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THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

CHARLES V. FARNSWORTH,

Petitioner.

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

---

RESPONDENT AND CROSS-PETITIONER'S  
SUPPLEMENTAL BRIEF

---

NANCY P. COLLINS  
Attorney for Respondent/Cross-Petitioner

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, WA 98101  
(206) 587-2711

 ORIGINAL

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A. ISSUES FOR WHICH REVIEW HAS BEEN GRANTED

1. Robbery requires the immediate use or threat of force to steal property from another. James McFarland entered a bank, waited in line, gave the teller a note asking her to “put the money in a bag,” and said “thank you.” Did the Court of Appeals reasonably evaluate the evidence and conclude he did not steal by threatening immediate force?

2. To be an accomplice to robbery, a person must aid in the robbery with the knowledge he is aiding this specific offense. Charles Farnsworth knew McFarland was alone, unarmed, and would present a note to the teller asking to put money in a bag. Did the Court of Appeals reasonably find there was insufficient evidence Farnsworth knowingly aided McFarland in forcibly stealing money?

3. Several rulings by the court impacted the fairness of the trial. The court limited Farnsworth’s cross-examination into McFarland’s credibility, let the prosecution inform the jury Farnsworth had prior convictions for similar robberies, and admitted evidence showing Farnsworth was a dangerous and dislikeable person. In a prosecution based on weak evidence, did these errors affect the jury’s evaluation of Farnsworth’s responsibility for McFarland’s acts?

4. Was there insufficient evidence Farnsworth was convicted of a strike-eligible offense when his 1984 California conviction for vehicular manslaughter was based on statutes with different elements than the potentially comparable Washington offense and the State did not prove the factual basis of his guilty plea?

B. STATEMENT OF THE CASE

Wearing an “auburn wig” and “really big glasses with diamonds,” bearing the grizzled face of 69-year old long-term heroin user, and slowed by emphysema and a noticeable limp, James McFarland waited in line to see a teller at a bank. 9RP 436, 440; 11RP 716, 870, 996; 14RP 1262-63, 1290; Ex. 31. He was “very quiet and very reserved.” 11RP 868. When it was his turn, he approached a teller and gave her a note. 9RP 481. He did not speak. 9RP 485. He did not imply he had a weapon. 9RP 531. The note said to put money in a bag but he did not have a bag. 9RP 484.

The teller was familiar with bank policy that instructed her to give McFarland what he asked for “as quick as possible.” 9RP 486. She did not have cash in her drawer, so she immediately took smaller denominations from a nearby station. 9RP 495, 526, 532-33. When she handed the money to McFarland, he said, “thank you,” and walked out.

9RP 486; 11RP 875. The teller was very shaken up after the incident but when it occurred, she focused on following bank policy to retain the note and get him out as soon as possible. 9RP 484, 531, 534.

According to McFarland, the plan to steal money from the bank arose when Farnsworth claimed he would rob a bank to pay for his share of heroin and McFarland offered to do it with him. 13RP 1203, 1207. But Farnsworth was “hem-hawing” and “making excuses” all day. 13RP 1232. McFarland decided Farnsworth “wasn’t going to do it.” 13RP 1231. McFarland “got mad,” and “snatched the wig” from Farnsworth, saying “You ain’t going to do nothing.” 13RP 1233. McFarland believed Farnsworth had “backed out.” 13RP 1239, 1241.

Facing a sentence of life without the possibility of parole if convicted of robbery, McFarland pled guilty to robbery and theft with the State’s promise that after he testified against Farnsworth, it would move to vacate the robbery. 14RP 1258-59; 14RP 1397-99. But when testifying, McFarland insisted he pled guilty only to theft, not robbery. 14RP 1347. The court refused Farnsworth’s request to confront him with his guilty plea statement to show he was relying on the State to vacate the robbery conviction to escape a life sentence. 15RP 1396-99.

After Farnsworth was convicted of first degree robbery, the State claimed his 1984 California vehicular conviction was comparable to Washington's vehicular homicide, and combined with a prior robbery conviction, required a life sentence under the Persistent Offender Accountability Act (POAA). 2/24/12RP 4, 9. It alleged the California conviction rested on Penal Code § 192(c)(3), and said the citation to "PC 192(3)(c)" in the complaint and judgment was a typographical error. 2/24/12RP 20, 22. Farnsworth objected to the comparability of the offense, noting that Washington had a different causation requirement than California and the State had not proven he was convicted of a factually or legally comparable offense. *Id.* at 50-58. The court found the California conviction comparable to vehicular homicide and sentenced him to life without parole. CP 695-707.

The Court of Appeals ruled that the evidence reasonably showed Farnsworth was an accomplice to first degree theft, not robbery. Slip op. at 9. The Court of Appeals did not reach the sentencing issues because Farnsworth did not face a persistent offender sentence for first degree theft. *Id.* at 20. This Court granted the petitions for review filed by the State and Farnsworth.

C. ARGUMENT.

**1. A request for money by an unarmed, unthreatening man is insufficient to establish the essential elements of robbery, as the Court of Appeals correctly held.**

*a. Robbery requires the purposeful use or threat of immediate force to steal property.*

Robbery is an aggravated form of theft containing the additional element of using or threatening immediate force or injury for the purpose of stealing property from a person. *State v. Witherspoon*, 180 Wn.2d 875, 888, 329 P.3d 888 (2014); RCW 9A.56.190<sup>1</sup>; *see* RCW 9A.56.030(1)(b) (defining theft in the first degree as wrongfully taking property “from the person of another” or wrongfully obtaining property worth over \$5000). The intent to steal is also an essential element of robbery. *State v. Kjorsvik*, 117 Wn.2d 93, 98, 812 P.2d 86 (1991).

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<sup>1</sup> A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of *immediate* force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial.

RCW 9A.56.190 (emphasis added). When a robbery occurs “within and against a financial institution,” it is elevated to first degree robbery. RCW 9A.56.200.

Robbery's requirement of "immediate" force means the use or threat of force "while the robbery is taking place." *State v. Gallaher*, 24 Wn.App. 819, 822, 604 P.2d 185 (1979). It does not include a threat to cause injury in the future. *Id.* The force may not be employed for a purpose other than furthering the robbery. *See State v. Hicks*, 102 Wn.2d 182, 185, 683 P.2d 186 (1984) (force used to recover stolen property does not constitute robbery); *see also State v. Johnson*, 155 Wn.2d 609, 611, 121 P.3d 91 (2005) (force used for purpose of escaping after abandoning stolen property is not robbery).

To constitute the necessary "threat" of immediate force, the perpetrator must communicate that immediate force will result if the targeted person does not comply with the demand. *See State v. Redmond*, 122 Wash. 392, 393, 210 P. 772 (1922) (describing robbery as taking of property under "circumstances of terror"). A threat is criminalized only when it is a "true threat," meaning a reasonable person would interpret the statement or act as a serious expression of intention to carry out the threat. *State v. France*, 180 Wn.2d 809, 818, 329 P.3d 864 (2014) ("'true threat' defines and limits the scope of criminal statutes"). A threat may be direct or indirect, but it must communicate the intent to cause the required harm. *Id.* at 819.

The essence of robbery is “the threat of violence against another person.” *State v. Rivers*, 129 Wn.2d 697, 713, 921 P.2d 495 (1996). Theft and robbery are penalized in the same chapter of the criminal code, with robbery defined as a more serious offense subject to higher punishment. *State v. Tvedt*, 153 Wn.2d 705, 712, 107 P.3d 728 (2005); *see* RCW 9.94A.515 (classifying first degree robbery as seriousness level IX; first degree theft as level II). The elements marking robbery as a more serious offense than theft may not be construed as superfluous. *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

This Court has said that “any force or threat, no matter how slight, which induces an owner to part with his property is sufficient to sustain a robbery conviction.” *State v. Handburgh*, 119 Wn.2d 284, 293, 830 P.2d 641 (1992). But in *Handburgh*, the 12 year-old defendant explicitly threatened the victim verbally, threw rocks at her, and punched her in the face. *Id.* at 286. It cited *Redmond* as authority for this minimal threshold of force, but in *Redmond*, the defendant pressed a gun against the victim’s head. *Id.* at 293; *Redmond*, 122 Wash. at 393. *Redmond* does not say “slight” implied force is enough; it characterized the threat required for robbery as “the taking of the property ... attended with such circumstances of terror or such threatening by

menace, word, or gesture as in common experience is likely to create an apprehension of danger and induce a man to part with property for the safety of his person.” *Id.* at 393.

The State’s petition for review relies heavily on *State v. Collinsworth*, 90 Wn.App. 546, 548-50, 966 P.2d 905 (1997), to claim that any bank theft is potentially violent and constitutes robbery. *Collinsworth* involved a string of bank robberies prosecuted in a bench trial. *Id.* The defendant did not have a weapon but the various bank tellers perceived his actions as threatening *and* either thought the defendant had a weapon, it seemed like he had one, or they believed he was actually threatening harm if they did not comply. *Id.* The trial court entered unchallenged findings of fact that the tellers “were fearful of immediate injury” due to Collinsworth’s conduct and their fears were objectively reasonable. *Id.* at 551, 554. “Unchallenged findings of fact are verities on appeal.” *In re A.W.*, 182 Wn.2d 689, 711, 344 P.3d 1186 (2015). Relying on the trial court’s “extensive” unchallenged findings, the court found sufficient evidence of robbery based on Collinsworth’s demanding words and conduct that implied force would result if the tellers did not comply. 90 Wn.App. at 554. This factual scenario did not occur in the case at bar.

*b. Because the specific requirements of robbery in Washington are different and more onerous than the broader federal bank robbery statute, federal bank robbery case examples are inapposite*

The *Collinsworth* Court noted that no Washington cases had addressed the evidence necessary to prove robbery “where the defendant does not utilize overt physical or verbal threats or display a weapon.” 90 Wn.App. at 552. Due to the absence of state case law, the court turned to federal cases construing the federal bank robbery statute, 18 U.S.C. § 2113(a). These federal cases led *Collinsworth* to sweepingly conclude that even a calmly expressed demand for money from a bank without “pretext of lawful entitlement . . . is fraught with the implicit use of force,” therefore constitutes robbery. *Id.* at 553-54.

This aspect of *Collinsworth* rests on the faulty premise that the federal bank robbery statute is “analogous” to RCW 9A.56.190, when the federal statute is far broader. *Id.* at 552. It does not import the common law definition of robbery. *Carter v. United States*, 530 U.S. 255, 266-67, 120 S.Ct. 2159, 2166, 147 L.Ed. 2d 203 (2000). It does not include the intent to steal or require property be carried away. *Id.* It includes an attempt to take property, even if unsuccessful. *United States v. McCarter*, 406 F.3d 460, 463 (7th Cir. 2005), *overruled on other*

grounds by *United States v. Parker*, 508 F.3d 434 (7th Cir. 2007). After *Collinsworth*, this Court held that “the elements of federal bank robbery and robbery under Washington’s criminal statutes are not substantially similar” and therefore “are not legally comparable.” *In re Pers. Restraint of Lavery*, 154 Wn.2d 249, 255-56, 111 P.3d 837 (2005).

Under 18 U.S.C. § 2113(a), a federal bank robbery occurs when a person “by force and violence, or by intimidation, takes, or attempts to take” property from a bank. It also occurs when a person “enters or attempts to enter any bank, . . . with intent to commit . . . any felony affecting such bank, . . . or any larceny.” *Id.*

The “intimidation” prong of 18 U.S.C. § 2113(a) is not equivalent to the threat of immediate force essential to commit robbery in Washington. Intimidation is satisfied by the lesser showing that a reasonable person would feel in fear of bodily harm. *United States v. Bingham*, 628 F.2d 548, 549 (9th Cir. 1980). But to commit robbery under RCW 9A.56.190, the threat must be temporally “immediate” and must communicate that the force or violence will occur “while the robbery is taking place.” *Gallaher*, 24 Wn.App. at 822. It requires an affirmative communication by word or gesture displaying intent to use immediate force, violence or cause injury. *State v. Shcherenkov*, 146

Wn.App. 619, 625, 191 P.3d 99 (2008). It must be a serious expression of intent to carry out the threat. *Id.*; *see France*, 180 Wn.2d at 818.

Due to these numerous elemental differences, federal decisions construing what constitutes sufficient evidence to commit bank robbery are based on a substantially different set of elements. These cases do not determine when a robbery occurs under state law.

*c. An unthreatening request to hand over money does not meet the elements of robbery.*

The burden of proving the essential elements of a crime unequivocally rests upon the prosecution. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. 14; Const. art. I, § 3. Proof beyond a reasonable doubt of all essential elements is an “indispensable” threshold of evidence the prosecution must establish to garner a conviction. *Winship*, 397 U.S. at 363-64.

In order to enforce the prosecution’s burden of proof, “inferences based on circumstantial evidence must be reasonable and cannot be based on speculation.” *State v. Vasquez*, 178 Wn.2d 1, 16, 309 P.3d 318 (2013). A reasonable inference is one that is “plainly indicated as a matter of logical probability.” *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The Court of Appeals properly applied this test. It concluded there was insufficient evidence McFarland forcibly stole money. His demeanor was not threatening. He wore an ill-fitting ladies' wig and walked with a "noticeable limp." 11RP 868; 12RP 996. He waited in line, said nothing other than thank you, and bungled his request by asking that money be put into a bag and yet he had no bag. 9RP 485. His note did not infer the immediate use of force or violence by directing the teller to "put the money in the bag" without "die packs" or tracers. The bank did not use either tracking device and it meant nothing to the teller to be told not to use them. 9RP 483.

Bank employees must be regularly trained on protocol should a theft occurs. 12 U.S.C. § 1882; 12 C.F.R. § 326.3.<sup>2</sup> The teller complied with McFarland's request based on her training. She knew bank policy instructed her to give McFarland what he asked for "as quick as possible," and acted quickly. 9RP 486. She reached for smaller denominations, because "[w]e're trained not to take any large bills."

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<sup>2</sup> Any federally insured bank must have a written security program that includes "initial and periodic training of officers and employees in their responsibilities under the security program and in proper employee conduct during and after a robbery, burglary or larceny." 12 C.F.R. § 326.3.

9RP 495, 526, 532. She put the note on the floor because bank policy says “to retain the note.” 9RP 484. McFarland knew about this policy and used a note to ask for money precisely because tellers are told to follow written directions. 12RP 1254. When she handed the money to McFarland, he said, “thank you,” and left. 9RP 486. McFarland did not take money by the threat of immediate force as required for robbery.

*d. Farnsworth’s hesitant assistance in McFarland’s theft from the bank does not constitute aiding in the charged crime of robbery.*

The Court of Appeals also found insufficient evidence that Farnsworth knowingly aided a robbery as required to be an accomplice. Slip op. at 8. To be legally culpable for another person’s actions, the accused must aid the commission of the crime and act with actual “knowledge of the specific crime that is eventually charged, rather than with knowledge of a different crime or generalized knowledge of criminal activity.” *Id.* at 7 (quoting *State v. Holcomb*, 180 Wn.App. 583, 590, 321 P.3d 1288, *rev. denied*, 180 Wn.2d 1029 (2014)).

This Court explained the necessary mental state of an accomplice in *State v. Allen*, 182 Wn.2d 364, 374, 341 P.3d 268 (2015). To convict Allen as an accomplice of first degree premeditated murder, “the State was required to prove that Allen *actually* knew that he was

promoting or facilitating [another person] in the commission of first degree premeditated murder.” *Id.* (emphasis in original)). The jury may not be urged to convict based on what the defendant “should have known” rather than his “actual knowledge that principal was engaging in the crime eventually charged.” *Id.*, citing. *State v. Shipp*, 93 Wn.2d 510, 516, 610 P.2d 1322 (1980).

The Supreme Court also recently addressed the requirements of accomplice liability under these common law principles. *Rosemond v. United States*, \_U.S. \_, 134 S.Ct. 1240, 1245, 188 L.Ed.2d 248 (2014). In *Rosemond*, the defendant knowingly aided in a drug sale but said he did not know his cohort was armed with a gun. *Id.* at 1243. Using a gun in connection with a drug trafficking crime substantially increases the penalty for the offense. *Id.* at 1247.

The *Rosemond* Court explained that the “conduct” prong of accomplice liability would be satisfied by aiding any part of the crime; he did not need to aid the offense’s gun element. *Id.* at 1258. But the “state of mind” necessary for accomplice liability required the defendant to intend more than a simple drug crime, rather he must intend to aid “an armed” drug sale. *Id.* This intent may be proven by

showing the defendant had full knowledge, in advance, of the gun's involvement in the drug sale. *Id.* at 1249.

This state's accomplice liability doctrine is premised on the same principle as in *Rosemond*, requiring that a person associate with the undertaking, participate in it as something he desires to bring about, and seek by his actions to make it succeed. *Id.* at 1248; *In re Wilson*, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979) (quoting *Nye & Nissen v. United States*, 336 U.S. 613, 619, 69 S.Ct. 766, 93 L.Ed. 919 (1949)). It does not extend to acts or crimes that are merely foreseeable. *State v. Stein*, 144 Wn.2d 235, 246, 27 P.3d 184 (2001). An accomplice need not participate in all elements of the offense, but his culpability does "not extend beyond the crimes of which the accomplice actually has knowledge." *State v. Roberts*, 142 Wn.2d 471, 511, 14 P.3d 713 (2000).

As the Court of Appeals correctly observed, Farnsworth knew McFarland was going to the bank to steal money but he did not encourage, discuss, or plan to use force. Slip op. at 8-9. Farnsworth knew McFarland was unarmed. While Farnsworth boasted about committing a robbery himself, he spent the entire day postponing it and had "backed out." 13RP 1223. McFarland decided "I was going because I seen he wasn't." 13RP 1241. McFarland said Farnsworth

wrote the note and parked their truck nearby. 14RP 1251. McFarland entered the bank alone, unarmed, said nothing other than “thank you” and left with \$330. 9RP 490, 528.

For Farnsworth to be guilty of robbery as an accomplice, the State needed to prove he joined the criminal venture “with full awareness of its scope,” including that the plan called for McFarland committing the aggravated offense of theft by force. *Rosemond*, 134 S.Ct. at 1249. In its closing argument, the State diluted this threshold by arguing that anyone who “shares in the bounty . . . shares in the responsibility.” 17RP 1616. The evidence does not permit the inference Farnsworth actually knew McFarland would threaten immediate force to get money. As the Court of Appeals held, Farnsworth is liable for knowingly aiding McFarland in committing a theft. The jury was instructed on the lesser offense of theft in the first degree. The robbery conviction must be reversed and the court may enter a conviction for first degree theft.

**2. If the robbery conviction is not dismissed for insufficient evidence, the State's case was so thin that the court's interference with Farnsworth's right to present a defense and court's evidentiary errors affected the outcome.<sup>3</sup>**

Assuming *arguendo* this Court defers to the jury's verdict, any of the Court's erroneous rulings was enough to materially affect the outcome of the case given the thin evidence of Farnsworth's culpability for McFarland's forcible theft. *See State v. Garcia*, 179 Wn.2d 828, 848, 318 P.3d 266 (2014).

An accused person has "the right to put before a jury evidence that might influence the determination of guilt." *Pennsylvania v. Ritchie*, 480 U.S. 39, 56, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987); U.S. Const. amends. 6, 14; Const. art. I, §§ 3, 22. Evidence impeaching a central witness, even when there was already significant impeachment evidence available, is reasonably likely to affect the jury. *Benn v. Lambert*, 283 F.3d 1040, 1055 (9th Cir. 2002). It is "always relevant" to discredit a witness by exploring his bias and partiality. *Davis v. Alaska*, 415 U.S. 308, 316-17, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974).

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<sup>3</sup> The legal and factual predicate of these various errors are discussed in detail in Farnsworth's supplemental brief filed in the Court of Appeals, at 6-29.

The Court of Appeals agreed Farnsworth was erroneously precluded from exposing McFarland's penchant for dishonesty by showing all of his prior convictions for crimes of dishonesty. Slip op. at 14; *see Garcia*, 179 Wn.2d at 849 (jury discredited witness after hearing of his prior felonies for dishonesty). In addition, Farnsworth was barred from fully impeaching McFarland by showing the extent of his incentive to testify favorably to the prosecution. McFarland initially faced a life sentence if convicted of robbery and told the jury he pled guilty to theft, facing far less punishment. 14RP 1260, 1346-48. But his guilty plea statement showed he pled guilty to robbery and theft, and was relying on the State to vacate the robbery after he testified against Farnsworth. 15RP 1396-97. This information would have given the jurors substantially more reason to disbelieve McFarland based on his heightened interest in pleasing the State, but the court refused to let Farnsworth use McFarland's guilty plea statement to impeach him.

In addition, the State told the jury Farnsworth had two convictions for robbery where he wore a wig in its opening statement. 1/13/11SuppRP 423. This information made it more likely the jury would attribute heightened involvement by Farnsworth in McFarland's acts, and even though the prosecution did not introduce evidence of

these prior convictions, the jury heard about them in the State's opening statement. McFarland also described how Farnsworth's crude, threatening behavior after the men were arrested, increasing the jurors' dislike of Farnsworth for improper reasons. 15RP 1430.

The court's rulings limited Farnsworth's efforts to cast doubt on McFarland's testimony and increased the jury's belief in Farnsworth's dangerousness. Given the weak evidence that Farnsworth participated in a forcible taking, the improper prohibitions on Farnsworth's cross-examination of McFarland and allegations that Farnsworth was a dislikeable person who had robbed banks in the past swayed the jurors for impermissible reasons and requires remand for a new trial.

**3. The out-of-state prior conviction was not proven comparable to Washington's equivalent offense based on sparse facts and different legal elements.**

*a. The State must prove a qualifying prior conviction.*

A judge may impose a sentence of life without the possibility of parole under the POAA only if the defendant is convicted of a "most serious offense" and he has qualifying prior convictions. *Lavery*, 154 Wn.2d at 255; RCW 9.94A.030(37)(a)(ii). RCW 9.94A.525(3). When a prior conviction is from another state, the State must prove it is comparable to a qualifying Washington offense. *Id.*

The judge's inquiry into the nature of the prior conviction is constrained by the Sixth and Fourteenth Amendments. *Descamps v. United States*, \_\_ U.S. \_\_, 133 S.Ct. 2276, 2288, 186 L.Ed.2d 438 (2013); *Lavery*, 154 Wn.2d at 258. Due to these constitutional restrictions, the only facts a sentencing court can be sure the jury found, or the defendant admitted in a guilty plea, "are those constituting the elements of the offense." *Descamps*, 133 S.Ct. at 2288; *Shepard v. United States*, 544 U.S. 13, 25-26, 28, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005)).

Farnsworth's three-strike sentence hinged on the court's determination that his 1984 California conviction for vehicular manslaughter is comparable to Washington's vehicular homicide. *See In re Cadwallader*, 155 Wn.2d 867, 876, 123 P.3d 456 (2014). Whether a prior conviction qualifies as a strike under the POAA is reviewed *de novo*. *State v. Knippling*, 166 Wn.2d 93, 98, 206 P.3d 332 (2009).

*b. The 1984 California conviction was not legally comparable because the state laws have different causation requirements.*

In 1984, Washington's vehicular homicide statute required that "impairment due to alcohol must have been a proximate cause of the fatal accident." *State v. MacMaster*, 113 Wn.2d 226, 235, 778 P.2d 1037 (1989); Former RCW 46.61.520 (1983). *MacMaster* explained

that it was “not a proper statement of the law” to merely ask the jury if the defendant’s driving caused the accident and “‘coincidentally’, defendant was also under the influence” of alcohol. *Id.* Additionally, a vehicular homicide conviction is not a basis for a three-strike sentence unless the homicide was “proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner.” RCW 9.94A.030(32)(r), 37(a)(ii).

Farnsworth was convicted of vehicular manslaughter in California for an offense that occurred on January 18, 1984. App. at 5, 12.<sup>4</sup> Comparability determinations are based on the state law in effect when the foreign offense was committed. *Lavery*, 154 Wn.2d at 255. Farnsworth’s California conviction did not require that the death was proximately caused by intoxicated driving, unlike RCW 46.61.520 and the most serious offense requirement of RCW 9.94A.030(32)(r).

The State claimed Farnsworth’s 1984 California conviction rested on a violation of Penal Code § 192(3)(c), while Farnsworth

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<sup>4</sup> The California statutes and the underlying complaint, guilty plea document, and judgment are attached in the Appendix.

contended that Vehicular Code § 23153(a) was the statute under which he was convicted. Both California statutes require that the proximate cause of the death or injury is a violation of the traffic law, committed while also driving drunk. Both say that *while* driving under the influence, the driver commits *another* act forbidden by law or neglects a duty imposed by law, such as a traffic violation, and this *additional* “act or neglect proximately causes” death or bodily injury. Former Veh. Code § 23153(a)<sup>5</sup>; Former Penal Code § 192(3)(c) (1983)<sup>6</sup>; *see People v. Soledad*, 190 Cal.App.3d 74, 81 (Ct. App. 1987) (explaining “the unlawful act” causing the death required by P.C. § 192 must be an unlawful act “other than” a violation of the drunk driving laws).

Because neither California statute required intoxicated driving proximately caused the death, neither would satisfy the narrower specific causation requirement of this state’s 1984 vehicular homicide offense or meet the elements of RCW 9.94A.030(32)(r). This lack of legal comparability ends the inquiry. *Lavery*, 154 Wn.2d at 256. The

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<sup>5</sup> The version of Veh. Code § 23153(a) in effect at the time of Farnsworth’s offense reached any injury, and was not limited to causing a person’s death. App. at 3 (Statutes of 1983, ch. 937, § 3).

<sup>6</sup> *See* App. at 1-2 (Statutes of 1983, ch. 937, § 1).

trial court erred by counting this California offense as a predicate for a life sentence for this reason alone.

*c. The charging document and statute in effect at the time of the offense further demonstrate the State failed to meet its burden of proof.*

Farnsworth was charged in a two-count complaint and pled guilty only to Count 2, according to the 1984 judgment. App. at 5, 12. The two counts name different individuals as victims and cite different statutes. Count 2 accused Farnsworth of “committing the crime of violation of section 23153 (a) of the Vehicular Code,” while Count 1 alleged “a violation of section 192(3)(c) of the Penal Code.” App. at 5.

The separate counts track the elements of the different statutes. Count 2 recites elements of Veh. Code § 23153(a). *Id.* It accuses Farnsworth of causing death or bodily injury, and bodily injury is an aspect of Veh. Code § 23153(a), not P.C. § 192(3)(c). *Id.* Count 2 does not allege driving with gross negligence, which is an element of P.C. § 192(3)(c) and not Veh. Code § 23153(a). *Id.* Because the judgment says Farnsworth was convicted of “count 2,” the elements of Veh. Code § 23153(a) control the legal comparability. *Id.* at 5, 12.

Some ambiguity arises because the judgment lists “PC § 192(3)(c),”<sup>7</sup> while citing count 2 as the basis of conviction and count 2 alleges a violation of Veh. Code § 23153(a). App. at 5, 12-13. If the State cannot demonstrate which statute is the basis of the conviction, it has not met its burden of proof.

Further doubt arises in the elements underlying Farnsworth’s prior conviction because the complaint does not accurately reflect the then-in-effect terms of Veh. Code § 23153(a). In January 18, 1984, Veh. Code § 23153(a) was broadly defined as when a person drives under the influence, commits another unlawful act, and this other act “proximately causes *bodily injury*” to another person. App. at 3 (emphasis added). The statute did not mention causing death. *Id.*

Even though the complaint alleges bodily injury and death, “the elements of the charged crime must remain the cornerstone of the comparison.” *Lavery*, 154 Wn.2d at 255. The statute in effect at the time of the offense governing count 2 was premised on causing “bodily injury” and not death to another person. App. at 3, 5.

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<sup>7</sup> During sentencing, the State did not offer the statutes as evidence but insisted the references to PC § 192(3)(c) were scrivener’s errors. 2/24/12RP 22. The versions in effect at the time of the offense are attached. App. at 1-3.

By pleading guilty to count 2 of the complaint, and without further evidence that count 2 was something other than the “violation of section 23153(a) of the Vehicular Code” as charged in the complaint, Farnsworth was not convicted of causing another person’s death by drunken driving, and the State has not shown the legal comparability required to treat the offense as a strike under the POAA. App. at 5, 12.

*d. Count 2 is not factually comparable to Washington’s vehicular homicide statute.*

The only facts that may be used to determine whether a prior conviction under a broader foreign statute is factually comparable to a Washington offense are “facts that were admitted, stipulated to, or proved beyond a reasonable doubt.” *Lavery*, 154 Wn.2d at 258; *see State v. Olsen*, 180 Wn.2d 468, 473-74, 325 P.3d 187, *cert. denied*, 135 S. Ct. 287 (2014). This requirement is premised on *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), which bars a court from increasing the penalty for a crime based on a fact that was not proved beyond a reasonable doubt. *Lavery*, 154 Wn.2d at 256. The *Lavery* framework limits the court’s consideration of facts underlying a prior conviction “to only those facts that were clearly

charged and then clearly proved beyond a reasonable doubt to a jury or admitted by the defendant.” *Olsen*, 180 Wn.2d at 476.

The factual record is sparse. There is no transcript from any hearing or detailed factual admission of guilt. The “felony disposition statement” says Farnsworth “will” plead guilty to “§ 192(3)(c)” but does not explain the elements of the offense or include any factual statements by Farnsworth. App. at 6-11. Other than this boilerplate form, the only evidence of conviction is the judgment, which says Farnsworth was convicted of count 2, citing PC § 192(3)(c), and saying vehicular manslaughter. App. at 12-13.

When the record of a guilty plea is ambiguous, the court must treat the conviction as reflecting “least adjudicated elements” of the offense. *People v. Rodriguez*, 17 Cal.4<sup>th</sup> 253, 261-62, 949 P.2d 31, 37 (Cal. 1998). Farnsworth did not plead “nolo contendere” and therefore his plea was not an admission to all charged elements. *Cf. Olsen*, 180 Wn.2d at 478. The least adjudicated elements of count 2 are that Farnsworth was convicted of causing bodily injury due to a traffic law violation he committed while driving under the influence of alcohol. This conviction is not comparable to vehicular homicide as required to authorize a sentence of life without the possibility of parole.

D. CONCLUSION.

Charles Farnsworth respectfully requests this Court affirm the Court of Appeals and further hold that he is ineligible for a sentence of life without the possibility of parole.

DATED this 24th day of July 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy Collins", written over a horizontal line.

NANCY P. COLLINS (WSBA 28806)  
Washington Appellate Project (91052)  
Attorneys for Respondent and Cross-Petitioner

NO. 91297-1

THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,  
Respondent,  
v.  
CHARLES V. FARNSWORTH,  
Petitioner.

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**APPENDIX**

NANCY P. COLLINS  
Attorney for Respondent/Cross-Petitioner

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, WA 98101  
(206) 587-2711

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is found to be a ward or dependent child of the juvenile court until the ward or dependent child attains the age of 21 years, except as provided in subdivisions (b), (c), and (d).

(b) The court may retain jurisdiction over any person who is found to be a person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b) of Section 707 until that person attains the age of 25 years if the person was committed to the Department of the Youth Authority.

(c) The court shall not discharge any person from its jurisdiction who has been committed to the Department of the Youth Authority so long as the person remains under the jurisdiction of the Department of the Youth Authority, including periods of extended control ordered pursuant to Section 1800.

(d) The court may retain jurisdiction over any person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b) of Section 707 who has been confined in a state hospital or other appropriate public or private mental health facility pursuant to Section 702.3 until that person has attained the age of 25 years, unless the court which committed the person finds, after notice and hearing, that the person's sanity has been restored.

SEC. 2. Section 1777 is added to the Welfare and Institutions Code, to read:

1777. Any moneys received pursuant to the Federal Social Security Act by a ward who is incarcerated by the Youth Authority are liable for the reasonable costs of the ward's support and maintenance.

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## CHAPTER 937

An act to amend Sections 192 and 193 of the Penal Code, and to amend Section 23153 of, and to add Sections 13350.5 and 23156 to, the Vehicle Code, relating to crimes.

[Approved by Governor September 20, 1983. Filed with Secretary of State September 20, 1983.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 192 of the Penal Code is amended to read:

192. Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

1. Voluntary—upon a sudden quarrel or heat of passion.

2. Involuntary—in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection; provided that this subdivision shall not apply to acts committed in the driving of a vehicle.

3. Vehicular—

(a) Driving a vehicle, not involving drugs or alcohol and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or driving a vehicle, not involving drugs or alcohol, and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(b) Driving a vehicle, not involving drugs or alcohol, and in the commission of an unlawful act, not amounting to felony, but without gross negligence; or driving a vehicle, not involving drugs or alcohol, and in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.

(c) Driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(d) Driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of an unlawful act, not amounting to felony, but without gross negligence; or driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.

This section shall not be construed as making any homicide in the driving of a vehicle punishable which is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

"Gross negligence", as used in this section, shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice, consistent with the holding of the California Supreme Court in *People v. Watson* (1981) 30 Cal. 3d 290.

SEC. 2. Section 193 of the Penal Code is amended to read:

193. (a) Voluntary manslaughter is punishable by imprisonment in the state prison for two, four, or six years.

(b) Involuntary manslaughter is punishable by imprisonment in the state prison for two, three or four years.

(c) Vehicular manslaughter is punishable as follows:

(1) For a violation of paragraph (a) of subdivision 3 of Section 192, the punishment shall be either by imprisonment in the county jail for not more than one year or imprisonment in the state prison for two, four, or six years.

(2) For a violation of paragraph (b) of subdivision 3 of Section 192 the punishment shall be by imprisonment in the county jail for not more than one year.

(3) For a violation of paragraph (c) of subdivision 3 of Section 192, the punishment shall be by imprisonment in the state prison for four, six or eight years.

(4) For a violation of paragraph (d) of subdivision 3 of Section 192, the punishment shall be either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months, two, or four years.

SEC. 2.5. Section 193 of the Penal Code is amended to read:

193. (a) Voluntary manslaughter is punishable by imprisonment in the state prison for three, six, or 11 years.

(b) Involuntary manslaughter is punishable by imprisonment in the state prison for two, three or four years.

(c) Vehicular manslaughter is punishable as follows:

(1) For a violation of paragraph (a) of subdivision 3 of Section 192 the punishment shall be either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison.

(2) For a violation of paragraph (b) of subdivision 3 of Section 192 the punishment shall be by imprisonment in the county jail for not more than one year.

(3) For a violation of paragraph (c) of subdivision 3 of Section 192, the punishment shall be by imprisonment in the state prison for four, six, or eight years.

(4) For a violation of paragraph (d) of subdivision 3 of Section 192, the punishment shall be either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months, two, or four years.

SEC. 3. Section 13350.5 is added to the Vehicle Code, to read:

13350.5. Notwithstanding Section 13350, for the purposes of this article, conviction of a violation of subdivision (c) or (d) of subsection 3 of Section 192 of the Penal Code is deemed to be a conviction of a violation of Section 23153.

SEC. 4. Section 23153 of the Vehicle Code is amended to read:

23153. (a) It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(b) It is unlawful for any person, while having 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) In proving the person neglected any duty imposed by law in the driving of the vehicle, it is not necessary to prove that any specific section of this code was violated.

SEC. 5. Section 23156 is added to the Vehicle Code, to read:

23156. For the purposes of this article, a prior offense which resulted in a conviction of a violation of subdivision (c) or (d) of subsection 3 of Section 192 of the Penal Code is a prior offense of a violation of Section 23153.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 193 of the Penal Code proposed by both this bill and AB 236. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1984, (2) each bill amends Section 193 of the Penal Code, and (3) this bill is enacted after AB 236, in which case Section 2 of this bill shall not become operative.

SEC. 7. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

## CHAPTER 938

An act to amend Section 37 of, and to add Sections 340.3 and 1021.4 to, the Code of Civil Procedure, and to amend Sections 26820.4 and 72055 of, of the Government Code, relating to civil actions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1983. Filed with Secretary of State September 20, 1983.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 37 of the Code of Civil Procedure is amended to read:

37. (a) A civil action shall be entitled to preference, if the action is one in which the plaintiff is seeking damages which were alleged to have been caused by the defendant during the commission of a felony offense for which the defendant has been criminally convicted.

(b) The court shall endeavor to try the action within 120 days of the grant of preference.

SEC. 2. Section 340.3 is added to the Code of Civil Procedure, to read:

340.3. Unless a longer period is prescribed for a specific action, in any action for damages against a defendant based upon such person's

FILED  
Ventura County Municipal Court

VENTURA COUNTY MUNICIPAL COURT  
STATE OF CALIFORNIA  
DEPT. OF JUSTICE  
Department By

JAN 26 1984

JAMES D. FOX, CLERK  
Deputy Clerk

FEB 28 1984

CR18917

THE PEOPLE OF THE STATE OF CALIFORNIA,  
RICHARD U. DEAR, County Clerk

By Richard U. Dear  
Deputy County Clerk

No FY 15538 Exh 5

CHARLES E. NICKERSON, JR.,

aka Charles Anderson, Charles E. Nickerson, Jr.  
CHP 1-84-135  
DEFENDANT

COMPLAINT

FELONY  
 MISDEMEANOR  
(Sec. 17b P.C.)

COUNT 1

Donald M. Grant

being first duly sworn, says that

CHARLES E. NICKERSON, JR., aka Charles Anderson

committed the crime of violation of section 192(3) (c) of the Penal Code,

a felony, (misdemeanor), on that on or about January 18, 1984,

in Ventura County, California, he did willfully and unlawfully while under the influence of an alcoholic beverage and a drug and under their combined influence drive a vehicle with gross negligence and in the commission of an unlawful act not amounting to a felony, to wit, passing without sufficient clearance, a violation of Vehicle Code section 21751, proximately caused the death of Digna Marie Henket.

COUNT 2

Said complainant further accuses CHARLES E. NICKERSON, JR., aka Charles Anderson of committing the crime of violation of section 23153(a) of the Vehicle Code, a felony, in that on or about January 18, 1984, in Ventura County, California, he did willfully and unlawfully, while under the influence of an alcoholic beverage and a drug and under their combined influence, drive a vehicle and in so driving did commit an act forbidden by law, to wit, passing without sufficient clearance, a violation of Vehicle Code section 21751, in the driving of said vehicle which proximately caused death and bodily injury to Teresa Ramirez.

Bail recommended by  
District Attorney

Richard U. Dear

\$ \_\_\_\_\_  
DMG:me CTRM. 11 1/27/84 9 a.m.

CHP  
Dept. \_\_\_\_\_  
Officer \_\_\_\_\_  
Vacation from \_\_\_\_\_ 197  
to \_\_\_\_\_ 197

Subscribed and sworn to before me this 26th  
day of JANUARY, 1984

Heather Quintz  
Deputy District Attorney, Ventura County

DA  D.C.   
PO  OTHER   
SO

**FILED**

DATE: MAY - 1 1984

RICHARD D. DEAN, County Clerk

By: *[Signature]*  
Deputy County Clerk

MICHAEL D. BRADBURY  
District Attorney  
800 South Victoria Avenue  
Ventura, CA 93009

Telephone (805) 654-2501

Attorney for Plaintiff

*Exh 6*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CHARLES VERDEL FARNSWORTH )  
 )  
 Defendant. )

COURT NO. CR 18917

FELONY DISPOSITION  
STATEMENT

I.  
PLEA

A. CHANGE OF PLEA

The defendant will plead GUILTY (  ) NOLO CONTENDERE (  ) to:

§192(3)(c)

and admit \_\_\_\_\_

The remaining counts will be dismissed after the defendant is sentenced.

OTHER CASE DISPOSITIONS: \_\_\_\_\_

B. SUMMARY OF DISTRICT ATTORNEY'S REASON FOR DISMISSAL OR AMENDMENT  
(Deputy District Attorney to initial)

*[Signature]* The defendant is entering (a plea to the most serious charge) (pleas to sufficient counts) to give the court adequate discretion to impose an appropriate sentence.

The defendant cannot be (convicted) (sentenced) on the count because it arises from the same facts as the count(s) to which the defendant has pleaded.

C. NOLO CONTENDERE PLEA (Defendant to initial, if applicable)

I understand that for all purposes, my plea of nolo contendere (no contest) has the same effect as a guilty plea, constitutes a conviction, and empowers the Court to sentence me as though I had pleaded guilty. It also may be used against me as an admission in a civil proceeding.

D. VOLUNTARINESS OF PLEA (Defendant to initial)

*CF* I have discussed the facts of the case and all possible defenses which I might have with my attorney.

*CF* I am entering this plea freely and voluntarily and not as the result of any force, pressure, threats or coercion brought against me or any member of my family; further, no commitments have been made to me or my attorney other than those appearing on this form.

E. FACTUAL BASIS FOR PLEA (Defendant to initial)

I agree that the Court may consider the following as proof of the factual basis for my plea:

- Preliminary hearing transcript
- Police reports
- Probation report
- Welfare investigator's declaration
- \_\_\_\_\_

F. CONSEQUENCES OF PLEA (Defendant to initial)

*CF* My attorney has explained to me the direct and indirect consequences of this plea including the maximum possible sentence. I understand that the following consequences could result from my plea:

CF I could be sentenced to the state prison for a maximum possible term of 8 year(s).

me I could be sentenced to the California Youth Authority for a maximum possible term of 8 year(s).

I will be required to register as a sexual offender pursuant to Penal Code § 290.

I could be deported, excluded from or denied naturalization if I am not a citizen. (Penal Code § 1016.5.)

My driver's license will be suspended or revoked for a period of \_\_\_\_\_ (§§ 13350, 13351, 13352 of the Vehicle Code).

I will not be granted probation, and execution or imposition of sentence will not be suspended (1203.055(c), 1203.06, 1203.65, 1203.066, 1203.07, 1203.075, 1203.08, 1203.085, 1203.09 PC).

I will not be granted probation unless the court finds that this is an unusual case where the interests of justice would best be served by granting probation (462, 462.5, 1203(e), 1203.04 PC).

CF After I have served my prison term, I may be subject to a maximum parole period of 3 years (In re Carabes, 144 Cal. App. 3d 927).

I will be required to register as a narcotics offender.

I will be ordered to pay a fine of not less than \$100 nor more than \$10,000 (Gov't. Code § 13957, § 1191.2 PC).

G. WAIVER OF CONSTITUTIONAL RIGHTS (Defendant to initial)

My attorney has explained to me, and I understand, that this plea will result in my conviction and that I am therefore waiving (giving up) each of the following constitutional rights:

- CF 1. The right to have every charge and allegation against me determined by a jury of 12 persons;  
CF 1(a) *If I waive jury, I have the right to a trial by the court.*
- CF 2. The right to confront and, through my attorney, cross-examine each witness called by the prosecution to prove my guilt;
- CF 3. The right to be represented at all times during a trial by a competent attorney and to have the Court appoint one to represent me at no charge, if I cannot afford one;
- CF 4. The right against self-incrimination which means I would not have to testify at my trial and if I did not, the jury could not consider this as evidence of guilt.

A. DISTRICT ATTORNEY

THE DISTRICT ATTORNEY'S POSITION ON SENTENCE  
(Deputy District Attorney to initial).

ICE Any authorized sentence may be sought.

— The defendant should be placed on probation and not now be sentenced to state prison. The defendant may, however, at a later time be sentenced to state prison if a court finds he has violated a term or condition of his/her probation.

— The defendant will receive credit for time served.

SUMMARY OF DISTRICT ATTORNEY'S REASON FOR SENTENCE;  
(Deputy District Attorney to initial)

— The defendant has no prior criminal record.

— The severity and frequency of the defendant's prior criminal record is not serious.

— The underlying facts of the case are not sufficiently serious to require a state prison sentence at this time.

B. THE COURT

The Court, in this non-Proposition 8 case, without the consent or concurrence of the District Attorney, makes the following statements concerning sentencing: (Judge to initial)

— The defendant will be placed on probation and not now be sentenced to state prison. If, however, he later violates his probation, he may be sent to prison at that time.

ICE Court agrees to no more than 4 yrs  
unless after reading probation report it  
feels that a higher sentence should be  
sought. If this occurs defendant may withdraw plea

C. HARVEY WAIVER (Defendant to Initial)

The defendant agrees that all facts and information relating to any and all counts, allegations of prior convictions, and other sentencing enhancement allegations which are dismissed by the Court as part of this disposition may be included in the probation report and considered by the Court in determining sentence.

III.

DEFENDANT'S AND DEFENSE ATTORNEY'S POSITION

I have read, discussed with my attorney, and understand the consequences of this plea and waive (give up) the above-mentioned constitutional rights. I request that the Court accept my new plea.

DATED: 5-1-84

Jacko V. Fremont  
(Defendant's signature)

I have explained to the defendant all of his constitutional rights. I am satisfied he understands them and also understands that by entering this plea he is giving up each of them. I have discussed the facts of the case and all possible defenses to the charges with the defendant. I have explained the direct and indirect consequences of this plea to the defendant and am satisfied he understands them. I am satisfied the defendant is voluntarily and of his own free will seeking to enter this plea. I request the Court to accept this plea.

DATED: 5-1-84

William A. M. Guffey  
(Defendant's Attorney's Signature)

IV.

DISTRICT ATTORNEY'S STATEMENT

With the exception of any commitments made to the defendant by the Court, the District Attorney agrees to the terms of this disposition and requests that the Court accept it and order this statement filed.

MICHAEL D. BRADBURY, District Attorney  
County of Ventura, State of California

DATED: 5/1/84

By Angela L. [Signature]  
Deputy District Attorney

FINDINGS AND ORDER

The Court finds that:

1. Defendant and his attorney appeared in open court and the defendant entered his plea(s) and admission(s).
2. Defendant understands the nature of the charge(s) and the consequences of his plea(s) and admission(s).
3. Defendant has knowingly, intelligently, and understandingly waived his rights as set forth above.
4. Defendant's waivers of his rights, and his plea(s) and admission(s), are free and voluntary.
5. There is a factual basis for the plea.

IT IS ORDERED THAT:

1. Defendant's plea(s) and admission(s) are accepted.
2. The clerk file this document and incorporate it in the minutes of this case.

DATED: May 1, 1981

William J. Beck  
Judge of the Superior Court

The defendant's plea is accepted conditionally, pursuant to Penal Code section 1192.5, and I have advised the defendant that my approval of this plea is not binding, that at the probation and sentencing hearing I may withdraw my approval, and that if I do so, he may withdraw his plea if he desires to do so.

DATED: May 1, 1981

William J. Beck  
Judge of the Superior Court

**ABSTRACT OF JUDGMENT - COMMITMENT**  
**SINGLE OR CONCURRENT COURT FORM**  
(Not to be used for Multiple Count Convictions nor Concurrent Sentences)

FORM OSL 270-3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

CRIMINAL DIVISION  
 56  
 BRANCH

*Exh 7*

PEOPLE OF THE STATE OF CALIFORNIA vs. VERDEL  
 DEFENDANT: CHARLES VERDEL FARNSWORTH  PRESENT  NOT PRESENT  
 AKA: ANDERSON AKA NICKERSON

COMMITMENT TO STATE PRISON  
 ABSTRACT OF JUDGMENT  AMENDED ABSTRACT  CASE NUMBER CR 18917

DATE OF HEARING: 05/25/84 TIME: 22  
 COUNTY: 050  
 JUDGE: WILLIAM L. PECK  
 COUNTY FOR PRISON: LOUISE CHARLES  
 PROBATION OFFICER: SHARON SCRUGGS  
 COUNTY FOR PRISON: HERB CURTIS  
 PROBATION OFFICER: WILLIAM MC GUFFY  
 COUNTY FOR PRISON: ELLEN LOVE

**1. DEFENDANT HAS BEEN CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONY:**

COUNT	CRIM. CODE SECTION NUMBER	CRIME	DATE OF CONVICTION	CONVICTION BY	TIME IMPROVED
1	PC 192(3)(b)	vehic mansl	84 05 07 84	X M	6

**2. ENHANCEMENTS (EXHIBIT AND FOUND VIOLATED, TIME IMPROVED)**

COUNT	ENH. (a)	ENH. (b)	ENH. (c)	ENH. (d)	ENH. (e)	ENH. (f)	ENH. (g)	ENH. (h)	ENH. (i)	ENH. (j)	ENH. (k)	ENH. (l)	ENH. (m)	ENH. (n)	ENH. (o)	ENH. (p)	ENH. (q)	ENH. (r)	ENH. (s)	ENH. (t)	ENH. (u)	ENH. (v)	ENH. (w)	ENH. (x)	ENH. (y)	ENH. (z)	

**3. OTHER ORDERS:**

**A. NUMBER OF PRIOR PRISON TERMS:**

	B	C/F	A	I
ENH (a)	0	0	0	0
ENH (b)	0	0	0	0
ENH (c)	0	0	0	0

**B. NUMBER OF PRIOR FELONY CONVICTIONS:**

	B	C/F	A	I
ENH (a)	0	0	0	0

**4. THE STRIKE IS  (a)  (b)  (c)  (d)  (e)  (f)  (g)  (h)  (i)  (j)  (k)  (l)  (m)  (n)  (o)  (p)  (q)  (r)  (s)  (t)  (u)  (v)  (w)  (x)  (y)  (z)**

**5. TOTAL TERM IMPROVED:** \_\_\_\_\_

THIS SENTENCE IS TO RUN CONCURRENT WITH ANY PRIOR UNCOMPLETED SENTENCE(S)

**6. EXECUTION OF SENTENCE IMPROVED**

AT INITIAL HEARING  BY HEARING/HEARD FURTHER  AFTER REPROBATION  AT DISCRETION OF JUDGE OR COMMITMENT TO STATE INSTITUTION

DATE SENTENCE PRONOUNCED: 05, 25, 84  
 CREDIT FOR TIME SPENT IN CUSTODY: 180 INCLUDING: 120 60

DEFENDANT IS ORDERED TO THE CUSTODY OF THE SUPERVISOR TO BE HELD AT:

FORTYWITH INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEIPTION-GUARDHOUSE CENTER LOCATED AT: \_\_\_\_\_

AFTER 48 HOURS, EXCLUDING SATURDAY, SUNDAY AND HOLIDAYS

STATE INSTITUTION FOR WOMEN - FORTYWITH  STATE INSTITUTION FOR MEN - FORTYWITH  STATE INSTITUTION FOR MEN - FORTYWITH

OTHER (APPROPRIATE): \_\_\_\_\_

CLERK OF SUPERIOR COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action

RECEIVED: \_\_\_\_\_ DATE: 5/25/84

This form is provided pursuant to Penal Code § 1213.5 in compliance with the requirements of Penal Code § 1213 (Abstract of Judgment and Commitment) for determinate sentences under Penal Code § 1213. A copy of probation report will accompany the Department of Corrections' copy of this form pursuant to Penal Code § 1213.5. A copy of the vehicle's preceding and any suspension/probation report shall be transmitted to the Department of Corrections pursuant to Penal Code § 1213.5. Attachment may be used but will not be incorporated by reference.

**ABSTRACT OF JUDGMENT - COMMITMENT**  
**SINGLE OR CONCURRENT COURT FORM**  
(Not to be used for Multiple Count Convictions nor Concurrent Sentences)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

DA  PO  SO  *China*

JUDGE: WILLIAM L. PEGK DATE: MAY 25, 1984 TIME: 9:30 CASE NO: CR 18917  
CLERK: LOUISE CHARLES NAT'LIFF: ART MILLER CRT, RPTR: S. SCRUGGS  
DDA: HERB CURTIS DEF. ENSL: W. MC CUFFY DPO: ELLEN LOVE

TITLE OF CASE: PEOPLE OF THE STATE OF CALIFORNIA NATURE OF PROCEEDINGS: JUDGMENT ON CONVICTION  
vs. Plaintiff

CHARLES VERDEL FARNSWORTH  
Defendant

Interpreter  ( ) Stipulated as qualified  ( ) Sworn  ( ) Previously sworn  
( ) Public defender appointed  ( ) Waives arraignment  ( ) Indicates no legal cause  
(  ) Convicted by plea of guilty of violation of Section 1423 VC of the Penal Code, vehicular manslaughter ( ) Declared misdemeanor  
(  ) Sentenced State Prison for the median term of 1 1/2 years

( ) Term set of \_\_\_\_\_ years in state prison if defendant subsequently violates probation  
(  ) Total fixed term 6 years ( ) 1202(b) PC ( ) 1170 (d) PC  
( ) Imposition of sentence suspended ( ) Execution of sentence suspended  
( ) Probation granted \_\_\_\_\_ months ( ) Formal ( ) Conditional ( ) Attached terms  
( ) Sentenced County Jail ( ) Concurrent ( ) Consecutive  
( ) Condition Probation ( ) Execution stayed  
( ) Review set \_\_\_\_\_ 9 AM, Courtroom 35 ( ) Ordered to return  
( ) Ordered to voluntarily surrender to Sheriff ( ) Defendant accepts

(  ) Remaining Count(s)/Allegation(s) dismissed/stricken ( ) Court waives work through criteria  
( ) Committed California Youth Authority ( ) 1737 WIC  
(  ) Credit actual 120 4019(b) 60 State Institution Total 180 days  
(  ) Defendant does not have the financial ability to reimburse County of Ventura/pay for:  
(  ) Court appointed counsel ( ) Probation costs ( ) Pre-sentence investigation  
( ) Defendant does have financial ability to pay for: ( ) Counsel \$ \_\_\_\_\_ at \$ \_\_\_\_\_ mo.  
( ) Probation costs \_\_\_\_\_ /mo. ( ) Investigation Report \$ \_\_\_\_\_ at \$ \_\_\_\_\_ mo.  
( ) 12% Collection Surcharge ( ) Through Collections Services beginning \_\_\_\_\_

( ) Financial ability hearing ( ) waived ( ) set \_\_\_\_\_, 9 AM, Courtroom 35  
(  ) Advised re appeal (  ) Advised re parole ( ) Time waived  
( ) Probation/Sentencing continued \_\_\_\_\_ at \_\_\_\_\_, Courtroom 35 ( ) Orders present  
( ) Bench Warrant, bail set \$ \_\_\_\_\_, issued ( ) Ordered held ( ) Re action bail  
( ) Bench Warrant recalled/withdrawn ( ) Bail ( ) Forfeited ( ) Reinstated ( ) Exonerated  
Company \_\_\_\_\_ Amount \$ \_\_\_\_\_  
( ) Released ( ) Probation/Bail/Own Recognizance (  ) Remanded (  ) without bail  
( ) Committed Diagnostic Facility, 90 days, 1203.03 PC, to be automatically returned by Sheriff upon notice by Director of Corrections  
( ) Criminal proceedings suspended, civil proceedings instituted, Dr(s) \_\_\_\_\_ appointed

( ) 1288.1 PC ( ) 3050/3051 WIC ( ) Hearing set \_\_\_\_\_, 9 AM, Courtroom 35  
( ) Ordered report to/make/keep appointment(s) ( ) Doctor(s) ( ) Probation Department  
(  ) Original/one copy of plea transcript ordered; Reporter Daniel O'Grady Date 5-1-84  
(  ) Sheriff ordered to transport defendant to Department of Corrections, China, California  
(  ) Defendant's request for commitment to the California Rehabilitation Center is denied

RICHARD D. DEAN, County Clerk (Rev. 4-84) BY: Louise Charles Deputy County Clerk

CRIMINAL PROBATION/SENTENCE MINUTE ORDER

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, )  
 )  
 Petitioner, )  
 )  
 v. ) NO. 91297-1  
 )  
 CHARLES FARNSWORTH, )  
 )  
 Respondent/Cross-petitioner. )

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 24<sup>TH</sup> DAY OF JULY, 2015, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF RESPONDENT/CROSS-PETITIONER** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] JAMES S. SCHACHT, DPA	( )	U.S. MAIL
[PCpatcecf@co.pierce.wa.us]	( )	HAND DELIVERY
PIERCE COUNTY PROSECUTOR'S OFFICE	(X)	E-SERVICE VIA
930 TACOMA AVENUE S, ROOM 946		COA PORTAL
TACOMA, WA 98402-2171		
[X] CHARLES FARNSWORTH	(X)	U.S. MAIL
875475	( )	HAND DELIVERY
WASHINGTON STATE PENITENTIARY	( )	
1313 N 13 <sup>TH</sup> AVE		
WALLA WALLA, WA 99362		

**SIGNED** IN SEATTLE, WASHINGTON THIS 24<sup>TH</sup> DAY OF JULY, 2015.



X \_\_\_\_\_

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