

No. 92605-1

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL RESTRAINT
PETITION OF:

ZYION DONTICE HOUSTON-
SCONIERS,

Petitioner.

NO. 45374-6-II

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Whether the trial court did not abuse its discretion in declining to conduct an evidentiary hearing pursuant to CrR 3.6(a) where it decided Petitioner's motion to suppress physical evidence based on the undisputed facts before it.
2. Whether the trial court did not violate Petitioner's right to be present by deciding not to conduct proceedings due to his attorney's medical emergency in Petitioner's absence.
3. Whether the trial court properly admitted the statement of James Wright as an excited utterance where that statement was nontestimonial and hence, not subject to the Confrontation Clause of the Sixth Amendment or Article I, section 22 of the Washington State Constitution.
4. Whether Petitioner failed to meet his burden of showing prosecutorial misconduct by failing to show improper conduct.

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B. STATUS OF PETITIONER:

The status of Petitioner, including the factual and procedural history of the present case, is set forth in the statement of the case section of the State’s Brief of Respondent (Br. of Resp.) filed on November 26, 2014 in Petitioner’s direct appeal. *See* Br. of Resp., p. 2-31 (§B).

After that brief was filed, Petitioner filed the present personal restraint petition (PRP) on December 9, 2014.

On February 17, 2015, this Court, “on its own initiative, consolidate[d Petitioner’s] petition, COA 47085-3-II, to his direct appeal, *State v. Houston-Sconiers*, COA No. 45374-6-II.” February 17, 2015 Ruling by Commissioner Schmidt.

To avoid needless repetition, the statement of the case section from the State’s Brief of Respondent, Br. of Resp., p. 2-31 (§B), is hereby incorporated herein.

C. ARGUMENT

1. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DECLINING TO CONDUCT AN EVIDENTIARY HEARING PURSUANT TO CrR 3.6(a) BECAUSE IT DECIDED PETITIONER’S MOTION TO SUPPRESS PHYSICAL EVIDENCE BASED ON THE UNDISPUTED FACTS BEFORE IT.

The Fourth Amendment to the United States Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause.” Article I, section 7 of the Washington State Constitution mandates that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

1 “[A] warrantless search is per se unreasonable [under the Fourth Amendment],
2 unless if falls within one of the carefully drawn exceptions to the warrant requirement.”
3 *State v. Patton*, 167 Wn.2d 379, 386, 219 P.3d 651 (2009). Similarly, “[t]he ‘authority of
4 law’ requirement of article I, section 7 is satisfied by a valid warrant, subject to a few
5 jealously guarded exceptions.” *State v. Afana*, 169 Wn.2d 169, 176-77, 233 P.3d 879
6 (2010); *State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009).

7 “Consent” is “one of the narrow exceptions to the search warrant requirement.”
8 *State v. Khounvichai*, 149 Wn.2d 557, 562, 69 P.3d 862 (2003).

9 “It is the State’s burden to establish that a consent to search was lawfully given,”
10 and “[i]n order to meet this burden, three requirements must be met: (1) the consent must
11 be voluntary, (2) the person consenting must have the authority to consent, and (3) the
12 search must not exceed the scope of the consent.” *State v. Thompson*, 151 Wn.2d 793, 92
13 P.3d 228 (2004). *See also, e.g., State v. White*, 141 Wn. App. 128, 135-36, 168 P.3d 459
14 (2007) (citing *State v. Thompson*, 151 Wn.2d 793, 803, 92 P.3d 228 (2004)).

15 “A third party may consent to a search if he or she possesses ‘common authority
16 over or other sufficient relationship to the premises or effects sought to be inspected.’ ”
17 *White*, 141 Wn. App. at 136 (quoting *State v. Holmes*, 108 Wn. App. 511, 518, 31 P.3d
18 716 (2001) (quoting *United States v. Matlock*, 415 U.S. 164, 171, 94 S. Ct. 988, 39
19 L.Ed.2d 242 (1974))). Common authority exists when there is “‘mutual use of the property
20 by persons generally having joint access or control for most purposes.’ ” *Id.* (quoting
21 *Matlock*, 415 U.S. at 171 n. 7, 94 S. Ct. 988). “Access and permission to enter are the
22 hallmarks of common authority.” *Id.* at 136 (quoting *Holmes*, 108 Wn.App. at 520).
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1 “Generally, the trial court suppresses evidence seized from an illegal search under
2 the exclusionary rule or the fruit of the poisonous tree doctrine.” *State v. Parris*, 163 Wn.
3 App. 110, 117, 259 P.3d 331 (2011).

4 However, “[a]s a prerequisite to claiming an unconstitutional search, a defendant
5 must demonstrate that he or she had a reasonable expectation of privacy in the item
6 searched.” *State v. Hamilton*, 179 Wn. App. 870, 882, 320 P.3d 142 (2014).

7 In determining a motion to suppress, “[t]he trial court has discretion whether to take
8 oral testimony[.]” *State v. Kipp*, 171 Wn. App. 14, 28, 286 P.3d 68 (2012), *reversed on*
9 *other grounds*, 179 Wn.2d 718, 317 P.3d 1029 (2014) (*citing State v. McLaughlin*, 74
10 Wn.2d 301, 303, 444 P.2d 699 (1968). *See State v. Wolken*, 103 Wn.2d 823, 829, 700 P.2d
11 319 (1985).

12 CrR 3.6(a) provides that “[t]he court shall determine whether an evidentiary hearing
13 is required based upon the moving papers,” and that “[m]otions to suppress physical, oral
14 or identification evidence, other than a motion pursuant to rule 3.5, shall be in writing
15 supported by an affidavit or document setting forth the facts the moving party anticipates
16 will be elicited at a hearing, and a memorandum of authorities in support of the motion.”

17 Appellate courts review the decision not to grant an evidentiary hearing under CrR
18 3.6(a) for abuse of discretion. *See State v. Kipp*, 171 Wn. App. 14, 28, 286 P.3d 68 (2012),
19 *reversed on other grounds*, 179 Wn.2d 718, 317 P.3d 1029 (2014). “[A] trial court
20 abuses its discretion if its decision is manifestly unreasonable or rests on untenable
21 grounds.” *Kipp*, 171 Wn. App. at 28 (*citing Griffin*, 173 Wash.2d at 473, 268 P.3d 924
22 (2012)).
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1 A "trial court d[oes] not abuse its discretion by addressing the issue [of suppression]
2 based on the undisputed facts already before it, regardless of [Defendant]'s assertion that
3 additional facts exist[]." *Id.*

4 In this case, Petitioner argues that "[t]he trial court erred when it refused an
5 evidentiary hearing during counsel[']s motion to suppress evidence found during [what he
6 assumes was] the illegal search of the Cadillac" from which he was arrested. PRP, p. 8. The
7 problem with this argument is that such a hearing was unnecessary. *See* RP 244-47.

8 The only disputed material fact in this case was whether Petitioner had permission
9 from the property owner's son to be inside the Cadillac. *Compare* RP 235 with RP 239.
10 However, the court did not find this fact relevant, and instead decided the issue on the
11 undisputed facts. RP 244-47. It found that regardless of whether such permission had been
12 given, the Cadillac itself was an "inoperable piece[] of personal property, which
13 happen[ed] to be [a] vehicle[]," stored on real property owned by someone else. RP 244.
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15 The real issue here, in my opinion, is whether or not there is an
16 expectation of privacy when you're in somebody's garage or when you're
17 in somebody's tool shed or in somebody's inoperable car that when you're
18 trespassing that you would have some expectation of privacy when you're
19 there without the permission of the owner of the real property and/or
20 custodian of these vehicles.

18 ***And first of all, the Court finds that these individuals were on the
19 property without her [i.e., the real property owner's] permission, that
20 they did not have an expectation of privacy. And, number two, even if
21 they were on her property with their permission, she still had the ability
22 as the person having care and control of these vehicles on her property
23 to give the police permission to search the garage, the tool shed, or, in this
24 case, five or six disrepaired cars that are on her property waiting to be
25 repaired since she was the homeowner and the owner of the property
where these individuals were discovered.***

23 ***The son had absolutely no permission to say it's okay to go into
24 these cars, even if my mother doesn't know about it, and do what you
25 guys want to do in terms of having a clubhouse meeting and the illegal
activity that allegedly went on in there.***

1 So this Court finds that both under no expectation of privacy based
2 on what I believe to be a trespass onto this woman's property and, two, the
3 fact that she had the legitimate authority to give permission to these
4 officers to search personal property which is left under her care, custody
5 and control, to search these vehicles without the necessity of the officers
6 obtaining a warrant first.

7 RP 245-47 (emphasis added).

8 Hence, the trial court found the disputed fact irrelevant, and decided the suppression
9 motion based on the undisputed facts. Because a "trial court d[oes] not abuse its discretion
10 by addressing the issue [of suppression] based on the undisputed facts already before it,
11 regardless of [Defendant]'s assertion that additional facts exist[]," *Kipp*, 171 Wn. App. at
12 28, the trial court here did not abuse its discretion.

13 Therefore, the petition should be dismissed.

14 2. THE TRIAL COURT DID NOT VIOLATE PETITIONER'S RIGHT TO
15 BE PRESENT BY DECIDING NOT TO CONDUCT PROCEEDINGS
16 DUE TO HIS ATTORNEY'S MEDICAL EMERGENCY IN
17 PETITIONER'S ABSENCE.

18 Article I, section 22 of the Washington State Constitution provides that "[i]n
19 criminal prosecutions the accused shall have the right to appear and defend in person, or by
20 counsel." The Washington State Supreme Court has held a criminal defendant thereby has
21 a right "to appear and defend in person and by counsel... *at every stage of the trial when*
22 *his substantial rights may be affected.*" *State v. Irby*, 170 Wn.2d 874, 885, 246 P.3d 796
(2011)(*quoting. with emphasis added, State v. Shultzler*, 82 Wn. 365, 367, 144 P. 284
(1914)).

23 The United States constitution also provides "[a] criminal defendant... a
24 fundamental right to be present at all critical stages of a trial." *State v. Irby*, 170 Wn.2d
25 874, 880, 246 P.3d 796 (2011)(*citing Rushen v. Spain*, 464 U.S. 114, 117, 104 S. Ct. 453,

1 78 L.Ed.2d 267 (1983)). “[T]he [federal] right to be present is rooted” in both “the
2 confrontation clause of the Sixth Amendment to the United States Constitution,” and,
3 “where the defendant is not actually confronting witnesses or evidence against him[,]” in
4 the due process clause of the Fourteenth amendment thereto. *Irby*, 170 Wn.2d at 880-81,
5 885 (citing *United States v. Gagnon*, 470 U.S. 522, 526, 105 S. Ct. 1482, 84 L.Ed.2d 486
6 (1985)).

7 Thus, “a defendant has a right to be present at a proceeding ‘whenever his presence
8 has a relation, reasonably substantial, to the fullness of his opportunity to defend against
9 the charge.’” *Irby*, 170 Wn.2d at 881 (citing *Snyder v. Massachusetts*, 291 U.S. 97, 105–
10 06, 54 S. Ct. 330, 78 L. Ed. 674 (1934), *overruled in part on other grounds sub nom.*
11 *Malloy v. Hogan*, 378 U.S. 1, 84 S. Ct. 1489, 12 L.Ed.2d 653 (1964)).

12 However, “a defendant does not have a right to be present when his or her ‘presence
13 would be useless, or the benefit but a shadow.’” *Id.* “Thus, it is fair to say that the due
14 process right to be present is not absolute; rather ‘the presence of a defendant is a condition
15 of due process to the extent that a fair and just hearing would be thwarted by his absence.’”
16 *Id.*

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18 “Whether a defendant’s constitutional right to be present has been violated is a
19 question of law, subject to de novo review.” *State v. Irby*, 170 Wn.2d 874, 880, 246 P.3d
20 796 (2011)(citing *State v. Strode*, 167 Wn.2d 222, 225, 217 P.3d 310 (2009)).

21 In the present case, Petitioner argues that his right to be present was violated
22 because he was not brought to court on July 8, 2013, when his counsel had a medical
23 emergency and *voir dire* was conducted. PRP, p. 12-14. The record shows otherwise.
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1 It shows that while *voir dire* was conducted and a jury selected in the morning of
2 July 8, 2013, Petitioner was present for this, and that no further proceedings were
3 conducted in the afternoon of that day, when his counsel had the medical emergency at
4 issue. *See* RP 258-71 & 275. With respect to the afternoon of July 8, 2013, at which time
5 the parties appeared to have scheduled continued proceedings, *see* RP 271, the trial court
6 stated the following on July 9, 2013:

7 Yesterday afternoon we were advised that [*Petitioner's attorney*]
8 had jammed her knee or ran into – her knee ran into the edge of a filing
9 cabinet and *required some medical attention*. And all the attorneys
10 appeared here, and it was obvious that she needed to see a doctor. *And the*
11 *Court excused her to go see a doctor without the necessity of bringing*
12 *the defendants in the court* and doing this all on the record, but all
13 counsel were present on behalf of their respective clients.

14 [*Petitioner's attorney*] was instructed, once she saw a doctor, to
15 give us an update as to what was going on with her situation. She did call
16 in as requested. We put her on speakerphone, not on the record, but with
17 myself present and [the deputy prosecutor]. [*Petitioner's attorney*] *gave*
18 *us an update over the phone as to her medical situation, which briefly*
19 *indicated that she needed to have stitches. She needed to go home and*
20 *elevate her leg and ice it down. And at that point in time, the Court*
21 *indicated that we would not hold session that afternoon because*
22 *[Petitioner's attorney] could not be present.*

23 RP 275-76 (emphasis added).

24 When the court asked Petitioner's attorney if this was "an accurate rendition of
25 what occurred," and how she was doing, his attorney responded as follows

It is an accurate rendition of what occurred, you know, to the best
of my knowledge, the phone call certainly, and an accurate rendition of
what happened to my leg.

I'm doing fine. I may limp a little bit. My client objects to the fact
that he wasn't present for the events of yesterday afternoon, the
courthouse or the room. The court apparently was open and members of
the public were here. He objects to, one, the lack of counsel being present.
The court has made a record on that. He objects to the Court proceeding
with the hearing in his absence, and that's the record I'm making.

RP 279.

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The court replied as follows:

Right. Well, I guess my response is that they [i.e., the jail staff] won't bring a defendant here without an attorney, and I would not have him here without being represented. And, number two, no substantive issues were discussed. It was simply procedural in terms of actually trying to accommodate your attorney, and the objection is noted for the record.

RP 279-80.

Thus, although Petitioner was not brought to court on the afternoon of July 8, 2013, the parties –including Petitioner’s attorney- agreed that court was “not [in] session that afternoon because [Petitioner’s attorney] could not be present.” RP 275-76. Thus, “no substantive issues were discussed[,]” and the court and attorneys simply re-scheduled the proceedings for the following morning. RP 279-80.

Because “no substantive issues were discussed[,]” RP 279-80, and indeed, court was not even in “session that afternoon,” RP 275-76, “a fair and just hearing” could not have been “thwarted by [Petitioner’s] absence,” and his “presence would [have] be[e]n useless.” *Irby*, 170 Wn.2d at 881. As a result, Petitioner did not “not have a right to be present[,]” *Id.*, in the courtroom at that time.

Therefore, that right could not have been violated, and the present petition should be denied.

1 3. THE TRIAL COURT PROPERLY ADMITTED THE STATEMENT OF
2 JAMES WRIGHT AS AN EXCITED UTTERANCE BECAUSE THAT
3 STATEMENT WAS NONTESTIMONIAL AND HENCE, NOT
4 SUBJECT TO THE CONFRONTATION CLAUSE OF THE SIXTH
AMENDMENT TO THE UNITED STATES CONSTITUTION OR
THAT OF ARTICLE I, SECTION 22 OF THE WASHINGTON STATE
CONSTITUTION.

5 Petitioner argues that the trial court erred when it allowed hearsay testimony” from
6 James Wright, PRP, p. 14-18. Petitioner also raised this issue in his direct appeal. Opening
7 Brief of Appellant Houston-Sconiers (Op. Br. of App.), p. 13-19.

8 The State responded to the issue in the State’s Brief of Respondent. Br. of Resp., p.
9 32-43. The State incorporates that response herein.

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11 4. PETITIONER FAILED TO MEET HIS BURDEN OF SHOWING
12 PROSECUTORIAL MISCONDUCT BY FAILING TO SHOW
IMPROPER CONDUCT.

13 “Every prosecutor is a quasi-judicial officer of the court, charged with the duty of
14 insuring that an accused receives a fair trial.” *State v. Boehning*, 127 Wn. App. 511, 518,
15 111 P.3d 899, 903 (2005). Prosecutorial misconduct violates this duty and deprives a
16 defendant of his right to a fair trial. *See Boehning*, 127 Wn. App. at 518.

17 However, “[w]ithout a proper timely objection at trial, a defendant cannot raise the
18 issue of prosecutorial misconduct on appeal unless the misconduct was so flagrant and ill-
19 intentioned that no curative jury instruction could have corrected the possible prejudice.”
20 *State v. Curtiss*, 161 Wn. App. 673, 250 P.3d 496 (2011); *State v. Larios-Lopez*, 156 Wn.
21 App. 257, 260, 233 P.3d 899 (2010) (*citing State v. Gregory*, 158 Wn.2d 759, 841, 147
22 P.3d 1201 (2006) (*quoting State v. Stenson*, 132 Wn.2d 668, 719, 940 P.2d 1239 (1997),
23 *cert. denied*, 523 U.S. 1008, 118 S. Ct. 1193, 140 L. Ed. 2d 323 (1998))). Thus, “the
24 defendant must show that (1) ‘no curative instruction would have obviated any prejudicial
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1 effect on the jury' and (2) the misconduct resulted in prejudice that 'had a substantial
2 likelihood of affecting the jury verdict." *State v. Emery*, 174 Wn.2d 741, 761, 278 P.3d
3 653 (2012)(quoting *State v. Thorgerson*, 172 Wn.2d 438, 455, 258 P.3d 43 (2011)).

4 This is because the absence of an objection "strongly suggests to a court that the
5 argument or event in question did not appear critically prejudicial to an appellant in the
6 context of the trial." *State v. Swan*, 114 Wn.2d 613, 661, 790 P.2d 610 (1990) (emphasis
7 in original).

8 Even where there was a proper objection, an appellant claiming prosecutorial
9 misconduct "bears the burden of establishing the impropriety of the prosecuting attorney's
10 comments and their prejudicial effect." *State v. Anderson*, 153 Wn. App. 417, 427, 220
11 P.3d 1273 (2009). See *State v. Thorgerson*, 172 Wn.2d 438, 442, 258 P.3d 43 (2011);
12 *State v. Fisher*, 165 Wn.2d 727, 746-47, 202 P.3d 937 (2009); *State v. McKenzie*, 157
13 Wn.2d 44, 134 P.3d 221 (2006) (quoting *State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d
14 546 (1997)); *Beck v. Washington*, 369 U.S. 541, 557, 82 S. Ct. 955, 8 L. Ed. 2d 834
15 (1962).
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17 Hence, a reviewing court must first evaluate whether the prosecutor's comments
18 were improper. *Anderson*, 153 Wn. App. at 427. "The State is generally afforded wide
19 latitude in making arguments to the jury, and prosecutors are allowed to draw reasonable
20 inferences from the evidence." *Anderson*, 153 Wn. App. at 427-28, 220 P.3d 1273.

21 It is not misconduct for a prosecutor to argue that the evidence does not support a
22 defense theory, *State v. Russell*, 125 Wn.2d 24, 87, 882 P.2d 747 (1994) (citing *State v.*
23 *Graham*, 59 Wn. App. 418, 429, 798 P.2d 314 (1990), *State v. Contreras*, 57 Wn. App.
24 471, 476, 788 P.2d 1114, review denied, 115 Wn.2d 1014, 797 P.2d 514 (1990)), and "the
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1 prosecutor, as an advocate, is entitled to make a fair response to the arguments of defense
2 counsel.” *Russell*, 125 Wn.2d at 87.

3 Moreover, “[r]emarks of the prosecutor, even if they are improper, are not grounds
4 for reversal if they were invited or provoked by defense counsel and are in reply to his or
5 her acts and statements, unless the remarks are not a pertinent reply or are so prejudicial
6 that a curative instruction would be ineffective.” *Id.* at 86.

7 “A prosecutor’s improper comments are prejudicial ‘only where ‘there is a
8 substantial likelihood the misconduct affected the jury’s verdict.’” *State v. Yates*, 161
9 Wn.2d 714, 774, 168 P.3d 359 (2007) (quoting *Brown*, 132 Wn.2d at 561, 940 P.2d 546);
10 *Fisher*, 165 Wn.2d at 747.

11 “A reviewing court does not assess ‘[t]he prejudicial effect of a prosecutor’s
12 improper comments... by looking at the comments in isolation but by placing the remarks
13 ‘in the context of the total argument, the issues in the case, the evidence addressed in the
14 argument, and the instructions given to the jury.’” *Id.* (quoting *Brown*, 132 Wn.2d at 561);
15 *State v. Johnson*, 158 Wn. App. 677, 683, 243 P.3d 936 (2010). “[R]emarks must be read
16 in context.” *State v. Pastrana*, 94 Wn. App. 463, 479, 972 P.2d 557 (1999); *Larios-Lopez*,
17 156 Wn. App. at 261.

18 Prosecutorial misconduct may be neutralized by a curative jury instruction, *Russell*,
19 125 Wn.2d 24, 86, 882 P.2d 747 (1994), and juries are presumed to follow the court’s
20 instructions. *State v. Weber*, 99 Wn.2d 158, 166, 659 P.2d 1102 (1983).

21 “Generally, to be entitled to relief, a timely P[ersonal] R[estraint] P[etitioner] must
22 establish ‘either that he or she was actually and substantially prejudiced by constitutional
23 error or that his or her trial suffered from a fundamental defect of a nonconstitutional
24 error or that his or her trial suffered from a fundamental defect of a nonconstitutional
25 error or that his or her trial suffered from a fundamental defect of a nonconstitutional

1 nature that inherently resulted in a complete miscarriage of justice.” *In re Pers. Restraint*
2 *of D’Allesandro*, 178 Wn. App. 457, 469, 314 P.3d 744 (2013) (footnote omitted) (*quoting*
3 *In re Pers. Restraint of Finstad*, 177 Wn.2d 501, 506, 301 P.3d 450 (2013)). Thus, “[a]
4 personal restraint petitioner has the burden of proving constitutional error that results in
5 actual prejudice or nonconstitutional error that results in a miscarriage of justice.” *In Re*
6 *Personal Restraint Petition of Waggy*, 111 Wn. App. 511, 518, 45 P.3d 1103 (2002)
7 (*citing In re Personal Restraint of Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990)). *See*
8 *In re Monschke*, 160 Wn. App. 479, 497, 251 P.3d 884 (2010); *In re Elmore*, 162 Wn.2d
9 236, 251, 172 P.3d 335 (2007); *In Re Personal Restraint Petition of Brett*, 142 Wn.2d
10 868, 874, 16 P.3d 601 (2001) (*citing In re Personal Restraint of Benn*, 134 Wn.2d 868,
11 884-85, 952 P.2d 116 (1998), *rev’d sub nom. on other grounds by Benn v. Wood*, No. C98-
12 5131RDB, 2000 WL 1031361 (W.D.Wash. June 30, 2000)).

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14 “If a petition is based on matters outside the appellate record, a petitioner must
15 show that he has ‘competent, admissible evidence’ to support his arguments.” *Waggy*, 111
16 Wn. App. at 518 (*quoting In re Personal Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d
17 1086, *cert. denied*, 506 U.S. 958, 113 S. Ct. 421, 121 L. Ed. 2d 344 (1992)).

18 “[A] petitioner must show that more likely than not he was prejudiced by the
19 error.” *Waggy*, 111 Wn. App. at 518. “Bare allegations unsupported by citation of
20 authority, references to the record, or persuasive reasoning cannot sustain this burden of
21 proof.” *Waggy*, 111 Wn. App. at 518-19 (*quoting State v. Brune*, 45 Wn. App. 354, 363,
22 725 P.2d 454 (1986), *review denied*, 110 Wn.2d 1002 (1988)). “A petition that fails to
23 meet this basic level of proof and argument may be dismissed summarily.” *Waggy*, 111
24 Wn. App. at 519.
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1 In the present case, Petitioner argues that the deputy prosecutor committed
2 misconduct in seven ways, some of which he also argued in his direct appeal. PRP, p. 18.
3 The record shows otherwise.

4 First, Petitioner argues that the deputy prosecutor “[u]sed a personal bias to
5 prosecute [him], because,” he contends, the deputy prosecutor “believed the [petitioner]
6 came from a bad family and would continue to commit worse crimes when the [petitioner]
7 got older.” PRP, p. 18-19.

8 However, Petitioner fails to support these allegations “by citation of authority,
9 references to the record, or persuasive reasoning.” *Waggy*, 111 Wn. App. at 518-19; PRP,
10 p. 18-22. Although Petitioner cites “[a]pp[endix] C” as support for his argument, he
11 includes no appendix C in his petition. *See* PRP. While he notes that “language used by the
12 prosecutor as described in Counsel’s declaration [which is attached to his petition] can be
13 found in *In re Vandervlugt*, 120 Wn.2d 427, 434, 842 P.2d 950 (1992),” PRP, p. 19,
14 However, *Vandervlugt* did not concern an allegation of prosecutorial misconduct, but only
15 the issue of whether a sentencing court may “rely on a finding of future dangerousness to
16 support an exceptional sentence for a nonsexual offense.” *Vandervlugt*, 120 Wn.2d at 428.

17 Nor does Petitioner otherwise explain how the prosecutor “[u]sed” his alleged
18 “personal bias” to prosecute him. PRP, p. 18-22. It could not have been in the initial
19 decision to charge Petitioner, because Petitioner was charged by a different prosecutor than
20 the one who represented the State at trial. CP 1-4. The declaration for determination of
21 probable cause was also prepared and signed by a different prosecutor. CP 5-7. Moreover,
22 regardless of whether either prosecutor was biased against Petitioner, the superior court
23 found probable cause for the charges that were filed against him. Appendix A. Nor could
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1 either of these prosecutor's alleged bias have affected the amended information, because
2 that was filed by a third prosecutor. CP 17-22. Nor was there bias demonstrated at trial
3 given that the deputy prosecutor agreed there was insufficient evidence of the first degree
4 robbery charged as count VIII, and stipulated to its dismissal. RP 1943-44. Finally, any
5 argument of bias in charging and prosecuting Petitioner must be dismissed given that a
6 jury, after trial, found that those charges had been proven beyond a reasonable doubt. RP
7 2370-72, 2375-77; CP 206-21.

8 Petitioner did include a declaration from his defense attorney at trial, which states,
9 in relevant part:

10 *Despite my best and repeated efforts, I was unable to obtain a reduction*
11 *of charges for my client. One of the prosecutor's stated reasons for*
12 *refusing to negotiate was my client's family background.* The prosecutor
13 had previously handled the case of A[.] C[.] Sconiers, Pierce County #00-
14 1-02607-4, a homicide by abuse case, and also was familiar with other
15 numerous cases committed by other individuals with the last name
16 Sconiers. *The prosecutor... told me that my client came from a "very bad*
family" and that he deserved no leniency. He rejected my repeated
arguments that my client should be viewed as an individual human being
and that his case and his case only was the matter we were discussing. The
prosecutor instead focused on the greater Sconiers family.

17 *[The deputy prosecutor] very straightforwardly told us that he was going*
18 *hard after my client because my client comes from "a bad family" and*
19 *that my client no doubt would continue to commit worse crimes as he got*
20 *older. [The deputy prosecutor] minced no words and said that he wanted*
21 *to lock up my client for as long as he could.* [The deputy prosecutor
appeared to me to be concerned more about my client's family[,] other
family members[,] and their misdeeds.

22 PRP, Declaration of Barbara Corey (emphasis added).

23 From this, it may be inferred that Petitioner's argument is that the deputy
24 prosecutor "[u]sed a personal bias to prosecute [him]," PRP, p. 18, by "refusing to
25

1 negotiate” a plea agreement and trying to “lock up [Petitioner] for as long as he could.”

2 PRP, Declaration of Barbara Corey.

3 However, a prosecutor has *no* duty to negotiate a plea agreement with a criminal
4 defendant, *see* RCW 9.94A.421 (*providing* that a prosecutor and defendant’s attorney
5 “*may* engage in discussions with a view toward reaching a[plea] agreement”), and may
6 seek an exceptional sentence *above* the standard range where aggravating circumstances
7 exist. *See* RCW 9.94A.500; RCW 9.94A.535.

8 Regardless, in this case, any alleged bias could not have resulted in the deputy
9 prosecutor “refusing to negotiate” a plea agreement and trying to “lock up [Petitioner] for
10 as long as he could.” PRP, Declaration of Barbara Corey. According to Appendix A to the
11 defense attorney’s declaration, the prosecutor made Petitioner at least one offer of a plea
12 agreement, which would have resulted in confinement of 17.5 years, or about 56% of the
13 time to which Petitioner was ultimately sentenced. *Compare* PRP, Appendix A with CP
14 232-46. Petitioner refused this offer. *See, e.g.*, PRP, Appendix A.

15
16 Finally, far from trying to “lock up [Petitioner] for as long as he could,” PRP,
17 Declaration of Barbara Corey, the deputy prosecutor here recommended and secured an
18 exceptional sentence *below* the standard range, which included only statutorily-mandated
19 confinement time. RP 2385-2407; CP 232-46.

20 Thus, Petitioner fails to show that the deputy prosecutor “[u]sed a personal bias to
21 prosecute [him],” PRP, p. 18, and fails to support his argument by any relevant “citation of
22 authority, references to the record, or persuasive reasoning.” *Waggy*, 111 Wn. App. at 518-
23 19; PRP, p. 18-22. As a result, his petition “fails to meet this basic level of proof,” and
24 should “be dismissed summarily.” *Id.*

1 Petitioner's second argument that the deputy prosecutor committed misconduct is
2 that the prosecutor implied that his "defense counsel was being dishonest." Petitioner made
3 this argument in his direct appeal, Op. Br. of App., p. 25-33, and the State responded to it
4 in its brief of respondent at pages 67-72. The State incorporates and relies on that response
5 herein.

6 Petitioner's third argument that the deputy prosecutor committed misconduct is that
7 the prosecutor "tried to shift the burden of proof, by pointing out why certain witness[es]
8 did not come before the court." PRP, p. 18. While Petitioner cites, without discussion, one
9 page in a transcript of over 2,400 pages, he does not explain what the prosecutor did or
10 why it was objectionable. He cites no authority and offers no "persuasive reasoning,"
11 *Waggy*, 111 Wn. App. at 518-19, in support of his argument. Therefore, he fails to meet
12 his burden of proof, and his argument should be dismissed.

13
14 Petitioner's fourth argument is that the deputy prosecutor "misstated the evidence
15 and testified to things that witness[e]s did not say." PRP, p. 18. The deputy prosecutor here
16 never testified to anything. *See* RP 1-2419. While he did deliver a closing argument, RP
17 2227-51, Petitioner does no more than cite, without discussion, five pages in the transcript
18 of that argument. PRP, p. 18. Petitioner does not reveal which of the prosecutor's
19 statements he finds objectionable or how those statements "misstated the evidence." PRP,
20 p. 18. *See* PRP, p. 1-22. He cites no authority and offers no "persuasive reasoning,"
21 *Waggy*, 111 Wn. App. at 518-19, in support of his argument that evidence was "misstated"
22 by the prosecutor. Therefore, Petitioner fails to meet his burden of proof, *see Id.*, and his
23 argument should be dismissed.
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1 Petitioner's fifth argument is that the deputy prosecutor incorporated racially
2 derogatory language into his closing argument and "suggested to the jury that his
3 witness[es] could not remember due to a snitch code." PRP, p. 18. Petitioner made this
4 same argument in his direct appeal, Op. Br. of App., p. 29, and the State responded to it in
5 its Brief of Respondent, p. 66-67. The State incorporates and relies on that response here.

6 Petitioner's sixth argument that the deputy prosecutor committed misconduct is that
7 the deputy prosecutor, during closing argument "used the Halloween [m]ask[s] and gun"
8 that were admitted into evidence "with the lights dimmed to illustrate the scene of the
9 crimes." PRP, p. 18, 20.

10 However, Petitioner does not explain, assuming this happened as he describes, why
11 it was objectionable, and offers no authority or "persuasive reasoning," *Waggy*, 111 Wn.
12 App. at 518-19, in support of his argument that this was improper. PRP, p. 1-22. Therefore,
13 Petitioner fails to meet his burden of proof, *see Id.*, and his argument should be dismissed.

14 Because both the mask and revolver at issue were admitted as exhibits, and hence,
15 were evidence, at trial, Exhibit 16 (mask), Exhibit 24 (revolver), Appendix B (exhibit
16 record -trial), their inspection by the witness in question was proper.

17 Finally, Petitioner argues that the deputy prosecutor committed misconduct by
18 "stat[ing] to the jury that he was advocating on behalf of the public." PRP, p. 18.

19 Again, however, Petitioner fails to explicitly state exactly where in the transcript
20 this statement was allegedly made or what precisely the deputy prosecutor said. *See* PRP,
21 p. 1-22.

22 Nor does Petitioner explain why a statement made by a prosecutor that a prosecutor
23 is "advocating on behalf of the public," is misconduct. *See* PRP, p. 1-22. It seems to be an
24
25

1 accurate statement. After all, “[p]rosecuting attorneys are attorneys authorized by law to
2 appear for and represent the state and the counties thereof[, i.e., ‘the public,’] in actions
3 and proceedings before the courts and judicial officers.” RCW 36.27.005. *See State v.*
4 *Sanchez*, 146 Wn.2d 339, 348, 46 P.3d 774 (2002). Petitioner fails to support his
5 allegation that such a statement is improper “by citation of authority, references to the
6 record, or persuasive reasoning.” *Waggy*, 111 Wn. App. at 518-19; PRP, p. 18-22. He has,
7 therefore, failed to meet his burden of proof, and his “argument may” and should “be
8 dismissed summarily.” *Id.* at 519.

9 Petitioner later recasts this argument by contending that “the prosecutor cannot play
10 to the jurors emotions by stating that he is an *advocate for justice*,” and cites, *State v.*
11 *Lindsay*, 326 P.3d 125 (2014), and RP 2348. PRP, p. 21 (emphasis added).

12 However, at no point in the transcript at page 2348 does the deputy prosecutor state
13 that he is “an advocate for justice.” RP 2348. Rather, he states only that

14 [m]y job and the process as an advocate as a person, as I said, to challenge
15 the evidence is not to take what [witness] Ms. Bush says and just, okay,
16 Ms. Bush, open-ended question, what’s your answer to this? Thank you
17 very much. It’s to challenge it. And that’s the only way you discover, for
18 instance, that she’s been talked to during her testimony by somebody who
19 was in here.

20 RP 2348.

21 Reading these “remarks... in context[.]” *Pastrana*, 94 Wn. App. at 479, the
22 prosecutor was arguing an inference from the evidence concerning witness credibility.
23 Because “prosecutors may argue inferences from the evidence, including inferences as to
24 why the jury would want to believe one witness over another,” *State v. Copeland*, 130
25 Wn.2d 244, 290–91, 922 P.2d 1304 (1996), these remarks were proper.

1 Therefore, Petitioner has failed to meet his burden of showing prosecutorial
2 misconduct by failing to show improper conduct, and his petition should be denied, if not
3 dismissed.

4 D. CONCLUSION:

5 The trial court did not abuse its discretion in declining to conduct an evidentiary
6 hearing pursuant to CrR 3.6(a) because it decided Petitioner's motion to suppress physical
7 evidence based on the undisputed facts before it.

8 The trial court did not violate Petitioner's right to be present by deciding not to
9 conduct proceedings due to his attorney's medical emergency in Petitioner's absence.

10 The trial court properly admitted the statement of James Wright as an excited
11 utterance because that statement was nontestimonial and hence, not subject to the
12 Confrontation Clause of the Sixth Amendment or Article I, section 22 of the Washington
13 State Constitution.

14 Finally, Petitioner failed to meet his burden of showing prosecutorial misconduct
15 by failing to show improper conduct.

16 Therefore, his present petition should be denied, if not dismissed.

17 DATED: May 21, 2015.

18
19
20 MARK LINDQUIST
21 Pierce County
22 Prosecuting Attorney

23 
24 BRIAN WASANKARI
25 Deputy Prosecuting Attorney
WSB # 28945

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Certificate of Service:

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

to Scoville's email to both counsel

5-21-15 *Theresa Kal*
Date Signature

APPENDIX A

November 05 2012 1:58 PM

Pierce County Clerk

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

STATE OF WASHINGTON,

Plaintiff

No. 12-1-04161-1

vs.

ZYION DONTICE HOUSTON-SCONIERS

Defendant

**ORDER ESTABLISHING CONDITIONS OF
RELEASE PENDING PURSUANT TO CrR 3.2
(orecrp)**

Arresting Agency : TACOMA POLICE DEPARTMENT

Incident Number : 123051341

Charges

- ROBBERY IN THE FIRST DEGREE
- CONSPIRACY TO COMMIT ROBBERY IN THE FIRST DEGREE
- UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE

THE COURT HAVING found probable cause, establishes the following conditions that shall apply pending in this cause number or until entry of a later order; IT IS HEREBY ORDERED

Release Conditions:

- Defendant shall be released upon execution of a surety bond in the amount of \$250,000.00 or posting cash in the amount of \$250,000.00.

NEW BAIL

- Bail issue reserved.

Conditions that take effect upon release from custody:

- Defendant is to reside/stay only at this address **2108 S 12TH ST TACOMA, WA USA**
- Travel is restricted to the following counties **Pierce, King, Thurston, and Kitsap Counties.**
- The defendant is not to drive a motor vehicle without a valid license and insurance.
- Defendant is to keep in contact with the defense attorney.

Conditions that take effect immediately:

- Defendant is to have no violations of the criminal laws of this state, any other state, any political subdivision of this state or any other state, or the United States, during the period of his/her release.
- That the Defendant have no contact with the alleged victim(s), witness(es), co-defendant(s), and/or **including TRESON LEE ROBERTS, AMANCIO RESAN TOLBERT.** This includes any attempt to contact, directly or indirectly, by telephone and/or letter at their residence or place of work.
- Defendant shall not possess weapons or firearms.
- Defendant shall not consume or possess alcohol or non prescription drugs, or associate with any known drug users or sellers.
- Remain in contact with the defense attorney.
- The said defendant is hereby committed to the custody of the arresting law enforcement agency to be detained by the same until the above-stated conditions of release have been met.

Dated : November 5, 2012.

Electronically Signed By
/s/MEAGAN M. FOLEY
JUDGE/COMMISSIONER

I agree and promise to appear before this court or any other place as this court may order upon notice delivered to me at my address stated below or upon notice to my attorney. I agree to appear for any court date set by my attorney and I give my attorney full authority to set such dates. I understand that my failure to appear for any type of court appearance will be a breach of these conditions of release and a bench warrant may be issued for my arrest. I further agree and promise to keep my attorney and the office of Prosecuting Attorney informed of any change of either my address or my telephone number.

I have read the above conditions of release and any other conditions of release that may be attached. I agree to follow said conditions and understand that a violation will lead to my arrest. **FAILURE TO APPEAR AFTER HAVING BEEN RELEASED ON PERSONAL RECOGNIZANCE IS AN INDEPENDENT CRIME, PUNISHABLE BY 5 YEARS IMPRISONMENT OR \$10,000 OR BOTH (RCW 10.19).**

Address: **2108 S 12TH ST TACOMA, WA USA**

Phone: **(253) 227-5944**

Defendant unable to sign:
shakled

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 21 day of May, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 21, 2015 12:02 PM



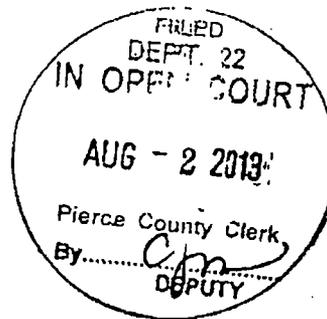
Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 77DAE004-F20F-6452-D6B78D3BC5290646.

This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX B

Case Number: 12-1-04161-1 Date: May 21, 2015
SerialID: 77DB52C3-110A-9BE2-A916CD71C9ECE498
Certified By: Kevin Stock Pierce County Clerk, Washington



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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

EXHIBIT RECORD - TRIAL

ROBERTS, TRESON LEE, and

Case No. 12-1-04160-8

HOUSTON-SCONIERS, ZYION DONTICE,

Case No. 12-1-04161-1

Defendants.

8-5-13 Kevin Stock

P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	1	Colored Photographs - Pages 1 through 54	Yes	No	Admitted	07/11/13	
P	2	CD - Full Video Houston Sconiers, et al.					
P	3	CD - Redacted version of Plaintiff's Exhibit #2	Yes	No	Admitted	07/24/13	
P	4	Large Board - Treson Roberts Clothing	Yes	Yes	Admitted	07/11/13	
P	5	Large Board - Zion Johnson Clothing	Yes	No	Admitted	07/09/13	
P	6	Large Board - Zyion Houston-Sconiers Clothing	Yes	No	Admitted	07/09/13	
P	7	Large Board - Amancio Tolbert Clothing	Yes	No	Admitted Published	07/22/13	
P	8	Large Board - Leshawn Alexander Clothing	Yes	No	Admitted	07/15/13	

Case Number: 12-1-04161-1 Date: May 21, 2015
 SerialID: 77DB52C3-110A-9BE2-A916CD71C9ECE498
 Certified By: Kevin Stock Pierce County Clerk, Washington

P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	9	Stipulation #1 as to TRESON LEE ROBERTS (Revised Version)	Yes	No	Admitted	07/11/13	
P	9A	The original version of Plaintiff's Exhibit #9					
P	10	Registration Information for 1996 Cadillac					
P	11	Large Board - "31 October 2012" Illustrating Incident Scenes					
P	12	Evidence Item No. 3: One black, red and white bandana	Yes	No	Admitted	07/10/13	
P	13	Evidence Item No. 4: One blue Seattle Seahawks	Yes	No	Admitted	07/10/13	
P	14	Evidence Item No. 5: One black and grey Nike backpack	Yes	No	Admitted	07/10/13	
P	15	Evidence Item No. 6: Five pieces of lined paper	Yes	No	Admitted	07/10/13	
P	16	Evidence Item No. 9: One red plastic devil mask	Yes	No	Admitted Published	07/10/13	
P	17	Evidence Item No. 10: One blue and white bandana	Yes	No	Admitted	07/10/13	
P	18	Evidence Item No. 11: One black Riggpaks backpack	Yes	Yes	Admitted	07/10/13	
P	19	Evidence Item No. 14: One black and slate colored backpack	Yes	No	Admitted	07/10/13	
P	20	Evidence Item No. 15: Miscellaneous fun size candy (x98)	Yes	No	Admitted	07/10/13	
P	21	Evidence Item No. 17: One grey, black and white bandana	Yes	No	Admitted	07/10/13	
P	22	Evidence Item No. 18: One white plastic mask	Yes	No	Admitted Published	07/10/13	
P	23	Evidence Item No. 19: One black cloth hood	Yes	No	Admitted Published	07/10/13	
P	24	Evidence Item No. 21: One Harrington & Richardson Revolver	Yes	No	Admitted	07/10/13	
P	25	Evidence Item No. 22: Five PMC .32 Auto rounds and 1 spent round	Yes	No	Admitted	07/10/13	
P	26	Evidence Item No. 23: One T-Mobile Prism Smartphone	Yes	Yes	Admitted	07/10/13	
P	27	Evidence Item No. 24: One LG VM510 cell phone	Yes	Yes	Admitted	07/10/13	
P	28	Evidence Item No. 25: One AT&T Z221 cell phone	Yes	Yes	Admitted	07/10/13	
P	29	Evidence Item No. 26: One ZTE battery	Yes	No	Admitted	07/10/13	
P	30	Evidence Item No. 27: One blue and white bandana	Yes	No	Admitted	07/10/13	

Case Number: 12-1-04161-1 Date: May 21, 2015
 SerialID: 77DB52C3-110A-9BE2-A916CD71C9ECE498
 Certified By: Kevin Stock Pierce County Clerk, Washington

P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	31	Tacoma Police Department Forensic Services Latent Print Identification – 11/28/2012 (As to Holliday)					
P	32	Tacoma Police Department Forensic Services Latent Print Identification – 11/28/2012 (As to Tolbert)					
P	33	E-mail from Detective John Ringer to Gregory Greer dated June 24, 2013 Subject: Court Room Intimidators					
P	34	Stipulation #1 as to ZYION DONTICE HOUSTON-SCONIERS (Revised Version)	Yes	No	Admitted	07/11/13	
P	34A	The original version of Plaintiff's Exhibit #34					
P	35	Tacoma Police Department Incident Report No. 123051264.1					
P	36	Large white diagram drawn during Officer Haddow-Brunk's direct examination on 7/9/13					
P	37	Cad Incident Inquiry Incident No. 20123051264					
P	38	Tacoma Police Department Supplemental Report No. 123051264.5					
P	39	Tacoma Police Department Arrest Report Incident No. 123051341.1					
P	40	CD - Walgreen's Surveillance Video (Redacted Version of Plaintiff's Exhibit #63)	Yes	No	Admitted	07/24/13	
P	41	Cad Incident Inquiry Incident No. 20123051270					
P	42	Cad Incident Inquiry Incident No. 20123051425					
P	43	Cad Incident Inquiry Incident No. 20123051341					
D	44	Cad Incident Inquiry Incident No. 20123051360					
P	45	Property Report (3-Page Document)					
P	46	Property Report (1-Page Document)					
D	47	Large diagram drawn during witness Prolo's cross examination by Attorney Corey on 7/11/13	Yes	Yes	Illustrative Only	07/11/13	
P	48	Tacoma Police Department Supplemental Report No. 123051341.13					
P	49	CD – Houston-Sconiers Jail Phone Calls (Full Version)					
P	49A	CD – Redacted Portion of Plaintiff's Exhibit #49 – Identifier "9914"					

Case Number: 12-1-04161-1 Date: May 21, 2015
 SerialID: 77DB52C3-110A-9BE2-A916CD71C9ECE498
 Certified By: Kevin Stock Pierce County Clerk, Washington

	P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
1								
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4	P	49B	CD - Redacted Portion of Plaintiff's Exhibit #49 - Identifier "0006"					
5	P	49C	CD - Redacted Portion of Plaintiff's Exhibit #49A	Yes	No	Admitted	07/24/13	
6	P	49D	CD - Redacted Portion of Plaintiff's Exhibit #49B	Yes	No	Admitted	07/24/13	
7	P	50	E-Mail, dated July 11, 2013, 4:56 PM, from Attorney Kent Underwood to DPA Gregory Greer, RE: Amancio Tolbert on State v. Houston-Sconiers, et al					
8								
9	P	51	Tacoma Police Department Supplemental Report No. 123051341.2					
10	P	52	Large diagram drawn during Officer Martin's redirect examination on 7/15/13					
11	P	53	Tacoma Police Department Incident Report No. 123051270.1					
12	P	54	Tacoma Police Department Incident Report No. 123051270.3					
13	P	55	Tacoma Police Department Supplemental Report No. 123051341.12					
14	D	56	Tacoma Police Department Supplemental Report No. 123051341.18					
15	P	57	Tacoma Police Department Incident Report No. 123051425.1					
16	P	58	Amended Information Pierce County Cause No. 12-8-01203-0					
17	P	59	Prosecutor's Statement Regarding Amended Information Pierce County Cause No. 12-8-01203-0					
18	P	60	Statement on Plea of Guilty Pierce County Cause No. 12-8-01203-0					
19	P	61	Tacoma Police Department Supplemental Report No. 123051341.9					
20	P	62	CD - 12-205 1341 Case Report					
21	P	63	CD - Walgreens Video (Full Version)					
22	P	64	Tacoma Police Department Forensic Services Latent Print Identification Report 11/28/12					
23	P	65	Tacoma Police Department Forensic Services Latent Print Identification Report 11/28/12					
24	P	66	Case # 12 205 1341 Case notes of Timothy Taylor prepared by him for trial testimony			Withdrawn	07/18/13	
25	P	67	Latent Case File					

Case Number: 12-1-04161-1 Date: May 21, 2015
 SerialID: 77DB52C3-110A-9BE2-A916CD71C9ECE498
 Certified By: Kevin Stock Pierce County Clerk, Washington

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P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
D	68	Motion and Order of Dismissal with Prejudice Pierce Co. Cause No. 12-8-01204-8					
P	69	Transcript of Interview of LeShawn Alexander					
P	70	Stipulation RE: Walgreen's Surveillance Video	Yes	No	Admitted	07/24/13	
P	71	Stipulation RE: Phone Video	Yes	No	Admitted	07/24/13	
P	72	Stipulation RE: Jail Phone Calls	Yes	No	Admitted	07/24/13	
D	73	Treson Roberts' Clothing	Yes	No	Admitted	07/25/13	
D	74	Photograph: Jack-in-the-Box Hours of Operations	Yes	No	Admitted	07/25/13	
D	75	Photograph: Jack-in-the-Box on 6 th Avenue, in Tacoma, Washington	Yes	No	Admitted	07/25/13	
D	76	Transcript of Interview of Amancio Tolbert on January 3, 2013					
P	77	Discovery Distribution Receipt State of WA vs. Tolbert Cause Number: 12-1-04159-0					
P	78	Discovery Distribution Receipt State of WA vs. Roberts Cause Number: 12-1-04160-3					
P	79	Discovery Distribution Receipt State of WA vs. Houston-Sconiers Cause Number: 12-1-04161-1					
P	80	Transcript Interview of Amancio Tolbert (56-Page Document)					
P	81	The original versions of Plaintiff's Exhibits #70, #71 and #72					
D	82	Large diagram drawn by Tredell Roberts during his direct testimony on July 30, 2013					
P	83	Interview of Amancio Rajan Tolbert					

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 21 day of May, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 21, 2015 12:02 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 77DB52C3-110A-9BE2-A916CD71C9ECE498.

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PIERCE COUNTY PROSECUTOR

May 21, 2015 - 2:56 PM

Transmittal Letter

Document Uploaded: 1-prp2-453746-Response.pdf

Case Name: PRP of Houston-Sconiers

Court of Appeals Case Number: 45374-6

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion:

Answer/Reply to Motion:

Brief:

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes:

Hearing Date(s):

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other:

Comments:

No Comments were entered.

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:

KARSdroit@aol.com

SCCAAttorney@yahoo.com