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No. 88913-9  
IN THE SUPREME COURT OF THE STATE OF WASHINGTON,

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STATE OF WASHINGTON,  
Respondent

v.

EDWARD MICHAEL GLASMANN  
Petitioner

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PETITIONER'S BRIEF

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Appeal from the Superior Court of Pierce County,  
Cause No. 04-1-04983-2  
The Honorable Katherine Stolz, Presiding

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 ORIGINAL

**TABLE OF CONTENTS**

	<u>Page</u>
A. ASSIGNMENTS OF ERROR.....	1
B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR	1
C. STATEMENT OF THE CASE.....	1
D. ARGUMENT .....	1
1. <u>This Court Should Reconsider Its Holding State v. Daniels Because Washington State Case Law Interpreting The Double Jeopardy Clause Is Irreconcilably Inconsistent With Federal Case Law Interpreting The Double Jeopardy Clause</u> .....	5
a. Double Jeopardy.....	5
b. Implied Acquittal.....	8
c. After <u>Daniels II</u> was decided, Daniel’s federal writ for habeas corpus was granted prohibiting the Pierce County Prosecuting Attorney from retrying her on the more serious homicide by abuse charges after the jury left that verdict form blank.....	12
2. <u>Public Policy Considerations Support Mr. Glasmann’s Request for Relief</u> .....	18
E. CONCLUSION. ....	20

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Washington Cases</u>	
<u>In re Pers. Restraint of Davis</u> , 142 Wn.2d 165, 171, 12 P.3d 603 (2000) ...	6
<u>State v. Corrado</u> , 81 Wn. App. 640, 645, 915 P.2d 1121 (1996).....	7
<u>State v. Daniels</u> , 165 Wn.2d 627, 200 P.3d 711(2009) (Daniels II) .....	7, 9, 10, 12, 13, 16, 17, 18, 19, 20
<u>State v. Daniels</u> 160 Wn.2d 256, 156 P.3d 905 (2007) (Daniels I) .....	7, 9, 10, 12, 13, 15, 18, 20
<u>State v. Daniels</u> , 124 Wn.App 830, 103 P.3d 249 (2004).....	12
<u>State v. Ervin</u> , 158 Wn.2d 746, 752, 147 P.3d 567 (2006).....	6, 7, 10, 15, 16, 17
<u>State v. Gocken</u> , 127 Wn.2d 95, 100, 896 P.2d 1267 (1995) .....	6, 13
<u>State v. Linton</u> , 156 Wn.2d 777, 132 P.3d 127 (2006) .....	10
<u>State v. Labanowski</u> , 117 Wn.2d 405, 816 P.2d 26 (1991) .....	16, 19
<u>State v. Wright</u> , 165 Wn.2d 783, 203 P.3d 1027 (2009).....	20
<u>Federal Cases</u>	
<u>Alabama v. Smith</u> , 490 U.S. 794, 109 S.Ct.2201, 104 L.Ed2d 865 (1989).....	6, 7
<u>Arizona v. Washington</u> 434 U.S. 497, 506, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978).....	8, 11, 15
<u>Brazzel v. Washington</u> , 491 F.3d 976, 978 -979 ( 9 <sup>th</sup> Cir.2007).....	7, 8, 9, 10, 11, 12, 13, 18, 19, 20

<u>Crist v. Bretz</u> , 437 U.S. 28, 38, 98 S.Ct. 2156, 57 L.Ed.2d 24 (1978) .....	7
<u>Daniels v. Pastor</u> , 2010 WL 56041 (W.D. Wash. 2010) .....	10, 12, 19
<u>Green v. United States</u> , 355 U.S. 184, 190, 78 S.Ct. 221, 2 L.Ed.2d 199 (1957) .....	6, 8, 13, 14, 15, 17, 18, 21
<u>Logan v. United States</u> , 144 U.S. 263, 297–98, 12 S.Ct. 617, 36 L.Ed. 429 (1892) .....	15
<u>North Carolina v. Pearce</u> , 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969), overruled on other grounds by <u>Alabama v. Smith</u> , 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989)) .....	6
<u>Price v. Georgia</u> , 398 U.S. 323, 90 S.Ct. 1757, 26 L.Ed.2d 300 (1970) .....	14, 15
<u>Richardson v. United States</u> , 468 U.S. 317, 324-25, 104 S.Ct. 3081, 82 L.Ed.2d 242 (1984) .....	8, 15
<u>Selvester v. U.S.</u> , 170 U.S. 262, 18 S.Ct. 580 (1898) .....	9
<u>United States v. Perez</u> , 22 U.S. (9 Wheat.) 579, 22 U.S. 579, 580, 6 L.Ed. 165 (1824) .....	8, 15
<u>Wade v. Hunter</u> , 336 U.S. 684, 689, 69 S.Ct. 834, 93 L.Ed. 974 (1949) .....	15
<u>Constitution</u>	
Const. Art. 1 § 9 (Wash.) .....	5, 6, 20
U.S. Constitution Amend. V .....	5, 6, 20
<u>Other</u>	
FRAP 32.1 .....	10
WPIC 155.00 .....	3

A. **ASSIGNMENTS OF ERROR.**

1. The trial court erred when it permitted the State to re-arraign Petitioner Glasmann on the charges of Assault in the First Degree and Attempted Robbery in the First Degree as charged in its Amended Information filed on May 3, 2013 even though the verdict forms for these charges was left blank by his trial jury in 2006 after four hours of deliberation during which the jury never indicated it was hopelessly deadlocked.

B. **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.**

1. Whether this court should reconsider its holding in State v. Daniels, infra, because Washington State case law interpreting the double jeopardy clause of the Fifth Amendment and art. 1 § 9 of the State Constitution is irreconcilably inconsistent with federal case law interpreting the federal double jeopardy clause?

C. **STATEMENT OF THE CASE.**

On May 9, 2006, Edward Michael Glasmann was convicted at trial of Assault in the Second Degree, Attempted Robbery in the Second Degree, Kidnapping in the First Degree and Obstructing a Law Enforcement Officer. CP 57,61,62,65. Mr. Glasmann is currently charged by Amended Information in Pierce County Superior Court under Cause No. 04-1-04983-2 with Assault in the First Degree, Attempted Robbery in the First Degree, Kidnapping in the First Degree and Obstructing a Law Enforcement Officer. CP 70-74 (Amended Information dated 5/3/13). These charges were brought against Mr. Glasmann on May 3, 2013, by the Pierce County Prosecuting Attorney's Office after his 2006 convictions were reversed by this Court for prosecutorial misconduct in closing

argument. He was re-arraigned by Judge Katherine Stolz. RP 5/13/13 (See Appendix H to Motion for Discretionary Review). The charges in the 2013 Amended Information mirror the charges he faced at his first trial. (See Appendices A & B to Motion for Discretionary Review - Amended Information dated 5/3/13 & 7/21/05). Glasmann's objection to being re-arraigned on the more serious offenses of Assault in the first degree in Count 1 and Attempted Robbery in the first degree in Count 2 contained in 2013 Amended Information was denied. RP 5/13/13, 6, 8-9 (Appendices G & H to Motion for Discretionary Review). SCP 7/9/13 - Order Denying Defense Objection.

The chart below delineates the charges, verdict forms and the jury's entries.

Count	Original	Lesser	Verdict Form	Decision
I	Assault in the First Degree		1A	Blank
		Assault in the Second Degree	1B	Guilty
		Assault in the Third Degree	1C	Blank
		Assault in the Fourth Degree	1D	Blank
II	Attempted Robbery in the First Degree		2A	Blank
		Attempted Robbery in the Second	2B	Guilty

		Degree		
III	Kidnapping in the First Degree		3A	Guilty
	Kidnapping in the Second Degree		3B	Blank
IV	Obstructing a Law Enforcement Officer		4A	Guilty

During the 2006 trial, the Court provided the jury with verdict forms delineating the crimes charged and lesser included offenses in conjunction with a packet of mutually agreed to jury instructions. CP 7-55, RP 433-434, 443. The jury was given a total of 10 verdict form to consider. CP 56-65. The Court included Washington Pattern Instructions directing the jurors to consider lesser included/lesser degree crimes and what to do if they found a defendant not guilty or could not agree as to which charge was proved.<sup>1</sup> CP 7-55 (See Instruction 12 and 43.) The instructions included the pattern instruction WPIC 155.00 which reads in relevant part “If you unanimously agree on a verdict, you must fill in the

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<sup>1</sup> Instruction No. 12: If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the crime charged, the defendant may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish the defendant’s guilt of such lesser crime beyond a reasonable doubt.

The crime of Assault in the First Degree necessarily includes the lesser crime of Assault in the Second Degree, Assault in the Third Degree, and Assault in the Fourth Degree.

The crime of Attempted Robbery in the First Degree necessarily includes the lesser crime of Attempted Robbery in the Second Degree.

The crime of Kidnapping in the First Degree necessarily includes the lesser crimes of Kidnapping in the Second Degree and Unlawful Imprisonment.

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.

blank provided in verdict form 1A the words “not guilty” or “guilty,” according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form 1B.” The instruction also included the language that “if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime...” This same language was used in counts I through IV. CP 52-55 (Instruction 43). The Parties argued their case to the Jury on May 8, 2006. RP Vol. 8. At the end of the rebuttal argument the jury was released and instructed to return the following morning at 9:00 a.m. to begin deliberations. RP 504-505. The jury deliberated from 9:00 a.m. until it reached verdicts at 12:49 p.m. SCP – Minute Entry 5/9/06. There is no record the jury had any questions or indicated to the court they were hopelessly deadlocked on any charge. RP Vol. 9; SCP –Minute entry dated 5/9/06 encompassing entire trial.)

On May 26, 2006, Glasmann timely filed a direct appeal to the Court of Appeals, Division II which was denied and the mandate filed on September 19<sup>th</sup>, 2008. On August 25, 2009, Mr. Glasmann filed a Personal Restraint Petition that was denied by the Court of Appeals Division II on April 6, 2010. On April 22, 2010, A Notice for Discretionary Review by the Supreme Court was filed and the Court accepted limited review based on the issues of prosecutorial misconduct

and ineffective assistance of counsel as it related to the prosecutorial misconduct issue. The Supreme Court denied review regarding ineffective assistance of counsel pertaining to the issue of involuntary intoxication.

On October 18, 2012, the Supreme Court reversed Mr. Glasmann's convictions for flagrant and ill intentioned prosecutorial misconduct that denied him a fair trial and remanded for a new trial. In re Personal Restraint of Glasmann, 175 Wn.2d 696, 286 P.3d 673 (2012). The State exercised its right to reconsideration by filing a Motion for Reconsideration on November 7, 2012. The State's Motion for Reconsideration was denied on December 19, 2012 and the case was remanded to the Pierce County Superior Court for a new trial.

**D. ARGUMENT**

1. This Court Should Reconsider Its Holding in State v. Daniels Because Washington State Case Law Interpreting The Double Jeopardy Clause Of The Fifth Amendment and Art. 1 § 9 Of The Washington State Constitution Is Irreconcilably Inconsistent With Federal Case Law Interpreting The Federal Double Jeopardy Clause.

a. Double Jeopardy.

The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may

be found guilty. Green v. United States, 355 U.S. 184, 187-88, 78 S.Ct. 221, 223, 2 L.Ed.2d 199, 61 A.L.R.2d 1119 (1957). A criminal defendant is therefore protected from a second prosecution for the same offense after acquittal or after a conviction for a lesser included offense and, under more limited circumstances, when a trial is terminated on the merits without either a conviction or an acquittal.

See North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969), overruled on other grounds, Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989).

The Fifth Amendment provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb;" U.S. Const. amend. V. Article I, § 9 of the Washington Constitution similarly provides, "No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense." These provisions are "identical in thought, substance, and purpose." State v. Ervin, 158 Wn.2d 746, 752, 147 P.3d 567 (2006) (internal quotation marks omitted) (*quoting* In re Pers. Restraint of Davis, 142 Wn.2d 165, 171, 12 P.3d 603 (2000)). The double jeopardy clause protects individuals from three distinct governmental abuses: a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense. State v. Gocken, 127 Wn.2d 95, 100, 896 P.2d 1267 (1995) (*quoting* North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 23

L.Ed.2d 656 (1969), overruled on other grounds by Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989)).

Three elements must be met for a defendant's double jeopardy rights to be violated: (1) jeopardy must have previously attached, (2) jeopardy must have previously terminated, and (3) the defendant is again being put in jeopardy for the same offense. State v. Daniels, 160 Wn.2d 256, 261–62, 156 P.3d 905 (2007), *adhered to on reconsideration*, 165 Wn.2d 627, 200 P.3d 711 (2009), *citing State v. Corrado*, 81 Wn. App. 640, 645, 915 P.2d 1121 (1996). In a jury trial, jeopardy attaches “when the jury is empaneled and sworn.” Crist v. Bretz, 437 U.S. 28, 38, 98 S.Ct. 2156, 57 L.Ed.2d 24 (1978). Jeopardy may be terminated in one of three ways:

- (1) when the defendant is acquitted, or
- (2) when the defendant is convicted and that conviction is final, or
- (3) when the court dismisses the jury without the defendant’s consent and the dismissal is not in the interest of justice.

State v. Ervin, 158 Wn.2d at 752–53.

Here, with respect to recharging Mr. Glasmann with Assault in the First Degree in Count 1 and attempted Robbery in the First Degree in Count 2, jeopardy terminated because he was either impliedly acquitted or because the jury did not convict on the offenses of Assault in the First Degree and Attempted Robbery in the First Degree despite having the opportunity to do so. Brazzel v. Washington, 491 F.3d 976,984 (9<sup>th</sup> Cir.

2007), citing, *Price*, 398 U.S. at 329, 90 S.Ct. 1757 (quoting *Green*, 355 U.S. at 191, 78 S.Ct. 221).

b. Implied Acquittal.

In *Green*, the Supreme Court explained the doctrine of implied acquittal: when a jury convicts on a lesser alternate charge and fails to reach a verdict on the greater charge—without announcing any splits or divisions and having had a full and fair opportunity to do so—the jury’s silence on the second charge is an implied acquittal. 355 U.S. at 191, 78 S.Ct. 221. A verdict of implied acquittal is final and bars a subsequent prosecution for the same offense. *See id.* Under *Price*, putting the defendant in jeopardy a second time is not necessarily harmless error or moot, even if the defendant is only convicted of the lesser crime, because “[t]he Double Jeopardy Clause ... is cast in terms of the risk or hazard of trial and conviction, not of the ultimate legal consequences of the verdict.” 398 U.S. at 331, 90 S.Ct. 1757.

Brazzel v. Washington, 491 F.3d 976, 978 -979( 9<sup>th</sup> Cir.2007).

In contrast to an implied acquittal, retrial is permitted where there is a mistrial declared due to the “manifest necessity” presented by a hung jury. *See United States v. Perez*, 9 Wheat. 579, 22 U.S. 579, 580, 6 L.Ed. 165 (1824). A hung jury occurs when there is an irreconcilable disagreement among the jury members. A “high degree” of necessity is required to establish a mistrial due to the hopeless deadlock of jury members. *See Arizona v. Washington*, 434 U.S. 497, 506, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978). The record should reflect that the jury is “genuinely deadlocked.” *Richardson v. United States*, 468 U.S. 317, 324-25, 104

S.Ct. 3081, 82 L.Ed.2d 242 (1984); see also Selvester v. U.S., 170 U.S. 262, 18 S.Ct. 580, 42 L.Ed. 1029 (1898); Brazzel v. Washington, 491 F.3d 976, 981-982 (9<sup>th</sup> Cir. 2007).

In State v. Daniels, 160 Wn.2d 256, 261–62, 156 P.3d 905 (2007) (Daniels I), *adhered to on reconsideration*, 165 Wn.2d 627, 200 P.3d 711 (2009) (Daniels II) the court held that jeopardy was not terminated as to a greater offense where the standard “unable to agree” instructions were given and the jury left the verdict form for the greater offense blank.

The Daniels jury was given two verdict forms. The jury was instructed to fill in “not guilty” or “guilty” on form A if it unanimously agreed on a verdict as to the homicide by abuse charge, otherwise it should leave it blank. If the jury either found Daniels not guilty of homicide by abuse or could not agree as to that charge, the jury was then instructed to consider the lesser included offense of second degree felony murder. The jury left verdict form A blank and found Daniels guilty of the lesser offense of second degree felony murder. Daniels, 160 Wn.2d at 260.

The Washington Supreme Court held an “unable to agree” jury instruction prevented a presumption of acquittal on the greater included offense. Daniels, 160 Wn.2d at 264. The Daniels I court reasoned that the “unable to agree” instruction implicitly operated as a statement of disagreement by the jury as to Daniels’s guilt or innocence and concluded

that the disagreement prevented an acquittal from being implied. Id. Consequently, the Court held there was no acquittal and that jeopardy did not terminate. Id. at 264–65<sup>2</sup>. The Daniels I Court reasoning that the presence of a blank verdict form, in a case where the jury has been given an “unable to agree” instructions does not amount to an implied acquittal and that this analysis ends the inquiry into whether jeopardy has terminated was based on the Court’s earlier case of State v. Ervin, 158 Wn.2d 746, 147 P.3d 567 (2006)(*N.B.*, The Ervin the jury deliberated for 5 weeks and sent out numerous notes concerning their inability to reach an unanimous verdict).

The Daniels I & II and Ervin cases depart from the previously decided case of State v. Linton, 156 Wn.2d 777, 132 P.3d 127 (2006)(plurality decision) and are irreconcilably inconsistent with decisions from the Ninth Circuit Court of Appeals. See e.g.; Daniels v. Pastor, 2010 WL 56041 (W.D. Wash. 2010); Brazzel v. Washington, 491 F.3d 976 (9<sup>th</sup> Cir. 2007).

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<sup>2</sup> Subsequent to Daniels II, Ms. Daniels secured federal review under writ of habeas. Daniels v. Pastor, not reported in F. Supp 2d, 2010 WL 56041 (W.D. Wash. C09-5711BHS Jan 6, 201), (citing to Brazzel v. Washington, the federal court granted Daniel’s relief finding that the State court interpretation of the double jeopardy clause of the Fifth Amendment was in error when it concluded that a blank verdict form should be construed as hopeless deadlock. FRAP 32.1 permits citation of judicial opinions, order, judgments or other written dispositions that have been designated unpublished.

In Brazzel v. Washington, 491 F.3d 976 (9<sup>th</sup> Cir. 2007) the Ninth Circuit stated that even if a blank verdict form in a case where the jury was instructed to leave such form blank if “unable to agree” on a charge does not constitute an implied acquittal so as to terminate jeopardy, the mere inability of the jury to agree on a verdict to a particular offense charged expressed by a blank verdict form does not meet the high threshold of disagreement required for a hung jury. Brazzel v. Washington, 491 F.3d at 984. Accordingly, the Brazzel court rejected the State’s argument that a blank verdict form should be construed as a hopeless deadlock. Id. The Brazzel court interpreted the law regarding the levels of jury disagreement as follows:

Under federal law, an inability to agree with the option of compromise on a lesser alternate offense does not satisfy the high threshold of disagreement required for a hung jury and mistrial to be declared. *See, e.g., Arizona v. Washington*, 434 U.S. at 509, 98 S.Ct. 824. The Supreme Court has characterized disagreement sufficient to warrant a mistrial as “hopeless” or “genuine” “deadlock.” *Id.* (“[T]he trial judge may discharge a genuinely deadlocked jury and require the defendant to submit to a second trial.”). Genuine deadlock is fundamentally different from a situation in which jurors are instructed that if they “cannot agree,” they may compromise by convicting of a lesser alternative crime, and they then elect to do so without reporting any splits or divisions when asked about their unanimity.

Brazzel v. Washington, 491 F.3d 976, 984(9<sup>th</sup> Cir. 2007).

c. After Daniels II Was Decided, Daniels's Federal Writ For Habeas Corpus Was Granted Prohibiting The Pierce County Prosecuting Attorney From Retrying Her On the More Serious Homicide By Abuse Charges After The Jury Left That Verdict Form Blank

After the Ninth Circuit Brazzel, *supra*, decision, this court reconsidered Ms. Daniels's case. After reconsideration, the Daniels II majority adhered to its original opinion as reported in State v. Daniels, 160 Wn.2d 256, 156 P.3d 905 (2007). Daniels II, 200 P.2d at 711. Ms. Daniels's then sought and was granted relief in the federal court system. Daniels v. Pastor, 2010 WL 56041.

Justice Sanders authored the original majority opinion in Daniels I and also wrote a dissenting opinion in the subsequent Daniels II.

As recounted by Justice Sanders in his dissent in Daniels II, Daniels remained in custody from October 31, 2000 while her case was tried by the trial court, reviewed by the Washington State Court of Appeals (State v. Daniels, 124 Wn. App. 830, 103 P.3d 249 (2004)), and reviewed twice by the Washington State Supreme Court ( State v. Daniels, 160 Wn.2d 256, 156 P.3d 905 (2007) and State v. Daniels, 165 Wn.2d 627, 200 P.3d 711 (2009), *cert. denied*, 558 U.S. 819, 130 S.Ct. 85, 175 L.Ed.2d 28 (2009).

Upon reconsideration of the decision in Daniels I, and in light of the compelling rationale of Brazzel, four justices dissented, finding that the State double jeopardy clause “is given the same interpretation the Supreme Court gives the Fifth Amendment” and would have reversed. State v. Daniels, 165 Wn.2d at 631, citing State v. Gocken, 127 Wn.2d 95, 107, 896 P.2d 1267 (1995).

Writing the dissent joined by Chief Justice Alexander and Justice Stephens, Justice Sanders acknowledged the flaws in his original opinion and reasoning as follows:

The original majority opinion erred by focusing too squarely on whether Daniels's jeopardy terminated on the homicide by abuse charge through an implied acquittal. It reasoned that an acquittal could not be implied because the jury was specifically instructed that it need not return a verdict on homicide by abuse if it was in disagreement; rather, it could proceed to return a verdict on the lesser offense of second degree felony murder. Daniels, 160 Wn.2d at 262–65, 156 P.3d 905.

The primary flaw in the original majority's analysis was its failure to perceive that under United States Supreme Court precedent, when an individual is forced to “run the gantlet” on a charge and the jury fails to convict, double jeopardy prohibits retrial on that charge. Green v. United States, 355 U.S. 184, 190, 78 S.Ct. 221, 2 L.Ed.2d 199 (1957). Here Daniels “ran the gantlet” when she “was in direct peril of being convicted and punished” for homicide by abuse at her first trial, but “the jury refused to convict” her. Id. And because she “ran the gantlet” on homicide by abuse, the State may not place her in jeopardy for that crime again. Id. This failure in analysis led to a dual flaw in the original majority opinion. First it failed to recognize that jeopardy

may terminate for reasons other than an implied acquittal. Second it failed to recognize the use of an “unable to agree” instruction standing alone is insufficient to distinguish this case from other lesser included offense cases.

*I. Jeopardy terminated when the jury was dismissed without returning a verdict on the greater offense despite having the opportunity to do so*

Jeopardy terminates when the jury is dismissed without returning a verdict despite having a full opportunity to do so. *Id.* at 184, 78 S.Ct. 221. In Green the Court found the Fifth Amendment prohibits a second trial on a charge where the jury fails to “return[ ] any express verdict on that charge.” *Id.* at 191, 78 S.Ct. 221. The Court provided two rationales for this holding. It first applied the doctrine of implied acquittal but also enunciated a second rationale:

Yet [the jury] was given a full opportunity to return a verdict and no extraordinary circumstances appeared which prevented it from doing so. Therefore it seems clear, under established principles of former jeopardy, that Green's jeopardy for first degree murder came to an end when the jury was discharged so that he could not be retried for that offense. *Id.* Therefore under Green jeopardy terminates either when a jury implies an acquittal by its actions OR when a jury is dismissed without returning an express verdict on the charge.

In Price, 398 U.S. 323, 90 S.Ct. 1757, the United States Supreme Court reiterated the validity of these two methods of terminating jeopardy. The Court described Green's two methods of terminating jeopardy.

First, the Court considered the first jury's verdict of guilty on the second-degree murder charge to be an “implicit acquittal” on the charge of first-degree murder. Second, and more broadly, the Court reasoned that petitioner's jeopardy on the greater charge had ended when the first jury “was

given a full opportunity to return a verdict” on that charge and instead reached a verdict on the lesser charge. Price, 398 U.S. at 328–29, 90 S.Ct. 1757 (quoting Green, 355 U.S. at 191, 78 S.Ct. 221). By reiterating both of Green's rationales, the Supreme Court in Price firmly reaffirmed that jeopardy for an offense may terminate under either.

Here the jury *was* given a full and fair opportunity to convict Daniels of homicide by abuse in the first trial but failed to do so. Retrial on this count is therefore barred by double jeopardy,<sup>FN8</sup> absent “manifest necessity.” United States v. Perez, 22 U.S. (9 Wheat.) 579, 6 L.Ed. 165 (1824). The most common example of “manifest necessity” to allow retrial is a mistrial based on a hung jury. Richardson v. United States, 468 U.S. 317, 324, 104 S.Ct. 3081, 82 L.Ed.2d 242 (1984) (“[W]e have constantly adhered to the rule that a retrial following a ‘hung jury’ does not violate the Double Jeopardy Clause.”) (citing Logan v. United States, 144 U.S. 263, 297–98, 12 S.Ct. 617, 36 L.Ed. 429 (1892)).

FN8. The majority incorrectly asserts Ervin, 158 Wn.2d 746, 147 P.3d 567, controls in this case. See Daniels, 160 Wn.2d at 264, 156 P.3d 905. However Ervin never considered, and therefore never decided, whether jeopardy terminates when a jury is dismissed without reaching a verdict. *Ervin* is neither controlling nor instructive on this issue.

However, a mistrial because of a hung jury is limited to situations where the jury is “genuinely deadlocked” and requires the trial court to use its discretion to balance competing rights of the defendant before declaring such. Arizona v. Washington, 434 U.S. 497, 509, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978). In the view of the Supreme Court, the trial judge's intervention and discretion to declare a mistrial based on a hung jury is required to protect two competing rights of the defendant. *Id.* First, the defendant is deprived of his “ ‘valued right to have his trial completed by a particular tribunal’ ” if the jury is dismissed before reaching a genuine deadlock. *Id.* (quoting Wade v. Hunter,

336 U.S. 684, 689, 69 S.Ct. 834, 93 L.Ed. 974 (1949)).<sup>FN9</sup>  
If a jury is not discharged after “protracted and exhausting deliberations, there exists a significant risk that a verdict may result from pressures inherent in the situation rather than the considered judgment of all the jurors.” *Id.*

FN9. The concurrence would hold a defendant, by not objecting to the “unable to agree” instruction, forgoes a double jeopardy challenge to retrial. Concurrence at 711. However, the defendant's acquiescence in the jury instruction is immaterial, as this is not a matter of an improper jury instruction. In fact the “unable to agree” jury instruction is a valid statement of the law. See State v. Labanowski, 117 Wn.2d 405, 420, 816 P.2d 26 (1991). The issue is whether jeopardy terminates and whether retrial is therefore barred by double jeopardy. Acquiescence to a valid jury instruction does not affect this analysis.

State v. Daniels, 165 Wn.2d 627, 631-634, 200 P.3d 711 (2009).

Justice Chambers also dissented, writing separately that he regretted the majority opinion in Daniels I. State v. Daniels, 165 Wn. 2d at 641 and concluded:

I have come to believe we should stop trying to divine what a jury may have been thinking when it simply failed to answer a question. I simply no longer believe that we should draw such dramatic inferences from the jury's mere silence. *Contra Ervin*, 158 Wn.2d at 756–57, 147 P.3d 567. A more definitive showing of deadlock is required. We should adopt the straightforward and easy-to-apply rule that if the jury is given the full opportunity to reach a verdict on a charge but does not and is silent as to its reasons, the blank jury form functions as an implied acquittal. By contrast, where the record reflects questions or statements by the jury from which it can be inferred

that the jury was hung, then the State may come forward to meet its burden to demonstrate that the jury was in fact hung, and jeopardy has not terminated. This test should be our beacon.

State v. Daniels, 165 Wn.2d 627, 644, 200 P.3d 711 (2009) (J. Chambers in dissent).

Mr. Glasmann asks the court to reconsider its rulings in Ervin, Daniels I and Daniels II, and follow the law as announced by the federal courts in its rejection of the doctrine of implied acquittal in cases where an “unable to agree” instruction is given. Glasmann ask this court to find, consistent with federal precedent, that re-prosecution for the same offense is barred whenever jeopardy has previously terminated, and find that in this case jeopardy terminated when the jury was dismissed without returning a verdict despite having a full opportunity to do so. Green v. United States, 355 U.S. at 184, 78 S.Ct. 221, 2 L.Ed.2d 199. In Green the Court found the Fifth Amendment prohibits a second trial on a charge where the jury fails to “return[ ] any express verdict on that charge.” Id. at 191, 78 S.Ct. 221. The Court provided two rationales for this holding. In addition to applying the doctrine of implied acquittal, the Court enunciated a second rationale:

Yet [the jury] was given a full opportunity to return a verdict and no extraordinary circumstances appeared which prevented it from doing so. Therefore it seems clear, under established principles of former jeopardy, that Green's jeopardy for first degree

murder came to an end when the jury was discharged so that he could not be retried for that offense.

Id. Therefore under Green, jeopardy terminates *either* when a jury implies an acquittal by its actions *or* when a jury is dismissed without returning an express verdict on the charge.

Just as Ms. Daniels asked, via a petition for writ of habeas corpus that was granted, to apply Brazzel and, as Justice Sanders wrote in the Daniels II dissent, Mr. Glasmann asks this court to grant him the “relief otherwise available by walking across the street to the federal courts.” Daniels II, 200 P.3d at 714 n. 10. Mr. Glasmann has likewise already been forced to run “the gantlet” by a jury that was given a full and fair opportunity to convict of the assault in the first degree charge in Count I and the attempted robbery in the first degree charge in Count II, and did not. Moreover, there is not showing the jury was genuinely deadlocked and thus, no showing of the manifest necessity of a retrial after a showing that the jury was genuinely deadlocked.

2. Public Policy Considerations Support Mr. Glasmann’s Request For Relief.

As a public policy matter, State v. Daniels I & II, supra, create inequitable results and interposes an unnecessary and burdensome step on defendants. Defendants with the resources to secure federal review will receive relief and not have to run “the gantlet” a second time on charges

where juries left verdict forms for more serious charges blank after being instructed to do so if they could not agree, while defendants who do not have the same resources will not receive relief. See Brazzel v. Washington, 491 F.3d 976 (9<sup>th</sup> Cir. 2007)(relief granted); Daniels v. Pastor, 2010 WL 56041 (W.D. Wash. 2010)(relief granted).

A defendant does not receive a windfall if this court adopts the federal framework and interpretation of the double jeopardy clause and the reasoning of the dissenting Justices in Daniels II. A defendant who has his convictions reversed and remanded for a new trial will face a trial on the charges that the State was able to prove. On the other hand, as matters stand under Daniels II, it is the State that receives a windfall – the State may engage in misconduct that deprives a defendant of a fair trial, the State does not have to give notice of its intent to seek lesser included or lesser degree crimes and then the State gets the benefit of the standard pattern jury instruction that this court interprets in a manner that deprives a defendant of a double jeopardy claim.<sup>3</sup>

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<sup>3</sup> Ironically the “unable to agree” instruction was first adopted in part to avoid problems attendant with hung juries. As the court has stated, the “unable to agree” instruction “promotes the efficient use of judicial resources...” State v. Labanowski, 117 Wn.2d 405, 420, 816 P.2d 26 (1991). “Retrials, necessitated by hung juries, are burdensome to defendants, victims, witnesses and the court system itself.” *Id.* Because a hung jury is so burdensome to the system, the court in Labanowski approved use of the “unable to agree” instruction in an effort to avoid the spectre of a hung jury. Under this understanding, it seems nonsensical to equate the judicially efficient “unable to agree” instruction to the hopeless deadlock required by the Supreme Court to declare a mistrial. “Genuine deadlock is fundamentally different from a situation in which jurors are instructed that if

**E. CONCLUSION**

Based on the arguments, records, and files contained herein, Mr. Glasmann respectfully requests that this reconsider its holdings in Ervin, supra, and Daniels, supra and find that the trial court erred in permitting the State to re-arraign him on more serious charges that the jury left blank the verdict forms in his 2006 trial. The double jeopardy clause guarantees that no person will be retried for the same offense following an acquittal. State v. Wright, 165 Wn.2d 783, 791, 203 P.3d 1027 (2009) (quoting U.S. CONST. amend. V; CONST. art. I, § 9). Defendant Glasmann was charged with 4 crimes, including assault in the first degree charged in Count I and attempted robbery in the first degree charged in Count II. A jury convicted him of several charges and several lesser included offenses. Here, the jury was given a full and fair opportunity to convict Glasmann of Assault in the First Degree in Count I and Attempted Robbery in the First degree in Count II but did not. Glasmann contends the double jeopardy clause precludes retrial of those charges for which he was expressly or impliedly acquitted of in the first trial. Our Supreme Court holding in State v. Daniels, 160 Wn.2d 256, 156 P.3d 905 (2007); adhered to

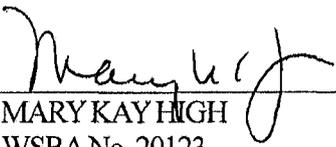
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they 'cannot agree,' they may compromise by convicting of a lesser alternative crime, and they then elect to do so without reporting any splits or divisions when asked about their unanimity.'" Brazzel, 491 F.3d at 984." State v. Daniels 165 Wn.2d 627, 634-635, 200 P.3d 711, 714 - 715 (2009).

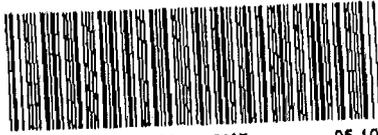
reconsideration, 165 Wn.2d 627, 200 P.3d 711 (2009) should be re-examined, especially in light of the federal action in that very case in which the federal court granted habeas relief and found that the federal double jeopardy clause precluded retrial on greater charges after a finding of guilt on lesser included offenses when the verdict form on the greater charge was merely left blank and there was no other indicia of jury disagreement. Alternatively, under Green, Mr. Glasmann should not have to run the gantlet twice when his original jury had a full and fair opportunity to convict him of the more serious offenses charged in Counts I and II.

DATED this 1<sup>st</sup> day of May 2014.

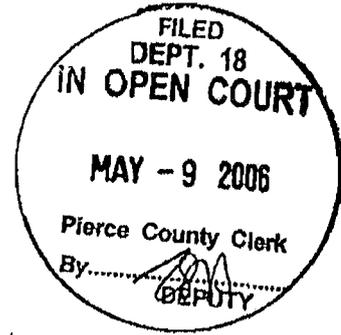
Respectfully submitted,

By   
\_\_\_\_\_  
MARY KAY HIGH  
WSB No. 20123

MINUTE ENTRY DESIGNATED IN  
SUPPLEMENTAL DESIGNATION OF  
CLERK'S PAPERS



04-1-04983-2 25435263 CME 05-10-08



**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 04-1-04983-2

**MEMORANDUM OF JOURNAL ENTRY**

vs.

Page 1 of 11

GLASMANN, EDWARD MICHAEL

Judge: BEVERLY G. GRANT

Court Reporter: KRISTINE TRIBOULET

Judicial Assistant: Tonya S Henderson

JOHN HILLMAN

Prosecutor

ROBERT M. QUILLIAN

Defense Attorney

Proceeding Set: JURY TRIAL

Proceeding Date: 04/20/06 8:30

Proceeding Outcome: HELD

Resolution: Convict JV After Trial

**Clerk's Code:**  
Proceeding Outcome code: **JTRIAL**  
Resolution Outcome code: **CVJV**

## IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 04-1-04983-2  
MEMORANDUM OF JOURNAL ENTRY

vs.

GLASMANN, EDWARD MICHAEL

Page: 2 of 11  
Judge: BEVERLY G. GRANT

### MINUTES OF PROCEEDING

Judicial Assistant: Tonya Henderson  
Start Date/Time: 04/20/06 9:59 AM

Court Reporter: KRISTINE TRIBOULET

April 20, 2006 10:35 AM Atty. John Hillman present on behalf of the State. The Defendant is present in-custody represent by Atty. Robert Quillian. This matter comes on today for Trial. 10:32 AM Colloquy: re: scheduling conflicts, jury selections. 10:36 AM Defense Motions in Limine argued. 10:37 AM Atty. Hillman responds. 10:39 AM Court issues rulings. 10:41 AM Atty. Quillian; re: 3.5 hearing. 10:42 AM Atty. Hillman responds and will prepare stipulation. 10:43 AM Court is at recess until Monday, April 24, 2006.

End Date/Time: 04/20/06 11:11 AM

Judicial Assistant: Tonya Henderson  
Start Date/Time: 04/24/06 8:59 AM

Court Reporter: KRISTINE TRIBOULET

April 24, 2006 09:49 AM Court convenes. All parties present. 09:50 AM Colloquy: re: jurors in the hallway when the defendant was brought down. 09:52 AM Atty. Quillian ask the Court to recess the trial until tomorrow. 09:53 AM Atty. Hillman ask the Court to proceed to jury selection. 09:55 AM Colloquy: re: new jury panel. 09:59 AM Court issues ruling. 10:07 AM 40 Prospective jurors enters courtroom. 10:07 AM Prospective panel sworn. 10:08 AM Court introduces the parties. 10:09 AM Court inquiries of the panel if any jurors have seen the Defendant. 10:10 AM No response. 10:10 AM Court introduces staff. 10:10 AM Court explains voir dire process. 10:12 AM Court explains the case. 10:16 AM Court's general questions. 10:33 AM Round 1 - Atty. Hillman voir dres. 10:55 AM Court ask more general questions. 11:00 AM Round 1 - Atty. Quillian voir dres. 11:22 AM Prospective jurors excused from the courtroom. 11:23 AM Court inquiries of counsel. 11:25 AM Court is at recess. 11:40 AM Court reconvenes. 11:41 AM Colloquy: re: Juror #4. 11:41 AM Juror #4 excused for cause. 11:45 AM Prospective jurors return to courtroom. 11:45 AM Round 1 continued by Atty. Quillian. 11:49 AM Round 2- Atty. Hillman voir dres. 12:04 PM Jury released for noon recess. 12:04 PM Juror #23 remains in the courtroom. 12:06 PM Juror #23 released until 1:30 PM. 12:07 PM Court is at

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 04-1-04983-2  
MEMORANDUM OF JOURNAL ENTRY

vs.

GLASMANN, EDWARD MICHAEL

Page: 3 of 11  
Judge: BEVERLY G. GRANT

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**MINUTES OF PROCEEDING**

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recess.

**End Date/Time: 04/24/06 1:24 PM**Judicial Assistant: Tonya Henderson  
**Start Date/Time: 04/24/06 1:24 PM**

Court Reporter: KRISTINE TRIBOULET

April 24, 2006 01:38 PM Court reconvenes. All parties are present. 01:38 PM Colloquy: re: scheduling. 01:44 PM Remaining prospective jurors enter the courtroom. 01:45 PM Round 2 - Continued voir dire by Atty. Hillman. 02:06 PM Round 2 - Atty. Quillian voir dire. 02:36 PM Round 3 - voir dire by Atty. Hillman. 02:49 PM Round 3 - voir dire by Atty. Quillian. 02:57 PM Peremptory Challenge. 03:33 PM Jury impaneled. 03:34 PM Impaneled jury sworn. 03:34 PM Court addresses the alternate jurors. 03:35 PM Court gives cautionary instructions. 03:40 PM Court is at recess.

**End Date/Time: 04/24/06 3:41 PM**Judicial Assistant: LINDA SHIPMAN  
**Start Date/Time: 04/25/06 9:30 AM**

Court Reporter: ANN-MARIE ALLISON

**April 25, 2006** 09:30 AM Jurors all present in jury room. 09:40 AM PEXHIBITS #65-68 premarked. 09:59 AM Court reconvened with Plaintiff counsel (J. Hillman) present; defendant present in custody and represented by counsel (R. Quillian) present. 10:01 AM Jury returns to courtroom. 10:02 AM Judge's gives preliminary instructions to jury (open minds; outline course of trial). 10:12 AM Plaintiff's counsel, J. Hillman, makes opening statement. 10:32 AM Defendant's counsel, R. Quillian) makes opening statement. 10:37 AM Judge gives instruction to jury re: note taking. 10:39 AM Plaintiff calls witness, **ERIKA RUSK**, who is sworn in and testifies under direct examination by J. Hillman. 10:41 AM **PEXHIBIT #64 identified, offered and admitted.** 10:44 AM Objection by J. Quillian; objection sustained. Continued direct. 10:45 AM Objection by J. Quillian; objection sustained. Continued direct. 10:53 AM Objection by J. Quillian; objection sustained.

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 04-1-04983-2

vs.

**MEMORANDUM OF JOURNAL ENTRY**

GLASMANN, EDWARD MICHAEL

Page: 4 of 11

Judge: BEVERLY G. GRANT

MINUTES OF PROCEEDING

Continued direct. 11:06 AM **PEXHIBIT #65 offered, admitted and published.** 11:11 AM  
Continued direct. 11:13 AM Witness identifies the defendant. 11:14 AM Cross-examination  
by R. Quillian. 11:18 AM Jury excused to jury room for morning break. Court at recess.  
11:33 AM Court reconvened with all counsel and defendant present. Jury returns to  
courtroom. Continued cross-examination of witness by R. Quillian. 11:39 AM Objection by  
R. Quillian; objection sustained; last response of witness stricken in part. 11:44 AM  
Redirect by J. Hillman. 11:48 AM Recross by R. Quillian. 11:50 AM Redirect by J.  
Hillman. 11:51 AM No recross. PEXHIBIT #69 marked: 11:51 AM Witness steps down  
and is excused, subject to recall. 11:52 AM Jury cautioned and excused until 1:30 p.m.  
Court at recess.

**End Date/Time: 04/25/06 11:57 AM**

Judicial Assistant: ROGER MCLENNAN

Court Reporter: ANN-MARIE ALLISON

**Start Date/Time: 04/25/06 2:41 PM**

**April 25, 2006 01:41 PM** Court reconvenes. Jury seated. Plaintiff's exhibits #70, #71, and  
#72 and defendant's exhibit #73 premarked. 01:41 PM Mr Hillman calls **BRIAN  
JOHNSON, DETECTIVE, LAKEWOOD PD,** who is sworn and testifies on direct  
examination. 01:45 PM **Plaintiff's exhibits #11 through #34** offered and admitted. 01:49  
PM **Plaintiff's exhibits #35 through #63** offered and admitted. No cross examination.  
Witness stands down and is excused. Mr Hillman calls **RICHARD JAMES HALL,  
DETECTIVE, LAKEWOOD PD,** who is sworn and testifies on direct examination. 01:56  
PM **Plaintiff's exhibit #72** offered, admitted, and published to jury. 01:59 PM Cross  
examination. 02:02 PM Redirect examination. 02:05 PM Witness stands down and is  
excused. 02:06 PM Mr Hillman calls **ANGEL MARIE BENSON** who is sworn and testifies  
on direct examination. 02:46 PM Jury excused. Recess. 02:59 PM Court reconvenes.  
03:00 PM Jury seated. Mr Hillman continues with direct examination. 03:07 PM Mr Hillman  
publishes plaintiff's exhibit #73 for witness to view as he continues with direct examination.  
03:15 PM **Plaintiff's exhibits #1 through #7** offered, admitted, and published to jury.

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 04-1-04983-2  
MEMORANDUM OF JOURNAL ENTRY

vs.

GLASMANN, EDWARD MICHAEL

Page: 5 of 11  
Judge: BEVERLY G. GRANT

MINUTES OF PROCEEDING

03:22 PM Cross examination. 03:28 PM **Defendant's exhibit #73** offered and admitted.  
03:42 PM Redirect examination. 03:47 PM Jury excused. Mr Hillman addresses Mr Quillian's mention of defense investigator and any report that may have been authored (summary) after interview. Counsel argue. Mr Hillman refers court and counsel to Criminal Rule 4.7 (B) (1). Mr Quillian handsforth investigator's report to court. Colloquy. Court rules that two areas are germane to the trial: the quotation and the last paragraph from the report. Mr Quillian reads the quotation from the report. Court gives Mr Quillian until tomorrow to reseach the issue. Court directs counsel to report tomorrow at 9:00 AM and witness to return tomorrow. 04:08 PM Mr Hillman publishes a portion of plaintiff's exhibit #68 to lay foundation. Colloquy. 04:14 PM Court adjourns.

End Date/Time: 04/25/06 4:14 PM

Judicial Assistant: Tonya Henderson  
Start Date/Time: 04/26/06 8:36 AM

Court Reporter: KRISTINE TRIBOULET

April 26, 2006 09:04 AM Court convenes outside the presence of the jury. All parties are present. 09:05 AM Atty. Hillman gives argument regarding the issue of the the Defense Investigator's report. 09:07 AM Atty. Quillian responds. 09:09 AM Atty. Hillman responds. 09:11 AM Court rules that the Defense is to turn over the document unradacted to the State. 09:12 AM Court inquiries of counsel regarding transcripts. 09:14 AM Dexhibit #74 marked. 09:19 AM Court is at recess. 09:37 AM ourt reconvenes. AM All parties are present. 09:39 AM Jury in. 09:39 AM Atty. Hillman calls witness, **Officer Timothy Borchardt**, who is duly sworn and testifies on direct examination. 10:26 AM Jury out. 10:26 AM Atty. Quillian argues objection: re: hearsay. 10:27 AM Atty. Hillman responds. 10:29 AM Court issues ruling. 10:30 AM Court takes a recess. 10:51 AM Court reconvenes outside the presence of the jury. 10:51 AM Jury in. 10:51 AM Continued direct examination of witness Borchardt. 10:53 AM **Pexhibit #7 through 9 offered, no objection and admitted.** 10:57 AM Cross-examination by Atty. Quillian. 11:05 AM **Dexhibit #76 marked, offered, no objection and admitted for illustrative purposes**

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 04-1-04983-2  
MEMORANDUM OF JOURNAL ENTRY

vs.

GLASMANN, EDWARD MICHAEL

Page: 6 of 11  
Judge: BEVERLY G. GRANT

---

**MINUTES OF PROCEEDING**

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**only.** 11:14 AM No redirect examination. Witness steps down and is excused. 11:15 AM Atty. Hillman calls witness, **Sgt. Mark Eakes**, who is duly sworn and testifies on direct examination. 11:42 AM Cross-examination by Atty. Quillian. 11:54 AM Redirect examination by Atty. Hillman. 11:56 AM Recross-examination by Atty. Quillian. 11:56 AM No further questions. Witness steps down and is excused. 11:57 AM Jury out. 11:58 AM Court is at recess.

End Date/Time: 04/26/06 12:01 PM

Judicial Assistant: Tonya Henderson  
Start Date/Time: 04/26/06 1:33 PM

Court Reporter: KRISTINE TRIBOULET

April 26, 2006 01:33 PM Pexhibits # 7 through 9 marked. 01:35 PM Court reconvenes outside the presence of the jury. All parties are present. 01:35 PM Colloquy: re: recording of the phone calls from the jail from the Defendant to the victim. 01:41 PM Court issues ruling regardint the taped conversations (Pexhibit #68). 01:42 PM Atty. Quillian: re: letters that were intercepted by the jail. 01:43 PM Atty. Hillman responds. 01:45 PM Jury in. 01:45 PM Victim/witness, **Angel Benson**, retakes the stand, previosily sworn and continues testifying on redirect examination. 01:47 PM **Pexhibit #68 offered, previously objected to by defense, admitted and published to the jury.** 02:09 PM Re-cross-examination by Atty. Quillian. 02:11 PM Witness steps down. Pexhibit #82 marked. 02:11 PM Atty. Hillman calls, **Officer Thomas Stewart**, who is duly sworn and testifies on direct examination. 02:23 PM Cross-examination by Atty. Quillian. 02:23 PM Witness steps down and is excused. 02:24 PM Jury out. 02:25 PM Colloquy: re: scheduling. 02:29 PM Court is at recess.

End Date/Time: 04/26/06 2:29 PM

Judicial Assistant: Tonya Henderson  
Start Date/Time: 04/27/06 9:17 AM

Court Reporter: KRISTINE TRIBOULET

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 04-1-04983-2  
MEMORANDUM OF JOURNAL ENTRY

vs.

GLASMANN, EDWARD MICHAEL

Page: 7 of 11  
Judge: BEVERLY G. GRANT

MINUTES OF PROCEEDING

April 27, 2006 09:17 AM Pexhibit #83 marked. 09:17 AM Court convenes outside the presence of the jury. All parties present. 09:18 AM Atty. Quillian: re: jurors contact with the Defendant. 09:19 AM Atty. Quillian motions the Court for a mistrial. 09:21 AM Atty. Hillman inquiries of CO Day regarding contact with the juror yesterday. 09:22 AM Court inquiries of CO Day. 09:24 AM Juror #13, David McCord, enters courtroom and answers inquiries of the Court and counsel. 09:29 AM Juror #3, Stokes Mc Gowen, enters courtroom and answers inquiries of the Court and counsel. 09:31 AM Colloquy: re: jurors #13 & 3. 09:31 AM Atty. Quillian motions for the Court for a mistrial. 09:32 AM Atty. Hillman is opposed and responds to Atty. Quillian's motion. 09:33 AM Court denies motion but will allow Atty. Quillian to renew his motion. 09:34 AM Court's comments regarding transport of the Defendant. 09:36 AM Jury in. 09:38 AM Atty. Hillman calls witness, Dr. William Eggebroten, who is duly sworn and testifies on direct examination. 10:00 AM Cross-examination by Atty. Quillian. 10:10 AM Redirect examination by Atty. Hillman. 10:11 AM No further questions. Witness steps down and is excused. 10:11 AM Atty. Hillman calls witness, Officer David Butts, who is duly sworn and testifies on direct examination. 10:18 AM Witness identifies the Defendant. 10:44 AM Jury out. 10:44 AM Court is at recess. 11:00 AM Court reconvenes outside the presence of the jury. 11:01 AM Jury in. 11:01 AM Continued direct examination of witness Butts. 11:17 AM Cross-examination by Atty. Quillian. 11:21 AM No further questions. 11:22 AM Witness steps down and is excused. 11:22 AM Court gives cautionary instruction and jury released until Monday, May 1, 2006 at 10:30 AM. 11:24 AM Colloquy: re: jury instructions. 11:25 AM Court is in recess.

End Date/Time: 04/27/06 11:25 AM

Judicial Assistant: Tonya Henderson  
Start Date/Time: 05/01/06 10:57 AM

Court Reporter: KRISTINE TRIBOULET

May 01, 2006 10:56 AM Pexhibits #84- 87 marked. 11:02 AM Court convenes outside the presence of the jury. 11:02 AM Atty. Hillman: re: juror #9. 11:03 AM Atty. Quillian motions

JUDGE BEVERLY G. GRANT Year 2006

Page: \_\_\_\_\_

## IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 04-1-04983-2

MEMORANDUM OF JOURNAL ENTRY

vs.

GLASMANN, EDWARD MICHAEL

Page: 8 of 11

Judge: BEVERLY G. GRANT

---

### MINUTES OF PROCEEDING

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to excuse juror #9. 11:05 AM Colloquy: re: alternate jurors. 11:07 AM Atty. Hillman responds: re: alternate juror #13 being excused. 11:09 AM Colloquy: re: remaining witnesses. 11:13 AM Juror, Michelle Edmonston, present and answers inquiries of the Court. 11:14 AM Atty. Hillman inquiries of the juror. 11:15 AM Atty. Quillian inquiries of the juror. 11:16 AM Juror #9 steps into the juryroom. 11:16 AM Atty. Hillman: re: Juror #9. 11:17 AM Atty. Quillian: re: Juror #9. 11:18 AM Court grants Defense's motion to excuse Juror #9, but denies their motion to excuse Juror #13. 11:20 AM Juror #9 re-enters courtroom. 11:20 AM Court thanks and excuses Juror #9. 11:28 AM Jury in. 11:28 AM Court addresses Juror #13 who has replaced Juror #9. 11:28 AM Atty. Hillman calls witness, Officer Ryan Hamilton, who is duly sworn and testifies on direct examination. 11:35 AM Witness identifies the Defendant. 11:46 AM Cross-examination by Atty. Quillian. 11:48 AM Redirect examination by Atty. Hillman. 11:48 AM Witness is excused and steps down. 11:49 AM Jury excused for the noon recess. 11:52 AM Court is at recess.

**End Date/Time: 05/01/06 11:52 AM**

Judicial Assistant: Tonya Henderson  
**Start Date/Time: 05/01/06 1:21 PM**

Court Reporter: KRISTINE TRIBOULET

May 01, 2006 01:21 PM Exhibits #88 & 89 marked. 02:00 PM Court reconvenes outside the presence of the jury. 02:01 PM Colloquy: re: stipulation. 02:02 PM Half-time motions argued and ruled upon. 02:15 PM Atty. Quillian: re: letters that were intercepted by the jail. 02:19 PM Atty. Hillman responds. 02:22 PM Atty. Quillian responds. 02:25 PM Court issues ruling regarding the language in Exhibit #78. 02:27 PM Court reverses its prior ruling and will allow the document to come in. 02:28 PM Colloquy: re: Court's ruling. 02:50 PM Jury in. 02:50 PM Court reads stipulation regarding. 02:51 PM State rests. 02:52 PM Atty. Quillian calls witness, Deputy Joshua Meyer, who is duly sworn and testifies on direct examination. 03:02 PM Atty. Hillman conducts cross-examination. 03:05 PM No redirect examination. Witness steps down and is excused. 03:05 PM Atty. Quillian calls witness/Defendant, Edward Glasmann, who is duly sworn and testifies on direct

JUDGE BEVERLY G. GRANT Year 2006

Page: \_\_\_\_\_

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 04-1-04983-2  
MEMORANDUM OF JOURNAL ENTRY

vs.

GLASMANN, EDWARD MICHAEL

Page: 9 of 11  
Judge: BEVERLY G. GRANT

---

**MINUTES OF PROCEEDING**

---

examination. 03:39 PM D exhibit #89 offered, no objection, admitted and published to the jury. 03:41 PM Jury out. 03:41 PM Colloquy: re: remaining direct examination, defendant's prior criminal history. 03:48 PM Jury in. 03:48 PM Cross-examination by Atty. Hillman. 04:09 PM Court gives "cautionary instructions" and excuses jury until tomorrow. 04:10 PM Atty. Hillman: re: question to be asked to the Defendant. 04:11 PM Atty. Quillian objects to the question. 04:11 PM Court issues ruling. 04:12 PM Colloquy: re: jury instructions. 04:12 PM Court is at recess.

**End Date/Time: 05/01/06 4:12 PM**


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 Judicial Assistant: Tonya Henderson  
 Start Date/Time: 05/02/06 9:49 AM

Court Reporter: KRISTINE TRIBOULET

May 02, 2006 09:49 AM Court convenes outside the presence of the jury. All parties are present. 09:51 AM Atty. Quillian: re: handwriting expert. 09:54 AM Atty. Hillman responds. 09:54 AM Atty. Quillian responds. 09:55 AM Court grants the Defense request. 10:01 AM Jury in. 10:01 AM Defendant, Edward Glasmann, previously sworn, retakes the stand and continues to testify on cross-examination. 10:04 AM Redirect examination by Atty. Quillian. 10:07 AM Witness/defendant steps down. 10:07 AM Court inquiries of jury: re: conflict with returning next week to conclude this trial. 10:07 AM Colloquy: re: Juror 1's conflict. 10:10 AM Court gives cautionary instruction to the jury. Jury excused until Monday, May 8 at 1:30 PM. 10:13 AM Court takes a recess to allow the attorneys to confer on the jury instructions. 10:38 AM Court reconvenes. 10:38 AM Colloquy: re: jury instructions. 10:38 AM Court is at recess.

**End Date/Time: 05/02/06 10:39 AM**


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 Judicial Assistant: Tonya Henderson  
 Start Date/Time: 05/08/06 1:22 PM

Court Reporter: JAN-MARIE GLAZE

May 08, 2006 01:36 PM Court convenes outside the presence of the jury. All parties are

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 04-1-04983-2  
MEMORANDUM OF JOURNAL ENTRY

vs.

GLASMANN, EDWARD MICHAEL

Page: 10 of 11  
Judge: BEVERLY G. GRANTMINUTES OF PROCEEDING

present. 01:36 PM Atty. Quillian: re: handwriting expert and status of defense's case. 01:37 PM Jury in. 01:39 PM Defendant, Edward Glasmann, resumes witness stand, previously sworn and testifies on redirect examination. 01:51 PM Recross-examination by Atty. Hillman. 01:52 PM Witness steps down. 01:52 PM Defense rests. 01:52 PM Jury out. 01:53 PM Colloquy: re: jury instructions. 01:53 PM Court takes a recess. 02:07 PM Court reconvenes outside the presence of the jury. All parties present. 02:09 PM Jury in. 02:09 PM Court reads jury instructions. 02:49 PM Closing statements by Atty. Hillman. 03:19 PM Court is at recess. 03:34 PM Court reconvenes outside the presence of the jury. All parties present. 03:34 PM Jury in. 03:34 PM Closings statements by Atty. Quillian. 04:18 PM Atty. Hillman gives rebuttal closing. 04:28 PM Court thanks and excuses alternate juror #14. 04:29 PM Court gives cautionary instruction and excuses jury until tomorrow morning at 9:00 AM. 04:30 PM Colloquy: re: jury questions. 04:34 PM Court is at recess.

**End Date/Time: 05/08/06 4:34 PM**Judicial Assistant: Tonya Henderson  
**Start Date/Time: 05/09/06 8:55 AM**

Court Reporter: KRISTINE TRIBOULET

May 09, 2006 09:00 AM All twelve jurors present with exhibits and begin to deliberations. 09:08 AM Juror #4, Dustie Torp, is the presiding juror. 11:35 AM Jury take a break for lunch. 12:20 PM Jury resumes deliberations. 12:49 PM Jury knock on jury room door. They have reached a verdict. Atty. Mary Robnett standing in for Atty. Hillman on behalf of the State. Defendant is present in-custody represented by Atty. Robert Quillian. 01:59 PM Court convenes outside the presence of the jury. All parties present. 02:02 PM Jury in. 02:03 PM Court reads the jury verdict forms. 02:03 PM Jury polled after each verdict form is read. 02:11 PM Jury out. 02:11 PM Counsel review verdict forms. 02:13 PM Colloquy: re: conditions of release. 02:14 PM Defendant to be held without bail until sentencing on May 26, 2006 at 1:30 PM. 02:15 PM Matter adjourned.

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

vs.

GLASMANN, EDWARD MICHAEL

Cause Number: 04-1-04983-2  
**MEMORANDUM OF JOURNAL ENTRY**

Page: 11 of 11  
Judge: BEVERLY G. GRANT

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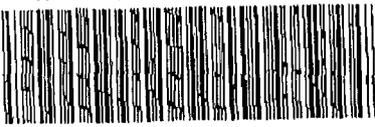
MINUTES OF PROCEEDING

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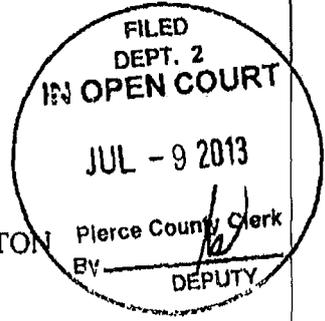
End Date/Time: 05/09/06 2:18 PM

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ORDER DESIGNATED IN  
SUPPLEMENTAL DESIGNATION OF  
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04-1-04983-2 40835254 ORDY 07-10-13



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

STATE OF WASHINGTON, )  
)  
Plaintiff, )  
vs. )  
EDWARD GLASMANN, )  
)  
Defendant. )

NO. 04-1-04983-2  
ORDER DENYING DEFENSE  
OBJECTIONS TO REARRAIGNMENT

THIS MATTER having come on regularly before the undersigned judge of the above-entitled court, upon order by the Court of Appeals for re-trial and the State's decision to rearraign the defendant on all of the ~~original charges~~ <sup>charges contained in the Amended Information, dated 07/21/05</sup> and the defense having objected to the rearraignment, Therefore,

IT IS HERBY ORDERD, ADJUDGED AND DECREED that defense objections are denied.

Dated this 9<sup>th</sup> day of July, 2013.

[Signature]  
The Honorable Katherine Stolz

Presented by:

[Signature]  
MARY K. HIGH, WSBA #20123  
Attorney for Defendant

Approved as to Form:

[Signature] 35502  
NEIL HORIBE, WSBA #36724  
Deputy Prosecuting Attorney

ORDER DENYING DEFENSE OBJECTIONS  
TO REARRAIGNMENT - Page 1 of 1

ORIGINAL

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RECEIVED BY E-MAIL

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 88913-9
vs.	)	
	)	
EDWARD MICHAEL GLASMANN,	)	CERTIFICATE OF SERVICE
	)	
Defendant.	)	
_____	)	

I, MARY BENTON, A United States Citizen over 18 years of age, served via ABC Legal

Messenger the:

Pierce County Prosecuting Attorney's Office  
930 Tacoma Avenue South, 9<sup>th</sup> floor, Reception  
Tacoma WA 98402

A true copy of the Petitioner's Opening Brief, on May 1, 2014, in the above-captioned case.

  
\_\_\_\_\_  
MARY BENTON  
Department of Assigned Counsel

## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Thursday, May 01, 2014 2:31 PM  
**To:** 'Mary Benton'  
**Cc:** Kit Proctor; Kim Demarco; Heather Johnson; Mary Kay High  
**Subject:** RE: Edward Glasmann 88913-9

Rec'd 5-1-14

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:** Mary Benton [mailto:[mbenton@co.pierce.wa.us](mailto:mbenton@co.pierce.wa.us)]  
**Sent:** Thursday, May 01, 2014 2:24 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Kit Proctor; Kim Demarco; Heather Johnson; Mary Kay High  
**Subject:** Edward Glasmann 88913-9

Attached is Petitioner's Opening Brief and Certificate of Service.

State v. Edward Glasmann PC# 04-1-04983-2, Supreme Court #88913-9  
Mary K. High, WSBA# 20123  
(253) 798-7857  
[mhigh@co.pierce.wa.us](mailto:mhigh@co.pierce.wa.us)

Mary E. Benton  
Legal Assistant III  
Department of Assigned Counsel  
(253) 798-7834  
[mbenton@co.pierce.wa.us](mailto:mbenton@co.pierce.wa.us)

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