NO. 41689-1

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

EDDIE DAVIS, DOUGLAS DAVIS, LETRECIA NELSON, APPELLANTS

Appeal from the Superior Court of Pierce County
The Honorable Stephanie A. Arend, Judge

Nos. 09-1-05374-1, 09-1-05375-0, 09-1-05453-5

BRIEF OF RESPONDENT

MARK LINDQUIST
Prosecuting Attorney

By
KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

Table of Authorities

State Cases

Constitutional Provisions

Statutes

Rules and Regulations

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Should this Court uphold the jury's convictions for possessing a stolen firearm and unlawful possession of a firearm when there is sufficient evidence that each defendant had actual or constructive possession of Officer Richard's stolen firearm?

2. Should this Court find that there is no prohibition - as a matter of law- from using aggravating circumstances found in RCW 9.94A.535(3)(r) and (v) on the crimes of rendering criminal assistance, unlawful possession of a firearm and possessing as stolen firearm?

3. Should this Court find that there are sufficient facts supporting all but one of the jury's findings of aggravating circumstances?

4. Should this Court affirm the exceptional sentences imposed below when there are sufficient valid aggravating circumstances to justify the trial court's sentences?

5. Have defendants failed to show any error in the judgment, much less one that can be raised for the first time on appellate review ?

B. STATEMENT OF THE CASE.

1. Procedure

On December 4, 2009, the Pierce County Prosecuting Attorney's Office charged appellant, Letrecia Nelson, with six counts of rendering criminal assistance, and one count of possessing a stolen firearm in Pierce

County Cause No. 09-1-05453-5. (LN)[1] CP 805-809. The Pierce County Prosecutor's Office charged appellant, Eddie Davis, with four counts of rendering criminal assistance, three counts of unlawful possession of a firearm in the second degree, and one count of possessing a stolen firearm in Pierce County Cause No.09-1-05374-1. (ED)CP 13-18. The Pierce County Prosecutor's Office charged appellant, Douglas Davis[2], with four counts of rendering criminal assistance, three counts of unlawful possession of a firearm in the first degree, and one count of possessing a stolen firearm, in Pierce County Cause No.09-1-05375-0. (DD)CP 537-541.

On all of the charges pending against all three defendants, the State alleged the crimes were aggravated by the following circumstances: 1) the offense involved a destructive and foreseeable impact on persons other than the victim, RCW 9.94A.535(3)(r); and, 2) the offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement

---

[1] The clerk's papers have been numbered serially in the index for all three defendants. Some clerk's papers pertain to a single defendant, while others apply equally to all three. When a clerk's paper applies to all three it will be referenced as "CP." If the clerk's paper pertains to only one defendant, then that defendant's initials will appear parenthetically before the "CP".

[2] In addition to two defendants having the same last name (although not related) many of the witnesses also have the same last names. Consequently, first names may be used for clarity; no disrespect is intended.

officer is not an element of the offense, RCW 9.94A.535(3)(v). (DD)CP 537-541, (ED)CP 13-18, (LN)CP 805-809.

Prior to trial, defendants moved to dismiss all but one count of rendering criminal assistance. The court found that rendering criminal assistance was an ongoing offense and that only one unit of prosecution could be sentenced upon, no matter how many acts of assistance was given to a particular person who had committed or was being sought for a crime. The court ruled that while it would not dismiss the multiple counts, only one unit of prosecution was applicable to defendants' actions. CP 41-42. The State dismissed one count of rendering against defendant Nelson prior to trial. RP[3] 1363; (LN)CP 1525. Further, the court dismissed two rendering counts[4] pending against Defendant Douglas Davis pursuant to a motion made at the close of the State's case for insufficient evidence. RP 1352-53. Ultimately, the jury was instructed on one count of rendering on each of the defendants; the instruction listed alternative means of committing that offense that had been charged initially in separate counts. CP 408-449, (Instruction No, 26 (Letricia Nelson), No. 28 (Douglas Davis), and No. 31 (Eddie Davis)).

---

[3] The consecutively paginated trial volumes will be referred to as "RP." Designation of all other volumes will indicate the date of the hearing prior to the "RP" designation.
[4] This was counts I and II pending against Defendant Douglas Davis. RP 1352-53.

Also prior to trial, defendants Eddie Davis and Douglas Davis brought a Knapstad/corpus delicti motion regarding the unlawful possession of firearm charges that pertained to Maurice Clemmons's guns, which were found at the crime scene at the Forza coffee shop (Counts VI and VII for Eddie Davis and Count VI for Douglas Davis) as well as the count pertaining to the police officer's gun that Clemmons took from one of his victim's (Count V defendants Nelson and Douglas Davis; VIII for defendant Eddie Davis). The court dismissed Counts VI and VII against defendant Eddie Davis, and Count VI against Douglas Davis. 10/12/10 RP 50-52; (ED)CP 393; (DD)CP 640. It denied the motion as to Count V (Defendants Eddie and Douglas Davis) and VIII (Eddie Davis). 10/12/10 RP 69-70; (ED)CP 393; (DD)CP 640. The court entered written orders reflecting its decision. (ED)CP 393; (DD)CP 640.

The matter proceeded to trial before the Honorable Stephanie Arend. A co-defendant, Ricky Hinton, was also tried at the same time. After hearing the evidence the jury acquitted Hinton of all charges.

The jury found Defendant Nelson guilty of rendering criminal assistance and possessing a stolen firearm. (LN) CP 1570, 1571. It unanimously agreed in a special verdict that she had rendered criminal assistance by "preventing or obstructing, by use of force, deception, or threat, anyone from performing an act that might aid in discovery or apprehension of Maurice Clemmons" (LN)CP 1572-1574. It also returned special verdicts finding both alleged aggravating circumstances applicable

to both convictions. (LN)CP 1572-1574. At sentencing, the court imposed an exceptional sentence of 60 months on the rendering conviction (standard range 12+-14 months), and a standard range 14 month sentence on the possessing a stolen firearm count, but then imposed another exceptional sentence by running the terms consecutively for a total confinement sentence of 74 months. (LN)CP 1629-1641. The court entered findings of fact on this ruling. (LN) CP 1626-1628.

The jury found Defendant Eddie Davis guilty of rendering criminal assistance, possessing a stolen firearm, and unlawful possession of a firearm in the second degree. (ED)CP 450-452. It unanimously agreed in a special verdict that he had rendered criminal assistance by "providing Maurice Clemmons with money, transportation, disguise, or other means of avoiding discovery or apprehension" and by "preventing or obstructing, by use of force, deception, or threat, anyone from performing an act that might aid in discovery or apprehension of Maurice Clemmons" (ED)CP 456. It also returned special verdicts finding both alleged aggravating circumstances applicable to all three convictions. (ED) CP 453-455. At sentencing, the court imposed an exceptional sentence of 60 months on the rendering conviction (standard range 41-54 months based upon an offender score of 6), a standard range 43 month sentence on the possessing a stolen firearm count (offender score of 5), and a standard range sentence of 22 months on the unlawful possession of firearm (offender score of 5), but then imposed another exceptional sentence by

running the term on the rendering conviction consecutive to the statutorily mandated consecutive sentences on the two firearm convictions, for a total confinement sentence of 125 months. (ED) CP 468-480. The court entered findings of fact on this ruling. (ED) CP 465-467.

The jury found Defendant Douglas Davis guilty of possessing a stolen firearm, and unlawful possession of a firearm in the first degree. (DD) CP 737-739. It found him not guilty of rendering criminal assistance. (DD) CP 737-739. It also returned special verdicts finding both alleged aggravating circumstances applicable to both convictions. (DD)CP 740-742[5]. At sentencing, the court imposed an exceptional sentence of 45 months on the unlawful possession of firearm conviction (standard range 26-34 months based upon an offender score of 2), and an exceptional sentence of 45 months on the possessing a stolen firearm conviction (standard range 13-17 months based upon an offender score of 2). The sentences ran consecutively pursuant to statute for a total confinement sentence of 90 months. (DD)CP 771-783. The court entered findings of fact on this ruling. (DD)CP 768-770.

Defendants filed timely notices of appeal from entry of their judgments. (LN)CP 1646-1655, (ED)CP485-498,(DD)CP 784-798.

---

[5] Only two of the three cited pages are relevant as Defendant Douglas Davis was acquitted of the rendering charge. From the index to the clerk's papers, it is impossible to discern which one of the three listed special verdicts pertains to the acquittal, as all three special verdicts have identical descriptions. Consequently, I listed all three to insure that the two relevant pages would be cited to the court.

2. Facts

On the morning of November 29, 2009, just before 8:00 am, Lakewood Officers Tina Griswold, Ron Owens, and Mark Renninger came into the Forza Coffee Shop located at 11401 Steele Street in Parkland, Washington. RP 230. They ordered their drinks and went to sit at two tables along the north side of the coffee shop. RP 230. Lakewood Officer Greg Richards was also present, but likely still near the front counter area. RP 231. Maurice Clemmons entered the coffee shop carrying two firearms: a Glock Model 17 9mm Luger semiautomatic, and a Smith & Wesson .38 double action revolver. RP 231. Clemmons walked over to the table where the three officers were sitting, and shot officer Tina Griswold in the back of the head using the Glock 9mm. RP 232. He then immediately used to same gun to shoot Officer Mark Renninger in the side of the head. RP 232. The Glock then jammed so that it was no longer functioning. RP 232. Maurice Clemmons then fired several shots from the Smith & Wesson - one of which struck and killed Officer Ronald Owens. RP 232. Then Clemmons and Officer Greg Richards began struggling with each other; Officer Richards fired his firearm, a .40 caliber Glock semiautomatic, which struck Clemmons in the right back. RP 233. The struggle continued until Officer Richards was shot in the head with his own weapon. RP 233. Clemmons then left the coffee shop taking Richards' firearm with him. RP 233. The first 911 call reporting the murders came in at 8:14 am. RP 234.

Detective Ben Benson testified that he was the lead detective assigned to this case, and that morning he interviewed the two baristas that had been working at the coffee shop, Sara Kispert and Michelle Chaboya. 249-51. From them he learned that after the initial shooting inside the coffee shop, they fled to a gas station a couple of blocks down the street at the intersection of Steele and 112th Streets, where they borrowed a cell phone to call 911. RP 251. As they waited at the gas station, Ms. Kispert noticed a white truck parked at the car wash across the street; a man that looked like the shooter walked up to the truck, got in the passenger side, and the truck drove away very fast heading east on 112th. RP 252-254.

Det. Benson testified that the investigation led to a woman named Nicole Kaley, who lived on Ainsworth who reported that she had seen a white truck matching the description of the suspect vehicle traveling fast right after the shootings - headed southbound on Ainsworth, in the direction of Saar's Marketplace. RP 255-56. Police located a vehicle matching the description of the suspect vehicle in the parking lot of Saar's Market. RP 255. This truck was linked to a business that was linked to an address that was linked to Maurice Clemmons. RP 257-58. This identification of Clemmons as a possible suspect in four first degree murders occurred within the first couple of hours after the shooting. RP 258.

Multiple law enforcement agencies from all over the region provided assistance to the Sheriff's Department in this investigation, and all Sheriff

Department detectives were called in to assist in the investigation. RP 416-426, 483-484, 542, 562-64, 879, 882-83. Several detectives were given the task of trying to locate the suspect. RP 1052. The identification of Clemmons as a possible suspect in four first degree murders occurred within the first couple of hours after the shooting. RP 431, 1053. Within a short time, numerous law enforcement officers were looking for Maurice Clemmons all over the Puget Sound region. RP 879-882..

Detective Ed Troyer is a public information officer for the Pierce County Sheriff's department responsible for media relations when there is a major incident. RP 615-16 . When he was informed of the shooting of the four officers at the Forza the morning it happened, he went out to the scene; on his way out there he heard radio broadcasts regarding the shootings RP 618, 625. He arrived at the scene at approximately 8:45 am and began a series of media briefings, giving updates approximately every fifteen minutes. RP 625-29. Within a couple of hours of the shooting, Det. Troyer was releasing information regarding the description of the shooter and of the suspect vehicle that he left the scene in, as well as information that the truck was being driven by a black male. RP 629-633. Det. Troyer also indicated to the media that the police would also be looking for anyone helping the persons involved in these shootings by giving them money or aid. RP 635.

Detective Karr was directed to the South Hill Precinct on the afternoon of November 30, 2009, to conduct some interviews of people that might have information about this crime. RP 1054. With very little information about Douglas Davis, Det Karr was assigned the task of interviewing him in an effort to locate Maurice Clemmons. RP 1055-58. Douglas Davis described himself as a friend of Maurice Clemmons and that he moved here from Arkansas to work for him. RP 1062. When asked about the last time he saw Clemmons, Douglas indicated that it had been the Tuesday prior to Thanksgiving. RP 1064. Douglas indicated that he was aware on Sunday that police were looking for Maurice because of news reports. RP 1067-1073. After consulting with some other detectives who had been doing other interviews, Det Karr returned to the interview and asked Douglas if he had ever seen the defendant doing a little dance while holding a gun and talking about "killing the bitches." RP 1079. Douglas stated that Clemmons had been talking crazy about shooting the police. RP 1092. Douglas then indicated that he had not been honest in the prior interview and that he had, in fact, seen Maurice Clemmons on the morning of the shootings. RP 1081. Douglas indicated that Maurice had come beating on his door around 8:30 -8:45 that morning, and that he was armed with a semiautomatic gun. RP 1081-82. Clemmons wanted to go to Auburn and said he had been shot by a police

officer. RP 1083-86. Douglas estimates that they were at the house in Auburn for about 15 minutes; Douglas helped Clemmons take care of his wound, cleansing it with hydrogen peroxide. RP 1087. Douglas was also pretty sure that Clemmons took the gun with him when he left. RP 1088. Douglas indicated that he was directed to follow him to Auburn in a separate car. RP 1089. Douglas indicated that they went to a Discount Tire store where he saw a girl, and that Clemmons ended up getting into her car. RP 1089. Through conversations with other detectives, Det Karr deduced that this "girl" was probably Quiana Williams. RP 1124.

On November 30th, Detectives Brooks and Quilio of the Tacoma Police Department were instructed to report to the command center to see if they could provide any assistance in the investigation of the four murders. RP 482-485. With only the most basic of information about the crime, the detectives were told to go to an address in Pacific where relatives and associates of Maurice Clemmons lived to see if they had any information about his whereabouts. RP 487-489. The detectives found Cicely Clemmons and Letrecia Nelson at this residence, as well as a young girl. RP 489-91. The detectives ascertained that Defendant Nelson was Maurice Clemmons's aunt. RP 493. While they were inside the house, Det. Quilio noted that the television was on to news coverage of the killings. RP 493. Det. Quilio interviewed Ms. Nelson, who indicated that

she did not know where Maurice Clemmons was, and that she had not seen him since the shooting, that the last contact had been on Thanksgiving. RP 494-96. Ms. Nelson also made it clear that she did not care for the police, and was not inclined to cooperate even if she had any information because Maurice was family. RP 497-500. Det. Quilio also asked about Ricky Hinton, Doug Davis and Eddie Davis; defendant Nelson indicated that she knew who those people were, but had not spoken to them and did not know where they were. RP 501. Ms. Nelson indicated that everything she knew about the murders was due to the news reports. RP 494. The detectives left this residence without making any arrests and without having learned anything about the whereabouts of Maurice Clemmons. RP 503. Detective Quilio testified that it would have been extremely useful information if Defendant Nelson had given her the information that she knew about Maurice Clemmons at that interview, as it would have given the police their first lead as to his whereabouts. RP 505-06, 511.

Det. Kobel was assigned the task of interviewing relatives of Maurice Clemmons in an effort to locate him. RP 882- 84. This led him to interview Creceda Clemmons -an aunt, Latanya Clemmons -a sister, and Eddie Davis - his cousin. RP 882-84. Detectives Kobel and Anderson interviewed Eddie Davis on November 30, 2009. RP 886-87. When

asked about his activities on the morning of November 29, Eddie Davis stated that he got up between 11:00am and noon, then went to a residence at 16th and Cedar where he stayed until 5 or 6 o'clock, then he went to another residence further north, where he spent the night. RP 910. Eddie stated that no one would have been using his cell phone that morning. RP 928. Eddie Davis indicated that he was driving a white Bonneville that day, and that he did not see Maurice Clemmons that day. RP 911-12 He acknowledged that around noon that day he learned from the news that his cousin was wanted for killing four police officers. RP 912-14, 920. Det. Kobel confronted Eddie Davis with the fact that he had information that Davis's cell phone had been used between 8:30 and 8:40 the morning of November 29, but Davis maintained that he had possession of the phone and had not used it. RP 944-46. Upon further question, Eddie eventually admitted that he had seen Maurice Clemmons on the morning of the 29th and that he had used his cell phone that morning. RP 955. Eddie Davis told Det Kobel that Maurice came back to the house and told him he wanted to be driven to Auburn. RP 964. He drove Maurice in his white Bonneville and on the way Maurice, who was in the back seat, told Eddie that he had been shot. RP 965, 968. When they reached their destination, Eddie could see that Maurice had been shot in the side of his chest, but it did not look serious. RP 966, 997-98. At their destination, he got the

wound cleaned with peroxide and bandaged; he was given fresh clothes. RP 967, 970, 998. Davis indicated that Maurice left his jacket there because it was blood soaked. RP 967. Eddie stated that Maurice told him while on the freeway that he had been shot by one of the police officers and that he "had shot four of them bitches" -meaning that he had shot the four police officers. RP 969, 995-96. Maurice indicated that Dorcus Allen had driven him to and from the coffee shop in the pickup truck. RP 993. From the house, Eddie drove Maurice to the Supermall and dropped him off near Discount Tires between 9:00 and 10:00 am where he got into another car. RP 971-73, 998, 1011. Eddie acknowledged that he heard Maurice talking about shooting cops prior to him doing so, and knew that he had guns that would enable him to carry out his threat. RP 1014.

On the morning of December 1, 2009, Pierce County Sheriff's Department received word that Maurice Clemmons had been shot and killed by Seattle Police Officer Kelly at 2:45 am. RP 1132-1134. Officer Kelly was on routine patrol when he came across a vehicle with its hood up, but its engine running. RP 1133. Officer Kelly stopped to check into the situation; he saw a person walk up to his patrol car as he was about to step out. He stepped out and found himself face to face with Maurice Clemmons whom he immediately recognized. RP 1134. Clemmons was attempting to pull a .40 caliber Glock out of his sweatshirt when Officer

Kelly opened fire and killed him. RP 1134. The gun in Clemmons possession was Officer Richard's gun. RP 1136.

By the afternoon of December 1st, Det Quilio's subsequent investigations and briefings with other detectives led her to believe that defendant Nelson and Cicely Clemmons needed to be re-interviewed, as the information they provided was not consistent with information learned from other sources. RP 1144. Det. Quilio went out to the Pacific residence in the late afternoon of December 1, and contacted both Ms. Nelson and Cicely, asking them to come down to the Tacoma Police department to be interviewed. RP 1145. When Det Quilio finally got the opportunity to interview Defendant Nelson, she confronted her with information that indicated Defendant had not been truthful in her prior statement to police. RP 1159. Defendant acknowledged that she had been untruthful, but did so because Maurice was "family." RP 1160-61. Defendant indicated that Maurice had been over on Thanksgiving and talking crazy, he was not wearing his ankle bracelet that he should have been wearing. RP 1165. Maurice indicated that if police came looking for him that he would open fire on them. RP 1166. On November 29, he showed up knocking on her door and when she answered it he was there holding his side saying he'd been shot. RP 1168-69. She got peroxide and bandages to help with the wound. RP 1174. Defendant Nelson indicated

that Clemmons bled on her carpet and that she cleaned it up after he left. RP 1173 -74. Defendant Nelson was vague as to who had picked up the gun that Clemmons brought to her house, but acknowledged that she "might have picked it up." RP 1175. She then admitted getting the bag for the gun out of the closet and putting the gun back in the bag. RP 1175-76, 1201. Det Quilio indicated that Defendant Nelson had information that would have been extremely useful in apprehending Maurice Clemmons had she been honest in the prior interview. RP 1180.

Cicely Clemmons testified that in November of 2009, she lived at 101 Second Avenue in Pacific, Washington, with her mother, defendant Letrecia Nelson. RP 274-76. Cecily testified that defendant Eddie Davis is her cousin; she knows defendant Douglas Davis, but he is not related to her. RP 276-78. Maurice Clemmons is also her cousin. RP 278. In November of 2009, defendants Eddie and Douglas Davis were living in a studio on Maurice's property in Lakewood, Washington, which also held a separate house, where Ricky Hinton and his family lived. RP 280-82. Maurice had been at Cecily's house for Thanksgiving a few days earlier, as had Douglas Davis and Defendant Nelson. RP 289, 296. Maurice had just been released from jail and was very angry and announced that he was going to kill the police. RP 296-298. Cecily had never seen Maurice like that and it frightened her as she thought he might follow through with his

threats; he had one gun on him at the time, and spoke of having other guns in his house. RP 299-304.

Cecily testified that Maurice Clemmons came to her house the morning of November 29, 2009, after he had killed four police officers at a Forza coffee shop in Parkland, Washington. RP 283. He arrived with Eddie and Doug Davis; her mother was also home when Maurice arrived. RP 283-84. Maurice announced that he had just killed four police officers and asked defendant Nelson to get him a shirt; he also announced that he had been shot and wanted help with his wound. RP 307, 333, 380. During the approximately 15 minutes that Maurice was there, his wound was cleaned and he received a change of clothes, but Cecily was in her room and did not see who helped him with these things; he also got permission to use Cecily's car. RP 284-86, 309-10, 382. Cecily testified that she thought her mom would have been the one to know where the clothes were stored that were given to Maurice. RP 396. Cecily, following Maurice's direction, gave her car keys to Eddie Davis. RP 310. Maurice also had Eddie call "Quiana" to instruct her that she was supposed to meet them at the Supermall. Maurice stated that he had killed four police officers, including a female officer that he shot in the head, and that one of the officers shot him, and that he had a tussle over the officer's gun before Maurice got it away from him, then used it to shoot the officer

in the head. RP 312. Maurice indicated that his own gun had jammed and that he took the officer's gun. RP 312, 316. Cecily gave Maurice $60 from her wallet. RP 313. When getting ready to leave Maurice asked "Where's the gun?" RP 316. The gun had been put in to a blue shopping bag, - a bag which Cicely had brought home and stored in a drawer in the laundry room; the bag with the gun was sitting on the counter. RP 314, 383. Eddie Davis told Clemmons that the gun was on the counter in the bag and then retrieved it for Maurice. RP 320. Maurice stated that he wasn't done-that he was going to kill more officers. RP 321. Maurice left with defendants Eddie and Doug; the three took the car that they arrived in, a white Bonneville that Cicely had seen Eddie driving previously, and Cecily's car. RP 286-87, 321-22. A few minutes later Eddie and Doug returned with Cecily's keys and car. RP 322-323. Maurice Clemmons was no longer with them. RP 323-24.

The police came to Cecily's house the next day, November 30th, asking her if she has seen her cousin Maurice since yesterday; Cecily lied and told them that she had not seen him since Thanksgiving and not helped him in any way. RP 287-90.

On November 29, 2009, defendant Eddie Davis had been previously convicted of the felony conspiracy to possess marijuana with intent to deliver, and Douglas Davis had previously been convicted of the serious

offense of unlawful possession of a controlled substance with intent to deliver. RP 1128-29.

Mike Zaro is the Assistant Chief of Police in Lakewood. RP 1229. He testified that all of the officers were on duty at the time they were killed. RP 1235. He testified the death of the four officers resulted in considerable shifting of schedules and use of overtime to compensate for the lost officers. RP 1257. Asst. Chief Zaro testified that there was concern for the families of the fallen officers, that these killings might be part of a vendetta so they were given a security detail. RP 1237. There was also a concern that police officers, and in particular Lakewood officers - might be being targeted. RP 1236, 1241. There was increased concern for the overall safety of the Lakewood community. RP 1237. When information came out that this killer might be being helped by others, it increased his officer safety concerns, because then there was the issue as to whether more than one person might be targeting officers. RP 1254. The concern was present as long as the shooter remained at large. RP 1255. Asst. Chief Zaro was responsible for seeing that the families of the fallen officers were notified, and that a Peer Support team was in place for the other Lakewood officers. RP 1232-33, 1255, -56 He testified that there were officers who availed themselves of this service. RP 1256. While no one resigned as a result of this incident, there was one officer

that has still been unable to return to work RP 1257. Zaro indicated that the fact that the perpetrator of these murders remained at large had a significant impact on the law enforcement community as the officers felt they were a target for this killer by virtue of their uniform. RP 1236, 1241. The crime received extensive coverage by national media. RP 629.

Kim Renninger testified that she is the widow of Mark Renniger and the mother of their three children, ages 16, 12 and 4. RP 236. She indicated that her husband was killed in the line of duty on November 29, 2009. RP 239. A friend called her attention to the news reports of the shootings of four officers just after 8:00 am; Ms Renninger tried to reach her husband by cell phone and, when that was unsuccessful, through dispatch. RP 240. Ms Renninger had been a dispatcher for 12 years and knew that the death of four officers would have a huge impact on the law enforcement community. RP 240-41. When she learned that her husband was one of the victims she became extremely frightened, was concerned for the safety of herself and her children, and sought protection. RP 241. Her fears were heightened by the fact that the suspect remained at large, and that he was apparently armed with one of the officer's guns. RP 242. She had a great sense relief when she learned the perpetrator had been killed and was no longer at large. RP 243. A child of slain officer Greg Richards testified that she was scared the entire time her father's killer

remained at large, that he would come for her and her family members. RP 246. She was also afraid for the families of other officers, especially those close to her family. RP 246-47. She found the fact that her father's killer had his gun for three days to be very unsettling. RP 247

Doug Richardson was mayor of Lakewood at the time of the murders. RP670-72 . He described the concern over the perpetrator of the murders remaining at large as it was clear that police officers had been targeted and how his community had to rely on officers from other jurisdictions to help cover the regular patrols in Lakewood. RP 675, 682-83.

C. ARGUMENT.

1. SUFFICIENT EVIDENCE SUPPORTED THE JURY'S VERDICTS FINDING DEFENDANTS GUILTY OF POSSESSING STOLEN FIREARM AND UNLAWFUL POSSESSION OF A FIREARM.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. ***State v. McCullum***, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); *see also* ***Seattle v. Gellein***, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); ***State v. Mabry***, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential

elements of the crime beyond a reasonable doubt. ***State v. Joy***, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. ***State v. Barrington***, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1988) (citing ***State v. Holbrook***, 66 Wn.2d 278, 401 P.2d 971 (1965)); ***State v. Turner***, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. ***State v. Salinas***, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. ***State v. Delmarter***, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In considering this evidence, "[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal." ***State v. Camarillo***, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing ***State v. Casbeer***, 48 Wn. App. 539, 542, 740 P.2d 335, *review denied*, 109 Wn.2d 1008 (1987)).

The written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. The differences in the testimony of witnesses create the need for such credibility determinations; these should be made by the trier of fact, who is best able to observe the witnesses and evaluate their testimony as it is given. On this issue, the Supreme Court of Washington said:

> great deference . . . is to be given the trial court's factual findings. It, alone, has had the opportunity to view the witness' demeanor and to judge his veracity.

State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (citations omitted). Therefore, when the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

All three defendants challenge their convictions for possession of a stolen firearm and Eddie Davis and Douglas Davis challenge their convictions for unlawful possession of a firearm[6] arguing that there was insufficient evidence to find that any of them possessed the firearm in question.

The jury was instructed that to convict a defendant of the crime of possessing a stolen firearm, each of the following elements had to be proved beyond a reasonable doubt:

> (1) That on or about the 29th day of November, 2009, the defendant possessed, carried, delivered, sold or was in control of a stolen firearm;
> (2) That the defendant acted with knowledge that the firearm had been stolen;
> (3) That the defendant withheld or appropriated the firearm to the use of someone other than the true owner or person entitled thereto; and
> (4) That any of these acts occurred in the State of Washington.

---

[6] Eddie Davis was convicted of unlawful possession of a firearm in the first degree while Douglas Davis was convicted of unlawful possession of a firearm in the second degree. (ED)CP 468-480; (DD)CP 771-783

CP 408-449 (Instruction No. 27 (Letrecia Nelson), No. 30 (Douglas Davis), and No. 33 (Eddie Davis)). The jury was instructed as to the possession element of an unlawful possession of a firearm charge as follows:

> (1) That on or about the 29th day of November, 2009, the defendant knowingly had a firearm in his possession or control;

CP 408-449 Instruction No. 29 (Douglas Davis) and No. 32 (Eddie Davis). Finally the jury was given the following instruction defining possession:

> Possession means having a firearm in one's custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.
>
> Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.
>
> In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant had the immediate ability to take actual possession of the item, whether the defendant had the capacity to exclude others from possession of the item, and whether the defendant had dominion and control over the premises where the item was located. No single one of these factors necessarily controls your decision.

CP 408-449 (Instruction No. 20).

Either actual or constructive possession is sufficient to convict a defendant of unlawful possession. ***State v. Jones***, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002). A defendant actually possesses an item if he has physical custody of it; he constructively possesses the item if he has dominion and control over it. ***Jones***, 146 Wn.2d at 333; ***State v. Coahran***, 27 Wn. App. 664, 668, 620 P.2d 116 (1980) (citing ***State v. Callahan***, 77 Wn.2d 27, 31, 459 P.2d 400 (1969)).

Dominion and control can be established by circumstantial evidence. ***State v. Chavez***, 138 Wn. App. 29, 34, 156 P.3d 246 (2007) (citing ***State v. Weiss***, 73 Wn.2d 372, 375 438 P.2d 610 (1968)). In a review of whether there is sufficient evidence of dominion and control, the court looks at "the totality of the situation to determine if there is substantial evidence tending to establish circumstances from which the jury can reasonably infer that the defendant had dominion and control of the [prohibited items] and was thus in constructive possession of them." ***State v. Partin***, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977).

Thus, the court looks to the various indicia of dominion and control with an eye to the cumulative effect of a number of factors. ***Partin***, 88 Wn.2d at 906; ***State v. Hagen***, 55 Wn. App. 494, 499, 781 P.2d 892 (1989). One important factor the court has recognized is having actual dominion and control over the premises where the prohibited item is found. *See, e.g.*, ***State v. Echeverria***, 85 Wn. App. 777, 783, 934 P.2d

1214 (1997) (affirming dominion and control over the premises as a factor); ***State v. Shumaker***, 142 Wn. App. 330, 334, 174 P.3d 1214 (2007) (holding that dominion and control is one factor from which constructive possession may be inferred).

The court considers an automobile a "premises" for this inquiry. ***State v. Turner***, 103 Wn. App. 515, 520–21, 13 P.3d 234 (2000) (citing ***State v. Mathews***, 4 Wn. App. 653, 656, 484 P.2d 942 (1971)). In ***Turner***, the court held that a defendant's actual control over the premises would create an inference of dominion and control over the prohibited item. ***Turner***, 103 Wn. App. at 523. It stated:

> When the sufficiency of evidence is challenged on the basis that the State has shown dominion and control only over the premises, and not over [the prohibited item], courts correctly say that the evidence is sufficient because dominion and control over premises raises a rebuttable inference of dominion and control over the [prohibited item].

Id. (quoting ***State v. Cantabrana***, 83 Wn. App. 204, 208, 921 P.2d 572 (1996)). A jury determines the weight of the inference created between defendant's actual control over the premises and his dominion and control over the prohibited item. ***Turner***, 103 Wn. App. at 524 (citing ***Cantabrana***, 83 Wn. App. at 209).

Aside from actual control over the premises, another important factor the court considers is whether the defendant had knowledge of the prohibited item's presence. ***State v. Turner***, 103 Wn. App. 515, 524, 13

P.3d 234 (2000). "Thus, where there is control of a vehicle and knowledge of a firearm inside it, there is a reasonable basis for knowing constructive possession, and there is sufficient evidence to go the jury." *Id.*

The courts have recognized other factors including close proximity, the ability to exclude others, and having immediate access to the prohibited item. ***State v. Edwards***, 9 Wn. App. 688, 690, 541 P.2d 192 (1973) (considering proximity as one factor and exclusion of others as another factor); ***State v. Wilson***, 20 Wn. App. 592, 596, 581 P.2d 592 (1978) (recognizing ability to exclude others as a factor); ***Jones***, 146 Wn.2d at 333 (holding immediate access to the prohibited item a factor).

No single factor is dispositive in determining dominion and control. ***State v. Collins***, 76 Wn. App. 496, 501, 886 P.2d 243, *review denied*, 126 Wn.2d 1016, 894 P.2d 565 (1995). Most of these factors alone will generally not be sufficient to establish dominion and control. ***Cantabrana***, 83 Wn. App. 204 (dominion and control over the premises alone not sufficient); ***State v. Shumaker***, 142 Wn. App. 330, 334, 174 P.3d 1214 (2007) (accord); ***State v. Summers***, 45 Wn. App. 761, 763-64, 728 P.2d 613 (1986) (proximity alone is not sufficient to establish dominion and control); ***State v. Hagen***, 55 Wn. App. 494, at 499, 781 P.2d 892 (1989) (the ability to reduce an object to actual possession alone is not sufficient). Finally, while the ability to exclude others is a factor, dominion and control need not be exclusive to establish constructive

possession. ***Wilson***, 20 Wn. App. at 596; ***State v. Weiss***, 73 Wn.2d 372, 378, 438 P.2d 610, 613 (1968).

In ***Turner***, the court considered these factors in totality when it upheld the defendant's conviction. 103 Wn. App. at 524. There, the defendant was driving a truck where a firearm was located in the back seat and he knew of its presence, even though he did not own the weapon. 103 Wn. App. at 521–22. Notwithstanding the location of the firearm in the backseat, the court stated that the defendant was in close proximity to the weapon. *Id.*

In this case, the evidence was sufficient for the jury to find that all defendants had either actual or constructive possession of Officer Richard's stolen service firearm. Following the murders at the Forza, Maurice Clemmons left with Richard's weapon in his possession. RP 233. He contacted Eddie Davis to transport him in Eddie Davis's Bonneville to Defendant Nelson's home in Pacific; there is evidence from which to infer that Doug Davis arrived at Nelson's home in the same vehicle as Clemmons and Eddie. RP 1081-82. Maurice Clemmons brought the gun inside Defendant Nelson's home and immediately announced that he had taken the gun from one of the officers that he killed, thereby informing all three defendants of the true owner of the stolen gun. RP 3-7, 333, 380. It is reasonable to infer that all three defendants heard this statement as they were in the room with Maurice Clemmons; Cecily Clemmons could hear this announcement even though she was in her bedroom when

Maurice made it. Thus, all three defendants had knowledge of the firearm's existence. RP 312, 1088. The evidence suggests that someone took the gun from Maurice Clemmons while his wounds were being cared for. It is clear that he did not maintain actual possession of the gun the entire time he was at Nelson's home, because he later asks where the gun had gone. RP 316. As Douglas Davis was the one attending Maurice's wounds, RP 1087, he would have been in close proximity to the gun and it is reasonable to infer that he would be the one to take the gun from Maurice so that it would not accidentally discharge while he was treating Maurice's wounds. Defendant Nelson's statements to Det. Quilio provide evidence that she not only knew of the gun but also that she handled it when she got a bag from the closet and placed the gun inside of the bag and left it on the counter. RP 1175—76, 1201. Not only is this evidence of actual possession, but it is also showing her dominion and control over the firearm as she places it in a container that hides it from view from Maurice Clemmons. While the firearm was on the counter, anyone of the defendants could have taken sole possession of the stolen firearm, showing that everyone had constructive possession of the gun. The firearm was in Defendant Nelson's house for between 10 to 15 minutes. RP 284. As she has dominion and control over the contents of her house, she also had dominion and control over the firearm for that period of time.

There is also evidence that Eddie Davis had actual possession of the gun as he knew the location of the gun when Maurice Clemmons

asked for it. RP 314, 320, 383. He also took actual possession when, after telling Maurice where it was located, Eddie Davis retrieved the bag with the gun from the counter and delivered it to Maurice Clemmons. RP 320. At that point, Maurice left with the gun in Eddie's car and the drove to the Supermall. Again, Eddie has dominion and control over the contents of his vehicle, which at this point included the gun. Considering all of these factors and viewing the evidence most favorably toward the State, this Court should find that the evidence is sufficient to uphold Eddie Davis's and Douglas Davis's convictions for unlawful possession of a firearm.

The same analysis of possession is also applicable to all three defendants' convictions for possessing a stolen firearm so those should be upheld as well. Additionally, a person is guilty of that crime if there is evidence that he or she carried or delivered a stolen firearm. Here, there is evidence that Defendant Nelson carried the firearm when she put it into the bag, and that Eddie Davis both carried and delivered the firearm when he picked up the bag holding the gun and delivered it to Maurice Clemmons. These convictions are supported by the evidence and the jury's verdict should be upheld.

2. THIS COURT SHOULD FIND THAT THE ALLEGED AGGRAVATING CIRCUMSTANCES MAY BE APPLIED TO DEFENDANTS' CRIMES AND, WITH ONE EXCEPTION, UPHOLD THE JURY'S FINDINGS AS TO THEIR EXISTENCE IN THIS CASE.

In most cases governed by the Sentencing Reform Act (SRA), a trial court is required to impose a sentence within the standard range. *See* RCW 9.94A.505(2)(a)(i). In order to depart from the standard range, the SRA indicates that a court may do so "if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.535. An appellate court will uphold a trial court's reasons for imposing an exceptional sentence so long as the reasons are not clearly erroneous. ***State v. Vaughn***, 83 Wn. App. 669, 675, 924 P.2d 27 (1996), *review denied*, 131 Wn.2d 1018, 936 P.2d 417 (1997); ***State v. Nordby***, 106 Wn.2d 514, 517-18, 723 P.2d 1117 (1986). The reviewing court will reverse a trial court's findings only if substantial evidence does not support its conclusion. ***State v. Grewe***, 117 Wn.2d 211, 218, 813 P.2d 1238 (1991). When an aggravating factor is found by a jury, the same standards used to test sufficiency of the evidence for a finding of guilt on a substantive crime are employed when testing the sufficiency of the evidence supporting an aggravating factor. *See*

generally ***State v. Suleiman***, 158 Wn.2d 280, 291, n. 3, 143 P.3d 795 (2006). Therefore, when the State has produced evidence of an aggravating factor, the decision of the trier of fact should be upheld.

On the other hand, when challenged by the appellant, the reviewing court independently determines as a matter of law whether the trial court's reasons justify imposing a sentence outside the standard range. ***State v. Fisher***, 108 Wn.2d 419, 423, 739 P.2d 683 (1987). The sentencing judge's reasons must be substantial and compelling, and must take into account factors other than those which are necessarily considered in computing the presumptive range for the offense. ***Nordby***, 106 Wn.2d at 516. A court cannot base an exceptional sentence on a factor that does not distinguish the defendant's behavior from that inherent in all crimes of that type. ***Vaughn***, 83 Wn. App. at 675.

The Legislature enacted several statutory aggravating circumstances, some of which may be considered by the court, and others which must be found by a jury. RCW 9.94A.535(2) and (3). The aggravating circumstances set forth in 9.94A.535 cover a broad range of factors. Some of the circumstances focus on the defendant's actions such as when the defendant manifests deliberate cruelty to the victim, RCW 9.94A.535(3)(a), or uses his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the offense, RCW 9.94A.535(3)(n). Other circumstances discuss what the defendant knew or should have known about his victim. RCW 9.94A.535(3)(b) (particularly

vulnerable); RCW 9.94A.535(3)(c)(pregnant). Other circumstances focus on the impact of the crime, i.e. a rape of child resulting in the victim's pregnancy, RCW 9.94A.535(3)(i), or the victim's injuries substantially exceeding the level of bodily harm necessary for the element of crime, RCW 9.94A.535(3)(y). Some aggravating circumstances simply describe some aspect of the offense, such as, it involved a high degree of sophistication or planning, RCW 9.94A.535(3)(m), or an invasion of the victim's privacy, RCW 9.94A.535(3)(p). In some instances the Legislature limited the use of a particular aggravator to a certain crime or type of crime. *See* RCW 9.94A.535(3)(c)(violent offense), (u) (burglary), (u)(i)(A) (theft or possession of stolen property in the first or second degree). But in many instances, the Legislature put no limitation as to which current offenses the aggravating circumstance might be applied.

In the case now before the Court, the State alleged, and the jury found, that defendants' crimes of rendering criminal assistance (Nelson and E. Davis), possession of stolen firearm (all three defendants), and unlawful possession of a firearm (E. Davis and D. Davis) were aggravated by the following circumstances: 1) the offense involved a destructive and foreseeable impact on persons other than the victim, RCW 9.94A.535(3)(r); and, 2) the offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is

not an element of the offense, RCW 9.94A.535(3)(v).

Defendants challenge the evidence supporting the jury's finding of the aggravating factors, and their legal applicability to the crimes of conviction. Defendants do not challenge the trial court's finding that these factors justified an exceptional sentence or the length of the sentence imposed.

a. There is a legal basis for applying RCW 94A.535(r) – regarding a "destructive and foreseeable impact on persons other than the victim" to the crimes of rendering criminal assistance, possession of stole firearm and unlawful possession of firearm.

As noted above, the Legislature has specifically limited certain aggravating factors to a particular crime or type of offense. It did not, however, put any such limitation on the aggravating circumstance that "the offense involved a destructive and foreseeable impact on persons other than the victim." RCW 9.94A.535(3)(r). Thus, defendants cannot point to any Legislative prohibition against using this aggravator on the crimes of rendering criminal assistance, possessing a stolen firearm, or unlawful possession of a firearm.

Their primary argument is that because these crimes do not have a particular victim under the elements of the offense -but are crimes against society or the general public - the public is the "victim" of these crimes leaving no one left to be the "persons other than the victim" described in

the aggravating factor. They contend that the impact on the general public has been already been taken into consideration by the legislature in the setting of the standard range rending this aggravating circumstance inapplicable to the facts of this case.

It is far more accurate to state that *every* crime is a crime against society – even those that have a more particularized victim such as murder, assault or rape. *See e.g.*, ***State v. Haddock,*** 141 Wn.2d 103, 111, 3 P.3d 733, 736 (2000)("we recognize that all crimes victimize the public in a general sense"); RCW 10.99.010 (Legislature finding that domestic violence is a serious crime against society as well as the particular victim). The state constitution directs that all prosecutions are brought in the name of "the State of Washington" which reflects that society is harmed when someone does not maintain his or her behavior within the bounds of the criminal law. WA Const. Art. 27, §5; *see also*, ***State v. Gentry***, 125 Wn.2d 570, 680, 888 P.2d 1105 (1995) (Johnson, J., dissenting) (observing that a criminal prosecution is not a private right of action on behalf of the victim; rather, the prosecutor represents the citizens of the State to "deter, punish, restrain, and/or rehabilitate those whose actions are so dangerous or offensive that they are an affront to a civilized society"). A prosecutor has the discretion and power to bring criminal charges and acts in the best interests of society at large; this charging decision may be done in consultation with, but is not controlled by, the desires or preferences of the person who could be viewed as the "victim" of a

particular crime, because that person's preference may be at odds with societal interests. Thus, to adopt defendants' analysis would be to eliminate applicability of this aggravating circumstance from *any* crime because the public or society is always a "victim" of every crime.

There is a difference between who is a "victim" under the elements of an offense, and who is a victim under the SRA. The Legislature recognized that people may be harmed by a crime even though they may not be identified as a "victim" under the elements of the offense. Consequently in the SRA, it defined a "victim" as "any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged." RCW 9.94A.030(53). A person need not be the "victim" under the elements of the substantive crime to fall within this statutory definition. ***State v. Davison***, 116 Wn.2d 917, 921, 809 P.2d 1374 (1991). But while the Legislature may contemplate the possibility of persons who will fall within this broader SRA definition of "victim," it cannot know if there will be any such persons or precisely who those persons may be. This broader group of victims cannot be foreseen by the Legislature in the same manner as the "victim" that is described by the elements of an offense. The Legislature knows that the crime could not have been committed without proof of the harm to that specific victim under the elements. The legislative scheme for the imposition of an exceptional sentence requires that there must be factors other than those which are necessarily considered in computing the

presumptive range for the offense. When a crime has a specific victim as part of the elements of the offense, the harm to that victim has been contemplated by the Legislature in both defining the crime and in the setting of the standard range.

Thus, when construing to whom "victim" refers in the phrase "*persons other than the victim*" in RCW 9.94A.535(r), it must be to someone other than society as a whole because "society" is always harmed by criminal acts, and such construction would translate to "persons other than society" rendering the aggravating circumstance meaningless. There are no persons who are not included within the term of "society." The term "victim" in the phrase "*persons other than the victim*" should be properly construed to refer to the specific victim, if any, identified by the elements of the crime. When so construed, this aggravating factor applies to persons other than the one victim that the legislature took into account when defining the crime and setting of the standard range for the offense – which is an appropriate class to consider for when imposing an exceptional sentence. If the crime does not have a specific victim under the elements, then it must be shown that there was a destructive and foreseeable impact on some specific people for the circumstance to apply.

This interpretation is consistent with cases construing a pre – *Blakely* version of the SRA finding harm to the community or others to be a proper aggravating factor. The Washington Supreme Court has upheld community impact reasonably foreseeable to the defendant as an

aggravator justifying an exceptional sentence, but held that the impact on others must be of a destructive nature not normally associated with the commission of the offense in question. ***State v. Johnson***, 124 Wn.2d 57, 73-76, 873 P.2d 514 (1994). Johnson was involved in a "gang" drive-by shooting that occurred in the immediate vicinity of a public elementary school that was in session. There was testimony that witnesses to the shooting included children about to be released from school, and their parents, and there was evidence that after the shooting children were afraid to attend school, and parents feared for the safety of their children while at school. ***Johnson***, 124 Wn.2d at 74-75. The court concluded that it was reasonably foreseeable to the defendant, who lived across the street from the school, that the children and their parents, who were not the intended victims of his acts, would be traumatized by them, and that this resulting trauma distinguished the case from other assaults. 124 Wn.2d at 75-76.

In ***State v. Jackson***, 150 Wn.2d 251, 76 P.3d 217 (2003), the Supreme Court upheld a challenge to the imposition of an exceptional sentence when Jackson alleged that the community impact aggravating factor was not supported by the facts, and was legally insufficient to justify an exceptional sentence. Jackson was convicted of the murder of his nine year old daughter, Valiree; he had reported that he last saw her in the front yard of the home heading to school. At sentencing, the court made the following finding:

> The students, parents and staff of McDonald Elementary, where Valiree Jackson attended the third grade, were tremendously impacted. Parents would no longer allow children to walk to and from school alone for fear that they to [sic] might be abducted. Children had nightmares and their schoolwork was affected. The principal, Jan Lenhart, would personally follow children home to make sure they arrived safely.

The Supreme Court held that this finding regarding the impact on the children at Valiree's school, which was supported by the testimony of Valiree's teacher, principal, and school counselor, justified the exceptional sentence. 150 Wn.2d at 275-276.

In ***State v. Cuevas-Diaz***, 61 Wn. App. 902, 812 P.2d 883 (1991), the court upheld an exceptional sentence based upon the emotional trauma caused to third parties, namely - children who were in their home and who were traumatized after witnessing an attack on their mother. Under these facts, the court rejected impact on the community as an aggravator, reasoning that while a community suffers from criminal acts, this is always the case. 61 Wn. App. at 905; *see also*, ***State v. Pennington***, 112 Wn.2d 606, 610, 772 P.2d 1009 (1989) (an exceptional sentence is only appropriate where the circumstances of the crime distinguish it from others of the same category). Finally, in ***State v. Way***, 88 Wn. App. 830, 946 P.2d 1209 (1997), the court also rejected the impact on the community factor where Way shot his estranged wife on a community college campus, and shot at a student arriving in a car; many other students heard

or saw the shooting and took cover. The court reasoned that while the record showed psychological impact on students, and this was foreseeable to the defendant, the circumstances of the crime did not set it apart from any other murder committed in a public place where adults might witness it. 88 Wn. App. at 834.

Thus, defendants have failed to show any reason why -as a matter of law- the aggravator set forth in RCW 9.94A.535(3)(r) cannot be applied to the crimes of rendering criminal assistance, possessing a stolen firearm, or unlawful possession of firearm. The only question is whether the circumstance is applicable under the facts of this case, which will be addressed below in the section discussing sufficiency of the evidence supporting the aggravating circumstances.

b. There is a legal basis for applying RCW 94A.535(v) – regarding crimes committed against law enforcement officers to the crimes of rendering criminal assistance, possessing a stolen firearm, and unlawful possession of firearm.

As noted above, the Legislature has specifically limited certain aggravating factors to a particular crime or type of offense. It did not, however, put any such limitation on the aggravating circumstance that the "offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status

as a law enforcement officer is not an element of the offense." RCW 9.94A.535(3)(v). This aggravator can be applied to any crime as long as the "victim's status as a law enforcement officer is not an element of the offense." Application of this limitation is straightforward as to two of the three crimes at issue as it is clear that the victim's status as a law enforcement officer is *not* an element of possessing a stolen firearm or unlawful possession of a firearm . "A person is guilty of possessing a stolen firearm if he or she possesses, carries, delivers, sells, or is in control of a stolen firearm." RCW 9A.56.310. There is no element of this crime that would bar application of RCW 9.94A.535(3)(v). A person commits the crime of unlawful possession of a firearm when he has previously been convicted of a qualifying predicate felony and knowingly owns or has in his or her possession or control any firearm. RCW 9.41.010, 040. Again no element of this offense would preclude application of 9.94A.535(3)(v). Defendants cannot point to any Legislative prohibition against using this aggravator on the crimes of possessing a stolen firearm, or unlawful possession of a firearm. The only question is whether rendering criminal assistance has an element which identifies a law enforcement officer as being the victim of the crime.

The crime of rendering criminal assistance is generally defined in RCW 9A.76.050[7], then divided into three different degrees under the

---

[7] *See* Appendix A, for full text of statute.

provisions of RCW 9A.76.070, 80, and 90. None of the statutes proscribing the various degrees includes an element that identifies a law enforcement officer as a victim. The "to convict" instruction listing the elements of the offense did not require the jury to make any factual determination regarding a "law enforcement officer". *See*, CP 408-449, Instruction Nos. 26 and 31.

Although the first paragraph of RCW 9A.76.050 mentions a "law enforcement officer" this reference comes after an "or" which means that the crime can be committed without reference to that portion of the statute. When a person -acting with intent to prevent, hinder, or delay the apprehension or prosecution of another person whom he or she *knows* has committed a crime -provides assistance to that criminal in any manner listed in the statute, the crime of rendering has been committed. Under these circumstances, it is unnecessary to prove that any law enforcement officer was seeking the criminal at the time the assistance is given. Indeed, the crime might not have even been discovered by law enforcement officers at the time of the assistance. That does not make the assistance any less criminal.

While the State agrees with defendants that this crime results in the obstruction of justice, and that it is probable that law enforcement officers are the ones who are most likely to be obstructed, this does make the victim's status as a law enforcement officer an element of the crime subject to proof beyond a reasonable doubt. Consequently, this

aggravating circumstance may also be applied to the crime of rendering criminal assistance.

Thus, defendants have failed to show any reason why -as a matter of law- the aggravator set forth in RCW 9.94A.535(3)(v) cannot be applied to the crimes of rendering criminal assistance, possessing a stolen firearm, or unlawful possession of firearm. The only question is whether they can be applied under the facts of this case, which will be addressed below in the section discussing sufficiency.

c. There is a sufficient factual basis for applying these aggravators to the crimes committed by defendants.

The law governing challenges to the sufficiency of the evidence has been more fully set forth above, supra, at pp. 21-23. Here the jury returned special verdicts finding that defendants' crimes of rendering criminal assistance (Nelson and E. Davis), possession of stolen firearm (all three defendants), and unlawful possession of a firearm (E. Davis and D. Davis) were aggravated by the following circumstances: 1) the offense involved a destructive and foreseeable impact on persons other than the victim, RCW 9.94A.535(3)(r); and, 2) the offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense, RCW 9.94A.535(3)(v).

i. Was a law enforcement officer, who was performing his or her official duties at the time of the offense, the victim of the possessing stolen firearm and unlawful possession?

In ***State v. Haddock***, 141 Wn. 2d 103, 110-111, 3 P.3d 733 (2000), the Supreme Court held that the victim of the offense of unlawful possession of a firearm is the general public. It noted that if Haddock had brandished the firearm towards his former girlfriend and her friends, then these people *might* also be considered crime victims but otherwise the victim of unlawful possession of firearm is the general public. In contrast, it held that the victims of the crime of possession of stolen firearms were the owners of the firearms. *Id.* at 111. Applying these principles to the facts at hand, as neither Eddie Davis or Douglas Davis used the firearm against a law enforcement officer while it was unlawfully in their possession, this aggravating factor would not be applicable to their convictions for unlawful possession of a firearm.

With regards to the stolen firearm charge, however, under ***Haddock*** the victim of that crime was Lakewood police Officer Richards. RP 233, 312. The facts adduced at trial showed that Maurice Clemmons took the weapon from the officer during a struggle when Officer Richards was trying to arrest or stop Clemmons, who had just murdered three other officers. *Id.* After Clemmons took the weapon, he used it to murder

Officer Richards. RP 233, 312. The defendants knew that the firearm had been stolen from a police officer while he was performing his official duties, because Clemmons told them so. RP 312, 316. All defendants had possession of the stolen firearm, yet "withheld or appropriated the firearm to the use of someone other than the true owner or person entitled thereto" by returning the gun to Clemmons. *See* CP 408-449, Instruction Nos. 27, 30, 33. As the "true owner or person entitled" to possess the firearm was a law enforcement officer performing his official duties, the aggravating circumstance was applicable to all three defendants' crimes of possessing a stolen firearm.

ii. **The evidence supports the jury's finding that law enforcement officers, performing his or her official duties at the time of the offense, were victims of the rendering criminal assistance.**

Defendants Nelson and Eddie Davis argue that because there is no "victim" for the crime of rendering other than society at large, the aggravating circumstance in RCW 9.94A.535(3)(v) is inapplicable to their crime. A person is guilty of the crime of rendering criminal assistance if she provides assistance or aid to another person whom she knows has committed a crime or is being sought by law enforcement for the commission of a crime with intent to prevent, hinder or delay the apprehension or prosecution of that person. The goal of this crime is to

help the suspect being sought by the police, by trying to impede law enforcement from making an arrest (or from gathering evidence to support a prosecution). This crime – a form of obstruction of justice- is a crime against society. While the elements of the crime do not identify a particular victim, the investigating law enforcement officials who are being frustrated in their efforts to apprehend a suspect and return the community to safety are "victims" of this offense.

There was evidence before the jury that following the murder of four Lakewood police officers, a huge manhunt began for the perpetrators of the crime that involved personnel from numerous law enforcement agencies in the Puget Sound area. Rather quickly, the primary focus of this manhunt became Maurice Clemmons. Numerous detectives were sent out to talk to relatives and associates trying to locate his whereabouts. Additionally detectives where trying to identify the driver of a white truck who had transported Clemmons to and from the scene. As argued above, the evidence before the jury was that defendants Nelson and Eddie Davis were actively engaged in trying to assist Maurice Clemmons by 1) treating his injuries and giving him other clothes to wear; 2) providing him with transport out of the area; and 3) lying to law enforcement officers to prevent them from locating Clemmons. All of these actions were done by Nelson and Eddie Davis with the knowledge that Clemmons had murdered four Lakewood officers. All of the law enforcement officers who were actively investigating the murders and searching for the perpetrators were

engaged in performing official duties. Defendants knew that their actions would delay or hinder these officers from locating Clemmons. Thus, their rendering criminal assistance was "committed against a law enforcement officer who was performing his or her official duties at the time of the crime" and defendants knew that these victims were law enforcement officers. This factor is supported by the evidence adduced at trial and should be upheld.

iii. **These crimes involved a destructive and foreseeable impact on persons other than the victim.**

The murders of four police officers who were gunned down in a coffee shop had an immediate and tremendous impact on the community, but the jury also heard evidence of the significant impact on the community that flowed from the fact that the perpetrators of a horrific crime remained at large for a significant period of time following the crime, and that this delayed apprehension was possible because of assistance by others. Because four officers had been executed -for no apparent reason other than the fact that they were officers - there was fear and insecurity in the community. RP 675, 682-83. There was concern that other officers might be at risk from this killer. RP 1236, 1241. Relatives of the slain officers worried that they might be at risk from the perpetrators and sought personal protection while the perpetrators remained at large. RP 241-43, 246-47. Defendants could see the degree

of national media attention the murders were receiving, and watched news reports showing the extensive manhunt that was underway to bring the perpetrators to justice. RP 493, 912-14, 920. The community was unsettled because the very people that had been entrusted with maintaining the safety of that community had been killed without reason, leaving the community insecure and fearful. Defendant's crime exacerbated the community's fear and insecurity, causing it to extend beyond what was necessary, by helping a perpetrator avoid detection and apprehension. The evidence adduced supported the jury's finding that defendant's crime "involve[d] a destructive and foreseeable impact on persons other than the victim."

Additionally the jury heard evidence that all defendants knew that Maurice Clemmons had murdered four police officers, including killing one officer with his own gun. They knew that Clemmons had brought that gun with him to Defendant Nelson's home shortly after the murders. Clemmons did not maintain actual possession of this stolen firearm while he was at Defendant Nelson's house and his wounds were being treated. Maurice stated that he wasn't done-that he was going to kill more officers. RP 321. Yet none of the defendants took any steps to keep this weapon from getting back into Clemmons's hands where it could be used against other officers who would be trying to arrest him. Allowing a weapon that is under your control to be returned to a person that has just murdered four police officers and planning to kill more is unleashing a foreseeable and

destructive impact upon the community, in general, and against the investigating law enforcement officers in particular. This aggravating circumstance was properly found by the jury.

iv. Only two valid aggravating factors per defendant are needed in order to uphold the sentences imposed by the trial court.

It should be remembered that while the jury found two aggravators on each conviction, that not all of these aggravators need to be upheld in order to affirm the exceptional sentences imposed below. The jury found four aggravating factors applicable to Defendant Nelson's two crimes. One aggravating factor relating to her rendering convictions must be upheld to justify the increased length of the sentence on that conviction, then any other aggravating factor may be used to justify running the sentences on the two convictions consecutively. *See* (LN)CP1629-1641, 1629-1628. Of the six aggravating circumstances found relating to Defendant Eddie Davis crimes, his sentence may be affirmed if one aggravating factor is upheld regarding his rendering conviction (to justify the increased length of the sentence on that conviction) and any other aggravating factor upheld to justify running the sentence on the rendering consecutive to the consecutive sentences on the firearm convictions. (ED)CP 468-480, 465-467. The two firearm convictions run consecutive

pursuant to RCW 9.94A.589(1)(c). Defendant Douglas Davis must have one aggravating factor upheld regarding his possessing stolen firearm conviction to justify the increased length of the sentence on that conviction, and one aggravating factor upheld regarding his unlawful possession of a firearm conviction to justify the increased length of the sentence on that conviction. (DD)CP 771-783, 768 -770. These two convictions run consecutive pursuant to RCW 9.94A.589(1)(c).

While the State concedes that law enforcement officers are not "victims" of the unlawful possession of a firearm convictions under the facts of this case, the striking of this one circumstance does not undermine the sentences imposed on Defendants Eddie and Douglas Davis by the trial court, as the remaining valid factors support their exceptional sentences.

3. DEFENDANTS' HAVE FAILED TO SHOW ANY ERROR IN THE JUDGMENT REGARDING MERGED OR DISMISSED COUNTS THAT CAN BE RAISED FOR THE FIRST TIME ON APPEAL.

The general rule is that appellate courts will not consider issues raised for the first time on appeal. RAP 2.5(a); ***State v. McFarland***, 127 Wn.2d 322, 332–33, 899 P.2d 1251 (1995). A claim of error may be raised for the first time on appeal if it is a manifest error affecting a constitutional right. RAP 2.5(a)(3). ***State v. Walsh***, 143 Wn.2d 1, 7, 17 P.3d 591 (2001).

Pursuant to RAP 2.5(a)(3), to raise an error for the first time on appeal, the error must be "manifest" and truly of constitutional dimension. ***State v. Scott***, 110 Wash.2d 682, 688, 757 P.2d 492 (1988).

a. The judgments properly reflect the court's rulings on the unit of prosecution for rendering criminal assistance so no constitutional issue is presented.

"A defendant may face multiple charges arising from the same conduct, but double jeopardy forbids entering multiple convictions for the same offense." ***State v. Hall***, 168 Wn.2d 726, 729-30, 230 P.3d 1048 (2010) (citing ***State v. Freeman***, 153 Wn.2d 765, 770–71, 108 P.3d 753 (2005)). Whether a defendant may face multiple convictions of the same crime turns upon the unit of prosecution of that crime. ***Hall***, 168 Wn.2d at 730. In ***State v. Womac***, 160 Wn.2d 643, 160 P.3d 40 (2007), the supreme court considered whether a defendant's convictions for three different crimes -homicide by abuse, second degree felony murder and first degree assault - all arising out of the same incident, could all be listed on the judgment and sentence even though the sentencing court imposed a sentence on just one of them. It held that the listing of all three convictions on the judgment violated double jeopardy and directed the lower court to vacate two of the convictions on remand. The court reasoned that even though Womac was sentenced for only one conviction, the stigma and impeachment value of the other convictions remained. "'[C]onviction, and

not merely imposition of a sentence, constitutes punishment' " for double jeopardy purposes. ***Womac***, 160 Wn.2d at 657, citing ***State v. Gohl***, 109 Wn. App. 817, 822, 37 P.3d 293 (2001).

In the case now before the Court, the prosecution filed multiple charges of rendering criminal assistance -based upon different acts and alternative means of committing that crime - for the defendants' assistance to Maurice Clemmons after he had murdered four Lakewood Police officers. Prior to trial, the court found that rendering criminal assistance was an ongoing offense and that only one unit of prosecution could be sentenced upon no matter how many acts of assistance was given to a particular person who had committed or was being sought for a crime. The court ruled that while it would not dismiss the multiple counts, only one unit of prosecution was applicable to defendants' actions. CP 41-42. The State dismissed one count of rendering against defendant Nelson prior to trial. RP 1363. The court dismissed two rendering counts[8] pending against Defendant Douglas Davis pursuant to a motion made at the close of the State's case for insufficient evidence. RP 1352-53. Defendants made a motion to dismiss, merge or consolidate the remaining multiple counts of rendering into a single count at this time as well. RP 1363-69, 1377-78. The court indicated that she would take this under advisement and give a ruling at least by the time they discussed jury instructions. RP

---

[8] This was counts I and II pending against Defendant Douglas Davis. RP 1352-53.

1374. Ultimately, the jury was instructed on one count of rendering on each of the defendants; the instruction listed alternative means of committing that offense that had been charged initially in separate counts. CP 408-449, (Instruction No. 26 (Letricia Nelson), No. 28 (Douglas Davis), and No. 31 (Eddie Davis)). The court did not dismiss these rendering counts so much as merge them into one. The jury convicted defendants Nelson and Eddie Davis of this crime and acquitted defendant Douglas Davis. No conviction for rendering criminal assistance appears on Defendant Douglas Davis's judgment. (DD)CP 771-783. Only one conviction for rendering criminal assistance appears on the judgments for defendants Nelson and Eddie Davis. (LN)CP 1629-1641, (ED)CP 468-480. Thus, the judgments properly reflect the court's ruling on the unit of prosecution as well as the jury's verdicts; no constitutional issue is presented with regard to the rendering criminal assistance charge.

Defendants fail to identify where in the record they asked the trial court to enter in writing -either by a notation on the judgment or by separate order – its ruling regarding the merged counts of rendering criminal assistance or Douglas Davis's dismissed counts of rendering. There is nothing in the record of the sentencing hearing to show that defendants Eddie Davis and Douglas Davis asked the court to reflect the merger of charges on the judgment. Defendant Nelson's attorney did initiate a discussion as to how to reflect in the court file the court's ruling merging the multiple charged counts of rendering criminal assistance into

a single unit of prosecution, but the parties informed the court that they would schedule a hearing if unable to reach an agreement. 1/14/11 RP 77-79. There is nothing in the record to indicate that anything has been done since this transpired. That is not the same as a showing that the trial court refused to enter an order of merger or dismissal when asked to do so. As this was not raised in the trial court, it is not properly before the Court for review.

b. The court had previously entered separate orders reflecting its dismissal of certain firearm counts and was not asked to make any additional notations by any party; therefor416e, this issue is not preserved for review.

Prior to trial, defendants Eddie Davis and Douglas Davis brought a Knapstad/corpus delicti motion regarding the firearm charges that pertained to the guns found at the Forza coffee shop (Counts VI and VII for Eddie Davis and Count VI for Douglas Davis) and the counts pertaining to the police officer's gun that Clemmons took from one of his victim's (Count V (both defendants) and VIII for defendant Eddie Davis). The court dismissed Counts VI and VII against defendant Eddie Davis, and Count VI against Douglas Davis. 10/12/10 RP 50-52; (ED)CP 393; (DD)CP 640. It denied the motion as to Count V (Eddie and Douglas

Davis) and VIII (Eddie Davis). 10/12/10 RP 69-70; (ED)CP 393; (DD)CP 640. The court entered written orders reflecting its decision. (ED)CP 393; (DD)CP 640.

Defendants now argue that the court should have reiterated this dismissal on the judgments. As defendants have not articulated how this is an issue of manifest error of constitutional dimension, defendants must show that it was preserved below in order to obtain appellate review. Defendants fail to identify where in the record they asked the trial court to enter a notation on the judgment regarding its ruling on the dismissed firearm counts. There is nothing in the record of the sentencing hearing to show that the defendants asked the court to reflect the dismissal of the firearm charges on the judgment. Consequently, this issue has not been preserved for appellate review.

Defendants rely upon ***State v. Moten***, 95 Wn. App. 927, 976 P.2d 1286 (1999), and ***State v. Ford***, 137 Wn.2d 472, 973 P.2d 452 (1999), but neither case supports their position that this can be reviewed for the first time on appeal. Mr. Moten entered a plea of guilty for the offense of solicitation to commit a violation of the controlled substances act, but the judgment listed the statutory reference for a completed offense rather than the inchoate solicitation. There were no errors however, in the calculation of the appropriate standard range, and the crime was described on the judgment as a solicitation. On appeal, Moten argued that he had been improperly sentenced under the wrong statute; the appellate court found

that the erroneous statutory reference was a scrivener's error and remanded for correction. In ***Ford***, the State had included out of state convictions in Ford's criminal history, but provided nothing to support a comparability determination at the sentencing hearing. Ford challenged the inclusions of these convictions for the first time on appeal and the State responded that he had waived any error by not challenging inclusion of these convictions in the trial court. The Supreme Court ruled that under the Sentencing Reform Act ("SRA") the prosecution had the affirmative burden of showing comparability of an out of state conviction before it could be used as criminal history; consequently, a defendant could challenge the lack of support in the record for inclusion of his out of state convictions for the first time on appeal.

In the case now before the Court, defendants claim is very different from those raised in ***Moten*** and ***Ford***. Defendants have failed to identify any error on their judgments as to a statutory reference or any miscalculation of the standard sentence range or improper reliance on out of state convictions in their criminal history. Defendants fail to identify any provision of the SRA that was not complied with by the court in completing the judgments. Defendants merely point to a section within the judgment form where the court *could* have reflected its dismissal of certain charges. What defendants failed to provide is any authority that a court is *required* to use that portion of the form or that the SRA mandates such a notation. Without any authority that the trial court was obligated to

note its dismissals on the judgment or a showing that a scrivener's error exists, ***Moten*** and ***Ford*** are inapposite.

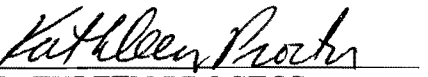
In sum, the trial court previously entered orders regarding the dismissal of certain counts. (ED)CP 393; (DD)CP 640; (LN)CP 1525. It was never asked to reiterate those rulings on the judgment or to reflect the result of successful half time motions to dismiss. Clearly the court was willing to sign appropriate orders of dismissal when asked to do so. As no one asked the court to make any notations on the judgment, then nothing was preserved for appellate review. This Court should dismiss this issue as not properly preserved below.

D. CONCLUSION.

For the foregoing reasons the State asks this Court to affirm the judgments and sentences entered below.

DATED: April 27, 2012.

MARK LINDQUIST
Pierce County
Prosecuting Attorney



KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

Certificate of Service:
The undersigned certifies that on this day she delivered by ~~U.S. mail or~~ e ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney 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.

4.27.18 _____
Date Signature

APPENDIX "A"

C

West's Revised Code of Washington Annotated Currentness
Title 9A. Washington Criminal Code (Refs & Annos)
Chapter 9A.76. Obstructing Governmental Operation (Refs & Annos)
9A.76.050. Rendering criminal assistance--Definition of term

As used in RCW 9A.76.070, 9A.76.080, and 9A.76.090, a person "renders criminal assistance" if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime or juvenile offense or is being sought by law enforcement officials for the commission of a crime or juvenile offense or has escaped from a detention facility, he or she:

(1) Harbors or conceals such person; or

(2) Warns such person of impending discovery or apprehension; or

(3) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension; or

(4) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or

(5) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person; or

(6) Provides such person with a weapon.

CREDIT(S)

[2011 c 336 § 400, eff. July 22, 2011; 1982 1st ex.s. c 47 § 20; 1975 1st ex.s. c 260 § 9A.76.050.]

Current with all Legislation from the 2011 2nd Special Session and 2012 Legislation effective through April 6, 2012

END OF DOCUMENT

PIERCE COUNTY PROSECUTOR

April 27, 2012 - 4:27 PM

Transmittal Letter

Document Uploaded: 416891-Respondents' Brief.pdf

Case Name: St. v. Davis, Davis Nelson

Court of Appeals Case Number: 41689-1

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: Respondents'

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

Other: _____

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

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

Sloanej@nwattorney.net

SCCAttorney@yahoo.com

KARSdroit@aol.com

nielsene@nwattorney.net