008, Rivera filed a

CrR 7.8 motion to vacate his sentence, arguing that the 60-month term was the incorrect sentence for a deadly weapon. The motion was transferred to the Court of Appeals as a personal restraint petition. The Court of Appeals ruled that the jury's general verdict finding he was guilty of shooting another person authorized the court to impose a firearm sentencing enhancement. In re Pers. Restraint of Rivera, 152 Wn.App. 794, 797, 218 P.3d 638 (2009), rev. granted, S.Ct. No. 82363-4 (Sept. 12, 2011). The Court of Appeals "decline[d] to follow" other decisions that held firearm enhancements were not authorized by a jury's verdict without a specific finding that the defendant was armed with a firearm as defined by statute. Id. at 805.

Rivera received a 333-month standard range sentence and a consecutive term of 60 months for the deadly weapon. App. at 8. He remains confined under the 33-year sentence imposed in 1998.

C. ARGUMENT.

THE JUDGE'S LACK OF AUTHORITY TO ORDER
RIVERA SERVE 60 MONTHS FOR A DEADLY
WEAPON ENHANCEMENT CONSTITUTES
UNLAWFUL RESTRAINT

1. Rivera's unlawful sentence is properly challenged in a PRP.

a. The sentence is invalid on its face. A sentence that is not authorized by law is invalid on its face. In re Pers. Restraint of Tobin, 165 Wn.2d 172, 176, 196 P.3d 670 (2008). Under RCW 10.73.090, a challenge to a judgment and sentence that is not valid on its face may be brought at any time. Id. at 176 n.2; RCW 10.73.090(1).

A sentence is "invalid on its face" when the sentencing document provides evidence of a sentencing error. In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 866, 50 P.3d 618 (2002). In Goodwin, the petitioner pled guilty based on an agreed offender score, but years later he filed a PRP arguing that two prior juvenile offenses had "washed out" by statute and should not have been used to increase his standard range. Id. at 864-65.

Although his sentence had been final for several years, this court reviewed the applicable statute, which said certain juvenile

offenses would not count in a person's offender score if a later crime was committed after the person was 23 years old. Id. at 867. The court then looked at Goodwin's judgment and sentence, which listed his date of birth and showed he was older than 23 when the crime occurred. Id. This examination showed that judgment and sentence used juvenile offenses to calculate the standard range even though under the pertinent statute and case law, those offenses should not have counted. Id. This sentence was invalid on its face. Id.

A court may consult documents in addition to the judgment and sentence "if those documents are relevant in assessing the validity of the judgment and sentence." In re Pers. Restraint of McKiernan, 165 Wn.2d 777, 782, 203 P.3d 375 (2009). Pertinent documents are "charging instruments, statements of guilty pleas, jury instructions, and the judgments and sentences themselves." In re Pers. Restraint of Hinton, 152 Wn.2d 853, 858, 100 P.3d 801 (2004). In Tobin, the defendant received a sentence of 168 months, but after reviewing the listed prior offenses and pertinent statutes, the court found that the high end of the standard range was 116 months, thus a 168-month sentence exceeded the

standard range on its face. 165 Wn.2d at 176. In Stoudmire,² the sentence was facially invalid where the date of the offenses as shown by the plea agreement meant the statute of limitations had expired before the offense was charged. In Thompson,³ the plea agreement showed the defendant was charged under a statute that was enacted after the date of the incident. In Hinton, the court found a judgment and sentence invalid on its face where the offense of conviction had been declared invalid. 152 Wn.2d at 860. In Golden,⁴ the court found a judgment invalid on its face where the juvenile was 10 years old at the time he pled guilty and the record contained no evidence the required capacity hearing had taken place before the plea.

Here, the judgment and sentence evidences the error. App. at 5-12. It repeatedly orders that Rivera serve 60 months of imprisonment based on the jury's "deadly weapon" finding and under the "deadly weapon clause," when by statute, the court was only authorized to impose 24 months for a deadly weapon

² In re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000).

³ In re Pers. Restraint of Thompson, 141 Wn.2d 712, 718, 10 P.3d 380 (2000).

⁴ State v. Golden, 112 Wn.App. 68, 72, 77, 47 P.3d 587 (2002), rev. denied, 148 Wn.2d 1005 (2003).

enhancement.⁶ Not once in the judgment and sentence did the court enter an express finding of a firearm enhancement, and instead it repeatedly referred to the "deadly weapon clause" and listed the jury's finding as possession of "a deadly weapon."

Where the court listed RCWs in its "findings," it included RCW "9.94A.125 and 9.94A.310(3)(a)a." App. at 6. Former RCW 9.94A.125⁶ set forth the procedure for presenting a deadly weapon special verdict to the jury. Its citation in the judgment and sentence does not indicate a firearm enhancement. The remaining citation, "RCW 9.94A.310(3)(a)a," is nonexistent. At the time of Rivera's sentence, RCW 9.94A.310 listed the penalties attached to both firearm and deadly weapon enhancements. RCW 9.94A.310(3)(a) contained the penalty for a firearm enhancement. But ".310(3)(a)a" never existed. The rest of the judgment and sentence uniformly and repeatedly refers to a deadly weapon enhancement. A single citation to a nonexistent statutory provision does not dictate the valid imposition of a "firearm" enhancement on its face.

⁶ The pertinent penalties permitted for a deadly weapon or firearm finding by the jury are contained in former RCW 9.94A.310 (1998), now codified as RCW 9.94A.510.

⁸ Former RCW 9.94A.125, was re-codified as RCW 9.94A.602(2001), and is presently codified as RCW 9.94A.825(2009). The various citations contain the same pertinent language.

The error is cemented by viewing the special verdict form and the jury's instructions, which only asked the jury to decide whether Rivera possessed a "deadly weapon." App. at 3, 4. Because 60 months is not the correct term to impose for a deadly weapon finding, this sentencing error is plain on the face of the sentencing document. Goodwin, 146 Wn.2d at 866.

b. Alternatively, a significant change in the law is an exception to the time bar. Another exception to the one-year deadline for filing a PRP is a significant change in the law. RCW 10.73.100(6).

Where an intervening opinion has effectively overturned a prior appellate decision that was originally determinative of a material issue, the intervening opinion constitutes a significant change in the law for purposes of exemption from procedural bars.

In re Pers. Restraint of Rowland, 149 Wn.App. 496, 503, 204 P.3d 953 (2009) (citing In re Pers. Restraint of Greening, 141 Wn.2d 687, 697, 9 P.3d 206 (2000)).

Rowland filed a PRP several years after his direct appeal was final, claiming that his offender score incorrectly included a California burglary conviction that was not comparable to a Washington felony. In another case decided several years after

Rowland was sentenced, the court ruled that California's burglary statute was broader than Washington's. Id. at 503 (citing State v. Thomas, 135 Wn.App. 474, 144 P.3d 1178 (2006)). The Court of Appeals agreed that Thomas marked a significant change in the law that materially affected Rowland's sentence. Id. at 506-07. Even though he received an exceptional sentence above the standard range, that sentence was based on a legally incorrect offender score and absent demonstrable evidence that the judge would have imposed the same term of imprisonment based on a lower standard range, Rowland was prejudiced by the error and entitled to resentencing. Id. at 508.⁷

Here, the State has claimed there was no error in Rivera's sentence because at the time he was sentenced, Meggysesy permitted the trial court to impose a firearm enhancement even though the jury only allowed a deadly weapon enhancement. State v. Meggyesy, 90 Wn.App. 693, 706-08, 958 P.2d 319, rev. denied, 136 Wn.2d 1028 (1998), reversed by State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005) (Recuenco I). Meggysesy has

⁷ The Court of Appeals analysis in Rowland relied on In re Pers. Restraint of Lavery, 154 Wn.2d 249, 260-61, 111 P.3d 837 (2005), which similarly held that a PRP challenging use of a prior conviction at sentencing is not time barred where an intervening decision constituted a change in the law.

been overturned. If the trial court was relying upon the law as dictated by Meggyesy, its abrogation marks a significant change in the law. The court imposed an incorrect sentence based on a legal error and therefore, Rivera is unlawfully restrained and entitled to a relief in a PRP. Rowland, 149 Wn.App. at 507.

c. Rivera remains unlawfully restrained based on violation of his constitutional and statutory rights. “[S]entences entered in excess of lawful authority are fundamental miscarriages of justice.” In re Personal Restraint of Adolph, 170 Wn.2d 556, 563, 243 P.3d 540 (2010). “When a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence, when the error is discovered.” In re Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980).

A person is entitled to relief in a PRP if unlawfully restrained. RAP 16.4. Restraint is “unlawful” if it is based on an incorrect calculation of the offender score. Rowland, 149 Wn.App. at 508; see RAP 16.4(b), (c)(2), (6), (7). As an additional threshold requirement,

[t]he appellate court will reach the merits of a constitutional issue when the petitioner demonstrates that the alleged error gives rise to actual prejudice and will reach the merits of a nonconstitutional issue when the claimed error constitutes a fundamental

defect which inherently results in a complete miscarriage of justice.

In re Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

Rivera meets this threshold. He received a sentence that exceeded the court's lawful authority and was greater than that authorized by the jury's verdict. While the jury found he possessed a "deadly weapon," the court imposed the prison term permitted only upon a "firearm" enhancement finding.

It is both actually prejudicial and fundamentally unfair to serve a sentence that is not authorized by law. See In re Pers. Restraint of Delgado, 149 Wn.App. 223, 238, 204 P.3d 936 (2009) (because petitioners "received higher sentences than the jury's verdict authorized, the error actually prejudiced them"); see also Goodwin, 146 Wn.2d at 868 ("a sentence that is based on an incorrect offender score is a fundamental defect that inherently results in a miscarriage of justice"). Rivera is presently serving a sentence that was not authorized by the jury's verdict and accordingly, his sentence should be reviewed and corrected.

2. Rivera's sentence exceeded the court's authority under longstanding case law. The court exceeded its authority by imposing 60 months as punishment under "the deadly weapon

clause," for reasons similar to the holdings of State v. Williams-Walker, 167 Wn.2d 889, 225 P.3d 913 (2010), and State v. Recuenco, 163 Wn.2d 428, 180 P.3d 1276 (2008) (Recuenco III), but this similarity does not mean he relies on a new rule of law that must be retroactively applied in order to entitle him to relief. The sentencing error stems from the trial court's abuse of its authority by exceeding the terms of the statute and the special verdict entered by the jury.

Article I, section 21 of our constitution "preserves the right [to a jury trial] as it existed at common law in the territory at the time of its adoption." City of Pasco v. Mace, 98 Wn.2d 87, 96, 653 P.2d 618 (1983).⁸ "From the earliest history of this state, the right of trial by jury has been treasured" and it is therefore liberally protected as a matter of constitutional law. Id. at 99 & 100 n.6; see also Sofie v. Fireboard Corp., 112 Wn.2d 636, 656, 771 P.2d 711 (1989) ("term 'inviolable' connotes deserving of the highest protection").

In Williams-Walker, this Court held that article I, section 21 bars a trial judge from imposing a firearm enhancement when the jury has been asked only to find that the accused possessed a

⁸ Article I, section 21 provides in pertinent part, "[t]he right of trial by jury shall remain inviolate."

deadly weapon. 167 Wn.2d at 897-98. Williams-Walker did not pronounce a new rule of law that expanded the right to a jury trial under article I, section 21. Rather, Williams-Walker rested on the scope of the jury trial right that has existed and been enforced from the time of the adoption of the constitution. Id. at 896.

In the three consolidated cases in Williams-Walker, each defendant was charged with a firearm sentencing enhancement, but the court instructed the jury on the definition of a deadly weapon, and by special verdict, the jury was asked to find whether the defendant possessed a deadly weapon. Id. at 893-94. Each defendant was also convicted of a predicate crime that involved using a firearm. However, this Court held that guilty verdicts alone are not "sufficient to authorize sentencing enhancements." Id. at 899. Instead, the governing statutory requirements and the constitutional right to a jury trial require that the jury authorize the additional punishment by a special verdict. Id.

Williams-Walker relied on State v. Frazier, 81 Wn.2d 628, 633, 503 P.2d 1073 (1972), which involved a different statutory scheme but the court similarly held that a deadly weapon special verdict does not authorize imposition of a mandatory firearm enhancement.

Where a factor aggravates an offense and causes the defendant to be subject to a greater punishment than would otherwise be imposed, due process requires that the issue of whether that factor is present, must be presented to the jury upon proper allegations and a verdict thereon rendered before the court can impose the harsher penalty.

167 Wn.2d at 896 (quoting Frazier, 81 Wn.2d at 633). Frazier borrowed this language from State v. Nass, 76 Wn.2d 368, 370, 456 P.2d 347 (1969), a case where the court reversed a sentencing enhancement based on the involvement of a minor in a drug sale when that issue had not been charged or found by the jury.

In Frazier, the defendant was accused of second degree assault where she threatened to kill another person and shot a bullet into the wall. 81 Wn.2d at 630. By special verdict, the jury found she was armed with a deadly weapon, but the court imposed five years of additional punishment under a sentencing statute that required a firearm finding, former RCW 9A.02.025. Id. at 629. The Frazier Court held that this increased punishment is unauthorized absent notice and a special verdict "requiring a finding that a firearm has been used" rather than a deadly weapon. Id. at 635. This express jury finding stems from the mandatory nature of the added sentence once found by the jury. Id. at 634. Where there is

mandatory increased punishment, "procedural due process of the highest order must, therefore, be afforded the appellant." Id.

Likewise, in Recuenco III the court turned to the greater protection our state constitution provides for jury trials than the federal constitution. 163 Wn.2d at 440. Because of our state constitutional jury trial right, "[w]ithout a jury determination that he was armed with a 'firearm,' the trial court lacked authority to sentence Recuenco for the two additional years that corresponded to the greater enhancement." Id. The court held that when the State does not expressly charge a firearm enhancement in the information, but rather charges a firearm as a "deadly weapon enhancement," it lacks authority to seek one by jury verdict.

Recuenco III did not stake out new legal territory. Recuenco III relied on State v. Theroff, 95 Wn.2d 385, 392, 622 P.2d 1240 (1980), which held that a charging document must contain notice of the prosecution's "intent to seek an enhanced penalty" for deadly weapon or firearm enhancements, and once the prosecution elects the charges it will pursue, it is bound by that decision. Id. Under Theroff, the charging decisions set forth in the charging document bind the prosecution and court to the penalties they may seek. Recuenco III, 163 Wn.2d at 435.

Recuenco III also explained that there is “nothing erroneous” about the jury finding a person is armed with a deadly weapon when the State could have asked the jury to find he was armed with a firearm. Id. at 435. This is not a “defect” in the instructions or the charging document. Id. at 436. On the contrary, the State may elect the charges it pursues and it is bound by that decision.

Here, the State elected to pursue a deadly weapon enhancement. It did not ask the jury to enter a firearm enhancement finding. App. at 3, 4. There was no error in the charging document or jury instructions. The error occurred in judgment and sentence when the judge “exceeded the authority issued to the court by the jury’s determination.” 163 Wn.2d at 441.

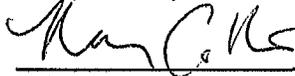
Rivera is entitled to relief because the 60-month sentence he received for the “deadly weapon clause” is not authorized by statute or by the jury’s finding in the special verdict form. The error was not in the jury instruction, but in the judge’s imposition of a sentence that was not what the State sought and jury authorized.

D. CONCLUSION.

For the foregoing reasons, Salvador Rivera respectfully requests this Court hold that the sentencing judge exceeded his authority by imposing a longer sentence than authorized by statute or by the jury's verdict, this error is plain on the face of the judgment and sentence, and accordingly, Rivera's sentence should be reversed.

DATED, as corrected, this 12th day of January 2012.

Respectfully submitted,



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Washington Appellate Project (91052)
Attorneys for Petitioner Rivera

APPENDIX

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
WHATCOM COUNTY

THE STATE OF WASHINGTON
Plaintiff,

No. 98-1-00289-4
98-1-00290-8
98-1-00287-8

vs.

SALVADOR HERNANDEZ RIVERA,
JOSE MANUEL RIVERA-HERNANDEZ,
ARTURO H. RIVERA,
and each of them,

Defendants.

FIRST AMENDED
INFORMATION FOR:

MURDER IN THE FIRST DEGREE,
COUNT I (AS TO SALVADOR RIVERA
AND JOSE RIVERA-HERNANDEZ ONLY)

ATTEMPTED RENDERING CRIMINAL
ASSISTANCE IN THE FIRST DEGREE,
COUNT II (AS TO ARTURO RIVERA
ONLY)

I, DAVID S. McEACHRAN, Prosecuting Attorney in and for the County of Whatcom, State of Washington, come now in the name and by the authority of the State of Washington, and by this first amended information do accuse SALVADOR HERNANDEZ RIVERA, JOSE MANUEL RIVERA-HERNANDEZ, AND ARTURO H. RIVERA, and each of them with the crimes of MURDER IN THE FIRST DEGREE, COUNT I (AS TO SALVADOR RIVERA AND JOSE RIVERA-HERNANDEZ ONLY), and ATTEMPTED RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE, COUNT II (AS TO ARTURO RIVERA ONLY) committed as follows:

then and there being in Whatcom County, Washington,

MURDER IN THE FIRST DEGREE, COUNT I: That the defendants, SALVADOR HERNANDEZ RIVERA AND JOSE MANUEL RIVERA-HERNANDEZ, and each of them, then and there being in said county and state, on or about the 20th day of March, 1998, with premeditated intent to cause the death of another person, did shoot Matthew Garza, thereby causing the death of Mr. Garza, a human being, in

violation of RCW 9A.32.030(1)(a), which violation is a Class "A" Felony, and during the course or commission of said crime, the defendants or one of them was armed with a deadly weapon, to-wit: a .22 caliber handgun, for the purposes of the deadly weapon enhancement of RCW 9.94A.125 and 9.94A.310(3)(a);

ATTEMPTED RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE, COUNT II: That the defendant, ARTURO H. RIVERA, then and there being in said county and state, on or about the 20th day of March, 1998, with intent to prevent or hinder the apprehension and prosecution of SALVADOR HERNANDEZ RIVERA, a person whom the accused knew had committed the crime of Murder in the First Degree and/or was being sought by law enforcement officials for the commission of this crime, did attempt to provide such person with clothing and other assistance as means of avoiding his apprehension and did take a substantial step toward the commission of that offense, in violation of RCW 9A.76.070(2)(a), RCW 9A.76.050(3), and 9A.28.020, which violation is a Misdemeanor;

contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Washington.

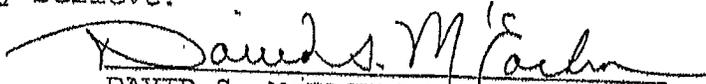
DATED this 31st day of March, 1998.



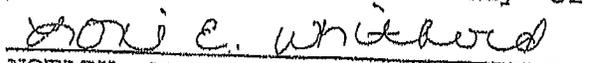
DAVID S. MCEACHRAN, Prosecuting Attorney in and for Whatcom County, State of Washington.

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss.

I, DAVID S. MCEACHRAN, being first duly sworn on oath, depose and say: that I am a duly elected and acting Prosecuting Attorney in and for Whatcom County, State of Washington, I have read the foregoing information, know the contents thereof and the same is true as I verily believe.


DAVID S. MCEACHRAN, WSBA#2496
Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 31st day of March, 1998.


NOTARY PUBLIC in and for the
State of Washington. MCE: 5/9/01

FILED IN OPEN COURT
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By *[Signature]*
Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,
Plaintiff,
v.
SALVADOR HERNANDEZ RIVERA,
Defendant.

No. 98-1-00289-4
SPECIAL VERDICT FORM

We, the jury in the above-entitled cause, return a special verdict by answering as follows:

Was the defendant, SALVADOR HERNANDEZ RIVERA, armed with a deadly weapon at the time of the commission of the crime?

ANSWER: yes

[Signature]
PRESIDING JUROR

INSTRUCTION NO. 37

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime.

A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.

If one participant to a crime is armed with a deadly weapon, all accomplices to that participant are deemed to be so armed, even if only one deadly weapon is involved.

ORIGINAL

FILED IN OPEN COURT
12-15 19 98
WHATCOM COUNTY CLERK

By [Signature]
Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

vs.

SALVADOR HERNANDEZ RIVERA

Defendant.

No. 98-1-00289-4

JUDGMENT AND SENTENCE
(FELONY)

I. HEARING

1.1 A sentencing hearing in this case was held:
December 15, 1998.

1.2 Present were:

Defendant: SALVADOR HERNANDEZ RIVERA
Defendant's Lawyer: JON C. KOMOROWSKI
Prosecuting Attorney: DAVID S. McEACHERAN
Judge: MICHAEL F. MOYNIHAN

1.3 The State has moved for dismissal of Count(s) N/A.

1.4 Defendant was asked if there was any legal cause why
judgment should not be pronounced, and none was shown.

II. FINDINGS

Based on the testimony heard, statements by defendant and/or
victims, argument of counsel, the presentence report and case
record to date, the Court finds:

2.1 CURRENT OFFENSE(S): The defendant was found GUILTY on
October 13, December 15, 1998, by JURY VERDICT of: MURDER IN THE
FIRST DEGREE (while armed with a deadly weapon):

Count No. I
Crime: MURDER IN THE FIRST DEGREE
RCW: 9A.32.030(1)(a), 9.94A.125, and 9.94A.310(3)(a)a
Crime Code: Class "A" Felony
Date of Crime: 3/20/98
Incident No. 98A-5437

JUDGMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - 1

98-9-02794-2

827

Jain

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608a*

(XX) With a special verdict/finding for use of deadly weapon on Count(s): I.

() Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

() Additional current offenses are attached in Appendix A.

2.2 CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

Crime: POSSESSION OF MARIJUANA (for sale)

Sentencing Date: 1/13/95

Adult or Juvenile Crime: Adult

2.3 SENTENCING DATA:

	Offender Score	Seriousness Level	Range	Maximum Term
COUNT NO. I:	1	XIV	250-333 mos. 60 mos.	LIFE
TOTAL:			310-393 mos.	

() Additional current offenses sentencing information is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

() Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) _____. Finding of Fact and Conclusions of Law are attached in Appendix D.

2.5 CATEGORY OF OFFENDER: The defendant is:

(a) (XX) An offender who shall be sentenced to confinement over one year.

(b) () An offender who shall be sentenced to confinement one year or less.

JUDGMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - 2

- (c) () A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.030(12), .120(5)).
- (d) () A sexual offender who is eligible for the special sentencing alternative and who shall be sentenced under the alternative because both the defendant and community will benefit from its use (RCW 9.94A.120(7)(a)).
- (e) () A felony sexual offender who shall be sentenced to confinement of over one year but less than six years, and shall be ordered committed for evaluation of defendant's amenability to treatment (RCW 9.94A.120(7)(b)).

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the crime(s) of: MURDER IN THE FIRST DEGREE (while armed with a deadly weapon).

IV. ORDER

IT IS ORDERED that defendant serve the determinate sentence and abide by the conditions set forth below.

4.1 Defendant shall pay to the Clerk of this Court:

- (a) \$110.00 court costs;
- (b) \$500.00 victim fund assessment;
- (c) \$ TFD (for burial expenses) - restitution
 _____ Joint & several with co-defendant;
 _____ On all counts charged;
 _____ Other:

() Schedule of Restitution is attached as Appendix E.

- (d) \$ 1,425.00 recoupment for court-appointed attorney's fees;
- (e) \$ _____ fine;
- (f) \$ _____ drug enforcement fund;
- (g) OTHER COSTS FOR:

JUDGMENT AND SENTENCE (FELONY)
 CONFINEMENT OVER ONE YEAR - 3.

(XX) \$100.00 = CRIME LABORATORY ANALYSIS

(h) \$ 2,135.00 + RESTITUTION = TOTAL MONETARY OBLIGATIONS

(i) Payments shall be made in the following manner:

(XX) That the defendant shall set up a payment schedule with his/her community corrections officer. That the defendant shall report IMMEDIATELY to his/her Community Corrections Officer to set up a schedule for the payment of his/her court-ordered legal financial obligations and the Community Corrections Officer shall monitor these payments.

() That defendant shall pay the amount of \$_____ per month toward his/her legal financial obligations. That the defendant shall report IMMEDIATELY to his/her Community Corrections Officer to set up a schedule for the payment of his/her court-ordered legal financial obligations and the Community Corrections Officer shall monitor these payments.

(j) This Court shall retain jurisdiction over the defendant for a period of TEN (10) years to assure payment of the above monetary obligations.

4.2 The Court DISMISSES Count(s) N/A.

4.3 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the DEPARTMENT OF CORRECTIONS as follows commencing IMMEDIATELY:

333 + 60 MONTHS MONTHS for Count No. I.

For Deadly Weapon 393

(XX) Credit is given for TIME SERVED OF _____ DAYS as of MARCH 21, 1998, and credit for any additional time served beyond that date until defendant is transported to the Department of Corrections.

() The terms in COUNTS No. are CONCURRENT for a total term of .

JUDGMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - 4

- () The sentence/s herein shall run CONCURRENTLY / CONSECUTIVELY with the sentence/s imposed in Cause No. .
- (XX) CUSTODIAL RECOMMENDATION FOR COMMUNITY PLACEMENT FOR TWENTY-FOUR (24) MONTHS OR UP TO THE PERIOD OF EARNED EARLY RELEASE AWARDED, WHICHEVER IS LONGER, conditioned upon full compliance with the following terms, all of which are imposed pursuant to RCW 9.94A.120(8)(b):
- (XX) Defendant shall not sell, use or under any circumstances have in her possession any illicit drug; that is, any drug such as marijuana, cocaine, LSD or any others which are not compounded, manufactured or refined by a licensed commercial pharmaceutical company. That the defendant shall not knowingly be anywhere where illegal or unprescribed drugs are being sold or used. In addition, the defendant shall not sell, use or have in her possession any prescription drugs except those which have been prescribed specifically for her personally by a duly licensed physician and then these prescribed drugs shall be used only in accordance with the instructions of such physician.
- (XX) Defendant shall not possess or own weapons of any kind at any time.
- () Defendant shall submit to random urine analysis as requested by her supervising community corrections officer at the defendant's own expense.
- () Defendant shall undergo evaluation for poly drug abuse with strict and full compliance with all treatment recommendations.
- (XX) Defendant shall not consume alcohol of any kind at any time.
- () Defendant shall abstain from using alcohol in excess. Due to the fact that the Court does not know whether the defendant has the ability to totally abstain from alcohol at the present time, defendant will be allowed to MODERATELY consume alcohol. However, if there any evidence of criminal activity resulting from alcoholic consumption in regard to driving, disorderly conduct, or any other type of non - socially accepted behavior, such activity will be

JUDGMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - 5

considered by the Court to be grounds for further sanctions to be imposed upon the defendant.

- () Defendant shall undergo counseling as approved by his/her community corrections officer.
- (XX) NO CONTACT PROVISION: Defendant shall not approach or communicate with, directly or indirectly, or through any third person or by any means, with:

THE GARZA FAMILY

() Violation of this NO CONTACT PROVISION is a criminal offense under Chapter 10.99 RCW, and will subject the violator to arrest; any assault or reckless endangerment that is a violation of this Order is a felony.

The NO CONTACT ORDER previously entered in this cause number is hereby:

(XX) Extended for the statutory maximum sentence, to wit:

- (XX) Permanent: Class A Felony
- () Ten Years: Class B Felony
- () Five Years: Class C Felony
- () One Year: Gross Misdemeanor

() Rescinded as of the date affixed to this order.

- (XX) That the defendant shall follow all of the rules of his Community Corrections Officer.
- (XX) HIV TESTING: The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing.
- (XX) DNA TESTING: That the defendant shall submit a blood sample of FIVE (5) m.l. to be acquired under medically safe conditions under the supervision of a Whatcom County Corrections Officer. This sample shall be safely transported to the Washington State Crime Laboratory in Seattle, DNA Section, pursuant to RCW 43.43.754.

JUDGMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - 6

Violations of the conditions or requirements of this sentence are punishable by up to SIXTY (60) days of confinement for each violation (RCW 9.94A.200(2)).

The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- () Appendix A Additional Current Offenses
- () Appendix B Additional Criminal History
- () Appendix C Current Offense(s) Sentencing Information
- () Appendix D Findings of Fact and Conclusions of Law for an Exceptional Sentence
- () Appendix E Schedule of Restitution
- () Appendix F Additional Conditions

SIGNED IN THE PRESENCE OF THE DEFENDANT.

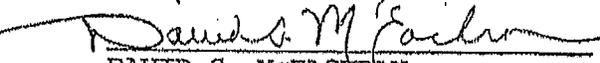
Date: DECEMBER 15, 1998

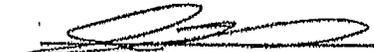
TIME OF ENTRY: _____ am/pm

Presented by:


JUDGE MICHAEL F. MOYNIHAN

Approved as to form:


DAVID S. MCEACHRAN,
Prosecuting Attorney
WSBA #2496


JON C. KOMOROWSKI
Attorney for Defendant
WSBA#91001

*** Defendant's Name: SALVADOR HERNANDEZ RIVERA
Date of Birth: 6/30/65; Sex: MALE; Race: HISPANIC

JUDGMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - 7

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHEATCOM COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

vs.

SALVADOR HERNANDEZ RIVERA,

Defendant.

No. 98-1-00289-4

WARRANT OF COMMITMENT

THE STATE OF WASHINGTON

TO: THE SHERIFF OF WHEATCOM COUNTY

The defendant, SALVADOR HERNANDEZ RIVERA, has been convicted in the Superior Court of the State of Washington of the crime or crimes of MURDER IN THE FIRST DEGREE, and the Court has ordered that the defendant be punished by serving the determined sentence of 333 + months on Count No. 1.

60 MONTHS FOR DEADLY WEAPON = 393 MONTHS
Defendant shall receive credit for time served of _____ as of MARCH 21, 1998, and credit for any additional time served beyond that date until defendant is transported to the Department of Corrections.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

DATED: DECEMBER 15, 1998 By Direction of the HONORABLE

JUDGE MICHAEL F. MOYNIHAN

N.F. JACKSON, JR., Clerk

By: Allen DeYoung
Deputy Clerk

JUDGMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - 8

CAUSE NUMBER: 98-1-00 289-4

Thumb prints of: Salvador Hernandez Rivera

Salvador Rivera
(Defendant's Signature)

Attested by: _____ (Seal)

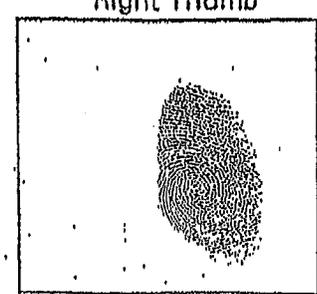
Allen DeYoung
(Deputy County Clerk)

WA0370000 12-15-98 (date)

Left Thumb



Right Thumb



IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF)
SALVADOR RIVERA,)
PETITIONER.)

NO. 83923-9

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 20TH DAY OF OCTOBER, 2011, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | | |
|-------------------------------------|--|---|-------------------------------------|
| <input checked="" type="checkbox"/> | HILARY THOMAS, DPA
WHATCOM COUNTY PROSECUTOR'S OFFICE
311 GRAND AVENUE
BELLINGHAM, WA 98225 | <input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/> | U.S. MAIL
HAND DELIVERY
_____ |
| <input checked="" type="checkbox"/> | SALVADOR RIVERA
790179
COYOTE RIDGE CORRECTIONS CENTER
PO BOX 769
CONNELL, WA 99326 | <input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/> | U.S. MAIL
HAND DELIVERY
_____ |

SIGNED IN SEATTLE, WASHINGTON, THIS 20TH DAY OF OCTOBER, 2011.

X _____ *gnt*

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
Phone (206) 587-2711
Fax (206) 587-2710

OFFICE RECEPTIONIST, CLERK

To: Maria Riley
Cc: hthomas@co.whatcom.wa.us
Subject: RE: 839239-RIVERA-SUPPLEMENTAL BRIEF

Rec'd 10/20/2011

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Maria Riley [mailto:maria@washapp.org]
Sent: Thursday, October 20, 2011 4:34 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: hthomas@co.whatcom.wa.us
Subject: 839239-RIVERA-SUPPLEMENTAL BRIEF

IN RE THE PRP OF SALVADOR RIVERA

No. 83923-9

Please accept the attached documents for filing in the above-subject case:

SUPPLEMENTAL BRIEF OF PETITIONER

Nancy P. Collins - WSBA 28806
Attorney for Petitioner
Phone: (206) 587-2711
E-mail: nancy@washapp.org

By

Maria Arranza Riley
Staff Paralegal
Washington Appellate Project
Phone: (206) 587-2711
Fax: (206) 587-2710
www.washapp.org

FILED
COURT CLERK
MARCH 26 AM 8:41

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,
Plaintiff,

vs.

SALVADOR HERNANDEZ RIVERA,
JOSE MANUEL RIVERA-HERNANDEZ,
ARTURO H. RIVERA,
and each of them,

Defendants.

NO. 98-1-00289-4
98-1-00290-8
98-1-00287-8

INFORMATION FOR:

MURDER IN THE FIRST DEGREE,
COUNT I (AS TO SALVADOR RIVERA
AND JOSE RIVERA-HERNANDEZ ONLY)

ATTEMPTED RENDERING CRIMINAL
ASSISTANCE IN THE FIRST DEGREE,
COUNT II (AS TO ARTURO RIVERA
ONLY)

I, CRAIG D. CHAMBERS for DAVID S. MCEACHRAN, Prosecuting
Attorney in and for the County of Whatcom, State of Washington,
come now in the name and by the authority of the State of
Washington, and by this information do accuse SALVADOR HERNANDEZ
RIVERA, JOSE MANUEL RIVERA-HERNANDEZ, AND ARTURO H. RIVERA, and
each of them with the crimes of MURDER IN THE FIRST DEGREE,
COUNT I (AS TO SALVADOR RIVERA AND JOSE RIVERA-HERNANDEZ ONLY),
and ATTEMPTED RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE,
COUNT II (AS TO ARTURO RIVERA ONLY) committed as follows:

then and there being in Whatcom County, Washington,

MURDER IN THE FIRST DEGREE, COUNT I: That the defendants,
SALVADOR HERNANDEZ RIVERA AND JOSE MANUEL RIVERA-HERNANDEZ, and
each of them, then and there being in said county and state, on
or about the 20th day of March, 1998, with premeditated intent
to cause the death of another person, did shoot Matthew Garza,
thereby causing the death of Mr. Garza, a human being, in
violation of RCW 9A.32.030(1)(a), which violation is a Class "A"

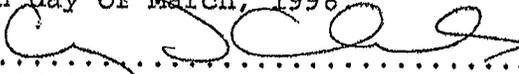
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Felony, and during the course or commission of said crime, the defendants or one of them was armed with a deadly weapon, to-wit: a .22 caliber handgun, for the purposes of the deadly weapon enhancement of RCW 9.94A.125 and 9.94A.310(3)(a);

ATTEMPTED RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE, COUNT II: That the defendant, ARTURO H. RIVERA, then and there being in said county and state, on or about the 20th day of March, 1998, with intent to prevent or hinder the apprehension and prosecution of SALVADOR HERNANDEZ RIVERA, a person whom the accused knew had committed the crime of Murder in the First Degree and/or was being sought by law enforcement officials for the commission of this crime, did attempt to provide such person with clothing and other assistance as means of avoiding his apprehension and did take a substantial step toward the commission of that offense, in violation of RCW 9A.76.050(3) and 9A.28.020, which violation is a Misdemeanor;

contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Washington.

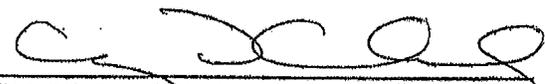
DATED this 25th day of March, 1998



.....
CRAIG D. CHAMBERS for DAVID S. MCEACHRAN, Prosecuting Attorney
in and for Whatcom County, State of Washington.

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss.

I, CRAIG D. CHAMBERS for DAVID S. MCEACHRAN, being first duly sworn on oath, depose and say: that I am a duly appointed and acting Deputy Prosecuting Attorney in and for Whatcom County, State of Washington, I have read the foregoing information, know the contents thereof and the same is true as I verily believe.



CRAIG D. CHAMBERS, WSBA#11771
for DAVID S. MCEACHRAN,
Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 25th day of March, 1998.

NOEL WHELAN
NOTARY PUBLIC in and for the
State of Washington. MCE: 5/9/01

APPENDIX B

ORIGINAL

FILED IN OPEN COURT

12-15 1998

WHATCOM COUNTY CLERK

By

Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,)	
)	
Plaintiff,)	No. 98-1-00289-4
)	
vs.)	
)	
SALVADOR HERNANDEZ RIVERA)	JUDGMENT AND SENTENCE
)	(FELONY)
Defendant.)	

I. HEARING

- 1.1 A sentencing hearing in this case was held:
December 15, 1998.
- 1.2 Present were:
 Defendant: SALVADOR HERNANDEZ RIVERA
 Defendant's Lawyer: JON C. KOMOROWSKI
 Prosecuting Attorney: DAVID S. MCEACHRAN
 Judge: MICHAEL E. MOYNIHAN
- 1.3 The State has moved for dismissal of Count(s) N/A.
- 1.4 Defendant was asked if there was any legal cause why judgment should not be pronounced, and none was shown.

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the Court finds:

2.1 CURRENT OFFENSE(S): The defendant was found GUILTY on ~~December 15, 1998~~ October 13, 1998, by JURY VERDICT of: MURDER IN THE FIRST DEGREE (while armed with a deadly weapon):

Count No. I
Crime: MURDER IN THE FIRST DEGREE
RCW: 9A.32.030(1)(a), 9.94A.125, and 9.94A.310(3)(a)a
Crime Code: Class "A" Felony
Date of Crime: 3/20/98
Incident No. 98A-5437

JUDGMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - 1

98-9-02794-2

827

Jain
K

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(XX) With a special verdict/finding for use of deadly weapon on Count(s): I.

() Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

() Additional current offenses are attached in Appendix A.

2.2 CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

Crime: POSSESSION OF MARIJUANA (for sale)
Sentencing Date: 1/13/95
Adult or Juvenile Crime: Adult

2.3 SENTENCING DATA:

	Offender Score	Seriousness Level	Range	Maximum Term
COUNT NO. I:	1	XIV	250-333 mos.	LIFE
	(deadly weapon clause)		60 mos.	
TOTAL:			310-393 mos.	

() Additional current offenses sentencing information is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

() Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) _____ . Finding of Fact and Conclusions of Law are attached in Appendix D.

2.5 CATEGORY OF OFFENDER: The defendant is:

(a) (XX) An offender who shall be sentenced to confinement over one year.

(b) () An offender who shall be sentenced to confinement one year or less.

- (c) () A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.030(12), .120(5)).
- (d) () A sexual offender who is eligible for the special sentencing alternative and who shall be sentenced under the alternative because both the defendant and community will benefit from its use (RCW 9.94A.120(7)(a)).
- (e) () A felony sexual offender who shall be sentenced to confinement of over one year but less than six years and shall be ordered committed for evaluation of defendant's amenability to treatment (RCW 9.94A.120(7)(b)).

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the crime(s) of: MURDER IN THE FIRST DEGREE (while armed with a deadly weapon).

IV. ORDER

IT IS ORDERED that defendant serve the determinate sentence and abide by the conditions set forth below.

4.1 Defendant shall pay to the Clerk of this Court:

- (a) \$110.00 court costs;
- (b) \$500.00 victim fund assessment;
- (c) \$ TBD (for burial expenses) - restitution
 - _____ Joint & several with co-defendant;
 - _____ On all counts charged;
 - _____ Other:
- () Schedule of Restitution is attached as Appendix E.
- (d) \$ 1,425.00 recoupment for court-appointed attorney's fees;
- (e) \$ _____ fine;
- (f) \$ _____ drug enforcement fund;
- (g) OTHER COSTS FOR:

JUDGMENT AND SENTENCE (FELONY)
 CONFINEMENT OVER ONE YEAR - 3.

(XX) \$100.00 = CRIME LABORATORY ANALYSIS

(h) \$ 2,135.00 + RESTITUTION = TOTAL MONETARY OBLIGATIONS

(i) Payments shall be made in the following manner:

(XX) That the defendant shall set up a payment schedule with his/her community corrections officer. That the defendant shall report IMMEDIATELY to his/her Community Corrections Officer to set up a schedule for the payment of his/her court-ordered legal financial obligations and the Community Corrections Officer shall monitor these payments.

() That defendant shall pay the amount of \$_____ per month toward his/her legal financial obligations. That the defendant shall report IMMEDIATELY to his/her Community Corrections Officer to set up a schedule for the payment of his/her court-ordered legal financial obligations and the Community Corrections Officer shall monitor these payments.

(j) This Court shall retain jurisdiction over the defendant for a period of TEN (10) years to assure payment of the above monetary obligations.

4.2 The Court DISMISSES Count(s) N/A.

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333 + 60 MONTHS MONTHS for Count No. I.

For Deadly Weapon 393

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() The sentence/s herein shall run CONCURRENTLY / CONSECUTIVELY with the sentence/s imposed in Cause No. .

(XX) CUSTODIAL RECOMMENDATION FOR COMMUNITY PLACEMENT FOR TWENTY-FOUR (24) MONTHS OR UP TO THE PERIOD OF EARNED EARLY RELEASE AWARDED, WHICHEVER IS LONGER conditioned upon full compliance with the following terms, all of which are imposed pursuant to RCW 9.94A.120(8)(b):

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(XX) Defendant shall not possess or own weapons of any kind at any time.

() Defendant shall submit to random urine analysis as requested by her supervising community corrections officer at the defendant's own expense.

() Defendant shall undergo evaluation for poly drug abuse with strict and full compliance with all treatment recommendations.

(XX) Defendant shall not consume alcohol of any kind at any time.

() Defendant shall abstain from using alcohol in excess. Due to the fact that the Court does not know whether the defendant has the ability to totally abstain from alcohol at the present time, defendant will be allowed to MODERATELY consume alcohol. However, if there any evidence of criminal activity resulting from alcoholic consumption in regard to driving, disorderly conduct, or any other type of non - socially accepted behavior, such activity will be

considered by the Court to be grounds for further sanctions to be imposed upon the defendant.

- () Defendant shall undergo counseling as approved by his/her community corrections officer.
- (XX) NO CONTACT PROVISION: Defendant shall not approach or communicate with, directly or indirectly, or through any third person or by any means, with:

THE GARZA FAMILY

() Violation of this NO CONTACT PROVISION is a criminal offense under Chapter 10.99 RCW, and will subject the violator to arrest; any assault or reckless endangerment that is a violation of this Order is a felony.

The NO CONTACT ORDER previously entered in this cause number is hereby:

- (XX) Extended for the statutory maximum sentence, to wit:
 - (XX) Permanent: Class A Felony
 - () Ten Years: Class B Felony
 - () Five Years: Class C Felony
 - () One Year: Gross Misdemeanor

() Rescinded as of the date affixed to this order.

- (XX) That the defendant shall follow all of the rules of his Community Corrections Officer.
- (XX) HIV TESTING: The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing.
- (XX) DNA TESTING: That the defendant shall submit a blood sample of FIVE (5) m.l. to be acquired under medically safe conditions under the supervision of a Whatcom County Corrections Officer. This sample shall be safely transported to the Washington State Crime Laboratory in Seattle, DNA Section, pursuant to RCW 43.43.754.

Violations of the conditions or requirements of this sentence are punishable by up to SIXTY (60) days of confinement for each violation (RCW 9.94A.200(2)).

The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- () Appendix A Additional Current Offenses
- () Appendix B Additional Criminal History
- () Appendix C Current Offense(s) Sentencing Information
- () Appendix D Findings of Fact and Conclusions of Law for an Exceptional Sentence
- () Appendix E Schedule of Restitution
- () Appendix F Additional Conditions

SIGNED IN THE PRESENCE OF THE DEFENDANT.

Date: DECEMBER 15, 1998

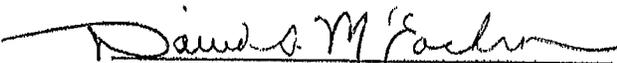


JUDGE MICHAEL F. MOYNIHAN

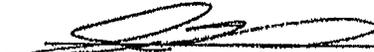
TIME OF ENTRY: _____ am/pm

Presented by:

Approved as to form:



DAVID S. MCEACHRAN,
Prosecuting Attorney
WSBA #2496



JON C. KOMOROWSKI
Attorney for Defendant
WSBA#91001

*** Defendant's Name: SALVADOR HERNANDEZ RIVERA
Date of Birth: 6/30/65; Sex: MALE; Race: HISPANIC

JUDGMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - 7

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,)
)
Plaintiff,) No. 98-1-00289-4
)
vs.)
)
SALVADOR HERNANDEZ RIVERA,) WARRANT OF COMMITMENT
)
Defendant.)

THE STATE OF WASHINGTON

TO: THE SHERIFF OF WHATCOM COUNTY

The defendant, SALVADOR HERNANDEZ RIVERA, has been convicted in the Superior Court of the State of Washington of the crime or crimes of MURDER IN THE FIRST DEGREE, and the Court has ordered that the defendant be punished by serving the determined sentence of 333 + months on Count No. 1.

60 months for deadly weapon = 393 months
Defendant shall receive credit for time served of _____ as of MARCH 21, 1998, and credit for any additional time served beyond that date until defendant is transported to the Department of Corrections.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

DATED: DECEMBER 15, 1998

By Direction of the HONORABLE

[Signature]
JUDGE MICHAEL F. MOYNIHAN

N.F. JACKSON, JR., Clerk

By: *[Signature]*
Deputy Clerk

JUDGMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - 8

CAUSE NUMBER: 98-1-00 289-4

Thumb prints of: Salvador Hernandez Rivera

Salvador Hernandez Rivera
(Defendant's Signature)

Attested by:

(Seal)

Aileen DeYoung
(Deputy County Clerk)

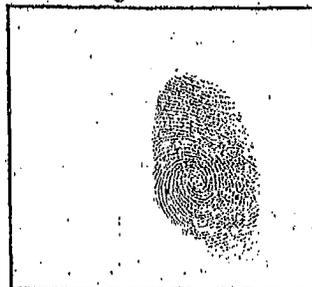
WA0370000

12-15-98 (date)

Left Thumb



Right Thumb



APPENDIX C

FILED IN OPEN COURT
11-10 19 98
WHATCOM COUNTY CLERK

By: 
Deputy

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

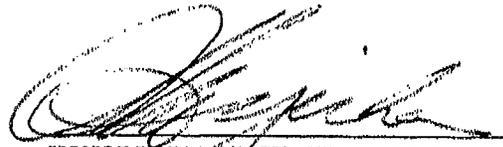
SALVADOR HERNANDEZ RIVERA,
JOSE MANUEL RIVERA HERNANDEZ,
and each of them,

Defendants.

No. 98-1-00289-4
98-1-00290-8

COURT'S INSTRUCTIONS

November 10, 1998
Bellingham, Washington



HONORABLE MICHAEL MOYNIHAN
Superior Court Judge

INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It is also your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by the prosecuting attorney by filing a document, called an information, informing the defendants of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of testimony during your

deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness's memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections which they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the

judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

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

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

INSTRUCTION NO. 2

Jurors have a duty to consult with one another and to deliberate with a view to reaching a unanimous verdict, if it can be done without violence to individual judgment. Each of you must decide the case for yourself but only after an impartial consideration of the evidence with your fellow jurors. In the course of deliberations, you should not hesitate to re-examine your own views and change your opinion if you are convinced it is erroneous. However, you should not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. 3

The defendants have entered pleas of not guilty. This plea puts in issue every element of the crime charged. The State is the Plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt. The defendants have no burden of proving that a reasonable doubt exists.

The defendants are presumed innocent. This presumption continues throughout the entire trial unless you find it has been overcome by the evidence beyond a reasonable doubt.

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

INSTRUCTION NO. 4

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts which he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 5

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.

INSTRUCTION NO. 6

The defendant is not compelled to testify, and the fact that the defendant has not testified cannot be used to infer guilt or prejudice him in any way.

INSTRUCTION NO. 7

A separate crime is charged against each defendant. The charges have been joined for trial. You must consider and decide the case of each defendant separately. Your verdict as to one defendant should not control your verdict as to any other defendant.

All of the instructions apply to each defendant.

INSTRUCTION NO. 8

You may give such weight and credibility to any alleged out-of-court statements of the defendant as you see fit, taking into consideration the surrounding circumstances.

INSTRUCTION NO. 9

Homicide is the killing of a human being by the voluntary act of another and is murder, manslaughter or justifiable homicide.

INSTRUCTION NO. 10

A person commits the crime of murder in the first degree when, with a premeditated intent to cause the death of another person, he or she causes the death of such person unless the killing was justifiable. The State has the burden of proving that the killing was not justifiable.

INSTRUCTION NO. 11

Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

INSTRUCTION NO. 12

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

INSTRUCTION NO. 13

A person knows or acts knowingly or with knowledge when he or she is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge.

Acting knowingly or with knowledge also is established if a person acts intentionally.

INSTRUCTION NO. 14

To convict Salvador Hernandez Rivera of the crime of murder in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about March 20, 1998, Salvador Hernandez Rivera shot Matthew Garza;
- (2) That Salvador Hernandez Rivera acted with intent to cause the death of Matthew Garza;
- (3) That the intent to cause the death was premeditated;
- (4) That Matthew Garza died as a result of Salvador Hernandez Rivera's acts; and
- (5) That the acts occurred in Whatcom County, Washington.

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

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

INSTRUCTION NO. 15

To Convict the defendant JOSE MANUEL RIVERA-HERNANDEZ of the crime of Murder in the First Degree as charged, each of the following elements must be proved beyond a reasonable doubt:

- (1) That on or about the 20th day of March, 1998, the defendant or an accomplice caused the death of Matthew Garza;
- (2) That the defendant or an accomplice acted with intent to cause the death of Matthew Garza;
- (3) That intent to cause death was premeditated;
- (4) That Matthew Garza died a result of the acts of the defendant or his accomplice.
- (5) That the acts occurred in Whatcom County, Washington.

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

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

INSTRUCTION NO. 16

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of a crime, if, with knowledge that it will promote or facilitate the commission of the crime, he or she aids or agrees to aid another person in planning or committing the crime.

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

INSTRUCTION NO. 17

To aid another person's criminal act, one must associate oneself with the undertaking, participate in it with the desire to bring it about, and seek to make it succeed by one's actions. A person does not aid another person's criminal act by actions which take place after the crime has been completed.

INSTRUCTION NO. 18

It is a defense to a charge of MURDER IN THE FIRST DEGREE, MURDER IN THE SECOND DEGREE, MANSLAUGHTER IN THE FIRST DEGREE, AND MANSLAUGHTER IN THE SECOND DEGREE that the homicide was justifiable as defined in this instruction.

Homicide is justifiable when committed in the lawful defense of the slayer when:

(1) the slayer reasonably believed that the person slain intended to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger of such harm being accomplished; and,

(3) the slayer employed such force and means as a reasonably prudent person would use under the same or similar conditions as they reasonably appeared to the slayer, taking into consideration all the facts and circumstances as they appeared to him, at the time of and prior to the incident.

The State has the burden of proving beyond a reasonable doubt that the homicide was not justifiable. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 19

In determining whether a homicide was justifiable, the phrase "great personal injury" means an injury that the slayer reasonably believed, in light of all the facts and circumstances known at the time, would produce severe pain and suffering if it were inflicted upon either the slayer or another person.

INSTRUCTION NO. 20

It is also a defense to the charge of murder that the homicide was justifiable as defined in this instruction.

Homicide is justifiable when committed in the resistance of an attempt to commit a felony upon the defendant.

The State has the burden of proving beyond a reasonable doubt that the homicide was not justifiable. If you find that the State has not proved the absence of self-defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty to murder in the first or second degree.

However, if you also find beyond a reasonable doubt that the defendant recklessly or negligently used more force than necessary, then you may consider manslaughter in the first or second degree.

INSTRUCTION NO. 21

The defendant is entitled to act on appearances in defending himself if that person believes in good faith and on reasonable grounds that he is in actual danger of great bodily harm, although it afterwards might develop that the person was mistaken as to the extent of the danger.

Actual danger is not necessary for a homicide to be justified.

INSTRUCTION NO. 22

It is lawful for a person who is in a place where that person has a right to be and who has reasonable grounds for believing that he is being attacked to stand his ground and defend against such attack by the use of lawful force. The law does not impose a duty to retreat.

INSTRUCTION NO. 23

Robbery and assault with a deadly weapon are both felonies.

INSTRUCTION NO. 25

No person may, by an intentional act reasonably likely to provoke a belligerent response, create a necessity for acting in self defense or defense of another and thereupon kill another person. Therefore, if you find beyond a reasonable doubt that the defendant was the aggressor, and the defendant's acts and conduct provoked or commenced the fight, then self-defense or defense of another is not available as a defense.

INSTRUCTION NO. 26

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of murder in the first degree, he may be found guilty of any lesser crimes, the commission of which is necessarily included in murder in the first degree, if the evidence is sufficient to establish the defendant's guilt of such lesser crime beyond a reasonable doubt.

The crime of murder in the first degree necessarily includes the lesser crime of murder in the second degree, manslaughter in the first degree and manslaughter in the second degree.

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

INSTRUCTION NO. 26

A person commits the crime of murder in the second degree when with intent to cause the death of another person but without premeditation, he or she causes the death of such person unless the killing is justifiable.

INSTRUCTION NO. 27

To convict Salvador Hernandez Rivera of the crime of murder in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about March 20, 1998, Salvador Hernandez Rivera shot Matthew Garza;
- (2) That Salvador Hernandez Rivera acted with intent to cause the death of Matthew Garza;
- (3) That Matthew Garza died as a result of Salvador Hernandez Rivera's acts; and
- (4) That the acts occurred in Whatcom County, Washington.

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

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

INSTRUCTION NO. 28

To convict Jose Manuel Rivera Hernandez of the crime of murder in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about March 20, 1998, the defendant or an accomplice shot Matthew Garza;
- (2) That the defendant or an accomplice acted with intent to cause the death of Matthew Garza;
- (3) That Matthew Garza died as a result of the defendant or an accomplice's acts;
- (4) That the acts occurred in Whatcom County, Washington.

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

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

INSTRUCTION NO. 29

A person commits the crime of manslaughter in the first degree when, with criminal recklessness, he acts in self-defense and uses more force than necessary to repel the attack and causes the death of another person.

INSTRUCTION NO. 30

To convict Salvador Hernandez Rivera of the crime of manslaughter in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 20th day of March 1998, Salvador Hernandez Rivera shot Matthew Garza;

(2) That Salvador Hernandez Rivera's conduct was criminally reckless;

(3) That Matthew Garza died as a result of Salvador Hernandez Rivera's acts; and

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

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

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

INSTRUCTION NO. 31

To convict Jose Manuel Rivera Hernandez of the crime of manslaughter in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 20th day of March 1998, the defendant or an accomplice shot Matthew Garza;

(2) That the defendant or an accomplice's conduct was criminally reckless;

(3) That Matthew Garza died as a result of the defendant or an accomplice's acts; and

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

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

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

INSTRUCTION NO. 32

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and the disregard of such substantial risk is a gross deviation from the conduct that a reasonable person would exercise in the same situation.

INSTRUCTION NO. 33

A person commits the crime of manslaughter in the second degree when, with criminal negligence, he or she causes the death of another person unless the killing is justifiable.

INSTRUCTION NO. 34

To convict Salvador Hernandez Rivera of the crime of manslaughter in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 20th day of March 1998, Salvador Hernandez Rivera shot Matthew Garza;

(2) That Salvador Hernandez Rivera's conduct was criminally negligence.

(3) That Matthew Garza died as a result of Salvador Hernandez Rivera's acts; and

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

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

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

INSTRUCTION NO. 35

To convict Jose Manuel Rivera Hernandez of the crime of manslaughter in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 20th day of March 1998, the defendant or an accomplice shot Matthew Garza;
- (2) That the defendant or an accomplice's conduct was criminally negligence;
- (3) That Matthew Garza died as a result of the defendant or an accomplice's acts; and
- (4) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 36

A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and the failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

INSTRUCTION NO. 37

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime.

A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.

If one participant to a crime is armed with a deadly weapon, all accomplices to that participant are deemed to be so armed, even if only one deadly weapon is involved.

INSTRUCTION NO. 38

If you find either defendant not guilty of any of the crimes, do not use the special verdict form for that defendant. If you find either defendant guilty of any of the crimes, you will then use the special verdict form for that defendant and fill in the blank with the answer "no" or "yes" according to the decision you reach.

In order to answer either of the special verdict forms "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you have a reasonable doubt as to the questions you must answer "no".

INSTRUCTION NO. 39

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be given with all of the exhibits admitted in evidence, these instructions, and four verdict forms, A, B, C and D, for each defendant and a special verdict form for each defendant.

When completing the verdict forms for each defendant, you will first consider the crime of murder in the first degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form A the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in verdict form A.

If you find the defendant not guilty of the crime of murder in the first degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of murder in the second degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form B the words "not guilty" or the word "guilty," according to the decision you reach.

If you find the defendant not guilty of the crime of murder in the second degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of manslaughter in the first degree. If you unanimously agree on a verdict, you must fill in the blank provided

in verdict form C the words "not guilty" or the word "guilty," according to the decision you reach.

If you find the defendant not guilty of the crime of manslaughter in the first degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of manslaughter in the second degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form D the words "not guilty" or the word "guilty," according to the decision you reach.

If you agree that the defendant is guilty of homicide but have a reasonable doubt as to which of the four degrees of homicide he is guilty, then you may only convict him of the lower degree.

If you find the defendant guilty of any crime, you will then use the special verdict form for that defendant and fill in the blanks with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict form "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If any of you have reasonable doubt as to that question, you must answer "no".

Since this is a criminal case, each of you must agree for you to return any verdict. When all of you have so agreed, fill in the proper form of verdict or verdicts to express your decision. The presiding juror will sign it and notify the bailiff, who will conduct you into court to declare your verdict.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

SALVADOR HERNANDEZ RIVERA,

Defendant.

No. 98-1-00289-4

VERDICT FORM A

We, the jury in the above-entitled cause, find the defendant,
SALVADOR HERNANDEZ RIVERA, _____ of the
crime of murder in the first degree.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

SALVADOR HERNANDEZ RIVERA,

Defendant.

No. 98-1-00289-4

VERDICT FORM B

We, the jury, having found the defendant SALVADOR HERNANDEZ RIVERA not guilty of the crime of murder in the first degree, or being unable to unanimously agree as to that charge, find the defendant _____ of the lesser included crime of murder in the second degree.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

SALVADOR HERNANDEZ RIVERA,

Defendant.

No. 98-1-00289-4

VERDICT FORM C

We, the jury, having found the defendant SALVADOR HERNANDEZ RIVERA not guilty of the crime of murder in the second degree, or being unable to unanimously agree as to that charge, find the defendant _____ of the lesser included crime of manslaughter in the first degree.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

SALVADOR HERNANDEZ RIVERA,

Defendant.

No. 98-1-00289-4

VERDICT FORM D

We, the jury, having found the defendant SALVADOR HERNANDEZ RIVERA not guilty of the crime of manslaughter in the first degree, or being unable to unanimously agree as to that charge, find the defendant _____ of the lesser included crime of manslaughter in the second degree.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

JOSE MANUEL RIVERA HERNANDEZ,

Defendant.

No. 98-1-00290-8

VERDICT FORM A

We, the jury in the above-entitled cause, find the defendant,
JOSE MANUEL RIVERA HERNANDEZ, _____ of the
crime of murder in the first degree.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

JOSE MANUEL RIVERA HERNANDEZ,

Defendant.

No. 98-1-00290-8

VERDICT FORM B

We, the jury in the above-entitled cause, find the defendant,
JOSE MANUEL RIVERA HERNANDEZ, _____ of the
crime of murder in the second degree.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

JOSE MANUEL RIVERA HERNANDEZ,

Defendant.

No. 98-1-00290-8

VERDICT FORM C

We, the jury in the above-entitled cause, find the defendant,
JOSE MANUEL RIVERA HERNANDEZ, _____ of the
crime of manslaughter in the first degree.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

JOSE MANUEL RIVERA HERNANDEZ,

Defendant.

No. 98-1-00290-8

VERDICT FORM D

We, the jury in the above-entitled cause, find the defendant,
JOSE MANUEL RIVERA HERNANDEZ, _____ of the
crime of manslaughter in the second degree.

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

SALVADOR HERNANDEZ RIVERA,

Defendant.

No. 98-1-00289-4

SPECIAL VERDICT FORM

We, the jury in the above-entitled cause, return a special verdict by answering as follows:

Was the defendant, SALVADOR HERNANDEZ RIVERA, armed with a deadly weapon at the time of the commission of the crime?

ANSWER: _____

PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

JOSE MANUEL RIVERA HERNANDEZ

Defendant.

No. 98-1-00290-8

SPECIAL VERDICT FORM

We, the jury in the above-entitled cause, return a special verdict by answering as follows:

Was the defendant, JOSE MANUEL RIVERA HERNANDEZ, armed with a deadly weapon at the time of the commission of the crime?

ANSWER: _____

PRESIDING JUROR