NO. 72221-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

LAVELLE X. MITCHELL,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE MONICA J. BENTON

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. It is a civil infraction to fail to provide proof of fare to a King County Metro Fare Enforcement Officer ("FEO") when requested. FEOs may request identification from those who fail to provide proof of fare, and may detain such persons for a reasonable time to verify their identity. Defendant Lavelle Mitchell was unable to provide proof of fare when requested by an FEO. He was detained for five minutes while a nearby police officer verified his identity. Did the trial court properly rule that Mitchell's detention was lawful and deny his CrR 3.6 motion to suppress evidence?

2. When a defendant appeals his conviction on the basis that a jury should have found his affirmative defense proven, courts ask whether, considering the evidence in the light most favorable to the State, a rational trier of fact could have found that the defendant failed to prove the defense by a preponderance of the evidence. Mitchell claimed that he never received written and oral notice of his ineligibility to possess a firearm, and that he lacked actual knowledge of this prohibition. The State introduced the plea statement and disposition order from his predicate juvenile felony offense, which advised him of this prohibition and specified that the judge was to read it out loud. Mitchell's testimony to the contrary was rife with inconsistencies and highly incredible. Could a

reasonable jury have found that he failed to prove his defense by a preponderance of the evidence?

3. A defendant who claims ineffective assistance of counsel must demonstrate both deficient performance on the part of his attorney and resulting prejudice. Mitchell asserts that his trial attorney should have obtained a copy of an audio recording of his juvenile sentencing hearing, because it would have supported his affirmative defense that the sentencing judge failed to advise him orally of his firearm prohibition. Mitchell has not provided this Court with a copy of an audio recording, nor does it appear in the record below. Further, the duty to provide oral notice does not apply to sentencing hearings. Finally, the State otherwise proved that Mitchell had actual knowledge of his firearms prohibition. Has Mitchell failed to meet his burden to establish ineffective assistance of counsel?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The State charged defendant Lavelle Mitchell with Unlawful Possession of a Firearm in the First Degree ("UPFA"). CP 1;

RCW 9.41.040(1).[1] The State alleged that Mitchell, on March 2, 2012, having been convicted previously of a serious offense, possessed a firearm. CP 1; RCW 9.41.040(1).

A jury convicted Mitchell of UPFA as charged. CP 172. The court imposed a standard range sentence. CP 227, 229.

2. SUBSTANTIVE FACTS.

On March 2, 2012, King County Metro Fare Enforcement Officer ("FEO") Christopher Johnson was assigned to check for fare compliance on the Metro RapidRide "A Line," on Pacific Highway South. 3RP 458-60, 470.[2] He was waiting at a RapidRide stop on the corner of South 240th Street when a coach pulled into the stop. 3RP 472. Several passengers exited from the rear of the coach. 3RP 472. FEO Johnson announced himself as a fare enforcement officer and asked to see the passengers' proof of fare. 3RP 472.

Mitchell, who had just exited through the rear door along with the other passengers, was unable to produce proof of fare. 3RP 473. He told FEO Johnson that he had given his proof of fare to another passenger.

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[1] RCW 9.41.040(1)(a) ("A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted . . . in this state or elsewhere of any serious offense as defined in this chapter.").

[2] The verbatim report of proceedings is cited as follows: 1RP – Dec. 10, 11, and 12, 2013; 2RP – Dec. 12 (continued), 17, and 18, 2013, and Jan. 13, 2014; 3RP – Jan. 13 (continued), 14, and 15, 2014.

3RP 473. FEO Johnson informed Mitchell that the proof of fare was non-transferable and asked to see his identification. 3RP 473-74.

Mitchell did not have any valid identification on his person. 3RP 474. Instead, Mitchell told FEO Johnson his name and date of birth. 3RP 474. FEO Johnson relayed Mitchell's information to King County Sheriff's Deputy George Drazich, who was nearby, and asked Drazich to verify Mitchell's identity. 3RP 418-19, 421-22, 475. When Drazich checked Mitchell's information, he discovered that Mitchell had an outstanding misdemeanor warrant for his arrest. 3RP 422, 476.

Drazich placed Mitchell under arrest and asked him if he had any weapons. 3RP 423, 476-77. Mitchell disclosed that he had two pistols in his jacket pockets. 3RP 423-24. Both guns were loaded. 3RP 424.

Mitchell stipulated and admitted at trial that he previously had been convicted of a serious felony offense. 3RP 506, 546, 568.

Additional facts are set forth below as appropriate.

C. ARGUMENT

1. METRO FARE ENFORCEMENT OFFICER JOHNSON HAD AUTHORITY TO DETAIN MITCHELL BECAUSE MITCHELL COMMITTED A CIVIL INFRACTION IN HIS PRESENCE BY FAILING TO PRESENT PROOF OF FARE.

Mitchell argues that FEO Johnson lacked authority to ask him for proof of fare and to detain him in order to verify his identity when he was

unable to provide proof of fare. Because the firearms that formed the basis for Mitchell's UPFA conviction were discovered by the police after he was detained by FEO Johnson, Mitchell argues that this evidence should have been suppressed as fruit of the poisonous tree, and that his conviction should be reversed for dismissal with prejudice.

Mitchell's argument should be rejected. King County Metro FEOs are empowered by statute and case law to ask a person for proof of fare, and to detain the person for purposes of verifying the person's identity, if the person commits a civil infraction in the FEO's presence by failing to present proof of fare. The trial court correctly denied Mitchell's motion. Mitchell's conviction should be affirmed.

a. Additional Facts.

Mitchell moved pre-trial to suppress all evidence flowing from his initial detention by "the agent," arguing that this encounter constituted an illegal seizure.[3] CP 28-33. Specifically, he argued that "the agent" lacked reasonable suspicion to believe that Mitchell was engaged in criminal activity, at the time that he "seized [Mitchell] as he exited the train." CP 28.

The State countered that Chapter 81.112 RCW granted Regional Transit Authorities the power to designate FEOs to monitor fare payment

[3] Mitchell clarified at oral argument on his suppression motion that he was referring to FEO Johnson. 1RP 159.

and to issue citations under Chapter 7.80 RCW.[4] CP 36. Pursuant to Chapter 7.80 RCW, such enforcement officers may detain a person who is to receive a notice of infraction for a period of time not longer than is reasonably necessary to identify the person. CP 37 (citing RCW 7.80.060). The State therefore argued that FEO Johnson acted within his authority to request proof of fare from Mitchell, and to temporarily detain him for purposes of verifying his identity through Deputy Drazich, when Mitchell committed a civil infraction in FEO Johnson's presence by failing to present proof of fare. CP 37-38.

The trial court held a hearing on Mitchell's motion and took testimony from FEO Johnson and Deputy Drazich. 1RP 27-60 (Drazich), 62-107 (Johnson). FEO Johnson explained that RapidRide operates differently from other Metro services, in that passengers are allowed to enter the coaches through the rear door. 1RP 64. Because passengers can enter through the rear door without verifying payment with the driver, King County hired FEOs to ensure fare compliance. 1RP 64.

Metro FEOs check for fare compliance in one of two ways. If a passenger has pre-paid their fare by "tapping" an "Orca card" against

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[4] For the reasons discussed below, the State concedes that King County Metro is not a Regional Transit Authority and that Chapter 81.112 RCW is inapplicable. Instead, Metro derives its authority to monitor and enforce fare payment from Chapter 35.58 RCW. This distinction is ultimately technical, however, because Chapter 35.58 RCW provides powers identical in pertinent part to Chapter 81.112 RCW.

devices along the line, the FEOs can scan the passenger's card in order to verify payment. 1RP 64-65. If the passenger has instead entered the coach and paid the driver at the front door, then the passenger is given a document that serves as proof of fare. 1RP 65. Such documents are non-transferable. 1RP 81. Passengers must maintain proof of fare at all times and show it to an FEO if requested. 1RP 65-66. Signage explaining these terms of use is posted at each stop and on the coach. 1RP 66.

FEOs can issue citations for failing to show proof of fare. 1RP 73. Any time a passenger is unable to show proof of fare, an FEO will ask the passenger for identification so that the FEO can issue a citation. 1RP 72. If the person is unable to provide valid identification, the FEO will ask a police officer to assist in identifying the person. 1RP 75. The FEOs typically fill out a "contact card" with the person's verbally-supplied information and give that card to a police officer for verification. 1RP 76-77.

FEO Johnson was standing outside the rear door of the arriving RapidRide coach when Mitchell exited, along with other passengers. 1RP 80, 92-93. Mitchell was unable to provide proof of fare and claimed that he had given his proof of fare to another passenger. 1RP 80-81. Mitchell was unable to provide valid identification, and instead told FEO Johnson his name and date of birth. 1RP 81-82. FEO Johnson copied the

information down onto a "contact card" and then provided it to a nearby deputy sheriff. 1RP 81-83. The deputy sheriff was only approximately 30 feet away at the time. 1RP 83-84. The deputy sheriff then verified Mitchell's identity and placed him under arrest for an outstanding warrant. 1RP 84-85.

Deputy Drazich testified to a near identical sequence of events. 1RP 27-42, 53-57. He clarified that less than five minutes elapsed between the time that FEO Johnson requested assistance with identifying Mitchell and when Deputy Drazich took Mitchell into custody. 1RP 59.

Mitchell also testified at the hearing and verified that FEO Johnson asked him for proof of fare immediately after he exited the bus, that his interaction with FEO Johnson proceeded quickly, and that Deputy Drazich arrived within a few minutes. 1RP 140-43. Mitchell eventually received a citation in the mail for failure to show proof of fare. 1RP 152.

The trial court then heard argument on Mitchell's motion. 1RP 153. Mitchell asserted that Chapter 81.112 RCW, allowing FEOs to inquire regarding proof of fare, was unconstitutional. 1RP 155-56. Because FEO Johnson could not know whether Mitchell had committed an infraction until after asking him for proof of fare, the encounter was illegal from the outset. 1RP 160.

The State argued that a Terry[5]-stop "reasonable suspicion" analysis was inapplicable to the enforcement of civil infractions, under State v. Duncan, 146 Wn.2d 166, 43 P.3d 513 (2002), and that Chapters 7.80 and 81.112 RCW provided the requisite authority for FEO Johnson to ask to see Mitchell's proof of fare, request identification, and detain him for a reasonable period of time to verify his identity for purposes of issuing a notice of infraction. 1RP 164-68.

The trial court found that FEO Johnson asked Mitchell to show proof of fare as Mitchell exited the back door of the coach.[6] Supp. CP __ (Sub No. 102, Written Findings of Fact and Conclusions of Law at 2) (attached at Appendix A). Mitchell was unable to show proof of fare, and told Johnson that he had given his proof of fare to another passenger. Id. Mitchell lacked valid identification, but gave his name and date of birth to FEO Johnson. Id. FEO Johnson provided this information to Deputy Drazich, who had responded to assist and was already on scene. Id. This initial detention period was less than one minute. Id. Deputy Drazich

[5] A Terry investigative stop allows an officer temporarily to detain a person upon reasonable suspicion of criminal activity. See State v. Doughty, 170 Wn.2d 57, 61-62, 239 P.3d 573 (2010) (citing Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). It does not apply to civil infractions. Duncan, 146 Wn.2d at 178.

[6] The State prepared proposed written findings of fact and conclusions of law prior to Mitchell's sentencing hearing on July 18, 2014. Supp. CP __ (Sub No. 101, Declaration of Deputy Prosecuting Attorney Dan Carew at 2). However, the record does not reflect that the findings were entered by the trial court at that time. The trial court entered the findings on May 18, 2015. Supp. CP __ (Sub No. 102, Findings of Fact and Conclusions of Law at 4) (App. A). The findings and conclusions were signed by Mitchell's counsel on appeal, who did not object to their entry. Id.

then ran Mitchell's name through his computer and dispatch, and discovered that Mitchell had an outstanding misdemeanor arrest warrant. Id. This process took less than five minutes. Id. Deputy Drazich arrested Mitchell on the outstanding warrant. Id. at 3. Mitchell was asked if he had any weapons, and volunteered that he had two guns on his person, which were recovered. Id.

Based on these findings, the trial court denied Mitchell's motion, concluding that Chapter 7.80 RCW and Title 81 authorized FEO Johnson to ask Mitchell for proof of payment, and to detain him in order to verify his identity for purposes of issuing a civil infraction once Mitchell was unable to provide proof of payment. Supp. CP __ (Sub No. 102, Written Findings and Conclusions of Law at 3-4) (App. A at 3-4). The court also found that the short detention was reasonable in scope. Id. at 3. Therefore, the statutes were complied with, and Mitchell's Fourth Amendment rights were not violated, nor any other state or federal law. Id. at 3-4; see also 1RP 184-87 (oral ruling).

b. Standard Of Review.

In reviewing a trial court's denial of a motion to suppress evidence, an appellate court reviews the trial court's conclusions of law *de novo* and its findings of fact for substantial evidence. State v. Levy, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). Substantial evidence is evidence

sufficient to persuade a fair-minded, rational person of the truth of the finding. Id. Unchallenged findings of fact are verities on appeal. Id.

Questions of statutory interpretation are reviewed *de novo*. State v. Alvarado, 164 Wn.2d 556, 561, 192 P.3d 345 (2008). A court's primary purpose is to determine and give effect to the intent of the legislature. Id. at 561-62. If the plain language of the statute is unambiguous, the inquiry ends. Id. at 562. Plain meaning also may be derived from "the entire statute in which the provision is found, as well as related statutes or other provisions in the same act that disclose legislative intent." Id.

If a statute is subject to more than one reasonable interpretation, courts turn to other sources, such as legislative history, in order to ascertain legislative intent. State v. Christensen, 153 Wn.2d 186, 194-95, 102 P.3d 789 (2004). In all instances, an appellate court uses common sense to interpret a statute and will avoid interpretations that lead to absurd results. Alvarado, 164 Wn.2d at 562.

An appellate court may affirm a trial court on any basis supported by the record and the law, and is not limited to the reasons articulated by the trial court. State v. Kelley, 64 Wn. App. 755, 764, 828 P.2d 1106 (1992); see RAP 2.5(a) ("A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground.").

c. Metro FEO Johnson Lawfully Detained Mitchell When Mitchell Committed A Civil Infraction In His Presence.

A person travelling on public transportation operated by a metropolitan municipal corporation ("Metro") shall pay the required fare and produce proof of payment in accordance with the terms of use established by Metro, when requested by a person designated to monitor fare payment.[7] RCW 35.58.580(1). The failure to produce proof of payment when requested is a civil infraction. RCW 35.58.580(2)(b).

Metro is authorized to designate persons (FEOs) to monitor fare payment. RCW 35.58.585(2)(a). FEOs are authorized to take the following actions:

- Request proof of payment from passengers;
- Request personal identification from a passenger who does not produce proof of payment when requested;
- Issue a citation; and

[7] A "metropolitan municipal corporation" includes "a *county* which has by ordinance or resolution assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation pursuant to the provisions of chapter 36.56 RCW." RCW 35.58.020(12) (emphasis added). King County assumed such powers and functions in 1994, following the approval by King County voters on November 2, 1992, of Proposition No. 1. See King County Ordinance 10531(6) (Sep. 4, 1992) ("[T]his ordinance shall be construed to have met the requirements of Chapter 36.56 RCW and shall be deemed to have effectuated the assumption by King County of the rights, powers, functions, and obligations of METRO.") (attached at Appendix B); King County Ordinance 11032(2) (Sep. 17, 1993) ("On November 2, 1992, King County voters approved Proposition No. 1 and King County Charter Amendment No. 1, providing for the assumption by the county of the rights, powers, functions, and obligations of the Municipality of Metropolitan Seattle (Metro), effective January 1, 1994.") (attached at Appendix C).

- Ask a passenger who has failed to produce proof of payment to leave the bus or other mode of public transportation.

RCW 35.58.585(2)(b)(i)-(iv).

In addition to these specific grants of authority, FEOs may also exercise all of the powers of an enforcement officer as defined in RCW 7.80.040.[8] RCW 35.58.585(2)(a) (cross-referencing RCW 7.80.040). Under that chapter, an enforcement officer may issue a civil infraction to a person who commits a civil infraction in the officer's presence. RCW 7.80.050(2).

Chapter 7.80 RCW also outlines an enforcement officer's authority to detain a person who is to receive a notice of civil infraction, in order to ascertain the person's identity:

> A person who is to receive a notice of civil infraction under RCW 7.80.050 is required to identify himself or herself to the enforcement officer by giving his or her name, address, and date of birth. Upon the request of the officer, the person shall produce reasonable identification, including a driver's license or identicard.
>
> A person who is unable or unwilling to reasonably identify himself or herself to an enforcement officer may be detained for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing a civil infraction.

RCW 7.80.060.

[8] "As used in [Chapter 7.80 RCW], 'enforcement officer' means a person authorized to enforce the provisions of the title or ordinance in which the civil infraction is established." RCW 7.80.040.

FEO Johnson acted squarely within the authority granted by these statutes. As Mitchell exited the RapidRide coach, FEO Johnson asked him to show proof of payment, as authorized by RCW 35.58.585(2)(b)(i). When Mitchell was unable to do so, FEO Johnson asked him for personal identification, as authorized by RCW 35.58.585(2)(b)(ii). Because the failure to produce proof of payment is a civil infraction under RCW 35.58.580(2)(b)—and because Mitchell had committed this infraction in FEO Johnson's presence—FEO Johnson also was entitled to request Mitchell's identification under RCW 7.80.060, for the purpose of issuing him a notice of civil infraction. When Mitchell was unable to produce valid identification, FEO Johnson was further entitled to detain him for a period of time not longer than reasonably necessary to verify his identity. RCW 7.80.060. This is precisely what FEO Johnson did—he detained Mitchell for a brief period in order to collect Mitchell's information, until Deputy Drazich took over the encounter.[9] 1RP 59, 81-84, 140-44.

Understandably, Mitchell's argument focuses on the inapplicability of Chapter 81.112 RCW. The State agrees with Mitchell that Chapter 81.112 RCW applies to Regional Transit Authorities, such as Sound Transit, and not to King County Metro. The State relied on Chapter

[9] Mitchell does not contend specifically that the length of the detention was unreasonable—only that FEO Johnson lacked authority to request to see his proof of fare and to detain him for failure to show the same.

81.112 RCW in error, below—as did to some extent the trial court. However, this Court is not bound by the State's error. See State v. Knighten, 109 Wn.2d 896, 902, 748 P.2d 1118 (1988); State v. Lewis, 62 Wn. App. 350, 351, 814 P.2d 232 (1991). Nor is it bound by any error in the trial court's reasoning, because, as noted, a trial court may be affirmed on any basis supported by the record. Kelley, 64 Wn. App. at 764; RAP 2.5(a). Because the record establishes that FEO Johnson acted in accordance with the powers granted by Chapters 7.80 and 35.58 RCW, the trial court's ruling denying Mitchell's motion to suppress should be affirmed.

Mitchell may maintain that his arguments apply equally to Chapter 35.58 RCW. Specifically, he argues in his opening brief that Metro lacks authority to request proof of payment from passengers because buses do not present the same concerns for fare evasion as trains and light rail, and that Mitchell was no longer a "passenger" subject to fare enforcement because he had just stepped off the bus. Br. of App't, at 12-16. Neither argument survives under Chapter 35.58 RCW.

Mitchell's first argument fails under the plain language of Chapter 35.58 RCW, which specifically grants fare enforcement power to metropolitan municipal corporations. The legislature's stated purpose for Chapter 81.112 RCW was to "facilitate ease of boarding of commuter

trains and light rail trains operated by regional transit authorities by allowing for barrier free entry ways." Laws of 1999, Ch. 20, § 1. In contrast, the relevant provisions of Ch. 35.58 RCW contain no such references. Instead, those provisions unambiguously grant authority to any metropolitan municipal corporation to enforce fare payment. See RCW 35.58.580, .585 *et seq.*

Even if the plain language of these provisions were somehow ambiguous, the legislature's intent in Ch. 35.58 RCW is evident from other sources. In 2008, when enacting RCW 35.58.580 and .585, the legislature lamented that "Metros do not have specific authority to monitor public transportation service fare payment or to issue civil infractions to passengers who fail to provide proof of fare payment." Final Bill Report for E.S.H.B. 2480 at 1 (attached at Appendix D); see also Laws of 2008, Ch. 123, §§ 1-2 (codified at RCW 35.58.580-.585). The legislature summarized its remedy to this problem as follows:

> Passengers traveling on public transportation operated by . . . Metros . . . are required to pay the established fare and to provide proof of payment when requested to do so by persons designated to monitor fare payment.
>
> Metros . . . are authorized to designate persons to monitor fare payment, and to establish a schedule of civil fines and penalties for civil infractions related to fare payment violations. A civil infraction not to exceed $250 may be issued by designated fare monitors to passengers who: fail to pay the fare; fail to provide proof of payment when requested to do so by a person designated

> to monitor fare payment; or refuse to leave the bus when asked by a person designated to monitor fare payment. The authority to issue civil citations for fare payment violations is supplemental to any other existing authority to enforce fare payment.

Final Bill Report for E.S.H.B. 2480 at 1-2 (App. D); see also Laws of 2008, Ch. 123, §§ 1-2 (codified at RCW 35.58.580-.585).

Mitchell's distinction between buses and trains also fails in the context of the RapidRide coaches at issue in this case. Such vehicles *do* present the same concerns for fare evasion as trains, because passengers may pre-pay their fare by tapping a card at designated scanners. 1RP 64-65. They may also board the RapidRide coach from the rear. 1RP 64. Thus, because RapidRide passengers may bypass the driver at the front door, they are required to maintain proof of payment at all times. 1RP 64, 66, 81. This Court should reject Mitchell's distinction.

Second, Mitchell may argue that FEO Johnson lacked authority to request proof of payment from him because he had just stepped off the RapidRide coach and therefore was no longer a "passenger" within the meaning of RCW 35.58.585(2)(b)(i).[10] This interpretation is too narrow, leads to absurd results, and should be rejected. A person asked to show proof of fare could simply step off the vehicle, at which point the FEO's authority would instantly dissipate. This would completely negate an

[10] Mitchell argues that he was no longer a "passenger" within the meaning of RCW 81.112.210(2)(b). Br. of App't at 14-15.

FEO's ability to enforce fare payment. Because the legislature never could have intended such an absurd result, Mitchell's claim should be rejected.

Finally, to the extent that Mitchell maintains that the relevant statutes fail to provide a constitutionally valid basis for his detention, the Washington Supreme Court expressly has rejected the contention that a Terry-stop analysis applies to civil infractions. Duncan, 146 Wn.2d at 178. Instead, "chapter 7.80 RCW provides an independent basis that could justify a stop for the investigation of a civil infraction." Id. at 178. Because Mitchell committed a civil infraction in FEO Johnson's presence by failing to show proof of payment when asked, his detention was valid. Mitchell's conviction should be affirmed.

2. THE JURY REASONABLY REJECTED MITCHELL'S INCREDIBLE AFFIRMATIVE DEFENSE.

Mitchell asserts that no reasonable jury could have rejected his affirmative defense, that the State failed to provide him with adequate notice of his ineligibility to possess a firearm. This argument is without merit. The State adduced evidence that Mitchell received both oral and written notice of his ineligibility to possess a firearm. Mitchell's testimony to the contrary was highly incredible. The jury reasonably found his defense unproven.

a. Standard Of Review.

When a defendant claims on appeal that a jury should have found his affirmative defense proven, courts ask "whether, considering the evidence in the light most favorable to the State, a rational trier of fact could have found that the defendant failed to prove the defense by a preponderance of the evidence." State v. Lively, 130 Wn.2d 1, 17, 921 P.2d 1035 (1996). Credibility determinations are for the trier of fact and are not subject to review on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Thus, appellate courts defer to the jury on issues of "conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

b. The Jury Reasonably Rejected Mitchell's Incredible Defense.

In order to convict Mitchell of UPFA, the State was required to prove:

> (1) That on or about March 2, 2012, [Mitchell] knowingly had a firearm in his possession or control;
>
> (2) That [Mitchell] had previously been convicted of a serious offense; and
>
> (3) That the possession or control of the firearm occurred in the State of Washington.

CP 186 (Instruction 6); see RCW 9.41.040(1).

A defendant's knowledge of the illegality of firearm possession is not an element of the offense. State v. Minor, 162 Wn.2d 796, 802, 174 P.3d 1162 (2008). In other words, the State need not prove that the defendant knew that he was ineligible to possess a firearm.

Instead, the Washington Supreme Court has held that lack of notice is an affirmative defense to UPFA, which a defendant must prove by a preponderance of the evidence. State v. Breitung, 173 Wn.2d 393, 403, 267 P.3d 1012 (2011). Here, the UPFA statute requires that the court at the time of the predicate conviction notify the defendant both orally and in writing that he may not possess a firearm. Id.; RCW 9.41.047(1)(a) ("At the time a person is convicted . . . of an offense making the person ineligible to possess a firearm, . . . the convicting . . . court shall notify the person, orally and in writing . . . that the person may not possess a firearm unless his or her right to do so is restored by a court of record."). In the absence of proof of both oral and written notice, the State may also prove that the defendant "otherwise had knowledge of the law or notice of the firearm prohibition," if such proof is sufficient to establish "actual knowledge[.]" Breitung, 173 Wn.2d at 404.

In accordance with this rule, the trial court in this case instructed the jury as follows:

> It is an affirmative defense to the crime of Unlawful Possession of a Firearm in the First Degree that the defendant had a lack of notice.
>
> This defense must be established by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty.
>
> Actual notice can be met where the evidence demonstrates *oral and written notification*, or by *other evidence*.

CP 187 (Instruction 7) (emphasis added); 3RP 598.

Mitchell challenges neither this instruction nor the sufficiency of the evidence to satisfy the elements of UPFA. Instead, he asserts only that no reasonable jury could have disbelieved his affirmative defense. But the State adduced evidence that Mitchell *did* receive proper notice. The jury was entitled to find his testimony to the contrary incredible.

The trial court admitted Exhibit 11, a copy of Mitchell's statement on plea of guilty to his predicate offense in juvenile court. 3RP 546-49, 555-58, 566; Exhibit 11 (attached as Appendix E). He admitted that the conviction was for a serious felony offense. See 3RP 506, 568 (stipulating to serious offense); 3RP 546 (admitting to felony). It was his signature that appeared on the plea statement.[11] 3RP 547.

[11] While the plea statement is captioned and signed as "Lavelle Brown," Mitchell stipulated that he was previously known as Lavelle Brown and that he was the individual named in the juvenile case. 3RP 568.

The plea statement contained the following language:

> RIGHT TO POSSESS FIREARMS: [JUDGE MUST READ THE FOLLOWING TO OFFENDER] I have been informed that if I am pleading guilty to any offense that is classified as a felony or any of the following crimes when committed by one family or household member against another: assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence: that I may not possess, own, or have under my control any firearm unless my right to do so has been restored by a court of record. RCW 9.41.040(1).

Exhibit 11 at 4 (bracketed statement and emphasis original) (App. E at 4). The underlined language above appears to have been underlined on the plea statement by hand. Exhibit 11 at 4. The subsection letter marking this paragraph also has been circled. Exhibit 11 at 4.

Mitchell's signature was affixed below this advisement, along with the statement, "I have read or someone has read to me everything printed above . . . and I understand it in full. I have been given a copy of this statement. I have no more questions to ask the judge." Exhibit 11 at 6 (App. E at 6). The plea statement was also signed by his attorney, with the statement that, "I have read and discussed this statement with the respondent and believe that the respondent is competent and fully understands the statement." Exhibit 11 at 6. Finally, the statement was also signed by a judge, who certified that the statement was signed by the respondent in open court in the presence of his lawyer and the judge.

Exhibit 11 at 6. The judge had also certified that Mitchell, himself, had asserted that this lawyer had previously read to him the entire plea statement and that he had understood it in full. Exhibit 11 at 6. Finally, the judge had found that Mitchell's plea was knowing, voluntary, and intelligent, and that he understood the charge *and the consequences* of his plea. Exhibit 11 at 6.

The trial court also admitted Exhibit 10, a copy of Mitchell's juvenile disposition order for his predicate offense. 3RP 551-55, 566; Exhibit 10 (attached at Appendix F). The disposition order had also informed Mitchell that:

> FIREARM PROHIBITION. If you are found to have committed a felony . . . [y]ou may not own, use, or possess any firearm unless your right to do so is restored by a court of record.

Exhibit 10 at 2 (App. F at 2). Mitchell signed the disposition order. 3RP 555; Exhibit 10 at 3. So did his attorney and the sentencing judge. Exhibit 10 at 3.

Mitchell testified that he could not remember if he was represented by an attorney when he pleaded guilty in juvenile court. 3RP 555. He could not remember if he signed the document in court. 3RP 556, 558. He could not remember if there was a judge present. 3RP 556. He could not remember if an attorney read the paragraph to him, explaining that he was ineligible to possess a firearm. 3RP 557-58. He could not remember

if a judge read that paragraph to him, either. 3RP 558. The only thing that he could remember was that he did not read the document. 3RP 556.

Mitchell also testified that he did not remember being in court when he signed Exhibit 10, his disposition order. 3RP 551-52. He could not recall if a judge had been present. 3RP 552. He could not recall if he had met with a lawyer. 3RP 552. He could not recall signing the document. 3RP 552. The only thing he could remember was that he had not read the document. 3RP 553.

Ultimately, after being questioned extensively about both documents, Mitchell testified that the only thing that he could remember about either document, and the circumstances surrounding his guilty plea and sentencing, was that he had never read them. 3RP 559. He also testified that he had a good memory and that he would have remembered if he had been informed that he could not possess a firearm. 3RP 560. However, he still could not recall any details of pleading guilty, signing the documents, or reading the documents. 3RP 560. He admitted then that he had a "good memory" when it came to whether he had been advised about firearms, but a "bad memory" about everything else. 3RP 561-62. When asked whether it was possible that he had indeed been told of his ineligibility to possess a firearm, Mitchell answered, "No," but then added, "Yes—no. I don't—I don't remember." 3RP 563.

This testimony was strange, inconsistent, and highly incredible. The jury was entitled to find that Mitchell was being untruthful and that he had indeed received oral and written notice of his ineligibility to possess a firearm. Even if the jury believed that the convicting court failed to advise Mitchell of his ineligibility to possess a firearm both orally and in writing, the jury could reasonably have found that the sentencing court had advised him of this prohibition—or that he had read it himself, or that his attorney had advised him of it— thus "otherwise" proving that Mitchell had actual knowledge. See Breitung, 173 Wn.2d at 404.

Mitchell even acknowledges that the plea and disposition paperwork tended to prove that he had actual knowledge of the firearm prohibition. He writes that, "[T]here is simply no evidence in the record, apart from Mr. Mitchell's written statement of plea on [sic] guilty and the disposition papers that proves that he had actual knowledge that he was not allowed to possess a firearm."[12] Br. of App't at 18-19. But Mitchell does not explain how this evidence, taken as true and in the light most

[12] Mitchell insists that "because the State failed to establish oral notice, and there was [sic] indication on the record, the Court and the jury must assume that 'no such notice was given.'" Br. of App't at 19 (quoting State v. Minor, 162 Wn.2d 796, 800, 174 P.3d 1162 (2008)). But there *was* indication in the record that Mitchell received oral notice—his plea statement included an oral advisement that the judge was required to read. Exhibit 11 at 4 (App. E). The letter for this subsection was circled and the pertinent advisement underlined. Id. In contrast, the firearm advisement in Minor had been left "unchecked" on the relevant documentation, and both parties in that case agreed that the defendant had not received oral or written notice. 162 Wn.2d at 797, 800.

favorable to the State, was insufficient for a reasonable jury to disbelieve his defense. His conviction should be affirmed.

3. MITCHELL'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM SHOULD BE REJECTED.

Mitchell asserts that his trial attorney's failure to obtain an audio recording of his juvenile sentencing hearing constituted deficient performance of counsel, and that this failure prejudiced him. The basis for this claim is Mitchell's assertion that the audio recording would have supported his affirmative defense of lack of notice.

This claim fails for four reasons. First, Mitchell has not provided a copy of an audio recording of this hearing, nor does it appear in the record below. Because the recording does not appear in the record, Mitchell is precluded from bringing this claim on direct review. Second, also because the recording does not appear in the record, Mitchell cannot meet his burden of showing deficient performance or prejudice. Third, even if a recording of the sentencing hearing appeared in the record, Mitchell's claim still would fail because the duty to notify a defendant of the ineligibility to possess a firearm applies to the *convicting* court, not to the *sentencing* court. Finally, even if a duty applied to the sentencing court, and assuming for the sake of argument that it was deficient for his attorney to fail to obtain a copy, Mitchell would be unable to demonstrate prejudice

because the State otherwise proved that he had actual knowledge of his ineligibility to possess a firearm.

a. Standard Of Review.

A challenge based on ineffective assistance of counsel is reviewed *de novo*. State v. Sutherby, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). To prevail on a claim of ineffective assistance of counsel, the defendant bears the burden of proving both: (1) that trial counsel's performance fell below a minimum objective standard of reasonableness; and (2) that the defendant was prejudiced by counsel's deficient performance. State v. West, 139 Wn.2d 37, 41-42, 983 P.2d 617 (1999) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

Regarding the performance prong, "scrutiny of counsel's performance is highly deferential and courts will indulge in a strong presumption of reasonableness." State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987) (citing Strickland, 466 U.S. at 689).

Regarding the prejudice prong, a defendant must prove that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Thomas, 109 Wn.2d at 226 (quoting Strickland, 466 U.S. at 694). If a defendant fails to meet either prong, the inquiry ends. State v. Hendrickson, 129 Wn.2d 61, 78, 917 P.2d 563 (1996).

b. Mitchell Has Not Shown Deficient Performance Or Prejudice.

As noted, Mitchell's ineffective assistance of counsel claim fails for four reasons. First, his claim is essentially non-reviewable. He argues that his attorney should have obtained a copy of an audio recording of his sentencing hearing, and that this failure caused him prejudice, but he has not provided this Court with a copy of the proposed audio recording.[13] "A party seeking review has the burden of perfecting the record so that the appellate court has before it all the evidence relevant to the issue." State v. Garcia, 45 Wn. App. 132, 140, 724 P.2d 412 (1986). This Court should decline to consider Mitchell's claim for this reason alone. See State v. Guerrero, 163 Wn. App. 773, 779, 261 P.3d 197 (2011) ("This argument is unsupported by citation to the record and authority, and as such we need not consider it.") (citing RAP 10.3(a)(6)).

In fact, it does not appear that the proposed recording was ever made a part of the record below. A defendant who wishes to introduce facts outside of the record in support of an ineffective assistance of counsel claim must bring a personal restraint petition. State v. McFarland,

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[13] Mitchell argues that "now, we know that" obtaining a copy of the audio recording would "not have benefited the State," implying that it would have helped his defense. Br. of App't at 19 n.56. He also writes that, "[A]s Mr. Mitchell's new counsel pointed out to the court before Mr. Mitchell was sentenced, no such oral notice was given." Br. of App't at 21. But Mitchell has not provided a record of his sentencing hearing in this case and otherwise cites nothing in the record to support either assertion.

127 Wn.2d 322, 338, 899 P.2d 1251 (1995). A reviewing court will not consider facts outside of the record on direct review. State v. Robinson, 171 Wn.2d 292, 314, 253 P.3d 84 (2011).

Second, Mitchell's failure to provide any record of the proposed audio recording also constitutes a failure of his claim on the merits, i.e., to meet his burden of establishing deficient performance or prejudice. The absence of a copy of the proposed recording makes it impossible to evaluate whether his attorney should have obtained a copy, or whether he was prejudiced by its absence. Because Mitchell cannot establish either prong of the Strickland test, his claim fails.

Third, Mitchell's claim fails because the duty to provide oral and written notice applies to the *convicting* court—not to the *sentencing* court. See RCW 9.41.047(1)(a); Minor, 162 Wn.2d at 803; Breitung, 173 Wn.2d at 401-03. Mitchell was convicted of his predicate offense when he pleaded guilty on December 4, 2007. Exhibit 11 (App. E). He was sentenced two weeks later, on December 18. Exhibit 10 (App. F). Mitchell alleges only that his attorney was ineffective for failing to obtain a copy of his sentencing hearing. Br. of App't at 19-24. This claim fails as a matter of law, because the juvenile court had no duty to provide him with oral notice at that time.

Finally, Mitchell's claim fails because the State's evidence proved that Mitchell otherwise had actual knowledge of his ineligibility to possess a firearm. See Breitung, 173 Wn.2d at 404; Exhibit 10; Exhibit 11. Thus, even if the sentencing recording were in the record, and even if the sentencing court had a duty to provide him with oral notice, Mitchell would be unable to establish prejudice because there is no reasonable likelihood that the outcome of his trial would have been different. For all of these reasons, Mitchell's claim fails.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Mitchell's conviction for Unlawful Possession of a Firearm in the First Degree.

DATED this 28th day of May, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____
JACOB R. BROWN, WSBA #44052
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

INDEX OF APPENDICES

APPENDIX A

Trial Court's Written Findings of Fact and Conclusions of Law on CrR 3.5 and CrR 3.6

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs. LAVELLE XAVIER MITCHELL, Defendant.	No. 13-1-10170-6 SEA WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW ON CrR 3.5 and CrR 3.6

This matter came before the Court on the defendant's Motion to Suppress. The Court reviewed the Motion to Suppress, the State's Opposition to Defendant's Motion to Suppress, and the authorities cited by the parties. The Court held a CrR 3.6 hearing on the admissibility of physical, oral, or identification evidence on December 10-12, 2013, before the Honorable Judge Monica Benton. The Court additionally considered whether statements made by the defendant to King County Sheriff's Office Deputy Drazich were admissible pursuant to CrR 3.5.

The Court considered the testimony of King County Sherriff Officers Drazich, Marcotte, and Morris, as well as that of former Fare Enforcement Officer Christopher Johnson. The Court then informed Mitchell that: (1) he may, but need not, testify at the hearing on the circumstances surrounding any statement; (2) if he does testify at the hearing, he will be subject to cross

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ORIGINAL

examination with respect to the circumstances surrounding any statement and with respect to his credibility; (3) if he does testify at the hearing, he does not by so testifying waive his right to remain silent during the trial; and (4) if he does testify at the hearing, neither this fact nor his testimony at the hearing shall be mentioned to the jury unless he testifies concerning any statement at trial. After being so advised, Mitchell elected to testify at the hearing, and the Court has taken his testimony into consideration.

After considering the evidence submitted by the parties and hearing argument on the motion, the court makes the following findings of fact and conclusions of law as required by CrR 3.5 and 3.6:

A. FINDINGS OF FACT

1. On March 2, 2012, King County Metro Fare Enforcement Officers Charles Smith and Christopher Johnson were working in full uniform, inspecting fares for the Rapid Ride A-Line on Pacific Highway South near 240th Street.

2. At around 2:45 pm, coach number 6013 arrived and Smith and Johnson attempted to board through the back door. As they were boarding, several passengers exited the rear door of the coach. Johnson announced himself as fare enforcement and asked all of the exiting passengers to show him proof of fare.

3. One of the passengers, later identified as the Defendant, was not able to provide proof of fare. He told Johnson that, since he was exiting the coach, he gave his transfer to another passenger who did not have a transfer.

4. The defendant told Johnson, who was now joined by Smith, that he did not have any identification, however, he did voluntarily provide his name and date of birth, as well as an address in Federal Way.

5. For verification purposes, Johnson then provided the information given to him by the Defendant to KCSO Deputy Drazich who had responded to assist and was already on scene. The Court finds that the period of detention was less than one minute.

6. Deputy Drazich ran the Defendant's name through both his computer and dispatch and discovered that the Defendant had a misdemeanor warrant for his arrest. It is undisputed that it took less than five minutes to verify his information.

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7. The defendant was asked to confirm his identity and once he confirmed his identity he was handcuffed and searched. Prior to being searched the defendant was asked if he had any weapons. He volunteered that he had two guns and gave the location of those guns. The weapons were seized and Deputy Drazich learned they had live ammunition.

8. The Defendant was advised of his rights and agreed to speak to officers. He told them that he had previously been convicted of a felony and did not have a Concealed Pistol License. He then told the officers that he had bought the guns from an unknown male, that he was aware that they might be stolen, and that he had a friend buy the ammunition for him because he knew stores would not sell it to a felon. He further stated that he carries the guns in case he came across a "Hoover" gang member called "Young Man" who he claimed shot at him on a prior occasion.

9. The Defendant was then transported to the precinct and was further interviewed by KCSO Detectives Morris and Barfield before being transported to King County Jail.

B. CONCLUSIONS OF LAW REGARDING THE MOTION TO SUPPRESS

1. The Court finds the testimony of the State's witnesses to be credible.

2. RCW 7.80 governs civil infractions and is relevant to the question of whether the fare enforcement officer was justified in stopping the defendant for proof of payment.

3. In the absence of proof of payment, the fare enforcement officer may take identification information for the purposes of writing a citation at a later time. That's what the officer did in this case, based upon an infraction committed in his presence, specifically a failure to display proof of payment under Title 81.

4. The Court concludes that the fare enforcement officer did have a right to stop and inquire about proof of payment under the statute and that doing so was not a violation of the 4th Amendment.

5. Further, deputy Drazich had a reasonable basis under the statute to detain the defendant for the purpose of verifying the information that he had been provided.

6. The question of reasonableness turns of facts relating to the time and scope of the detention. After reviewing the records, exhibits and testimony, the Court finds that the scope of the stop was not exceeded as it took less than five minutes for the warrant to be found.

7. Though the stop was investigatory in nature it was not pretextual. The record shows that three other people were stopped and that the defendant was not selected or treated any differently than any others that exited the bus.

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8. The detention was investigatory, slight in scope, and the actions of the defendant were entirely voluntary. Therefore, there was no violation of State or Federal Law.

9. All evidence obtained from Mr. Mitchell is admissible in the State's case-in-chief.

C. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE DEFENDANT'S STATEMENTS

1. The Court finds the testimony of the State's witnesses to be credible.

2. The Court finds that the defendant's testimony – and specifically the fact that the defendant initially testified that he remembered the conversation with officers and then changed his testimony the following day to say that he could not remember - was not believable.

3. The defendant knowingly, intelligently and voluntarily waived his Miranda rights.

4. The Court finds that the defendant's statements to Deputy Drazich and Detective Morris are admissible pursuant to an understanding and waiver of the defendant's Miranda rights

Signed this 18 day of July, 2014 May 2015

Judge Monica J. Benton

Presented by:

Dan Carew, WSBA #45726
Deputy Prosecuting Attorney

Approved as to form:

Counsel for Defendant

Daniel T. Satterberg, Prosecuting Attorney
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APPENDIX B

King County Executive Ordinance 10531

August 24, 1992
metroord4.jlb/clrk

Introduced by: Sims, Laing, Sullivan, Phillips, Nickels, Gruger

Proposed No.: 92-596

ORDINANCE NO. 10531

AN ORDINANCE providing for the consolidation of the Municipality of Metropolitan Seattle and King County pursuant to Chapter 36.56 RCW, and for the submission to the qualified voters of King County of a proposition ratifying said consolidation and establishing a date of election.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings and declaration of purpose. The council makes the following findings:

A. It is in the best interests of the citizens of King County for the functions of King County and the Municipality of Metropolitan Seattle (METRO) to be consolidated.

B. This consolidation is being endorsed by a regional panel of elected representatives from King County, Seattle and the suburban cities as part of a broader plan to reorganize and improve the governance of both Metro and King County.

C. Implementation of this consolidation plan is also being recommended by the same regional panel of elected representatives as their preferred alternative to the remedy ordered in Cunningham et al v. METRO (No. C89-1587D).

SECTION 2. Pursuant to the provisions of Chapter 36.56 RCW, and upon both: (i) the approval of this ordinance and its ratification by the qualified voters of King County, and (ii) voter approval of the proposed amendment of the county charter set forth in Ordinance No. 10530, King County shall on the date established in Section 5 of this ordinance assume all rights, powers, functions and obligations of the Municipality of Metropolitan Seattle, the Metropolitan Council shall be abolished and the legislative and executive authority of King County as provided for in the King County Charter shall be

vested with all rights, powers, functions and obligations otherwise vested by general state law in said Metropolitan Council.

SECTION 3. Ninety days in advance of the date for the assumption by King County of the rights, powers, functions and obligations of METRO, the county council shall by ordinance establish the metropolitan services department, which shall provide those mass transit and water quality services authorized in Chapter 35.58 RCW.

SECTION 4. Revenues and expenditures for metropolitan municipal corporation purposes shall be preserved and accounted for as first tier enterprise funds separate from other county funds, and shall be specifically pledged to services authorized by chapter 35.58 RCW, or as otherwise provided by state or federal law.

SECTION 5. The effective date of the assumption by King County of the rights, powers, functions and obligations of METRO provided for in this ordinance shall be January 1, 1994; provided, however, that planning activities necessary to effectuate said assumption, including planning activities carried out by King County alone, or by both King County and METRO pursuant to duly negotiated interlocal agreements, and the expenditure of county funds for such planning activities prior to the effective date of assumption are hereby authorized.

SECTION 6. Upon approval of this ordinance and its ratification by the qualified voters of King County, in the manner specified in Chapter 36.56 RCW, and upon voter approval of the proposed amendment of the county charter set forth in Ordinance No. 10530, this ordinance shall be construed to have met the requirements of Chapter 36.56 RCW and shall be deemed to have effectuated the assumption by King County of the rights, powers, functions and obligations of METRO.

SECTION 7. It is hereby found that an urgent need exists for the consideration by the electors of King County of the

proposition set forth in this ordinance. Pursuant to RCW 29.13.010, it is hereby deemed that an emergency exists requiring the submission to the qualified voters of the county at a special county election to be held therein on November 3, 1992, in conjunction with the statewide general election to be held on that same date, of the proposition set forth in this ordinance. Pursuant to Chapter 36.56 RCW, this ordinance shall be referred to the qualified voters of King County at the general election of November 3, 1992, and the manager of the division of records and elections shall provide notice of this proposed ordinance in accordance with the state constitution and general law.

Notwithstanding any other provisions of the King County Code, this proposed ordinance shall be submitted to the voters of King County for ratification with the following ballot title:

"Shall King County, effective January 1, 1994, assume the rights, powers, functions and obligations of the Municipality of Metropolitan Seattle (METRO) as authorized by state law, with said assumption being contingent upon voter approval of Proposed King County Charter Amendment No. ____ providing for a thirteen member metropolitan county council, regional committees to review county-wide policy plans, and modified referendum and initiative requirements, all as provided in Ordinance No. 10531 ?"

SECTION 8. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

INTRODUCED AND READ for the first time this 17th day of August, 1992.

PASSED this 24th day of August, 1992.

KING COUNTY COUNCIL
~~KING COUNTY~~, WASHINGTON

ACTING Chair

ATTEST:

Clerk of the Council

APPROVED this 4th day of September, 1992.

King County Executive

APPENDIX C

King County Executive Ordinance 11032(2)

September 17, 1993
DMSSUB2.ORD (MW:clt)

Introduced by: Audrey Gruger

Proposed No.: 93 - 615

ORDINANCE NO. 11032

AN ORDINANCE establishing the Department of Metropolitan Services and its divisions, creating a new title in the King County Code, establishing funds for the department, establishing the rules and regulations for the operations of the department; and amending Ordinance 1438, Section 3, as amended; Ordinance 4324, Section 36; Ordinance 9651, Sections 1 and 2; Ordinance 4324, Section 19, as amended; Ordinance 7112, Section 5; Ordinance 3581, Section 5, as amended; and K.C.C. 3.12.360, K.C.C. 3.12.170, K.C.C. 3.12.290, K.C.C. 3.16.050, K.C.C. 4.10.050; and K.C.C. 4.12.040 and adding anew chapter to K.C.C. 4.12.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

NEW SECTION. SECTION 1. **New title established.** There is hereby established a new Title 28 in the King County Code which shall pertain to the department of metropolitan services.

NEW SECTION. SECTION 2. **Statement of policy.** On November 2, 1992, King County voters approved Proposition No. 1 and King County Charter Amendment No. 1, providing for the assumption by the county of the rights, powers, functions, and obligations of the Municipality of Metropolitan Seattle (Metro), effective January 1, 1994. The proposition called for the creation of a new department of metropolitan services by ordinance, and the charter amendment established a two year transition period in which the organization, functions, and responsibilities of Metro would remain essentially the same.

This ordinance sets forth the initial policies and procedures under which the department of metropolitan services will operate. It is based on the premise that most of Metro's current policies and procedures will and should remain applicable to the operation of the department for a period of at least two years following assumption, while providing for changes to those policies and procedures where necessary to further important county policy goals or to avoid conflicts between current Metro policies and procedures and the requirements of the county's charter or state law. It is also based on the premise that under Chapter 35.58 RCW the council

may establish policies, rules and regulations related to the performance of metropolitan functions that are different from those of other departments and agencies of the county.

It is anticipated that additional legislation affecting the operation of the department may be enacted during the two year transition period and thereafter, and that such legislation may establish unified policies and procedures applicable to all units of county government, including the department.

Except as specifically provided for herein, the operation of the department shall be subject to all otherwise applicable provisions of the King County Code. The provisions of this ordinance shall not be construed to alter, limit, or modify the application of Chapter 36.56 RCW to the assumption by the county of the rights, powers, functions, and obligations of Metro effective January 1, 1994.

SECTION 3. Ordinance 1438, Section 3, as amended, and K.C.C. 2.16.090 are each hereby amended to read as follows:

Department of executive administration - divisions - duties. The department of executive administration is a staff department primarily responsible for providing administrative and management support to other agencies of county government and for the management and coordination of the county's civil rights and compliance program, cable communications, capital planning and development for the Harborview 1987 and Prior Bonds and the Phase One Regional Justice Center Projects, and the ((~~centralized~~)) purchasing process for materials and services purchased by the county for every agency of county government other than, for a two year period beginning on January 1, 1994, the department of metropolitan services. The department is responsible to manage and be fiscally accountable for the following divisions:

A. COMPUTER AND COMMUNICATIONS SERVICES DIVISION. The functions of the division include:

APPENDIX D

Final Bill Report for
Engrossed Substitute House Bill 2480

FINAL BILL REPORT
ESHB 2480

C 123 L 08
Synopsis as Enacted

Brief Description: Concerning public transportation fares.

Sponsors: By House Committee on Transportation (originally sponsored by Representatives Clibborn, McIntire and Simpson).

House Committee on Transportation
Senate Committee on Transportation

Background:

Public transportation benefit areas (PTBAs), metropolitan municipal corporations (Metros), and city-owned transit systems (city-owned transits) are special purpose districts authorized to provide public transportation services within their respective boundaries. Metros are also authorized to provide a number of other essential public services, including water supply, sewage treatment, and garbage disposal.

Generally speaking, "public transportation service" means the transportation of packages, passengers, and their incidental baggage by means other than by chartered bus or sight-seeing bus, together with the terminals and parking facilities necessary for passenger and vehicular access to and from such systems. For PTBAs, "public transportation service" also includes passenger-only ferry service for those PTBAs eligible to provide passenger-only ferry service. City-owned transits, PTBAs, and Metros do not have specific authority to monitor public transportation service fare payment or to issue civil infractions to passengers who fail to provide proof of fare payment.

Regional transit authorities are specifically authorized to monitor fare payment and to issue civil infractions for, among other things, failure to provide proof of payment.

Summary:

Passengers traveling on public transportation operated by PTBAs, Metros, and city-owned transits are required to pay the established fare and to provide proof of payment when requested to do so by persons designated to monitor fare payment.

Metros, PTBAs, and city-owned transits are authorized to designate persons to monitor fare payment, and to establish a schedule of civil fines and penalties for civil infractions related to fare payment violations. A civil infraction not to exceed $250 may be issued by designated fare monitors to passengers who: fail to pay the fare; fail to provide proof of payment when requested to do so by a person designated to monitor fare payment; or refuse to leave the bus when asked by a person designated to monitor fare payment. The authority to issue civil

citations for fare payment violations is supplemental to any other existing authority to enforce fare payment.

Votes on Final Passage:

House	84	10	
Senate	48	0	(Senate amended)
House	86	8	(House concurred)

Effective: June 12, 2008

APPENDIX E

Exhibit 11

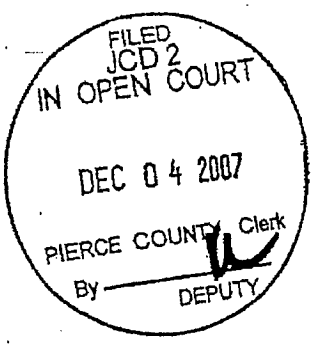
(Statement on Plea of Guilty in Juvenile Court)

State Exhibit 11

5483 12/4/2007 00669

Case Number: 07-8-01976-3 Date: March 22, 20[illegible]
SerialID: 93429870-F20F-6452-DAC[illegible]96ECAFC3C9
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

07-8-01976-3 28752161 STJOPG 12-04-07



SUPERIOR COURT OF WASHINGTON
PIERCE COUNTY JUVENILE COURT

STATE OF WASHINGTON Plaintiff,

Darelle Brown Respondent

D.O.B. 10/08/91

JUVIS # 756975-07R066248

NO: 07-8-01976-3

STATEMENT ON PLEA OF GUILTY
(STJOPG)

Tuesday - December 18th, 2007 @ 9:00
Disposition date and time

Case Number: 07-8-01976-3 Date: March 22, 20
SerialID: 93429870-F20F-6452-DAC[redacted]96ECAFC3C9
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

be required to register where I reside, study or work. The specific registration requirements are set forth in Attachment "A."

[D] DNA TESTING: If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. RCW 43.43.754.

XLB

[E] HIV TESTING: If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus. RCW 70.24.340.

[F] CRIME LAB FEES: If this offense involves a controlled substance, I will be required to pay $100 for the State Patrol Crime Lab fees to test the substance.

[G] SCHOOL NOTIFICATION: If I am enrolled in a common school, the court will notify the principal of my plea of guilty if the offense for which I am pleading guilty is a violent offense as defined in RCW 9.94A.030; a sex offense as defined in RCW 9.94A.030; inhaling toxic fumes under chapter 9.47A RCW; a controlled substance violation under chapter 69.50 RCW; a liquor violation under RCW 66.44.270; or any crime under chapters 9.41, 9A.36, 9A.40, 9A.46, and 9A.48 RCW. RCW 13.04.155.

XLB

[H] SCHOOL ATTENDANCE WITH VICTIM PROHIBITED: I understand that if I am pleading guilty to a sex offense, I will not be allowed to attend the school attended by the victim or victim's siblings. RCW 13.40.160.

[I] FEDERAL BENEFITS: I understand that if I am pleading guilty to a felony drug offense, my eligibility for state and federal food stamps and welfare will be affected. 21 U.S.C. § 862a.

[J] [redacted]

[K] RIGHT TO POSSESS FIREARMS: [JUDGE MUST READ THE FOLLOWING TO OFFENDER] I have been informed that if I am pleading guilty to any offense that is classified as a felony or any of the following crimes when committed by one family or household member against another: assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence; that I may not possess, own, or have under my control any firearm unless my right to do so has been restored by a court of record. RCW 9.41.040(1).

[L] [redacted]

[I] [redacted]

[ii] Unlawful Possession with Stolen Firearm: I understand that if the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm, that the sentences imposed

XLB

* for a finding of guilt if the case proceeded to ~~conviction~~ trial.

5483 12/4/2007 00074

Case Number: 07-8-01976-3 Date: March 22, 20
SerialID: 93429870-F20F-6452-DACF-[redacted]6ECAFC3C9
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

20. I have read or someone has read to me everything printed above, and in Attachment "A," if applicable, and I understand it in full. I have been given a copy of this statement. I have no more questions to ask the judge.

Dated: 11-30-07

x Lavelle Brown
Respondent

I have read and discussed this statement with the respondent and believe that the respondent is competent and fully understands the statement.

Deputy Prosecuting Attorney

KATHLEEN OLIVER
Type or Print Name/Bar Number 18252

Attorney for Respondent

DONNA HIRKOS
Type or Print Name/Bar Number # 17759

JUDGE'S CERTIFICATE

The foregoing statement was signed by the respondent in open court in the presence of his or her lawyer and the undersigned judge. The respondent asserted that [check appropriate box]:

☐ (a) The respondent had previously read the entire statement above and that the respondent understood it in full;
☑ (b) The respondent's lawyer had previously read to him or her the entire statement above and that the respondent understood it in full; or
☐ (c) An interpreter had previously read to the respondent the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

I find the respondent's plea of guilty is knowingly, intelligently, and voluntarily made. Respondent understands the charge and the consequences of the plea. There is a factual basis for the plea. The respondent is guilty as charged.

Dated: 12/4/07

John A. McCarthy
JUDGE/COMMISSIONER
John McCarthy

FILED
JCD 2
IN OPEN COURT
DEC 04 2007
PIERCE COUNTY, Clerk
By DEPUTY

Case Number: 07-8-01976-3 Date: March 22, 2013
SerialID: 93429870-F20F-6452-DACFA196ECAFC3C9
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the aforementioned court do hereby certify that the document **SerialID: 93429870-F20F-6452-DACFA196ECAFC3C9** containing 6 pages plus this sheet, is a true and correct copy of the original that is of record in my office and that this image of the original has been transmitted pursuant to statutory authority under RCW 5.52.050. In Testimony whereof, I have certified and attached the Seal of said Court on this date.

Kevin Stock, Pierce County Clerk

By /S/CAROLYN STEWART, Deputy.
Dated: Mar 22, 2013 11:01 AM

SEAL OF THE SUPERIOR COURT WASHINGTON OF PIERCE COUNTY

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The copy associated with this number will be displayed by the Court.

State's/ ~~Defendant's~~ Exhibit
13-1-10170-6 SEA
State v. Mitchell

//

FILED
KING COUNTY, WASHINGTON

JAN 14 2014

SUPERIOR COURT CLERK
BY Rebecca Hibbs
DEPUTY

FILED
KING COUNTY, WASHINGTON

JAN 14 2014

SUPERIOR COURT CLERK
BY Rebecca Hibbs
DEPUTY

APPENDIX F

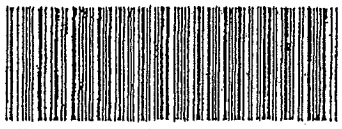
Exhibit 10

(Order of Disposition)

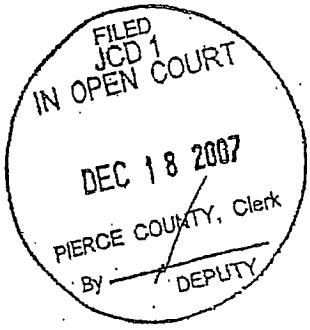
State Exhibit 10

5749 12/18/2007 00868

Case Number: 07-8-01976-3 Date: March 22, 20
SerialID: 934189CF-F20D-AA3E-57547726B479C492
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



07-8-01978-3 28848558 ORD 12-18-07



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

STATE OF WASHINGTON, Plaintiff, vs. LAVELLE X BROWN D.O.B.: 10/08/91 JUVIS#: 756975-07R066248 Respondent.	CAUSE NO. 07-8-01976-3 DISPOSITION ORDER ☐ TRIAL ☒ PLEA ☐ AMENDED RESTITUTION DATE: _____ [ ] DECLARATION [ ] TESTIMONY [ ] RESPONDENT WAIVES RIGHT TO APPEAR AT RESTITUTION HEARING

It has been found beyond a reasonable doubt that the above respondent, a ☒ Male ☐ Female, 16 years of age, has committed the offense(s) of:

C

TOTAL COSTS $ 00.00

Costs to be paid by CASH or MONEY ORDER to: PIERCE COUNTY JUVENILE COURT THIS AMOUNT SHALL BE PAID AT A RATE OF $_____ PER MONTH UNTIL PAID IN FULL, OR AS MODIFIED BY PROBATION OFFICER.

RESTITUTION AMENDMENTS. The portion of the sentence regarding restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime.

DNA IDENTIFICATION ANALYSIS: Required under RCW 43.43.754 for any Felony, Stalking, Harassment, or Communication with a Minor for Immoral Purposes.

FIREARM PROHIBITION. If you are found to have committed a felony or a crime against a family member under RCW 10.99.020, to include Assault in the Fourth Degree, Coercion, Stalking, Reckless Endangerment, Criminal Trespass, or Violation of a restraining order, no-contact order, or protection order. You may not own, use or possess any firearm unless your right to do so is restored by a court of record.

VOTING RIGHTS STATEMENT. RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

SCHOOL NOTIFICATION. The common school in which you are enrolled will be notified of the disposition of this case, if the offense is one of those listed in RCW 13.04.155. The School District in which the respondent resides and/or is enrolled shall release all of the respondent's school records to the Juvenile Court probation officer upon request.

JURISDICTION is extended beyond the age of eighteen (18) to accomplish this order.

OTHER_____

_____

VIOLATION OF ANY TERM OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS PUNISHABLE BY UP TO THIRTY (30) DAYS CONFINEMENT FOR EACH VIOLATION.

Office of the Prosecuting Attorney
Juvenile Division
5501 Sixth Avenue
Tacoma, Washington 98406-2697
Telephone: (253) 798-3400

It is adjudged and ordered this 18th day of December, 2007.

Mary Beth Holt-Perkins
JUDGE/COURT COMMISSIONER pro tem
MARY E. HOLT-PERKINS

Presented by:

Deputy Prosecuting Attorney
WSB # 32310

Respondent's Attorney
WSB #

LaVelle Brown
Respondent

FILED
JCD 1
IN OPEN COURT
DEC 18 2007
PIERCE COUNTY, Clerk
By DEPUTY

Office of the Prosecuting Attorney
Juvenile Division
5501 Sixth Avenue
Tacoma, Washington 98406-2697
Telephone: (253) 798-3400

Case Number: 07-8-01976-3 Date: March 22, 2013
SerialID: 934104DF-F20D-AA3E-55DEA44BE50B0654
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the aforementioned court do hereby certify that the document **SerialID: 934104DF-F20D-AA3E-55DEA44BE50B0654** containing 2 pages plus this sheet, is a true and correct copy of the original that is of record in my office and that this image of the original has been transmitted pursuant to statutory authority under RCW 5.52.050. In Testimony whereof, I have certified and attached the Seal of said Court on this date.

Kevin Stock, Pierce County Clerk

By /S/CAROLYN STEWART, Deputy.
Dated: Mar 22, 2013 10:59 AM

SEAL OF THE SUPERIOR COURT WASHINGTON OF PIERCE COUNTY

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enter **SerialID: 934104DF-F20D-AA3E-55DEA44BE50B0654.**
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State's/ ~~Defendant's~~ Exhibit
13-1-10170-6 SEA
State v. Mitchell 10

FILED
KING COUNTY, WASHINGTON

JAN 14 2014

SUPERIOR COURT CLERK
BY Rebecca Hibbs
DEPUTY

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Mitch Harrison, the attorney for the appellant, at mitch@mitchharrisonlaw.com, containing a copy of the Brief of Respondent, in State v. Lavelle Xavier Mitchell, Cause No. 72221-2, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 28th day of May, 2015.

Name:
Done in Seattle, Washington