No. 89706-9

NO. 70180-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

In re Personal Restraint Petition of

MATTHEW WILSON MOI,

Petitioner.

STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION

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COURT OF APPEALS DIV I
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12 ROYCE A. FERGUSON, JR., WASHINGTON PRACTICE: CRIMINAL PRACTICE AND PROCEDURE § 1209 (3d ed. 2004) 31

A. AUTHORITY FOR RESTRAINT OF PETITIONER

Matthew Wilson Moi is restrained pursuant to Judgment and Sentence in King County Superior Court No. 04-1-08866-2 KNT. CP 221-29.

B. ISSUES PRESENTED

1. Both a criminal defendant and the public have the right to an open proceeding. Here, a seated juror asked to be released due to hardship. The court and the parties considered the request and formulated a response in open court. The court relayed that response to the juror, but the circumstances of that communication are unknown. The court then put on the record the fact that it had relayed the agreed-upon response to the juror. Should Moi's public trial claim be rejected because he has failed to demonstrate both that a closure occurred and that the proceeding was one to which his public trial right attached? Further, did Moi fail to preserve the issue for review, when he did not object and told the court that he did not wish to be present?

2. A criminal defendant has a constitutional right to notice of the charges against him. Moi was provided a copy of the Information and was arraigned. At his first trial, the jury was unable to reach a verdict, so a mistrial was declared, rendering the proceedings nugatory. No new proceedings commenced; instead, Moi was retried on the pending

Information. Has Moi failed to show that he did not receive constitutionally adequate notice of the charges against him?

3. Evidence is sufficient to support a verdict if, when taken in the light most favorable to the State, any rational factfinder could have found the elements of the crime beyond a reasonable doubt. The trial court, sitting as the factfinder with respect to the count of Unlawful Possession of a Firearm in the First Degree, acquitted him after concluding that he was not convinced beyond a reasonable doubt that Moi was the shooter. A jury, hearing different evidence, concluded otherwise. Is the trial court's verdict immaterial to the question of sufficiency of the evidence on a separate count, at least where the trial court based its decision on different evidence and on its own weighing of the credibility of witnesses?

4. Criminal defendants have a constitutional right to be free of double jeopardy. Here, Moi chose separate factfinders for the two counts he faced under a single charging instrument. The trial court acquitted him on one count. A jury hearing the same evidence hung on the other count; a second jury seated in a second trial convicted. Where there was no prior lawsuit or final judgment, but rather a single proceeding involving two trials, and where Moi himself elected to have separate factfinders for the

separate counts of the same Information, has Moi failed to meet his burden of proving that the doctrine of collateral estoppel should be applied?

5. A prosecutor commits misconduct when she vouches for a witness or states a personal opinion about credibility. However, the prosecutor has wide latitude in making arguments, may draw reasonable inferences from the evidence, and may comment on the quality of the defense evidence. Here, the prosecutor discussed the credibility of many witnesses, including Moi, by discussing the manner of the witnesses' testimony, the reasonableness of their statements in the context of the other evidence, and other factors specifically identified in the jury instructions as proper. No vouching occurred, nor were personal opinions offered. Has Moi failed to meet his burden to demonstrate that the prosecutor engaged in any misconduct?

6. A criminal defendant is entitled to the effective assistance of counsel. A conviction should only be overturned where the defendant shows that his counsel's performance was deficient and he was thereby prejudiced. All of Moi's ineffective assistance of counsel claims rest on the failure of his trial and appellate attorneys to raise the above issues. Where none of the issues have any legal merit, has Moi failed to establish deficient performance and prejudice?

C. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On October 26, 2004, the State charged appellant, Matthew Wilson Moi, with one count of Murder in the First Degree, and further alleged that he was armed with a firearm at the time of the murder. CP 1.[1] The Information was later amended to add count II, Unlawful Possession of a Firearm in the First Degree. CP 51-52.

The matter proceeded to trial before the Honorable LeRoy McCullough on October 18, 2006. 10/18/010/29/07RP 1; App. A, at 1.[2] Moi waived his right to a jury trial on count II, the firearm possession charge, and that count was tried to the bench. App. A, at 5. The jury was unable to reach a verdict as to count I, and the trial court declared a mistrial. CP 121; App. A, at 33. The court acquitted Moi of count II, concluding that the State had failed to prove beyond a reasonable doubt that Moi was the shooter in the murder. App. B; 11/14/010/29/07RP 5-13.

The remaining count of Murder in the First Degree was then reassigned for trial to the Honorable Laura Gene Middaugh on September 4, 2007. CP 231. The second jury convicted Moi of Murder in the First Degree, and concluded that he was armed with a firearm at the time of the

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[1] The State previously moved to transfer the Clerk's Papers and Verbatim Reports of Proceedings from the direct appeal.

[2] The forty volumes of the Verbatim Report of Proceedings are referred to by date. The Appendices consist of documents from the court file and two trial exhibits.

crime. CP 177, 179. The trial court imposed a standard range sentence. CP 221-29.

Moi filed a timely appeal. CP 220. This Court affirmed in an unpublished decision. State v. Moi, 154 Wn. App. 1004 (2010). The Supreme Court granted review and remanded for reconsideration in light of State v. Irby, 170 Wn.2d 874, 246 P.3d 796 (2011). State v. Moi, 172 Wn.2d 1014, 261 P.3d 664 (2011). After reconsideration, this Court again affirmed in an unpublished decision. State v. Moi, 165 Wn. App. 1006 (2011). The Supreme Court denied review on July 30, 2012. State v. Moi, 174 Wn.2d 1017, 282 P.3d 96 (2012). The mandate issued on October 10, 2012. App. C. This Petition timely followed.

2. SUBSTANTIVE FACTS[3]

Keith McGowan was a long-time member of the gang known as the Hoover Crips. 10/25/07RP 254; 11/1/07RP 735-36. McGowan's nickname was "Baby Nut." 10/25/07RP 3254-55. McGowan was 23 years old and lived with his girlfriend and newborn son at the Emerald Villa Apartments on Pacific Highway South in Des Moines. 10/25/07RP 250-51; 10/29/07RP 430-31. The Emerald Villa was a well-known Hoover hang-out. 10/25/07RP 262; 10/29/07RP 391, 434;

[3] This recitation of the substantive facts is borrowed from the Brief of Respondent filed in Moi's direct appeal, No. 61167-4-I.

11/1/07RP 736-37; 11/5/07RP 881-82. Also living with McGowan were two cousins, Kevin Carpenter and Achillia Palmer Jack.[4] 10/29/07RP 500; 11/1/07RP 827.

Daizy Hauro, appellant Matthew Moi's girlfriend, testified about Moi's actions before the shooting.[5] Hauro knew that Moi associated with the Hoover gang, but Moi never claimed to be a Hoover. 11/7/07RP 1197-98. Hauro confirmed that Moi's nickname was "Matt Matt." 11/7/07RP 1140.

Moi had been extremely close to his friend Jonathan Otis and the pair spent a lot of time together. 11/7/07RP 1141. When Otis was shot and killed in January 2004, Moi's grief was "extreme" and "continuing."[6] Moi and Hauro would go to Otis's grave almost every day. 11/7/07RP 1142-44; 11/15/07RP 1825. Moi asked Hauro to make a sweatshirt with Otis's picture on it. 11/7/07RP 1144-45. Moi wore the sweatshirt every day. 11/7/07RP 1145-46.

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[4] McGowan, Carpenter, and Palmer Jack are not all "first" cousins, but were related. 10/25/07RP 252-53; 10/29/07RP 428-30; 11/1/07RP 826. Because the witnesses used this terminology, they will be referred to as "cousins." In 2004, Carpenter was 16 years old. 10/29/07RP 428, 476. Palmer Jack was 15 years old. 10/29/07RP 432; 11/1/07RP 827.

[5] Daizy Hauro, 23 years old, dated Moi in high school and on and off for five years. When not dating, they were still close friends, spoke almost every day, and Moi at times lived with her family. 11/7/07RP 1135-39, 1146. The record is clear that Hauro and Moi had a very close relationship.

[6] Des Moines Detective Stuth testified that in January 2004, Jonathan Otis had been shot multiple times in the leg and head outside the Redondo Bar and Grill, a pub out at 272nd and Pacific Highway South. Police have never identified a suspect. 11/5/07RP 978-79. The Redondo Bar and Grill is a well-known Hoover hang-out. 11/1/07RP 857.

On October 19, 2004, Moi called Hauro, upset because his mother had been "jumped" and robbed by Hoovers. Moi was crying, and he sounded angry. 11/7/07RP 1147-51. About 30 minutes after the phone call, Hauro met Moi at a gas station. Moi was still angry, and said he was going to meet his uncle and go to Pacific Highway South to look for his mother. 11/7/07RP 1151-58. Hauro saw Moi leave the gas station in a car with people she did not recognize. 11/7/07RP 1207; 11/8/07RP 1232.

On the evening of October 19, 2004, McGowan, Carpenter, Palmer-Jack, and Anthony Stell (a friend) were all at McGowan's apartment. 10/29/07RP 436-37. McGowan and Stell went onto the balcony, which was just above ground level. 10/29/07RP 437-40. From inside, standing next to the sliding glass doors, Carpenter saw McGowan and Stell speaking with someone outside. 10/29/07RP 446-50, 509-11, 518;10/30/07RP 583. Carpenter could not hear much of what was said, but did hear McGowan's nickname ("Baby Nut") and also the words, "Tell them I'll be back."[7] 10/29/07RP 513-14;10/30/07RP 582-83.

McGowan and Stell came inside and Stell left. 10/29/07RP 470-71; 11/1/07RP 745-47. A few minutes later, Carpenter left to use the bathroom on a different floor and went out to the hall and into an elevator.

[7] Anthony Stell recalled that the person standing outside the balcony asked for "Tiny" and "Smiley." 11/1/07RP 743. Stell didn't know Moi and couldn't identify Moi as the person he saw outside the apartment. 11/1/07RP 756. Stell admitted that his memory of events four years earlier was clouded by his drug use. 11/1/07RP 759.

10/29/07RP 450-54. As he did so, Moi ran into the elevator as well. 10/29/07RP 455, 518. Carpenter testified that Moi was the person who had been talking to McGowan and Stell on the balcony. 10/29/07RP 458, 468.

Carpenter did not know Moi. 10/29/07RP 458. Moi asked Carpenter what "hood" he was from and if he knew certain people, naming individuals that Carpenter knew were associated with the Hoovers. 10/29/07RP 456-57;10/30/07RP 579-80. Moi also asked Carpenter if he was a Hoover. Carpenter said no. 10/29/07RP 457. Moi told Carpenter his name was "Matt Matt" and he was a Hoover. 10/29/07RP 489-90, 520.

As they exited the elevator, Moi asked to use Carpenter's cell phone, and spoke to someone Carpenter assumed was a girl. 10/29/07RP 458-60;10/30/07RP 581-82. Carpenter received no answer at the upstairs apartment and returned to the elevator. Moi was still there and rode down the elevator with him. 10/29/07RP 460-61.

As Carpenter opened the door to McGowan's apartment, Moi tried to come inside as well. Carpenter stopped him and told him that he could not just walk in. 10/29/07RP 464-67. Moi asked if he could come in and wait for "Tiny." 10/29/07RP 637-38. Carpenter said no. Moi said, "Can you ask him if I can come in and wait?" 10/29/07RP 467-68. Carpenter

told Moi he would ask and went inside. 10/29/07RP 470, 535-36. Carpenter saw no one other than Moi in the hallway. 10/29/07RP 468-69. Although the door to the apartment swung shut automatically, someone standing in the doorway could see McGowan where he was seated on the couch. 10/29/07RP 471-72.

Carpenter told McGowan that someone named "Matt Matt" was asking if he could come inside. 10/29/07RP 472, 531;10/30/07RP 580-81; 11/1/07RP 837-38; 11/6/07RP 1051-52. McGowan went outside to see who it was.[8] 10/29/07RP 472-73. The door swung closed, then Carpenter almost immediately heard five or six shots being fired, one right after the other. 10/29/07RP 473-74, 543-44; 11/1/07RP 847-48. Carpenter did not recall hearing any conversation prior to the shooting. 10/29/07RP 543. Palmer Jack thought she heard words exchanged before the shots. 11/1/07RP 847-48.

McGowan came stumbling through the door and said, "He shot me call 911." 10/29/07RP 475; 11/1/07RP 848-50. Carpenter ran outside, looked both directions, and didn't see anyone in the hallway. 10/29/07RP 475-76. A chaotic scene ensued, as 911 was called, people rushed to the

[8] At trial, there was considerable testimony concerning whether Palmer-Jack, from inside the apartment, was able to see the face of the person at the door. At best, however, she testified that the person was a black male, between 5'8" and 5'10" tall, and wearing a black hooded sweatshirt. 11/1/07RP 843-46; 11/6/07RP 1054-64, 1071-78; 11/15/07RP 1797-1800. Palmer Jack could not identify Moi as the shooter.

apartment, and the fire alarm was pulled in an attempt to get a faster medical response.[9] 10/29/07RP 476-79, 545-47; 11/1/07RP 748-55.

Des Moines Police responded to a shots fired call at the Emerald Villa Apartments on October 19, 2004, at about 10:39 p.m.[10] Entering the apartment complex, officers discovered Keith McGowan's body just inside the door. 10/25/07RP 262-72; 10/29/07RP 399-401. Medics arrived but were unable to revive McGowan. 10/25/07RP 272-76. Officers discovered five .22 caliber shell casings in the hallway. 10/25/07RP 277-78; 10/29/07RP 403-05. There were bullet impact marks on the door frame. 10/29/07RP 423. A bullet was removed from the drywall. 11/5/07RP 884-85; 11/14/07RP 1719-23; 11/15/07RP 1804-09.

The medical examiner testified that McGowan suffered five gunshot wounds (left thigh near the groin, left arm, two on his back, and one on his flank). All those were on the left side of the body. 11/6/07RP 1087. The bullets were small caliber, .22. or .25. 11/6/07RP 1087-88. Three bullets were recovered from McGowan's body and turned over to

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[9] Palmer Jack did not realize that McGowan was dead. Concerned that drugs would be found on him at the hospital, she removed a bag of "weed" and $3 from McGowan's shoe before the police arrived. 11/1/07RP 849-51; 11/6/07RP 1067-70.

[10] City of Des Moines Police Officers testifying about their response to the scene included Officer Kevin Montgomery, 10/25/07RP 259-375; Officer Dominic Arico, 10/29/07RP 386; Officer Mike Graddon, 11/14/07RP 1718-23; Officer George Jacobowitz, 11/14/07RP 1731-37; Detective Robert Tschida, 11/14/07RP 1743-54; and Sergeant Robert Bohl, 11/15/07RP 1802-10.

detectives.[11] 11/6/07RP 1101-02. Because there was no fouling or stippling associated with any of the entry wounds, the medical examiner concluded the shots were fired from at least two feet away. 11/6/07RP 1091-1100. There was no sign of struggle or physical altercation. 11/6/07RP 1087.

Kevin Carpenter had avoided speaking to the police the night of the shooting because he had outstanding warrants. 10/29/07RP 479, 548-50. Detectives located Carpenter the next morning. 10/29/07RP 554; 11/5/07RP 902-03. Detectives determined that a call had been made to "C.C. Johnson" on Carpenter's cell phone on October 19, 2004, at about 10:30 p.m. 10/30/07RP 573; 11/5/07RP 906, 984. Detectives contacted Johnson, who told them that "Matt Matt" had called her. 11/5/07RP 907. Johnson and "Matt Matt" had gone to school together. Detectives determined Moi's real name and used this information to prepare a photo montage that included Moi. 11/5/07RP 908-10. The montage was shown to Carpenter who identified Moi as the person he had seen the night before. 10/29/07RP 493-94; 11/5/07RP 911, 945-46, 982-83.

In the early morning of October 20, 2004, several hours after the shooting, between midnight and 2:00 a.m., Moi arrived at Hauro's house.

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[11] A total of five bullets were recovered from the crime scene and McGowan's body. 9 RP 954. The slugs and the casings were sent to the crime lab. At trial, it was stipulated that there was no DNA or fingerprints on any of the bullet casings. 11/5/07RP 954-55.

11/7/07RP 1158-59. Moi smelled of alcohol. 11/7/07RP 1160; 11/8/07RP 1235-38. Moi seemed tired and said he had been drinking at his friend Malcolm's house. Hauro believed this to be Malcolm Hollingsworth. 11/7/07RP 1162, 1183; 11/8/07RP 1255-56.

Moi and Hauro started talking; Moi was crying, and Hauro was concerned because he was acting strangely. 11/8/07RP 1244. Moi then asked Hauro what she would do if he killed someone.[12] 11/7/07RP 1163. Hauro was scared but tried to be calm and said she didn't know because she'd never been in that situation. Hauro asked Moi if he had killed someone. Moi nodded his head. 11/7/07RP 1163-64. Moi looked at her and then he tried to turn it into a joke. He started laughing and said he was just joking. Hauro had taken him seriously. Hauro testified that she could not recall Moi ever joking about something like that before. 11/7/07RP 1165.

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[12] A portion of Hauro's testimony from the first trial was also read to the jury by agreement:

> I asked him what was wrong with him, because he didn't go to sleep. And he started crying, so I asked him, What's wrong with you?
> And then he said, Um, I killed someone.
> And so I sat down on the other side of the bed and I said – so I asked him questions, like, Why? And, Who was it?
> And all his response was, I killed someone when I was on Pac Highway. And I just started shooting.
> And so when he saw my face that I was, like, getting scared and stuff, he just spoke up and said, Well, I'm just joking. No, what do you really think? I'm going to do that?

11/13/07RP 1416.

The next day, Moi and Hauro went to the house of Hauro's aunt and uncle, Benjamin and Rosemary Comer, in Renton. 11/7/07RP 1168. Moi told Benjamin Comer that he had been on Pacific Highway South at the "wrong place, wrong time," and saw a Samoan shoot someone. Moi said he could be blamed for the shooting. 11/7/07RP 1169-71; 11/15/07RP 1815-16. Moi said that he had been at an apartment complex asking people if they had seen his mom. A Samoan told everybody in the area if you're not a Hoover to leave. Moi claimed that as he was leaving he heard gunshots. 11/7/07RP 1172.

Benjamin Comer advised Moi to call the police. Moi did so and made arrangements to go to the Des Moines Police Station. 11/7/07RP 1172-73; 11/14/07RP 1706; 11/15/07RP 1816. Hauro began to drive Moi to the station when they received a call from Rosemary Comer, who said Moi needed an attorney, so they returned to the Comers' house. 11/7/07RP 1174; 11/8/07RP 1251-52; 11/15/07RP 1822-23, 1835-39. Moi then called the pastor from the Comers' church, Michael Baruso, and described a somewhat different version of events.[13] 11/8/07RP 1284-88.

[13] Baruso testified that Moi told him that he took a bus to the apartments, knocked on a door to use a friend's phone, and was told they didn't have a phone. As he was leaving, some Samoans from another gang stopped him in a stairwell and asked him if he was in a certain gang (Baruso couldn't recall the name). Moi said no. As he ran out he heard gunshots. Moi told Baruso the Samoan had long hair. 11/8/07RP 1284-88.

Baruso came to the Comers' house, and Moi repeated his story. 11/7/07RP 1174-75; 11/8/07RP 1291-92.

Hauro then took Moi to the house of a friend. Later that night Moi returned to the Comer house and they watched a movie. 11/7/07RP 1176. As Moi and Hauro were standing in the kitchen, they saw police approach the front door. Hauro answered and told the police that Moi was inside. Unknown to Hauro or Benjamin Comer, however, Moi had fled out the back door. 11/7/07RP 1177-81; 11/8/07RP 1254; 11/15/07RP 1820, 1826-28.

During the entire time Hauro was with Moi he never mentioned that someone named "J.J.," "Jason," or "Jason Johnson" was responsible for the shooting. 11/7/07RP 1142, 1182, 1185-86; 11/15/07RP 1825. Nor did Moi provide any details about the Samoan he claimed did the shooting. Moi never told the Comers or Baruso that his mother had been assaulted by Hoovers the day before the shooting. 11/8/07RP 1294.

On October 21, 2004, King County Sherriff's deputies obtained a lead that Moi might be at the Comer residence. 10/25/07RP 296-303. Deputies in marked vests approached the Comer residence from the front, while one watched the back door. When detectives knocked on the front door, Moi left by the back door in a low crawl. 10/25/07RP 303-04. After an extensive search of the area, Moi was apprehended. 10/25/07RP

305-18. Moi had changed his sweatshirt, discarding the one with the picture of his friend Jonathon Otis. A search near where Moi was apprehended found the Otis sweatshirt. 10/25/07RP 311-12. As he was arrested, Moi began to say, "I was there but I didn't" but what he said after that was not clear. 10/25/07RP 334.

Moi was transported to the Des Moines police station, where he gave an oral and recorded statement.[14] 11/5/07RP 913-17. Moi admitted that he had been at the Emerald Villa apartments, had met Carpenter, and had used Carpenter's cell phone to call C.C. Johnson. He said he had travelled to the Emerald Villa by bus and went there to hang out with friends. 11/5/07RP 993-94. Moi admitted to seeing McGowan but denied shooting him. Moi told police that the shooting had been done by a Samoan. 11/5/07RP 950. Moi admitted that he told Hauro that he had shot someone. Ex. 108 (a copy of which is attached as App. E), at 31-32.

Moi did not tell detectives that his mother had been "jumped" the night before the shooting by Hoovers. 11/5/07RP 992. During a break in the interview, detectives independently learned of this assault. 11/5/07RP 990-91. When presented with this information, Moi became very upset. 11/5/07RP 993-94. When asked why he hadn't told detectives about this,

[14] Moi's recorded interview was played for the jury. 11/5/07RP 997-98; Ex. 108 (App. E).

Moi said it was a matter of personal business and personal affairs. 11/5/07RP 994. Moi made no mention of anyone by the name of J.J., Jason, Jackson, or Johnson. RP 1676. The first time detectives learned of this information was when Moi testified at the first trial ("prior hearing"). 11/14/07RP 1676.

Moi, Kyle Knutson, Malcom Hollingsworth, and James Randall had all been good friends in high school, although they had drifted apart after that. 11/8/07RP 1304-10. Some time in October 2004, after Knutson had heard of McGowan's death, Hollingsworth called Knutson and told him he had put something in Knutson's room. 11/8/07RP 1312-14. Searching his room, Knutson found a handgun. 11/8/07RP 1315. Later, Hollingsworth came over and told Knutson that he could have the firearm if he wanted it, could sell it, or could get rid of it.[15] 11/8/07RP 1316.

Knutson and Ramsdell threw the weapon in a storm drain near Knutson's house. 11/8/07RP 1316-19. Knutson subsequently showed detectives where he had thrown the weapon. 11/8/07RP 1322. Detectives searched the drain and found a firearm. 11/8/07RP 1375-85; 11/13/07RP 1418-39. The firearm was sent to the state crime lab, where it was

[15] In his testimony at the first trial, Knutson stated that Hollingsworth arrived with a friend and that it was the friend who had the weapon. 11/8/07RP 1342. This discrepancy was fully explored by defense counsel. 11/8/07RP 1325-42. Knutson's testimony at the second trial was consistent with his original statement to police. 11/8/07RP 1356; 11/13/07RP 1412. The person with Hollingsworth was not Moi and was not "J.J." 11/8/07RP 1358-63.

restored and test fired. 11/8/07RP 1381. The crime lab concluded that the casings recovered from the crime scene were fired from the recovered firearm. 11/14/07RP 1665-75.

Moi denied knowing Keith McGowan. 11/19/07RP 2071. The State introduced evidence that Moi and McGowan had been in custody together prior to the shooting. Specifically, Moi and McGowan were both booked into the King County Jail (on unrelated matters) on December 20, 2003, at 7:12 a.m. and placed in adjacent "tanks." 11/14/07RP 1613-15. The next day, they were in a small holding cell, along with 15 other inmates, for 47 minutes. 11/14/07RP 1616-17. Moi and McGowan were then transported to the Regional Justice Center ("RJC") in a van with eight other inmates. 11/14/07RP 1618. At the RJC they were placed together in a holding cell for 42 minutes. 11/14/07RP 1619. The pair was then assigned adjacent (two-man) cells for ten hours. 11/14/07RP 1620-21. They would also have been able to see each other directly during the 8 a.m. to 10 a.m. recreation period at the RJC.[16] 11/14/07RP 1621.

Otis Williams, thirty-one years old, was a long-time member of the Hoover Crips and had been a close friend of McGowan. 11/13/07RP 1481-94, 1538-39. In 2005, while in custody on this charge, Moi

[16] Moi testified that he did not know McGowan. Moi claimed that he was injured in the head prior to his arrest in January 2004 and had no memory of seeing McGowan while in custody in Seattle or the RJC. 11/15/07RP 1851-58; 11/19/07RP 2019-22.

approached Williams. 11/13/07RP 1497-1502. Williams did not know Moi. 11/13/07RP 1497. After an initial conversation, Moi said to Williams, "I'm locked up for killing Baby Nut [McGowan]." 11/13/07RP 1506. Williams's first instinct was to fight Moi, but he then decided to try and turn Moi's confession to his advantage. 11/13/07RP 1506-09, 1541-44.

Moi talked to Williams every day, repeatedly telling Williams that he felt bad for killing McGowan and that he prayed about it. 11/13/07RP 1510. Moi explained he went to the Emerald Villa because his brother was killed by some of the "homeys" and he wanted revenge. Moi said he had slept on his brother's grave all the night before and he went up to the apartment looking for anybody from Hoover, and it just happened to be "Baby Nut" he ran into. 11/13/07RP 1511, 1513-14, 1522. Moi told Williams that he was let in through the locked doors of the Emerald Villa. He met someone and asked, "Where the Hoovers at?" 11/13/07RP 1515. After riding in an elevator with that person, Moi tried to go inside an apartment with him, but was stopped. 11/13/07RP 1515-16.

Moi said that when McGowan came to the door, he was holding a baby. Moi told him to give the baby to somebody so he could talk to him. McGowan handed the baby to someone and he came out the door. Moi said he only meant to shoot McGowan one or two times but he let off the

whole clip. 11/13/07RP 1516-17. Moi said that he intended to shoot anyone from Hoover and didn't specifically target "Baby Nut." 11/13/07RP 1560.

After the shooting, Moi ran to 208th (the street where Malcom Hollingsworth lived). 11/13/07RP 1517. Moi told Williams he shot Baby Nut with a .22 caliber gun. He said he left the gun at the house and somebody turned it over to the police. 11/13/07RP 1520-21. Moi wrote two letters to Williams that reference the shooting. 11/13/07RP 1535; Ex. 94 (attached as App. F).

Williams tried to encourage Moi to talk and pretended that he was protecting Moi from other Hoovers. 11/13/07RP 1512-13, 1535.

Williams was facing 17 months on a felony charge and tried to work out a deal with prosecutors in exchange for his cooperation. 11/13/07RP 1526-27, 1569-75. It was agreed to reduce Williams's pending telephone harassment charges to misdemeanors and run the sentence concurrently with the 17 months prison time. 11/13/07RP 1527-29, 1555-58.

Moi testified in his own defense. He agreed that Jonathan Otis had been his best friend before he was killed. 11/15/07RP 1862-65. Moi visited Otis's grave daily and wore a shirt or sweatshirt with Otis's picture on it every day. 11/15/07RP 1866-69, 1871-72; 11/19/07RP 2083. Moi

claimed he didn't hold any particular person responsible for the death of Otis. 11/15/07RP 1865. However, on cross-examination, Moi admitted that he told detectives that there were rumors that Hoovers killed Otis. 11/19/07RP 2118-19; Ex. 108 (App. E), at 12.

In October 2004, Moi learned from his sister that his mother had been "jumped" and robbed by Hoover gang members.[17] 11/15/07RP 1880-83. When he got this information he was upset and angry. 11/15/07RP 1883.

Moi admitted that he went to the Emerald Villa and was present when the shooting occurred. 11/15/07RP 1903-13, 1943-47. Moi's version of the events just prior to the shooting—speaking to people on the balcony, meeting Carpenter and riding the elevator with him, and asking to come inside the apartment—were remarkably similar to Kevin Carpenter's testimony. 11/15/07RP 1900-44. Moi claimed that when McGowan came to the door, J.J. appeared and started shooting. 11/15/07RP 1943-45. He said he ran past J.J. and outside the building. 11/15/07RP 1946-48. Moi admitted that the first time he ever said anything about J.J. was at the first trial, two years after the shooting. 11/19/07RP 2089.

[17] Moi's sister has died and did not testify in either trial. 11/15/07RP 1850.

After the shooting, Moi claimed he made his way to his sister's house, had a beer, and told her what happened. 11/15/07RP 1948-53; 11/19/07RP 2022. He then went to Hauro's house. 11/19/07RP 2023. Moi admitted that he told Hauro that he had shot somebody. 11/19/07RP 2027, 2103. He then claimed he said he was "just playing" and that he had witnessed a shooting. 11/19/07RP 2028. At trial, Moi stated he didn't know why he said that. Moi admitted that he never mentioned J.J. to Hauro. 11/19/07RP 2029-30.

The rest of Moi's testimony—including the conversations with Benjamin Comer and Michael Baruso, his aborted attempt to turn himself in, and his flight when detectives approached the house—mirrored that of Hauro. 11/19/07RP 2034-82.

Moi admitted that he did not tell police about his mother being jumped until after the police raised this issue. 11/19/07RP 2084-85. Moi admitted speaking to Otis Williams at the RJC, but denied confessing to shooting McGowan. 11/19/07RP 2071-79. Finally, on cross-examination, Moi admitted that his intent when he went to the Emerald Villa Apartments was to harm Hoovers. When asked why he went to the Emerald Villa Apartments, Moi replied: "Jump on the people who jumped on my mom." 11/19/07RP 2054.

D. ARGUMENT

Obtaining relief from a conviction based on a collateral challenge is "extraordinary."[18] In re Coats, 173 Wn.2d 123, 132, 267 P.3d 324 (2011). An appellate court will uphold an otherwise settled judgment unless the petitioner demonstrates a constitutional error that resulted in actual and substantial prejudice, or a non-constitutional error that constitutes a fundamental defect that inherently resulted in a complete miscarriage of justice. Id.

A petitioner bears the burden of showing prejudicial error by a preponderance of the evidence. In re Lord, 152 Wn.2d 182, 188, 94 P.3d 952 (2004). Bare assertions unsupported by references to the record, citation to authority, or persuasive reasoning cannot sustain the petitioner's burden of proof. State v. Brune, 45 Wn. App. 354, 363, 725 P.2d 454 (1986). "Where the record does not provide any facts or evidence on which to decide the issue and the petition instead relies solely on conclusory allegations, a court should decline to determine the validity of a personal restraint petition." In re Cook, 114 Wn.2d 802, 813-14, 792 P.2d 506 (1990).

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[18] Courts have limited the availability of collateral relief because "it undermines the principles of finality of litigation, degrades the prominence of trial, and sometimes deprives society of the right to punish admitted offenders." In re Davis, 152 Wn.2d 647, 670, 101 P.3d 1 (2004).

1. MOI'S RIGHT TO A PUBLIC TRIAL WAS NOT VIOLATED.

Moi contends that the trial court violated his right to a public trial when it advised a seated juror that she would not be released mid-trial for hardship. This argument is without merit. Moi has failed to establish that a closure occurred. Further, his right to a public trial did not attach to the proceeding at issue. Finally, Moi failed to preserve the issue for review. His claim should be rejected.

A criminal defendant has a constitutional right to a public trial. U.S. CONST. amends. I, VI; WASH. CONST. art. I, §§ 10, 22. However, the decisions of the Washington Supreme Court establish that reversal is required only upon a showing that the trial court actually issued an order closing the courtroom, or where it is clear from the record that people were in fact excluded from the proceedings. See, e.g., State v. Marsh, 126 Wash. 142, 142-44, 217 P. 705 (1923) (defendant's trial in juvenile court was held in private); State v. Bone-Club, 128 Wn.2d 254, 256-57, 906 P.2d 325 (1995) (courtroom was closed during pretrial suppression hearing by order of the court); In re Orange, 152 Wn.2d 795, 801-03, 100 P.3d 291 (2004) (court ordered that defendant's family members be excluded from the courtroom during voir dire); State v. Brightman, 155 Wn.2d 506, 511, 122 P.3d 150 (2005) (court ordered that spectators be

excluded from the courtroom during voir dire); State v. Easterling, 157 Wn.2d 167, 171-73, 137 P.3d 825 (2006) (defendant and the public excluded from the courtroom during co-defendant's motion to sever by order of the court); State v. Wise, 176 Wn.2d 1, 11-12, 288 P.3d 1113 (2012) (court conducted private questioning of prospective jurors in chambers); State v. Paumier, 176 Wn.2d 29, 33, 288 P.3d 1126 (2012) (same).

Here, Moi has not shown that his courtroom was closed to the public at any time. The parties advised the trial judge that they did not seek to be present when the juror was advised she would not be released, 11/13/07RP 1406, but is no evidence that the court closed the courtroom to anyone.[19] The record does not reflect where the court's advisement to the juror occurred. Moreover, there is nothing in the record to indicate that the court excluded the public, or even that any members of the public were present to be excluded. Although Moi alleges that his attorney told him that he could not be present in the judge's chambers, implying that that is where the conversation occurred, App. D to Petition, his attorney's

[19] To the extent that Moi suggests that the trial court's comment, "I think it would be better to do it outside the presence of everyone else," 11/13/07RP 1406, means that a closed courtroom was contemplated, this suggestion should be rejected. The most natural reading of the court's statement is that she preferred to talk to the juror outside the presence of the rest of the jury. This is especially true in light of the fact that court was contemplating changing the designation of alternates, 11/13/07RP 1405-06, and that in the very next breath she invited counsel and the defendant to be present, although they declined, 11/13/07RP 1406.

advisement—even if Moi's affidavit is credited—does not demonstrate that the trial judge in fact met with the juror in chambers, as opposed to in the open courtroom while the jury was being excused for lunch. See also In re Morris, 176 Wn.2d 157, 166, 288 P.3d 1140 (2012) (distinguishing between the defendant's right to be present and the right to a public trial).

Even if there was a closure, however, the right to a public trial only attaches to those proceedings that, based on experience and logic, implicate the core values of the right. State v. Sublett, 176 Wn.2d 58, 292 P.3d 715 (2012). The experience prong of the test examines whether "the place and process have historically been open to the press and general public." Id. at 73. The logic prong examines whether "public access plays a significant positive role in the functioning of the particular process in question." Id. Only if the answer to both prongs is yes does the public trial right attach. Id.

Here, application of this test demonstrates that Moi's public trial rights were not violated. First, Washington trial court experience does not suggest that an answer to a juror's question requires a public proceeding. Rather, juror questions are routinely answered via a written communication to the jury room. CrR 6.15(f)(1). The public is not present when the additional instructions are provided. Indeed, the court's review of the jury's question and its consultation with counsel about a

proper response need not occur in open court. Sublett, 176 Wn.2d at 75-77. There is no reason to believe that an answer to a question posed by a single juror requires more.

Moi's suggestion that the communication with the juror at issue is comparable to voir dire is unavailing. Although the right to a public trial extends to the process of jury selection, Orange, 152 Wn.2d at 804, the proceeding at issue was not a part of voir dire. Nor is Moi's citation to State v. Lam, 161 Wn. App. 299, 254 P.3d 891 (2011), helpful. In Lam, this Court held that a public trial violation occurred when the trial judge questioned a seated juror in chambers in order to determine whether the juror would continue to serve. Here, however, no questioning occurred. Instead, the juror conveyed information to the court via a letter that was read into the record. 11/13/07RP 1403. The court then discussed the juror's communication with the parties, came to a decision not to excuse the juror, and formulated a response; this entire discussion occurred on the record. 11/13/07RP 1403-06. The court then relayed the agreed-upon response to the juror. While the interaction between the court and the juror was not on the record, the court put the substance of the communication on the record after it occurred. 11/13/07RP 1500-01.

Second, looking at the logic prong of the test, there is no reason to believe responding in open court to the juror's request to be excused from

further service would allow the public to "play[] a significant positive role in the functioning of the particular process in question." Sublett, 176 Wn.2d at 73. The court was merely communicating a decision already reached in open court, after open deliberation, to a juror. There was no role for the public.

Finally, even if there was a public trial violation, Moi failed to adequately preserve this issue. RAP 2.5(a) allows this Court to refuse to review any claim of error not raised in the trial court. Here, Moi not only failed to object below, but affirmatively assented to the court's communicating with the juror in his absence. 11/13/07RP 1406. RAP 2.5(a)(3), allowing review for the first time on appeal of a manifest error affecting a constitutional right, should not be applied to benefit Moi. For RAP 2.5(a)(3) to apply, a defendant must establish actual prejudice, meaning that the error had practical, identifiable consequences. State v. O'Hara, 167 Wn.2d 91, 99, 217 P.3d 756 (2009). Here, Moi cannot meet his burden. Everything related to the decision about whether the juror at issue would continue to serve occurred on the record, except for the trial court's communication of that decision to the juror. The juror was ultimately excused as an alternate, due to illness, and did not deliberate.

11/15/07RP 1762-64; CP 253. Moi cannot articulate, let alone prove, how he was prejudiced.[20]

In short, Moi has failed to show a court closure occurred, failed to prove that his right to a public trial attached to the proceeding, and failed to preserve the issue for review. His claim for relief must fail as well.

2. MOI HAD CONSTITUTIONALLY ADEQUATE NOTICE OF THE CHARGE AGAINST HIM.

Moi contends that he is entitled to a new trial because he was not informed of the charges against him. Specifically, he complains that the State should have filed a new Information and arraigned him on that Information after his first trial ended with a hung jury. Moi is incorrect. A mistrial does not terminate criminal proceedings. Instead, it renders the trial a nullity. As there was no basis to recommence ongoing proceedings against Moi, no new charging document or arraignment was required. He had adequate notice of the charges against him.

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[20] In State v. Bone-Club, 128 Wn.2d 254, 257, 906 P.2d 325 (1995), the Supreme Court noted that a contemporaneous objection did not constitute a waiver. Perhaps in reliance on this language, the Supreme Court has addressed some public trial claims without closely examining whether the issue was properly preserved. E.g., Wise, 176 Wn.2d at 15-16; Paumier, 176 Wn.2d at 36. The dissents in those cases, two concurrences in Sublett, and the petitions for review granted this term suggest that this issue remains unresolved. Wise, 176 Wn.2d at 21-24 (Madsen, C.J., dissenting); id. at 25-28 (J.M. Johnson, J., dissenting); Paumier, 176 Wn.2d at 42-43 (Madsen, C.J., dissenting); id. at 52-56 (Wiggins, J., dissenting); Sublett, 176 Wn.2d at 90-128 (Madsen, C.J. concurring); id. at 150-56 (Wiggins, J., concurring); State v. Grisby, 176 Wn.2d 1031 (2013) (granting review); State v. Shearer, 176 Wn.2d 1031 (2013) (granting review); State v. Koss, 176 Wn.2d 1030 (2013) (granting review).

A defendant has the constitutional right to be informed of the nature of the charges against him. U.S. CONST. amend VI; WASH. CONST. art. I, § 22. The charging document must contain all essential elements of the crime in order to apprise the defendant of the charges against him and to allow him to prepare a defense. State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995); State v. Kjorsvik, 117 Wn.2d 93, 101-02, 812 P.2d 86 (1991). The accused cannot be tried for a crime with which he has not been charged. Vangerpen, 125 Wn.2d at 787.

Here, Moi was charged on October 26, 2004, with one count of Murder in the First Degree. CP 1. The Information was amended on October 18, 2006, to charge one count of Murder in the First Degree and one count of Unlawful Possession of a Firearm in the First Degree.[21] App. A, at 1. It was amended a second time, on November 14, 2006, to correct the spelling of Moi's name. App. A, at 24; CP 51-52. Moi was arraigned on each of these two amended Informations at the time of their filings. App. A, at 1, 24.

At the conclusion of the first jury trial on the Second Amended Information, the jury was unable to reach a verdict, and the trial court declared a mistrial on November 29, 2006. App. A, at 33. The court did not acquit Moi on count I or dismiss the charge against him. (It did,

[21] Moi waived his right to a jury trial with respect to count II, Unlawful Possession of a Firearm in the First Degree, and this count was tried to the court. App. A, at 5.

however, orally acquit Moi on count II, the count tried to the court. 12/14/010/29/07RP 4-13; App. B.) A few days after the mistrial, the parties reset the case for a case scheduling hearing. App. D. No new or additional Information was filed, and no rearraignment occurred.

Citing State v. Corrado, 78 Wn. App. 612, 898 P.2d 860 (1995), abrogated on other grounds by State v. Franks, 105 Wn. App. 950, 22 P.3d 269 (2001), Moi claims that the State's failure to file a new Information and rearraign him violated his right to notice of the charges against him. But Moi fails to recognize the fundamental difference between his case and Corrado. In Corrado, the State dismissed the charges against the defendant, then later rearraigned him without filing a new charging instrument. Id. at 613-14. The dismissal terminated the proceedings against Corrado. Id. at 615.

Here, however, the case was never dismissed; instead, the trial court declared a mistrial when the jury was unable to reach a verdict.[22] App. A, at 33. A mistrial does not terminate criminal proceedings against a defendant such that the filing of a new charging instrument is necessary. Rather, the effect of a mistrial is to render the trial a nugatory[23] proceeding, leaving the criminal defendant in the same position as he was

[22] Moi does not challenge the propriety of the court's decision to declare a mistrial, nor does he claim any deficiency in the charging document itself.

[23] "Nugatory" means "Of no force or effect; useless; invalid." BLACK'S LAW DICTIONARY 1096 (8th ed. 2004).

prior to the trial. State v. Mayovsky, 25 Wn. App. 155, 157, 60-5 P.2d 793 (1980); see also State v. Clemons, 56 Wn. App. 57, 61, 782 P.2d 219, 221 (1989) (holding that a defendant may not affidavit a judge who presided over a trial that resulted in a mistrial, because the retrial is not a new proceeding but a part of the same case); 12 ROYCE A. FERGUSON, JR., WASHINGTON PRACTICE: CRIMINAL PRACTICE AND PROCEDURE § 1209, at 470 (3d ed. 2004). Although there is no court rule that deals explicitly with procedures after a mistrial, this treatment is consistent with CrR 3.3(c)(2)(iii), which governs the time for trial and provides for a new commencement date when a court enters an order granting a mistrial. If a mistrial required the reinitiation of proceedings, this provision of CrR 3.3(c)(2) would be rendered superfluous.

In short, the granting of a mistrial does not terminate a case. Moi cites no authority to support his contention that a new Information must be filed in order to retry a defendant following a hung jury. Because Moi was charged by Information and arraigned prior to his trial, he had constitutionally adequate notice of the charges against him. He has failed to demonstrate either constitutional error that resulted in actual and substantial prejudice or non-constitutional error that constitutes a fundamental defect that inherently resulted in a complete miscarriage of justice. His argument to the contrary should be rejected.

3. THERE WAS SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT THE JURY'S VERDICT THAT MOI WAS GUILTY OF MURDER IN THE FIRST DEGREE.

Moi claims that the State's evidence was insufficient to support a guilty verdict for Murder in the First Degree. Specifically, he argues that the evidence was insufficient because the trial court—to whom the Unlawful Possession of a Firearm in the First Degree was tried—acquitted him of that count. But the trial court's own weighing of the evidence in reaching a decision on a separate count is immaterial to whether the State adduced sufficient evidence to support a conviction on a different count. Moi's claim should be rejected.

Evidence is sufficient if, taken in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). A claim of insufficiency of the evidence admits the truth of the State's evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Id. (citation omitted).

To convict Moi of Murder in the First Degree as charged in this case, the State had to prove beyond a reasonable doubt that on or about October 19, 2004, in King County, Washington, Moi caused the death of Keith McGowan, a human being, and did so with premeditated intent. CP 51; RCW 9A.32.030(1)(a). As described above in section B.2, there is ample evidence in the record to support the jury's finding that Moi shot and killed McGowan, and that he premeditated the killing. Indeed, Moi does not specifically challenge the adequacy of the evidence on any particular element. Rather, he claims that the trial court's findings on count II, Unlawful Possession of a Firearm in the First Degree, "substantiate[] his claim that he did not 'shoot' Keith McGowan." Brief of Petitioner at 14. Moi then summarizes the trial court's oral findings and conclusions.[24] These findings and conclusions include the court's determination that the State had failed to prove beyond a reasonable doubt that Moi was the shooter, primarily based on its assessment of the credibility of certain of the State's witnesses. 12/14/010/29/07RP 12-13.

However, the trial court's verdict with respect to count II is wholly immaterial to an evaluation of the sufficiency of the evidence with respect

[24] Moi incorrectly asserts that the trial court made the findings in response to a "motion to dismiss the possession of a firearm charge against Moi." Petition at 14. In fact, the findings were made as part of the court's rendering of a verdict on count II. App. B.

to count I.[25] Moi appears to be arguing that, because one rational factfinder concluded that the State failed to prove that he was the shooter, there is insufficient evidence that he was the shooter. This is not the standard. The test is whether any rational finder of fact could have found the defendant guilty beyond a reasonable doubt, not whether all rational factfinders would do so. Green, 94 Wn.2d at 220-22. Moi also ignores the fact that the jury that convicted him of Murder in the First Degree heard different evidence, at a different trial, than the court that acquitted him of Unlawful Possession of a Firearm in the First Degree did. Taken as a whole and drawing all inferences in favor of the State, as this Court must, the evidence before the jury was sufficient for it to conclude that Moi was the shooter, even if the trial court did not share that opinion. There was no error, constitutional or otherwise.

4. MOI'S RIGHT TO BE FREE FROM DOUBLE JEOPARDY WAS NOT VIOLATED.

Moi contends that his double jeopardy rights were violated when he was tried for Murder in the First Degree after being acquitted of Unlawful Possession of a Firearm in the First Degree in a bench trial. But

[25] Moi does not make a specific argument regarding inconsistent verdicts. However, the Washington Supreme Court has concluded that verdicts, such as the ones by the court and the jury in this case, "should not be disturbed, despite inconsistencies, so long as there is sufficient evidence to support the conviction." State v. Goins, 151 Wn.2d 728, 734, 92 P.3d 181 (2004). Thus, the Supreme Court has acknowledged that evidence can be sufficient even when it leads a factfinder to acquit on a particular charge.

Murder in the First Degree and Unlawful Possession of a Firearm in the First Degree are not the same offense. Moreover, collateral estoppel principles do not preclude Moi's trial on the homicide charge, because there was no prior adjudication or final judgment, and because Moi himself chose to have separate factfinders on the two crimes. Moi's claim should be rejected.

Both the federal and state constitutions protect a defendant from multiple trials for the same crime. Specifically, the federal constitution 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. The parallel provision of the Washington constitution reads, "No person shall . . . be twice put in jeopardy for the same offense." WASH. CONST. art. I, § 9. The two clauses provide identical protections. State v. Womac, 160 Wn.2d 643, 650, 160 P.3d 40 (2007). They prohibit "(1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense imposed in the same proceeding." Id. at 650-51 (citations and internal quotation omitted). Only the first prohibition is at issue here.[26]

[26] There is no question that a retrial following a mistrial declared due to the inability of the jury to reach a unanimous verdict does not violate double jeopardy principles. State v. Russell, 101 Wn.2d 349, 678 P.2d 332 (1984).

Although Moi was tried for one charge after his acquittal by the court on another charge, no double jeopardy violation occurred because Murder in the First Degree and Unlawful Possession of a Firearm in the First Degree are not the "same offense." To be the same offense for purposes of double jeopardy, the offenses must be the same in law and fact, not merely have occurred in a single transaction. State v. Vladovic, 99 Wn.2d 413, 423, 662 P.2d 853 (1983). "If there is an element in each offense which is not included in the other, and proof of one offense would not necessarily also prove the other, the offenses are not constitutionally the same and the double jeopardy clause does not prevent convictions for both offenses." Id. Here, Murder in the First Degree and Unlawful Possession of a Firearm each include an element not found in the other. Murder in the First Degree requires that the State prove that the defendant, with premeditated intent, caused the death of another human being. RCW 9A.32.030(1)(a). Unlawful Possession of a Firearm in the First Degree, on the other hand, requires the State to prove that the defendant, previously having been convicted of a serious offense, knowingly possessed a firearm. RCW 9.41.010. Other than proof of identity—that it was the defendant who committed the offenses—and that they occurred within the jurisdiction of the court, the two crimes have no overlapping

elements. Thus, the two crimes are not the same in law, they are not the same offense, and double jeopardy is not implicated.

Perhaps in acknowledgement that his two charges are not the same offense for double jeopardy purposes, Moi instead argues that collateral estoppel precludes the State from retrying him for Murder in the First Degree after the first jury failed to reach a verdict on that offense. In Ashe v. Swenson, 397 U.S. 436, 443, 90 S. Ct. 1189, 25 L. Ed. 2d 469 (1970), the Supreme Court held that the doctrine of collateral estoppel is embodied in the Fifth Amendment guarantee against double jeopardy, such that "when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." The party asserting collateral estoppel bears the burden of proof, and must show that four requirements have been met:

> (1) the issue decided in the prior adjudication is identical with the one presented in the second action; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) application of the doctrine does not work an injustice.

Thompson v. State, Dep't of Licensing, 138 Wn.2d 783, 790, 982 P.2d 601, 605 (1999) (citation omitted); see also State v. Williams, 132 Wn.2d 248, 253-54, 937 P.2d 1052 (1997).

Here, Moi is unable to meet his burden of proof with respect to the second or fourth element of collateral estoppel. As to the second element, the first trial, which resulted in a hung jury on one count and an acquittal by the court on the other, was not a "prior adjudication" that resulted in a "final judgment." Rather, the retrial was a part of the same adjudication—the same lawsuit. The cause number remained the same, no new Information was filed, Moi retained the same attorney, and the adjudicatory process did not start anew. Instead, the second trial was but a continuation of the adjudicatory process already begun.[27] See also section C.2, supra.

Likewise, the trial court's verdict of "not guilty" was not a "final judgment." A "final judgment" is one "that settles the rights of the parties and disposes of all issues in controversy." BLACK'S LAW DICTIONARY 859 (8th ed. 2004) (emphasis added). The trial court's oral acquittal did not resolve all issues in controversy; the charge of Murder in the First Degree remained unresolved. Compare State v. Ahluwalia, 143 Wn.2d 527, 22 P.3d 1254 (2001) (holding that the "double jeopardy provisions require a final adjudication to bar retrial of a charge," and holding that acquittal on the charged crime and a mistrial due to a hung jury on a lesser included crime is not a final adjudication); State v. Russell, 33 Wn. App. 579, 584,

[27] For this reason, Moi is unable to prove the first or third elements either: there is no "second action" or "prior adjudication"; the first and second trials were a single action.

657 P.2d 338 (1983) ("A conviction or acquittal operates, under RCW 10.43.020 [which codifies constitutional double jeopardy provisions], as 'a bar to another indictment or information.' (Italics ours.) It does not bar a new proceeding under the original information as to offenses charged but upon which no adjudication was made."), aff'd in part, rev'd in part, 101 Wn.2d 349 (1984). And, the trial court never reduced its verdict to a written judgment.[28] An oral ruling is not binding until it is formally reduced to findings, conclusions, and judgment. State v. Collins, 112 Wn.2d 303, 771 P.2d 350 (1989); State v. Pruitt, 145 Wn. App. 784, 795, 187 P.3d 326 (2008).

As to the fourth element, Moi cannot meet his burden of showing that application of the collateral estoppel doctrine does not work an injustice. Moi faced different factfinders on the two charges against him, because Moi himself moved to sever the two counts, then waived his right to a jury trial on the weapons charge when his motion to sever was granted. App. B. Having strategically elected separate factfinders, Moi cannot be heard to complain that the separate factfinders reached different results, or that the decision of one factfinder should control the decision of

[28] The Judgment and Sentence, entered after the second trial, does not mention the Unlawful Possession of a Firearm charge at all. The State does not argue that the oral acquittal on that charge, once accompanied by a Judgment and Sentence that does not mention that charge or change that oral ruling, constitutes an acquittal for purposes of double jeopardy. E.g., State v. Pruitt, 145 Wn. App. 784, 796-97, 187 P.3d 326 (2008) (discussing State v. Hescock, 98 Wn. App. 600, 989 P.2d 1251 (1999)).

the other. To hold otherwise would be to provide a criminal defendant two opportunities for acquittal any time severance is available.

Moi has failed to carry his burden of proving every element of collateral estoppel. There was no "prior adjudication" or "final judgment." Relieving a criminal defendant from the results of his choice to have separate factfinders for separate counts would work an injustice. Moi's double jeopardy claim should be rejected.

5. THE PROSECUTOR DID NOT COMMIT MISCONDUCT.

Moi argues that his conviction should be reversed because of prosecutorial misconduct during closing argument. But the prosecutor's arguments, which Moi did not object to, properly discussed the evidence and its weight. There was no vouching or expression of personal opinion. The court also provided the jury with instructions about how to evaluate credibility, which the prosecutor built on with specific examples from the evidence. The prosecutor did not commit misconduct.

A conviction should be reversed when a defendant demonstrates both prosecutorial misconduct and resulting prejudice. State v. Russell, 125 Wn.2d 24, 85, 882 P.2d 747 (1994). To determine whether a prosecutor's argument was improper, a reviewing court must examine the entire argument, the issues in the case, the evidence addressed in the

argument, and the court's instructions to the jury. Russell, 125 Wn.2d at 85-86; State v. Graham, 59 Wn. App. 418, 428, 798 P.2d 314 (1990). A defendant is prejudiced if a substantial likelihood exists that the misconduct affected the jury's verdict. State v. Belgarde, 110 Wn.2d 504, 508, 755 P.2d 174 (1988); State v. Neslund, 50 Wn. App. 531, 561-62, 749 P.2d 725 (1988). The defendant bears the burden of demonstrating both that the argument was improper and that he was prejudiced. State v. Stenson, 132 Wn.2d 668, 718, 940 P.2d 1239 (1997).

It is improper for a prosecutor to vouch for or express a personal opinion about the credibility of a witness. State v. Brett, 126 Wn.2d 136, 175, 892 P.2d 29 (1995). Vouching occurs when the prosecution places the prestige of the government behind the witness, or indicates that information not available to the jury supports the witness's testimony. State v. Smith, 162 Wn. App. 833, 849, 262 P.3d 72 (2011). But the State is afforded wide latitude in making arguments, and prosecutors may draw reasonable inferences from the evidence. State v. Gregory, 158 Wn.2d 759, 860, 147 P.3d 1201 (2006); Brett, 126 Wn.2d at 175. Likewise, the State is entitled to comment upon the quality of the defense evidence. Gregory, 158 Wn.2d at 860; State v. Anderson, 153 Wn. App. 417, 427-28, 220 P.3d 1273 (2009). Unless it is clear and unmistakable that the prosecutor is not arguing an inference from the evidence, but is expressing

a personal opinion, no prejudicial error has occurred. State v. McKenzie, 157 Wn.2d 44, 53-54, 134 P.3d 221 (2006) (citation omitted); State v. Sargent, 40 Wn. App. 340, 344-45, 698 P.2d 598 (1985).

Even if a defendant was prejudiced by prosecutorial misconduct, defense counsel's failure to object constitutes waiver. Russell, 125 Wn.2d at 86. In the absence of an objection, a conviction will not be reversed for prosecutorial misconduct unless the misconduct was so flagrant and ill-intentioned that it evinces an enduring and resulting prejudice that could not have been obviated by a curative instruction or other action. Stenson, 132 Wn.2d at 719; Belgarde, 110 Wn.2d at 507; Russell, 125 Wn.2d at 86. Counsel for the defendant may not remain silent, hoping for a favorable verdict, and then claim misconduct for the first time on appeal. Russell, 125 Wn.2d at 93.

Moi argues that the prosecutor committed misconduct by vouching for the credibility of the witnesses. But the prosecutor did no such thing. Rather, the prosecutor properly discussed the evidence in the case, including its weight. Similarly, in attacking Moi's credibility, she discussed reasons that the jury should believe the State's witnesses and disbelieve Moi. Providing reasons for the jury to make credibility determinations, which are based in the evidence and common human experience, is not misconduct. It is appropriate argument.

Moi's specific complaints about the prosecutor's argument are that she "repeatedly informed the jury that 'State witnesses were telling the truth' because they 'did not forget nothing,'" and that the jury should discount Moi's testimony "because he did not do well on remembering." Petition at 20, 23. He also complains that the prosecutor used a quotation, apparently from Mark Twain, to the effect that "If you tell the truth, you don't have to remember anything." Petition at 20, 23; 11/20/07RP 2267; 11/21/07RP 2343.

Looking at the prosecutor's entire argument, she discussed the elements of the crime charged, 11/20/07RP 2244, the definitions applicable to the elements, 11/20/07RP 2242-43, the differences between the charged crime and the lesser included offenses, 11/20/07RP 2245-48, the issues in dispute, 11/20/07RP 2245, the meaning of reasonable doubt and its relation to the elements, 11/20/07RP 2244, the special verdict form, 11/20/07RP 2248-49, and the evidence in the case, 11/20/07RP 2249-76. On each issue, she tied her argument directly to the instructions provided by the trial court.

Because credibility was a significant issue in the case, the argument focused in large part on that issue with respect to each critical witness. 11/20/07RP 2259-64, 2266-75; 11/21/07RP 2334, 2337-39, 2341, 2343. With respect to credibility, the jury was instructed:

> You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

CP 182; 11/20/07RP 2224-25. In arguing credibility of the witnesses, including Moi, to the jury, the prosecutor focused on these and similar factors.

For instance, the prosecutor began her discussion of credibility by reflecting back to an observation that had apparently been made during jury selection that "sometimes the best lies start with truths." 11/20/07RP 2259. This is not a statement of personal opinion, but rather a fact of common experience. Similarly, the quotation from Twain reflects the same idea—it is easier to tell the truth than it is to tell a lie. Neither of these concepts constitute inappropriate argument. Rather, they are a suggestion to the jury of a useful tool for determining the credibility of witnesses: a means of evaluating "the manner of the witness while

testifying" and "the reasonableness of the witness's statements in the context of all of the other evidence."

The prosecutor then used these ideas to discuss the particular evidence in the case—Moi's constantly changing stories, 11/20/07RP 2260-61, 2267, the plausibility of his statements, 11/20/07RP 2260, the quality of Moi's memory, 11/20/07RP 2267, and the manner in which he testified, 11/21/07RP 2343. These are all reasonable comments about the quality of the defense evidence and appropriate inferences about credibility to be drawn from the evidence.

Additionally, the prosecutor never gave a personal opinion about believability nor vouched for the credibility of any witness, and Moi has not cited any instance where she did. Although Moi suggests that the prosecutor claimed that "State witnesses were telling the truth," Petition at 20, he provides no pin cite for that quote, nor has the State been able to locate anything similar in the transcript. Moreover, even if the prosecutor made that or a like statement, every argument she made about the credibility of the State's witnesses was tied to the evidence. For instance, she contrasted Moi's three versions of what happened the night of the murders to the consistent testimony provided by Carpenter and Palmer-Jack. 11/20/07RP 2267. And, it is not vouching to provide an explanation for why a witness is credible. Compare Brett, 126 Wn.2d at

175 (holding that the argument that a witness should be believed because "watching her husband of 33 years being blown away by a .410 shotgun" is "the kind of scenario of events that she's going to remember fairly well for the rest of her life" is not improper personal opinion, but a proper inference from the evidence).

In short, in evaluating the prosecutor's entire argument, the issues in the case, the evidence addressed in the argument, and the court's instructions to the jury, the prosecutor did not commit misconduct. Even if she did, however, Moi has failed to demonstrate either prejudice or that any such misconduct was so flagrant and ill-intentioned that his failure to object at trial does not constitute waiver. His claim that prosecutorial misconduct entitles him to a new trial must be rejected.

6. MOI WAS NOT DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL.

Moi contends that his trial attorney's and appellate counsel's failures to raise the above issues denied him the effective representation of counsel. But each of the issues lacks merit. Counsels' performances were not deficient, nor was Moi prejudiced.

A defendant claiming ineffective assistance of counsel must demonstrate (1) that his counsel's performance was so deficient that he was not functioning as the "counsel" guaranteed by the Sixth Amendment,

and (2) that the defendant was prejudiced by reason of his attorney's actions, such that the defendant was deprived of a fair hearing. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); see also State v. Jeffries, 105 Wn.2d 398, 417-18, 717 P.2d 722 (1986) (adopting the Strickland standard in Washington). Counsel is deficient if his "representation fell below an objective standard of reasonableness based on consideration of all of the circumstances." State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). Prejudice results when it is reasonably probable that, "but for counsel's unprofessional errors, the result of the proceeding would have been different." State v. Lord, 117 Wn.2d 829, 883-84, 822 P.2d 177 (1991). Where ineffective assistance of appellate counsel is at issue, a defendant must show both that the legal issue that appellate counsel failed to raise had merit, and that he was actually prejudiced by appellate counsel's failure to raise it adequately. In re Dalluge, 152 Wn.2d 772, 777-78, 100 P.3d 279 (2004); In re Maxfield, 133 Wn.2d 332, 344, 945 P.2d 196 (1997).

There is a strong presumption that counsel's representation was effective. Lord, 117 Wn.2d at 883. The presumption of effectiveness will only be overcome by a clear showing of ineffectiveness derived from the record as a whole. State v. Hernandez, 53 Wn. App. 702, 708, 770 P.2d 642 (1989). The defendant bears the heavy burden of proving both

deficient performance and prejudice. State v. Grier, 171 Wn.2d 17, 32-34, 246 P.3d 1260 (2011). Here, neither Moi's trial attorney nor his appellate attorney was ineffective.

Moi first claims that his trial counsel was ineffective for failing to demand that the State refile charges against Moi before proceeding to a second trial. As discussed above in section D.2, a mistrial renders the trial a nugatory proceeding. No new charging instrument or arraignment was required. Counsel's performance was not deficient for failing to demand a procedure to which Moi was not entitled, nor was Moi prejudiced, because he was tried on a charging instrument that he had unquestionably received.

Moi next claims that his trial attorney was ineffective for failing to object to prosecutorial vouching during closing argument. As discussed in section D.5, supra, no such vouching occurred. An objection was not warranted, and would not have been sustained. Thus, Moi has not carried his burden of showing either deficient performance or prejudice.

Moi also claims that his trial counsel's failure to enter his acquittal on the firearm charge at trial on the murder constituted ineffective assistance of counsel. To the extent that Moi is claiming an evidentiary error, he fails to establish the admissibility of the acquittal under the rules of evidence, or that choosing not to offer such evidence was an unreasonable strategic choice. (Surely if it had been offered, the jury

would have heard about Moi's prior convictions that made him ineligible to possess a firearm as an explanation for the claim that the acquittal was based on a finding that the State failed to prove that Moi was the shooter, as opposed to a failure of proof as to his eligibility.) Nor can Moi demonstrate prejudice for failure to offer such evidence.

Instead, Moi appears to be arguing that his trial lawyer should have raised the double jeopardy claim raised here. But, as the claim has no merit, see section D.4, his attorney's actions were not deficient, nor did they prejudice Moi. Moreover, as this double jeopardy claim can be raised at any time, there can be no prejudice to Moi for his lawyer's failure to raise it earlier.

Moi also claims that appellate counsel was ineffective for failing to raise five issues. Petition at 26. However, he identifies only two, a violation of his right to a public trial and lack of notice of the charges against him, and argues only the first. For the reasons discussed in sections D.1 and D.2, supra, these issues are wholly without merit. Appellate counsel was not deficient in failing to raise these issues, and as they would not have succeeded on appeal, Moi was also not prejudiced. He was not denied effective representation.

E. CONCLUSION

For all of the foregoing reasons, Moi's Petition should be dismissed.

DATED this 12th day of September, 2013..

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____
ERIN H. BECKER, WSBA #28289
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Appendix A

FILED

06 DEC 01 AM 9:04

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 04-1-08866-2 KNT

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

MULTIPLE DAY MINUTES

SCOMIS CODE: JTrial $JFA 12 Person

Judge:	LeRoy McCullough	Dept. 32
Bailiff:	Donne Young	Date: 10/18/2006
Clerk:	Rhonda Hoyem	
Reporter:	Bridget O'Donnell	

KING COUNTY CAUSE NO.: 04-1-08866-2 KNT

State of Washington vs Matthew W. Moi

Appearances:

State appears, represented by DPA Erin Ehlert
Defendant is present, represented by counsel Don Minor

State's Motion to Amend Information to add Count II-UPFA 1---GRANTED.
Defense acknowledges receipt and waives formal reading.
Defense reserves its Motion to sever the counts.
Defendant enters a plea of not guilty.

State's Motion to exclude witness except Det. Paul Young---GRANTED.

Court and counsel discuss trial length and jury selection.

Court in recess until October 23, 3006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: October 23, 2006

Judge: LeRoy McCullough
Bailiff: Donne Young
Clerk: Rhonda Hoyem
Reporter: Bridget O'Donnell

Continued from: October 19, 2006

MINUTE ENTRY

Parties and respective counsel are present. Robin Sheridan joins Erin Ehlert on behalf of the State.

State begins its 3.5 hearing.

Sgt. Richard W. McMartin is sworn and examined on behalf of the State.
Sgt. Robert H. Collins is sworn and examined on behalf of the State.
Det. Ross A. Stuth is sworn and examined on behalf of the State.

State's pre-marked pretrial Exhibit 1 is ADMITTED.
State's pre-marked pretrial Exhibit 2 is ADMITTED.

Det. Paul Young is sworn and examined on behalf of the State.

Defense informs Court that he had represented one of the witnesses in a previous juvenile matter.
Defense Motion for Conflict of Interest Waivers from the Defendant and the witness---RESERVED for after the 3.5 hearing.

Det. Paul Young's testimony continues.

State's pre-marked pretrial Exhibit 3 is ADMITTED.
State's pre-marked pretrial Exhibit 4 is ADMITTED.

Defense Motion for conflict of interest waiver---GRANTED as it pertains to the Defendant. The State will contact the witness re: signing a waiver.

Defense pretrial Exhibit 5 is marked for identification and ADMITTED.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Counsel present closing argument on the 3.5 hearing.

The Court will announce its decision tomorrow.

The State advised the Court that the witness shall be available tomorrow re: possible conflict of interest.

The State addresses the Court re: confidential juror questionnaire and informing the jurors that the trial could extend into the week of Thanksgiving.

Court in recess until October 24, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: October 24, 2006

Judge: LeRoy McCullough
Bailiff: Donne Young
Clerk: Rhonda Hoyem
Reporter: Bridget O'Donnell

Continued from: October 23, 2006

MINUTE ENTRY

Parties and respective counsel are present.

The Court's decision on the 3.5 hearing is DEFERRED.

State's Motion to exclude evidence of "bad character" of victim---GRANTED, as it pertains to domestic violence allegations.
State's Motion to exclude evidence re: Defendant's "good character"----GRANTED.
State's Motion to exclude evidence/argument of penalty---GRANTED.

Counsels stipulate on elimination of DNA testimony and elimination of additional testimony from firearms expert Ray Kusumi.

Court in recess to allow counsel to discuss "conflict of interest" issue with witness Kamika Cooper.
Counsel advise the Court of their discussion with the witness and the witness is questioned by the Court.

Both Defendant and the witness, Kamika Cooper, sign the waivers and the Orders are signed by the Court.

State's Motion to admit 911 tape---GRANTED, calls 1 and 3 only
Parties stipulate to authenticity of the tape.

State's Moiton to admit evidence of "gang" activity---GRANTED, to exclude evidence of the Defendant's gang membership.
State's Moton to exclude admissibility of other suspect evidence---GRANTED.

Defense pretrial Exhibits 6 & 7 are marked for identification.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

State's Motion to exclude admission of conviction of non-witness---DENIED.

Defense Motion to sever Counts I and II--GRANTED. Count II shall be heard at the same time; defense waives jury and the Court will decide.

Defense Motion to Exclude Defendant's statements---RESERVED for 3.5 decision.
Defense Motion to Identify/exclude other crimes and "bad acts"---GRANTED.
Defense Motion to Exclude Defendant's juvenile history---GRANTED, in the event defendant testifies.
Defense Motion to Exclude testimony of certain wtinesses---GRANTED, in part.
Defense Moiton to include self interest motive of witness---GRANTED, in part.
Defense Motion to Admit statements of the deceased---DENIED.
Defense Moiton to Preclude use of term "victim"---GRANTED.

State's Moiton to Exclude the term "booking photo" to describe the photo of the Defendant---GRANTED.
State's Motion to Redact portions of letters written by the Defendant---GRANTED.

Defense Motion to admit phone calls from Defendant to Des Moines P.D.---RESERVED.

Court announces its 3.5 decision. Statements made by the Defendant---GRANTED.

Defense informs State it shall seek to introduce witnesses' criminal histories.

Court and counsels discuss jury selection. Counsels agree on Jurors 13 and 14 as alternates.

Court in recess until October 25, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: October 25, 2006

Judge:	LeRoy McCullough
Bailiff:	Donne Young
Clerk:	Rhonda Hoyem
Reporter:	Bridget O'Donnell

Continued from: October 24 2006

MINUTE ENTRY

Parties and respective counsel are present.

Court and counsels discuss potential juror panel and juror questionnaires.

Court is notified that potential jurors 89 and 115 didn't show up. Jurors 89 and 115 are EXCUSED by the Court.

Potential Jurors1,6,7,8,9,16,17,19,21,22,24,25,27,28,30,32,39,40,41,43,44,45, 46,48,49,50,52,53,54,55,56 and 60 are EXCUSED for hardship.

State's Motion to amend the information to correct the Defendant's name--- GRANTED.

Potential Jurors 61,62,64,65,69,70,81,85,88,91,94,95,97,98,99,100,103,104,106, 108,110,111,112,113,114,116,118,119,120,121,122,123,124 and 125 are EXCUSED for hardship.

Court in recess until October 26, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: October 26, 2006

Judge:	LeRoy McCullough
Bailiff:	Donne Young
Clerk:	Rhonda Hoyem
Reporter:	Bridget O'Donnell

Continued from: October 25, 2006

MINUTE ENTRY

Parties and respective counsel are present.

The potential juror panel is sworn to answer questions.

Potential jurors 4,7,9,10,14,15,21,24,28,29,33,35,36,45,48 and 56 are excused for hardship.
Potential jurors 2,17,41 and 54 are excused for hardship.

Out of the presence of the rest of the panel, potential Jurors 8, 11,18,27,47,52,53,57 and 58 are questioned.
Potential Jurors 53 and 58 are excused for cause by the State.
Potential Jurors 8,18 and 52 are excused for cause by the Defense.
Potential Jurors 12 and 57 is excused for hardship.

Court and counsels discuss jury selection and obtaining a supplemental panel on Monday, October 30, 2006.

The potential juror panel returns to the courtroom. The Court updates them on the status of the selection process. Potential Jurors 23, 39 and 43 did not return with the panel. One of the potential jurors informed the Court that there was an announcement in the jury room that excused the jurors for the day.

After consulting with counsel, the Court excuses potential jurors 23, 39 and 43.

Potential juror panel is to return on October 30, 2006 @ 1:20 p.m.

Court in recess until October 30, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: October 30, 2006

Judge:	LeRoy McCullough
Bailiff:	Cheryl
Clerk:	Rhonda Hoyem
Reporter:	Bridget O'Donnell

Continued from: October 26, 2006

MINUTE ENTRY

Parties and respective counsel are present.

Court and counsels review supplemental juror questionnaires.

Potential Jurors 129,130,131,132,135,136,137, 140,141,144,149,152, 157, 160, 164,165,166 and 170 are excused for hardship.

Defense Motion for ER 609 to admit prior convictions of witnesses. Counsels present argument. Ruling is RESERVED until hearing complete.

The supplemental juror panel is sworn to answer questions.

Out of the presence of the panel, Jurors 127,142,147 and 162 are examined individually.
Potential jurors 127, 142 and 147 are EXCUSED for cause by the defense.

Potential jurors 134,146,158,161 and 169 are examined individually.
Potential jurors 146 and 169 are EXCUSED for hardship.

>>>>>> Entire potential juror panel is present.

The Court questions the panel.

>>>>>>>> Potential Juror panel excused until October 31, 2006 @ 9:00 a.m.

Juror 2 is questioned outside the presence of the panel and is EXCUSED for hardship.

Court in recess until October 31, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: October 31, 2006

Judge: LeRoy McCullough
Bailiff: Donne Young
Clerk: Rhonda Hoyem
Reporter: Bridget O'Donnell

Continued from: October 30, 2006

MINUTE ENTRY

Parties and respective counsel are present.

Upon receipt of a letter from his employer, Juror 153 is excused.

Out of the presence of the potential juror panel, Jurors 133,138 and 159 are questioned individually.

>>>>>>>> Potential juror panel enters

Counsels begin voir dire.

Potential Jurors 11,23,51,93 and 87 are excused by the State as peremptory challenges.
Potential Jurors 18,68,80,72,92,93 and 75 are excused by the Defense as peremptory challenges.

The following jurors are sworn and impaneled:

1. McCallum, Monica
2. Erickson, Jeffrey
3. Patricelli, Joyce
4. Adman, Eric
5. Pendergrass, Linda
6. Lane, Stephen
7. Gingrich, Margaret
8. Carey, Joann
9. Wasell, Mary
10. Nordquist, Erik
11. Marasco, Barbara
12. Chand Deo
13. Watts,Judity
14. Campbell, Robert

>>>>>>>>>> Jury is excused for the day.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Court puts sidebar on record, excusing Juror 168 as they were late coming back to Court this morning.

Defense resumes its 609 Motion to admit prior convictions of the witnesses. Defense Motion is GRANTED, in part and DENIED, in part.

Defense Motion to allow evidence of Defendant's activities prior to his arrest---GRANTED.
Defense Motion to allow statements made by the Defendant prior to his arrest---DENIED.

State's Motion to exclude evidence of Defendant taking ecstasy----GRANTED.
State's Motion to exclude testimony re: money taken from the victim---RESERVED.

Court in recess until November 1, 2006 @ 8:30 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 1, 2006

Judge:	LeRoy McCullough
Bailiff:	Donne Young
Clerk:	Rhonda Hoyem
Reporter:	Bridget O'Donnell

Continued from: October 31, 2006

MINUTE ENTRY

Parties and respective counsel are present.

Defense Motion to include evidence of "other suspect" ---DENIED.

State's Motion to exclude testimony re; money taken from the victim---DENIED. as it pertains to money. Defense cannot introduce testimony re: drugs possibly taken from victim.

Defense Motion to exclude photo of Kamika Cooper and victim---DENIED.
Defense Motion to include criminal history of witness Ramsdell---GRANTED, upon questioning of witness re: his conviction.

>>>>>>>> Jury is present.

Counsels present opening statements.

Kamica Cooper is sworn and examined on behalf of the State.
State's pre-marked Exhibit 15 is ADMITTED.

Defense Exhibit 16 is marked for identification.

Witness is excuses, subject to recall.

Officer Kevin Montgomery is sworn and examined on behalf of the State.
State's pre-marked Exhibit 1 is ADMITTED.
State's pre-marked Exhibits 2-14 are ADMITTED.

>>>>>>> Jury is absent for noon recess.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Defense counsel puts side bar on the record.

State's Motion to exclude one of the photos to be offered by Defense--
GRANTED..
Photo is marked as Defense Exhibit 19 and REFUSED.

>>>>>>> Jury is present.

State's pre-marked Exhibit 17 is ADMITED.

Cross examination of witness Montgomery continues.

Defense pre-marked exhibits 20-27 are ADMITTED.
Defense Exhibit 28 is marked for identification.

Witness is excused, subject to recall.

Off. Dominique Arico is sworn and examined on behalf of the State.
Det. Robert Bohl is sworn and examined on behalf of the State.
State's pre-marked Exhibits 29-31 are ADMITTED.
State's pre-marked Exhibit 18 is ADMITTED.

Det. Paul Young is sworn and examined on behalf of the State.

>>>>> Jury is absent.

Court and counsels discuss witness scheduling.

Court in recess until November 2, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 2, 2006

Judge: LeRoy McCullough
Bailiff: Donne Young
Clerk: Rhonda Hoyem
Reporter: Bridget O'Donnell

Continued from: November 1, 2006

MINUTE ENTRY

Parties and respective counsel are present.

The State presents a stipulation re: DNA and the bullet fragments to be read by the Court at the end of the testimony of the crime lab witnesses.

>>>>>>>> Jury is present.

Richard Wyant is sworn and examined on behalf of the State, out of order.

>>>>>>>>> Jury is absent.

Defense Motion to admit crime lab notes---GRANTED.

>>>>>>>>>> Jury is present.

Defense Exhibits 57 and 58 are marked for identification and ADMITTED.

Witness excused subject to recall.

>>>>>>>>> Jury absent for noon hour.
>>>>>>>>> Jury present.

Raymond Kusumi is sworn and examined on behalf of the State, out of order.

Defense Exhibits 59, 60, 61 and 62 are marked for identification and ADMITTED.

Richard Wyant is recalled on behalf of the Defendant.

The Court reads the stipulation presented earlier by the State.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

>>>>>>>> Jury is absent.

State advises Court that some of the testimony from its witness Detective Young may ellicite a hearsay objection from Defense. The Court will address the issues as they arise.

>>>>>>>>> Jury is present.

Examination of Det. Paul Young on behalf of the State,resumes.

State's pre-marked Exhibits 32-44 are ADMITTED.
State's pre-marked Exhibits 51-54 are ADMITTED.
State's pre-marked Exhibits 46 and 47 are ADMITTED.

>>>>>>> Jury is absent.

Court in recess until November 6, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 6, 2006

Judge: LeRoy McCullough
Bailiff: Donne Young
Clerk: Rhonda Hoyem
Reporter: Erma DeMar*

Continued from: November 2, 2006

MINUTE ENTRY

Parties and respective counsel are present.

State advises Court of witness schedules.

Defense Motion to recess to allow the Defendant to be taken to the hospital.
Court recesses to allow Defense counsel to contact the jail clinic to obtain Mr. Moi's health status.
Upon its return, the Court is advised that a medical report cannot be obtained without a release. The Defendant signs the release and it is faxed to the jail clinic.

Parties stipulate to the Court informing the Jury that the condition of the Defendant's hand has nothing to do with the case.

>>>>>>>>> Jury is present.

Court informs the Jury of Defendant's medical condition and that it is not to be considered.

Examination of Det. Paul Young on behalf of the State continues.
State's pre-marked Exhibit 55 is ADMITTED.
State's pre-marked Exhibits 48,49 and 50 are offered----RESERVED.
State's pre-marked Exhibit 45 is ADMITTED.

>>>>>>>>>> Jury is absent.

Defense counsel updates Court on Defendant's medical status.
Defense puts sidebars on record.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

>>>>>>>>>> Jury is present.

Ofc. Mark Tindol is sworn and examined on behalf of the State, out of order.
State's pre-marked Exhibits 63-70 are ADMITTED.
State's pre-marked Exhibit 56 is ADMITTED.

Examination of Det. Paul Young on behalf of the State resumes.

>>>>>>>>> Jury is absent.
>>>>>>>>> Jury is present.

Cross examination of Det. Paul Young continues.

>>>>>>>>> Jury is absent.

State's Motion for material witness warrants--GRANTED. Warrants will expire on 11/13/06.

Court puts sidebar on record.

Court in recess until November 7, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 7, 2006

Judge:	LeRoy McCullough
Bailiff:	Donne Young
Clerk:	Rhonda Hoyem
Reporter:	Erma DeMar

Continued from: November 6, 2006

MINUTE ENTRY

Parties and respective counsel are present.

Defense counsel updates Court on Defendant's medical status.

Defense Motion to exclude statements made by Daisy to Defendant---GRANTED.
State informs the Court of its witness schedule.
State's Motion to question witnesses during recess---GRANTED.

Lelonie Jenkins is sworn and examined on behalf of the State.
Cecilia Johnson is sworn and examined on behalf of the State.
State's Exhibit 72 is marked for identification.

>>>>>>>>> Jury is absent.

State updates Court on its witness schedule.

>>>>>>>>>> Jury is present.

Daisy Haruo is sworn and examined on behalf of the State.

>>>>>>>>>>> Jury is absent.

Out of the presence of the witness Haruo, Defense Motion's to question witness re: Defendant's statements to her re: the shooting---DENIED.

Defense Exhibit 73 is marked for identification.

>>>>>>>>>>> Jury is present.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Cross examination of witness Haruo continues.

>>>>>>>>> Jury is absent.

State puts its objection on record. State's Motion to exclude testimony re: the Defendant wanting to obtain an attorney prior to going to Des Moines Police Dept---DENIED. Out of court statements excluded.

Sabrina Housand, counsel for material witness Carpenter appears. She will speak with her client and report back to the Court re: his possible testimony today.

>>>>>>>>>> Jury is present.

Cross examination of witness Haruo continues.
Defense Exhibit 75 marked for identification.

Witness excused subject to recall.

Achillia Palmer-Jack is sworn and examined on behalf of the State.
State's pre-marked Exhibit 74 is ADMITTED.
Defense Exhibit 76 is marked for identification.

>>>>>>>>>> Jury is absent.

Material witness Kevin Carpenter appears with counsel, Sabrina Housand and Motions to quash material witness warrant---DENIED.
State's Motion to exclude testimony re: other suspect information per pretrial hearing---DENIED.

>>>>>>>>>> Jury is present.

Cross examination of witness Palmer-Jack continues.
Defense pre-marked Exhibits 77,78 and 79 are ADMITTED.

>>>>>>>>>>> Jury is absent.

Court and State's counsel discuss tomorrow's witness schedule.

Court in recess until November 8, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 8, 2006

Judge: LeRoy McCullough
Bailiff: Donne Young
Clerk: Rhonda Hoyem
Reporter: Erma DeMar

Continued from: November 7, 2006

MINUTE ENTRY

Parties and respective counsel are present.

State informs Court it will not object to the Defense questioning witness Ramsdell about his prior conviction.
State discusses its witness schedule.

>>>>>>>>> Jury is present.

Sgt. Richard McMartin is sworn and examined on behalf of the State.
State's pre-marked Exhibit 80 is ADMITTED.

Kyle Knutson is sworn and examined on behalf of the State.
Defense Exhibit 81 is marked for identification.

James Ramsdell is sworn and examined on behalf of the State.

>>>>>>>>> Jury is absent.

Defense Motion for a mistrial--DENIED.

>>>>>>>>> Jury is present.

Examination of witness continues.
Defense Exhibits 82 and 83 are marked for identification.

>>>>>>>>>> Jury absent for noon recess.
>>>>>>>>>> Jury is present.

Cross examination of witness Ramsdell continues.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Defense pre-marked Exhibit 84 is ADMITTED.
Defense Exhibit 85 and 86 are marked for identification.

>>>>>>>>> Jury is absent.

State's Motion to exclude questioning witness Carpenter re: his moniker---GRANTED.

>>>>>>>>>> Jury is present.

Kevin Carpenter is sworn and examined on behalf of the State.
State's pre-marked Exhibit 87 is ADMITTED.
Defense Exhibit 88 is marked for identification.
Defense Exhibits 89 and 90 are marked for identification.

>>>>>>>>> Jury is absent.

Sabrina Housland Motions the Court, on the behalf of witness Carpenter, to quash the material witness warrant---GRANTED. Witness to stay with his aunt and appear at the prosecutor's office at 8:00 a.m., Monday, November 13, 2006.

The Court puts the sidebars on record.

Court in recess until November 13, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 13, 2006

Judge:	LeRoy McCullough
Bailiff:	Donne Young
Clerk:	Rhonda Hoyem
Reporter:	Rhonda Salvesen*

Continued from: November 9, 2006

MINUTE ENTRY

Parties and respective counsel are present.

Counsels discuss the remaining witness/trial schedule.

>>>>>>>>>>>> Jury is present.

Cross examination of Kevin Carpenter continues.

>>>>>>>>>>>>> Jury is absent.

Court in recess until November 14, 2006 @ 8:30 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 14, 2006

Judge:	LeRoy McCullough
Bailiff:	Donne Young
Clerk:	Rhonda Hoyem
Reporter:	Rhonda Salvesen

Continued from: November 13, 2006

MINUTE ENTRY

Parties and respective counsel are present.

Defense Motion to include witness Otis William's criminal history--DENIED.

>>>>>>>>>>> Jury is present.

Sgt. Tabot Lowe is sworn and examined on behalf of the State.
State's pre-marked Exhibit 92 is ADMITTED.
State's Exhibits 95 and 96 are marked for identification.

Otis Williams is sworn and examined on behalf of the State.
State's pre-marked Exhibits 93 and 94 are ADMITTED.
Defense Exhibits 97 and 98 are marked for identification.
Defense Exhibit 91 is ADMITTED.

Det. Paul Young is examined on behalf of the State. Witness previously sworn and remains under oath.

>>>>>>>>>> Jury is absent.

Court puts sidebars on the record.

>>>>>>>>>> Jury is present.

Dr. John Lacy is sworn and examined on behalf of the State, out of order.
State's pre-marked Exhibit 99 is ADMITTED.
State's pre-marked Exhibits 100,101,102 and 103 are ADMITTED.
State's pre-marked Exhibits 48,49 and 50 are ADMITTED.
Defense Exhibit 104 is marked for identification and ADMITTED.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

>>>>>>>>>> Jury is absent.

Court in recess until November 15, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 15, 2006

Judge: LeRoy McCullough
Bailiff: Donne Young
Clerk: Rhonda Hoyem
Reporter: Rhonda Salvesen

Continued from: November 14, 2006

MINUTE ENTRY

Parties and respective counsel are present.

State's Motion to file 2nd Amended Information to reflect the correct spelling of Defendant's name---GRANTED.
Defendant acknowledges receipt and waives formal reading.
Order is signed and a plea of not guilty is entered.

Defense discusses its witness schedule.
Defense Motion to recess prior to presenting its case---GRANTED.

Counsels discuss defendant's testimony.

>>>>>>>>>>> Jury is present.

Cross examination of Det. Paul Young resumes. Witness previously sworn and remains under oath.

Defense Exhibit 107 is marked for identification.
State's pre-marked Exhibits 105 and 106 are ADMITTED.

The State RESTS.

>>>>>>>>>> Jury is absent.

Defense Motion to Dismiss Counts 1 and 2---DENIED.

Upon meeting with counsel in chambers, the Court notifies counsel that testimony re: other suspect information shall be heard outside the presence of the jury.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

State's Motion to recess to allow it to research defendant's possible testimony regarding other suspect---GRANTED.

Court in recess until 1:30 p.m.

The Court hears argument regarding Defendant's testimony re: other suspect.

The Court rules that the Defendant can testify that he knows the identity of the real perpetrator without disclosing the name; however he may be subject to possible sanctions or his testimony may be stricken.

>>>>>>>>>>>>> Jury is present.

Matthew Moi is sworn and examined on his own behalf.

>>>>>>>>>> Jury is absent

Court in recess until November 16, 2006 at 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 16, 2006

Judge:	LeRoy McCullough
Bailiff:	Donne Young
Clerk:	Rhonda Hoyem
Reporter:	Rhonda Salvesen

Continued from: November 15, 2006

MINUTE ENTRY

Parties and respective counsel are present.

Counsels discuss yesterday's testimony of the Defendant.

>>>>>>>>>> Jury is present.

Direct examination of Matthew Moi continues.

Sgt. Robert Collins is sworn and examined on behalf of the Defense.

>>>>>>>>>> Jury is absent.

Defense discusses its witness schedule.

>>>>>>>>>> Jury is present.

Kamica Cooper is recalled and examined by the Defense. Witness previously sworn and remains under oath.
Daisy Haruo is recalled and examined by the Defense. Witness previously sworn and remains under oath.
Benjamin Comer is sworn and examined on behalf of the Defense.
Pastor Michael Baruso is sworn and examined on behalf of the Defense.
Rosary Comer is sworn and examined on behalf of the Defense.

>>>>>>>>>> Jury is absent.

Court in recess until November 20, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 21, 2006

Judge:	LeRoy McCullough
Bailiff:	Donne Young
Clerk:	Rhonda Hoyem
Reporter:	Rhonda Salvesen

Continued from: November 18, 2006

MINUTE ENTRY

Parties and respective counsel are present.

Court was in recess yesterday, November 20, 2006 due to illness.

Defense Motion to exclude testimony of Rodney Foster---RESERVED.

>>>>>>>>>> Jury is present

Officer David Demoss is sworn and examined on behalf of the Defense. The Court notes that Off. Demoss was involved in the transport of the Defendant during jury selection.

The Defense RESTS.

Otis Williams is recalled and examined on behalf of the State. Witness previously sworn and remains under oath.

>>>>>>>>>> Jury is absent.

Defense Motion to exclude testimony of Rodney Foster---DENIED.
Defense Motion to include Rodney Foster's criminal history---DENIED.
Defense Motion to include evidence of Rodney Foster's history of domestic violence---GRANTED.

Defense Exhibit 110 is marked for identification.

Defense Motion to exclude testimony of Det. Paul Young re: his investigation of other suspect---DENIED.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

State's Motion to include Defendant's prior statement re: Hoover membership---DENIED.

Defense Motioon to call detective/officer who took the report of Rodney Foster's domestic violence complaint---RESERVED.

>>>>>>>>>> Jury is present.

Rodney Foster-Parris is sworn and examined on behalf of the State.
Det. Paul Young is recalled and examined on behalf of the State. Witness previously sworn and remains under oath.

>>>>>>>>>> Jury is absent.

Defense Motioon to call detective/officer who took the report of Rodney Foster's domestic violence complaint---DENIED.

>>>>>>>>>> Jury is present.

Crosss examination of Det. Paul Young continues.

State RESTS.

>>>>>>>>>> Jury is absent.

Court puts sidebars on record.

Court and counsels discuss jury instructions.

.>>>>>>>>>> Jury is present.

The Court reads the Jury instructions to the Jury.

>>>>>>>>>> Jury is absent.

State's Motion to amend Jury instruction 26---GRANTED.

Court is in recess until November 22, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 22, 2006

Judge:	LeRoy McCullough
Bailiff:	Donne Young
Clerk:	Gabrielle Jacobsen
Reporter:	Rhonda Salvesen

Continued from: November 21, 2006

MINUTE ENTRY

Defendant and counsel are present and ready to proceed.

Court and counsel discuss revised jury instruction, and it is agreed the Court will read this revised instruction to the jury.

>>>>>> Jury is present.

Court reads the revised jury instruction to the jury.

State gives closing argument.

Defense gives closing argument.

Court excuses alternate jurors - - - juror #13, #14, and the jury retires at 1:35 p.m. to begin deliberations.

>>>>>> Jury is absent

Court memorializes sidebars for the record.

State argues admission of evidence related to count II.

State's exhibits #112-#115 ----------OFFERED AND ADMITTED
State's exhibits #112-#115 are to be used for count II only and are not to be shared with the jury.

Defense makes argument against the evidence related to count II.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

The Court will make a decision as to count II once the jury returns with their verdict.

Court instructs counsel to review the exhibits for accuracy.

Counsel reviewed the exhibits and approved them to be delivered to the jury.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 27, 2006

Judge:	LeRoy McCullough
Bailiff:	Donne Young
Clerk:	Rhonda Hoyem*
Reporter:	not reported

Continued from: November 22, 2006

MINUTE ENTRY

At 9:00 a.m. the jury returns to resume deliberations.

Jury excused at 3:00 p.m. for the day.

Jury to resume deliberations November 28, 2006 @ 9:00 a.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 29, 2006

Judge:	LeRoy McCullough
Bailiff:	Donne Young
Clerk:	Rhonda Hoyem
Reporter:	not reported

Continued from: November 27, 2006

MINUTE ENTRY

Due to inclimate weather, the Jury did not deliberate on November 28, 2006.

At 9:15 a.m. the jurors return to resume deliberations.

At 2:20 the jury submits a written inquiry notifying the Court that it is unable to reach a unanimous verdict. The Court does not submit a response.

The verdict will be delivered on November 30, 2006 @ 9:00 a.m. to allow all parties to be present.

The Jury is excused at 3:00 p.m.

State of Washington vs Matthew W. Moi
King County Cause No. 04-1-08866-2 KNT

Date: November 30, 2006

Judge:	Michael Heavey*
Bailiff:	Donne Young
Clerk:	Rhonda Hoyem
Reporter:	Rhonda Salvesen

Continued from: November 29, 2006

MINUTE ENTRY

Parties and respective counsel are present.

Court reads the jury statement to counsel.

At 9:30 the Jury returns to open court. Upon inquiry of the Court, the foreman reports that the jury is not able to reach a verdict. The jury is polled by the Court. The Court declares a mistrial and the jury is excused from further consideration of this cause.

Appendix B

FILED

06 DEC 20 PM 1:55

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 04-1-08866-2 KNT

CLERK'S MINUTES

SCOMIS CODE: MTHRG

Judge:	LeRoy McCullough	Dept. 32
Bailiff:	Donne Young	Date: 12/14/2006
Clerk:	Rhonda Hoyem	
Reporter:	Velma Haynes	Page 1 of 1

KING COUNTY CAUSE NO.: 04-1-08866-2 KNT

State of Washington vs Matthew Moi

Appearances:

State appears, represented by DPA Erin Ehlert
Defendant is present represented by counsel, Don Minor

MINUTE ENTRY

State's Motion for Entry of 3.5 findings---GRANTED.
Order is signed.

State's Motion for Court's bench trial ruling on Count 2 heard on November 22, 2006.

The Court presents its general findings.

Court finds Defendant NOT GUILTY of Count 2.

Court and counsel discuss status of Count 1.

Appendix C

COMMITMENT ISSUED OCT 12 2012

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

STATE OF WASHINGTON, Respondent, v. MATTHEW MOI, aka MATHEW WILSON MOI, Appellant.	No. 61167-4-I MANDATE King County Superior Court No. 04-1-08866-2 KNT	FILED KING COUNTY, WASHINGTON OCT 11 2012 SUPERIOR COURT CLERK

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on December 5, 2011, became the decision terminating review of this court in the above entitled case on October 10, 2012. An order denying a motion for reconsideration and motion for permission to file supplemental assignment of error and supporting argument was entered on February 15, 2012. An order denying a petition for review was entered in the Supreme Court on July 30, 2012. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

Pursuant to RAP 14.4, costs in the amount of $21,196.81 are awarded against judgment debtor MATTHEW MOI, aka MATHEW WILSON MOI, as follows: costs in the amount of $20,986.12 are awarded in favor of judgment creditor WASHINGTON OFFICE OF PUBLIC DEFENSE, INDIGENT DEFENSE FUND and costs in the amount of $210.69 are awarded in favor of judgment creditor KING COUNTY PROSECUTOR'S OFFICE.

c: Nancy Collins
Stephen Hobbs
Hon. L Gene Middaugh

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 10th day of October, 2012.

RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. MATTHEW MOI, aka MATHEW WILSON MOI, Appellant.	No. 61167-4-I DIVISION ONE UNPUBLISHED OPINION FILED: December 5, 2011

BECKER, J. — Keith McGowan, a member of a gang known as the "Hoovers," was murdered at the door of his Des Moines apartment on the night of October 19, 2004. The State charged Matthew Moi with first degree premeditated murder. The first trial resulted in a hung jury. At the second trial, Moi was convicted as charged. We affirm the conviction.

JURY VENIRE

Over Moi's objection, the trial court drew a jury venire from only a portion of King County, consistent with King County Local General Rule 18 (KCLGR) and RCW 2.36.055. Moi contends that he was tried by an unconstitutionally assembled jury in violation of article I, section 22 of the Washington Constitution.

The Washington Supreme Court recently rejected this argument in State v. Lanciloti, 165 Wn.2d 661, 201 P.3d 323 (2009).

Moi additionally contends that RCW 2.36.055 and KCLGR 18 created separate jury districts, thereby violating article IV, sections 5 and 6 of the Washington Constitution. He relies on State ex rel. Lytle v. Superior Court, 54 Wash. 378, 103 P. 464 (1909). At issue in Lytle was a statute granting authority to county commissioners to divide the county into two or more distinct judicial districts if approved by the county's superior court. The purpose of the statute was to enable sessions of the superior court to be held at places other than the designated county seat. The court construed the statute as authorizing independent and distinct superior courts within each county, each with its own jurisdiction, procedures, records, seals, jail, name, and "its own list of trial jurors." Lytle, 54 Wash. at 384-85. In each district, the place of trial would be determined "as if each district was a separate and distinct county." Lytle, 54 Wash. at 385.

The court explained that article IV, section 5 limits every county to one superior court and that article IV, section 6 gives the superior court original jurisdiction in a broad range of cases. These sections, read with all of article IV, create "a complete system of superior courts." Lytle, 54 Wash. at 389. The court invalidated the statute because it authorized dividing up the jurisdiction of a superior court into "as many parts as there may be districts created by the board of county commissioners." Lytle, 54 Wash. at 391.

Lytle does not control here. The contested regulations do not divide the jurisdiction of the King County Superior Court. They do not allow the creation of

new districts as if each could be a separate and distinct county. They merely allow juries to be drawn from portions of the county, consistent with article I, section 22. The regulations do not violate article IV, sections 5 and 6.

Moi also argues the regulations violate the Sixth Amendment of the United States Constitution and RCW 2.36.080. The Sixth Amendment prohibits the systemic exclusion of distinctive groups from jury pools. Lanciloti, 165 Wn.2d at 671. The statute cited by Moi requires that "all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court." RCW 2.36.080(1). Moi has not carried his burden of a factual showing that any distinctive groups were excluded or that the jury pool was selected in an unfair or nonrandom manner. We therefore decline to consider his argument without prejudice to a future challenge. See Lanciloti, 165 Wn.2d at 672.

SIDEBAR DURING VOIR DIRE

At the start of voir dire, the trial court asked prospective jurors if they would suffer any hardship by serving on a four-week-long case. In open court, the judge asked the potential jurors who claimed hardship to state their reasons, and they did so. The judge then conducted two sidebars with counsel in the hallway. The judge excused jurors after each sidebar. Moi was present in the courtroom for the hardship hearing and all of voir dire but was not included in the sidebars in the hallway. Moi argues that his right to attend trial under the Fifth

and Sixth Amendment and article I, section 22 of the Washington Constitution was violated when he was excluded from the sidebars.

In our original decision in this case, State v. Moi, noted at 154 Wn. App. 1004 (2010), we concluded that Moi's right was not violated. Moi petitioned for review, presenting four issues.

Our Supreme Court then issued its decision in State v. Irby, 170 Wn.2d 874, 246 P.3d 796 (2011). Thereafter, the Supreme Court granted Moi's petition for review only on the issue of the right to be present at trial. The court remanded the case to us for reconsideration in light of Irby.

Having reconsidered the issue in light of Irby, we adhere to our original decision.

The core of the constitutional right to be present at trial is the right to be present when evidence is presented. But the right also extends to situations when the defendant's presence is related to the fullness of his opportunity to defend against the charge. In re Pers. Restraint of Lord, 123 Wn.2d 296, 306, 868 P.2d 835, 870 P.2d 964, cert. denied, 513 U.S. 849 (1994). A defendant therefore does not have a constitutional right to be present during in-chambers or bench conferences between the court and counsel on legal matters, at least where those matters "do not require a resolution of disputed facts." Lord, 123 Wn.2d at 306. Lord was absent during hearings where the court announced rulings on matters that had already been argued. He was also absent for sidebar conferences that involved only discussion of matters of law. The court held he

had no constitutional right to be present during any of the proceedings. Lord, 123 Wn.2d at 306-07. Irby does not overrule or alter the holding of Lord.

In Irby, the trial court dismissed certain potential jurors for hardship and for cause after reviewing their responses to a questionnaire and consulting with counsel in an e-mail exchange in which Irby had no opportunity to participate. The Supreme Court found a constitutional violation because the potential jurors were dismissed before Irby had even seen them. The e-mail exchange began the work of empanelling the jury. "The work was ongoing when the trial judge e-mailed Irby's attorneys and the prosecutor about potentially dismissing 10 jurors, not only for hardship, but because 4 jurors had parents who had been murdered." Irby, 170 Wn.2d at 884. That work constituted a critical stage of trial during which Irby had a right to be present. His absence violated his right to appear and defend in person under article I, section 22 of the state constitution as well as the due process clause of the Fourteenth Amendment. Irby, 170 Wn.2d at 885.

This case differs significantly from Irby. Here, there was a colloquy in open court between the judge and the prospective jurors. Irby was present throughout. The court explained that the trial involved a charge of premeditated murder and that it was likely to last three to four weeks. The court then posed the question of hardship: "So, first thing we're going to do is ask, based on this timeframe, does this cause an unusual hardship to anyone?" Numerous members of the panel raised their hands. Questioned individually by the court, each gave their reasons. Moi was present to see and hear and react and analyze.

After hearing the stated reasons for claiming hardship, the judge had a private discussion, or sidebar, with the lawyers in the hallway. Upon returning to the courtroom, the judge announced the names of those who would be excused for hardship. After this first sidebar, some individuals raised new hardship concerns. Moi was again present for that colloquy. The court and counsel took another sidebar, after which the court dismissed more prospective jurors.

Excusing jurors for hardship is a discretionary function of the court. RCW 2.36.100. In fact, it is a function that can be delegated to court staff. GR 28(1). Moi thus had no right to be present at the sidebar regarding hardship. The topic discussed was a matter within the judge's discretion that did not require resolution of disputed facts. Moi was present throughout voir dire and able to consult with counsel and object at all appropriate points in the proceedings. Nothing prevented him from sharing with counsel and the court any comments or insights he may have had concerning the jurors who asked to be excused for hardship.

We conclude the trial court did not violate Moi's right to be present at trial.

CROSS-EXAMINATION BY TELEPHONE

The State presented forensic scientist Matthew Noedel as an expert witness. Noedel did not testify at the first trial. Noedel explained how he inferred where the gunman stood by determining the trajectory of the bullets fired. The point of his testimony was two-fold: (1) that the gunman stood where Moi was last seen by witnesses seconds before the shooting; and (2) that it would have

been difficult for Moi to squeeze past the shooter in the narrow hallway to escape as he claimed he did.

Noedel testified in the courtroom on October 30, 2007. The State conducted direct examination, and the defense conducted part of cross-examination. At 4:30 p.m., Moi's counsel told the court that cross-examination was going on longer than he had anticipated. The court called for a sidebar.

After the sidebar, the court announced that it was ending testimony for the day and that Noedel would finish testifying on Thursday, November 1, by phone. Moi did not object. The court put the sidebar on the record after excusing the jury and Moi for the day: "We agreed in our sidebar that Mr. Minor would finish his cross and if there was any redirect it would be by phone on Thursday." On November 1, Moi concluded cross-examination by speaker phone. The parties then conducted redirect and recross by speaker phone.

Moi argues that the court violated his Sixth Amendment and article I, section 22 right to confront the witnesses against him face-to-face by allowing Noedel to testify by telephone. The State responds that the agreement recorded after the sidebar shows that Moi waived his right to confront Noedel face-to-face.

Waiver of a fundamental constitutional right must be made knowingly, voluntarily, and intelligently. State v. Thomas, 128 Wn.2d 553, 558, 910 P.2d 475 (1996). The defendant in Thomas did not testify. He argued on appeal that the trial court was obliged to advise him of his constitutional right to testify in his own behalf. Rejecting this argument, the Supreme Court held that it is the duty of defense counsel to advise the defendant of the right to testify, not the duty of

the court. The court reasoned that trial judges should not be required to intervene in the attorney-client relationship to independently advise defendants of rights their attorney might advise waiving for tactical reasons. A trial judge "may assume a knowing waiver of the right from the defendant's conduct." Thomas, 128 Wn.2d at 559.

Thomas controls here. The duty fell on defense counsel to instruct Moi of his right to confront all witnesses against him face-to-face. Counsel's choice to conclude cross-examination by telephone might well have been tactical so as to not further delay the conclusion of cross-examination. When the defense continued to cross-examine the witness by telephone without objection, the court could assume a knowing waiver, especially in light of the recorded sidebar agreement. The court was not obliged to obtain an express waiver from Moi himself.

MOTIVE EVIDENCE

The State's theory of the crime was that Moi wanted to kill a member of the Hoover gang in part to avenge the murder of his best friend Jonathon Otis, who had been the victim of a gang-related killing some nine months earlier. Otis' murder was never solved, but Moi knew the Hoover gang was rumored to be responsible. The State wanted to admit evidence that Moi wore a shirt bearing a picture of Otis every day for six months after his death and sometimes slept on his grave. This evidence was not offered during the first trial.

The State argued that Moi's extreme level of grief over his friend's murder, combined with Moi's admission that his mother had recently been "jumped" and robbed by Hoover gang members, showed Moi's motive to kill a Hoover gang member.

Before trial, Moi objected on relevance grounds given the amount of time that had elapsed since the murder of Otis. The trial court decided to admit the evidence as probative of motive. We review a trial court's decision to admit evidence for an abuse of discretion. State v. Cook, 131 Wn. App. 845, 850, 129 P.3d 834 (2006).

Circumstantial evidence of motive is relevant in a homicide where there is little other explanation for the murder. State v. Matthews, 75 Wn. App. 278, 877 P.2d 252 (1994) (evidence of defendant's straitened financial circumstances was admissible to support theory that he murdered a jewelry store owner who was a "veritable stranger" in order to cover up an interrupted robbery), review denied, 125 Wn.2d 1022 (1995). Moi testified that he and McGowan were strangers. There was evidence that they were once incarcerated together in close quarters for a short time, but the only evidence explaining why Moi would want to kill McGowan was that Moi had grievances against the Hoovers and McGowan was a Hoover. Following Matthews, we conclude the trial court did not abuse its discretion in admitting the evidence.

STATEMENT TO POLICE

Moi's former girl friend, Daisy Hauro, told police that on the night of McGowan's murder, Moi told her he had shot someone. Later, when police were interviewing Moi after his arrest, they asked him why he would say this to Hauro. Moi responded that it was just to see how she would react. He told them he had previously told her as a joke that he had to move to Seattle because he killed someone in Louisiana.

Over Moi's objection and after extensive pretrial argument, the court ruled these statements admissible. At trial, a police officer testified about Moi's statement during his interview. Moi testified that when he told Hauro he had shot someone, he was "just playing" with her. Hauro testified and said she thought Moi was joking when he made the remark on the night of the murder. But she also said that Moi had never joked with her before about killing anyone.

Moi argues that it was unduly prejudicial to allow the jury to hear that he had made a remark about killing someone in Louisiana, even if it was presented as a joke.

The statement was not offered as proof that Moi had killed before. It was offered to show that Moi was concerned about the significance that might be given to his confession to Hauro on the night of the murder, and that he tried to minimize that confession by describing it as part of a pattern of joking comments about murder that were not intended to be taken seriously. Showing that there was no such pattern, and that Moi lied to police to explain away his confession to Hauro, was highly probative of his guilt.

Moi did not request a limiting instruction. The jury listened to the police interview audiotape and read the transcript. Moi testified and was able to give his version of what he meant. The statement about killing someone in Louisiana was always presented in the context that it was a lie or joke. We conclude the trial court did not abuse its discretion by determining that the statement was more probative than prejudicial.

OPINION TESTIMONY

Detective Ross Stuth was one of the detectives who interviewed Moi after his arrest. Detective Stuth made several comments in his testimony that Moi challenges as improper opinion testimony requiring reversal. After each such comment, Moi objected and the trial court instructed the jury to disregard the comment. The court denied Moi's motion for a mistrial based on the comments but instructed Stuth to refrain from such comments in subsequent testimony after excusing the jury for the day. Moi argues that the improper opinion testimony contributed to an accumulation of errors requiring reversal. We review a trial court's decision to deny a mistrial for an abuse of discretion. State v. Brown, 132 Wn.2d 529, 565, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007 (1998).

Detective Stuth was asked why he met with Moi to take his statement. Stuth answered it was "to find out what he knew of the shooting and to find out why he did the shooting." Detective Stuth described Moi as "animated" at their first meeting. Asked what he meant by this, Stuth answered that Moi was "gesturing" and "cordial" and was talking as if he had "this . . . all planned out

where he had been and what he was doing." Asked to describe Moi's emotional responses during their initial conversation, Stuth answered that at the time, Moi appeared "scripted." The court sustained the objection to this comment and struck the remark about Moi appearing "scripted." But the detective repeated the comment later when comparing Moi's emotional demeanor during his initial interview to the calm he displayed in giving a taped statement: "When we confronted him about his mother, he became very upset, near tears, if I remember right; and when we went on tape, he was somewhat scripted."

No witness may offer testimony in the form of an opinion regarding the guilt or veracity of a defendant. A police officer's testimony carries a special aura of reliability with a jury. State v. Demery, 144 Wn.2d 753, 758, 30 P.3d 1278 (2001). The trial court was rightly concerned that Detective Stuth was making a persistent effort to portray Moi as someone who had premeditated exactly what he would say and how he would act during his interview with police.

Nevertheless, the comments did not directly state Stuth's personal belief that Moi committed premeditated murder. "Scripting" was not a theme perpetuated by other witnesses or in argument. The court instructed the jury to ignore all comments objected to by Moi. Jurors are presumed to follow the court's instructions. State v. Rice, 120 Wn.2d 549, 573, 844 P.2d 416 (1993). And because the jury heard the recorded interview of Moi played in open court, the jury could decide for itself whether or not Moi's answers sounded scripted. We conclude the court did not abuse its discretion by denying the mistrial motion.

PREMEDITATION ARGUMENT

In closing argument, the prosecution told the jury several times that to be found guilty of premeditated murder, Moi needed to premeditate killing *any* human being, not McGowan specifically:

> Murder in the First Degree requires that premeditation, a premeditated intent to kill someone. Not to kill Keith McGowan and that's important. Mr. Moi doesn't have to intend to kill any certain person. He has to intend to kill and premeditate it, in other words deliberate about it and decide that's the thing to do.
>
> . . . .
>
> What you have to be convinced beyond a reasonable doubt is that on October 19th, in the State of Washington, the defendant shot Keith McGowan. He intended to cause Keith McGowan's death. His intent was premeditated, so he thought it beforehand, a plan, an intent to kill that was formulated in advance of doing the killing and Keith McGowan died as a result of that.

Moi contends that the prosecutor's argument was inconsistent with instruction 14, the to convict instruction. He interprets the instruction as requiring proof that he acted with the premeditated intent to kill McGowan. That is not an element the State needs to prove. See State v. Price, 103 Wn. App. 845, 853, 14 P.3d 841 (2000), review denied, 143 Wn.2d 1014 (2001). But Moi relied on the principle that the instruction given at trial becomes the law of the case. State v. Willis, 153 Wn.2d 366, 374-75, 103 P.3d 1213 (2005).

Moi's argument is new on appeal. He did not raise any issue below about instruction 14. He did not object during the State's closing argument nor did he contradict the prosecutor's interpretation of the instruction in his own closing argument. When a party fails to object to closing argument at trial, this court will not review the misconduct unless he proves the prosecutorial misconduct was

"so flagrant and ill intentioned that no curative instructions could have obviated the prejudice engendered by the misconduct." State v. Belgarde, 110 Wn.2d 504, 507, 755 P.2d 174 (1988).

Instruction 14 did not require proof that Moi's premeditation was specifically focused on McGowan. It properly informed the jury that to convict Moi of first degree murder, the jury needed to find that he premeditated his intention to kill someone and that when he encountered McGowan, he intended to cause McGowan's death:

> (1) That on or about October 19, 2004, the defendant shot Keith McGowan multiple times;
> (2) That the defendant acted with intent to cause the death of Keith McGowan;
> (3) That the intent to cause the death was premeditated;
> (4) That Keith McGowan died as a result of the defendant's acts; and
> (5) That the acts occurred in the State of Washington.

The prosecutor's closing argument did at times misstate the elements set forth in instruction 14, although not in the way Moi argues. The instruction read, "That the defendant acted with intent to cause the death of Keith McGowan." The prosecutor said, "Mr. Moi doesn't have to intend to kill any certain person." But the prosecutor said soon after, "What you do have to be convinced beyond a reasonable doubt is that on October 19th, in the State of Washington, the defendant shot Keith McGowan. He intended to cause Keith McGowan's death." The prosecutor's argument was somewhat imprecise, but it was not flagrantly ill-intentioned. There is no indication the prosecutor was attempting to dupe the jury into ignoring the to convict instruction by misstating the element of intent. On

the element of premeditation, the prosecutor accurately stated that Moi only had to premeditate killing someone, not McGowan specifically. This was consistent with the instruction.

If Moi had objected, the court could have clarified the meaning of the instruction for the jury. Because there was no objection, we conclude Moi has waived review of his claim of prosecutorial misconduct in closing argument.

As Moi does not prevail on his assignments of error, we do not reach his argument on cumulative error.

Affirmed.

Becker, J.

WE CONCUR:

Appelwick, J.

Ellington, J.

Appendix D

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KING COUNTY, WASHINGTON

DEC 6 2006

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON, COUNTY OF KING

STATE OF WASHINGTON, Plaintiff, vs. MATTHEW MOI Defendant	No.: 04-1-08866-2 KNT SCHEDULING ORDER- TRIAL AND OTHER HEARINGS - WAIVER (ORCS; ORSTD; OSPD; OSOD)

The following court dates are set based on a commencement date of 1/10/07.

[✓] **a) Case Scheduling Hearing:** 1-10-07 **at 1 p.m in courtroom GA**
[ ] **b) Plea/Sentencing Date:** _____ **at** _____ **a.m./ p.m.**
[ ] **c) Omnibus Hearing:** _____ **at 8:30 a.m.**
[ ] **d) Trial date:** _____ **at 9 a.m.; Expiration date:** _____

YOU MUST BE PRESENT OR A WARRANT WILL BE ISSUED FOR YOUR ARREST AND YOUR FAILURE TO APPEAR MAY RESULT IN ADDITIONALCRIMINAL CHARGES BEING FILED.

DATED this 6 day of Dec, 2006.

Jeffrey M Ramsdell
Judge

Deputy Prosecutor WSBA No. 26340

Alon Munson
Attorney for Defendant WSBA No. 16702

Waiver: I understand that I have the right to a trial within 60 days of the commencement date if I am in jail on this case, or 90 days of the commencement date if I am not in jail on this case. I am voluntarily and knowingly giving up this right for a specific period of time to allow my attorney to negotiate with the prosecuting attorney and/or to investigate and/or prepare my case. I agree that the new commencement date is 1/10/07 and that the expiration date is 3/10/07.

[This waiver must be signed if a new case scheduling hearing date is set or if a trial date is set outside the time for trial provisions of CrR 3.3.]

I have read and discussed this waiver with the defendant and believe that the defendant fully understands it.

Alon Munson #16702
Attorney for Defendant

Matt Moi
Defendant

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

_____ King County, Washington
Interpreter

Appendix E

State Exhibit
108

DES MOINES POLICE DEPARTMENT

CASE NUMBER 04-3328
DATE/TIME OF STATEMENT: 102204/0215 hours
STATEMENT TAKEN BY: Detective R. Stuth

RS Ok um the time now is zero two fifteen (0215) hours um this is case number zero four dash three three two eight (04-3328), homicide investigation of Keith McGowan occurred at twenty-four fifty-nine (2459) South two sixteenth (216th) Street in Des Moines. This is an interview uh with Matthew W. Moi and that's M-O-I, right Matthew?

MM Yes sir.

RS Ok and um I'm Detective Ross Stuth and also present is Paul Young. Matthew um, you've been with us Detective Young and I since what was written down here on uh this form here since about twelve thirty (12:30) a.m.

MM Yes sir.

RS And we've been here talk'n for a little while, we've took a little bit of a break um offered you some water and bathroom, you're comfortable?

MM I'm fine.

RS Ok. Um and uh you agreed to to to talk with us and you're aware that we're tape-recording a statement from you?

MM Yes sir.

RS And that's with your permission?

MM Yes sir.

RS Ok. When we first sat down with ya uh we kinda told you who we were and asked ya about who you were as far, you know, where you lived and that kind of stuff, right?

MM Yes sir.

RS Ok and then we went through this rights form, told ya what we were investigating?

MM Yes sir.

RS And you already knew what we were investigating, a murder case right?

MM Ya.

RS Ok and we went through this rights form I'm holding up in font of you here, right?

MM Um huh (indicating yes).

RS And that looks familiar to you cuz you got your signature on it?

MM Yes sir.

RS Ok. So for the record, what I need to do is read this rights form back into the tape-recorder. I know I told ya I wasn't gonna read it again, but I have to for the tape, ok?

MM No problem.

RS Alright. It says before questioning and the making of any statement, I, Matthew W. Moi, have been advised by Detective Paul Young of the following rights:

- I have the right to remain silent. Any statement that I do make can be used against me in a court of law.
- I have a right at this time to an attorney of my own choosing and to him/her present before and during any questioning and the making of any statement.
- If I cannot afford and attorney, I am entitled to have one appointed for me by a court, without cost to me without cost to me, and to have him/her present before and during any questioning and the making of any statement.
- I further understand that I have the right to exercise any of the above rights at any time before or during any questioning and the making of any statement.

And you understood those one (1) through five (5) that I just read and you put your signature there, correct?

MM Yes sir.

RS Ok, and the next portion of it is is called the Waiver of your Constitutional Rights, and it reads:

> I have read or have had read to me the above Explanation of my Constitutional rights and I understand them. I have decided not to exercise these rights at this time and the following statement is made by me freely and voluntarily, without any threats or any promises of any kind. Is that correct?

MM Yes sir.

RS Where you signed this as well? Have nobody's threatened ya and nobody's made an promises to you?

MM um huh (indicating yes)

RS Ok, then to get you a drink of water, or whatever you wanted to drink then and use the bathroom. I guess were promises. Ok?

MM Yes sir.

RS Ok. Tuesday, we're gonna start over again here, ok?

MM Um huh (indicating yes)

RS Again because we're tape recording your statement. What happened Tuesday uh where were you at Tuesday afternoon? Who were you with?

MM Troy.

RS Ok. Um where'd you guys go?

MM To the transit center.

RS Ok and where's that? Where's the transit center?

MM Downtown Renton by Renton high school.

RS Ok. How long were you guys there?

MM Um about two (2) to about four thirty-five (4:35).

RS Ok and uh what was going on there?

MM Uh we just popped in and watched the little fight for.....

RS Ok, so but just some kids get'n outta school?

MM And just fighting, ya.

RS Ok, all right. And what caused you to leave?

MM Just ready to go.

RS Ok.

MM Just tired of see'n them, so.

RS Where'd you head up to?

MM The one forty eight (148) bus's stop.

RS Uh up the bus route

MM .....

RS one forty eight (148)?

MM uh huh (indicating yes).....

RS Up up to the hillside, Benson hillside area? You you know what the cross street is up there?

MM Benson and Puge.

RS Benson and Puget?

MM Puget Drive.

RS Ok. What what's up there?

MM Just apartments.

RS Ok. All right. Was there any specific place where you were at?

MM Uh by the circle K, store.

RS Ok. And what was go'n on up there?

MM Nothing.

RS All right. Um, how long were you hanging up there?

MM Probably for about um not that long. I I don't remember the time, how long we were sit'n up there.

RS Ok

MM But I know we were sitting there together until he had to leave to go, he went to his auntie's house.

RS .....

MM C.C.'s mom

RS Ok.

PY So Troy left?

MM Um huh (indicating yes).

PY And that's Troy's?

MM C.C.....

PY Ya

RS Troy Johnson. All right. And you're acknowledging by nodding yes

MM Yes sorry ya ya.

RS Ok. Um what did you do?

MM Hopped on the one forty (140), I sat there for a minute and then I hopped up went to the bus stop and waited for the bus.

RS Ok. and you hopped on the one forty (140)?

MM .....

RS Where are you going?

MM Down.

RS To?

MM Towards Renton.

RS Ok.

MM And then I hopped in Renton.....Chris had uh Chris got his between that time.

RS Who's Chris?

MM Chris, C.C.'s brother. That's whatcha talk'n about when you said all the hit an run an stuff.

RS Ya.

MM Chris seen em.

RS Ok.

MM So Chris got hit.....

RS He got hit by a car?

MM Ya, somebody ran him over.

RS Ok, how bad did he get hurt?

MM Not bad at all, I mean he's walk'n around.

RS Ok. ok. and

PY Did you see this happen?

MM um um (indicating no).

PY Ok. how did you hear about?

MM Just Chris.

PY Oh.

RS Ok. uh who else was there?

MM Uh Chris, that that's it.

RS Ok

MM Chris is over by the store and then I seen Daisy's truck, but I, you know what I'm say'n? walked off.

RS You saw Daisy's truck? Ok. you walked off?

MM Well

RS Why'd you

MM Well

RS Why'd

MM not

RS you walk off?

MM Because she was in the park with Brittany.

RS Ok?

MM So then they were talk'n to me and stuff.

RS What were they talk'n to you about?

MM Tell'n me to just be cool.

RS Why were they tell'n you to be cool?

MM About about my mom's situation.

RS What happen to your mom?

MM She had got robbed.

RS And where was it that she got robbed?

MM On the highway.

RS What part of the highway?

MM On the highway.

RS Ok. Which would mean to you, what what area in the highway was that in?

MM Pacific highway.

RS Ok. um Tukwila? Des Moines? Federal Way? Do you know

MM How would

RS what area

MM you know which one is which? Like Tukwila is the highway, right? Pacific highway.

RS It it stretches from Everett to Olympia, so I I if you

MM No.

RS could tell me where abouts on the highway where you're think'n about your mom got robbed.

MM .....

RS Do you know specifically?

MM No.

RS Ok, where you think'n about that she got robbed?

MM Um

RS Tukwila?

MM Well, where

RS Federal Way?

MM ever they buy crack at, lower down by the uh by the Jack in the Box and stuff.

RS Ok. so

MM Cuz that's where we buy these.....crack pack.

RS Not the Jack in the Box in Federal Way, but the Jack in the Box by

MM Down

RS SeaTac?

MM down, ya down.

RS By the airport?

MM A little bit farther down.

RS And closer to Tukwila?

MM That's what my assumptions was, I assume that's where she got robbed at cuz that's where they go by crack at.

RS Ok. your mom has a crack problem?

MM Um huh (indicating yes).

RS Ok. so how'd you feel about your mom get'n robbed?

MM Bad for a minute.

RS Ok. only for a minute?

MM Only for a minute.

RS Ok. why only for a minute?

MM Because I was just like, it's my mom, I know she I know she was cool because my mom been in prison and everything, so I know she did wasn't just oh somebody just ran up on her and robbed her.

RS Ok. so how was uh how was Daisy reacting to you being upset about

MM Tell'n just calm down, calm down.

RS Ok, and did you leave her

MM .....

RS think'n that you were cool with it? or did she think you were

MM She-thought

RS still upset?

MM Ya, she thought I was still upset.

RS Who else might of thought you were still upset?

MM mmmmmmmm

RS Everybody else?

MM Na.

RS That was around?

MM Na, probably not.

RS Who else was around?

MM Just Daisy and Christian and his mom and stuff cuz I was talk'n to the police.

RS Ok, did Chris and his mom know that you were upset about what happen

MM Ya

RS to

MM I told

RS your

MM his mom

RS mom?

MM I told his mom, she was just like don't worry about it, everything's gonna be fine.

RS Ok. so, she probably thought you were still pretty upset too?

MM Na, she knew I was cool because I was talk'n to her, I said she was like cuz his mom has a problem too

RS Um huh

MM and she's try'n ta get fixed. And she just like brush it off, don't let don't stoop to that level. And she's a grown woman.

RS Ok. so you left them there?

MM Um huh (indicating yes), hopped on the bus.

RS Ok.

MM One forty eight (148).

RS Did you happen to tell any of them where you were going?

MM Na.

RS Ok, where'd you end up go'n then?

MM .....

RS .....

MM I I I hopped on the one forty eight (148), I get down to the Cheney center, hop on the the one forty (140), the one forty (140) puts me to the mall on the one twenty eight (128), one twenty eight (128) take me to the highway. The highway take me to the one seventy-four (174), the one seventy-four (174) took me to the one "O" eight (108).

RS Ok. Two "O" eight (208)?

MM Two "O" eight (208), my

RS Ok.

MM fault.

RS Two hundred and eighth (208th) and Pac Highway?

MM Yes sir. SeaTac.

RS Almost Des Moines, but why'd you get off at two "O" eight (208)?

MM Just to get off, I just put the.....to get off.

RS Ok, no particular reason?

MM Um uh (indicating no)

RS Ok. and where'd you go?

MM I went uh I walked up to just see if I see somebody up towards two sixteenth (216th).

RS Ok, and where abouts were you at at two sixteenth (216th)?

MM Uh right by the store.

RS Which store?

MM Seven eleven (7-11).

RS Ok. Did did you post out by seven eleven (7-11)?

MM Ya post .....seven eleven (7-11) for a minute and then saw walked up where you walk make a left at seven eleven (7-11)

RS um huh.

MM I walked up

RS On the side of the store?

MM Ya, on the side, make a left. So basically you make a left at the light and they got that first right right there and on the on the planter they got this little seat'n spot

RS Um huh

MM And I'm just posted der for a minute.

RS So it's kinda dark around there isn't is?

MM Ya

RS Ok

MM It was.

RS Ok. So you go around the front of the store up around the left side of it.

MM Make a left at the light.

RS .....and go up that little hill.

MM Ya, you're not even go'n it's like the behind seven eleven (7-11)

RS Ya.

MM .....that right and they got the little spot light there on.....

RS By a motel?

MM I think so, right behind the little store

RS Ok

MM on the corner

RS Ok. all right, so how long do you think you posted up there?

MM Uh I'm not certain. I ain't had no time and then so. I wasn't for certain.

RS What are you think'n about?

MM Uh where's .....at where's.....

RS Ok. now are you hoover?

MM I was from hoover.

RS Ok, you was from hoover.

MM I was from hoover.

RS Ok, how long ago did you get out of hoover?

MM Uh minute ago, minute.

RS A minute ago?

MM Minute ago.

RS What do you mean?

MM Before I got locked up the second time.

RS And how long ago was that?

MM Probably like, I got locked up in December.

RS Ok.

MM Of last year.

RS Last year you got locked up.

MM So and then it was in December.

RS Were you hoover last year?

MM Yup.

RS Ok. So when did you get out?

MM I got out uh uh I did seven and a half months on house arrest. They sent me to the penitentiary, all I had to do was twenty (20) days in the pen and then I got out. it's like uh on the twentieth (20th) of January, January.

RS Ok. This January?

MM No, no, not January, June

RS Ok.

MM or July. One of those months on the twentieth (20th).

RS Ok and that's when you got outta hoover?

MM Ya I got outta hoover in December.

RS December?

MM And then, ya, and den I ran over

RS Ok, how did you get out?

MM I jumped out.

RS And for the purposes of the tape, and you explained that to me already, but for the purposes of the tape, what do you mean by you got jumped out?

MM I got beat up by people so I didn't have to be from a gang.

RS Ok. and how many people beat you up?

MM Four (4).

PY .....

MM Just some men in caps, they did it.

PY Ok.

RS They picked some random guys?

MM Yup, was go'n jump me out

RS Ok. and hoover from?

MM South end.

RS South end here. Ok, so you jumped out uh so you're up here off two sixteenth (216th) and the highway, is this hoover turf?

MM Yes sir.

RS Ok. but these are still friends, right?

MM Ya, I have friends. Gary Saxton, Tiny, KB, I know these guys

RS And and their hoovers?

MM Ya

RS But your still gonna go visit with them because their friends?

MM Ya their ya come on, ... I'm not that spec, you know ..... have no problem. They say it was hoovers that killed him, so is hoovers at my best friends funeral.

RS Ok.

MM No problem, ...we feel, we talk to them all the time.

RS And your talk'n about your best friend .....?

MM Yes.

RS Ok. from when he was killed in January?

MM Um huh (indicating yes).

RS But you were in custody.....?

MM Yes sir.

RS Ok. and you don't believe that hoovers were responsible for that?

MM They weren't.

RS Ok, you think it was Samoan?

MM No. it was just uh I know hoovers weren't a part of it because I dun talk to a lot of people and they say na it wasn't the hoovers and when he got ran over it was by something else and everything, so they say it was many shots, you don't know who shot em.

RS But he didn't get run over either.

MM That's

RS Ok

MM what

RS well, let's

MM they said.

RS Let's move on. Um your posted up there at two sixteenth (216th)

MM Um huh (indicating acknowledgement)

RS up by seven eleven (7-11). How long did you sit up there you remember?

MM No sir.

RS Was it

MM Um

RS half hour and hour? Your gathering your thoughts, you're seeing what's going on. People are moving about. Right? I mean that's uh little buzz of activity seven (7) days a week, twenty-four/seven (24/7) you know?

MM I don't even know how long I was up there. Just posted from the store to that spot and back down over by the apartments.

RS Ok. so you left your friends at about, according to what their telling me, you left them at about eight (8:00) o'clock?

MM Um huh (indicating yes)

RS And you gotta do bus rides and what sounds to me like, what four (4) transfers?

MM Ya, ish ish

RS And you gotta wait for the transfers.

MM No wait for the bus.

RS Ya. I mean so by the time you're waiting for the buses and you're catching the buses and you're doing four (4) transfers. Could that be like two (2) hours riding the buses?

MM Yup. I

RS Could

MM I

RS could take two (2) hours to get

MM Ya.

RS From the Benson over to SeaTac?

MM Yup.

RS Take that long?

MM Yup.

RS So, when you're up there post'n at seven eleven (7-11) you may only be there like about two (2) three (3) minutes, huh?

MM Na I was there for a minute, I was there for a minute cuz I was

RS What do you

MM stand'n

RS by I was

MM right outside

RS there for a minute?

MM Not like I was there for one (1) second

RS Right.

MM I was there for a minute like uh long period of time.

RS Ok, well uh a minute and what you're tell'n me a minute ago about, you know, get'n get get'n outta the outta hoover um

PY for a second

RS for a second might be a different minute or a second to me. I'm talk'n about a minute on the clock, ok?

MM Oh no I'm talk'n about is a figure of speech

RS We know

MM I mean I'm.....

RS we know you're you're using it as a figure of speech, but I wanna use it in the context of what a real minute means as far as um ten (10) minutes sit'n here talk'n to you or fifteen (15) minutes sit'n up there on the stoop or are we talk'n a half hour or or, you know, what are we talk'n about?

MM No uh

RS Real time.

MM Say from the seven eleven (7-11) to the spot

RS um huh

MM to back down there

RS um huh

MM probably all together like say about forty-five (45) minutes.

RS Ok, so you made it down to the apartments

MM um huh (indicating yes)

RS about that in in the time that you got off that bus about forty-five (45) minutes. Right?

MM Ya.

RS Ok. so you got off that bus at two "O" eighth (208th), made it up to seven eleven (7-11), posted up there, posted up around the corner from seven eleven (7-11), down to the apartments the forty five (45) minutes has gone by?

MM About that time, ya.

RS Ok, so maybe more like an about an hour and a half, bus ride and the transfers? Thereabouts. If it's around eight (8) o'clock

MM I'm not for certain.

RS .....

MM of the times like that.

RS Ok. all right, all right. Well, we're just try'n to get best guess .....

MM Ya.

RS You go down to the apartments um what part of the apartments did you go to?

MM The the front part.

RS Right out in front by the light near the roadway?

MM Right near the.....

RS Ok. and how long did you hang out there?

MM Probably for like, not that long. I walked inside

RS Minute?

MM the apartments

RS Five (5) minutes?

MM I like uh

RS Ten (10) minutes?

MM Probably like uh four (4) minutes, not even three (3) minutes.

RS Alright. Did did you see anybody while you were out there?

MM Ya, I seen somebody walk'n into the apartments.

RS Just a person?

MM Um huh (indicating yes)

RS Ok. male, female?

MM Male.

RS Ok. You happen to recognize him?

MM No.

RS Ok. alright. And where did you go? You said you went inside?

MM I saw I walked down to the apartment, the the last apartment on the end on the bottom floor, the last apartment.

RS So you went in the main door

MM Um huh (indicating yes)

RS Down that long hallway

MM Um huh (indicating yes)

RS Down to the last apartment

MM Um huh (indicating yes)

RS On which side? Left side or right side? As you're walk'n down that hallway. Picture that hallway

MM It's on the right side.

RS Ok. the right side. Um what did you do when you got to that last apartment?

MM I was gonna knock on the door. The door was basically already open.

RS Ok, why did you go to that last apartment?

MM Cuz that's where they be at.

RS Who?

MM Darius and them.

RS Ok. So you knocked on the door?

MM Yes.

RS And the door was open?

MM Na, it was like cracked, so dude was like he seen me right before I walked up.

RS Ok.

MM He's like what sup?

RS .....

MM Like uh.....

RS Describe him for me will you?

MM Who? The dude?

RS Ya. that answered the door.

MM Like skinny, about my uh my size and weight.

RS Um huh

MM Probably a little shorter then

RS Ok.

MM And he has short hair, like mines.

RS Real short hair like yours?

MM (no audible answer)

RS Ok. all right. Um so he said what's up?

MM Ya, I was like is Darius in in here, Lou, Lou tiny monster rat, Lou Will. He was like uh na, but Will will be right back, he was like dude they just went to go get sum'n. .....uh so so then dude I'm just posted there for a minute till the other one comes out and then another one

comes out, I see had cell phone, I axed him use cell phone, we hop on the elevator go upstairs. He get to sum sum apartment.

RS Describe, let me stop you for a minute. Describe that other one that comes out with the cell phone.

MM Short and had bushy hair.

RS Ok.

MM he had like an afro.

RS All right. You remember what he was wearing?

MM Um um (indicating no)

RS Ok. and but you saw him with a cell phone?

MM Um huh (indicating yes)

RS Ok. and did you see anybody else?

MM Na.

RS Ok.

MM Well, somebody they had people in the hallway, that's it.

RS Ok. they had people in the hallway? Who was that?

MM Some dude.

RS Ok, just another guy?

MM Some guy.

RS Ok.

PY Did he live there do you think?

MM I don't know, he was there though.

RS Ok. so, the guy you saw with the cell phone, he jumps on the elevator, you jump on with him. Uh you guys talk'n?

MM Ya, I use his cell phone.

RS Ok. wh you're use'n his cell phone in the elevator?

MM Na, I just right when we hopped off I'm on it, ya, I'm on the phone.

RS Ok. and where was that at? Do you remember what floor you hopped off on?

MM Na, not for certain. It had to it was one of the upper floors. We went up, we didn't go down.

RS Ok. you you went up a ways?

MM .....

RS On the elevator? Was it seem like a little bit of a long ride or quick short ride?

MM Na it was quick.

RS Ok.

MM .....

RS All right.

MM .....

RS You guys got off the elevator

MM Yes sir.

RS and you were on the phone.

MM Yes sir.

RS His phone.

MM Yup.

RS Who were you call'n?

MM C.C.

RS C.C.?

MM Chris's sister.

RS Ok. Alrighty, and uh what kind of conversation did you have with her?

MM .....what sup, she like what sup, I'm like noth'n whatcha do'n, noth'n, all right man, I'll call you back, all right. That's it.

RS Ok. How long was the conversation?

MM .....

RS .....

MM ..... that that probably like probably less then like uh probably like less then a minutes a little longer then a minute, less then a minute.

RS All right. Did you get on the elevator right away?

MM Uh we walked back down cuz ain't nobody answer the door.

RS Ok. you walked back down?

MM We walked towards the elevator.

RS Ok.

MM .....

RS All right.

MM we walked towards the elevator.

RS and you rode the elevator down with him?

MM (no audible answer)

RS Ok. you guys talk about anything?

MM No. we just when there gun be back. I was like how long do you think they're gun be? He was like I don't know they just went to go grab something real quick, but they'll be back.

RS Ok.

PY Is this person .....Darius

MM Darius

RS .....Darius, is that?

MM Na, that was while na I axed for little first, and he was like ..... I axed for Darius, little and KB, he was like little just left, he'll be back

PY Ok.

MM say he just went to go get something.

PY Who's little?

MM Little monster rat.

PY And do you have a name for?

MM .....

PY Ok, but I mean does little monster rat have a name?

MM Will.

PY Will? I though Marshall Wilson was named that.

MM Na that's

PY .....

MM that's that's monster rat. Marshall, Marshall is monster rat and they got little, baby, tiny and all them.

RS Ok. and you guys rode the elevator down and that's the conversation you had about that?

MM um huh (indicating yes)

RS Ok. what happen next?

MM We get to uh we get off the elevator, I'm like man, do you think you can ask homeboy if I can post here until little man get back? like ya, goes in the house. He gets dude, dude comes out, he's like what sup? I'm like uh do you think that I can post here until uh little man get back, he's like man, I don't know you but can post out here. I turned around here goes a Samoan dude. He says you the mover, na. Get outta here. Walked to the door, that's it. that's when everything happen.

RS What happen?

MM I just started hearing gunshots, I started run'n.

RS Ok. so, when the good guy with the bushy hair who let you use the cell phone.

MM um huh (indicating acknowledgement)

RS he went to the door and brought out the guy with the short hair?

MM um huh (indicating yes)

RS And the guy with the short hair, you asked him if you could post?

MM um huh (indicating yes)

RS And he said you could post out here?

MM um huh (indicating yes)

RS He didn't let you in?

MM um um (indicating no)

RS And then

MM He said I don't know you, so you post out here. I'm like I ain't trip'n.

RS Ok. you ain't trip'n, you're ok with it?

MM Ya, I'm cool.

RS All right. So, he's still stand'n there and out from where you don't even see where he's come'n from is a Samoan guy?

MM From right over my shoulder.

RS Right behind you?

MM Right behind me.

RS And how far away is he from you?

MM He's about right there.

RS Within a couple of feet?

MM Within a couple feet.

RS Arms

MM I mean

RS length away?

MM Yes. He can touch me if he wanted to.

RS Ok. and how far away from you is the short cropped hair guy? The

MM I

RS one

MM right

RS that said

MM by me

RS you could post?

MM I'm right because I'm right by his door.

RS Ok, so he woulda saw the Samoan come through the door far soon then you?

MM Yup, basically.

RS And how far away were you from the door?

MM From which door, his house door or

RS No the

MM the outside door?

RS outside door, the hall door?

MM Once the Samoan told me go, I started walk'n straight towards the door.

RS How far away were you from the door when the Samoan and you and the short crop haired guy were all there, how far away were you from that door?

MM I was at the door.

PY The front door?

RS The outside door?

PY or the outside door?

MM Look alright. Here goes the outside door um .....here goes the hallway, here goes the stairs, here goes the outside door right here, here goes the elevator right there, here goes dudes door right here through this little split, there goes dudes door. It's not even a split, it's just the door, dudes door the stairs, like that

RS Um huh

MM Here goes dude at his front door, here goes me, I'm barely by the split, here goes dude right behind me, like that.

RS So, was that outside door as close to this door is to you?

MM About that

RS Or

MM Yup.

RS was it further away?

MM Uh I'm not for certain, probably

RS How many steps did you

MM .....

RS have to make to make it to that door when that Samoan dude told you to get outta here?

MM Like three (3)?

RS Three (3) steps away?

MM Yup.

RS Ok.

MM Probably like cuz once I started hearing them gunshots, that door was just like it opened on it's own.....to the outside

PY You made it past the Samoan?

MM Yup, cuz he axed me he was like you from hoover, I'm like nope. Get outta here.

RS What did the Samoan look like?

MM He was tall, he was like a little bit taller then me, had long hair, red hat, it was kinda big, he had tattoos on his hand.

RS Ok. And how was his hair arranged

MM It was

RS Was it long?

MM it was in a pony tail uh like the hat that capped it down it was through the little part in the cap, the pony tail.

RS Did you get a good look at him?

MM Yup. If I seen him again, I know em.

RS Ok. and you said you stepped away, you walked about three (3) steps and the door felt like it opened itself?

MM Once I started once I heard the gunshots I just started running.

RS Ok. and what did you do next?

MM Uh I went all the way down until I caught a ride by somebody.

RS Ok. and how far down did you think you went, run'n or walk'n before you caught that car?

MM "D"

RS "D"? A mile? Two (2) miles? A half a mile?

MM I don't know, couple blocks though. It was some blocks.

RS It was some blocks?

MM and I just started walking, you know.

RS Ok, you walked away?

MM Once I got from by the store, I just started jog'n and stuff down the hill

RS .....

MM started jog'n down the hill and I seen the police and I was like oh man.

RS How were the police come'n about?

MM Come'n up.

RS The hill?

MM Towards two sixteenth (216th).

RS Ok. and where they with sirens and lights?

MM Um huh (indicating yes)

RS Ok. and what were you think'n?

MM Like sum'n bad just happen.

RS Ok. where did you go next?

MM I went

RS You caught a ride.

MM Ya.

RS Who did you catch a ride from?

MM By some guy. Some guy that I uh I

RS Did you flag him down or what?

MM Nope, he was pulled over and I was like I start uh do you think I can get a ride down this street. I was like are you headed that way, he was like ya come on. I hopped in. .....

RS All right. So you just caught a ride from a stranger?

MM Basically, ya.

RS And and where did he give you a ride to?

MM Down to one forty third (143rd).

RS And anything specific about one forty third (143rd), why you went there?

MM My.....where Daisy stays.

RS Ok. so you got to Daisy's house right away?

MM Um huh (indicating yes)

RS Ok, are we get'n low on the tape? All right, let's uh go ahead and uh conclude it. what time do you have here, we'll turn this over to the other side.

PY two forty-three (0243)

RS zero two forty three (0243) hours and we'll conclude it and we'll move to side two (2) or the other side of the tape here.

*******Switched sides of tape. Continuing with Tape A, side 2*******

RS Ok, um, the time now is again two forty-three (0243), we had to stop the tape on side A. we're con we're reconvening here on on the second (2nd) side, side B. this is uh reference case number zero four, dash three three two eight (04-3328), interview with Matthew W. Moi, M-O-I. We left off with you catch'n a ride and from some stranger um and than you ended up uh down there off of one forty third (143rd)

MM .....

RS an .....area there. And it was out by Daisy's place.

MM um huh (indicating yes)

RS Did you go to Daisy's right away? I mean, after you got off the from the ride from the person?

MM Na, they let me off like at the corner by the library

RS Ya.

MM and I was just walk to Daisy's.

RS You just walked to Daisy's. right away after you got that ride?

MM Walked to the house.

RS .....Daisy's? Ok. um uh you you told us earlier you uh and Daisy said you had been drinking

MM Um huh

RS And you you said ya, I been drink'n. what what pointing this time were you drink'n?

MM I was drink'n early. Way early, but it was only a beer, that's why I was on my best cuz I don't like that.

RS Ok. so way earlier, about what time was that?

MM I don't even remember what time it was.

RS Ok. so, somewhere ray maybe around up by the Benson is when you were drink'n? when you were up there in Renton?

MM No, when I got towards down, like when I hopped off the one forty (140), cuz I remember

RS Ok.

MM I got it over there by the mall.

RS You got

MM At the Chevron.

RS Ok. all right. So it was somewhere in those transfers that you were make'n you got you got a beer?

MM Um huh (indicating yes).

RS Ok. like at a what a forty (40) ouncer, or something?

MM Just duce twenty-two (22).

RS Just a twenty-two (22) ounce? Ok. did you get somebody to bum it for ya or what?

MM Um huh (indicating yes) anybody to get it for me.

RS I gotcha. Ok.

MM .....

RS All right. Uh what time do you think you you got into Daisy's? I mean, here you are, it's I mean we're we're talk'n the the left at the Benson at eight (8) o'clock, you two (2) hours worth of a transfer ride, ten (10) o'clock sit'n up there, it's uh seven eleven (7-11) up by seven eleven (7-11) now forty five (45) minutes. So it's about ten forty-five (10:45) when you were head'n down to the apartments. How long do you think you were the at that apartment where the kid uh guy got shot?

MM Na. This was later then that.

RS That was ten forty five (10:45).

MM When dude got shot?

RS Well that's what time you're down there at the apartment when you're talk'n about the transfer up off of the Benson, down

MM mmmmm

RS off the bus

MM this was late because

RS Well, here let me finish this

MM .....

RS for a minute to help you out here, ok? so, it's it's eight (8:00) o'clock, you're at the Benson, ok? you're doing the transfers and then you're at two "O" eighth (208th) and then you're forty-five (45) minutes at seven eleven (7-11) to the apartment. Ok? and I'm guessing or we're talk'n about that be'n somewhere right around ten forty-five (10:45) and I know for a fact that the dude, he got shot was right around ten forty (10:40). So how long were you are the apartments? How much time did you spend at the apartments, take'n that elevator ride with that one (1) guy and you used his phone and then you left. How much time do you think you sat out there like you said, you know, you only posted for?

MM A second.

RS Before the shots rang out? so, but how much time do you think you spent with that elevator ride and at the front door, walk'n down the hall, knock'n on the door?

MM Not that long.

RS Five (5) minutes, ten (10) minutes?

MM Man, to tell you the truth, I thought it was way later then that.

RS Um huh

MM I thought it was

RS .....

MM way later then that.

RS .....

MM Na, that couldn't of been the time cuz I don't I don't know. I (paper rustling, can not understand what is being said).....

RS Ok, so how long do you think it took you to get down to Daisy's?

MM Probably like from that walk to the ride.

RS Hour? Two (2) hours?

MM I don't know, they didn't even take that long. I was just not for certain with the times.

RS Ok. well, let's not figure out the exact time

MM Um huh (indicating agreement)

RS cuz that's not going to be possible for you to have a watch on. On right?

MM On right.

RS You weren't pay'n attention to the time? But, how much time do you think it took you? not not time on the clock but, you know, the time it was versus what time it is now, which is somewhere around two forty-five (2:45) in the morning, but how much time do you think it took you to get down there walking and then catching that ride from that person, because if you caught a ride from that person, that's only gonna take about ten (10) minutes. Even from those apartments. To get to one forty-third (143rd). uh maybe fifteen (15) minutes. But you didn't get a ride from the apartments, you got a ride over a ways away from

MM .....

RS the shooting. That takes a little more time off of that ride, doesn't it? so how much time do you think you spent? Half hour?

MM Um I don't know the times.

RS Ok. but you walked, you got a ride and you were there?

MM Yes sir.

RS Ok. so maybe an hour?

MM If you wanna call it an hour

RS Well,

MM .....

RS I don't wanna call it an hour. I want you to help me out here. Would it be about right for you, an hour or an hour and a half, two (2) hours?

MM Na. It wouldn't of took no two (2) hours, but I know um just I just don't know.

RS Ok. um did you talk to Daisy when you got there? Much?

MM .....

RS Ok. what'd you all talk about?

MM Uh right when I got in, I said baby I killed somebody.

RS Right away?

MM Um huh (indicating yes)

RS You said Baby I killed somebody? How did you? tell me how you put it out?

MM It just when I was like man, I killed somebody, she was like uh uh (indicating disbelief), I'm like I'm serious and then she was like what? I was like Na, but I'm I I witnessed murder, I seen somebody get killed, I seen this Samoan dude killed him and everything. She was like well, what are you gonna do? I was like, man what should I, I gotta go to the police gotta tell them. She was like na just wait, just wait. Like na, I have to tell somebody I saw it. told Mr. Comer, started tell'n the preachers sister.

RS Ok. Why did you tell her you killed somebody?

MM Only reason is to see her reaction.

RS .....

MM Cuz she thought I was up here for killing somebody from Louisiana.

RS Wha wha why?

MM Just.....said it one (1) time before.

RS You told you before you were up her from Louisiana to kill somebody?

MM No, for for killing somebody.

RS For killing somebody. Ok?

MM I was young then. I don't know, I just said it. didn't stop.

RS Did where where you really up here?

MM No. I was I'd I'm from up here

RS Um huh

MM I went to Louisiana when my family and my brother, he was get'n locked up so ain't nobody could take care of me so I came back up here, so I can tell that need thing and tell them man, I just robbed somebody I came up here, that's how I was. I was young and then that's when money was really starting to come in. I was just that's my money I'm not I'm not throw'n away.

RS Ok. what kind of money?

MM Just money. Make'n money fourteen (14) years old. Make'n money.

RS Do'n what?

MM Sell'n dope.

RS Ok. so, you told Daisy that you killed somebody just to get a reaction? How did she react?

MM Like.....she was just like what? At first she was like what? And I'm like for real, and she was like for real? Like na, but I seen everything that happen. She was just like what are you going to do? I was like I gotta go to the police, I gotta tell them.

RS Why?

MM Why do I have to tell the police?

RS Ya

MM Cuz I was there, I was I seen it, I witnessed it, so witnesses come forward.

RS You told me before your conscience was bothering you?

MM na. I was just like I was cry'n, I was like man somebody got killed and I seen it. Then I'm the only person who knows sum'n about it, so I have to go say something.

RS But like you said before when we weren't on the tape-recorder here, you said your conscience was bothering you.

MM Ya.

RS It was bothering you then?

MM Cuz I didn't couldn't say noth'n. she was just tell'n me to be quiet. I said, no I have to tell somebody.

RS Um huh

MM Somebody has to know this.

RS Ok. and what were you told?

MM To do?

RS um huh

MM I was told to come down to the precinct. I got some numbers I called up here and then the officers gave me uh uh directions to get up here. Uh I'm on my up here

RS Let me back you up a minute here ok?

MM Um huh (indicating agreement)

RS Um you you told these people what happen and you told Daisy what happen

MM Um huh (indicating yes)

RS And um you and Daisy talked about it, right?

MM Na

RS And what did she tell you to do?

MM She said what are you she goes why don't you just wait.

RS Ok.

MM See what's up.

RS And you waited?

MM No.

RS Cuz this was Tuesday. Or Wednesday morning now, right? You spent the night at Daisy's?

MM Um huh (indicating yes)

RS Did you call anybody uh uh Tuesday night? Or Wednesday early morning hours? From Daisy's house?

MM Na.

RS Ok.

MM I .....noth'n.

RS Ok. who did you talk to next?

MM Uh Ellie pop's mom, the Comers.

RS The Comers?

MM Um huh (indicating yes)

RS Ok and uh when did you tell them?

MM Earlier today.

RS Early today. And why did you tell them earlier today?

MM Cuz I think they should know. I'm stay'n in their house, they need to know it.

RS About what time of the day was it that you told them?

MM Probably like uh, this was early in the morning, probably like eleven (11:00)

RS Eleven (11:00) o'clock in the morning?

MM Cuz it was it was because today was a half day at school.

RS Um huh

MM and Mr. Comer came home to get some papers and I told him. Was like and this is what happened.

RS Ok.

MM And he just started calling people for me.

RS Had you talked to C.C. today?

MM Um um (indicating no)

RS Did you talk to C.C. at all and tell C.C. what had happened?

MM Tell C.C. I was just like sum'n happen.

RS When did you tell C.C. someth'n happened?

MM Yesterday. Someth'n happened, because I was over there.

RS What what what time of the day did you tell here that someth'n happened?

MM I don't remember.

RS Was it in the morning?

MM I don't remember.

RS Ok.

MM No I'm seriously, I just don't remember the times.

RS Ok. and what did C.C. tell you?

MM (long pause) I don't know.

RS You didn't tell her anything more then something happened?

MM I

RS or did you tell her what happened?

MM Na, I didn't tell her noth'n like that. I didn't tell her noth'n, I just like sum'n happen C.C. and it's gonna be alright.....come talk to you guys.

RS Ok, you gonna come talk to the police and you just told her someth'n happened and I gotta come talk to the police.

MM I didn't say noth'n about talk'n to the police.

RS Ok

MM I just man someth'n happened

RS So I'm mistaken when you said

MM Ya.

RS you said.....

MM no.....

RS .....

MM That's what's going through my mind. Like something happened I just got to do something that's gonna make it right.

RS Ok. So, C.C. didn't ask you anymore like what are you talk'n about? Someth'n happen?

MM She probably did, I was like don't worry about it.

RS Ok.

MM I was like don't worry about it, it's gonna be all right. Make it right.

RS Ok. When did you find out that we were look'n for you?

MM Today.

RS What time?

MM mmm Tonight?

RS Ya, what time today?

MM Probably about about it had to be late it was late. It was real late.

RS All right, who told you that the police were looking for you?

MM Daisy had got a phone call from somebody said the police are look'n for you. I was like man what should I do. She's like don't worry, we'll just go down there tomorrow, everything will be all right.

RS Did you call the police?

MM I called the police like three (3) four (4) times. I called the uh uh

RS Right away after you found out or later on after you

MM No

RS found

MM I

RS out?

MM called the police before I even knew the police was try'n to look for me. I called the police officer this morn'n.

RS This morning? And what did you tell the police?

MM Uh I have some information about a shooting I witnessed, I was there. He was like well, come in and give a statement.

PY You told them who you were?

MM Ya.

RS And you didn't tell the police that you thought they were looking for you?

MM That's that's what I say, ya.

RS So you called the police before the police were looking for you?

MM For me.

RS But it the police told you to come in?

MM Ya he was just like come give a statement.

RS Um huh

MM And then I asked the dude dude was like you don't have no warrants or nothing.

RS um huh

MM The man who I just rode in the car with he was like you ain't got no warrants or noth'n, you just here under investigation. Say man I was there man, I witnessed what happen. He was like just give uh just give uh uh a statement. .....is true everything will be fine. That's it.

RS Ok.

MM So I really.....

RS And what happen after that when you told him you'd be coming in?

MM The we're on our way up here, me and Daisy are on our way up here and we get a call from Mama Comer say'n no, don't go up there yet, their going railroad you because you have a background. So just wait, we're gun getcha an attorney. There you go, turned around went back to Mama Comers house.

RS Ok. and then what happen later on this evening?

MM And I was smoke'n a cigarette walk'n around the block, police pull up, a

RS You're just out

MM who bunch of police.

RS Ok, and you were just walk'n around the block?

MM I'm smoke'n a cigarette. I just came back police.....na I got a friend stay right around the corner from Daisy's uh Uncle house. And he stays right on the corner and that is we was smoke'n a cigarette on his porch. Um so we're standing there, I'm like why is the police all the ways around there? And then this hell of them vans and everything, I'm like who they look'n for?

Statement Participants:
RS Detective Ross Stuth (Interviewer)
PY Detective Paul Young
MM Matthew W. Moi

Transcribed by: J. Clark 0106
October 23, 2004
R:/Jennifer/04-3328RS1.doc

**********New Transcriptionist**********

MM We go back and do what the officer says, go back in the house. So we go back in, and it's like, I'm going down to the house. I come out and I'm walkin towards uh, towards Mama Comer's into (unclear) and says get on the ground. What's your name? Matthew Moore. He says you're under arrest for an investigation.

RS So they go to her house and you know it's you they're looking for?

MM Mm.

RS OK. And you ... go up to the house to meet 'em.

MM Meet who?

RS The police.

MM No, I go up to the house to see the home, my home boys. And we're standing on his porch 'cause he said go back in. We go back in, and I'm like, man, they're not worried about us. Why are they... you know what I'm sayin'? So I come back out and I'm like, I'm fixin'... I'm gonna holla at ya, I'm fixin to go. Come out, smokin' a cigarette, and cops pulled a gun on me. It's like, who are you? Told 'em my name and everything.

RS OK. When you went to Daisy's house the night that the guy was killed in the apartment, shot in the apartment, um, what were you wearing.

MM Uh, I was wearing my black jacket. I was wearing these black pants. My shoes, and a white hood.

RS OK, so the clothes you have on are the same clothes, minus the jacket...

MM Yah.

RS minus the jacket, the clothes that you have on are the clothes you had on the night the shooting took place.

MM Yep, these jeans.

RS And the sweats underneath, and the shoes.

MM Yah.

RS And the hat?

MM The hat?

RS Yah, did you have a hat?

MM I didn't have no hat.

RS OK, but you had a jacket with a hood?

MM Mm.

RS OK, did you have your hood up?

MM Nope.

MM So it was down.

MM For the whole time.

RS OK, and uh, where's your jacket at now?

MM At Mama Comer's house.

RS Ok, have your clothes been cleaned for you since...

MM No, not these.

RS that Tuesday night?

MM Not these.

RS They're the same clothes then... they haven't been cleaned since Tuesday.

MM Nope.

RS OK, alright.

MM Just my underclothes. That's it.

RS Alright. And what you've told us so far, is that you wouldn't have any reason to do harm to any of these people?

MM No, I don't. I don't have no reason to do that.

RS OK. Even though, as we've talked about already, when we were off tape about the incident that happened to Jonathan Otis down at Redondo Grill. Even though what we've talked about already, off tape and on tape, your mother was jumped, but we probably believe it's probably Hoover's that jumped her when she got robbed on the highway, 'cause that's where it occurred. Right?

MM Mm.

RS You're not upset about that?

MM No, I don't.

RS You were out there at the apartment just to go visit with some of these friends of yours who are hooters, which you're not anymore 'cause you jumped out. You got your ass beat once you jumped out just to regain your name so that you're no longer a Hoover. You don't have any grudges with anybody, this is all done by some strange man, a Samoan man.

MM That's the hype.

RS Unknown to you.

MM I don't know.

RS Even though you may have told someone and that name Daisy, which you've given us already, that you killed it. You didn't mean to say that, only just to get a reaction out of them. Just like you've done in the past, tell her you're up here from Louisiana killing somebody. How long ago was that you told her that?

MM A long, long time ago.

RS Like years ago?

MM Years ago when I first met her. We've been together for five years.

RS OK. Alright. And this male, you'll identify him?

MM I will. I'll (unclear)

RS OK, alright. Do you have anything, Paul?

PY How many times you've been to that park?

MM Uh, I've been there about three times.

PY Who went with you before?

MM Me, Greg, Otis uh, I was there with Greg and Otis. We was going to look for Darius. You know.

PY Why'd you park (unclear/quiet)

MM In don't know. That's where they all be at. They just all be out on the steps.

PY So they just... you know, Otis doesn't live there...

MM No.

PY And Darius doesn't live there.

MM But they be there. I know you didn't...

RS Why is Greg and Otis going over there?

MM No, this is when JO was alive. John was alive.

RS Ok, this is before you've gone into... into jail.

PY You came... you don't even know who's apartment this was? It wasn't like, I'm makin' up a name here... it was like Mad dog's apartment or anything like that?

MM No, I don't know who stayed there. I was just there for my friends. They was there.

PY You never met the owner of the apartment?

MM No, 'cause we didn't never go in like that. We just stood right by the steps. Everybody just be right by the steps. Everybody.

PY When was the last time you were there? Not Tuesday. Was that Tuesday, the shooting?

RS Mm.

PY When was... when was the time your were there before?

MM Last time I was on the highway was... October. Probably October.

RS So this would have been before you were arrested and jailed.

MM Before I was put on parole.

RS Before you were put on parole. So that would have been when you were a Hoover?

MM Mm.

RS You hadn't been there for at least a year. 'Cause we're in October again. A whole year. And you've been out since June?

MM Mm.

RS June, July, something like that?

PY Did that meant you decided to hop a ride all the way from Renton?

MM We always... we always talked to him. It's just ... you know I'd be with Greg. Greg would be like, I talked to Tonya Neal (unclear) and I said how you doin' and stuff. It's like, I'm kickin it with him sometimes. It was like I still be with him. Because Tonya and them, they were going through it when JO got killed. 'Cause JO loved those other guys just like he loved me. We all kicked it together, we always together all the time.

RS So you chose this night to go up there to kick it with them?

MM I just kickin it... just kickin it to see what's up.

RS OK, same night that you're upset that your mother got jumped.

MM No, I wasn't upset. I told you I got just...

RS You got over it.

MM Yah. Basically. I was upset when it first happened, but I need to leave it alone.

RS OK, alright.

PY Did you ever head... did you ever go downtown?

MM Mm.

PY Hang out... where out in downtown?

RS Third, first, second?

MM Pioneer Square. That's where all the Hoovers be. Just because you got jumped out, doesn't mean they're not going to show you respect. They'd probably like you more that you got jumped out.

PY Do you know D Lock?

MM D Lock? Who's that? A Hoover?

PY Yah.

MM D Lock... no. I know a D Loke.

RS Well then again, I'm not...I don't live on the streets. It could be D Lock or D Loke. Do you know D Loke?

MM Uh, I heard of him. I don't know of him.

RS Is he a Hoover?

MM D Loke. That sound that a hood name. Some hood dude's name. D Loke.

RS So you know Tiny Nut? Or Little Nut?

MM Little Nut.

RS You ever had a beef with Little Nut?

MM No. That's gangster... the rapper. That's his little homie. Nah, man. Nothin' like that. Never.

RS Who's little homie?

MM Alright, there's OG, and there's the OG's little homies. And gangster Nut is a rapper. He raps. He's a rapper, but he's a Hoover. And MC is his little homie. He put him on. He jumped him in.

PY Is that how the hierarchies goes? I mean, you're a gangster nut, then you get...

MM Baby nut, little nut, tiny nut...like that. That's how they go.

RS So little nut is...

MM He's gangster nut's little homie. Wouldn't nobody mess with him. Nobody in their right mind would want to. Nobody.

PY If somebody wanted to mess with him, what would they do?

MM Nah, he's... everybody knows him 'cause he's gangster nut's little homie. You know what I'm sayin'? Everybody listens to him. You listen to big nut, you go and you hear about little nut. That's how it is.

RS So where... when you were in the Hoovers, where did you fall in this pecking order?

MM I was a rat. Tiny monster rat, I'm little monster poo.

PY OK, I'm getting tired here... so you were on the bottom?

MM Nah, I'm like in the range of the middle. Like it'd go, OG richie rat, monster rat, little monster rat, baby monster rat, monster coop. That's where I was. Then it got... then it got, went from baby to tiny monster rat. Then you got just wild names. Uh, wet rat, sad rad...

PY You gotta work up to be...

MM A rat. Nah, it's just like a age range. Like alright...

PY If you got older if you still in, would your name ever change? Would it ever have been...?

MM Nah, I was just monster poo. Not no little monster poo or big monster poo, just monster poo.

RS Monster poo. Do you go by Mad Matt?

MM Mm.

PY We know what happened when you got out. You got jumped out. Somebody way up (unclear) says I'm tired of this life. You know, the babies want out. Talkin' of the shit going on her now. Did he ever got?

MM What do you mean?

PY Does anybody ever get out of a gang?

MM Yap. You can, man. It's not like how you guys look at it, oh you gotta get kicked to get out. You don't...

RS Not if you're a girl. But if you're a general?

MM If you're older?

RS Yah.

MM There's no getting' out. You're in it for life. That's something that you gonna have to live with.

RS But what if you want out? What if you say, I don't want in. I don't want in no more.

MM Nah, you look at the OG's like it's the older guts don't bang. They don't be on the Hoover this, Hoover that. They don't bang. They represent. They got order (unclear) but if something happens in the neighborhood, that's when it happens. Or you see the older guys here, you can out, man. Just be like, I don't bang no more. I don't do that no more. And they're not gonna be like, oh, you a sucker. No I'm too old for this. That's what they're gonna say, I'm too old. I'm tired of bein' out here on the block everyday.

RS But what happens if the guy hasn't been there long enough to be OG. You know...

MM And don't wanna...

RS Don't wanna be there.

MM It's all in the situation you're in. It's just how deep you're into the gang, if they uh, depend on you for stuff, nah you're not gonna get out. But if you stay to yourself all the time, you know what I'm sayin? You don't be around the gang, but you represent it. If somebody come up on you when you a Hoover, and they say... they respect. Respect.

PY But then again, if somebody was talkin' out, what would happen?

MM I don't know. I never... you know what I'm sayin? I'm not... I wasn't put in that position. I was able to get out because I was still young. And I got put off my some young cats.

PY Um, you don't know who got killed?

MM I don't know his name.

PY You... the last time you were there on Tuesday night, you were telling us you weren't there until October. You got out. How many times other than those two times were you ever there at that apartment?

MM Just the pass through sometimes.

PY And you never met the homeowner?

MM Nope.

PY And you don't know who lived there?

MM Na uh, just the homies be up there.

PY So if I told you that Little Nut was killed, the guy that 's dead had two babies in his apartment. Baby nut.

MM No I... who got killed?

PY Do you know a name?

MM I don't know him like that. I just use... you hear the names, you know cats by their older homies. Ok, gangster nut, well they got a little nut behind him. That's it. That's how I know him. I wasn't really into the gang. I thought we were gonna get filthy deep and walk around and go... no, I stayed to myself. I'm always to myself. I don't...

RS Which... when... Darius and all those guys, wouldn't they tell you who's missing? So and so's place (unclear)

MM No, I actually never asked. (unclear) it's about the clothes (unclear) I aint even really worried about it.

RS I don't even believe it. I mean I would... I think I'd want to associate with gangster rat or monster rat or baby nut, or whatever.

MM I just don't look at it like that.

RS It's Baby nut.

MM Baby nut.

PY Yah.

MM See I aint never met him or nothin'. And that's who's house it was?

PY Mm.

MM Shoot, I didn't meet him or nothin'.

PY You never got in a fight with a guy by that name?

MM No, never.

PY That's contrary to what we're hearing.

MM You guys is hearin' I got a fight with him? I aint never met him. If I would have got in a fight with him, if it was the owner of the house who came out, he would have took off on me right there.

PY No. He maybe got on first avenue. Larry's... ?

MM I got in a fight with him?

PY Yah.

MM No, never.

PY OK, again I'm just tryin' to ... people tell me stuff and...

MM Never.

PY I appreciate talking with you. Just trying to confirm what people are saying.

MM Mm.

PY You ever hear of little Capone?

RS Ok, the time is 0317 hours. Uh, we ran out of tape on the second side. This is uh, the is now the second tape, first side. This case number is 04-3328. This is uh, and interview with Matthew W Moi. M-o-i. And uh, Detective Stuth and Detective Young present. Um, Detective Young was asking Mr. Moi about Persons on first avenue, and different names and marker names. That's where we left off at about 0314 hours. Again, we're reserving uh, on this tape. Go ahead.

PY Back to what I was asking... if you've ever heard of a guy by the name of little Capone.

MM Little Capone. What's his real name?

PY I don't know. Did you know what his real name was?

MM No.

PY No. Do you know...

MM I know, I know, I know some thugs, yah.

PY OK. How about Little Spoon?

MM Little Spoon? Nah. Nah, I heard of Little Spoon. I heard of him. I know of him. He got killed, didn't he?

PY Yes.

MM Yah, I heard of him.

PY What that Kilgore, or was that the name?

MM Kilgore? Was his real name?

PY Yah.

MM I don't know his real name. I know of him.

PY OK, so you know people by there street names before you know...

MM Nah, sometimes it 's like on faces, OK, he goes... 'cause so many people got the same name. It's just like... 'cause whatever there's big, there's a little. Whenever there's a little, there's a big.

PY So there's a big spoon and a little spoon...

MM Little spoon, baby spoon, tiny... yah, it goes down the line.

PY OK, um...

MM I don't about the spoons though. I think it's just him and his big brother. He got a big brother. I heard all about that from Monster Rat himself.

PY OK.

MM Monster Marshall. You can ask him, but he's locked up by now.

PY That's right. He is Monster Rat. Um, ever heard of a guy by the name of Little Tone?

MM Little Tone? No sir.

PY You never heard that name?

MM No. Little Tone? No.

PY Baby Tone, or a variation? I mean the guy was...

MM Nah.

PY OK, no Tones. Um, how about baby C?

MM Baby C. What's his real name? See I don't know these cats like that. I'm tellin' you, I was a Hoover, but I stayed to myself.

PY But if you knew Marshall, you would have known baby.

MM I was locked up. That's how I met Marshall. They was chargin me as an adult when I was fifteen...

PY You didn't know Marshall on the outside before he got locked up?

MM Mm. That's how I met him. In jail. Being charged as an adult.

PY Ok, how about D? You ever heard Marshall talk about D? Randall Embry?

MM I.. I...

PY Bad man. Bad man. Um, but Marshall never talked about D?

MM No. He was messy, but he wasn't ... what he really used to talk about was Baby Spoon, Little Spoon. 'Cause that's right around the time he got killed when I was locked up.

PY OK. Alright. Earlier you were talkin' about... I'm just clarifying... the shooting's gone down, you're running. You told us you were running down hill.

MM I ran down... like once you get to 216th, if you run towards...

PY And you ran out of the apartment?

MM Mm.

PY Let me even take it back a little bit farther. You're in front of your partner. You're saying you're at the door and you keep... you were talking... demonstrated by you looking over your left shoulder. Is that where this guy comes from?

MM Yep. He's right...

PY He goes, you're a Hoover?

MM Yep.

PY Get the fuck out a here.

MM Just like, get out of here.

PY Get out of here. How did you get out of here?

MM I walked. I passed 'em.

PY You just...

MM No, I just... I passed em. He was right there.

PY OK, but the wall... we're looking at this wall, and here's an apartment door. If we can visualize the apartment door on this wall here.

MM Yah. This is the hall.

PY Right. Where's this guy that you...

MM If I do, he'll bump me. Dude's right behind me. I do this... you from Hoover? Uh huh, (meaning no) so I'm down. (unclear last word)

PY So you cut between... you went to the... you went to the left.

MM Yah.

PY You broke to the left around him.

MM On his left side.

PY OK.

MM And that's when I... I left.

PY What's this guy doing?

MM I don't know. He's just standing there. The dude is like, get out a here, so I'm like, walk fast. I didn't see where he was goin'. I did not see.

PY So you break out those double doors? Which way did you run?

MM Uh, to the right. Straight back towards the store.

PY Down the parking lot, or through the woods?

MM No. Down the parking lot. Straight down the parking lot.

PY So you hopping through the parking lot.

MM Mm.

PY You can see...

MM 7-11 to Safeway.

PY You can see the Safeway. Safeway's dead ahead. Which way did you go?

MM I went right across the street by 7-11, and then I was just (unclear)

PY So you broke to the right, or did you...

MM Look, alright. Come out of the apartments, it's a right. You'll go to 7-11 towards your right.

PY OK.

MM Uh, I cross the street by the 7-11. I'm right in front of the 7-11 store. I'm like... man I don't know. The dude's... so I just start going straight down the hill.

PY Straight down the hill, I mean, north, south? Up the hill, Pac Highway?

MM Down the hill. Down the hill. Down the hill is towards Letroy.(unclear last word)

PY And back where you came from.

MM Mm.

PY I mean...

MM Yah, it was towards, yah.

PY You see the cops coming?

MM Yep, I lock em in and say I'm down the hill. As I go down the hill, here come the cops. They're coming back up.

PY OK, you just saw somebody get shot, and you think you're gonna get shot.

MM Mm.

PY You're trying to tell us now that, you know, you gotta tell somebody. Why didn't you stop and say...

MM I don't know.

PY 'Cause you're now...

MM I don't know that much... I was just panicking. I just like, man, let me go. Before this dude come out and try to kill me. That would have been me. If I would have said, yah, I'm from Hoover, man, I would have got shot before dude did.

PY But, but the cops aren't gonna shoot ya. You said shooting just happened, so I came down.

MM That hadn't even went through my mind at all.

PY OK, but the first thing that ran through your mind when you got to Daisy's house was, baby I just killed somebody.

MM Mm.

PY Where did that come from?

MM I don't know.

PY Why?

MM 'Cause I always come up with stupid shit like that. I said it before.

PY But you won't stop the cop to tell him that somebody got shot, but the first thing you tell your girl, or the people you're stayin' with, is baby, damn it, I just shot somebody.

MM No. It wasn't nothin' like that.

RS But you said, baby, I just shot somebody.

MM Baby I just... he's tryin' to say, baby I just DAMN... I just shot this. It wasn't like that. I was like, baby, I just shot somebody. She looked at me, she was like, for real? She was like... I was like yah. She was like uh, what you gonna do? I was like, no I just seen a murder happen. I just seen somebody get killed and everything. She was like uh, are you sure? You seen somebody? I was like yes man, someone walked right past me, asked me if I was a Hoover. I said no.

RS How are we supposed to understand it though, and try to understand that a Samoan shot him when um, let me throw this out to ya, man. OK? That um, first you tell Daisy that you shot somebody. Um, that kinda confuses us a bit. And Daisy tells us this. And then when we're talking to you, when we first started talking to you earlier this evening, um, you didn't even tell about you being upset about what happened to your mom?

MM 'Cause I was...

RS You're upset about what happened to JO. You're kind of denying that JO... that the Hoover's had anything to do with his death, but you can't do anything about it because you're in jail. And then you know...

MM But I talk to people though. You talk to people...

RS To top things off, I mean you know, you jumped out of Hoover. You jumped out of Hoover. That's pretty serious stuff.

MM Before JO got killed...

RS Granted you got gone, and that's why you're jumping out. You wanna get your name back. And your mom... you mom's been wronged. Your mom's got problems, but she's been wronged. And it sounds like you're upset and everybody feels that you're upset. That's what they're telling us, that you're upset when you left them. And you're going into territory to go see people you haven't seen for better than a year. Or at least a year.

MM No, I seen em. I aint never said I aint seen em...

RS You never see them up there.

MM Yah.

RS And you're going into their turf there. Um...

MM I be at their house, man.

RS How come you didn't tell us about your mother when we first started asking you about what happened that day? And we were going through minute to minute practically, or you know, we were doing it in like five to ten minute increments. And that would be significant. If you're telling us about what happened during that day, that you know that the police are going to do their work, and have their homework in front of them.

MM Mm.

RS And you know the police are going to find out that you were upset. And why didn't you tell us that? Until we had to get it from you.

MM It slipped my mind.

RS It's just your mom. It's not a big deal.

MM Nah, I said it slipped my mind. It wasn't...

RS It slipped your mind. I'm sorry, I thought you said, it's just my mom. So it just slipped my mind.

MM Yes sir.

RS Ok, and that slipped your mind.

MM It happened man, come on now.

PY That's pretty traumatic when you both agree that your mom got beat up or robbed.

RS Could you have told Daisy that you killed a guy because you felt like that's the way you felt because of what happened to your mom and what happened to JO, and you just FELT that way about everything that's gone on with... going on in your life in the past year.

MM No.

RS Jumping out. Mom getting jumped. JO getting killed.

MM It's not like that. I mean I'm no... I really just...

RS Are you feeling... but are, I mean is that what's kinda spawning you or encouraging you to tell Daisy that you killed somebody?

MM I was like man, I told her that before. It was like it was nothing.

RS So you're just freaking her out.

MM Basically.

RS You're just freaking her out.

MM I'm not tryin' to like that, I mean...

RS I mean I... I... I've know my wife for 27 years, I don't know how long you've known Daisy. Obviously not that long, 'cause you're not that old.

MM I just...

RS But you've know her for five years and you've done that once before a long time ago, and it freaked her out. And now you're going to try it again. And she says you're a bit more intoxicated than what you're saying you were. She saying that she had to help you get out of your clothes and get undressed.

MM No.

RS And you're saying that didn't happen.

MM That didn't happen.

RS So she's wrong.

MM I'm just saying about me. Oh you gotta undress me and all that? Nah. That's not right, no. 'Cause her friend Kevin was there and everything.

RS OK. Kevin?

MM Kevin is her friend. A church buddy.

RS OK. She's very religious.

MM Mm. All them years.

RS And you wouldn't want to deceive her?

MM Nope.

RS But you did anyway.

MM Nah, you're not... man, this is like, me and Daisy are friends, right? We've been going out. We broke up to... you know what I'm saying? To get closer with God. Both of us. But it's not like that. I just come up with, man, come up with anything. Told her I got jumped, I didn't get jumped until...

RS OK, alright. But the time you were... when you first met her a couple years ago when you told her you killed somebody, that didn't happen.

MM Look, three weeks ago...

RS OK.

MM I supposedly got jumped. I didn't get jumped.

RS OK, but you told her you did.

MM Mm.

RS Yah.

MM You aint gonna (unclear) heard at.

RS No. Huh? I'm not gonna go out and tell her you didn't get jumped. But you told her you got jumped. So you lied to her.

MM Basically.

RS And when you told me earlier lying is a sin and you wouldn't do that, but you've done that.

MM With you guys it's not.

RS I'm asking you this...

MM ... make it seem how it's going...

RS don't, don't... I'm sorry but, but you told me here earlier, lying is a sin and you wouldn't do that.

MM But every... I go back and say, man...

RS But you've lied to Daisy. A woman who you're very interested in, who you've had a relationship for five years, and now you're asking me, please don't tell her that three months ago I told her I got jumped, when you didn't.

MM Nah... I told her I didn't get jumped.

RS You didn't get jumped, but you told her you did.

MM Mm.

RS Yah, and that's lying.

MM If that's what you wanna call it.

RS You called it lying.

MM No I said this is just stuff I just do to play with her. I don't ... I don't go up to her intentionally all up... I fixin to... I fixin to go tell Daisy if you go lie.

RS But did you get jumped?

MM No.

RS Did you tell her you got jumped?

MM Yah.

RS Isn't that a lie?

MM But it's... but I'm not taking it... you're taking it totally different, you're taking it as, oh baby I just got beat! Nah.

RS You got beat up?

MM No.

RS No, you just got jumped.

MM Yah. I got jumped.

RS Like somebody jumped you... took the stuff out of your pockets, or took whatever you...

MM No, jumped is just jumped. Like more than one person.

RS OK, alright. But you were able to hold your own and fend them off.

MM Absolutely, it's how it goes.

RS OK, so you were kind of building yourself up.

MM Basically. The boy who cried wolf.

RS OK. Trying to get a reaction out of her. Get sympathy.

PY Isn't that a sin?

MM She... listen... what you're sayin...

RS Making a false statement...

MM this is what you're sayin... I go to her... alright your going with the intentions to tell her, you're... I got jumped.

RS Yah.

MM But then never to tell her the truth again. Never to tell her what really happened. No, but I'm going up to her as OK, I 'm fixin to see what my baby say about this... baby, I got jumped. Just stare at her... look in her eyes. I got jumped. What's she gonna think? Well who jumped you? I don't know who jumped me. Are you serious? Yep. And then she's... don't worry about it.

RS So you're asking us then to believe you about the Samoan, 'cause that part's true.

MM I'm telling...

RS Don't believe you about telling Daisy that you killed somebody, 'cause that part's wrong. And believe the... and believe me that I didn't get jumped three months ago, but I told Daisy I did, and that part's wrong. And...

MM No, all I'm sayin is you...you...

RS You wouldn't lie.

MM You really believe what you want, right?

RS Right, right.

MM You believe what you want.

RS I'm believing what I have to understand and ... how things are put together. And I'm not quite understanding your... your motive and your ideology or your ideas about how you interpret things of whether it's a lie, or whether it's just to have somebody feel sorry for you, or playing around.

MM Playing around.

RS But you know, in this particular case, um, when you told her you got jumped and you really didn't, you're playing around. But when you told her you killed somebody and somebody died, you're not playing around.

MM I was playing, but I...

RS It's serious.

MM No, nobody died. And I didn't shoot or kill nobody.

RS And when you're... and when you're upset about what happened to your mother, when you're upset about what happened to JO, and you're jumped out of a... of a gang, that you haven't been over in their turf in better than a year, I don't know to believe whether you're telling me the truth or you're lying about what your motive is for going over there. Because you're telling me you're going over there to visit these people, but the last people you had contact with, they understand, or they were under the understanding you were upset about the people you were going over to see. And of course, that's an apartment number, or an apartment unit that you...

MM That's their assumption.

RS again, that's their assumption, you're right. And that apartment number that you went to is the apartment number you're familiar with from a year ago as to where to find Hoover.

MM Nah, I just ... I be up in through there! Man, I'm telling you!

RS But you know that's an apartment where you'd find Hoover, correct? Is that right?

MM No, it's not.

RS You were there a year ago.

MM ... where I can go find my friends. You're makin it seem like...

RS Who are Hoovers, correct?

MM Yah, yah but they're just... man, they're my friends.

RS They're your friends, and you're going to an apartment where you can find your friends.

MM Yes sir.

RS And they are Hoovers, correct?

MM Yes sir.

PY And these are good friends where you hadn't seen them for six, seven months. And on this night, you wanted... now you... you wanted to see them... haven't seen them for six or seven months, and for some unknown reason, you find your way down there on the same night of the shooting.

MM That's how it happened.

PY OK, alright. Anything else? I... I... I guess, you know... you don't have children. You're not fortunate enough to have a baby. We have children. Every now and then we... being parents, our kids tell us little white lies that tend to kind of grow and grow, ok? I forgive them. OK? I tell it's wrong, but they know, you know, I will.. they still need to be punished though. You know, it's kind of a (unclear) thing. I think that's where you need to be.

MM What?! (whispers)

PY OK?

MM Basically you're sayin... basically you're judging me. You're saying you need to be punished for what you did, which I didn't do nothing. There's nothing I did.

RS You've lied to us.

MM How?

RS Telling us, you know... part of that story tonight. Not the whole story, but you know, leaving stuff out about your mom.

MM That wasn't me. Now, come on, now. I feel that you guys got something personal, I mean, that you guys...

RS Well you... it's something personal that I ask you to tell me everything that happened...

MM I know, and then I said it slipped my mind.

RS It slipped your mind.

MM Things happen like that.

RS But then when we got to the part about Daisy, and you told us about that, but it slipped your mind to tell us that you actually told her that you killed someone until I told you that. She said that. And then you denied it, and then you said, you know detective, you're right. I did tell her that.

MM 'Cause I told you I have no reason to lie!

RS But that didn't slip your mind. You just omitted...

MM No, that's what you said, oh, you said that... that it came to mind. OK, I did say that, I remember sayin that.

RS But Matthew, you omitted it. In other words, you intentionally omitted it...

MM No, I did not...

RS Until... until after I confronted you with it. So, at this point, I think there really isn't any need for us to go on further...

MM Why?

RS with tape recording this statement... because I... I think we're at a point right now where you know, you ... you believe what you believe as far as the Samoan coming in?

MM That's what I think, sir.

RS And other people believing other things with someone else...

MM Not being there. They seen me shoot somebody?

RS They seen you shoot somebody.

MM Who's seen me shoot somebody?

RS Well, at this point I'm not at liberty to tell you who seen you shoot somebody. But somebody's dead. They've been shot. And somebody's here to tell us that you told them you shot them.

MM That's... and I TOLD you, I said that, but I didn't...

RS And then you recanted it after you told her that.

MM Yes, told her right after...

RS Let finish, Matthew. And nobody else was seen leaving that apartment complex except you.... were the only shadow going out the doors. No one else was seen going out the doors, other than the witnesses trying to find who did it. A male wearing black clothes. A black male wearing black clothes.

MM And I'm telling you that the Samoan dude had long hair, had tattoos on his hands, I'm telllin you, OK?

RS And we've got that. We've heard that earlier. So at this point, unless detective Young, we're going to go ahead and conclude the interview. But before I turn the tape off and get the time down, I just want to go over this here real quick, alright? Nobody's made any threats to you? Is that correct?

MM Yes sir.

RS Nobody's made any promises to you, is that correct?

MM Yes sir.

RS And you're giving this statement on your own...

MM Free will.

RS Free will. OK, and nobody's deprived you of anything?

MM What does that mean?

RS In other words, we haven't let you go to the bathroom. We haven't let you have a glass of water, or whatever you needed. If you wanted something, all you had to do was ask for it, right?

MM Yes sir.

RS OK, alright. Then let's go ahead and conclude the tape. I thank you for your uh, for your time. We've been here since 2:15, and it's now 3:39 am. Well yah, we've been here since 12:30, but we've been tape recording since 2:15. And it's 3:39.

END OF STATEMENT

Catherine Palmer

Second part of tape was transcribed by Record Specialist Catherine Palmer, 0107

Appendix F

PEY-49

04-3328

04-26-05

State Exhibit 94

04-1-08866-2K

STATE OF WASHINGTON
VS
Matthew Moi

Offered and Admitted

FILED
KING COUNTY, WASHINGTON

NOV 13 2007

SUPERIOR COURT CLERK
KARLA GABRIELSON
DEPUTY

O-Dog

fam, you are a real man,
I feel the Lord put you here.
Man!, I aint going to lie to you
I cry all the Time about this
Because two young Brother Have
lost there lives over nothing.
sometimes I feel like Just
giveing up But it is not in My
heart to. I fall to My Knees every
night and pray for Baby nutti fam
I Know theyer going through it,
some people dont even want to
here this. But it is real. I
dont like telling people Because
I dont want people to think
that Im a Killer, Because Im
not, I stay in the Bible
to try to make a difference.
you Know Moses the one in
the Bible? He had a passion
for his people so grate that
he Killed a man. I never
new that tell I got in here
I have gave My life to (GOD)
and I try to live for his
purpose. I will not waste My
life. I feel this will Help.
I could see if I was Just
going to waste the rest of
My life, then Just do away
with me. But Im seeking help
from the Lord. Because I Know
that he is the only one that >

Confelly help me with this
But I want to thank
you for trying to help to
and your not like fam you
are fam no matter what happens
to me. if something Bad
Happen to me were I Happen
to die, it say's in the
Bible; The day you die is
Better than the day you are born.

I learned that in this game
as we kill each other, Its
a never ending story. No one
wins and we all loos

But for real, with all my
Heart. thank you and I'm
playing for you too.

Matthew

Try to take this to the Heart
and really feel me.

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Matthew Wilson Moi, DOC #873600, the petitioner, at Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, Washington 98326, containing a copy of the STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION, in IN RE PERSONAL RESTRAINT OF MATTHEW WILSON MOI, Cause No. 70180-1-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 12th day of September, 2013

U Brame

Name
Done in Seattle, Washington

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 SEP 12 PM 4:23