

03:4 S 1-4

03451-4  
TG

FILED  
COURT OF APPEALS FOR THE  
STATE OF WASHINGTON  
2010 APR 21 PM 3:58

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION ONE

---

STATE OF WASHINGTON,            )  
  )  
                          Respondent,    ) No. 63937-4-I  
  )  
                          VS.                ) Motion for,  
  ) STATEMENT OF ADDITIONAL  
BAILEY CREDO WITT,            ) GROUNDS FOR REVIEW  
  )  
                          Appellant.     ) Pursuant to RAP 10.10

---

I.     IDENTITY OF MOVING PARTY

I, the appellant, Bailey Credo Witt, received and reviewed the opening brief prepared by Counsel, Neilsen, Broman, & Koch and request additional briefing stated in part II.

II.    STATEMENT OF RELIEF SOUGHT

Under RAP 10.10, I move "PRO SE" to identify and discuss matters which, I believe have not been adequately address in brief by Counsel. I understand this Court will review the statement when my appeal

is considered on the merit's. I want this Court to request additional briefing prepared by Counsel to adequately address the facts relevant to motion and grounds for relief. "PRO SE QUI"

III. FACTS RELEVANT TO MOTION

Brief summary of the circumstances surrounding the arrest on April 4, 2009. I was arrest and charged with burglary in the second degree Cause No. 09-1-00711-4. (See in, Probable cause for arrest dated 04/04/2009 by Deputy Veentjer at Standwood P.D) On April 7, 2009, I was charged with attempted second degree burglary Cause No. 09-1-00711-4. These Court records are not included in Court papers. Why I don't know, but it needs to be reviewed. Neither is the arrest incident report by Deputy Veentjer or; Snohomish County incident report case no. s009-06745, in cause to the arrest by Deputy Peckham. That also needs to be reviewed. Well, according to Verbatim report, court papers of proceedings, & records not included. On April 4, 2009, during a routie patrol of Stanwood Washington, Deputy Veentjer called in a suspicious vehicle behind the Viking Village Complex.

(RP-31) Deputy Veentjer confronted the parked vehicle and "heard a loud sound like metal object hitting the ground". (RP-32, 33) What was this sound ? The clash of Thor's hammer hitting the pavement of Viking Village ? Thunder ? A window being broke ? A door being pried open ? Because Deputy Veentjer called a burglary in process during a suspicious vehicle encounter. Now on the other side of Viking Village, Deputy Peckham was assisting the suspicious vehicle call. (RP-75, 76, 77) When Deputy Peckham arrived to the suspicious vehicle call, she spotted a male in front of the building in dark clothing. (RP-76) Deputy Peckham was getting out of her patrol car "When she heard Deputy Veentjer saying this place is being burglarized this place is being burglarized" over the radio. (RP-78) There wasn't a loud clash like a hammer hitting the pavement ! A loud sound of a window being broke ! The sound of a door being pried opened ! Or even the sound of someone on top of the roof breaking in ! (Rp-76) Deputy Peckham saw me in front of the building. I was intoxicated and started to walk away from the patrol car. Deputy Peckham immediately got out of her patrol car then chased me into the woods. (RP-78, 79,

80, 81)(CP-66-69) Deputy called me out of the woods and I explained to her that I had been drinking & thought, I had a warrant for domestic violence. (CP-66-69)(RP-81) My defense Counsel objected to this in direct examination. (Also see in attached; Snohomish County incident report case no. s009-06745) I exercised my fifth amendment right "to talk to an attorney and remain silence". I was handcuffed and placed into her patrol car. (Also see in, Probable cause for arrest, and incident report by Deputy Veentjer on 04/04-/2009) I fell asleep in the backseat, then later woken up grabbed and dragged out of the vehicle & walked off the property of Viking Village. Then an incident occurred during the arrest, I was taserred several times while handcuffed and forced to walk a good distance with taser probes in my back to Stanwood P.D holding cell for questioning. (See in, Snohomish County incident report case no. s009-06745)( also in; Snohomish County personell complaint's & formal letter to County & A.C.L.U) I believe that my Constitutionally Protected Fourth, Eight, & Fourteenth Amendmet Right's violated during this arrest. I exercised my Fifth Amendment Right "to have counsel". (See in; Miranda Right, Under Miranda V. Arizona 384 U.S. 436) Under

the Fifth Amendment the advisement of right's need be if a suspect is in custody and about to be interrogated. (See in; State V. Templeton 148 Wn 2d 193, 59, P.3d 632)(2002) Where the State held that advisement of these right's where for someone about to be interrogated. Force was used, I was placed into a holding cell for questioning. Then force was used again to remove article's of personal property as evidence. I asked to talk to an Attorney I didn't receive Counsel until weeks later as request through the courts. There is a question of law as to whether the arresting officers violated my Fourth Amendment Right "unlawful search & seizure of my person" and the force used violated my due process. There actions during the arrest where "cruel and unusual punishment" that also violates the Eight Amendment. After this interrogation, I was transported to Snohomish County Jail and booked on felony criminal charges. On April 7, 2009, I went to Court without Counsel and charges where filed for Attempted burglary in the second degree cause no. 09-1-00711-4. A felony dismissal date was set for April 24, 2009. The State on April 23, 2009, moves with an affidavit for probable

cause for attempted second degree burglary. (CP-66-69) An error made during trial second degree trespassing charge was included in jury instructions a misdemeanor charge in Superior Court after Snohomish County's felony dismissal date.

IV. ADDITIONAL GROUNDS FOR REVIEW

1. Defense Counsel's conduct was deficient and fell below an objective standard of reasonableness. Counsel deficiency is clearly shown on the record, by his failure to investigate alternative theories. Counsel failed to mention relevant facts to the defense. (I.E)(Witt, told Peckham that he had been drinking & thought he had a warrant for his arrest)(CP-66-69) Facts relevant to the arrest to support an alternative theory for the defense. (I.E)(Snohomish County incident report case no. s009-06745) (Defense Exhibit A)(Deputy Peckham stated in her report "he told me he had been at the bar with a friend and asked if he was going to jail for his warrant" she also detected a strong odor of alcoholic intoxication

ants emanating from his persons as he was talking to me) Defense Counsel failed during cross examination to make mention of these relevant facts in the case. He failed to mention alternative theories other possible reasons, Why the defendant was running ? Was he intoxicated ? Did he have a warrant ? So, that the Jury could come to a reasonable conclusion, besides the theory presented by the State. Defense Counsel knew of this evidence in discovery, this shows deficient conduct with a absence of legitimate strategic or tactical reasons at trial. Counsel also objecting during direct examination as Peckham stated "he said he thought he had a warrant for domestic violence out of Snohomish (RP-81) Shows his deficiency at legitimate reasoning at trial. At a minimum Defense Counsel must conduct an investigation to determine a reasonable line of defense to rebut or; challenge the State's theories. A defense is available if a particular mental state is an element of the crime charged. A diminished capacity (I.E)(Defense Exhibit A) Peckham smelt alcoholic intoxicants & the fact that I had to be woken up by Officer Linnell and dragged out of a patrol car, because I was passout drunk. Facts

relevant to a trial defense and also forgot to mention I thought I had a warrant for my arrest. A trial defense requires expert witness testimony demonstrating that a person intoxicated has a diminished capacity, and couldn't commit the crime charged. An alternative theory in contradiction to State's expert witness testimony Detective Bett's hypothesis of an attempted burglary. "FACTUM IMPRESTABILE" Latin means an act that cannot be performed. Defense Counsel's deficient performance failed also to move to suppress critical items of evidence. The questionable search & seizure of personal property during the arrest. Defense Counsel didn't challenge law enforcement's actions a constitutional violation & unlawful search & seizure of my persons. (I.E)(Defense Exhibit A) An incident report taken during the arrest where Deputy Peckham use force. I was taserred several times while handcuffed then deprived article's of personal property taken as critical items of evidence. The State introduce an item taken State's exhibit 30 (1 pair of Nike tennis shoes) in connection to Detective's hypothesis of an attempt to enter the building.(RP-146-147) Defense Counsel's failure at pointing out law enforcement

misconduct during the arrest a constitutional violation which prejudice my defense. The Court should've evaluated whether law enforcement violated my due process during this arrest. Counsel should've determined whether my right's where violated in this case. (I.E)(Defense Exhibit A) Deputy Peckham used the taser as a tool to gain obedience while handcuffed and forced to walk from Viking Village to Stanwood P.D with taser probes in my back, to a holding cell where I was taserred again, before questioning and article's of personal property where taken and used as critical items of evidence in this case. Deputy's actions where excessive form of punishment which is in violation of the Fourth , Eight , & Fourteenth Amendment. Defense Counsel failure to move to suppress the evidence taken during the arrest clearly shows a deficiency in his performance at trial. Had Counsel move to suppress evidence there would've been a different outcome at trial. (SUB NOM. State V. Horton) Defense Counsel's failure to move to suppress evidence on a particular ground constitutes ineffective assistance of Counsel. The Court holding that the arresting officer exceeded the scope of the protective frisk

when he searched the contents of the cigarette pack and Defense Counsel was ineffective for failing to move to suppress the evidence found on the defendant's persons, the court reverses the judgement. (See in; State V. Horton 136, Wn App, 146 P.3d 1227) Defense Counsel failed to move to suppress evidence, when force was used by law enforcement that violated my due process. State's exhibit 23, 25, 26, 30, where admitted without challenge at trial. Defense Counsel deficient performance resulted in prejudice, without complete examination of the facts relevant in this case. (I.E)(Defense Exhibit A)(CP-66-69)(RP-90-103)(RP-81) There was a reasonable possibility that, but for the Counsel deficient conduct the outcome of the proceedings would've differed met with alternative theories, constitutional violations, & suppress evidence. I can clearly show (I.E) ineffective assistance of Counsel the two part test adopted (See in; Strickland V. Washington 466 U.S 668, 687, 104 S.ct 2052, 80 L.ed 2d 674)(1984) In my case there is no reasonable legitimate tactic performed by Counsel at trial. "CITRA CAUSAE COGNITIONEM" Lati means without investigating the cause. At trial Detective Bett's

investigation was satisfactory without judicial interdiction, and trial proceeded upon an investigation of those facts made in satisfaction to the Court. Defense Counsel didn't challenge or; conduct it's own investigation of alternative theories leading the jury to a reasonable conclusion.

2. Defense Counsel asked the Court to grant motion "IN LIMINE" to prohibit the introduction of any crimes or wrongful conduct of the Co. defendant charged or; Uncharged. This motion was granted. (CP-55, 64, 65) The State's prosecution introduced a photograph of the bottom of Co. defendant's shoe in comparison to the shoe print on the roof. (RP-145-146) The State introduce states exhibit 28 & compared it to the tread pattern of state's exhibit 24. Detective gave his opinion about the differences in that single sole impression state's exhibit 24 that it was an athletic shoe, but detective is not a shoe expert. (RP-186) The State did introduce Co. defendant conduct allowing the introduction of state's exhibit 28.

3. I wasn't given a fair and impartial jury at trial.

A jury question provide by counsel, that I recall from memory if the defendant didn't stand trial, would you think differently about that?

Most answered, yes I would like to know what he had to say. Counsel then told the jury that his client would be exercising his right not to stand trial. Would you still think differently about him? Most answered No, but they still wanted to know that he had to say before they made a decision.

4. Jury question, would like to believe a law enforcement officer's story or theories? Taking the word of an officer as the truth. All answered yes, someone was related or had friends in law enforcement, some were victim's of property crimes. So, their opinions would more than likely lean toward law enforcement.

5. The jury took 35 mins before coming to there verdict of guilty. My legal property was lost or misplaced by Snohomish County's Jail property room my legal document's & legal note pads where I took notes "they were unable to locate" this is all I could recall from memory about the jury.

6. Jury instructions the Court should've excluded the lesser charge of trespassing in the second degree as an instruction at trial.

The superior court of Snohomish county had a felony dismissal date set on April 24, 2009, where charges could've been dismissed and misdemeanor charges may have been pursued according to Snohomish county court rules. On April 23, 2009, the State decided to pursue attempted second degree burglary charges instead. (CP-66-69) The State use trespassing to call witness Jeff Anderson second day of trial. (That he never gave anyone "access to the roof.") (CP-131-134) To play into the State's theory that someone was trespassing and attempting to gain entry into the laundromat of the building without permission. State's witness Mr. Anderson never saw anyone, heard, or called an attempting or trespassing on the Viking Village property let alone gave anyone permission.

7. "CONSTRUCTION UT RES MAGIS VALEAT QUAM PEREAT"

Latin means, "construction that gives effect to matter rather than it fail. I exercise my Right "not to stand trial" because of that the State's vindictive prosecution constructed a crime rather than having to prove the criminal element's beyond a reasonable doubt. The State fail to meet it's burden of proof that an actual crime took place on April 4, 2009. That a substantial step towards the commission of an attempted second degree burglary occurred by a moral certainty.

The State constructed roof access and entry with insufficient evidence and a hypothesis of "how a burglary could've been committed." (RP-155-158)(RP-174-177) During cross examination Detective Betts never found any evidence there was any attempt to enter the building. (RP-180) neither did deputy Peckham or Deputy Veentjer, able to find any actual evidence indicating roof access or entry into the building was ever gained. (RP-64) (RP-87)(CP-66-69) (SUB NOM. State v. Jackson) Supreme Court holding the trial court cannot instruct the jury, where the charge is attempted burglary, that it may infer the defendant acted with intent to commit a crime within a building, where the evidence is that the defendant may have attempted entrance into a building, but there exist other equally reasonable conclusions which follow from the circumstances. See (State v. Jackson, 112 Wn.2d 867, 870 P.2d 1211). In my case there exist other equally reasonable conclusions which follow from the circumstances. When Deputy Peckham arrived to a suspicious vehicle call, she spotted a male in front of the building in dark clothing. (RP-76) Deputy Peckham was getting out of the car when she heard "this place is being burglarized" over the radio. (RP-78) I was intoxicated and thought I had a warrant (CP-66-69) Affidavit of probable cause dated 04/23/2009.

Reasonable conclusions which followed from the circumstances. The disputable presumption is that the State's never met reasonable standards of equivocal conduct, without actual entry "into the building the jury may not be instructed that

criminal intent, may be inferred such an instruction is improper. There was no suspect on the roof, burglary alarm in progress at Viking Village, broken window, property damage, a hole in the wall or any indication of an attempted burglary made on Viking Village. There wasn't an attempt whatsoever at entering the building, but the State sure constructed one. The State's prosecution was vindictive and prejudicial with a preconceived judgment formed with a strong bias to persuade the jury that a crime had occurred; an attempted burglary. The State's prosecution fail to mention facts relevant to the crime. In it's construction prosecution state's "well, he didn't go up there to drink or use drugs, there is no evidence of that" in his closing statement to the jury. (RP-204) Then again the State's prosecution did have evidence in court papers and discovery that said otherwise. (CP-66-69) The State's prosecution constructed a crime rather than reconstructing the criminal elements constituting an attempted second degree burglary. The State fail to meet it's burden of proof (See in: opening brief prepared by Appellate Attorney's) To a moral certainty if there was no indication of an attempt to enter the building, then why two days later construct one?

8. The State's evidence was insufficient to establish that "roof access" was made. The State called no witness in direct

evidence that seen or heard someone on or upon the roof. The State did have sitting at prosecution's table as managing witness Detective Bett's. (RP-3) Detective Betts on April 4, 2009, didn't discover any unlawful entry into any of the businesses at Viking Village. (RP-138) Deputy Veentjer didn't draw any conclusion that it had to be roof entry. (RP-64) Deputy Peckham didn't find any evidence to indicate someone tried to break into the building. (RP-87) On April 6, 2009, two days later Detective Bett's constructed roof access and began to construct a crime. (RP-153) During the initial investigation, Detective Bett's had a couple theories or; hypothesis about what could've happened, but didn't know for sure what had happened. (RP-153) Detective Bett's took photographs until April 9, 2009, to support his hypothesis of an attempt to gain entry into the building. The first impression to this hypothesis Photographic evidence state's exhibit 19, which doesn't clearly establish or identify a pattern of foot prints. The State does not clearly distinguishes the different foot print patters or; clearly mark a pattern left in the morning frost. State exhibit 19, clearly establishes smudge marks not foot prints. (RP-120)(RP-125) The fibron sole's of Deputy's shoes were not clearly marked or intoduced in comparison (RP-121) There was two sets of foot prints in the morning frost.

9. The State introduces exhibit 21 "still unable to locate foot prints in photograph" (RP-122-125) The foot prints in the morning frost were not clearly marked in the photo's. The evidence is insufficient to establish roof access to the building (RP-178).

10. The Second Impression of This Hypothesis the Modes of Entry and Different Style's of Roof Top Burglar Would Gain Entry (RP-136-138).

Detective Betts still didn't discover any unlawful entry into any of the businesses (RP-138) a relevant fact in this case.

11. Detective Describes Exhibit 23. (My shoe) an athletic shoe & it's tread pattern in comparison to exhibit 24 "a questionable impression" of a single left sole. Investigating Detective & expert witness identifies that the two have similar characteristic's (RP-140-144). "Exhibit 24" one single questionable impression with similar characteristics is insufficient to establish all the criminal elements of this charge.

The Sixth Amendment say's that all facts must be proven beyond a reasonable doubt all elements of the crime. The State uses one single left sole impression to establish someone gained roof access without introducing the right sole impression indicating a set of footprints. Detective Bett's is not a shoe expert (RP-186).

12. The State Never Introduced Washington State Patrol Crime Lab Test Reports. "A questionable impression" A test to support the photo evidence taken by Detective for water, frost, condensation, similar characteristics. A question of law to be reviewed "De Novo."

13. The State Then Introduces More Photo Evidence to Support Their Hypothesis. Photo's taken several days after until April 9, 2009 (RP-155-158). The hypothesis that roof access was made by climbing on a dumpster. The Detective never tested any evidence to support his hypothesis (RP-174-176) Detective Bett's states "I think any person could look at this and form an opinion!" That is the reason why evidence wasn't tested (RP-184-185). The State did not conduct another test to find similar characteristics in the tread patterns. Exhibit 24, one single footprint "a questionable impression" is insufficient evidence to support the conviction. Detective Bett's still didn't find any direct evidence indicating that there was any attempt to enter the building. (RP-180)

14. Exhibit 36 & 37 where evidence admitted as photographic without introducing the actual back-pack and contents.

The photographic evidence is then used in a hypothesis "as burglar tools." (RP-150)

The State introduces photo's and paints a picture of impression of what the tools could've been used for?

As burglar tools to make entry into the building.

Between the 4th & 6th of April 2009, Detective Bett's describe the tools in the back-pack as Carpentry tools used in Carpentry Work in his search warrant. (RP-7)

The carpentry tools were never used in a burglary. The State again uses the photographic evidence and construct's a Non-existent crime. This brings the question of whether you can introduce a picture of the gun & not introduce the gun itself without bullets as the weapon that attempted to murder someone.

#### V CONCLUSION

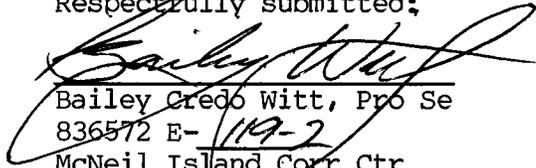
I exercised my Fifth Amendment Right "Not to Stand Trial" The State's vindictive prosecution with a preconceived judgment constructed a nonexistent crime. There were no witnesses! No Entry! No property damage! I was substantially prejudiced because "I chose not to stand trial." The prosecution moved with a strong bias to persuade the jury with insufficient evidence and allow a miscarriage of justice.

I request additional briefing from Nielsen Broman Koch, PLLC. Attorney at Law to adequately address issues raised in my "Pro Se" Statement of Additional Grounds for Review. I move with counsel, Nielsen Broman & Koch, PLLC Attorney at Law in opening brief that there was insufficient evidence to support attempt second degree burglary. It is requested this

Court reverse my conviction.

Dated this 9th day of April 2010.

Respectfully submitted;

  
Bailey Credo Witt, Pro Se  
836572 E- 119-2  
McNeil Island Corr Ctr  
P.O. Box 881000  
Steilacoom, WA 98388-1000

DEFENSE

**EXHIBIT (A)**

( SNOHOMISH COUNTY INCIDENT REPORT )

CASE NO. S009-06745

# Snohomish County Incident Report

## Snohomish County Sheriff

# ORIGINAL

Case Number  
**SO09-06745**

Incident Classification 1 <b>Assist other agency, other</b>		<input type="checkbox"/> Attempted	Offense Code <b>AOAOT</b>	Incident Classification 2 <b>Burglary 2nd Degree</b>		<input type="checkbox"/> Attempted	Offense Code <b>BURGT</b>
Incident Classification 3		<input type="checkbox"/> Attempted	Offense Code	Type of Report <b>Alcohol Related, Arrest, Information, Persons</b>			
Address/Location of Incident <b>8820 Viking WAY, Stanwood, WA 98292</b>				Premise Type/Name		Code	
Officer Assault/Safety	Responding To		Type of Assignment <b>1 Officer Vehicle</b>	<input type="checkbox"/> Force <input type="checkbox"/> No Force	Reporting Area	Beat	
Occurred on or From (Date/Time/DOW) <b>04/04/2009 04:35 Saturday</b>		Occurred To (Date/Time/DOW) <b>04/04/2009 04:35 Saturday</b>		Reported On (Date/Time/DOW) <b>04/04/2009 04:35 Saturday</b>			
<b>Known Suspects/Subjects</b> <small>RO-Registered Owner, GC-General Contact, W-Witness, SU-Suspect-Unidentified, SK-Suspect-Known, V-Victim, S-Suspect, R-Runaway, RES-Respondent, VP-Victim</small>							
No. <b>A-1</b>	Name (Last, First, Middle) <b>Witt, Bailey Credo</b>			Race <b>W</b>	Ethnicity	Sex <b>M</b>	
DOB/Age <b>01/08/1979 30</b>	Height <b>5'11"</b>	Weight <b>190</b>	Hair <b>BLK-Black</b>		Eyes <b>BRO-Brown</b>		
Street Address <b>1126 W Casino RD #2A, Everett, WA 98204</b>				Residence Phone		Business Phone	
Social Security No. [REDACTED]	Driver's License [REDACTED]		State <b>WA</b>	Other ID			
<b>Narrative</b>							

**SUMMARY:** [RCW 42.56.230(5)] [18 USC 2721(a)(1)]

I assisted Stanwood Police Department with an interrupted burglary by chasing one of the suspects on foot and taking him into custody. I also gathered some evidence from the crime and assisted in checking the area for more suspects. I tased the male I took custody of twice due to his noncompliance and attempts to assault deputies.

**NARRATIVE:**

On 04/04/09 I was working as a Deputy for the Snohomish County Sheriff's Office in Snohomish County, Washington. I was wearing my department-issued duty uniform complete with a badge. I was driving a fully marked patrol vehicle with reflective decals and insignia that clearly identifies me as a Deputy Sheriff.

I was in the city of Stanwood when Deputy Veentjer #1485 requested my assistance behind the Viking Village Complex (8820 Viking Way). I knew that he was out with an occupied suspicious vehicle and was only a short distance away, near the police department building. (See Stanwood PD case number OO 09-335)

As I turned westbound into the complex's northeast corner parking lot from 88th St NW, I observed a male wearing dark clothing running from near the laundromat's entrance. I noticed that he was in possession of a dark-colored backpack. Deputy Veentjer soon advised me that the complex was in the process of being burglarized. I briefly lost sight of him as he ran straight to the rear part of the driver's side of a box van that was parked in the lot (WA license A53340P). I parked my patrol vehicle, exited and went towards the front of the van where I drew my duty weapon and peeked around the side.

I spotted the male, pointed my pistol at him, identified myself as a law enforcement officer and told him to stop. I observed that he no longer had possession of the backpack. The suspect looked at me and immediately began

<b>Status</b>		Officer Name/Number <b>Peckham, T L #1451</b>		Unit	Approved By/Number <b>[Signature] #1312</b>	Date <b>4-5-09</b>
Clearance <input checked="" type="checkbox"/> Arr/A <input type="checkbox"/> Arr/J	<input type="checkbox"/> Unfounded <input type="checkbox"/> Exc/A <input type="checkbox"/> Exc/J	Distribution <input type="checkbox"/> PA <input type="checkbox"/> ADMIN	<input type="checkbox"/> DOC <input type="checkbox"/> CPS <input type="checkbox"/> DSHS	<input type="checkbox"/> HD <input type="checkbox"/> JUV <input type="checkbox"/> MH	<input type="checkbox"/> TRAF <input type="checkbox"/> DET <input type="checkbox"/> PAT	PROACT Court Other
Entered RMS						Logged
Date	Initials	<input type="checkbox"/> Entered WACIC/NCIC		Date	Initials	Date
<b>INCIDENT REPORT</b>						

**Snohomish County Incident Report**  
**Snohomish County Sheriff**

2

**ORIGINAL**

Page 2

Incident Classification 1

Assist other agency, other

Case Number

SO09-06745

running towards 88th. I advised dispatch that I was in foot pursuit and gave chase. The male then ran to SR 532, where he went eastbound for a few feet, then crossed the highway going southbound. I holstered my weapon and drew my X26 Taser while I was running after the suspect. I requested K9 assistance and continued giving the suspect verbal commands while pursuing him, but he continued to refuse to comply.

After the male crossed SR 532, he ran down a grassy embankment and into a wooded area just west of the SR 532/Burlington Northern viaduct. I did not pursue him into the woods and instead remained on the south shoulder of SR 532, giving dispatch information and still giving orders to the male, as I could hear him moving around in the underbrush.

I saw the male poke his head out of the brush and look at me. I told him to exit the woods but he refused and remained in there for a few seconds more before showing himself entirely. I again unholstered and pointed my duty weapon at him and ordered him to walk towards me. I heard him ask, "why?", and advised him that a police dog was coming to track him if he didn't give himself up. I immediately noticed that his hands were in the front pockets of his sweatshirt and commanded him to take them out of his pockets, to which he complied. As he walked towards me, he put his hands in the same pockets two separate times and only took them out momentarily when I ordered him to. The male approached me and I had him turn away from me, holstered my pistol and drew my Taser. I had him put his hands behind his back and subsequently placed him in handcuffs.

While detaining the male and escorting him to my patrol vehicle, he told me he believed he has a warrant for Domestic Violence out of Snohomish. He told me he had been at the bar with a friend and asked if he was going to jail for his warrant. I detected a strong odor of alcoholic intoxicants emanating from his person as he was talking to me. When we got to my car, I patted the male down for officer safety purposes and felt a hard object in his right front pants pocket. I pulled it out and saw that it was a wallet. I found nothing else during my frisk of the male and subsequently double-locked my handcuffs and placed him into the back seat of my patrol car.

I observed the backpack he was carrying lying on the pavement near the rear driver's side wheel of the box van he had initially run towards when I first saw him. As I approached it, I noted a large crowbar sitting on top of the wheel. I immediately took photographs of the evidence, then took custody of them. I did not look inside the backpack but noticed the teathed end of what appeared to be a saw poking out of the top of it. I placed them on the trunk of my patrol vehicle for a short time, then secured them inside.

I went over to Deputy Veentjer's location, a short distance away from where I had parked my car and he advised someone might still be on the roof.

In an attempt to identify the male I had detained, I discovered a social security card and debit card in the name of Bailey C. Witt. I ran the name through RMS with dispatch and she advised she had found one with a birthday of 01/08/79, which matched the description of the male I had custody of.

Everett Police Officer/K-9 Handler Mekelburg and K-9 Kodiak arrived on scene a short time later and I briefed him on what had occurred. We decided to run the dog around the exterior of the complex and check the security of every door due to the fact that we didn't know if/where entry had been made or if there were any outstanding suspects. We discovered that all exterior doors were secured.

Officer Name/Number

Peckham, T L #1451



Unit

Approved By Number

Date

**INCIDENT REPORT**

**Snohomish County Incident Report**  
**Snohomish County Sheriff**

3

**ORIGINAL**

Page 3

Incident Classification 1

**Assist other agency, other**

Case Number

**S009-06745**

After that, Officer Mekelburg requested that I show him where I had chased Witt in an attempt to recover any evidence and determine if anyone else had run from the front of the building. We reached the wooded area where Witt had briefly hidden and K-9 Kodiak located two rubber-covered work gloves. I took custody of the gloves and handed them over to Deputy Veentjer a short time later when we returned to the complex.

We then decided to check the roof for any more suspects or point(s) of entry. There were some sheets of ice on the roof due to the weather. I remained on the roof of the northernmost building, a karate dojo, which was separated by a few feet from the main complex building, where the laundromat roof began. Deputy Veentjer observed footprints on the north part of the laundromat roof, which I could see from my vantage point. I noticed that the tread appeared to be that of sneakers, not the police-type boots we police officers were wearing. Also, no law enforcement officers had walked on that section of the roof. From what I saw, they lead around a large roof vent but I couldn't see where else they went due to my position.

Deputy Linnell #1232 was asked to take custody of Witt, who was still in my patrol vehicle, and transport him to the police department building. I unlocked my car and Deputy Linnell opened the rear driver's side door to contact Witt. Witt was lying across my back seat with one of his feet up on that same door's window prior to Deputy Linnell opening the door. Deputy Linnell ordered him to exit my car but Witt refused and continued to simply lay there, passively resisting the verbal commands. Deputy Linnell kept commanding Witt to exit the vehicle but the suspect wasn't making any effort to do so. I heard Witt say something to Deputy Linnell but I didn't hear it clearly enough to ascertain what his words were. Deputy Linnell told Witt that he was going to drag him out of the vehicle due to his consistent level of non-compliance. Witt still continued to lie there. Deputy Linnell then took hold of Witt near his ankles and pulled him out to the point where Witt's feet made contact with the ground. Witt still refused to completely get out of the car and was assisted by Deputy Linnell, who took ahold of the back upper part of his shirt to escort him.

Deputy Linnell and I then walked Witt out of the parking lot and northbound on 88th towards the police department. I was walking a few feet behind them and heard Witt becoming verbal with Deputy Linnell. Suddenly, I observed Witt turn his body towards Deputy Linnell and appear to lunge at him with his upper body. Viewing this as an assault attempt on Deputy Linnell, I deployed my X26 Taser and shot Witt in the mid-back with the probes. Witt immediately fell to the ground onto his back, said, "Okay, Okay, Okay!" and his compliance was soon gained. I left the probes in Witt's back and we escorted Witt the rest of the way to the police department and into the holding cell, where Deputy Linnell told him he was going to unhandcuff him. Deputy Linnell directed Witt to keep his hands behind his back after being unlocked, to which Witt confirmed that he would do so. When Deputy Linnell uncuffed Witt's left hand, Witt immediately brought it in front of himself and up towards his head. Seeing this act of disobedience and perceiving it as a possible second attempt at assaulting law enforcement, I pulled the trigger of my taser, delivering a second shock to Witt's back. Again, compliance was gained directly thereafter and Deputy Linnell was able to finish unhandcuffing Witt, remove his sweatshirts (including the taser probes) and then re-handcuff one of Witt's hands to the bench in the holding cell.

I then brought the crowbar and backpack I had recovered, in addition to Witt's wallet, to Stanwood PD where they were secured in Detective Betts's office per his request. I booked 2 CDs (1 Original and 1 Copy) of the photographs I had taken of the items at the North Precinct.

Officer Name/Number <b>Peckham, T L #1451</b> <i>TP</i>	Unit	Approved By Number	Date
<b>INCIDENT REPORT</b>			

T6

DECLARATION OF SERVICE

I, Bailey Witt, certify that I deposited today in the internal mail system of McNeil Island Corrections Center a properly stamped and addressed envelope directed to:

The Court of Appeals  
Division I  
One Union Square  
600 University St.  
Seattle, WA 98101-4170

Containing the following document(s):

20 page motion for  
Statement of additional  
grounds for review  
Attached defense Exhibit A.  
Snohomish County incident Report  
Case No. 5009-06745

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Submitted this 9th day of April, 20 10, at McNeil Island

Corrections Center, Steilacoom, Washington.

By: Bailey Witt  
(Signature)  
Bailey Witt #836572  
(Name, DOC # and Cell) E-119-2  
McNeil Island Corrections Center  
P.O. BOX 88-1000  
Steilacoom, WA 98388-1000

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

---

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 63937-4-1
	)	
BAILEY WITT,	)	
	)	
Appellant.	)	

---

**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 21<sup>ST</sup> DAY OF APRIL 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] SNOHOMISH COUNTY PROSECUTOR'S OFFICE  
3000 ROCKEFELLER AVENUE  
EVERETT, WA 98201

**SIGNED** IN SEATTLE WASHINGTON, THIS 21<sup>ST</sup> DAY OF APRIL 2010.

x *Patrick Mayovsky*