

1 4. Has petitioner failed to show that a juror's brief and inadvertent viewing
2 of him in handcuffs in a courthouse corridor had a substantial or injurious effect on the
3 jury's verdict?

4 5. Has petitioner failed to show that this juror committed misconduct when
5 she failed to disclose this sighting of the petitioner during voir dire when the court asked
6 the venire panel whether anyone knew the petitioner and whether anyone had heard
7 anyone discussing the facts of the case?
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9 B. STATUS OF PETITIONER:

10 Petitioner, HOYT CRACE, is restrained pursuant to a judgment and sentence
11 entered in Pierce County Superior Court Cause No. 03-1-03797-6 on May 28, 2004.
12 State's Appendix A (Counts I and III); State's Appendix B (Count II). A jury convicted
13 petitioner of attempted assault in the second degree, criminal trespass in the first degree,
14 and malicious mischief in the second degree; the jury found a deadly weapon
15 enhancement on the assault. State's Appendices A & B. Petitioner had convictions for
16 nine prior felonies, including two prior convictions for robbery in the first degree and
17 one prior conviction for robbery in the second degree. State's Appendix A. The
18 sentencing court found petitioner to be a persistent offender and sentenced him to life
19 without the possibility of parole on the attempted assault; it imposed a high end standard
20 range sentence of 29 months, based upon an offender score of 9, on the malicious
21 mischief, and a suspended sentence on the trespass. State's Appendices A & B.

22 Petitioner appealed his convictions challenging the court's instructions and the
23 sufficiency of the evidence. In an unpublished opinion, the Court of Appeals, Division
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1 II, affirmed the judgment entered in the trial court. *See* Appendix D to the Petition. The
2 court issued the mandate on June 19, 2007. *See* Appendix E to the Petition.

3 On May 27, 2008, petitioner filed a timely, first-time collateral attack with the
4 Court of Appeals. Petitioner now alleges that he is entitled to a new trial because : 1) he
5 received ineffective assistance of counsel solely because his attorney failed to seek
6 instructions on the lesser offense of unlawful display of a weapon; 2) the State
7 compelled him to wear orange jail sandals with his civilian clothes when he went to
8 court; 3) he was denied a fair trial because a person who ultimately sat on his jury briefly
9 saw him in handcuffs in a corridor of the courthouse; and 4) this juror committed
10 misconduct when she failed to disclose this sighting during voir dire.
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12 Petitioner does not claim to be indigent.

13 C. ARGUMENT:

- 14
15 1. THE PETITION SHOULD BE DISMISSED BECAUSE PETITIONER
16 HAS NOT SHOWN PREJUDICIAL CONSTITUTIONAL ERROR OR
17 A FUNDAMENTAL DEFECT RESULTING IN A COMPLETE
18 MISCARRIAGE OF JUSTICE NECESSARY TO OBTAIN RELIEF BY
19 PERSONAL RESTRAINT PETITION.

20 Personal restraint procedure has its origins in the State's habeas corpus remedy,
21 guaranteed by article 4, section 4, of the State Constitution. Fundamental to the nature
22 of habeas corpus relief is the principle that the writ will not serve as a substitute for
23 appeal. A personal restraint petition, like a petition for a writ of habeas corpus, is not a
24 substitute for an appeal. *In re Hagler*, 97 Wn.2d 818, 823 24, 650 P.2d 1103 (1982).

25 Collateral relief undermines the principles of finality of litigation, degrades the
prominence of the trial, and sometimes costs society the right to punish admitted

1 offenders. These are significant costs, and they require that collateral relief be limited in
2 state as well as federal courts. *Id.*

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

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

- 15 1. If a petitioner fails to meet the threshold burden of showing actual
16 prejudice arising from constitutional error or a fundamental defect
17 resulting in a miscarriage of justice, the petition must be dismissed;
- 18 2. If a petitioner makes at least a prima facie showing of actual
19 prejudice, but the merits of the contentions cannot be determined solely
20 on the record, the court should remand the petition for a full hearing on
21 the merits or for a reference hearing pursuant to RAP 16.11(a) and RAP
22 16.12;
- 23 3. If the court is convinced a petitioner has proven actual prejudicial
24 error, the court should grant the personal restraint petition without
25 remanding the cause for further hearing.

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

24 In a personal restraint petition, “naked castings into the constitutional sea are not
25 sufficient to command judicial consideration and discussion.” *In re Williams*, 111

1 Wn.2d 353, 365, 759 P.2d 436 (1988) (citing *In re Rozier*, 105 Wn.2d 606, 616, 717
2 P.2d 1353 (1986), which quoted *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir.
3 1970)). That phrase means “more is required than that the petitioner merely claim in
4 broad general terms that the prior convictions were unconstitutional.” *Williams*, 111
5 Wn.2d at 364. The petition must also include the facts and “the evidence reasonably
6 available to support the factual allegations.” *Id.*

7 The evidence that is presented to an appellate court to support a claim in a
8 personal restraint petition must also be in proper form. On this subject, the Washington
9 Supreme Court has stated:

10 It is beyond question that all parties appearing before the courts of this
11 State are required to follow the statutes and rules relating to
12 authentication of documents. This court will, in future cases, accept no
13 less.

14 *In re Connick*, 144 Wn.2d 442, 458, 28 P.3d 729 (2001).

15 The petition must include a statement of the facts upon which the claim of
16 unlawful restraint is based and the evidence available to support the factual allegations.
17 RAP 16.7(a)(2); *In re Williams*, 111 Wn.2d 353, 365, 759 P.2d 436 (1988). Personal
18 restraint petition claims must be supported by affidavits stating particular facts, certified
19 documents, certified transcripts, and the like. *Williams*, 111 Wn.2d at 364. If the
20 petitioner fails to provide sufficient evidence to support his challenge, the petition must
21 be dismissed. *Williams* at 364. The purpose of a reference hearing “is to resolve
22 genuine factual disputes, not to determine whether the petitioner actually has evidence to
23 support his allegations.” *In re Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). It is
24 not enough for a petitioner to give a statement about evidence that he believes will prove
25 his factual allegations. *Id.* The court has been specific on how petitioner must support
his claims:

1 If the petitioner's allegations are based on matters outside the existing
2 record, the petitioner must demonstrate that he has competent, admissible
3 evidence to establish the facts that entitle him to relief. If the petitioner's
4 evidence is based on knowledge in the possession of others, he may not
5 simply state what he thinks those others would say, but must present their
6 affidavits or other corroborative evidence. The affidavits, in turn, must
7 contain matters to which the affiants may competently testify. In short,
8 the petitioner must present evidence showing that his factual allegations
9 are based on more than speculation, conjecture, or inadmissible hearsay.

7 *In re Rice*, 118 Wn.2d at 886. Generally, a motion or petition that is supported by
8 unsworn statements or hearsay affidavits, rather than proper testimonial affidavits,
9 should be dismissed. See *State v. Crumpton*, 90 Wn. App. 297, 952 P.2d 1100 (1998).

10 Petitioner has presented several appendices to his petition, including several that
11 are court documents. The State has received a computer disc containing scanned images
12 of these documents. The documents appear to be accurate images of the court
13 documents; the State assumes that the evidence is in compliance with the above law. A
14 notable exception, however, is the State's copy of Declaration of Linda Hoerling-Glenn,
15 which is unsigned. Appendix I to the Petition. If the original of this document is also
16 unsigned, then it should not be considered by the court.

17 As will be more fully set forth below, petitioner has failed to meet his burden of
18 showing that he is entitled to relief.

20 2. PETITIONER HAS FAILED TO MEET HIS BURDEN UNDER
21 STRICKLAND V. WASHINGTON NECESSARY TO SHOW
22 INEFFECTIVE ASSISTANCE OF COUNSEL

22 The right to effective assistance of counsel is the right "to require the
23 prosecution's case to survive the crucible of meaningful adversarial testing." *United*
24 *States v. Cronin*, 466 U.S. 648, 656, 104 S. Ct. 2045, 80 L.Ed.2d 657 (1984). When
25 such a true adversarial proceeding has been conducted, even if defense counsel made

1 demonstrable errors in judgment or tactics, the testing envisioned by the Sixth
2 Amendment of the United States Constitution has occurred. *Id.* “The essence of an
3 ineffective-assistance claim is that counsel’s unprofessional errors so upset the
4 adversarial balance between defense and prosecution that the trial was rendered unfair
5 and the verdict rendered suspect.” *Kimmelman v. Morrison*, 477 U.S. 365, 374, 106 S.
6 Ct. 2574, 2582, 91 L.Ed.2d 305 (1986).

7 To demonstrate ineffective assistance of counsel, a defendant must satisfy the
8 two-prong test laid out in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052,
9 80 L.Ed.2d 674 (1984); *see also State v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987).

10 First, a defendant must demonstrate that his attorney’s representation fell below an
11 objective standard of reasonableness. Second, a defendant must show that he or she was
12 prejudiced by the deficient representation. Prejudice exists if “there is a reasonable
13 probability that, except for counsel’s unprofessional errors, the result of the proceeding
14 would have been different.” *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251
15 (1995). There is a strong presumption that a defendant received effective representation.
16 *State v. Brett*, 126 Wn.2d 136, 198, 892 P.2d 29 (1995), *cert. denied*, 516 U.S. 1121,
17 116 S. Ct. 931, 133 L.Ed.2d 858 (1996); *Thomas*, 109 Wn.2d at 226. A defendant
18 carries the burden of demonstrating that there was no legitimate strategic or tactical
19 rationale for the challenged attorney conduct. *McFarland*, 127 Wn.2d at 336. An
20 appellate court is unlikely to find ineffective assistance on the basis of one alleged
21 mistake. *State v. Carpenter*, 52 Wn. App. 680, 684-685, 763 P.2d 455 (1988).

22 Judicial scrutiny of a defense attorney’s performance must be “highly deferential
23 in order to eliminate the distorting effects of hindsight.” *Strickland*, 466 U.S. at 689.
24 The reviewing court must judge the reasonableness of counsel’s actions “on the facts of
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1 the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; *State v.*
2 *Benn*, 120 Wn.2d 631, 633, 845 P.2d 289 (1993).

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

10 *Hendricks v. Calderon*, 70 F.3d 1032, 1040 (9th Cir. 1995). As the Supreme Court has
11 stated "The Sixth Amendment guarantees reasonable competence, not perfect advocacy
12 judged with the benefit of hindsight." *Yarborough v. Gentry*, 540 U.S. 1, 8, 124 S. Ct. 1,
13 157 L.Ed.2d 1 (2003).

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

18 In addition to proving his attorney's deficient performance, the defendant must
19 affirmatively demonstrate prejudice, i.e. "that but for counsel's unprofessional errors, the
20 result would have been different." *Strickland*, 466 U.S. at 694. Defects in assistance
21 that have no probable effect upon the trial's outcome do not establish a constitutional
22 violation. *Mickens v. Taylor*, 535 U.S. 162, 122 S. Ct. 1237, 152 L.Ed.2d 29 (2002).

23 The reviewing court will defer to counsel's strategic decision to present, or to
24 forego, a particular defense theory when the decision falls within the wide range of
25 professionally competent assistance. *Strickland*, 466 U.S. at 489. When the
ineffectiveness allegation is premised upon counsel's failure to litigate a motion or
objection, defendant must demonstrate not only that the legal grounds for such a motion
or objection were meritorious, but also that the outcome of the proceeding would have

1 been different if the motion or objections had been granted. *Kimmelman*, 477 U.S. at
2 375; *United States v. Molina*, 934 F.2d 1440, 1447-48 (9th Cir. 1991). An attorney is
3 not required to argue a meritless claim. *Cuffle v. Goldsmith*, 906 F.2d 385, 388 (9th Cir.
4 1990).

5 A lack of awareness of the relevant law, standing alone, is insufficient to
6 establish ineffective assistance of counsel. *Bullock v. Carver*, 297 F.3d 1036, 1048
7 (10th Cir. 2002).

8 A defendant must demonstrate both prongs of the *Strickland* test, but a reviewing
9 court is not required to address both prongs of the test if the defendant makes an
10 insufficient showing on either prong. *State v. Thomas*, 109 Wn.2d 222, 225-26, 743
11 P.2d 816 (1987).

12 Petitioner seeks to show ineffective assistance of his trial counsel solely for
13 failing to request an instruction on the lesser included offense of unlawful display of a
14 weapon.

15 The decision of whether to request an instruction on a lesser-included offense is a
16 matter of trial strategy. *United States v. Windsor*, 981 F.2d 943, 947 (7th Cir. 1992).

17 Generally, decisions regarding trial tactics are accorded “enormous deference,” *United*
18 *States v. Hirschberg*, 988 F.2d 1509, 1513 (7th Cir. 1993), *cert. denied*, 114 S. Ct. 311

19 (1993), and will not constitute ineffective assistance if, “viewed from counsel’s

20 perspective at the time, [they] might be considered sound trial strategy.” *Kubat v.*

21 *Thieret*, 867 F.2d 351, 360 (7th Cir. 1989), *cert. denied*, 493 U.S. 874 (1989). The

22 decision not to request a lesser-included instruction will not constitute ineffective

23 assistance when requesting the instruction would conflict with a reasonable trial strategy.

24 *Kubat*, 867 F.2d at 364-65 (seeking lesser-included instruction in kidnapping case would

25 conflict with alibi defense); *see also, Moyer v. State*, 620 SE2d 837 (Ga. App. 2005);

1 *Autrey v. State*, 700 N.E.2d 1140, 1141 (Ind. 1998) (a tactical decision not to tender a
2 lesser included offense does not constitute ineffective assistance of counsel, even where
3 the lesser included offense is inherently included in the greater offense).

4 Presenting the jury with an all-or-nothing choice is generally a reasonable trial
5 strategy because, although it involves a risk, it increases the chances of an acquittal. *See*
6 *Collins v. Lockhart*, 707 F.2d 341, 345-46 (8th Cir. 1983) (Gibson, J. concurring);
7 *United States ex rel. Sumner v. Washington*, 840 F. Supp. 562, 573-74 (N.D. Ill. 1993);
8 *Parker v. State*, 510 So. 2d 281, 286 (Ala. Crim. App. 1987); *Henderson v. State*, 664
9 S.W.2d 451, 453 (Ark. 1984); *see also, Heinlin v. Smith*, 542 P.2d 1081, 1082 (Utah
10 1975) (court noted that counsel's failure to request a lesser included offense instruction
11 was not unreasonable, but a likely tactic involving the idea that an all-or-nothing stance
12 might better lead to an outright acquittal).

13 Petitioner relies on *State v. Ward*, 125 Wn. App. 243, 104 P.3d 670 (2004); a
14 Division I case which, in turn, relied heavily on the following language from *Keeble v.*
15 *United States*, 412 U.S. 205, 93 S. Ct. 1993, 36 L.Ed.2d 844 (1973), to support its
16 decision that the request for instruction on a lesser offense is not a tactical decision:

17 [I]t is no answer to petitioner's demand for a jury instruction on a lesser
18 offense to argue that a defendant may be better off without such an
19 instruction. True, if the prosecution has not established beyond a
20 reasonable doubt every element of the offense charged, and if no lesser
21 offense instruction is offered, the jury must, as a theoretical matter, return
22 a verdict of acquittal. But a defendant is entitled to a lesser offense
23 instruction -- in this context or any other -- precisely because he should
24 not be exposed to the substantial risk that the jury's practice will diverge
25 from theory. Where one of the elements of the offense charged remains in
doubt, but the defendant is plainly guilty of some offense, the jury is
likely to resolve its doubts in favor of conviction.

23 *Keeble*, 412 U.S. at 212-213. The *Ward* court's reliance on this language in *Keeble* is
24 misplaced. *Keeble* is not an ineffective assistance of counsel case. It is a case
25 determining whether a trial court properly refused to instruct on a lesser offense when

1 the defendant *had requested that such instruction be given*. The Court concluded that
2 the trial court erred in refusing the instruction. The language quoted above seems to be
3 responding to an argument by the Government that the defendant was better off without
4 his requested instruction. The Court properly responds that the determination of whether
5 a defendant is better off with or without instructions on a lesser offense is one that is left
6 to the defendant, and not the prosecution or the court. The only question for the court is
7 whether the defendant is legally entitled to the instruction. Since Keebler asked for the
8 instructions and was legally entitled to them, it was error not to give the instructions.
9 The Court did not hold that it was ineffective assistance of counsel not to ask for
10 instruction on a lesser offense. The Court in *Keebler* did not address effectiveness of
11 counsel at all. If anything, this language in *Keeble*, read in context, reinforces the
12 concept that whether to seek instruction on a lesser offense is a tactical decision.

13 *Keeble* is the only case cited in the *Ward* decision to refute the State's argument
14 that the decision to request instructions on a lesser included offense is a tactical decision.
15 As noted above, there is considerable authority from other jurisdictions that this is a
16 tactical decision. There is no claim for ineffective assistance of counsel when the
17 challenged action goes to a legitimate trial strategy or tactic. *State v. Garrett*, 124
18 Wn.2d 504, 520, 881 P.2d 185 (1994). This court should not follow Division I and its
19 decision in *Ward*.

20 By relying on this language in *Keeble*, the court in *Ward* stepped away from long
21 standing principles set forth in *Strickland* and its progeny. Firstly, the determination of
22 the effectiveness of counsel is always to be assessed by looking at the entire record.
23 Neither the court in *Ward* nor the petitioner applied this standard. Instead, they focus on
24 one decision of the attorney below. Case law has held that an appellate court is unlikely
25 to find ineffective assistance on the basis of one alleged mistake. *State v. Carpenter*, 52

1 Wn. App. 680, 684-685, 763 P.2d 455 (1988). Petitioner cannot show that he was
2 effectively denied counsel on the basis of this one mistake. He has failed to articulate
3 why the record, as a whole, demonstrates ineffective assistance of counsel.

4 Moreover, petitioner has not clearly established that he would have been entitled
5 to this instruction if requested. The State acknowledges that unlawful display of a
6 weapon is a lesser included offense of assault in the second degree. *State v. Fowler*, 114
7 Wn.2d 59, 67, 785 P.2d 808 (1990), *overruled on other grounds* by *State v. Blair*, 117
8 Wn.2d 479, 486-87, 816 P.2d 718 (1991). Still, petitioner must demonstrate that there
9 was affirmative evidence that the lesser, and only the lesser, was committed. Deputy
10 Hardesty testified that petitioner ran at him holding onto a sword with both hands, then
11 as he approached he began to side step like a ninja type stance. Appendix H to the
12 petition RP 65-69, 77-81, 83-84. He demonstrated to the jury the petitioner's position.
13 Appendix H to the petition RP 80-81. Petitioner admitted that he grabbed the sword as a
14 means of protection and ran down the street with it in his hand, but does not describe
15 how he was holding it. Appendix H to the petition RP 123-128153-155. Therefore, it
16 would appear that the only evidence in the trial as to how petitioner was holding the
17 sword is that of Deputy Hardesty; petitioner has not articulated how that supports the
18 giving of instructions for unlawful display of a weapon. Consequently, he has not met
19 his burden of proving both deficient performance and resulting prejudice.

20 Petitioner's claim of ineffective assistance of counsel should be dismissed as
21 meritless.

1 3. PETITIONER HAS NOT MET THE BURDEN OF SHOWING THAT
2 THE REASON HE WORE JAIL SANDALS WAS BECAUSE THE
3 STATE COMPELLED HIM TO DO SO WHICH IS THE
4 CONSTITUTIONAL PREREQUISITE FOR THIS TYPE OF CLAIM;
5 THE ISSUE WAS NOT PRESERVED IN THE TRIAL COURT.

6 The presumption of innocence is a basic component of a fair and impartial trial in
7 our criminal justice system. *Estelle v. Williams*, 425 U.S. 501, 503, 96 S. Ct. 1691, 48
8 L.Ed.2d 126 (1976). The presumption of innocence may be jeopardized where the
9 criminal defendant is required to wear prison garb, is handcuffed, or is otherwise
10 shackled before the jury. *State v. Finch*, 137 Wn.2d 792, 844, 975 P.2d 967 (1999). The
11 use of restraints may tend to prejudice the jury against the accused because they lead to
12 an inference that the defendant is guilty or dangerous. *Id.* at 845.

13 An accused is “entitled to the physical indicia of innocence which includes the
14 right of the defendant to be brought before the court with the appearance ... of a free and
15 innocent man.” *Id.* at 844. The State may not compel a criminal defendant to stand trial
16 and appear before a jury dressed in identifiable jail attire. *State v. Stevens*, 35 Wn. App.
17 68, 70, 665 P.2d 426 (1983) (citing *Estelle*, 425 U.S. at 504-06). Essential to a finding
18 of a constitutional violation is the element of compulsion; as stated by the Supreme
19 Court “the particular evil proscribed is *compelling a defendant against his will* to be tried
20 in jail attire.” *Estelle*, 425 U.S. at 507 (emphasis added).

21 Having a defendant appear in prison garb is a common defense tactic used to
22 elicit sympathy from the jury. See *Estelle*, 425 U.S. at 508; *State v. Elmore*, 139 Wn.2d
23 250, 274, 985 P.2d 289 (1999). In view of this tactic, a defendant may not willingly
24 appear at trial in prison garb, remain silent, and afterwards claim error. *Estelle*, 425 U.S.
25 at 508 (quoting *Hernandez v. Beto*, 443 F.2d 634, 637 (5th Cir. 1971)). To assert that
 appearing in jail clothing denied him his constitutional right to a fair trial by reversing
 the presumption of innocence, a defendant must first object or request a curative

1 instruction. *State v. Rodriguez*, 146 Wn.2d 260, 271, 45 P.3d 541 (2002) (quoting
2 *Elmore*, 139 Wn.2d at 273). The United States Supreme Court has stated definitively
3 that “the failure to make an objection to the court as to being tried in such clothes, for
4 whatever reason, is sufficient to negate the presence of compulsion necessary to
5 establish a constitutional violation.” *Estelle*, 425 U.S. at 512-13.

6 Petitioner has failed to show that the State compelled him to wear prison shoes
7 against his will. The record of the first day of trial shows that petitioner had not yet been
8 brought to the courtroom because there was a difficulty in finding two corrections
9 officers who were available to escort him. Appendix H to the Petition, RP 1-2.¹ The
10 court decides to set over the matter until the following morning, then makes this
11 statement:

12 Court: Also I understood there was an issue of him being dressed. He
13 should be dressed and ready to go.

14 Defense Counsel: Yes, Your Honor. It [clothing] was supposed to be
15 dropped off this morning and it wasn't, by mistake. I brought it, I didn't
16 –I just wanted the court to be aware we did have the clothes but we didn't
17 deliver them to the jail this morning.

18 Appendix H to the Petition, RP 2. This indicates that the petitioner was free to wear any
19 attire that was brought to the jail on his behalf, rather than he was compelled by the State
20 to wear jail sandals into court. The record does not reference any objection by the
21 petitioner when he was brought to court the next morning for a pretrial hearing,
22 presumably wearing his jail sandals. Appendix H to the Petition, RP 6-9. Nor does it
23 indicate any objection when the venire was brought to the court room. *See*, Appendix H

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25 ¹ Appendix H to the Petition contains four volumes of transcripts, two of which are labeled Volume 1.
There is a single volume that contains only voir dire proceedings which the State will reference as “Voir
Dire RP.” The three volumes that contain trial testimony that are sequentially paginated will be referenced
as “RP.”

1 to the Petition, Voir Dire RP 2. He had to object in the trial court to preserve this issue
2 and he failed to do so. His claim is without merit.

3 Jail records indicate that petitioner was not wearing shoes when he was booked
4 into the jail and that there were no shoes with the clothing that was delivered to the jail
5 for petitioner to wear at trial. *See* Declaration of Michael Heishman, State's Appendix
6 E. Sergeant Heishman further indicates that there is no jail policy that would compel
7 petitioner to wear jail sandals to court. *Id.* The evidence before this court indicates that
8 the reason petition wore jail sandals to court was that he did not have any other footwear
9 to put on his feet.

10 Petitioner's own declaration does not clearly establish that he was *compelled* to
11 wear the sandals. Petitioner states that "jail officers told me that I also had to wear the
12 jail- issue, orange sandals," but is silent as to whether he had other footwear that he
13 wanted to wear but was told that he could not. The fact that he was allowed to wear
14 civilian clothes shows that the State was not compelling him to wear jail attire into the
15 courtroom, and is inconsistent with his claim that he was forced to wear jail sandals.

16 In sum, petitioner has failed to provide evidence that he has a cognizable claim
17 for relief of being compelled to wear jail footwear before the jury, and that this was
18 preserved in the trial court. In order for him to preserve his claim, he needed to object in
19 the trial court and to ask for a limiting instruction. He did neither. With this record,
20 petitioner could not show a basis for relief if he had raised this in a direct appeal; he has
21 failed to meet the increased burden imposed upon him in a collateral attack. This claim
22 is without merit and should be dismissed.

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4. PETITIONER HAS FAILED TO SHOW THAT A JUROR'S BRIEF AND INADVERTENT VIEWING OF HIM IN HANDCUFFS IN A COURTHOUSE CORRIDOR HAD A SUBSTANTIAL OR INJURIOUS EFFECT ON THE JURY'S VERDICT.

As mentioned earlier, when discussing petitioner's appearance in jail shoes, the presumption of innocence may be jeopardized where the criminal defendant is required to wear prison garb, is handcuffed, or is otherwise shackled before the jury. *State v. Finch*, 137 Wn.2d 792, 844, 975 P.2d 967 (1999). When the court allows a defendant to be brought before the jury in restraints, the jury may become prejudiced against the accused, perceiving him as dangerous or untrustworthy "even under the surveillance of officers." *Finch*, 137 Wn.2d at 845. While a court must make a particularized showing of need before restraining a criminal defendant in the courtroom, the situation is on a slightly different constitutional footing when a juror or venire person sees the defendant in restraints outside of the courtroom. While it is best to try to avoid having jurors or potential jurors see the defendant in restraints, it is not reversible error simply because jurors see a defendant wearing shackles. *State v. Gosser*, 33 Wn. App. 428, 435, 656 P.2d 514 (1982)(defendant moved for a mistrial claiming he was unduly prejudiced because shackles were removed from him in the corridor outside the courtroom, presumably in the presence of at least some of the jurors).

When a defendant on direct review raises a claim about a jury's brief or inadvertent view of him in shackles or handcuffs, the defendant must make an affirmative showing of prejudice, and he carries the burden of curing any defect. *State v. Elmore*, 139 Wn.2d 250, 273, 985 P.2d 289 (1999), *cert. denied*, 531 U.S. 837 (2000). To demonstrate prejudice on direct appeal, the defendant must show "a substantial or injurious effect or influence on the jury's verdict." *Elmore*, 139 Wn.2d at 274 (quoting *State v. Hutchinson*, 135 Wn.2d 863, 888, 959 P.2d 1061 (1998)). There must be

1 evidence in the record beyond the defendant's bare allegations that seeing the defendant
2 in shackles prejudiced the jury. *State v. Gosser*, 33 Wn. App. 428, 435, 656 P.2d 514
3 (1982); *State v. Early*, 70 Wn. App. 452, 462, 853 P.2d 964 (1993) (“Mr. Early's mere
4 appearance in handcuffs during jury selection does not indicate the incident ‘inflamed or
5 prejudiced’ the jurors against Mr. Early.”).

6 In *State v. Ollison*, 68 Wn.2d 65, 411 P.2d 419, *cert. denied*, 385 U.S. 874, 87 S.
7 Ct. 149, 17 L.Ed.2d 101 (1966), the trial court denied a motion for mistrial sought
8 because sheriff's deputies had brought two defendants down a hallway in handcuffs,
9 then unhanded them outside the courtroom, but in an area where prospective jurors
10 may have been able to view. The trial court denied the motion for mistrial and
11 defendants challenged this decision on appeal. The Supreme Court affirmed noting
12 “[b]eyond the statement of appellants' counsel, the record contains no proof that the
13 incident inflamed or prejudiced the minds of any prospective jurors against appellants.”
14 *Ollison*, 68 Wn.2d at 69.

15 The facts of *Ollison* are nearly directly on point with the case before the court.
16 Petitioner has shown that a person who ultimately sat on his jury, saw him being
17 escorted down a courthouse corridor while handcuffed. *See* State's Appendices C² & D.
18 This occurred prior to the juror being assigned to the venire that was sent to defendant's
19 court room. *Id.* Petitioner does not present an issue regarding the use of restraints in the
20 courtroom, but of an inadvertent sighting by a single juror of the petitioner in handcuffs
21 in a courthouse hallway. Just as it was in *Ollison*, there is no proof that the incident
22 inflamed or prejudiced the mind of this juror, only petitioner's assertion that it did so.
23 The evidence before this court does not support this claim.

24 _____
25 ² State's Appendix C is a copy of an article that was written by a juror on petitioner's case that appeared in
the Puyallup Herald on September 8, 2005. While petitioner included a copy of this article in his
materials, *see* Appendix I to the Petition, it is incomplete, in very small print, and difficult to read.

1 The juror in question, Juror No. 6,³ spoke several times during the voir dire
2 process. State's Appendix D; Appendix H to the Petition, Voir Dire RP 10, 11, 20, 31-
3 32, 51, 52-53, 58-59, 65, 75-76. Nothing in these answers indicates Juror No 6 had
4 become inflamed or prejudiced against the petitioner. She indicated that her prior jury
5 duty had helped her understand the process and left her with the opinion that the
6 "Constitution is cool." Appendix H to the Petition, Voir Dire RP 10. When asked what
7 the presumption of innocence means to her she stated:

8 Means that he walks in as any other person would. I don't know the man;
9 I don't know what he has done; I don't know the facts.

10 Appendix H to the Petition, Voir Dire RP 53. When the prosecutor asked the venire
11 panel whether anyone on the venire had a problem with the fact that Mr. Crace was
12 presumed innocent at that point, no one indicated that they did. Appendix H to the
13 Petition, Voir Dire RP 56. These answers indicate that this juror had an open mind as to
14 the facts and had not become inflamed or prejudiced against the petitioner.

15 The court's instructions informed the jury that it was its "duty to determine
16 which facts have been proved in this case from the evidence produced in court" and that
17 the "only evidence you are to consider consists of the testimony of the witnesses and the
18 exhibits admitted into evidence." Appendix F to the Petition, Instruction No. 1. A jury
19 is presumed to follow a court's instructions. *State v. Lough*, 125 Wn.2d 847, 864, 889
20 P.2d 487 (1995). Under these instructions, the juror would not have considered the fact
21 that she had seen the petitioner handcuffed in determining his guilt.

22 After the trial, the juror wrote about her jury experience for a local newspaper.
23 State's Appendix C. Her article does not indicate that she was inflamed or prejudiced
24

25 _____
³ This was her number during the voir dire process; she became Juror No. 3 in the seated panel. State's Appendix D

1 by seeing the petitioner in handcuffs. Rather, she discusses how the evidence in the case
2 was “a true story of immense importance” and how she “earnestly embraced the gravity
3 of the situation.” *Id.* She goes on to state that:

4 As a jury, we were charged with the responsibility of considering the
5 intent of actions, based upon the evidence presented, and the application
6 of the law provided. We were to consider substance abuse induced
7 personality disorder, or diminished capacity in relation to the events.

8 *Id.* This shows that the juror remained focused on the task she was assigned to perform
9 under the court’s instructions.

10 Finally, this claim of error affects but one juror out of twelve. It took a
11 unanimous jury to convict defendant of attempted assault in the second degree,
12 malicious mischief and criminal trespass. The facts of what the petitioner did were
13 largely undisputed, and the issue before the jury was his mens rea; petitioner had
14 voluntarily consumed drugs and alcohol just prior to committing the acts that were the
15 basis of these charges. Appendix H to the Petition, RP 260-265. The identity of the
16 assailant was not in dispute, nor were his actions, the jury simply had to decide what was
17 petitioner’s intent at the time. With this limited issue before the jury, it is unlikely that
18 the fact that one juror briefly saw the defendant in handcuffs would have an impact on
19 the outcome of the case. Moreover, the jury unanimously convicted defendant of a
20 lesser included offense of the charged crime. Appendix G to the Petition. This indicates
21 that the jury was carefully considering the evidence before it and not merely convicting
22 because it believed petitioner to be a dangerous man. Under *Elmore*, in order to succeed
23 on his claim, petitioner must show that one juror’s brief viewing of him in handcuffs in
24 the hallway had “a substantial or injurious effect or influence on the jury’s verdict.” He
25 has failed to meet his burden. This claim is without merit and should be dismissed.

1
2 5. PETITIONER HAS FAILED TO MEET HIS BURDEN OF
3 SHOWING JUROR MISCONDUCT DURING VOIR DIRE OR
4 THAT HE WOULD HAVE BEEN ENTITLED TO A
5 CHALLENGE FOR CAUSE HAD THE JUROR DISCLOSED
6 SEEING PETITIONER IN HANDCUFFS.

7 The party who asserts juror misconduct bears the burden of showing that the
8 alleged misconduct occurred. *State v. Hawkins*, 72 Wn.2d 565, 566, 434 P.2d 584
9 (1967). When this claim is raised in the trial court, the determination of whether
10 misconduct has occurred lies within the discretion of the trial court. *State v. Havens*, 70
11 Wn. App. 251, 255-56, 852 P.2d 1120, *review denied*, 122 Wn.2d 1023 (1993). Not all
12 instances of juror misconduct merit a new trial; there must be prejudice. *State v. Barnes*,
13 85 Wn. App. 638, 668-669, 932 P.2d 669 (1997); *State v. Tigano*, 63 Wn. App. 336,
14 341, 818 P.2d 1369 (1991). “A strong, affirmative showing of misconduct is necessary
15 in order to overcome the policy favoring stable and certain verdicts and the secret, frank
16 and free discussion of the evidence by the jury.” *In re Pers. Restraint of Elmore*, 162
17 Wn.2d 236, 267, 172 P.3d 335 (2007), citing *State v. Balisok*, 123 Wn.2d 114, 117-18,
18 866 P.2d 631 (1994).

19 Voir dire protects the right to an impartial jury by exposing possible biases.
20 *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 554, 104 S. Ct. 845, 78
21 L.Ed.2d 663 (1984). For this process to serve its purpose, truthful answers by
22 prospective jurors are necessary. *Id.* *McDonough* was a products liability case in which
23 a juror did not disclose in voir dire that his son had received a broken leg as the result of
24 an accident involving a truck tire when questions were asked whether jurors, or members
25 of their immediate family, had sustained any severe injuries resulting in disability or
prolonged pain and suffering. *McDonough*, 464 U.S. at 550-51. The Supreme Court

1 refused to grant a new trial on this basis stating that “[t]o invalidate the result of a 3-
2 week trial because of a juror's mistaken, though honest response to a question, is to insist
3 on something closer to perfection than our judicial system can be expected to give.”

4 **McDonough**, 464 U.S. at 555. The Court held that to obtain a new trial, a party must
5 first demonstrate that (1) a juror failed to honestly answer a material question on voir
6 dire, and (2) show that a correct response would have provided a valid basis for a
7 challenge for cause. **McDonough**, 464 U.S. at 556. Washington law is in accord with
8 **McDonough. Elmore**, 162 Wn.2d at 268; **In re Det. of Broten**, 130 Wn. App. 326, 336,
9 122 P.3d 942 (2005), *review denied*, 158 Wn.2d 1010 (2006).

10
11 Petitioner cannot get past the first requirement of **McDonough**; he cannot show
12 that Juror No. 6 failed to honestly answer a material question on voir dire. Petitioner
13 asserts that the juror lacked candor when she failed to disclose that she had seen him, in
14 handcuffs, in a courthouse hallway, in response to these questions which the court put to
15 the entire venire:

16 COURT: Do any of you know Mr. Crace? Have any of you heard
17 anything about this particular case by potentially hearing potential
18 witnesses talk about it, or other folks that may be involved in the case
19 having any kind of discussion?

20 No? Okay.

21 Appendix H to the Petition, Voir Dire RP 6. The State submits that a juror who has only
22 seen the petitioner pass by in the hallway is not being dishonest and does not lack candor
23 in failing to divulge that information in response to these questions. The juror does not
24 know Mr. Crace; nor has she heard anyone discussing the facts of the case. Petitioner
25 has failed to establish juror misconduct.

1 Nor could petitioner establish that had Juror No. 6 disclosed what she had seen in
2 the hallway, that this would have provided a basis for a challenge for cause. Petitioner
3 does not cite any authority stating that a venire person's inadvertent viewing of a
4 criminal defendant in restraints is a valid basis for a challenge for cause. The State is
5 unaware of any such authority. In the preceding argument section, the State cited to
6 several cases where the fact that jurors had briefly viewed the defendant in restraints was
7 not a basis for a new trial. Clearly such a viewing is not fatal to a fair trial. As such, it
8 would be a stretch to conclude that an inadvertent viewing by a venire person would
9 automatically preclude them from serving on the jury. While everyone should try to
10 guard against inadvertent jury views of a defendant in restraints, it is not an event that
11 creates a presumption of prejudice which must be rebutted by the State. It is always the
12 criminal defendant's burden to show the prejudicial effect. Here, Juror No. 6 did not
13 indicate that she had any difficulty in applying the presumption of innocence to
14 petitioner. Appendix H to the Petition, Voir Dire RP 56. Petitioner cannot show that he
15 had any valid basis for a challenge for cause.

16 As petitioner has failed to meet his burden in establishing juror misconduct, this
17 claim should be dismissed.

18 In summary, the State asks this court to dismiss the petition as being without
19 merit. Should this matter be remanded for a reference hearing, the State disputes that: 1)
20 petitioner received ineffective assistance of trial counsel; 2) the reason why petitioner
21 wore jail shoes into court was because the State compelled him to do so; 3) a brief and
22 inadvertent viewing by a juror of the petitioner in handcuffs had a substantial and
23 injurious effect on the jury's verdict; and, 4) the juror who saw the petitioner in
24 handcuffs committed misconduct or lacked candor in her answers to questions in voir
25

1 dire as no question asked of her would have required her to disclose the fact that prior to
2 being called to the venire panel she had seen the petitioner in the hallway in handcuffs.

3
4 D. CONCLUSION:

5 This court should dismiss the petition because petitioner has failed to demonstrate
6 that he is entitled to relief.

7 DATED: September 17, 2008.

8 GERALD A. HORNE
9 Pierce County Prosecuting Attorney

10 
11 KATHLEEN PROCTOR
12 Deputy Prosecuting Attorney
13 WSB #14811

14 Certificate of Service:

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

22 9-17-08 Therese K
23 Date Signature

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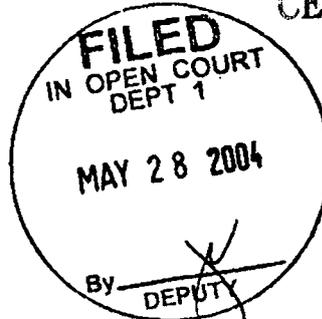
APPENDIX “A”

Judgment and Sentence



03-1-03797-6 21081314 JDSWCD 05-28-04

CERTIFIED COPY



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 03-1-03797-6

vs.

HOYT WILLIAM CRACE,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

MAY 28 2004

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[x] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

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

03-1-03797-6

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

By direction of the Honorable

[Signature]
JUDGE
JAMES R. ORLANDO

Dated: MAY 28, 2004

KEVIN STOCK
By: *[Signature]*
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

MAY 28 2004 *[Signature]*
Deputy

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

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

KEVIN STOCK, Clerk

By: _____ Deputy

sp

STATE OF WASHINGTON, County of Pierce
ss: I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of said Court this

17 day of Sept, 2008
Kevin Stock, Clerk
By: *[Signature]* Deputy

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KEVIN STOCK, County Clerk
BY *[Signature]* DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 03-1-03797-6

vs.

JUDGMENT AND SENTENCE (JS)
*** COUNTS I & III ONLY ***

HOYT WILLIAM CRACE

Defendant.

- Prison
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)

MAY 28 2004

SID: 12197251
DOB: 02-28-1963

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 05-14-2004 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ATTEMPTED ASSAULT IN THE SECOND DEGREE	9A.28.020, 9A.36.021	DEADLY WEAPON (D)	08-17-2003	032290185 PCSD
III	MALICIOUS MISCHIEF IN THE SECOND DEGREE	9A.48.080	-NONE-	08-17-2003	032290185 PCSD

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

as charged in the Amended Information

[X] A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) I.
RCW 9.94A.602, .510.

04-9-06448-2

03-1-03797-6

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.569):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	BURG 2	[uncertain]	Pierce, WA	8-7-81	A	NV
2	ROB 1*	6-2-88	Pierce, WA	5-4-88 4/26/88	A	V
3	ROB 1*	6-2-88	Pierce, WA	5-4-88 4/26/88	A	V
4	ROB 2*	7-3-91	Pierce, WA	5-4-91	A	V
5	BURG 2	1-10-94	Pierce, WA	5-4-91	A	NV
6	BURG 2	11-6-95	Pierce, WA	10-7-95	A	NV
7	PSP 2	11-6-95	Pierce, WA	10-7-95	A	NV
8	BURG 2	5-13-99	Pierce, WA	3-5-99	A	NV
9	ATT ELUDE	2-25-03	King, WA	11-1-02	A	NV

* = Most Serious Offense ("M.S.O."), RCW 9.94A.030(28).

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

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAX TERM
I	Third M.S.O.	Third M.S.O.	Life without Possibility of Early Release	24 months (D) 6 MONTHS	Life without Possibility of Early Release	Life
III	9	I	22-29 Months	-0-	22-29 Months	5 Years

- 2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):
-

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

03-1-03797-6

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [x] as follows: No agreements.

III. JUDGMENT

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

3.2 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RTN/RJN \$ 743.72 Restitution to: PIERCE COUNTY
 \$ _____ Restitution to: _____
 (Name and Address--address may be withheld and provided confidentially to Clerk's Office).
 PCV \$ 500.00 Crime Victim assessment
 DNA \$ 100.00 DNA Database Fee
 PUB \$ 400.00 Court-Appointed Attorney Fees and Defense Costs
 FRC \$ 110.00 Criminal Filing Fee
 FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____
 \$ _____ Other Costs for: _____
 \$ 1853.72 TOTAL

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

4.2 RESTITUTION

[] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

[] is scheduled for _____

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

[X] RESTITUTION. Order Attached

03-1-03797-6

1
2
3 4.3 COSTS OF INCARCERATION

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

5 4.4 COLLECTION COSTS

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

7 4.5 INTEREST

8 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

9 4.6 COSTS ON APPEAL

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

11 4.7 [] HIV TESTING

12 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.

13 4.8 [X] DNA TESTING

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

15 4.9 NO CONTACT

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

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

18 4.10 OTHER:

19
20
21
22

23 4.11 BOND IS HEREBY EXONERATED

03-1-03797-6

4.12 CONFINEMENT OVER ONE YEAR: PERSISTENT OFFENDER. The defendant was found to be a Persistent Offender.

X The court finds Count I is a most serious offense and that the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

[] The court finds Count _____ is a crime listed in RCW 9.94A.030(31)(b)(i) (e.g., rape in the first degree, rape of a child in the first degree (when the offender was sixteen years of age or older when the offender committed the offense), child molestation in the first degree, rape in the second degree, rape of a child in the second degree (when the offender was eighteen years of age or older when the offender committed the offense) or indecent liberties by forcible compulsion; or any of the following offenses with a finding of sexual motivation: murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or an attempt to commit any crime listed in RCW 9.94A.030(31)(b)(i)), and that the defendant has been convicted on at least one separate occasion, whether in this state or elsewhere, of a crime listed in RCW 9.94A.030(31)(b)(i) or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in RCW 9.94A.030(31)(b)(i).

Those prior convictions are included in the offender score as listed in Section 2.2 of this Judgment and Sentence. RCW 9.94A.030, RCW 9.94A.

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

Life without the possibility of early release on Count I _____
29 months on Count III _____
_____ months on Count _____
_____ months on Count _____

Actual number of months of total confinement ordered is: Life without the possibility of early release.

(b) CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

_____ The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

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

[] The sentence herein shall run consecutively to the felony sentence in cause number(s) _____

_____ 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: _____

4.13 OTHER: CREDIT FOR 285 DAYS SERVED

03-1-03797-6

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:

<u>6</u> months on Count No	<u>I</u>	_____ months on Count No	_____
_____ months on Count No	_____	_____ months on Count No	_____
_____ months on Count No	_____	_____ months on Count No	_____

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

V. NOTICES AND SIGNATURES

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

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

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.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.

5.4 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

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

5.6 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. N/A

03-1-03797-6

5.7 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 5/28/04

JUDGE

Print name

[Signature]
J. A. Orlando

Attorney for Defendant

Print name:

[Signature]

Deputy Prosecuting Attorney

Print name:

[Signature]

WSB # 25470

WSB #

17902

Defendant

Print name:

[Signature]

FILED
IN COUNTY CLERK'S OFFICE

A.M. MAY 28 2004 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY [Signature] DEPUTY

03-1-03797-6

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 03-1-03797-6

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

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

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

LLLL
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EEEE

03-1-03797-6

IDENTIFICATION OF DEFENDANT

SID No. 12197251 Date of Birth 02-28-1963
(If no SID take fingerprint card for State Patrol)

FBI No. UNKNOWN Local ID No. UNKNOWN

PCN No. UNKNOWN Other

Alias name, SSN, DOB: _____

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

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb



Right Thumb

Right four fingers taken simultaneously



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

DEFENDANT'S SIGNATURE: *[Handwritten Signature]*

DEFENDANT'S ADDRESS: _____

APPENDIX “B”

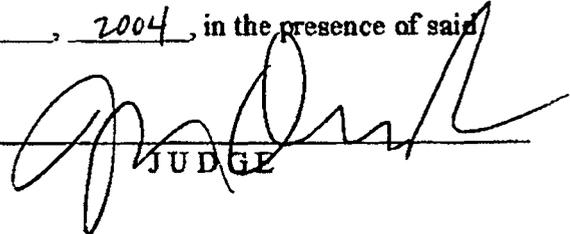
Judgment and Sentence

03-1-03797-6

Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason.

Bail is hereby exonerated.

Signed this 28th day of MAY, 2004, in the presence of said Defendant.



JUDGE

CERTIFICATE

Entered Jour. No. _____ Page No. _____ Department No. _____, this _____ day of _____,

I, _____, County Clerk and Clerk of the Superior Court of the State of Washington, in and for the County of Pierce, do hereby certify that the foregoing is a fully, true and correct copy of the judgment, sentence, and commitment in this cause as the name appears of record in my office.

WITNESS my hand and seal of said Superior Court this _____ day of _____,

County Clerk and Clerk of Superior Court.

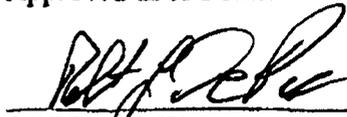
By _____
Deputy Clerk

Presented by:



S.M. PENNER
Deputy Prosecuting Attorney
WSB # 25470

Approved as to Form:



ROBERT J. DEPAN
Attorney for Defendant
WSB# 17902

IN COUNTY FILED
CLERK'S OFFICE
A.M. MAY 28 2004 P.M.
PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

STATE OF WASHINGTON, County of Pierce
ss: I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
17 day of Sept, 2008
Kevin Stock, Clerk
By _____ Deputy

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

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAY 28 2004 P.M.
PIERCE COUNTY WASHINGTON
KEVIN STOCK County Clerk
BY _____ Deputy

CERTIFIED COPY

MAY 28 2004

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 03-1-03797-6

vs.

HOYT WILLIAM CRACE,

CONDITIONS ON SUSPENDED
SENTENCE (COUNT II ONLY)

Defendant.

This matter coming on regularly for sentencing before the Honorable James Orlando, Judge, on the 28th day of MAY, 2004, and the Court having sentenced the defendant HOYT WILLIAM CRACE to the term of 0 days for the crime(s) of CRIMINAL TRESPASS IN THE FIRST DEGREE and the Court having suspended that term, the Court herewith orders the following conditions and provisions: NO CONDITIONS ON COUNT II

- 1. () Termination date is to be _____ year(s) after date of sentence.
- 2. () The Defendant shall be under the charge of a probation officer employed by the Department of Corrections and follow implicitly the instructions of said Department, and the rules and regulations promulgated by the Department of Corrections for the conduct of the Defendant during the time of his/her probation herein.
- () That the Defendant be under the supervision of the Court (bench probation).
- 3. () Defendant will pay the following amounts to the Clerk of the Superior Court, Pierce County, Washington.

\$ _____ Attorney fees as reimbursement for a portion of the expense of his/her court appointed counsel provided by the Pierce County Department of Assigned Counsel. The court finds that the defendant is able to pay said fee without undue financial hardship.

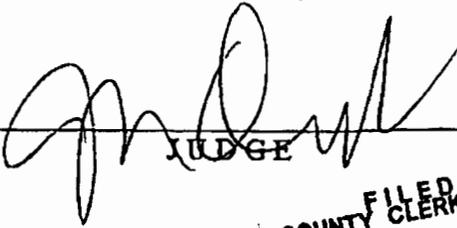
\$ _____ Crime Victim Compensation penalty assessment per RCW 7.68.035;

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

IT IS FURTHER ORDERED that, upon completion of any incarceration imposed the defendant shall be released from the custody of the Sheriff of Pierce County and report to the authorized Probation Officer of this district, to receive his instructions: Bail is hereby exonerated.

PURSUANT TO 1993 LAWS OF WASHINGTON, CHAPTER 419, IF THIS OFFENDER IS FOUND TO BE A CRIMINAL ALIEN ELIGIBLE FOR RELEASE AND DEPORTATION BY THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, SUBJECT TO ARREST AND RE- INCARCERATION IN ACCORDANCE WITH THIS LAW, THEN THE UNDERSIGNED JUDGE AND PROSECUTOR CONSENT TO SUCH RELEASE AND DEPORTATION PRIOR TO THE EXPIRATION OF THE SENTENCE.

DONE IN OPEN COURT this 28 day of MAY, 2004.



JUDGE

Presented by:



S.M. PENNER
Deputy Prosecuting Attorney
WSB # 25470

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAY 28 2004 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY  Deputy

Approved as to Form:



ROBERT J. DEPAN
Attorney for Defendant
WSB # 17902



HOYT WILLIAM CRACE
Defendant

STATE OF WASHINGTON, County of Pierce
ss: I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
17 day of , 20 08
Kevin Stock, Clerk
By  Deputy

sp

APPENDIX "C"

Article

Juror learns about mental health during Pierce County trial



Jury Duty

◆◆◆
Linda Hoerling

Group 20 was not to report again until Tuesday morning. This gave me Monday at work to answer repeatedly that my jury duty reality involved little of the suggested relax and read a book time and that I had indeed been selected for a jury.

Many people wanted to know what type of case and some of the details. I spoke generally, as somehow it really did not seem respectful to identify the "winners" or "losers" by name, but took the opportunity to confirm that the constitutional guarantee of the right to a fair trial by peers appeared to be intact and working well.

Although, after observing the impossible caseload of the judges and attorneys first hand, I was not so convinced of the adjective speedy.

Tuesday morning, Rose and Jan met us with sincere smiles and checked us in.

We were instructed to be nearby and watch for the flashing amber light that would indicate that a judge had requested a pool. I had a cup of coffee at the nearby kiosk, and sat down to take a few notes for future articles in the hub of action.

Slipping warm caffeine, I contemplated the issue of clothing as it defined everyone working in the county city building.

Beyond a colorful Coldwater Creek outfit or a new pair of Dockers, my teacher clothes often border on simply functional.

I began a list of the vast array of shoes parading before me, as the variations were intriguing. There were the dark wing-tip leathers for

the pinstripe crowd, shiny pastel pumps to compliment spring suits, the hearty dark black sturdy gym like shoes of security, or deputy sheriffs, and plastic orange sandals with socks.

Sandals? It wasn't that warm yet. I looked up the sandaled feet to the man attached. He was handcuffed and being escorted by two rather large, (formerly known as burly) men in uniform. Obviously, an accused prisoner in street clothes, sans real shoes, in route to his trial; I was definitely not in Kansas anymore.

Before I could put more thought into the scene before me, the flashing amber light intruded with a visual distraction. It was time for my version of a line up.

It was like old home week and a reunion to see two former co-jurors of the previous week, Judy and Larry. We caught up a bit, and talked about our previous jury group and whom had been assigned to which judges and what type of cases.

Brandt, too, had been assigned another pool and it felt odd not to be able to visit more with the people I had grown so fond of in such a short time.

After our brief gathering, I was once again requested in the hallway. This time, lined up in number order by a pumpkin colored tag, and the encouraging Rose smile. There were no stairs to ascend this trip, since we were headed right across the hall to Judge Orlando's superior criminal court.

We were again welcomed by a variety of people standing silently and observing: the attorneys, Jan Costanti the judicial assistant to Judge Orlando, Randy York the court reporter, two sheriff deputies, and the accused man.

Judge Orlando was announced by Jan Costanti. He entered, and requested us to take a seat. It was then I realized that the defendant was the man I had earlier observed in the hallway as socked,



Photo courtesy/Linda Hoerling

The jury box Linda Hoerling would be spending time in while serving on jury.

sandaled, and escorted.

The 21 Pierce County superior court judges rotate through blocks of criminal cases, which projected approximately 10 percent chance of being tagged for this particular man's jury pool. I felt as if I had somehow violated some vague acquaintance, or knowing the defendant rule. But, this new revelation justified no action on my part. Besides, out of the 40 people waiting in this particular pool, it would seem unlikely to be selected for his trial.

Guess who statistically lost or won depending on your perspective?

Voir dire (truth telling) previously referred to as enlarged conversation for jury selection, began with what appeared to be a pain-

fully slow recounting of current occupation, or what type of jobs the jury pool had previously held. This seemed redundant to me, and when the defense attorney, Mr. Depan apologized for the slow going, explaining "previously, the potential juror list contained more information," I felt my patience o'meter gauge dip dangerously low.

The judicial system was already overburdened, and this glitch only amplified the lack of time issues. When I had the opportunity to ask Mr. Depan directly, he did not know why the jury lists were information deficient.

Judge Orlando interjected that he had e-mailed Jan, the jury coordinator the same question. People were not filling out the 10-ques-

tion survey that accompanies a jury summons completely, which produces scanty information from which the attorneys work their craft.

After an hour of discussion, the jury was announced.

My pea-brain was trying to calculate the odds of not only making it on yet another jury, but specifically, that of Mr. Sandal Foot's trial.

As the mother of my godchildren, and survivor of cancer told me, it does not matter if you are in the less than one percent category; it is your personal 100 percent.

Tucking my Toto-sized reading desires aside, a true story of immense importance, and more intriguing than any reading material, was about to unfold as told by the prosecutor and

defense attorney.

Mr. Penner was a tall gentleman with the classic pinstripe suit, which deftly augmented his prosecutor look. The defense attorney, Mr. Depan reminded me of the friendly, but somewhat scattered college professor. Both men were occupation grave, and after being sworn in, I understood the vital nature of the proceedings as it related to the defendant.

The accused man was charged with the crimes of Assault in the Second Degree or Attempted Assault in the Second Degree with a Deadly Weapon Enhancement, Criminal Trespass in the First Degree, and Malicious Mischief in the Second Degree.

I earnestly embraced the gravity of the situation when both the defense and the prosecutor basically agreed on the sequence of events during one August evening of 2003. Few, if any witnesses were to be called. This idea intrigued me but was a puzzle. A trial without witnesses?

As a jury, we were charged with the responsibility of considering the intent of actions, based on the evidence presented, and application of the law provided. We were to consider substance abuse induced personality disorder, or diminished capacity in relation to the events.

Beyond a made for TV movie, or Ann Rule book, these were only virtual terms used to create suspense. I sincerely hoped for more guidance and instruction about these phrases, and their application.

Between testimony from two psychologists, and numerous references to the DSM -V (Diagnostic and Statistical Manual of Mental Disorders-5), I learned more in a week about the topic of mental health, than I would probably ever need to know in a lifetime.

I clicked my heels together, but the ruby red slippers were not working properly.

APPENDIX “D”

Jury Panel Selection List



CERTIFIED COPY

Number: 03-1-03797-6

Title: State of Washington vs. CRACE, HOYT WILLIAM
 Charge: ASSAULT IN THE SECOND DEGREE E28
 Judge: JAMES ORLANDO
 Interpreter: Panel Id 13350

Juror Badge Color: ORANGE

VOIR DIRE
 START DATE: 05.11.04 TIME: 11:10am
 SWORN DATE: 05.11.04 TIME: 2:40pm

RANDOM
ORIGINAL JURY PANEL SELECTION LIST
 Pierce County Superior Court Jury Administration

Panel Num	Juror Name	Peremptory	Stipulated	Excused for Cause	Not Reached	Sworn	Alternate	BADGE
1	BALDES, J JAMES	()	()	()	()	(X)	()	754663
2	BURHANS, DONALD C	()	()	()	()	(X)	()	665827
3	LEMON, EUGENE A	(X)	()	()	()	()	()	779841
4	GUERRA, BRIDGETTE L	(X)	()	()	()	()	()	779699
5	JOHNSTON, A KANANI	(X)	()	()	()	()	()	784886
6	HOERLING, LINDA J	()	()	()	()	(X)	()	702155
7	CALLAHAN, JOHN R	()	()	()	()	(X)	()	784704
8	TWETEN, LORIE S	(X)	()	()	()	()	()	778156
9	DIMOND, DAVID HENRY	()	()	()	()	(X)	()	784884
10	MERRITT, STEWART Z	()	()	()	()	(X)	()	767765
11	VUKOVICH, MICHAEL L	()	()	()	()	(X)	()	782264
12	VANICEK, ERROL D	(X)	()	()	()	()	()	784532
13	ALDRIDGE, MARILYN R	()	()	()	()	(X)	()	784523

Number: 03-1-03797-6

Juror Badge Color: ORANGE

Title: State of Washington vs. CRACE, HOYT WILLIAM
 Charge: ASSAULT IN THE SECOND DEGREE E28
 Judge: JAMES ORLANDO
 Interpreter: Panel Id 13350

RANDOM

ORIGINAL JURY PANEL SELECTION LIST

Pierce County Superior Court Jury Administration

Panel Num	Juror Name	Peremptory	Stipulated	Excused for Cause	Not Reached	Sworn	Alternate	BADGE
14	YOUNG, ARLENE FRANCES	(X)	()	()	()	()	()	767824
15	HAGGERTY, LORY L	()	()	()	()	(X)	()	785003
16	BROUILLET, SHIRLENE J	()	()	()	()	(X)	()	744048
17	KOCOUREK, RHONDA M	()	()	()	()	(X)	()	784790
18	PEKO, FITI	()	()	()	()	(X)	()	282844
19	HAMILTON, ROBERT A	(X)	()	()	()	()	()	725532
20	FRENCH, JAMIE ANN	()	()	()	()	(X)	()	785158
21	MC CORD, JENNIFER A	()	()	()	()	(X)	()	784597
22	HOBAN, EMMA	()	()	()	(X)	()	()	747237
23	DAMS, ANNA M	()	()	()	(X)	()	()	608678
24	COX, KARA MARIE	()	()	()	(X)	()	()	785126
25	TIEGS, ADAM A	()	()	()	(X)	()	()	784888
26	WILLIAMS, VICKI	()	()	()	(X)	()	()	763647
27	CASWELL, DANIEL THOMAS	()	()	()	(X)	()	()	751685
28	ANDERSON, JAMES F	()	()	()	(X)	()	()	784661
29	CRABB, R C	()	()	()	(X)	()	()	785009
30	ARMPRIEST, SCOTT GREGORY	()	()	()	(X)	()	()	784767
31	JONES, SUSAN K	()	()	()	(X)	()	()	777960
32	HARLOW, JEFFREY G	()	()	()	(X)	()	()	769105
33	RICHARDS, IRENE K	()	()	()	(X)	()	()	784750

Number: 03-1-03797-6

Juror Badge Color: ORANGE

Title: State of Washington vs. CRACE, HOYT WILLIAM
 Charge: ASSAULT IN THE SECOND DEGREE E28
 Judge: JAMES ORLANDO
 Interpreter: Panel Id 13350

RANDOM

ORIGINAL JURY PANEL SELECTION LIST

Pierce County Superior Court Jury Administration

Panel Num	Juror Name	Peremptory	Stipulated	Excused for Cause	Not Reached	Sworn	Alternate	BADGE
34	VAN ARNAM, DAVE	()	()	()	(X)	()	()	780291
35	KNOWLES, JEAN A	()	()	()	(X)	()	()	784596

Number of Jurors Original Panel 35

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jury_pbl.d_original_jury_panel_selection_list

STATE OF WASHINGTON, County of Pierce
 ss: I, Kevin Stock, Clerk of the above
 entitled Court, do hereby certify that this
 foregoing instrument is a true and correct
 copy of the original now on file in my office.
 IN WITNESS WHEREOF, I hereunto set my
 hand and the Seal of said Court this
 17 day of Sept, 2008
 Kevin Stock, Clerk
 By [Signature] Deputy

APPENDIX "E"

Declaration of Michael Heishman

1
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5
6 IN THE COURT OF APPEALS
7 OF THE STATE OF WASHINGTON
8 DIVISION II

9 IN RE THE PERSONAL RESTRAINT
10 PETITION OF:

11 NO. 37806-0

12 DECLARATION OF MICHAEL
13 HEISHMAN

14 HOYT CRACE

15 Appellant.

16 I, MICHAEL HEISHMAN, declare under penalty of perjury under the laws of the
17 State of Washington, the following is true and correct:

18 1. I am a sergeant with the Corrections Division of Pierce County Sheriff's
19 Department and am the Court Sergeant Supervisor for the Pierce County Jail.

20 2. When an inmate in the Pierce County Jail is required to appear in court for
21 trial, he or she is allowed to wear street or civilian clothes rather than jail issued garb.

22 These street clothes may be provided by the inmate's family or attorney or they may be the
23 clothes that the inmate was wearing when booked into the jail. The Jail has no policy that
24 forbids an inmate from wearing such clothing; although if the clothes are being delivered
25

1 to the jail from an outside source, they must be delivered in a timely manner in order to be
2 available for use by the inmate.

3 3. I reviewed jail records with regard to Hoyt Crace's incarceration and trial in
4 May, 2004. I checked his property list and there is no listing for shoes when he was
5 booked; the clothes listed at the time of booking were a red sweatshirt and a pair of black
6 shorts. I also looked at the listing of the clothes that were brought in for his trial; clothes
7 brought in for trial included a pair of tan pants, a green shirt and a blue/black tie. I
8 checked the behavior log and there is no mention of the shoes. From these records, it
9 would appear that Mr. Crace did not have a pair of civilian shoes to wear at the time of his
10 trial.
11

12
13 Dated: September 16, 2008.

14 Signed at Tacoma, WA.

15 
MICHAEL HEISHMAN 84025

16 Certificate of Service:

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

19 _____
Date Signature