

FILED
SUPREME COURT
STATE OF WASHINGTON
6/2/2021 4:07 PM
BY SUSAN L. CARLSON
CLERK

NO. 98846-3

THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SANTIAGO ALBERTO SANTOS,

Appellant.

SUPPLEMENTAL BRIEF OF RESPONDENT
(Treated as the Answer to motion requesting additional relief)

David B. Trefry WSBA #16050
Senior Deputy Prosecuting Attorney
Attorney for Respondent

JOSEPH A. BRUSIC
Yakima County Prosecuting Attorney
128 N. 2d St. Rm. 329
Yakima, WA 98901-2621

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii-iv
INTRODUCTION	1
ISSUES PRESENTED BY PETITION	1
1. Does <u>State v. Blake</u> , 197 Wn.2d 170, 1481 P.3d 521 (2021) effect the point total determined by the trial court based on defendant’s prior possession of a controlled substance charges which arose from convictions in the State of California?	1
ANSWER TO ISSUES PRESENTED BY PETITION.....	1
1. Blake has not effect on Santos’s offender score.	2
B. STATEMENT OF THE CASE.....	2
C. ARGUMENT	2
D. CONCLUSION	5

TABLE OF AUTHORITIES

PAGE

Cases

State v. Blake, 197 Wn.2d 170, 1481 P.3d 521 (2021).....passim

State v. Davis, 53 Wn. App. 306, 309, 766 P.2d 1120 (1989) 4

State v. Perez, 69 Wn. App. 133, 140, 847 P.2d 532 (1993) 5

People v. Martin, 108 Cal. Rptr. 2d 599, 25 Cal. 4th 1180, 1184, 25 P.3d 1081, 602 (2001), 2

Rules and Statutes

RCW 9.94A.525(3) 3

RCW 69.50.4013(1) 3

Other References

A. INTRODUCTION

The State has filed its Answer to Santos' Petition. Therefore, the State shall not supply this court with yet another recitation of the underlying facts of this case.

The State acknowledges that Santos' criminal history Nelson was found guilty by a jury on January 12, 2016. The State has attached a copy of the defendant's judgment and sentence.

The State has also attached the Finding of Fact and Conclusions of Law For and Exceptional Sentence; Order Vacating Count 1. This document clearly sets out the trial court's basis for the imposition of the exceptional sentence imposed in this case. It is clear from these pleadings that the trial court would have imposed and will if this case were to be remanded the same sentence which the defendant is presently serving.

B. ISSUE PRESENTED BY PETITION

The one issue before this court in Santos' supplemental motion.

1. Does State v. Blake, 197 Wn.2d 170, 1481 P.3d 521 (2021) effect the point total determined by the trial court based on defendant's prior possession of a controlled substance charges which arose from convictions in the State of California?

ANSWER TO ISSUES PRESENTED BY PETITION

1. This court's decision in Blake does not negate the use of constitutionally valid possession of controlled substance convictions from other States in determination of a defendant's standard range sentence. In the alternative it is clear from the

decision of the jury and the trial court's imposition of an exceptional sentence as set forth in the findings and conclusions that the trial court would impose the same sentence on remand and therefore remand is unwarranted.

C. STATEMENT OF THE CASE

The facts of this case are of little need to address the issue before this court, they will be set forth in the body of this brief as needed. The newly raised issue before this court is whether Blake, *infra*, applies to out of state convictions for possession of a controlled substance convictions which were counted in an offender's point total for sentencing purposes.

D. ARGUMENT

1. Blake Does Not Prevent A Constitutionally-Valid Out-Of-State Conviction From Being Included In The Offender Score.

Santos has not made a showing that he is entitled to relief. With regard to the California drug conviction, the defendant relies on State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021). That case holds that the Washington drug possession statute is constitutionally invalid because of the absence of a knowledge element. As the court pointed out, however, this problem does not apply to the statutes of any other state. *Id.* at 530 ¶ 30. In particular, the crime of drug possession in California includes that element. People v. Martin, 108 Cal. Rptr. 2d 599, 25 Cal. 4th 1180, 1184, 25 P.3d 1081, 602 (2001), "...the possessor's knowledge of the presence

of the controlled substance and its nature as a restricted dangerous drug must be shown, no further showing of a subjective mental state is required. (Ibid.)”

As Blake made clear the court deemed the purpose of the statute valid but ruled that due to the lack of the proof of knowledge it was an invalid statute. Since the California conviction is constitutionally valid, the question is purely one of legislative intent: whether the Washington Legislature intended for it to be counted towards an offender score.

That answer lies in RCW 9.94A.525(3): “Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law.” The crime of possessing a controlled substance is defined by RCW 69.50.4013(1): “It is unlawful for any person to possess a controlled substance.” And citing from Martin under California law, “[t]he essential elements of unlawful possession of a controlled substance are dominion and control of the substance in a quantity usable for consumption or sale, with knowledge of its presence and of its restricted dangerous drug character.” Martin, 25 Cal. 4th at 1184-85. It is clear that the California crime includes every element of the Washington crime (plus some additional elements).

Since the question is one of legislative intent, Blake is irrelevant. That case does not change the interpretation of the Washington statute.

Rather, it prevents the will of the legislature from being effectuated, due to constitutional problems. That does not imply that the legislature would want drug crimes to be ignored, in cases where it is constitutionally permissible to count them. The defendant's valid California conviction for drug possession was properly counted towards his offender score.

Exceptional Sentence

In the alternative the State would argue that the exceptional sentence imposed in this case was not based on the defendant's point score but on the decision of the jury and the trial court's subsequent analysis of the facts of the case and the actions of this defendant. The Appellant did not and has not addressed nor challenged the exceptional sentence imposed in his case. He has no ability to do so now at this stage of his appeal. The jury found aggravators which were pled and proven and the trial court heard from both parties and numerous individuals at sentencing. The Court then imposed an exceptional sentence and entered finding and conclusions. These can be found in Appendix A to this supplemental brief.

State v. Davis, 53 Wn. App. 306, 309, 766 P.2d 1120 (1989) "The trial court may impose a sentence outside the standard range if it finds that there are "substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.120(2). Whenever an exceptional sentence is

imposed, the court must set forth the reasons for its decision in written findings of fact and conclusions of law. RCW 9.94A.120(3).”

Davis goes on to state “In reviewing an exceptional sentence, this court must first determine whether the trial court's reasons are supported by the record. RCW 9.94A.210(4)(a) Since this is a factual determination, the trial court's reasons will be upheld unless they are found to be "clearly erroneous." Once we determine that there is sufficient evidence in the record to support the trial court's reasons for imposing an exceptional sentence, then we must independently determine whether, as a matter of law, the trial court's reasons justify an exceptional sentence. RCW 9.94A.210(4)(a) (Citations omitted.)

Again, Santos has never challenged the exceptional sentence imposed. The defendant merely challenges the point which were attributed to him at the time he was sentence.

State v. Perez, 69 Wn. App. 133, 140, 847 P.2d 532 (1993);

We are satisfied that the trial court would have followed the State's recommendation and imposed the same sentence absent the improper factor. Therefore, we need not remand for further consideration. State v. Fisher, 108 Wn.2d 419, 429-30, 430 n.7, 739 P.2d 683 (1987). State v. Drummer, 54 Wn. App. 751, 760, 775 P.2d 981 (1989).

E. CONCLUSION

A valid conviction in California based on a statute which mirrors that which this court said was essential in this state still should count towards Santos's point total for sentencing purposes. The actions of the trial court and the Court of Appeals should not be disturbed.

Respectfully submitted this 2nd day of June 2021.

s/ David B. Trefry
DAVID B. TREFRY, WSBA #16050
Senior Deputy Prosecuting Attorney
Yakima County, Washington
P.O. Box 4846, Spokane WA 99220
Telephone: (509) 426-0235
David.Trefry@co.yakima.wa.us

APPENDIX A

P R O C E E D I N G S

1
2 THE COURT: Are the parties ready on the matter of
3 State of Washington vs. Santos, 14-1-01469-8?

4 Mr. Ramm.

5 MR. RAMM: The state is ready, your Honor.

6 MR. SMITH: The defense is ready, your Honor.

7 THE COURT: Mr. Ramm, please proceed.

8 MR. RAMM: Your Honor, I filed a sentencing
9 memorandum. I'm not sure how the court wants to proceed,
10 whether it wants to hear from the family members with regard
11 to the sentencing or deal with the issues in the sentencing
12 as I've seen with regard to just the standard range.

13 THE COURT: Let's proceed with the statements of
14 the family and victims in this case.

15 MR. RAMM: Okay, your Honor.

16 THE CLERK: Your Honor, the clerk has marked
17 state's Identification 1A through 6A.

18 MR. RAMM: First will be Bryanna Hernandez.

19 BRYANNA HERNANDEZ: Bryanna Hernandez.

20 THE COURT: Good morning, Bryanna.

21 GINA CARDENAS: I'm Gina Cardenas from victim
22 services. I'm going to be reading her letter. Her letter
23 was written with her and her counselor.

24 THE COURT: Okay. How old is Bryanna?

25 GINA CARDENAS: She's seven.

1 THE COURT: Thank you.

2 GINA CARDENAS: When I was four years old
3 something scary happened. I heard voices when I woke up and
4 noises. I heard stuff dropping down and yelling and
5 somebody going to the restroom. I heard a man saying,
6 you're dying slowly; you're dying slowly.

7 I feel sad because my tio Manuel died that night. My
8 tio was my friend. He was my friend to me and like a dad to
9 me. I loved him so much and I miss him so much. I miss
10 watching TV with him and laughing.

11 I have nightmares from what happened, and I wake up and
12 I'm scared. I need to go stay with someone to feel better.
13 I wish my tio Manuel did not die so I could watch TV
14 together still.

15 My grandma cries a lot, and it makes me think about my
16 tio Manuel. I think about him every day. I have a shirt
17 that reminds me of him, and I wear it when I go to bed.

18 What happened to my tio hurt my whole family. We
19 always cry a lot. We think about him and we cry more. When
20 I go places, I think about my tio Manuel and I wish he was
21 there with me.

22 THE COURT: Thank you.

23 Mr. Ramm.

24 MR. RAMM: Next is Maria Mendez.

25 THE COURT: Good morning, Ms. Mendez. Could you

1 tell us your full name, please.

2 MARIA MENDEZ: Good morning. Maria Elena Mendez.

3 THE COURT: Okay. And what would you like the
4 court to know?

5 MARIA MENDEZ: It's been very hard. I miss him.
6 I miss my son so much. I have to be strong for my four
7 girls, Alma, Catalina, Chrissy, Lupita and my 16 grandkids.

8 I have never been on medication. Now I am on
9 medication with depression pills, high blood pressure and
10 sleeping pills.

11 I'm always crying. I don't have that joy anymore like
12 I used to. When I see person, I'm always crying. I can't
13 face it.

14 I had more stuff to say, but it's really hard for me to
15 say. He was my only son. He was my baby. Santiago took
16 the joy from me and my family. That's it.

17 THE COURT: Ms. Mendez, I'm sorry for your loss.
18 Thank you.

19 MR. RAMM: Next will be Katrina Guillen.

20 THE COURT: Good morning. Could I have you tell
21 us your full name, please.

22 KATRINA GUILLEN: My name is Katrina Guillen.

23 THE COURT: Thank you. Please proceed.

24 KATRINA GUILLEN: Dear Judge, since I have a voice
25 I'm going to use it. Even though I'm 14, I can still figure

1 out what happened and understand everything that happened.
2 Even at 10 years old, I still understood and endure the pain
3 of losing someone I love.

4 That night I felt so scared. I felt like everything
5 was over. My life has been adjusted to a new path I didn't
6 choose and I don't want. As I heard my uncle crying out, I
7 felt my heart race. I felt my whole body panic. When we
8 couldn't escaped the room, for the first time, and I hope
9 the last, I thought I was going to die. I was going to cry
10 from the fear, but my cousin assured me that I was going to
11 be fine and that everything else was going to be fine. Then
12 I heard the sirens. I saw the red, white and blue colors
13 reflecting on the window, and my body felt somewhat safe.

14 Having my life and my family's lives being controlled
15 by something that causes so much pain that wasn't our fault
16 is very unfair, and it frightens us, the memories, the
17 emotions, the loss, the fear, the trauma, the trial, the
18 lies, the tears. What scares me is that the same thing can
19 happen to me. Even worse, the same thing can happen to my
20 family.

21 My tio Manuel loved us all. I remember the day I asked
22 my mom if I could stay at my grandma's house. My tio Manuel
23 was standing in front of me, trying to race and playing
24 around with us. My brother Raul was there playing around,
25 too. My tio had a smile on his face, a big smile, a smile

1 that could brighten up the room and laughter that could
2 carry joy for miles.

3 Right then and there I told my tio Manuel I loved him.
4 I'm glad I did. Because I want him to know that I love him
5 no matter what. I know he loves us all. I know he loved us
6 all no matter what.

7 My tio Manuel wasn't just some tio that was here and
8 there. He was a person, a person who loves us. He meant
9 everything to us. To him you were his world. No matter
10 what he did, we still loved him. My tio Manuel was loving,
11 caring and kind, and he only wanted the best for us. He was
12 loved. He had value, and all of this was taken from us.
13 Santiago made a hole in our hearts.

14 I made a poem called Someone I Miss, by Katrina
15 Guillen.

16 Love passes through life, love passes through death.
17 Wherever you are, the love won't be left. With prayers that
18 give, the tears that I cry, you know that I love you, until
19 the day that I die.

20 Even after death the love will still burn, until the
21 day I see you, I hope that we learn. You're in a place,
22 happy as can be. We all love you so much. You're in our
23 hearts and won't leave. We all want your hugs. I give you
24 a kiss. Our love will shine bright. You're someone we
25 miss.

1 I wrote another poem called *The Truth*, by Katrina
2 Guillen.

3 See through the clothes; see through the lies. Don't
4 listen to their mouths; look into the eyes. You will see
5 the truth even if you despise. Killing a person, that isn't
6 right.

7 He didn't kill just one person. He killed our whole
8 family. A part of us died. Pray for no more insanity.

9 My uncle died in one of the worst ways, suffering while
10 being intimidated. How could someone be able to say
11 something that would make you want to look away?

12 Hearing the man telling my uncle to die broke my heart
13 and took away the lie. Taking away our childhood and our
14 innocence, we will always have the memories. We will never
15 get rid of it.

16 That night changed our lives forever, never to be the
17 same, hoping that our lives will get better.

18 That's it.

19 THE COURT: Thank you.

20 MR. RAMM: Next, your Honor, will be Alma Guillen.

21 THE COURT: Good morning, Ms. Guillen. Could you
22 introduce yourself for the record, please.

23 ALMA GUILLEN: Yes, Alma Guillen.

24 THE COURT: Okay. Thank you.

25 ALMA GUILLEN: Your Honor, the night of

1 November 15, 2014, dramatically changed our lives forever.
2 This is a day in which my brother Manuel Jamie was brutally
3 murdered in his own home.

4 Many people may not know this, but I helped raise my
5 baby brother Manuel because my mom was a single parent who
6 worked two jobs. The bond we formed was unbreakable.

7 My baby brother was the most caring, loving and helpful
8 individual. I distinctly recall that when I was diagnosed
9 with cancer he came to assist me. He was the type of person
10 that you could count on for anything. Any time my brother
11 would see any of us, even the children, he would give us
12 what we call bear hugs. We all disliked these bear hugs
13 because he was squeeze us super, super tight and tell us he
14 loved us. At this very moment I could really use one of
15 those bear hugs.

16 A piece of me died when my brother, my baby brother,
17 was murdered. I'm never going to see his beautiful smile.
18 I'm never going to hear him call me Alma like he used to
19 call me. I'm never going to receive one of those bear hugs
20 ever again. I'm never going to be an aunt to his children
21 because he never had that opportunity.

22 My sisters and I lost our only brother. My nieces and
23 nephews lost their only uncle, and my parents lost their
24 only son. Our family functions will never be the same
25 because there will always be with a constant reminder that

1 he's no longer with us.

2 That night was the very first night I allowed my
3 daughter Katrina to spend the night away from home. She had
4 hopes for a night of fun, games and movies with her cousins.
5 What was supposed to be children creating long, lasting
6 childhood memories and living a normal life turned out to be
7 a nightmare and the worse night of their lives that they
8 will never recover from. That night forever changed all
9 seven of their lives.

10 Santiago Santos took away their innocence. He ripped
11 away their sense of security. Santiago Santos has forever
12 affected their view of the world around them, making it
13 scary and unsafe. The place all of us once called home
14 could no longer be that comfort that we all connected to.
15 The house has become a constant reminder that our son,
16 brother, uncle had been brutally murdered there.

17 It took my mom, sisters and the children two years to
18 move back into the home, into the house, not ready to face
19 the terror. They stayed with my sister, Lupe, the church
20 pastor and my own family. They moved from place to place
21 even after having a home of their own. Because the children
22 were extremely terrified of going back into that house, the
23 pain of having to go there was just too unbearable.

24 Until this day, my nephew Angel still lives with me
25 because he fears for his life. The children should not have

1 to go about their day wondering if they will be next to die.
2 No child should have to endure what they have endured.

3 Our children are currently receiving counseling
4 services because they witnessed their uncle being brutally
5 murdered. The children heard my brother crying and yelling
6 for help. My brother's cries for help is something that no
7 one will ever be able to erase from their minds.

8 Since my brother was murdered I have insomnia. I get
9 severe panic attacks. I can't even be around knives without
10 panicking. It got so extreme that I couldn't cook with a
11 knife because a million thoughts ran through my mind.

12 During the entire court process I have not seen any
13 remorse displayed on his behalf. I'm begging you to give
14 Santiago Santos the maximum amount of time for all the pain
15 he has caused our family. Thank you.

16 THE COURT: Thank you.

17 MR. RAMM: Next is Catalina Garcia.

18 CATALINA GARCIA: Good morning, your Honor.

19 THE COURT: Good morning, Ms. Garcia. Would you
20 tell us your full name for the record, please.

21 CATALINA GARCIA: Catalina Jaime Garcia.

22 THE COURT: Thank you.

23 CATALINA GARCIA: My name is Catalina Jamie
24 Garcia. I'm the second of four sisters. My brother, Manuel
25 Ezequiel Jamie, he was a good person, a wonderful son and a

1 caring brother and a fun, loving uncle.

2 The last time I saw my brother was September 7th of
3 2014. I live in Pasco. We were just -- me and my mom was
4 just getting back from her brother's funeral. He passed
5 away of cancer. When we got to my mom's house, my brother
6 was there. He took my children, who were then two and four,
7 out to the back yard, and they were playing and having a
8 good time.

9 This is how I'd like to remember my brother, fun,
10 loving, happy and caring for his nieces and nephews like he
11 always did. He had the most radiant smile and the best hugs
12 ever.

13 I have no hate in my heart towards Santiago. It's not
14 necessarily for myself. I can't carry that weight around my
15 whole life, but I don't have hate. I'm not okay with what
16 happened and it hurts me. It hurts me to the core.

17 That day when the police officer called me at 5:00 in
18 the morning and told me Manuel has been stabbed, the first
19 thing, okay. Come on. Let's go. I've got to go. I've got
20 to go. Where is he at, the hospital? Officer Palacio is
21 like, no, he didn't make it. The feeling that I had, my
22 heart just dropped. I don't think my heart has ever been
23 the same.

24 When Santiago stabbed my brother, the forensic
25 scientist or the coroner said that he didn't pierce my

1 brother's heart. He didn't pierce my brother's heart but he
2 pierced all of our hearts. Fifty-nine times to get stabbed
3 is terrible. One time to get stabbed is terrible. But 59,
4 you're thinking what you're going to do is kill him, and
5 that's what he did.

6 Your Honor, I don't want vengeance, but I do want
7 justice. I want justice for my brother. I want justice for
8 my mom. I want justice for my nieces and nephews that were
9 there that night. They had to experience the cruelty and
10 the awfulness that was given to my brother that night.

11 I miss my brother. I know that one day I will see him
12 in heaven, but on this earth I would like justice. That's
13 why I ask for the maximum sentence possible.

14 Santiago's mom owns property down the street from my
15 mom. I don't think they live there. Still, just knowing
16 that, you know, the family is just that close or their
17 property.

18 My older sister might not remember, but I do remember
19 Santiago going to my mom's house when he was in elementary
20 school because Manuel and him were friends back then. I
21 remember him. I remember him as a young boy at my house
22 playing, hanging out. I think it just brings more hurt just
23 knowing that you knew him. You guys hung out, whatever.
24 Things happen. It just brings that much more pain.

25 Like I said, I just ask for the maximum sentence

1 possible. Thank you.

2 THE COURT: Thank you.

3 MR. RAMM: Next, your Honor, will be Ayisha
4 Guillen.

5 THE COURT: Good morning.

6 AYISHA GUILLEN: Good morning.

7 THE COURT: Tell us your full name, please.

8 AYISHA GUILLEN: Ayisha Guillen.

9 You always think it is the criminal that has to live
10 with the guilt and the suffering imposed by someone
11 committing such a horrendous act. In actuality it's the
12 family. It's the family that has to wake up every day and
13 remind themselves that their brother, their uncle, their son
14 is dead, murdered, in fact. Imagine that for a second, that
15 someone you hold so dearly to your heart is suddenly ripped
16 away at the hands of another person.

17 When Santiago murdered my Uncle Manuel on November 15,
18 2014, he wasn't just murdering one man. He was murdering an
19 entire family. My Uncle Manuel wasn't the only one who
20 died. Part of my mother died as well when she fell to her
21 knees sobbing at the police station at the news that her
22 baby brother was dead. Part of my grandma died as she laid
23 her only son to rest, and part of me dies a little everyday
24 knowing that the suffering is one their hearts will never be
25 able to heal.

1 Although we do not have the power to heal the void in
2 our hearts, we do have the power to administer justice.
3 That is why I'm adamant in my decision that Santiago should
4 get the maximum sentence for the murder of my Uncle Manuel.

5 THE COURT: Thank you.

6 MR. RAMM: Lupe Farias.

7 UNKNOWN VOICE: Lupe wants me to read her letter.

8 THE COURT: All right.

9 UNKNOWN VOICE: On November 15, 2014, my life
10 changed in many ways. I was told my only brother was
11 murdered. Every day I struggle with depression and anxiety.
12 I am afraid to let my kids sleep alone. So we all sleep in
13 one room with a bat beside my bed. When my dog barks, I
14 wake up with my heart pounding and think someone is trying
15 to get in. I see it's nothing. So I go back to bed.

16 You just don't take a person's life. You took a
17 brother, a son and an uncle. My baby will never get to meet
18 his uncle and know what a great uncle he was. I don't think
19 you should live your life when my brother will never live
20 his.

21 THE COURT: Thank you.

22 MR. RAMM: Alize Jamie.

23 THE COURT: Good morning.

24 ALIZE JAIME: Good morning.

25 THE COURT: Tell us your full name, please.

1 ALIZE JAIME: Alize Jamie.

2 THE COURT: You need to speak up just a little
3 bit. Go ahead.

4 ALIZE JAIME: My tio meant everything to me. He
5 was like a dad to me. He was my life and the best tio.
6 There will be never anybody like him. Santiago took a
7 strong, lovable bond from me.

8 My tio Manuel, he would always do things for me, always
9 cheer me up and always check up of me.

10 I was only nine years old in November 2014. My tio
11 died, and I have bad dreams all the time. It's so hard for
12 me to concentrate at school. I cannot learn. Every second
13 I think about my tio and wonder what he's doing in heaven.

14 I see a counselor to help me because I stress so much
15 about what happened to my tio. My tio Manuel was so funny
16 and so handsome. He would always call me monkey.

17 Judge, I hope you see who Santiago really is. I
18 believe he knew what he was doing that night in November.

19 Me and my brothers and sisters and family aren't as
20 happy as we used to be. We hardly go outside to play. Even
21 if someone knocks on the door or something falls down in the
22 house, I get so scared. Whenever I hear someone crying out,
23 it reminds me of when I was hearing my tio crying out.

24 When my tio was crying like that, I heard Santiago tell
25 him, you're dying slowly, not fast. I heard the knife

1 drawer open.

2 When Santiago took the stand, I got so scared looking
3 at him. I'll never forget when he was asked if he knew who
4 my tio was. He said no. That hurt me so much because he
5 knew what he did.

6 In closing, I want you to know who my tio was. He was
7 a funny, loving, hardworking man who loves all of us,
8 especially my grandma. My grandma's only son was taken
9 from her, and we all feel the pain.

10 I want my tio to know that even though we didn't have
11 him with us for a very long time, the time we spent with him
12 was a blessing. Our family chain is broken and nothing
13 seems the same. As God takes us one by one, I know our
14 family chain will link again. Thank you, Judge.

15 THE COURT: Thank you.

16 MR. RAMM: Angel Flores.

17 THE COURT: Good morning.

18 ANGEL FLORES: Good morning.

19 THE COURT: Go ahead and introduce yourself,
20 please.

21 ANGEL FLORES: My name is Angel Flores.

22 This has impacted me in many different ways, whether it
23 be that night having to check the doors, double check,
24 because that night I was really scared. I didn't know what
25 to do. My heart was racing. I didn't know what to do.

1 Ever since that day I've been living with my aunt
2 because I can't go back to my house that I used to live in.
3 Ever since that happened I get nightmares at times. It's
4 hard for me to sleep at night. So I ask that you give
5 Santiago the maximum sentence. Thank you.

6 THE COURT: Thank you, Angel.

7 MR. RAMM: Erica Pina.

8 ERICA PINA: My name is Erica Pina. First I'd
9 like to say thank you to the prosecuting attorney office for
10 helping my family put this heartless human being behind
11 bars. The reason why I say heartless is because how could
12 you sit there on the stand with a straight face, no sympathy
13 in his eyes, knowing what he did to my poor baby cousin. As
14 he laid there helplessly, he repeatedly stabbed him over and
15 over again with no conscience of his wrongful act.

16 Three and a half years this cowardly murderer ruined
17 our lives and thoughts. He also delayed our grieving
18 process. Many innocent people's lives have been shattered,
19 even his own family. This has been sad, exhausting,
20 frustrating, stressful for my family. Now we have to deal
21 with this all over again.

22 My poor baby cousins all once were all so happy. Now
23 all I see is sad faces. How they used to play outside with
24 their uncle who they looked up to as their father now is
25 gone.

1 Now any loud noise the children hear scares them. It
2 was even hard for them to move back into the house. It took
3 them years to finally go back. They suffer lots of
4 nightmares, them waking up at night, screaming and crying.
5 So many sleepless nights.

6 Until this day they are scared knowing one day that
7 this heartless person will be out one day and that scares
8 them. They will never be able to live a normal life. They
9 will always think of the day he gets out or this horrific
10 tragedy is in their head for the rest of their lives.

11 For the sisters, Alma, Catalina, Chrissy and Lupe, this
12 will forever haunt them. They lost their only brother. He
13 was the man of the house. When they needed a shoulder to
14 cry on, he was there. When they needed a jar of pickles to
15 be opened, he was there. When they needed a hug, he was
16 there.

17 Now all they have is the tragedy that has happened.
18 All they do is cry. It hurts me to see them hurt so much.
19 They will never be the same.

20 As for my Aunt Maria, she is one of the strongest women
21 I know. This broke her into a million pieces. She has lost
22 her only son. She will never be able to know what his
23 children would look like or someone to carry his last name
24 or have his big smile. All she has to remember is the
25 gruesomeness tragedy. She will never be able to go to sleep

1 without crying or giving him a kiss goodnight. She will
2 never been the same.

3 This has affected me in so many ways. When I lost
4 Manuel, I lot all of them. We were all so happy. Now we're
5 all full of sorrow and full of tears and anger.

6 I look across the street because that's where I live.
7 I would see many faces, happy faces. I would see Manuel
8 cutting the grass, playing with the kids. Now all I see is
9 a house full of sadness.

10 See, Judge, all I'm asking you is to show him the same
11 as he's shown us. Give him what he has given us. That is a
12 pure lifetime of a agony. Thank you.

13 THE COURT: Thank you.

14 MR. RAMM: Teresa Hernandez.

15 THE COURT: Good morning, Teresa. Could you tell
16 us your full name, please.

17 TERESA HERNANDEZ: Teresa Hernandez.

18 THE COURT: Okay. Thank you. Go ahead.

19 TERESA HERNANDEZ: Manuel was my tio, but he was
20 like a dad to me. I feel sad and I miss my tio. Sometimes
21 when we go see him it's hard because it reminds me of him.

22 When I was little he used to make us cakes and buy us
23 things. We used to watch TV together. All of us used to
24 watch regular a show together. He loved to draw and make us
25 pictures.

1 That night I heard something fall and I woke up. I
2 heard my tio crying. I heard Santiago tell him, you're
3 dying slowly and then him telling him bad words. When I
4 heard my tio crying I got so sad. We all started praying
5 because we didn't know what was happening.

6 How I knew he was killing my tio was because I heard
7 the sound of a knife being taken out of our kitchen. When
8 that happened I was six years old, and we were all small.
9 We didn't know a lot of things.

10 When we found out about my tio, I was shocked because
11 my tio was a nice person. Whenever we needed him, he was
12 right there. Whenever I hear anybody say Santiago's name, I
13 start crying because it reminds me of what he did to my tio.
14 When I see my mom or grandma crying, it makes me cry. I
15 will always have his shirt to remind me of him.

16 This has changed my family. We used to all be happy.
17 Now, after my tio died, we all are sad. He was like a dad
18 to us.

19 If I had Santiago go out in front of me, I would ask
20 him why did you do this. What did my tio do for you to do
21 that to him? I will never forgive Santiago because of what
22 he did to my tio and to my family.

23 I have bad dreams because of what happened that night.
24 I get scared still. When he killed my tio, he killed some
25 of my memories.

1 THE COURT: Thank you.

2 MR. RAMM: Hector Mendez.

3 HECTOR MENDEZ: My name is Hector Mendez.

4 THE COURT: Good morning.

5 HECTOR MENDEZ: Did it make you feel like a man --

6 MR. SMITH: Would you please direct your comments
7 to the court.

8 THE COURT: Mr. Smith, his comments are addressed
9 to everyone in this courtroom, including the defendant.

10 MR. MENDEZ: Thank you, sir.

11 MR. SMITH: Your Honor, I think that's wrong. I
12 think that he's -- I object to him addressing Mr. Santos
13 directly, attempting to aggravate the situation.

14 THE COURT: Mr. Smith --

15 MR. MENDEZ: I don't agree, your Honor.

16 THE COURT: -- I will be the judge whether or not
17 there's deliberate aggravation. Your objection is noted.
18 It is overruled.

19 MR. MENDEZ: Santiago, did it make you feel like a
20 man when you were stabbing Manuel slowly, when you were
21 taking his life? Did it make you feel like a man?

22 MR. SMITH: Objection, your Honor.

23 HECTOR MENDEZ: Did he owe you \$200 --

24 MR. SMITH: Objection, your Honor.

25 HECTOR MENDEZ: -- \$500, \$1,000?

1 THE COURT: Mr. Mendez, we'll never know the
2 answers to those questions.

3 HECTOR MENDEZ: Okay.

4 THE COURT: Perhaps you could address your
5 comments to me because I'm the one that has to --

6 HECTOR MENDEZ: Did it make him feel like man,
7 sir? He destroyed a family. He destroyed a lot of little
8 children. He brought shame to his father and mother, to the
9 community.

10 Yeah, he's got a lawyer that defends him now. I
11 understand that. His arrogance during this every time he
12 stabbed, seven children were in the other room listening to
13 that. Am I angry? Yes, I am angry.

14 I see my family every week, every day when we get
15 together. What is a life worth? Did he owe him \$200, \$500,
16 \$1,000? His arrogance in killing Manuel slowly brings anger
17 to the family, brings frustration. These children will
18 always, always be hurting.

19 I can understand his father and mother and family.
20 Nobody wants a child raised like this. We all want our
21 children to be doctors, lawyers, maybe even the president of
22 the United States. He's brought shame to his family, too.
23 I understand that. I don't blame them.

24 I'm here to say, sir, give him the maximum, whatever
25 that may be. Because we know that one day, as you are judge

1 of the land, there is a judge in heaven. There he will not
2 have a defending lawyer.

3 It is my desire and my family's desire, sir, that you
4 look at this and decide the maximum because he's hurt a lot
5 of families, a lot of children. Thank you, sir.

6 THE COURT: Mr. Mendez, thank you.

7 Mr. Ramm, are you aware of any other family members
8 that would like to address the court?

9 MR. RAMM: I am not.

10 JOSHUA MENDEZ: I would like to, if I could.

11 THE COURT: Good morning.

12 JOSHUA MENDEZ: Hi, your Honor.

13 THE COURT: Good morning.

14 JOSHUA MENDEZ: I'm Joshua Mendez. I'm a cousin.
15 I actually know Santiago, grew up with him. I ate at his
16 house. He's ate at my house.

17 Your Honor, I just ask, you know, that you give the
18 maximum sentence. Something like that, to do something like
19 that --

20 You know what? I wasn't even going to come up here.
21 Knowing that piece of shit is only a few feet away from
22 me --

23 THE COURT: Mr. Mendez --

24 UNKNOWN VOICE: Watch your language in the
25 courtroom.

1 JOSHUA MENDEZ: Shut the fuck up, man.

2 THE COURT: Mr. Mendez.

3 MR. MENDEZ: Yes, sir.

4 THE COURT: I understand your frustration. Now is
5 not the time to --

6 JOSHUA MENDEZ: Yes. I understand, your Honor.
7 You know, it just kills me because, you know, this justice
8 system, I've been going through it all my life. I'd like to
9 say it's always been unfair to me. To see someone that
10 actually deserves this shit -- I'm sorry, your Honor.
11 Sorry, your Honor. It just makes me upset that so many
12 officers are here to protect that mother fucking coward.
13 I'm sorry, your Honor. Excuse me, your Honor. I can't.

14 THE COURT: Mr. Mendez, let me just address you
15 specific. I understand your frustration. I understand your
16 anger.

17 JOSHUA MENDEZ: Yes.

18 THE COURT: I understand your sorrow in this case.

19 JOSHUA MENDEZ: I apologize to the court for my
20 words, your Honor.

21 THE COURT: The security is here just simply to
22 maintain calm.

23 JOSHUA MENDEZ: Yes.

24 THE COURT: I trust that you can do that.

25 JOSHUA MENDEZ: I can, your Honor.

1 THE COURT: All right. Mr. Mendez, your words are
2 well spoken. I appreciate the comments you made.

3 JOSHUA MENDEZ: I want your Honor to take serious
4 consideration on this sentence. Thank you.

5 THE COURT: You're welcome.

6 Mr. Ramm.

7 MR. RAMM: That's it, your Honor.

8 I guess one more.

9 THE COURT: Good morning.

10 JESSICA RODRIGUEZ: Good morning. My name is
11 Jessica Rodriguez. I'm Joshua Mendez's girlfriend. We have
12 10 years. We have four girls together. Three of them are
13 biologically his.

14 The reason why this hurts Joshua so much is that Manuel
15 seemed to surprise us every time our daughters were born.
16 He would be there at the hospital without even us asking him
17 to be. He would show up there.

18 In November, he took that away from us because our
19 daughter, who's now three and a half, was born December 6,
20 2014. The day that we expected him to be there we knew that
21 he couldn't. This frustrates us so much that he took a good
22 man from this wonderful family. I just need you to take
23 that into consideration. Thank you.

24 THE COURT: Thank you.

25 MR. RAMM: Anyone else?

1 That's it, your Honor.

2 THE COURT: All right. Mr. Ramm, what is your
3 position on this matter?

4 MR. RAMM: Your Honor, I've written a sentencing
5 memorandum regarding various issues that I observed that may
6 play out in this hearing and also on appeal.

7 The first issue that I address is the issue with regard
8 to sentencing with the two crimes and double jeopardy.
9 Clearly double jeopardy would be applicable.

10 The state is citing the case of State vs. Webber with
11 regard to which count to vacate. You have to vacate one of
12 them. The analysis that the court in Webber took was you
13 vacate the one that basically has the lesser sentence. In
14 this case, the lesser sentence would be the first degree
15 manslaughter, as I set forth.

16 The sentence for first degree manslaughter would be 102
17 to 136. The sentence for second degree felony murder both
18 with the offender score of three would be 154 to 254 plus
19 the 24-month enhancement that the jury found for the deadly
20 weapon, the knife.

21 The second issue is that of the defendant's prior
22 convictions. The prior convictions that count are the three
23 prior convictions from, I believe, 2012 from California.
24 The first conviction is possession of a controlled
25 substance. I believe it's methamphetamine.

1 I've marked state's Identifications 1A through 6A.

2 THE CLERK: 7A.

3 MR. RAMM: 7A. Those are certified copies of
4 those judgment and sentences with the minute notes. That's
5 how California records their judgment and sentences, their
6 convictions.

7 They list out the three convictions that are set forth
8 in the sentence paperwork. The first one was for, I
9 believe, methamphetamine. The second one was for possession
10 of cocaine. The third one is evading a peace officer.

11 Now, the two drug convictions clearly correspond. The
12 elements are the same as the Washington state statutes. I
13 believe both states use the Uniform Controlled Substance Act
14 to pattern their drug charges.

15 With regard to the eluding or what would be eluding in
16 Washington, the elements are set forth in the California law
17 as I've also attached. I believe they are Exhibits 2, 4 and
18 6 that I obtained from Lexus. They state the different
19 statutes with regard to California, that being California
20 Vehicle Code 2800.02 and 2800.01.

21 They have a misdemeanor, which is basically failing to
22 stop under Washington statute, like from an officer,
23 2800.01. Then they add on the disregard for safety and
24 persons. They in their statute use the language willful and
25 wanton disregard for safety of persons and property whereas

1 Washington has gone to reckless driving to be the same as
2 our vehicular homicide and vehicular assault.

3 As the court stated in State vs. Ridgley, 141 Wn. App.
4 771, willful and wanton is a higher state than recklessness.
5 If you compare the two, since California has a higher state
6 of mind, it would be comparable to the Washington state
7 statute because every California conviction for eluding or
8 evading with disregard would be a crime in Washington.

9 It's not the same that every Washington crime is the
10 same as California because California has a few additional
11 elements that Washington doesn't have. Based upon that, he
12 should have an offender score of three.

13 Then the fourth thing, I lay out the law with regard to
14 exceptional sentences. The court may impose an exceptional
15 sentence if there's substantial and compelling reasons to
16 justify the exceptional sentence. Here there were two
17 findings by the jury, deliberate cruelty and the other one
18 was the foreseeable and destructive impact on others.

19 I cite the case of State vs. Faagata, 147 Wn. App. 236,
20 with regard to the deliberate cruelty. Here we have both
21 the psychological trauma that was inflicted, the taunting
22 and the number of stab wounds that took place over a period
23 of time and over basically a geographical distance.

24 With regard to the destructive impact on others, I cite
25 State vs. Jackson. They cite State vs. Johnson, which

1 talked about a gang drive-by shooting at a school. This is
2 kind of equivalent to something that could have taken place
3 at a school. With the age of the children, it would have
4 been an elementary school.

5 Clearly where the kids were known to live at the
6 residence and we established that at trial, the jury found
7 the foreseeable impact and the destructive impact. The
8 court heard further testimony with regard to the impact of
9 the children. It's the state's possession that the court to
10 impose an exceptional sentence based upon those two
11 aggravators and impose the top of the standard range of 278
12 plus 120 months for a total of 398 months.

13 I've been a prosecutor for over 30 years. I've done
14 both felony and appellate work. So I've seen a lot of
15 different crimes. This is probably in the category where
16 you have aggravators. I can only remember one other
17 instance in Yakima County where children, where the crime
18 occurred in front of children.

19 This is a very rare circumstance where children are
20 right there when a violent offense such as a murder happens.
21 It's very rare in Yakima. Listening to everybody, I think
22 it's important for the court to give an exceptional
23 sentence. The state believes that 120 additional months is
24 justified

25 THE COURT: The top of the range on this

1 particular offense is what?

2 MR. RAMM: It's 278 if the court finds the
3 offender score of three.

4 THE COURT: Mm-hmm. All right.

5 Mr. Smith.

6 MR. SMITH: Your Honor, we have some family
7 members that would like to speak.

8 THE COURT: All right.

9 MR. SMITH: Would the court hear from them now?

10 THE COURT: Certainly.

11 Good morning. What is your full name?

12 LAURA GISA: My name is Laura Gisa, and I'm an
13 aunt.

14 THE COURT: Okay. You're an aunt.

15 LAURA GISA: Aunt to Santos.

16 THE COURT: All right.

17 MS. PALOMARES: Is it all right if I interpret for
18 her?

19 MR. SMITH: Yes.

20 THE COURT: Go ahead.

21 MR. SMITH: Your Honor, I want to identify my
22 staff member. This is my assistant, Joslin Palomares. She
23 provides translation services for me. She was present
24 during the trial. I would ask her to provide translation
25 services.

1 THE COURT: Ms. Palomares, do you feel comfortable
2 translating from the Spanish language to the English
3 language and from the English language to the Spanish
4 language?

5 MS. PALOMARES: I do.

6 THE COURT: You provide those services routinely
7 for Mr. Smith, who you work for; is that correct?

8 MS. PALOMARES: I do.

9 THE COURT: Do you believe that you can accurately
10 make those translations for us today?

11 MS. PALOMARES: I do.

12 THE COURT: All right. You're not certified by
13 the court. It's the court's finding, number one, we don't
14 have a certified interpreter here present. Number two, the
15 court is confident in your ability. So please proceed.

16 LAURA GISA: *(Through interpreter)* Sadly I see
17 the suffering of the family since it's a big tragedy. But I
18 beg of you, your Honor, to have mercy on my nephew.

19 I know that their family suffers a lot. We also do, my
20 mother, my brothers. I see the suffering of my sister, the
21 mother of Santiago Santos.

22 Like we know the houses are a couple houses away from
23 theirs. Since that day she had to leave her home with her
24 daughter, 12 years of age.

25 She also suffers in different areas. She lost her job.

1 She had to move cities. My niece is still to this day
2 having to go to treatment and counseling.

3 We as a family have also suffered a lot of losses. My
4 sister of 40 years passed away three years ago. My niece of
5 25 years passed away two years ago. I understand their
6 suffering.

7 I beg of you, your Honor, to have mercy on my nephew.
8 He is here and deserves a second chance because that was a
9 tragedy, the drugs, the alcohol. In one second it can
10 change anybody's life. If the family, any one of them wants
11 us to apologize, we will. I see sadly the hurt in their
12 hearts.

13 If the young man was here with us, I know that he is
14 the person that they have described. He would give Santiago
15 an opportunity.

16 I beg of you, your Honor, because he is here my family
17 has also changed in a lot of aspects. I ask for mercy.

18 If you saw all the comments on the internet, on
19 Facebook, it makes me really sad to see all of the anger and
20 the hurt of them. Life goes on, and we all deserve a second
21 chance. So I'm begging you, your Honor. See everything
22 around you. I hope that God touches your heart to make the
23 correct decision. Thank you.

24 THE COURT: Thank you.

25 CARLOS GUIZAR: Good morning, your Honor. My name

1 is Carlos Guizar, and Santiago is my cousin.

2 I ask forgiveness from the other family. I know
3 they're very hurt and it's very hard on them.

4 I ask you just to be very fair, you know, and see that
5 he was on drugs and he was intoxicated. He didn't know what
6 he was actually doing. Anyone could do that. It's just
7 that it happened to him. He's had a hard life, and it has
8 affected us in many ways, too.

9 I see his little sister, and she's going through a lot
10 lately. She's not the same. She had to move states. She
11 lost all her friends. She was being bullied at school
12 because of that tragedy. So it doesn't just affect their
13 family.

14 It does affect me because I was very close to their
15 family. They're like brothers to me. I know that what he
16 did was not right. It would hurt me if it was the other way
17 around. I'm just asking you to give him like a good
18 sentence and be as fair as possible as you can with him and
19 understand he wasn't in the right mindset. He wasn't doing
20 what he should have done.

21 Everyone deserves a second chance and forgiveness. I
22 know that their family might not want forgiveness. They
23 probably hate us or whatever, but I just hope that you do
24 what's right. That's all I got to say.

25 THE COURT: Thank you.

1 THE COURT: Good morning.

2 MARIA SANTOS: (*Through interpreter*) You know me.
3 My name is Maria Santos. I am here -- sorry. I am here
4 asking for mercy for my son.

5 I know that God is fair and that you will also be fair.
6 I, in the name of my son, ask for forgiveness to all of the
7 family because my son didn't do that, not my son.

8 I miss my son. My daughters miss their brother. My
9 youngest daughter cries daily for him. She misses him. We
10 miss him. I adore my son, and I adore my daughters.

11 I ask for mercy on behalf of him, sir. I ask that you
12 give him a second opportunity. I know that sometimes drugs
13 and alcohol make us do things that we normally wouldn't do.
14 He doesn't remember anything. I don't believe my son would
15 have done that.

16 I feel a lot of sadness. I have also seen on Facebook
17 everything they said. It has affected my daughters. It has
18 affected me, my family.

19 All of my family is with Santiago, his grandparents,
20 his uncles, his cousins. Unfortunately they couldn't be
21 here personally to support him. I ask you, please, for a
22 second opportunity for my son.

23 I tell the family once against I'm sorry. I'm sorry.
24 I know that that won't return Jamie, but my son is here and
25 we need him. Please have mercy on him. Give him a second

1 opportunity so that he can soon be with us, with his family.
2 Thank you, sir.

3 THE COURT: Thank you.

4 Good morning.

5 SANTIAGO SANTOS, SR.: Good morning, your Honor.
6 Well, I'm Santiago Santos.

7 THE COURT: Thank you.

8 What is your name?

9 SANTIAGO SANTOS, SR.: Santiago Santos, same name.

10 THE COURT: Thank you.

11 SANTIAGO SANTOS, SR.: I'm going to try to speak
12 English. If I need help I want her.

13 THE COURT: Okay.

14 SANTIAGO SANTOS, SR.: Well, I'm here as a father
15 to defend my son. I understand -- to the family, I
16 understand pain. Both families, we are suffering. We are
17 here, right? What we're here for, for justice or revenge?

18 UNKNOWN VOICE: Justice.

19 SANTIAGO SANTOS, SR.: Okay. What we see since
20 tragedy happened, the way they are writing on Facebook, on
21 the internet saying they want to see my son dead and the
22 family go to pay for this, threatening. I understand they
23 feel -- they are angry, but that's the truth.

24 We've been forced to move out of there. Our family,
25 the daughter, you know, she's suffering with pain. I think

1 it's too much pain for both families. We have to move
2 forward and try to forget this. This is a tragedy and to
3 understand he's got a problem. He's not well.

4 UNKNOWN VOICE: You still have your son. We don't
5 have our --

6 THE COURT: Mr. Santos, we're not picking you up
7 because you have your back to the microphone.

8 SANTIAGO SANTOS, SR.: All right.

9 So what I'm saying is let's get over with this. It's
10 not going to solve anything. It's not going to bring --
11 it's not going to bring, you know, living with hating in
12 their hearts, hating the other people, the other family. We
13 are suffering. He's not. You know, he's not. He's got an
14 illness. He's ill. He needs attention.

15 That's one of the other things that I want to ask you,
16 beg you, to do something about it, to get attention, medical
17 attention. Whatever your decision is going to be, you know,
18 do something. Because he's going to be in a place
19 interacting with other inmates. I'm afraid he's going to
20 get hurt or hurt someone.

21 Like I was saying, you know, the family is looking for
22 revenge only. Grandview is small town. People know. They
23 heard what they say in the Facebook, saying they want to see
24 him behind bars for his whole life. They don't understand
25 it was a tragedy. He's got a problem.

1 They don't see that because they are blaming. They
2 just want revenge. They don't want justice. Honestly,
3 that's the way I feel. So that's my concern.

4 First, he needs attention. He's got a problem. It's
5 in the family. Our daughter has the same problem. So it's
6 one of the things I'm worried about it.

7 Before whatever your decision, I hope God give you and
8 help you do the right decision according to justice. I know
9 you will do the right decision. I hope, like I said, God
10 help you make a wise decision.

11 You know, we can say many things. They can say they
12 want -- everybody is crying. We're crying. They don't
13 understand that he has a problem. He's got a problem. He
14 needs attention. He needs medical help.

15 They want revenge. I don't think it's fair. The
16 family, our family, they were scared. Nobody wants to show
17 here during the process because they were scared. Family or
18 friends related with their family pass in front of the
19 house, stopping, look into the house. Then they stop at the
20 other house. We didn't take serious, but we were worried.
21 So that's why.

22 They are saying something here and they are doing
23 something different, saying on the Facebook we want to see
24 him dead. We want to see him for the whole life behind
25 bars. This is a monster. What he did, he didn't know.

1 They don't understand he's got a problem, a mental problem.
2 He needs help, and that's my concern.

3 I understand. Maybe they say, no, you don't
4 understand. It's only worse. My family, we learn to -- I
5 have a niece who dies. She got killed for someone. They
6 shot her right in front of a lot of people. She was a
7 student, a law student. She was going to be a lawyer. At
8 the age of 31 she died.

9 This guy, we got to do something. We learn to deal
10 with that and try to forgive because that was not going to
11 bring, you know, your daughter back, I mean our niece.

12 That's what I inviting. I invite all of you to do the
13 same, to try. It's not going to solve, you know, putting
14 behind bars for the whole life.

15 Maybe he can get well and be a better citizen and help
16 the community. He was planning -- we were planning that he
17 would go to the school to be a nurse or doctor. I don't
18 know. Maybe he lost the right for that, to go to school.

19 Still, I think he deserves a chance, and that's why I'm
20 here to speak and ask them what they want. You want
21 revenge? You want to do something? I'm not going to do
22 anything. You want to see someone -- you want to see him
23 die? I mean, you want to see him dead? Go ahead and kill
24 me. Does that make you happy?

25 UNKNOWN VOICE: We never once said that.

1 SANTIAGO SANTOS, SR.: Does that make everybody
2 happy? That was the only way that they're going to be
3 happy. I'm not going to do anybody in, not my family, not
4 me. That's the only way they can be happy. I'm here. I'm
5 not going to do anything. They can do against me.

6 That's the way I feel. That's what I -- that's why I'm
7 ask you, beg you consider. He needs attention, whatever
8 your decision.

9 Once again, I invite people to forgive, learn. Living
10 with that in your heart, it's horrible. We ask for that.
11 Here's Manny, the one who died. For a guy who was
12 intoxicated and drunk and shattered in front of a lot of
13 people.

14 Okay. We're going to give him a high sentence. God is
15 the only one who decides. Whatever, you know, it's not
16 going to bring them back. I think that's all I have to say.

17 THE COURT: Thank you, Mr. Santos.

18 Are there any other individuals?

19 MR. SMITH: There isn't, your Honor.

20 THE COURT: Okay.

21 MR. SMITH: Your Honor, addressing the issues that
22 Mr. Ramm raises, one, I don't think that the eluding should
23 be counted. By virtue of the California code, it is a
24 six-month sentence. So in terms of the sentencing itself it
25 was a misdemeanor.

1 Although the elements on paper may be similar, because
2 it is a six-month to year sentence, it would not be
3 considered a felony in the State of Washington. A person
4 might be more inclined to enter a plea to a lesser charge
5 than they would a felony, and I think that's what they did.
6 I think these were all satisfied or resolved by pleas.

7 I don't know if there were alternative means. I can't
8 tell that from here, but I can say that I don't think it
9 should be counted. I think it should be a criminal history
10 category two.

11 The issue with regard to the double jeopardy argument,
12 that's probably more, I guess, complicated. I say that
13 because of the jury's verdict itself. I mean, we had talked
14 about this before. Mr. Ramm had said he would be moving to
15 dismiss what was basically an alternative means crime.

16 Well, we have first degree murder and second degree
17 felony murder. In this case, Mr. Santos was not convicted
18 of first degree murder. So there was no premeditated
19 intent. He wasn't convicted of second degree murder. So
20 there was no intent to kill.

21 Really, what the jury found and it's somewhat -- I
22 guess it's somewhat confusing based upon the fact that they
23 found an aggravator of deliberate cruelty. They found that
24 the death was caused recklessly, which would have been
25 consistent with the evidence in terms of, you know, flailing

1 and stabbing.

2 Under the second degree felony murder, they obviously
3 had to find or it was some type of a compromised verdict.
4 They had to find that he intended at least to assault the
5 individual. By recklessly causing the death of the
6 individual, it seems like that's got to be, I think,
7 considered by the court when it makes a determination of
8 what this deliberate cruelty under these circumstances mean.

9 The case cited by Mr. Ramm, the Birchfield case talked
10 about a similar situation. In fact, I think it was almost
11 exactly. It was an assault and a lesser included of
12 manslaughter. The court said -- I mean, when I read these
13 cases, they're somewhat confusing. It seems like what the
14 court comes down on is the simplistic answer. What's the
15 lesser sentence? We're going to vacate that.

16 In Birchfield, they said the lesser sentence was a
17 reduction of his sentence from 135 months to 53 months. So
18 it's almost two thirds of a reduction in the sentence as to
19 the crime that the court should vacate under double jeopardy
20 standards.

21 In this case, we've got -- he was charged with murder.
22 That was the basis, the foundation of the entire case.
23 Whether it's felony murder or murder, they were asking for
24 premeditated murder. It's like, okay. Understanding that
25 there's lesser includes for first degree premeditated

1 murder, we're going to have this second degree felony
2 murder. Is it a legitimate charge? Sure. But it involves
3 an assault that results in murder during that assault.

4 The facts of this case, what the state was asking for,
5 was that premeditated murder, that he committed murder,
6 intending to commit murder, not that it was an assault. The
7 jury found that, no, he didn't intend to commit murder. He
8 recklessly caused the death of another person.

9 Under that analysis, even though the sentence is
10 perhaps longer with the second degree felony murder charge,
11 I think we're looking at one -- if the court were to accept
12 a manslaughter charge and a criminal history score of two,
13 then the sentence would be 95 to 125 months plus 24. So the
14 top end of the about 150 months and then apply the
15 aggravators. So we would ask the court to vacate the second
16 degree felony murder charge because it doesn't adequately
17 really reflect the jury's verdict in this case.

18 If the court imposes a sentence with regard to the
19 second degree felony murder charge, the standard range
20 sentence -- assuming that we have a criminal history --
21 Mr. Ramm's calculations assume a criminal history category
22 of three, which would be a top-end sentence of 278 months, a
23 bottom end of 178 months. So there's a range.

24 Is that correct?

25 MR. RAMM: Yes.

1 MR. SMITH: A criminal history of three would be
2 178 to 278. So it's a range in there of 100 months and a
3 criminal history score of three.

4 The criminal history, is it worse crimes, any of them
5 violent? No. It's possession, two possession charges and
6 if the court finds it, the eluding charge.

7 If the court were to find that it was a criminal
8 history category two, then the range with the 24-month
9 enhancement is 189 to 289. So top end -- excuse me. I'm
10 sorry. A two would be 144 to 244. The top end of 168 to
11 268, a criminal history category two. It's still 100 month
12 range. It's either 178 to 278 or 168 to 268.

13 THE COURT: That includes the two-year
14 enhancement?

15 MR. SMITH: It does. It does. I mean, I don't
16 think there's any argument. Once the jury found it the jury
17 found it. We're adding that in.

18 Under those circumstances, if we look at the charge and
19 we look at the criminal history, does that require a maximum
20 sentence within the range? We would submit it does not.

21 **Then we go to the two aggravators.** Well, the jury
22 found them. Do they apply? We've heard from these
23 children. Did Mr. Santos -- he's the one. He got up on the
24 stand. He said, yeah, I know there were children there that
25 lived at that house. Did he know there were children there

1 that night in that room that heard that? There's nothing in
2 the evidence that indicates that, that he said anything or
3 did anything.

4 In fact, in one of the cases cited by Mr. Ramm with
5 regard to foreseeability, this is the case State vs. Cuevas
6 Diaz, and there was an aggravator. The court found, in our
7 opinion, they said, like the situation, there children were
8 in the house where the assault occurred. They were severely
9 traumatized by the events. In our opinion, such a result is
10 foreseeable to persons who unlawfully enter the private
11 residence of another and commit an assault.

12 Here there's no evidence of unlawful entry. There
13 never was or else we would have been charged with first
14 degree felony murder for going into a house to commit a
15 crime, a burglary, and that wasn't the case. It didn't fit
16 the facts of this case.

17 The problem is that some of this, as we argued from the
18 beginning, some of it is inexplicable. Some of it, just as
19 your Honor noted, is just unknown. It won't be known. It
20 can't be known.

21 We all want to suppose what happened. The fact is the
22 evidence at the time of trial from Angel Flores was that my
23 uncle opened the door and let him in. The information from
24 Mr. Santos was to Dr. Barnard that he was waved over and
25 waved in, beckoned in, invited into the house. There's

1 nothing contrary to that. They have never argued anything
2 contrary because there isn't.

3 Then we have this inexplicable circumstance, however
4 this happened, that it began in the bedroom, in the bedroom
5 of Mr. Jamie. He was under the influence of this very
6 unusual drug.

7 Now, there's no question -- I mean, I guess I would say
8 this. It's not that there's no question but there's no
9 basis for this court to find there was an unlawful entry.
10 How did it start? How did this whole thing start where a
11 stabbing occurred? Where did the knife come from? Those
12 were never answered and couldn't be answered, but I think
13 they affect the court's imposition of sentence in this case.

14 The jury had to find at least to a degree that
15 Mr. Santos suffered from a mental illness, which was
16 testified to by Dr. Barnard. Even when we were up to the
17 doorstep to begin trial back in February of this year, the
18 court ordered properly so Mr. Santos for an evaluation. He
19 was evaluated again by the doctors. They found, after an
20 evaluation, that he needed to have a 14-day stay for further
21 evaluation.

22 Not one of them, not one doctor -- he saw Dr. Barnard,
23 Dr. Fanto, Dr. Fredrickson, I think. There was one other
24 one. There was Dr. Fredrickson here and a team of doctors
25 over in Eastern State. Not one of them made any

1 determination or finding that he was malingering, that he
2 was falsely reporting symptoms or exaggerating symptoms of
3 mental illness.

4 They found him competent, but even they had to take a
5 second look to see if he was competent to stand trial.
6 Dr. Fredrickson found essentially what Dr. Barnard was
7 saying, that he had paranoid and schizophrenic symptoms in
8 his evaluation for competency. That's just kind of an
9 aside. He just did that.

10 So if the court looks at the facts of the case and
11 takes into consideration some of the things that are unknown
12 and the real facts of this case that were presented to the
13 jury, it seems to me that the crux of the conviction is the
14 manslaughter. It's that he recklessly killed a person.

15 We know that from Dr. Fanto and his statement saying
16 this wasn't the result of random flailing. He never looked
17 at the photos. If you look at the photos and you look at
18 the evidence, the fact is it was the result of random
19 flailing.

20 Mr. Ramm mentioned in closing that Mr. Santos had a
21 medical degree, that he never struck his heart. There were
22 stab wounds over the individual. It was terrible. It was
23 tragic. It was bloody, and it was terrible. It wasn't the
24 result of -- that death found by the jury was not the result
25 of an intent to kill.

1 If the court says, okay, we're going to sentence him on
2 second degree felony murder and we're going to take out the
3 sentence that would have been 150 months, well, take that
4 into consideration. The bottom end of the range proposed by
5 the state is either 178 or 168 with the enhancement.

6 The aggravators, are they so warranted in this case
7 that the court should sentence Mr. Santos outside that
8 standard range of 278 months on a second degree murder,
9 felony murder? We submit not, your Honor.

10 Even if the court were to do that, if you were to go
11 outside either 268 months or 278 months, what the state is
12 proposing is a first degree premeditated murder sentence. I
13 don't think the court can or should do that under these
14 circumstances where the jury specifically said, no. It's
15 not only no to first degree murder but also no to second
16 degree murder.

17 We would ask the court for a sentence within the range
18 that the court finds is appropriate, whether it's with two
19 criminal history points or three criminal history points.
20 Thank you, your Honor.

21 THE COURT: Mr. Smith, your argument that the
22 court should not consider the eluding conviction down in
23 California, essentially it's your belief they treated it as
24 a misdemeanor or gross misdemeanor rather than a felony even
25 though comparable to eluding a police officer in Washington

1 and it's a felony. So it's just that significance. Is that
2 your argument?

3 MR. SMITH: I've got to say, your Honor, with
4 regard to -- we got this last night. So I guess I'm
5 excusing myself a little bit. I haven't made what I would
6 call a categorical analysis.

7 If a vehicle is driven in a willful and wanton
8 disregard for the safety of other persons, it says if the
9 person flees or attempts to elude a pursuing police officer,
10 the pursued vehicle is driven, there's an additional element
11 in Washington that a person -- I think it's like lights or
12 siren or disregards lights or siren. I don't see that here.

13 Does our statute include something more? Apparently it
14 does. In that regard, I would submit that you couldn't say
15 that it was an eluding of a pursuing a police vehicle.

16 THE COURT: There is a siren and light requirement
17 in the California statute.

18 MR. SMITH: I don't see it. Disregard for safety
19 of persons or property, it says that if a person flees or
20 attempts to elude a pursuing police officer, peace officer,
21 and the pursued vehicle is driven in a willful or wanton
22 disregard for the safety of persons or property, the person
23 driving the vehicle at the time upon conviction. That's
24 what it says.

25 THE COURT: Thank you, Mr. Smith.

1 MR. SMITH: Thank you, your Honor.

2 THE COURT: Do you wish to respond to that legal
3 argument, Mr. Ramm?

4 MR. RAMM: Yes, your Honor.

5 The way California does it, this is under the motor
6 vehicle code, section 2800.1. It's a misdemeanor if you're
7 not driving willful and wantonly. When it's under the other
8 section, 2801.2 or 2800.2, when you add that section in,
9 that adds the willful and wanton driving.

10 It's the equivalent of our misdemeanor failure to
11 basically pull over, failure to respond, which is when you
12 don't respond to the lights and siren and you continue to
13 drive but not in a wanton or willful manner, a reckless
14 manner. When you add on under 2800.2, they add the willful
15 and wanton, that is a felony under the section.

16 If I haven't, I would move to admit state's Exhibit 1A
17 through 7A.

18 The minute notes with regard to the evading a police
19 officer indicate it was a felony. They indicate that the
20 sentence for that, a potential sentence, is state prison.
21 In fact, Mr. Santos received a two-year sentence but to be
22 served in the county facility. They note in the docket
23 notes that it was a felony.

24 The docket notes, I believe Mr. Smith has had these for
25 quite sometime through discovery. They indicate that he did

1 enter a guilty plea of nolo contendere as to Count 1. They
2 show disposition convicted. He pled to Count 3, which is a
3 DUI. They dismissed Count 2, which was also a felony. It
4 was possession of controlled substance. It's the equivalent
5 to our attempt to elude. So it should count as to the
6 offender score.

7 The analysis with regard to Count 1 and finding of the
8 lesser of first degree manslaughter and Count 2, second
9 degree murder, you've got a murder and a manslaughter.
10 What's greater? The murder. In the hierarchy of the
11 homicide statute in Washington, Section 32, it's the same as
12 second degree intentional murder. So it's the higher
13 degree. It has the higher offense score and it has the
14 higher sentence range. So the state would ask that the
15 court vacate Count 1 and sentence on Count 2.

16 THE COURT: Mr. Santos, you have right to address
17 the court on sentencing. Is there anything you would like
18 to tell me before I impose sentence in this case?

19 MR. SANTOS: I'm confident in the court's ability
20 to arbitrary and capricious properly and agreeing to go
21 along with whatever the state agrees to do, your Honor,
22 willingly.

23 THE COURT: All right. Thank you, Mr. Santos.

24 MR. SANTOS: You're welcome, your Honor.

25 THE COURT: Addressing the legal issues first, the

1 court will grant the state's request to vacate Count 1 in
2 this case. The court will proceed with sentencing on
3 Count 2, which is second degree murder. That's committed by
4 means of a second degree assault which resulted in the death
5 of the victim in this particular case.

6 The court also finds that the three convictions from
7 California are substantially similar to the similar charges
8 in the State of Washington, possession of controlled
9 substance, one being methamphetamine, the other being
10 possession of cocaine. Both are felony charges in the state
11 of California. Both are felony charges in the State of
12 Washington.

13 The issue as to whether or not the court would find in
14 this case that the comparable conviction for evading a
15 police officer in California while engaged in a willful and
16 wanton disregard for the safety of others is comparable to
17 this state's statute regarding attempting to elude a police
18 vehicle. The court finds that they are substantially the
19 same offense.

20 The court finds that recklessness for years was defined
21 as willful and wanton disregard for the safety of others. I
22 understand that definition has now changed a little bit.
23 It's not quite as bad as willful or wanton disregard. The
24 State of California still utilizes that particular language.
25 It's substantially similar to reckless driving that is

1 comparable in the State of Washington. So the court will
2 consider that.

3 That will result in a prior offender score of three. I
4 presume that his juvenile convictions wash because of age.

5 MR. RAMM: They do, your Honor.

6 THE COURT: All right.

7 This case was tragic no matter how you look at it. The
8 impact that this heinous act has had upon both families is
9 palpable in this room. It arises out of the conduct of one
10 individual. This should not be one family versus the other.
11 Both sides have suffered tremendous losses in this case, and
12 the impact is something that's going to affect both families
13 for years and years.

14 The nature of this crime is difficult for people to
15 fathom. In essence, the defendant stabbed the victim so
16 many times. It's just simply not possible to stop the
17 bleeding and the victim succumbed because of those wounds.

18 The fact that children were present in the home, the
19 fact that Mr. Santos acknowledged that he knew children
20 lived there and the impact that that has had on these
21 children is enormous. The court observed that impact when
22 Angel testified. The court observed that as the children
23 have addressed the court today. It's difficult to put
24 ourselves in the position of those young children, the older
25 of which was 12 years of age when this act occurred and what

1 impact that's going to have on them in the future.

2 Mr. Santos testified in this case that he was aware of
3 everything that took place that day and that evening up
4 until the point that he walked into the house. Then his
5 recollection, in his words, is hazy. He doesn't remember
6 what happened.

7 He also exhibited conduct after his arrest that would
8 indicate that he was aware of his circumstances and what was
9 going on. He had the foresight to look at a search warrant
10 that was issued by Judge Hahn telephonically and to question
11 the officer as to whether it was a lawful search warrant
12 because it didn't bear her signature. That is a person in
13 this court's mind that is aware of his circumstances and
14 knows what's going on.

15 He was also mindful enough to pick up the camera when
16 it was inadvertently left in the cell after they took
17 pictures of the clothing and so forth and in a very short
18 period of time remove the SD card and destroy the
19 photographs. Whether or not we could have gone back and/or
20 the police could have gone back and photographed those
21 clothes again is not the issue. What the court sees is a
22 deliberate act that takes thought. It is not thought that
23 we would generally associate with a person suffering from a
24 mental illness.

25 The evidence in this case is clear to this court that

1 the only time Mr. Santos was hazy about his recollection was
2 while this crime was taking place. In my mind, that
3 justifies the jury verdict in this case.

4 The sentence this court can impose cannot go back in
5 time and bring the victim back to life. What is justice?
6 Is justice locking away a human being for the balance of
7 their life because of the acts they have committed? Is
8 justice following what the law would require us to do?

9 In this particular circumstance, the court has heard
10 about standard ranges, a range of sentencing. That range of
11 sentencing in this particular case with an offender score of
12 three is 178 to 278 months. That's what the legislature has
13 determined is an appropriate sentence for this type of
14 crime. Is that justice?

15 The 178 to 278 months is a range which includes the
16 two-year enhancement because a weapon was used. The
17 legislature has seen fit to add two years that cannot be
18 reduced by good behavior for use of a knife. It's five
19 years if a firearm was used.

20 The legislature also gives this court the ability to
21 sentence above or below the standard range if there are
22 aggravating or mitigating circumstances. Two aggravating
23 circumstances were presented to the jury for determination
24 in this case, and the jury was unanimous when they found the
25 defendant's conduct during the commission of the crime

1 manifested deliberate cruelty to the victim.

2 The evidence in this case is abundantly clear that the
3 children heard you're dying and you're dying slowly, that 59
4 stab wounds, significant stab wounds, in the testimony of
5 Dr. Reynolds resulted in the death of the victim in this
6 case. Each wound not directly causing the death but it was
7 a collaboration of all the wounds that caused him to bleed
8 to death. All the while the victim is attempting to escape
9 that assault, moving from the bedroom towards the door
10 adjacent to the kitchen and perhaps outside of the house.
11 He didn't make it.

12 Was the victim aware of what was happening? There is
13 no doubt about that. The impact of the drugs that the
14 victim had in his system, the court recalls the testimony of
15 the toxicologist in this case, which would indicate that
16 it's to reduce pain. Dr. Reynolds testified that would
17 render a person in a dissociative state and they couldn't
18 control what was going on. They wouldn't be able to move.

19 In this particular circumstance, the evidence
20 established he knew he was being stabbed and he tried to
21 flee. Whether or not he was under the influence of that
22 drug, to the extent I think is really the key, he knew what
23 was happening. He was trying to get away, and the defendant
24 didn't allow that to happen.

25 The jury was also unanimous on an enhancement. When

1 questioned, they voted unanimously that the crime involved a
2 destructive and foreseeable impact on persons other than the
3 victim, seven children, the oldest of which was 12 years of
4 age at the time. While they didn't directly see this act,
5 they could hear it.

6 This court cannot imagine the thoughts that were going
7 through those children's minds at that time and the fear and
8 terror they have to live with even to today. I'm happy to
9 hear that they're in counseling. I want to encourage them
10 to continue counseling because they have many, many years
11 ahead of them. They have to address these issues at some
12 point in their life. The jury found these were aggravating
13 circumstances, and this court finds they are aggravating
14 circumstances.

15 To the charge of second degree murder, the court
16 sentences Mr. Santos to the base sentence of -- let me get
17 my calculations here -- to 254 months plus 24 months, the
18 enhancement for the deadly weapon. That brings it up to
19 278 months.

20 The court also finds that a sentence within the
21 standard range does not serve justice in this case. The
22 court finds, as the jury did, that there are substantial
23 and compelling reasons to justify an exceptional sentence
24 above the standard range. The court is going to sentence
25 Mr. Santos to a total of 398 months. That's 120 months for

1 the exceptional sentence of 10 years. Essentially we're
2 looking at a little over 30 years. I think that is clearly
3 justified under the circumstances of this case.

4 Mr. Santos, there are issues that you need to address
5 in your lifetime. I hope that those issues can be properly
6 addressed through the state Department of Corrections. I
7 hope that you will think about the impact of your actions
8 that night and hope that it never happens again.

9 MR. SANTOS: I understand, your Honor. Thank you.

10 MR. SMITH: I have a copy of the original judgment
11 and sentence. I just want to note this before I hand it up.
12 On page 2, 2.6 -- does the court have a copy?

13 THE COURT: I don't.

14 MR. SMITH: I'll give the court the original.
15 I'll have a copy.

16 THE COURT: Thank you.

17 MR. SMITH: On page 2, 2.6, the box is checked
18 that says the defendant stipulates that justice is best
19 served by imposition of an exceptional sentence. I would
20 ask the court to strike that.

21 THE COURT: Any objection, Mr. Ramm?

22 MR. RAMM: No, your Honor.

23 THE COURT: The court will strike that paragraph.

24 MR. RAMM: I'll prepare findings of fact and
25 conclusions of law pursuant to State vs. Friedland.

1 MR. SMITH: On 4.D.3, the \$600 should be stricken
2 from the assessment of restitution.

3 THE COURT: Is restitution agreed in this case?

4 MR. RAMM: The attorney recoupment fee.

5 MR. SMITH: Your Honor, I can't say that we agree
6 to the restitution. I don't have any problem the court
7 putting in --

8 MR. RAMM: If you want to look at it. The medical
9 bills to Prosser Hospital were \$5760.79 and funeral bills
10 \$5750.

11 MR. SMITH: We have no objection to it, your
12 Honor, to \$11,510.79.

13 THE COURT: The court finds that Mr. Santos is
14 indigent pursuant to case law. The court will strike the
15 court-appointed attorney recoupment fee of \$600. However,
16 the crime penalty assessment, the criminal filing fee, the
17 DNA collection fee and the restitution, which is now agreed,
18 are not something the court can modify. The total now will
19 be \$12,310.79. I've changed the judgment and sentence to so
20 reflect.

21 The court also has stricken costs of incarceration and
22 costs of medical care in light of Division III's most recent
23 decision on that issue.

24 Any additional matters?

25 MR. SMITH: No, your Honor.

1 THE COURT: Does Mr. Santos wish to sign the
2 judgment and sentence acknowledging he will receive a copy
3 of it and acknowledging that he's been provided the notices
4 in section five of the judgment and sentence?

5 MR. RAMM: Your Honor, have the exhibits been
6 admitted?

7 THE COURT: Exhibits 1A through 7A will be
8 admitted.

9 Mr. Santos, in addition to the sentence imposed by the
10 court, you have lost your right to vote.

11 You have lost your right to own or possess a firearm.

12 You have lost your right to receive any form of public
13 assistance while incarcerated.

14 You have the right to appeal this decision. That right
15 to appeal the conviction of the jury in this case, you must
16 file a notice of appeal with the county clerk's office
17 within 30 days of the entry of today's judgment. If you
18 fail to file that notice of appeal within the next 30 days,
19 then your right to appeal is irrevocably waived.

20 The superior court clerk will, if you request, supply
21 you with a notice of appeal form and file it upon completion
22 by you.

23 If you're unable to pay the costs of your appeal, the
24 court may appoint an attorney to represent you in that
25 process.

1 Also, you need to be advised that you have one year
2 from today's date to collaterally attack the judgment and
3 sentence. If you do not file that within the one-year
4 period of time, then you have waived your right to
5 collateral attack.

6 Do you understand your obligations in that regard?

7 MR. SANTOS: Yes, your Honor.

8 THE COURT: Mr. Smith, will you be available to
9 assist Mr. Santos if he makes a decision to appeal the
10 jury's decision?

11 MR. SMITH: We'll be filing the appeal, your
12 Honor.

13 THE COURT: All right.

14 MR. SMITH: Thank you, your Honor.

15 THE COURT: Thank you.

16 *(Proceedings recessed until 7-9-2018.)*

17
18
19
20
21
22
23
24
25

1 SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF YAKIMA

3 -----

4 STATE OF WASHINGTON)
5 Plaintiff,)
6 vs.) No. 14-1-01649-8
7 SANTIAGO SANTOS,) COA No. 36069-5-III
8 Defendant.)
9)

10 -----

11 VERBATIM REPORT OF PROCEEDINGS

12 VOLUME XV - POST-TRIAL HEARING

13 -----

14 BE IT REMEMBERED that the above-mentioned cause
15 came on for hearing on July 9, 2018, before the Honorable
16 Richard Bartheld, Yakima County Superior Court, Yakima,
17 Washington.

18 COUNSEL IN ATTENDANCE were Mr. Kenneth Ramm,
19 Deputy Prosecuting Attorney, Yakima, Washington,
20 representing the Plaintiff; Mr. Richard Smith, Attorney at
21 Law, Yakima, Washington, representing the Defendant.

22
23
24 Reported by: Joan E. Anderson
25 CSR No. 2564

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X
July 9, 2018

WITNESS	D	C	RD	RC	FRD	FRC
-----	---	---	---	---	---	---

MOTION	PAGE
-----	-----
FINDINGS OF FACT / CONCLUSIONS OF LAW	1240

IDENTIFICATION	MARKED	ADMITTED	WITHDRAWN
-----	-----	-----	-----

P R O C E E D I N G S

1
2 THE COURT: Good morning, Mr. Santos.

3 MR. SANTOS: Good morning.

4 THE COURT: This is the matter of State of
5 Washington vs. Santiago Santos, 14-1-01649-8. This is the
6 time and place set for presentation of findings of fact and
7 conclusions of law for an exceptional sentence and an order
8 vacating the jury's decision on Count 1, which was the
9 finding of guilty to the charge of manslaughter. Mr. Ramm
10 has provided the court with a copy of the findings and
11 conclusions and proposed order. I have now been handed the
12 original.

13 Mr. Smith, do you have any objections to that proposed
14 order?

15 MR. SMITH: Your Honor, as far as the findings of
16 fact and conclusions of law for exceptional sentence and the
17 order vacating Count 1, on my review I believe it is what
18 the court found and concluded. As far as I can recall, it
19 accurately reflects the court's rulings.

20 Our objections were made at the time of sentencing to
21 the court vacating Count 1 rather than vacating the felony
22 murder count based upon which offense more accurately
23 depicts the crime. The jury did not find him guilty of
24 intentional murder. The best reading of the jury's verdict
25 is that he intentionally assaulted another but recklessly

1 killed him, which in our opinion, our analysis, simply
2 vacating the charge which carries the lesser sentence should
3 not apply.

4 We would object to the court's findings of fact and
5 conclusions of law that impose an exceptional sentence and
6 the aggravators consecutive to one another. I think those
7 were, at the time of the court's sentencing, our objection.
8 Generally we object to the sentence and the manner in which
9 it was obtained. I think the findings and the conclusions
10 accurately reflect the court's judgment.

11 THE COURT: Okay. The court recognizes that
12 you're reserving those objections in spite of the order
13 directed by the court. I have reviewed the order and I find
14 it is consistent with the court's oral ruling as far as the
15 findings made by the court and the conclusions. I will
16 approve the judgment or the order this 9th day of July 2018.

17 Mr. Smith, you have also prepared and presented an
18 order which allows Mr. Santos to be transferred to the
19 Department of Corrections to begin serving his sentence.

20 MR. SMITH: That's correct.

21 THE COURT: Mr. Santos, the court has given you
22 credit for the time you've already received. You will be
23 transported now to the state Department of Corrections. The
24 local of Department of Corrections will provide the state
25 with an accurate assessment of the number of days and so

1 forth that you've already served here so that you will
2 receive credit for that. Do you understand?

3 MR. SANTOS: I understand. Thank you, your Honor.

4 THE COURT: Does that resolve the issues this
5 morning Mr. Ramm?

6 MR. RAMM: Yes, your Honor

7 THE COURT: Any further issues, Mr. Smith?

8 MR. SMITH: No, your Honor.

9 THE COURT: All right. Thank you.

10 Thank you Mr. Santos.

11 MR. SANTOS: Is there a different court that I
12 should know about, sir, or will I be notified?

13 THE COURT: Not that I'm aware of.

14 MR. SMITH: Appellate counsel has been appointed.
15 I know that because they have contacted me to alert me to
16 give notice that they've received the case and will process
17 the appeal. I understand they have already requested
18 transcripts from the case itself. The next contact for
19 Mr. Santos will be by his appellate attorney.

20 MR. SANTOS: I understand.

21 MR. SMITH: All right.

22 THE COURT: There being no further business, the
23 court is adjourned.

24 MR. RAMM: Thank you.

25 *(Proceedings were adjourned.)*

FILED
WANE L. RIDDLE JR

'18 JUL -9 09:21

SUPERIOR COURT
YAKIMA CO WA

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

STATE OF WASHINGTON,
Plaintiff,

vs.

SANTIAGO ALBERTO SANTOS,
Defendant.

NO. 14-1-01649-8

FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOR
EXCEPTIONAL SENTENCE;
ORDER VACATING COUNT 1

This matter having come on for hearing before the Honorable Richard Bartheld, Judge of the above-entitled Court; the Plaintiff State of Washington appearing through Kenneth L. Ramm, Deputy Prosecuting Attorney; the Defendant appearing personally; and being represented by his attorney, Richard Smith; the Court having heard the argument of counsel, and having considered the record and files herein, and being otherwise fully informed, does now, therefore, make and enter the following FINDINGS OF FACT AND CONCLUSION OF LAW FOR EXCEPTIONAL SENTENCE, based upon the jury's verdicts of guilty as to count 2 and special verdicts regarding deadly weapon and aggravating factors;

FINDINGS OF FACT

The Court makes the following findings of fact:

- (1) The jury found unanimously beyond a reasonable doubt that the defendant was guilty as to count 2, Second Degree Felony Murder, and answered yes as to the special verdict as to the defendant being armed with a deadly weapon, and as to the special verdicts regarding the aggravating factors of deliberate cruelty to the victim during the commission of the crime and that the the crime involved a destructive and foreseeable impact on persons other than the victim.
- (2) Pursuant to the court's holding in *State v. Weber*, 159 Wn.2d 252, 149 P.3d 646 (2006), the court finds that the offense of Manslaughter in the First Degree as found by the jury in count 1 is the lesser offense and should be vacated in favor of sentencing of the greater offense of Murder in the Second Degree as found by the jury in count 2.
- (3) The defendant has three prior offenses from the State of California. The offenses were for Possession of a Controlled Substance, Cocaine; Possession of a Controlled Substance, Methamphetamine; and Evading Peace Officer with Disregard for Safety of Persons or Property, all having occurred in 2012.

Based upon the foregoing FINDINGS OF FACT and the Jury's Special Verdicts as to Count 2, Murder in the Second Degree, the Court now enters the following CONCLUSIONS OF LAW, as referenced in the Court's Judgement and Sentence as to the exceptional sentence entered by the Court.

II.

CONCLUSIONS OF LAW

1. Based upon the jury's verdict of guilty as to Murder in the Second Degree in count 2, and the Special Verdicts as to count 2 of deliberate cruelty to the victim during the commission of the crime and that the crime involved a destructive and foreseeable impact on persons other than the victim, the Court has the authority to enter an exceptional sentence outside of the standard range for count 2, pursuant to RCW 9.94A.535.
2. The Court concludes that considering the purposes of the Sentencing Reform Act of 1981 (ch. 9.94A RCW), justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds that an exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
3. The factors found by the jury are substantial and compelling reasons to justify an exceptional sentence. Furthermore, that the grounds listed above, taken together or considered individually, constitute sufficient cause to impose the exceptional sentence. This court would impose the same sentence if only one of the grounds listed above is valid.
- X 4. Count 1, Manslaughter in the First Degree, is a lesser crime as to Murder in the Second Degree for double jeopardy purposes since Murder in the Second Degree has a greater punishment and because it is the greater crime in the hierarchy of crimes of homicide as set forth in RCW 9A.32.

5. The defendant's prior convictions from California are comparable to crimes in Washington. The elements of the felony drug convictions in California are the same elements as in Washington statute. The offense of Evading an Officer with willful disregard is a felony in California. The California offense has the same elements as the Washington offense of Attempt to Elude a Pursuing Police Vehicle except for the mental state. The mental element of the California's offense is willful or wanton. The mental element of Washington's offense is reckless manner. The California statute's mental state is higher than that of Washington, thus every Washington crime of Attempt to Elude would be within the crime of Evading an Officer. Therefore, the California offense for Evading an Officer is comparable to the Washington offense of Attempt to Elude.
6. With an offender score of three, the defendant's standard range for the crime of Murder in the Second Degree would be 154-254 months. Additionally, the deadly weapon enhancement would add an additional 24 months to that base sentence.

III

ORDER

Based upon the Court's FINDINGS OF FACT AND CONCLUSIONS OF LAW, The Court Orders that an exceptional sentence is justified herein and is imposed by the Court in its Judgment and Sentence of an additional 120 months for the aggravating factors. The court orders a term of confinement time of 378 months in count 2.

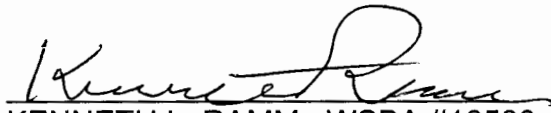
Furthermore, the court orders that count 1 be vacated pursuant to the courts conclusions of law.

DATED: July 9, 2018.



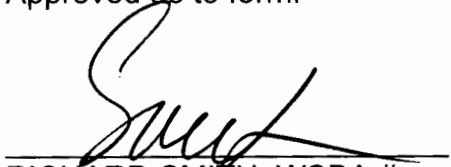
JUDGE RICHARD BARTHELD

Presented by



KENNETH L. RAMM, WSBA #16500
Deputy Prosecuting Attorney

Approved as to form:



RICHARD SMITH, WSBA #
Attorney for Defendant

DECLARATION OF SERVICE

I, David B. Trefry, state that on June 2, 2021 I emailed a copy of the Respondent's Supplemental Brief to Gregory Charles Link and Richard Wayne Lechich at wapofficemail@washapp.org

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

DATED this 2nd day of June 2021, Spokane, Washington.

s/ David B. Trefry
DAVID B. TREFRY, WSBA #16050
Deputy Prosecuting Attorney
Yakima County, Washington
P.O. Box 4846, Spokane WA 99220
David.Trefry@co.wa.yakima.us

YAKIMA COUNTY PROSECUTORS OFFICE

June 02, 2021 - 4:07 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98846-3
Appellate Court Case Title: State of Washington v. Santiago Alberto Santos
Superior Court Case Number: 14-1-01649-8

The following documents have been uploaded:

- 988463_Briefs_20210602160658SC339984_5012.pdf
This File Contains:
Briefs - Respondents Supplemental
The Original File Name was Santos 988463 Supp Brief.pdf

A copy of the uploaded files will be sent to:

- Appeals@co.yakima.wa.us
- greg@washapp.org
- joseph.brusic@co.yakima.wa.us
- ken.ramm@co.yakima.wa.us
- richard@washapp.org
- wapofficemai@washapp.org
- wapofficemail@washapp.org

Comments:

Sender Name: David Trefry - Email: David.Trefry@co.yakima.wa.us
Address:
PO BOX 4846
SPOKANE, WA, 99220-0846
Phone: 509-426-0235

Note: The Filing Id is 20210602160658SC339984