

NO. 61853-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

In Re Personal Restraint Petition Of

RAYMOND D. McCOY,

Petitioner,

STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION

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**A. AUTHORITY FOR RESTRAINT OF PETITIONER**

Raymond McCoy is restrained pursuant to judgment and sentence in King County Superior Court No. 06-1-03538-7 SEA (Appendix A).

**B. ISSUES PRESENTED**

1. May petitioner relitigate the argument, rejected on direct appeal, that a photo montage was impermissible suggestive?

2. May petitioner relitigate the argument, rejected on direct appeal, that the testimony of a jail-house informant should not have been allowed?

3. May petitioner relitigate the argument, rejected on direct appeal, that defense counsel should have called an expert witness in rebuttal to address the significance of a surveillance tape introduced by the State?

4. May petitioner relitigate the argument, rejected on direct appeal, that the evidence was insufficient to support his convictions?

5. May petitioner relitigate the argument, rejected on direct appeal, that his defense attorney was ineffective?

**C. STATEMENT OF THE CASE**

**1. PROCEDURAL BACKGROUND.**

The State charged Raymond McCoy with three counts of first degree robbery of financial institutions. CP 41-42. After a jury trial, McCoy was found guilty as charged on all three counts. CP 132-33, 160. McCoy received a standard range sentence of 150 months. CP 164-68.

McCoy filed a timely appeal. McCoy's direct appeal was denied. State v. McCoy, COA 60134-2-I (Appendix B). In support of his direct appeal, McCoy also filed a Statement of Additional Grounds (Appendix C).

McCoy has now filed a personal restraint petition, to which this brief responds.

**2. FACTUAL BACKGROUND.<sup>1</sup>**

Raymond McCoy was identified as the person who took money from tellers working at three Seattle area banks: Sterling Savings Bank, U.S. Bank, and Key Bank.

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<sup>1</sup> This summary of the facts is taken from the opinion denying McCoy's direct appeal. (Appendix B). Additional facts will be presented as necessary in the argument section of this brief.

**a. Sterling Savings Bank.**

McCoy approached Marlana Willey's teller station and reached for the money she was still holding in her hand from a previous transaction. She pulled the money back, initially thinking that he was joking. He again reached for the money and she told him to "[s]top it." McCoy then said, "This is no joke. This is a robbery. Give me the money." It was at that point that Willey knew it was a real robbery. Willey was training Olga Moore for the teller position that day. Moore testified that McCoy demanded the money and when Willey did not react, he reached over and said, "I am serious, give me the money." Moore described Willey as "very, very stressed out" after the incident and testified that "everybody was shocked" as a result of the robbery. Moore and Ruby Elwood, branch manager, identified McCoy as the person who took the money.

**b. U.S. Bank.**

McCoy passed a note to Jasmine Fung, a teller at U.S. Bank, directing her to give him all of her money and iterating that "this is not a game." McCoy then verbally conveyed the same demand to Fung. When she started to give him the money, he

reached out to her cartridge to get the money himself. Fung also positively identified McCoy as the person to who took approximately \$2,000.

An employee seated nearby, heard Fung say, "I was robbed, I was robbed." The responding police officer described Fung as "a little disturbed" and "shaken" by the incident. As a result, he only spoke with her briefly.

**c. Key Bank.**

McCoy greeted Tuan Le, a teller at Key Bank, before slipping him a note on a card. Written in all capital letters it said, "ATTENTION, THIS IS A HOLDUP. PLEASE REACH INTO YOUR DRAWER AND PLACE ALL THE 100's INTO THE BAG." McCoy slid a plastic bag to Le under the Plexiglas. Le required a few moments to gather himself and did as he was asked.

When asked how long the entire incident took, Le responded, "To me, you know, when the incident happened, it lasted forever, but I could say anywhere between a minute to three minutes." The teller working next to Le did not observe the interactions. Le gave her a signal that he had just been robbed.

**d. King County Jail Disclosure.**

McCoy and Kevin Olsen, also being held for bank robbery, met in the King County Jail. Olsen and McCoy performed legal research work together while in jail. Over the course of approximately ten conversations initiated by McCoy, McCoy admitted to committing several bank robberies. Olsen took notes regarding these conversations. Olsen did not see either the police reports or the certificate of probable cause in McCoy's case. McCoy told Olsen that he had left a palm print on the counter at Key Bank and was contemplating explaining its presence by saying he was in the bank at a different time than the robbery. McCoy recounted that he had snatched money out of the hands of one of the tellers and that he was frustrated by one of the robberies because the teller trainee in the bank identified him with more specificity than had the bank employee senior to her.

Olsen shared his knowledge of McCoy's activities with FBI (Federal Bureau of Investigation) agents who contacted Dag Aakervik, the Seattle Police detective in charge of McCoy's case. Aakervik later took a tape recorded and handwritten statement from Olsen. Aakervik found Olsen's knowledge of the crimes to be

detailed. Olsen did not receive any benefit in return for his assisting the police.

**e. McCoy's Testimony.**

McCoy testified that he did not rob any of the three banks. He also stated that he was in Key Bank the morning of the day that bank was later robbed, claiming that he was exchanging coins that he had received panhandling for paper currency. McCoy also testified that he and Olsen helped each other on their cases and that Olsen had access to various portions of McCoy's discovery when they worked together.

**D. ARGUMENT**

**1. STANDARD OF REVIEW.**

An appellate court will grant substantive review of a personal restraint petition only when the petitioner makes a threshold showing of constitutional error from which he has suffered actual prejudice or nonconstitutional error which constitutes a fundamental defect that inherently resulted in a complete miscarriage of justice. In re Personal Restraint of Cook, 114 Wn. 2d 802, 813, 792 P.2d 506 (1990). In a personal restraint petition, petitioner bears the

burden of showing prejudicial error. State v. Brune, 45 Wn. App. 354, 363, 725 P.2d 454 (1986). Bare allegations unsupported by citation to authority, references to the record, or persuasive reasoning cannot sustain this burden of proof. Brune, 45 Wn. App. at 363.

"Naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion." In re Personal Restraint of Williams, 111 Wn.2d 353, 365, 759 P.2d 436 (1988) If the petitioner's allegations are based on matters outside the existing record, the petitioner must demonstrate that he has competent, admissible evidence to establish the facts that entitle him to relief. In re Rice, 118 Wn.2d 876, 885, 828 P.2d 1006 (1992).

## **2. MCCOY MAY NOT RELITIGATE CLAIMS PREVIOUSLY PRESENTED ON DIRECT REVIEW.**

A personal restraint petition is not meant to serve as a forum for relitigation of issues already considered on direct appeal. In re Personal Restraint of Lord, 123 Wn.2d 296, 329, 868 P.2d 835 (1994); In re Personal Restraint of Pirtle, 136 Wn.2d 467, 491, 965 P.2d 593 (1998). Simply revising a previously rejected legal

argument neither creates a new claim nor constitutes good cause to reconsider the original claim. In re Personal Restraint of Jeffries, 114 Wn.2d 485, 488, 789 P.2d 731 (1990). Nor may a petitioner create a different ground for relief merely by alleging different facts, asserting different legal theories, or couching the argument in different language. In re Lord, 123 Wn.2d at 329; In re Pirtle, 136 Wn.2d at 491. For example, “a claim of involuntary confession predicated on alleged psychological coercion does not raise a different 'ground' than does one predicated on physical coercion.” Jeffries, 114 Wn.2d at 488 (quoting Sanders v. United States, 373 U. S. 1, 16, 10 L. Ed. 2d 148, 83 S. Ct. 1068 (1963)).

Likewise, in In re Lord, supra, 123 Wn.2d at 330, Lord raised the issue of ineffective assistance of counsel on direct appeal by alleging that counsel had failed to call certain witnesses and made an inadequate closing argument. Lord filed a personal restraint petition raising ineffective assistance of counsel by alleging that counsel failed to conduct an adequate investigation, failed to call other witnesses and failed to present mitigating evidence. Id. The Washington Supreme Court summarily rejected the new claim as an attempt to relitigate an issue already raised and rejected on appeal. Id. at 329-30.

### 3. PHOTO MONTAGE CLAIM.

McCoy's first assignment of error is that a photo montage was impermissibly suggestive, undermined the outcome of the verdict, and that he should have been granted an in-custody line-up prior to trial. See Petition, p. 1, 6-20. This argument is essentially identical to the argument McCoy made in his Statement of Additional Grounds. See Appendix C, p. 11-14 (the "in-court identification of petitioner/witnesses was tainted by a prejudicial and bias photo montage"). This argument was rejected on direct review:

McCoy contends that his in-court identification by witnesses was tainted by a biased photomontage shown to them before trial. The photomontage was created from video surveillance cameras at the bank. However, *McCoy fails to articulate how he was prejudiced. Moreover, each witness was extensively cross-examined by counsel regarding the photomontage procedure and their credibility was a matter for the jury to determine. We do not review credibility determinations on appeal.*

Appendix B, p. 7-8 (emphasis added, footnote omitted).

In his Petition, McCoy has added the suggestion that the alleged flaws in the photo montage mean that the trial court's refusal to order an in-person line up was a violation of his right to due process. This argument is linked directly to McCoy's flawed

identification claim. Thus, McCoy is simply asserting a different legal theory, and couching the argument in different language, to reach the same result: namely that the in-court identification was flawed and prejudicial. As discussed above, simply rephrasing a previously litigated claim under a new theory is prohibited in a personal restraint petition.

In any event, McCoy's new argument fails because there is no constitutional right to an in-person line-up:

Neither does the denial of a lineup constitute a due process violation. A defendant is guaranteed no more than a fair identification process, that is, a process that is not so impermissibly suggestive as to give rise to a substantial likelihood of misidentification. State v. Ortiz, 34 Wash. App. 694, 699, 664 P.2d 1267 (1983). There is no requirement that any particular identification procedure be used. See State v. Hilliard, 89 Wash.2d 430, 573 P.2d 22 (1977) (lineup not required instead of photo display); State v. Hill, 83 Wash.2d 558, 520 P.2d 618 (1974) (specific in-court identification not required); and State v. Kinard, 39 Wash. App. 871, 696 P.2d 603 (voice lineup not required), review denied, 664 103 Wash.2d 1041 (1985). In fact, there is no requirement for any formal identification process before trial. State v. Kinard, supra. The failure to provide lineup evidence goes to the sufficiency of the identification, not its propriety. See State v. Hill, 83 Wash.2d at 560, 520 P.2d 618; and State v. Kinard, 39 Wash. App. at 874, 696 P.2d 603.

State v. Dukes, 56 Wn. App. 660, 663-664, 784 P.2d 584 (1990).

McCoy's first assignment of error, that the photo montage undermined the verdict, is without merit.

#### **4. TESTIMONY OF JAIL HOUSE INFORMANT.**

McCoy's second assignment of error asserts that he was prejudiced as a result of the testimony of jail house informant Scott Olsen who, McCoy contends, was acting as a government agent when he spoke with McCoy in jail. See Petition, p. 1, 20-25. In his Statement of Additional Grounds, McCoy made essentially the same argument, but asserted that Olson had held himself out to be his (McCoy's) attorney and that his testimony was therefore improper. See Appendix C, p. 4-7. This argument was rejected on direct appeal. See Appendix B, p. 7. In both instances, McCoy's claim is that he was prejudiced by the introduction of Olson's allegedly improper testimony. McCoy may not relitigate this issue for a second time in his personal restrain petition.

In any event, this claim was fully litigated before the trial court, which rejected McCoy's argument that Olsen was acting as a government agent when he spoke with McCoy. McCoy has simply reiterated this argument in his Petition. He has not met his burden of establishing that the trial court's ruling was clearly erroneous.

At trial, McCoy framed his motion pursuant to CR 8.3, alleging governmental misconduct in allegedly allowing Olson to operate as a governmental agent. McCoy's Motion to Dismiss and Brief in Support of his Motion to Dismiss were attached as Exhibit 6 to McCoy's Pro Se Reply Brief in the direct appeal.

At trial, the State filed a Response to the Motion to Dismiss, as well as various supporting documents. Appendix D. This brief summarized the State's position and proposed testimony:

Det. Dag Aakervik will testify that he was contacted by an FBI agent and a local detective regarding an interview that was occurring on September 1, 2006, with a known FBI source. When the Agent and Detective were interviewing the source (later identified as Kevin Scott Olsen) the source offered information regarding bank robberies allegedly committed by defendant Raymond McCoy. Det. Aakervik sat in the room and documented statements made by Mr. Olsen. *No information about the pending robberies was provided to Mr. Olsen.* According to Detective Aakervik's follow-up report, Mr. Olsen stated ...

- He had regular contact with McCoy and that he knew that Mr. McCoy was defending himself on bank robbery charges.
- That Mr. McCoy had admitted to him that he robbed some banks in Seattle and that he used the money to buy crack cocaine. He told the source that he got caught when he was arrested for narcotics and the police found a demand note on him.
- McCoy said that his right palm print was lifted from the bank counter at one of the robberies.

- He said that Mr. McCoy was having a handwriting expert examine the note to show that he did not write it. The defendant added that the note was actually written by a female friend.
- The defendant discussed possible defense for having his handprint on the teller counter. Olsen suggested that McCoy might say that he was at the counter at an earlier time.
- At this point in the report, at the end of the entry for that day the detective wrote the following:
  - "The source stated that he would continue his relationship with McCoy and contact us if he obtains further information."

. . . Detective Aakervik will testify that it was not his intention to send Mr. Olsen back in the jail to spy on the defendant. He did not ask Mr. Olsen to get more information and did not consider Mr. Olsen his "agent." Moreover, Mr. Olsen will testify that he did not consider himself an agent and did not go back into the jail with the express purpose to obtain more information about the defendant. Mr. Olsen is expected to testify that he did not approach Mr. McCoy in order to obtain more information.

The evidence and testimony will demonstrate that no one asked Mr. Olsen to spy on the defendant or inquire as to his legal strategy. In fact, most of the usable information or evidence was essentially known to Detective from his interview on September 1, 2006.

Appendix D, p. 1-4.

The trial court heard testimony and argument on this motion (and several other motions) over two days. Det. Aakervik and

Kevin Olsen testified consistently with the offer of proof set forth in the State's brief above. Appendix E (VRP, Feb. 22 & 23, 2007).

McCoy's argument in his Petition fails for two reasons. First, his claim that Olsen was sent back into the jail as government agent after his initial meeting with detectives was explicitly rejected on direct appeal:

Once Olsen came forward to share his information with the State, the better course of conduct would have been to separate Olsen and McCoy. Thus, any suspicion that the State was using Olsen to garner McCoy's trial tactics and defenses would be transparently baseless. However, Olsen testified that he had no conversations with McCoy after he had informed the police of the contents of their conversations regarding the bank robberies. The assertion that no further information was obtained from Olsen between the time the detective spoke with him and when Olsen's statement was recorded approximately ten days later, was buttressed by the detective's testimony, and found credible by the trial court.

Appendix B, p. 7.

Second, if McCoy's argument claim is that Olsen was a government agent before he met with Det. Aakervik, that claim was explicitly rejected by the trial court in its oral findings:

Its clear that what Mr. Olsen had to say on Sept. 10<sup>th</sup> came from information he had gotten before September 1.

It is also not accurate to say that the State is not allowed to find out from someone that you have unwisely spoken to what your defenses are. Provided the State doesn't inspire the disclosures in any way, or eavesdrop on you or look into your private papers. Provided that information comes to them through no act of their own there's nothing wrong with the State's accepting that information. And frankly jail house snitches are nothing new in criminal litigation. They do come forward occasionally, and when they do so without any prompting or urging, or advance request from the State, the State can use that information. They are of course obligated to tell you about it, but they did do that here.

I can't find any misconduct or mismanagement by the State.

Appendix E (Feb, 23, 2007, p. 34-35). The trial court denied McCoy's motion to dismiss on this basis. Appendix F.

McCoy offers no new or compelling evidence to undermine the trial court's factual finding that the Olsen was not acting on behalf of the State when he initially spoke with McCoy in jail and that there was no misconduct by the State. McCoy has failed to satisfy his burden of establishing that there was prejudicial error that requires reversal of his convictions.

##### **5. FAILURE TO CALL REBUTTAL EXPERT.**

McCoy's third assignment of error concerns the decision of defense counsel not to call expert Eric Blank as a rebuttal witness

in response to the introduction of the surveillance tape of the Key Bank robbery. See Petition, p. 1-2, 26-28. This precise argument was made by McCoy in his Statement of Additional Authorities in the context of his claim that defense counsel was ineffective:

Here, not only did defense counsel advised petitioner to take the stand, but failed to turn over or call an expert witness, to wit Mr. Eric Blank (Video Tape Analyst Expert) to counter rebuttal the Sate's misrepresentation of the surveillance tape from the Key Bank, and the testimony of the Sate's witness Mr. Lee testifying, in reference to the suspect hands being on the teller's counter.

Appendix C, p. 17.

The Court rejected Olsen's claim of ineffective assistance of counsel on direct appeal. Appendix B, p. 8-9. McCoy may not simply extract one of his arguments made in support of the ineffective assistance claim on direct review and present it as a new and independent claim in his Personal Restraint Petition.

But in any event McCoy has supplemented his Petition with a letter from the expert witness, Eric Blank, whom he alleges his trial attorney should have called in rebuttal. Appendix G. This letter makes it abundantly clear that the decision not to call Blank was a legitimate trial tactic: Here is what Blank has to say about the usefulness of his proposed testimony:

Mr. McKay, although I do not particularly care for his choice of words, is correct that I would have been a "lackluster" witness of dubious benefit. As stated clearly in my report, while I do not personally think the video shows that subject's hands touching the counter (and remember, I never fully enhanced the video), I could not opine as I was originally asked to do: *to state that the subject's hand did not touch the counter during the visit to the bank.*

Appendix G (Bank Letter, p. 1) (emphasis added). And further:

To summarize the above, I think that Mr. McKay is self-serving and offensive in his comments regarding my role in this matter. I do not appreciate being the subject of made-up suppositions and negative innuendo. However: *his essential point, that I would not have been helpful and could even have harmed the defense, is in my opinion correct.* I also think that Mr. McKay, who is vastly more experienced in criminal defense than I (I have no experience at all), deserves deference with respect to his defense strategy.

Appendix G (Bank Letter, p. 3) (emphasis added). The very documentation submitted by McCoy in support of his Petition establishes that calling Blank as a rebuttal witness would have been futile and unwise. Again, McCoy has failed to meet his burden of establishing prejudicial error.

## **6. SUFFICIENCY OF THE EVIDENCE.**

McCoy's fourth assignment of error involves a sufficiency claim in which he alleges that "viewing the evidence in the light most favorable to the State" does "not establish the identity of petitioner beyond a reasonable doubt." McCoy's Petition on this

issue is a grab bag of arguments, including corpus delicti, circumstantial evidence allegations, more complaints about the introduction of the video tape, and allegations that his defense attorney failed to call certain witnesses. See Petition, 1, 3, 28-31. An almost identical assortment of arguments was presented in McCoy's Statement of Additional Grounds, in his challenge to the sufficiency of the evidence. See Appendix C, p. 1, 18-23. McCoy's attempt to relitigate these issues should be rejected. In any event, the Court on direct review addressed and denied McCoy's claim that the evidence was not sufficient to convict. Appendix B, p. 4-6. ("McCoy contends there was insufficient evidence to prove beyond a reasonable doubt that he was guilty of all three counts of first degree robbery of financial institutions. But his argument is unconvincing.").

#### **7. INEFFECTIVE ASSISTANCE OF COUNSEL.**

McCoy's fifth assignment of error is that his defense counsel was ineffective. In this section of his Petition, McCoy also repeats his claim that defense counsel should have called Eric Blank as a rebuttal witness. See Petition, 1, 3, 32-37. Again, McCoy's arguments simply repeat, or could have easily been included in, his

original Statement of Additional Grounds in which he also asserted that his defense attorney was ineffective. See Appendix C, p. 1, 14-18. McCoy's effort to relitigate the effectiveness of his counsel's performance should be denied. In any event, the Court reviewed and rejected McCoy's claim of ineffective assistance of trial counsel on direct review. See Appendix B, p. 8-9.

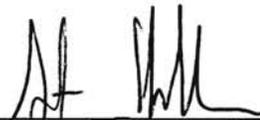
**E. CONCLUSION**

The State respectfully request that McCoy's Petition be denied.

DATED this 20<sup>th</sup> day of November, 2009.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
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# **Appendix A**

## **Judgment and Sentence**

**State v. McCoy,**

**06-1-03538-7 SEA**



**SPECIAL VERDICT or FINDING(S):**

- (a)  While armed with a **firearm** in count(s) \_\_\_\_\_ RCW 9.94A.510(3).
- (b)  While armed with a **deadly weapon** other than a firearm in count(s) \_\_\_\_\_ RCW 9.94A.510(4).
- (c)  With a **sexual motivation** in count(s) \_\_\_\_\_ RCW 9.94A.835.
- (d)  A V.U.C.S.A. offense committed in a **protected zone** in count(s) \_\_\_\_\_ RCW 69.50.435.
- (e)  **Vehicular homicide**  Violent traffic offense  DUI  Reckless  Disregard.
- (f)  **Vehicular homicide** by DUI with \_\_\_\_\_ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g)  **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h)  **Domestic violence** offense as defined in RCW 10.99.020 for count(s) \_\_\_\_\_.
- (i)  Current offenses encompassing the same criminal conduct in this cause are count(s) \_\_\_\_\_ RCW 9.94A.589(1)(a).

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): \_\_\_\_\_

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):  
 Criminal history is attached in **Appendix B**.  
 One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

2.4 **SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	12	IX	129 TO 171		129 TO 171 MONTHS	LIFE AND/OR \$50,000
Count II	12	IX	129 TO 171		129 TO 171 MONTHS	LIFE AND/OR \$50,000
Count III	12	IX	129 TO 171		129 TO 171 MONTHS	LIFE AND/OR \$50,000
Count						

Additional current offense sentencing data is attached in **Appendix C**.

2.5 **EXCEPTIONAL SENTENCE (RCW 9.94A.535):**  
 Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_. Findings of Fact and Conclusions of Law are attached in **Appendix D**. The State  did  did not recommend a similar sentence.

**III. JUDGMENT**

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A**.  
 The Court **DISMISSES** Count(s) \_\_\_\_\_

#### IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

#### 4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached **Appendix E**.  
 Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.  
 Restitution to be determined at future restitution hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m.  
 Date to be set.  
 Defendant waives presence at future restitution hearing(s).  
 Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

#### 4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a)  \$ \_\_\_\_\_, Court costs;  Court costs are waived; (RCW 9.94A.030, 10.01.160)  
 (b)  \$100 DNA collection fee;  DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);  
 (c)  \$ \_\_\_\_\_, Recoupment for attorney's fees to King County Public Defense Programs;  
 Recoupment is waived (RCW 9.94A.030);  
 (d)  \$ \_\_\_\_\_, Fine;  \$1,000, Fine for VUCSA;  \$2,000, Fine for subsequent VUCSA;  
 VUCSA fine waived (RCW 69.50.430);  
 (e)  \$ \_\_\_\_\_, King County Interlocal Drug Fund;  Drug Fund payment is waived;  
 (RCW 9.94A.030)  
 (f)  \$ \_\_\_\_\_, State Crime Laboratory Fee;  Laboratory fee waived (RCW 43.43.690);  
 (g)  \$ \_\_\_\_\_, Incarceration costs;  Incarceration costs waived (RCW 9.94A.760(2));  
 (h)  \$ \_\_\_\_\_, Other costs for: \_\_\_\_\_

- 4.3 **PAYMENT SCHEDULE:** Defendant's **TOTAL FINANCIAL OBLIGATION** is: \$ 3,876.<sup>85</sup> The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:  Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. **The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied.** Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.  
 Court Clerk's trust fees are waived.  
 Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing:  Immediately;  (Date): \_\_\_\_\_ by \_\_\_\_\_ m.

150 months days on count I; 150 months days on count III; \_\_\_\_\_ months/day on count \_\_\_\_\_

150 months days on count II; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/day on count \_\_\_\_\_

The above terms for counts I, II, III are ~~consecutive~~ concurrent.

The above terms shall run  CONSECUTIVE  CONCURRENT to cause No.(s) 06-1-01623-4 SEA and 06-1-03529-8 SEA

The above terms shall run  CONSECUTIVE  CONCURRENT to any previously imposed sentence not referred to in this order.

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: \_\_\_\_\_

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 150 months.

Credit is given for  429 days served  days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of life years, defendant shall have no contact with \_\_\_\_\_

~~Key Bank, U.S. Bank, Starlings Savings Bank, 5000 S. Dearborn Seattle, WA, 2401 E. 3rd Ave Seattle, WA, 1406 4th Ave, Seattle, WA~~

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a)  COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for \_\_\_\_\_ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b)  COMMUNITY CUSTODY pursuant to RCW 9.94.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

- (c)  **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
  - Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
  - Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
  - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
  - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
  - Felony Violation of RCW 69.50/52 - 9 to 12 months
 or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer.  
 Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.  
 **APPENDIX H** for Community Custody conditions is attached and incorporated herein.  
 **APPENDIX J** for sex offender registration is attached and incorporated herein.

4.8  **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. **Appendix H** for Community Custody Conditions is attached and incorporated herein.

4.9  **ARMED CRIME COMPLIANCE, RCW 9.94A.475,.480.** The State's plea/sentencing agreement is  attached  as follows:

---



---

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: June 8, 2007

*Paris Kallas*  
 JUDGE  
 Print Name: JUDGE PARIS K. KALLAS

Presented by  
*Jim Ferrell*  
 Deputy Prosecuting Attorney, WSBA# 24314  
 Print Name: Jim Ferrell

Approved as to form:  
*Robert S. McKay*  
 Attorney for Defendant, WSBA # 14687  
 Print Name: Robert S McKay

FINGERPRINTS



BEST AVAILABLE IMAGE POSSIBLE

RIGHT HAND  
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: *Raymond D. McCoy*  
DEFENDANT'S ADDRESS: C/O DOC

RAYMOND DWAYNE MCCOY

DATED: JUN 08 2007

ATTESTED BY: BARBARA MINER,  
SUPERIOR COURT CLERK  
BY: *Barbara Winter*  
DEPUTY CLERK

*Paris K. Kallas*  
JUDGE, KING COUNTY SUPERIOR COURT  
PARIS K. KALLAS

CERTIFICATE

OFFENDER IDENTIFICATION

I, \_\_\_\_\_,  
CLERK OF THIS COURT, CERTIFY THAT  
THE ABOVE IS A TRUE COPY OF THE  
JUDGEMENT AND SENTENCE IN THIS  
ACTION ON RECORD IN MY OFFICE.  
DATED: \_\_\_\_\_

S.I.D. NO. WA11364603  
DOB: AUGUST 10, 1959  
SEX: M  
RACE: B

\_\_\_\_\_  
CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON,	)	
	)	
	)	Plaintiff,
	)	
vs.	)	No. 06-1-03538-7 SEA
	)	
	)	JUDGMENT AND SENTENCE,
	)	(FELONY) - APPENDIX B,
RAYMOND DWAYNE MCCOY	)	CRIMINAL HISTORY
	)	
	)	Defendant,
	)	

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
THEFT 2	03/13/2003	ADULT	021104190	KING CO
VUCSA: POSSESS COCAINE	12/08/2000	ADULT	001080758	KING CO
VUSCA: DELIVER COCAINE	12/08/2000	ADULT	001079857	KING CO
BURGLARY 1	07/23/1980	ADULT	801004600	KING CO
THEFT 2	09/30/2005	ADULT	051040048	KING CO
VUCSA: BURN	09/01/2006	ADULT	061016234	KING CO
FORGERY	09/01/2006	ADULT	061035298	KING CO

The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: JUN 08 2007

Paris K. Kallas  
 JUDGE, KING COUNTY SUPERIOR COURT  
**PARIS K. KALLAS**

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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
	)	No. 06-1-03538-7 SEA
Plaintiff,	)	
	)	APPENDIX E
vs.	)	<i>Agreed</i>
	)	ORDER SETTING RESTITUTION
RAYMOND MCCOY,	)	
	)	
Defendant,	)	

The court ordered payment of restitution as a condition of sentencing. The Court has determined that the following person is entitled to restitution in the following amounts;

IT IS ORDERED that defendant make payments through the registry of the clerk of the court as follows:

Sterling Savings Bank 1406 4 <sup>th</sup> Avenue Seattle, WA 98101 Re: Robbery 12-27-2005	AMOUNT: \$ 450.00
---	-------------------

KeyBank MS WA31-05-0167 PO Box 1816 Tacoma, WA 98401 Re: Robbery 2-13-2006 @ 666 S Dearborn - Seattle, WA	AMOUNT: \$ 845.00
--	-------------------

US Bank Attn: Corp Security 111 SW 5 <sup>th</sup> Avenue, Suite 330 Mailstop PD-OR-P3CI Portland, OR 97204 @ 2401 3 <sup>rd</sup> Avenue -Seattle, WA	AMOUNT: \$ 2,081.85
---	---------------------

Norm Maleng, Prosecuting Attorney  
Daniel T. Satterberg, Acting Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000, FAX (206) 296-0955

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DONE IN OPEN COURT this 8 day of June, 2007.

*Paris Kallas*

JUDGE PARIS KALLAS

Presented by:

*Jim Ferrell*  
Jim Ferrell #243141  
Deputy Prosecuting Attorney

Copy received; Notice  
Presentation waived:

*Robert McKay*  
Robert McKay-Private  
Attorney for Defendant 19667

Order Setting Restitution  
CCN# 0476934

REF# 2060331100

tl

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON,	)	
	)	
	)	Plaintiff,
	)	
vs.	)	No. 06-1-03538-7 SEA
	)	
	)	APPENDIX G
RAYMOND DWAYNE MCCOY	)	ORDER FOR BIOLOGICAL TESTING
	)	AND COUNSELING
	)	
	)	Defendant,
	)	

**(1) DNA IDENTIFICATION (RCW 43.43.754):**

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

**(2)  HIV TESTING AND COUNSELING (RCW 70.24.340):**

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date:         JUN 08 2007        

        Paris Kallas          
JUDGE, King County Superior Court

**PARIS K. KALLAS**

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
	)	Plaintiff,
	)	No. 06-1-03538-7 SEA
vs.	)	JUDGMENT AND SENTENCE
	)	APPENDIX H
RAYMOND DWAYNE MCCOY	)	COMMUNITY PLACEMENT OR
	)	COMMUNITY CUSTODY
	)	
	)	Defendant,

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.700(4), (5):

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
- 2) Work at Department of Corrections-approved education, employment, and/or community service;
- 3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- 4) Pay supervision fees as determined by the Department of Corrections;
- 5) Receive prior approval for living arrangements and residence location;
- 6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.720(2));
- 7) Notify community corrections officer of any change in address or employment; and
- 8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

OTHER SPECIAL CONDITIONS:

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with: Key Banks, US Banks and Sterling Savings Banks at their individual locations
- Defendant shall remain  within  outside of a specified geographical boundary, to wit:

The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_

The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_

No Contact with: Olga Moore, Tuan Le, Yen Huynh, Madlene Wiley, Kenneth Jackson, Ruby Elwood, Shomin Fung, Eric van Dierst

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9.94A.720] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.740].

Date: JUN 08 2007

*Pentick/Kell*  
JUDGE

# **Appendix B**

**Mandate and Unpublished Opinion**

**State v. McCoy,**

**COA No. 60134-2-I**

COPY TO COUNTY JAIL **AUG 28 2009**

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

**09 AUG 28 PH 1:00  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA**

STATE OF WASHINGTON,	)	No. 60134-2-1
	)	
Respondent,	)	MANDATE
	)	
v.	)	
	)	King County
RAYMOND DWAYNE MCCOY,	)	
	)	Superior Court No. 06-1-03538-7 SEA
Appellant.	)	

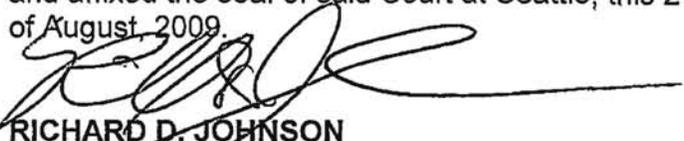
**THE STATE OF WASHINGTON TO:** The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on July 21, 2008, became the decision terminating review of this court in the above entitled case on August 21, 2009. An order denying a motion for reconsideration was entered on September 12, 2008. An order denying a petition for review was entered in the Supreme Court on April 28, 2009. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to a Commissioner's ruling entered on July 1, 2009, costs in the amount of \$6,190.44 are awarded against judgment debtor Raymond Dwayne McCoy to be awarded as follows: \$6,148.04 in favor of judgment creditor to the Washington Office of Public Defense and \$42.40 in favor of judgment creditor to the King County Prosecutor's Office.

c: Andrew P. Zinner, NBK  
James A. Ferrell, KC  
Hon. Paris K. Kallas

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 21st day of August, 2009.



**RICHARD D. JOHNSON**  
Court Administrator/Clerk of the Court of Appeals, State of Washington, Division I.



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

STATE OF WASHINGTON,	)	
	)	No. 60134-2-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	UNPUBLISHED OPINION
RAYMOND DWAYNE MCCOY,	)	
	)	
Appellant.	)	FILED: July 21, 2008

**PER CURIAM.** A threat to use force is implied when there is unequivocal demand for the immediate surrender of money from a bank teller without any color of right to that money. That implicit threat which induces a teller to part with the money is sufficient to sustain a robbery conviction. Here, the defendant made unequivocal demands for money from bank tellers at three different financial institutions. We affirm.

**FACTS**

Raymond McCoy was identified as the person who took money from tellers working at three Seattle area banks: Sterling Savings Bank, US Bank, and Key Bank.

Sterling Savings Bank

McCoy approached Marlena Willey's teller station and reached for the money she was still holding in her hand from a previous transaction. She pulled the money back, initially thinking that he was joking. He again reached for the money and she told him to "[s]top it." McCoy then said, "This is no joke. This is a robbery. Give me the money." It was at that point that Willey knew it was a real robbery. Willey was training Olga Moore for the teller position that day. Moore

No. 60134-2-1/2

testified that McCoy demanded the money and when Willey did not react, he reached over and said, "I am serious, give me the money." Moore described Willey as "very, very stressed out" after the incident and testified that "everybody was shocked" as a result of the robbery. Moore and Ruby Elwood, the branch manager, identified McCoy as the person who took the money.

#### US Bank

McCoy passed a note to Jasmine Fung, a teller at US Bank, directing her to give him all of her money and iterating that "this is not a game." McCoy then verbally conveyed the same demand to Fung. When she started to give him the money, he reached out to her cartridge to get the money himself. Fung also positively identified McCoy as the person to who took approximately \$2,000.

An employee seated nearby, heard Fung say, "I was robbed, I was robbed." The responding police officer described Fung as "a little disturbed" and "shaken" by the incident. As a result, he only spoke with her briefly.

#### Key Bank

McCoy greeted Tuan Le, a teller at Key Bank, before slipping him a note on a card. Written in all capital letters it said, "ATTENTION, THIS IS A HOLDUP. PLEASE REACH INTO YOUR DRAWER AND PLACE ALL THE 100's INTO THE BAG." McCoy slid a plastic bag to Le under the Plexiglas. Le required a few moments to gather himself and did as he was asked.

When asked how long the entire incident took, Le responded, "To me, you know, when the incident happened, it lasted forever, but I could say anywhere

No.,60134-2-1/3

between a minute to three minutes.” The teller working next to Le did not observe the interactions. Le gave her a signal that he had just been robbed.

#### King County Jail Disclosure

McCoy and Kevin Olsen, also being held for bank robbery, met in the King County Jail. Olsen and McCoy performed legal research work together while in jail. Over the course of approximately ten conversations initiated by McCoy, McCoy admitted to committing several bank robberies. Olsen took notes regarding these conversations. Olsen did not see either the police reports or the certificate of probable cause in McCoy's case. McCoy told Olsen that he had left a palm print on the counter at Key Bank and was contemplating explaining its presence by saying he was in the bank at a different time than the robbery. McCoy recounted that he had snatched money out of the hands of one of the tellers and that he was frustrated by one of the robberies because the teller trainee in the bank identified him with more specificity than had the bank employee senior to her.

Olsen shared his knowledge of McCoy's activities with FBI (Federal Bureau of Investigation) agents who contacted Dag Aakervik, the Seattle Police detective in charge of McCoy's case. Aakervik later took a tape recorded and handwritten statement from Olsen. Aakervik found Olsen's knowledge of the crimes to be detailed. Olsen did not receive any benefit in return for his assisting the police.

No. 60134-2-I/4

### McCoy's Testimony

McCoy testified that he did not rob any of the three banks. He also stated that he was in Key Bank the morning of the day that bank was later robbed, claiming that he was exchanging coins that he had received panhandling for paper currency. McCoy also testified that he and Olsen helped each other on their cases and that Olsen had access to various portions of McCoy's discovery when they worked together.

McCoy was charged with three counts of first degree robbery of financial institutions. After a jury trial, he was found guilty as charged on all three counts. McCoy was sentenced within the standard range for 150 months. McCoy appeals.

## **ANALYSIS**

### Sufficiency of the Evidence

McCoy contends there was insufficient evidence to prove beyond a reasonable doubt that he was guilty of all three counts of first degree robbery of financial institutions. But his argument is unconvincing. Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the State, it permits a rational trier of fact to find the essential elements of a crime beyond a reasonable doubt.<sup>1</sup> A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences gleaned therefrom.<sup>2</sup> Circumstantial

<sup>1</sup> State v. Tilton, 149 Wn.2d 775, 786, 72 P.3d 735 (2003).

<sup>2</sup> State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

No. 60134-2-1/5

evidence is as reliable as direct evidence.<sup>3</sup> And, an appellate court defers to the trier of fact regarding witness credibility or conflicting testimony.<sup>4</sup>

A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial.<sup>[5]</sup>

“Any force or threat, no matter how slight, which induces an owner to part with his property is sufficient to sustain a robbery conviction.”<sup>6</sup> In State v. Collinsworth, a defendant who told a bank teller to “[g]ive me your hundreds,” “no dye packs,” argued that he did not display a weapon and therefore may only be held liable for theft, not robbery. In rejecting that argument, the court stated, “No matter how calmly expressed, an unequivocal demand for the immediate surrender of the bank’s money, unsupported by even the pretext of any lawful entitlement to the funds, is fraught with the implicit threat to use force.”<sup>7</sup> The Collinsworth court noted that the defendant “made a clear, concise, and unequivocal demand for money. He also reiterated his demand or told the teller not to include ‘bait’ money or ‘dye packs,’ thereby underscoring the seriousness of his intent.”

<sup>3</sup> State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

<sup>4</sup> State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

<sup>5</sup> RCW 9A.56.190.

<sup>6</sup> State v. Handburgh, 119 Wn.2d 284, 293, 830 P.2d 641 (1992).

<sup>7</sup> 90 Wn. App. 546, 553, 966 P.2d 905 (1997).

No. 60134-2-1/6

The words used in each of the three robberies of the financial institutions were unequivocal. At Sterling Savings Bank, McCoy declared, "This is no joke. This is a robbery. Give me the money." At US Bank, McCoy twice made a clear demand for money accompanied by the words that "this is not a game." The written note McCoy handed to the teller at Key Bank used the word "holdup" accompanied by the words, "Hurry up. This is a holdup," which were likewise unequivocal.

McCoy argues that in none of the incidents did the tellers actually feel threatened. The testimony at trial, however, contradicts this contention. Willey of Sterling Savings Bank was described as being "very, very stressed out." Fung at US Bank appeared "a little disturbed" and "shaken" up by the incident. And, Le of Key Bank described the incident as seeming to last forever even though it only lasted from one to three minutes.

But actual fear on the part of the tellers does not have to be specifically proven. As often noted, "the law, *in odium spoliatoris*, will presume fear where there appears to be just ground for it."<sup>8</sup> Here, the evidence was sufficient to warrant such a presumption.

#### Statement of Additional Grounds

McCoy raises several issues in his Statement of Additional Grounds (SAG), including State misconduct, flawed identification by a witness, and ineffective assistance of counsel. None of his claims have merit.

---

<sup>8</sup> State v. Redmond, 122 Wash. 392, 393-94, 210 P. 772 (1922) (quoting Long v. State, 12 Ga. 293 (1852)).

No., 60134-2-1/7

First, the trial court properly denied McCoy's motion to dismiss for State misconduct or mismanagement. McCoy argues that the information Olsen obtained was akin to attorney work-product as McCoy was representing himself pro se and consulting with Olsen. After an evidentiary hearing, the trial court found that Olsen may have served as a "jail house lawyer" but that fact did not actually transform him into one and that any work that he performed with McCoy was not protected under the work-product doctrine. Once Olsen came forward to share his information with the State, the better course of conduct would have been to separate Olsen and McCoy. Thus, any suspicion that the State was using Olsen to garner McCoy's trial tactics and defenses would be transparently baseless. However, Olsen testified that he had no conversations with McCoy after he had informed the police of the contents of their conversations regarding the bank robberies. The assertion that no further information was obtained from Olsen between the time the detective spoke with him and when Olsen's statement was recorded approximately ten days later, was buttressed by the detective's testimony, and found credible by the trial court. Additionally, McCoy's claim that the State committed misconduct by serving him responses to his motion just before trial is devoid of merit. The State followed proper procedure in filing timely responses to McCoy's pretrial motions.

McCoy contends that his in-court identification by witnesses was tainted by a biased photomontage shown to them before trial. The photomontage was created from video surveillance cameras at the bank. However, McCoy fails to articulate how he was prejudiced. Moreover, each witness was extensively

No. 60134-2-1/8

cross-examined by counsel regarding the photomontage procedure and their credibility was a matter for the jury to determine. We do not review credibility determinations on appeal.<sup>9</sup>

McCoy argues that he received ineffective assistance of counsel because of his attorney's failure to request a CrR 3.5 hearing to suppress Olsen's testimony, in advising McCoy to take the stand, thus permitting the jury to learn of his in custody status and criminal history, and finally for failure to impeach one of the witnesses with evidence of prior misconduct. "To prevail on a claim of ineffective assistance of counsel, a defendant must establish both ineffective representation and resulting prejudice."<sup>10</sup> The issue of Olsen's testimony has already been addressed. McCoy's testimony alleging he was at the bank earlier in the day was crucial to rebut the State's evidence of his palm print found at the teller's station that was robbed. The decision to have McCoy testify could be construed to be a trial tactic. Legitimate trial strategy or tactics cannot serve as a basis for a claim of ineffective assistance of counsel.<sup>11</sup> McCoy's impeachment was in accord with the rules of evidence. McCoy contends that he should have been able to question in depth the prior bad acts by a bank teller who was subsequently dismissed from the bank. On direct, the prosecution elicited teller Le was subsequently dismissed for embezzlement of bank funds. Inasmuch as

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<sup>9</sup> Camarillo, 115 Wn.2d at 71.

<sup>10</sup> State v. McNeal, 145 Wn.2d 352, 362, 37 P.3d 280 (2002).

<sup>11</sup> McNeal, 145 Wn.2d at 362.

No. 60134-2-1/9

the jury heard this testimony, they could draw their own conclusions regarding Le's credibility.

Finally, McCoy's SAG arguments regarding insufficient evidence were adequately presented and argued in his appellate counsel's brief and have already been addressed in this opinion.

The trial court is affirmed.

For the Court:

Grosse, J.  
Dunne, A.C.J.  
Ajid, J.

# **Appendix C**

**Statement of Additional Grounds**

**State v. McCoy,**

**COA No. 60134-2-I**

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

\*\*\*\*\*  
\*\*\*\*\*

RAYMOND D. MCCOY,  
APPELLANT,  
V.  
STATE OF WASHINGTON,  
RESPONDENT.

\*\*\*\*\*  
\*\*\*\*\*

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Paris K. Kallas, Judge,

\*\*\*\*\*  
\*\*\*\*\*

BRIEF IN SUPPORT OF APPELLANT'S  
STATEMENTS OF ADDITIONAL GROUNDS

\*\*\*\*\*

RAYMOND D. MCCOY  
Petitioner Pro-Se  
DOC. 270764-BMU-3e14  
WASHINGTON STATE PENITENTIARY  
WATA WATA WASH 99362

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A. ASSIGNMENTS OF ERROR:

1. The third party intrusion into petitioner's Pro-Se work-product denied petitioner rights to a fair trial, and effective self-representation, which constitutes a violation of petitioner's constitutional rights pursuant to the Sixth Amendment of the U.S. constitution.

2. The State's delay tactics, in disclosing pre-trial discoveries, impeded upon petitioner's right to proceed to trial in a timely manner, was prejudicial, and constituted mis-management of the case.

3. The in-court identification was tainted by a prejudicial and bias photo-montage, which was impermissibly suggestive, and an impermissibly misidentification of petitioner that resulted in a miscarriage of justice.

4. Court appointed counsel actions fell below an objective standard of reasonableness and, therefore constituted deficient and unreasonable performance, denying petitioner effective assistance of counsel.

5. The evidence relied upon in the State's case-in-chief was insufficient to substantiate a conviction of three counts of first degree bank robberies, or to prove each element beyond a reasonable doubt, pursuant to R.C.W. 9A.56.200(1)(b) and 9A.56.190.

B. Issues Pertaining To Assignments Of Error:

I) The FBI and State informant Mr. Kevin Scott Olsen informed the State, allegedly about information pertaining to the allegations of bank robberies that he inquired in assisting petitioner in perceiving

in perparing for trial, proceeding Pro-Se .

(a) Mr. Olsen only informed the State concerning petitioner work-product, which gave the State an unfair advantage, and denied petitioner a fair trial.

II) The State delayed four months before disclosing that the alleged bank note was written on a letter addressed to petitioner. The State delayed disclosing information that the witness was unavailable because of a federal conviction and federal home detension, until after the trial and conviction of petitioner. The State delayed three months before disclosing the facts surrounding the circumstances about the meeting held on September 1, 2006 and September 11, 2006, between the State and Mr. Olsen the jailhouse informant.

III) As a result of an alleged note founded on petitioner incident to the February 9, 2006 VUCSA arrest, petitioner became a suspect into Detective Aakervik of SPD bank robberies investgation. On February 13, 2006 Detective Aakervik created a photo-montage, which was bias, and, impremissible=suggestive, resulting in a misidentification and miscarriage of justice.

IV) Court appointed counsel trial tactics denied petitioner equal protection by not moving to supress under CrR 3.5 hearing the State's jailhouse informant testimony, which probative value was substantially outweighed by the danger of unfair prejudice.

V) Other then the alleged palm-print dusted from the Key Bank, which the petitioner never denied being at this particular bank, a in-court Id based on a bias and impremissive photo-montage, and the prejudicial testimony of the jailhouse informant, there is know sufficient, or clear and undisputed evidences, put forward in the State's case-in-chief to substantiate a conviction of three counts

of first degree bank robberies or to prove each element beyond a reasonable doubt.

### C. STATEMENT OF THE CASE

On February 9, 2006 petitioner was arrested in Down Town Seattle for allegedly delivering a controlled substance to an undercover SPD Officer, incident to the arrest the arresting Officer found what appeared to be a Bank demand note on petitioner. On February 22, 2006 after being re-arrested for the February 9, 2006 incident, petitioner's was informed, for the first time, of the alleged demand note recovered from the petitioner on February 9, 2006, that the petitioner was under investigation for four counts of first bank robberies. See EX.1 (Summary and request for bail and conditions of release). On April 7, 2006 petitioner was charged with two counts of first degree bank robberies. Counts one, Sterling Saving Bank, December 27, 2005, and count two Key Bank, February 13, 2006. See EX.2 (information by DPA Laura Poellet WSBA#29137). On April 12, 2006 petitioner was granted a motion to proceed Pro-Se. See EX.3. On May 15, 2006 proceeding Pro-Se petitioner was denied a criminal motion, pursuant to cause number 06-1-03538-7 for a Bill of Particular and a request for a line-up. See Ex.4. On September 15, 2006 proceeding Pro-Se, petitioner was denied a criminal motion for a change of venue and severance of counts one and two. See EX.5. On December 14, 2006 petitioner was provided for the <sup>1st</sup> time discovery pertaining to the circumstances surrounding the State's jailhouse informant Mr. Olsen also charged with count three U.S. Bank, February 6, 2006 by amended information. See Ex.6, before the Honorable Laura Inveen. See (RP)1 27 at 4-25 and 28 at 1-22. On February 22, 2007 proceeding Pro-Se petitioner's motion to dismiss pursuant to CrR 26(b)(4), CrR 8.3(b)

and Kapstad motions was denied. See (RP)2 and (RP)2A. On March 6, 2007 petitioner unfortunately forfeited his Pro-Se status for reasons stated on the record pursuant to cause number 06-1-03538-7. See EX. 7. On May 10, 2007, over a year after being charged, petitioner was found guilty of three counts of first degree Bank Robberies, and sentenced to 150 months, Mr. Robert S. McKay appointed counsel of record. These Statements of Addiction Grounds follows the appellant's Brief filed on behalf of petitioner by Nielsen, Broman & Koch, Mr. Andrew P. Zinner as counsel, counsel for appellant.

D. ARGUMENT

1. The third party intrusion into petitioner's Pro-Se work-product denied petitioner rights to a fair trial, violating petitioner's constitutional rights pursuant to the Sixth Amendment of the U.S. constitution.

As a result of an alleged note that appeared to be a bank demand note founded on petitioner incident to the February 9, 2006, on April 7, 2006 petitioner was charged with two counts of first degree bank robberies, to-wit Sterling Saving Bank December 27, 2005, and Key Bank February 13, 2006. After informing petitioner on September 21, 2006 about Mr. Kevin Scott Olsen, the jailhouse informant, on December 14, 2006, do to Mr. Olsen alleged information provided to the State between September 1, 2006 and September 11, 2006, asserting that petitioner confessed to robbing banks, the State amended the information adding count three U.S. Bank February 6, 2006. After the Honorable Inveen compelled the State to disclosed to petitioner, for the first time, discovery about the September 1 and 11, 2006 meeting and follow-up with

Mr. Olsen, on February 22, 2007 petitioner moved to dismiss pursuant to CrR 8.3 (b) and CR 26 (b)(4). Governmental misconduct "need not be of an evil or dishonest nature: simple mismanagement is sufficient. See State V. Michielli, 132 Wn.2d 229, 937 P.2d 587 at 239 (emphasis omitted)(quoting State V. Blackwall, 120 Wn.2d 822, 831, 845 P.2d 1017 (1993). A trial court may not dismiss charged under CrR 8.3 (b) unless the defendant shows by a preponderance of the evidence (1) "arbitrary action or governmental misconduct" and (2) "prejudice affecting the defendant's right to a fair trial. State V. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). A trial court decision on a motion to dismiss under the rule is reviewed for manifest abuse of discretion. State V. Michielli, Supra. Here the record will show that the State's action constituted mismanagement by allowing Mr. Olsen to come back into contact after the first meeting on September 1, 2006. "Now, obviously Your Honor, candidly, the better practice would have been an immediate separation of the [Mr. McCoy and Mr. Olsen] parties". See (RP)2A 27 at 10-17, here the record reflects a prima facie showing that the prejudice outweighed any probative values of allowing Mr. Olsen to continue contact with petitioner after September 1, 2006, than re-contact Mr. Olsen on September 11, 2006 to require about additional information. "...Mr. Olsen on the 11th we [the State] brought Mr. Olsen on September 11th of '06 we brought Mr. Olsen back over to the SPD office this time where he provided a taped statement". See (RP)2 19 at 16-22., "... And I also brought up this that, that I just wanted to know if there was---did he gather any more information from McCoy from the time we first----." See (RP)2 21 at 12-25. Here the state not Mr. Olsen required about petitioner's

and the robberies allegations. 14 Washington Practice Civil Procedure Chapter 13 subsection 13.13 Work-Product Attorney's theories, strategies and the like, Hornbook, In Friedenthal Kane & Miller Civil Procedure subsection 7.5 (2d.ed) West Hornbook, the authors states: " Thus there is little doubt today that the Work-Product Doctrine extends to unwritten as well as written information. Further, the current federal rule gives the most complete protection to information regarding ' the mental impressions, conclusion, opinions, or legal theories of an attorney or other representative a party concerning the litigation whether that information is written or unwritten. Case law has extended the protection afforded a lawyer's mental impressions, opinions, conclusions and legal theories to oral deposition requests. Courts have established certain guidelines detailing the scope of deposition questioning of a deponent. Those guidelines prohibited questions about any matter that revealed counsel's mental impression concerning the case, including specific areas and general lines of inquiry discussed by opposing counsel with the deponent. and any facts to which opposing counsel appeared to have attached particular significance during conversation with the deponent. See again 14 Washington Practice, Textbook, In Haydeck, Herr & Stemple, Fundamental of Pretrial Litigation, subsection 5.7.4 (3d.ed). Here petitioner relies on the author's commentation in reference to the Work-Product Doctrine in 14 Washington Practic Civil Procedure Chapter 13, and asks that the court address the issue of Pro-Se incustody work-product protection for the frist time on appeal. Also that this court will consider petitioner's argument in his motion to dismiss in the trial court, before the Honorable Catherine Shaffer, and make a ruling if it finds any merit in reference to the

responsibilities and constitutional protection afforded an in-custody Pro-Se defendant, to-wit, surrounding the application of the work-product doctrine. See (RP)2A 8 at 1-25 and 9 at 1-11. In the State's response to petitioner's motion to dismiss the state response stated: " At the very most, this court would be in a position to suppress any statement made by the defendant during this time frame from the 1th through the 11th" See State's response to petitioner's motion to dismiss as EX 8 4 at 6-10. and 11-13., "...Additionally, the defendant will be unable to prove that his rights or ability to defend himself were compromised in any way..." However, the trial court held, " In terms of whether there's been prejudice to you, of course there's been material prejudice to you". Here the trial court without citing any authorities, but states a subjective ruling denying petitioner's motion on the grounds that in part, "... and that is that there was a waiver in this case...". See (RP)2A 35 at 15-16 Petitioner's rights to a fair trial was denied, and for the state not separating petitioner and Mr. Olsen after September 1, 2006 constitutes mismanagement of the case, which was not harmless but a reversible error. Even "high motives and zeal for law enforcement can not justify spying upon and intrusion into the relationship between a person accused of [a] crime and his counsel". For that reason, the court held that where the state intrudes on a defendant's right to effective representation by intercepting privileged communication between an attorney and his client, the only adequate remedy is dismissal. See State V. Granack, 90 Wash.App 598 959 P.2d 667 (1998). For the reasons stated, petitioner respectfully asks that the conviction pursuant to cause number 06-1-03538-7 be vacated and dismiss without prejudice.

2. Petitioner's rights to effective self-representation proceeding Pro-Se was violated by the State's delay tactics, and eleven hour response to petitioner's criminal motion for discovery disclosure pursuant to CrC 4.7.

Washington State's Constitution Article 1, section 10, Administration of justice provides: Justice in all cases shall be administered openly, and without unnecessary delay.

Although petitioner faced in-custody problems preparing his pro-se defense, the state was not candid with the court or petitioner about the witnesses interviews, to-wit one victim/teller Mr, Lee, which only after trial when petitioner unsuccessfully move the court for a new trial, did the state disclosed the facts concerning Mr. Lee's availability for interviews by the defense. "In fact, we got that on direct during his---during the State's questioning that he was, in fact terminated and convicted and on Federal probation and literally on electronic home detention and on leave from that detention to testify. See (RP)9 13 at 11-18. Here the record will show that proceeding pro-se the petitioner on or about July, 2006, requested an interview with the victim and witness from the February 13, 2006 incident, to-wit, the Key Bank, the request was to set up interviews with both Mr. Lee and Mrs. Huynh, victim/witness. On August 10, 2006, through stand-by counsel, the State informed petitioner that both Mr. Lee and Mrs. Huynh had been terminated from the Key Bank. See EX9. Also in August 2006, the State response to petitioner's request by arranging a phone interview with Mr. Lee, who at the time, according to the State was out the county and agreed to give a phone interview from Vietnam. On August 29, 2006;

September 15, 2006; November 29, 2006; March 14, 2007, petitioner was lead to believe by the state that the witness Mr. Lee was out of the county or was on vacation, only until April 30, 2007 did the state reveal that in fact Mr. Lee was convicted and had been on electronic home detention. See (RP) 26 at 4-25. "Because we didn't find anything in our system and the I had communication with his swapped message-- exchanged messages with his federal probation officer to make sure that he could come to the interview last week". See (RP) 26 at 18-23. The record here indicates that the state had a line of communication with the witness, to-wit, Mr. Lee but failed to disclose this contact information with the defense, which in this case constitutes mismanagement of the case, and in non-compliance with the ruling of the circuit courts which held: Initially we conclude, as we have in the past that "both sides have the right to interview witness before trial," See United States V. Cook, 608 F.2d 1175, 1180 (9th Cir 1979) cert, denied, 444 U.S. 1034 100 S.Ct 706, 62 L. Ed.2d 670 (1980); Callahan V. United States, 371 F.2d 658, 660 (9th Cir 1967). However, "abuses can easily result when officials elect to inform potential witness of their right not to speak with defense counsel." United States V. Rich, 580 F.2d 929 934 (9th Cir 1978). "Absent a fairly compelling justification, the government may not interfere with defense access to witnesses." United States V. Black, 767 F.2d 1334, 1338 (9th Cir)(Black) cert, denied, 474 U.S. 1022, 106 S.Ct 574, 88 L. Ed.2d 557 (1985).

On September 1, 2006, during an interview with a FBI and State informant, the informant at that time was housed with the petitioner in the King County Jail, Eastnine block, the informant in cell two and

petitioner in cell ten, the informant allegedly offered information concerning the pending robberies allegations, and asserted that the petitioner confessed to robbing banks. The informant also informed the state during the September 1, 2006 meeting, that the petitioner was Pro-Se and that he, the informant, had a research relationship with the petitioner that consisted of legal research of case law, and talking over defense strategies. See ES.10 ( September 11, 2006 taped and written statement taken from informant Kevin Scott Olsen). Here as with State's witness Mr. Lee, although the State obtained information from the informant on September 1 and 11, 2006, this discovery was not disclose to petitioner proceeding pro-se, until December 14, 2006. See (RP)1 26-28 at 1-22, See also (RP)2A 73-74 at 1-11. Not only did the State not disclose to the defense contact information to Mr. Lee, the State's witness, but also both Mr. Lee's and Mr. Olsen's criminal history. See (RP)3 31 at 15-23.'

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' Through out the remaining of this brief the Verbatim Report of Proceedings will referred to as follows: RP1 (One volumes of verbatim report of proceedings her and after (VRP), from Decmeber 14, 2006 before Honorable Laura Inveen reported by Jane Lamerle); RP2 (One volumes of (VRP) from February 22, 2007 before Honorable Catherine Shaffer, reported by Pete S. Hunt); RP2A (One volumes of (VRP) From February 23, 2007 before Honorable Catherine Shaffer, reported by Pete S. Hunt); RP3 (One volumes of (VRP) from April 30, 2007 before Honorable Paris K Kallas, reported by Pete S. Hunt); RP5 (One volumes of (VRP) from May 1, 2007 before Honorable Paris K. Kallas, reported by Joanne Leatiota); RP6 (One volumes of (VRP) form May 2, 2007 before Honorable Paris K. Kallas, reported by Joanne Leatiota); RP7 (One volumes of (VRP) from May 7, 2007 before Honorable Paris K. Kallas, reported by Joaane Leatiota); RP7 (One volumes of (VRP) from May 8, 2007 brfore Honorable Paris K. Kallas, reported by Joanne Leatiota); RP8 (One volumes of (VRP) form May 9, 2007 brfore Honorable Paris K. Kallas, reported Joanne Leatiota); RP9 (One volumes of (VRP) form May 22, 2007 before Honorable Paris K. Kallas, reported by Joanne Leatiota).

Here petitioner shows from the record a prima facie showing, that the State's conduct pertaining to witnesses, and discovery disclosure, constitutes mismanagement of the case, which delayed petitioner's proceeding pro-se from bring the case to trial in a timely manner, denying petitioner equal protection and due process of law, for these reasons petitioner respectfully asks this court to vacate the conviction and dismiss without prejudice.

3. The in-court identification of petitioner by the victim/witnesses was tainted by a prejudicial and bias photo-montage, which was impermissibly suggestive resulting in a miscarriage of justice.

As a result of an alleged bank demand note recovered from petitioner incident to an arrest on February 9, 2006, for allegedly delivering a controlled substance to an undercover SPD Officer, Detective Aakervik of the Seattle Police Department, on February 13, 2006 created a photo-montage, after unsuccessfully trying to have petitioner held in-custody pending a possible February 14, 2006 line-up. On February 27, 2007 Detective Aakervik conducted a photo-montage ID procedure from the photo-montage created on February 13, 2006, with the victims teller's and witnesses at the following Banks: 1.) Sterling Saving Bank incident date: December 27, 2005; 2.) Washington Mutual Bank incident date: December 31, 2005. Detective Aakervik also conducted a photo-montage ID procedure on March 2, 2006, with the victim/teller's and witnesses from the U.S. Bank incident date: February 6, 2006, also again at the Washington Mutual Bank, Supra, On February 13, 2006 the Key Bank was robbed, in which Detective Aakervik showed the victim/teller and witness the photo-montage he created on February 13, 2006.

Once a suspect is in custody there is less justification for employing the photograph identification procedure since a corporeal line-up is available. See State V. Thorkelson, 25 Wn.App. 615.611 P.2d 1278 (1980); modified 28

Wn.App. 606, 625 P.2d 726 (1981). On May 15, 2006 proceeding pro-se the trial court denied petitioner's criminal motion requesting that the State conduct a corporeal line-up with the victims/teller's and witnesses from the four alleged bank robberies. See EX.42 (Order on criminal motion, before the Honorable Theresa B. Doyle, Judge). In State V. Poulos, 31 Wn.App. 241, 640 P.2d 735 (1982) the court held: (pre-trial identificatuion of a suspect by means of photographs is proper so long as, under the totality of the circum-  
stances, the procedure is not so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification). Here during petitioner's trial, not only did Mr. Geoffery Loftus (photo-montage expert) testified to the impremissible suggestive montage, created by Detective Aakervik on February 13, 2006, as being biased, See (RP) 36 at 5-25 and 37 at 1-10, but also the victim/teller's and witnesses gave testimonies that the petitioner's photo in the montage was the darkest. The record will show that the teller from the December 27, 2005 incident, Mr. Marlana Willey, three times identified photo number one as the suspect and not petitioner's photo number five, stating that she was 90% sure of her pick; nevertheless, the day before her testimony, she received a call from the prosecutor, and even after taking the stand she selected photo number one. However, during the State's direct-examination, the prosecutor was allow, with know objection from defense counsel to bring the witness around to testify that she was 100% sure the petitioner was the suspect who robbed the Sterling Saving Bank on December 27, 2005. Without any objection from defense counsel, the prosecutor was allow to lead the witness on direct-exam to identify the petitioner's photo number five and not her pick of number one as the robbery suspect. See (RP) 6 at 21-25 and 28-29 at 1-24. This performance by defense counsel

falls below reasonable standard, denying petitioner effective assistance. Here the record will show that the witness from the Key Bank made an in-court ID based on bias photo-montage. See (RP) 6 57 at 17-25 and 58 at 1-3. The Sterling Saving Bank Witness when asked which person in the montage had the darkest complexion? the response was number five the petitioner. See (RP) 6 71 at 5-13, See also (RP) 6 87 at 7-15. After the State witness Mr. Lee confirmed that he in fact did see petitioner pass him in the hallway in hand cuffs, the prosecutor before calling Ms. Elwood and Ms Moore, witnesses from the sterling Bank, he went out into the hallway to have them both testify that they didn't see the petitioner walk pass them coming into the courtroom, but only when petitioner was coming out of the courtroom. See (RP) 6 9 at 6-7. The record will show that the teller from the U.S. Bank incident date: 2-6-06, that on March 2, 2006, according to Detective Aakervik Continuation Sheet, See EX10 406-5 at 27, "She continued to look at this photo and stated she wanted to pick #5, but was not 100% certain, After a couple of minutes she signed her name to the picture #5, but again stated that she can not be 100% certain." However, again during the prosecutor's direct-examination of this witness, she testified that on the above date in question, 3-2-06, she picked #5, and was 100% sure. Not only does this indicate the prosecutor leading the witness, but Mr. Eric Van Diest, state's witness from the U.S. Bank also, when asked by the prosecutor, "...what was it that made you want to point to [photo #5] that? Which the witness replied, " The skin tone". On cross-examination Mr. Eric

Van Diest testified that both he and Ms. Fung was present during Detective Aakervik showing of the photo-montage, and when asked " so you were present when Ms. Fung made her choice?", Mr. Eric replied, " If I remeber correctly, she did not pick one either. Yeah, she did not pick one either".<sup>2</sup> Herein light of the bias montage, and inconsistance of the witnesses and tellers, the record here on its face reflects a prima facie showing that the in-court identification of petitioner was tainted by a bias and impremissibly suggestive montage, resulting in a irreparable misidentification and a miscarriage of justice. Therefore, petitioner respectfully asks that this court vacate the conviction and dismiss without prejudice.

4. Court appointed counsel actions felled below an objective standard of reasonable, and deficient and unreasonable performance, denied petitioner the right to effective assistance of counsel.

Court appointed counsel, to-wit, Mr. Robert S. McKay denied petitioner the right to effective assistance of counsel depriving petitioner due process and equal protection, pursuant to the Fourteenth Amendment, section 1, of the U.S. constitution which provides in part: ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

<sup>2</sup> (RP) 6 160 at 14-21

Here court appointed counsel deprived petitioner of equal protection by not requesting a CrR 3.5 hearing to suppress the testimony of the State's jailhouse informant, which probative value was outweighed by the danger of unfair prejudice. ER 602 provides in part: A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. For the reasons argued above in petitioner's assignment of error one, the information the informant provided to the Detective, other than petitioner's work-product was from the Detective's own source, to-wit, the discovery from his investigation turned over to the petitioner proceeding pro-se. Here during the Detective testimony at petitioner's motion to dismiss, the Detective clearly stated: "...There really wasn't any information for me to gather. Everything Mr. Olsen provided I already knew. There wasn't any information that I needed, even if I wanted to there wasn't any information that I needed to get".<sup>3</sup> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, to be misleading the jury, or by consideration of undue delay, wasted of time, or needless presentation of cumulative evidence. See ER 403, Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time. Here the informant testimony was not personal knowledge, but only cumulative information from petitioner's pro-se discovery, therefore, the petitioner was

<sup>3</sup> (RP) 2 36 at 19-23

prejudiced by the informant testimony which exposed the jury to petitioner's in-custody status. Here court appointed counsel closed the door on the trial Judge to determine whether the danger of undue prejudice outweighed the probative value of allowing the witness to testify, exposing the jury to the in-custody relationship between the informant and petitioner. See (RP) 3 at 21-25 and 4-5 at 1-6. This decision by court appointed counsel denied petitioner equal protection pursuant to the U.S. constitution Sixth, and Fourteenth Amendment. By advising petitioner to take the stand before resting the defense case-in-chief, even after the petitioner expressed there were no need for taking the stand, court appointed counsel stated that petitioner needed to give his side of the story about the relationship between petitioner and the informant, also that the jury had already been informed that I, the petitioner was in-custody, which court appointed counsel, and not the prosecutor open the door allowing the jury to know of petitioner's in-custody status, and criminal history. See (RP) 6 35 at 14-25. Where defense counsel elicited defendant telling jury about prior crimes, which would have been excluded if the prosecutor had tried to present to the jury, counsel was ineffective. See State V. Saunders, 91 Wn.App 575 (1998). Here the record will also show that the trial Judge, although defense counsel indicated he may or may not impeach State's witness Mr. Lee See (RP) 3 27 at 17-25 and 28 at 1-6, makes it real clear that the Court's Rules and constitution allow for the impeachment

of Mr. Lee. Proceeding pro-se, petitioner turned over an impeachment vehicle, to wit, Corporate Security Investigation Summary, outlining the circumstances surrounding Mr. Lee's determination from Key Bank, for embezzling \$10,000,00. See Appendix A. During cross-examination of Mr. Lee defense counsel knowing the circumstances of Mr. Lee determination didn't impeach; nevertheless, after advising petitioner to take the stand, defense counsel almost immediately impeach petitioner unexpectedly about his criminal history. See (RP)5 92 at 14-25 and 93 at 1-10. In State V. Klinger 96 Wn.App 619 (1999), concerning absence of tactical reason, the court held: Must show counsel felled below objective standard, reasonable probability this changed the result. Counsel's tactics are assumed valid, unless there is an absence of tactical reason for counsel's action. Here not only did defense counsel advise petitioner to take the stand, but failed to turn over or call an expert witness to wit Mr. Eric Blank (Video Tape Analyst Expert) to counter rebuttal the State's mis-representation of the surveillance tape from the Key Bank, and the testimony of the State's witness Mr. Lee testifying, in reference to the suspect hands being on the teller's counter. See Appendix B. This action by defense counsel prejudice the petitioner and effected the outcome of the trial. During re-direct-examination, here defense counsel trial tactics, intentionally asked petitioner a question then cross-up petitioner and leaves petitioner deying-in-the-dust. See (RP)5 121 at 9-21. For the above reasons petitioner asks

that this court vacate and dismiss without prejudice.

5. The evidence relied on in the State's Case-In- Chief was insufficient to substantiate the convictions of three counts of First Degree Bank Robberies, or prove each element beyond a reasonable doubt, pursuant to RCW 9A.56.200(1)(b).

The State's chief-evidence that was used to charge and convict petitioner with three counts of bank robberies was as follows: (1) An alleged bank demand note recovered from petitioner person on February 9, 2006; (2) A latent-print allegedly dusted from one of the teller's window/counter; (3) An in-court identification; and (4) The testimony of a jailhouse informant.

Pursuant to RCW 9A.56.200(1)(b) and the State's jury instructions 16, the statute and instructions stated as follows:

To convict the defendant of the crime of robbery in the first degree..., each of the following elements of the crime must be proved beyond a reasonable doubt; (1...); (2...); (3), That the taking was against the person's will by the defendant's use or threatened use of immediate force, violence or fear of injury to that person; (4) That force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking; (5) That the defendant committed the robbery within and against a financial institution; (6...).

Other than the above elements(5), that there were three banks, or financial institutions, and (6) that the incident occurred in the state of Washington, the evidences relied on by the State, didn't support the guilty verdict of three counts

first degree robberies. Here concerning the State's chief-evidence relied on. Frist, the alleged bank-demand note, although the trial Judge denied the admission of the alleged note recovered from the petitioner on February 9, 2006, its what resulted in petitioner's trial and conviction on May 10, 2007. "...And I believe it was this note on the defendant which really triggered the police officer's focus on him as a suspect in this string of bank robberies...". See (RP)3 19 at 1-4. "...This is very probative critical evidence in this case and we would ask the court to allow this in...". See (RP)3 24 at 20-22. "...If I were sitting as a juror in this case, I think my natural question would be, why did they---A, why did they--- what focused their attention on Mr. McCoy; and ultimately, they didn't just pick him out of thin air...". See (RP)7 159 at 11-16. Again, if it wasn't for this alleged note there never would have been a trial resulting in a conviction for three counts of first degree bank robberies.

Second, The latent-print allegedly dusted from one of the teller's window, to-wit, the February 13, 2006 Key Bank incident the record do not clearly or convincingly support the state's claim that the defendant's print was lifted from said location 1.) There were no other officer besides Officer Green who initial to verify the alleged lift location, and 2.) although the State in its case-in-chief presented many pictures of the bank and the teller's counters, there is not one picture taken of the alleged dusted latent-print. Only after being informed about petitioner's legitimate access defense through the jail informant, did Detective

Aakervik conducted an investigation into tracking down the cleaning actual or alleged cleaning person. In State V. Garza, 99 Wash.App 291, 994 P.2d 868 (200), the court held:

The United States Supreme Court subsequently has rejected a per se rule that any government intrusion into private attorney-client communication establishes a Sixth Amendment violation of a defendant's right to counsel. *Weatherford v. Bursey*, 429 U.S. 545, 97 S.Ct. 837, 51 L.Ed.2d 30(1977). The constitutional validity of a conviction in these circumstances will depend on whether the improperly obtained information has "produced, directly or indirectly any of the evidence offered at trial." *Id.* at 552, 97 S.Ct. 837. In the wake of *Weatherford*, federal courts have not been clear as to which party bears the burden of proving prejudice or lack of prejudice or whether prejudice may be presumed in some circumstances. See *Shillinger v. Haworth*, 70 F.3d 1132, 1140-40 (10th Cir. 1995); ...In *United States v. Irwin*, 612 F.2d 1182 (9th Cir 1980), the Ninth Circuit court appeared to hold the burden was the defendant's: Prejudice can manifest itself in several ways. It results when evidence gained through the interference is used against the defendant at trial. It also can result from the prosecution's use of confidential information pertaining to the defense plans and strategy, from government influence which destroys the defendant's confidence in his attorney, and from other actions designed to give the prosecution an unfair advantage at trial.

Here the state presented a clearing record, which the clearing person testified that the bank surveillance cameras

was on during the time he allegedly was clearing the teller's counter in question. See (RP)7 29 at 2-7. Here the same surveillance tape was used, although Mr. Blank (Video tape analyst expert) after examining the tape on behalf of the defendant, to-wit, myself proceeding pro-se, reported that the tape in question shows little information and up to 90% of the activities is miss viewed from the surveillance tape in question, again this tape was used to impeach my testimony that I was at the bank on February 13, 2006 around 10:00am to 10:30am. This viewing of this mis-represented surveillance tape by the jury, according to the prosecutor and defense counsel is what convicted petitioner. See(RP)9 14 at 24-25 and 15 at 1-6.

As stated in Mr. Blank report, defense counsel was aware of his conclusion, and the suggested questions for cross-exam. The record will show that the trial Judge open the door for the defense to call for defense's expert witness, to-wit, the testimony of Mr. Blank, See (RP)8 42 at 17-19. Instead, defense counsel called the State's witnesses, Detective Aakervik, and Mr. Read (a support employee). See(RP)8 37 at 2-6 and 28 at 17-25 and 29-31 at 1-16, as lay-rebuttal witnesses, when defense had available expert rebuttal testimony from Mr. Eric Balnk.

Thrid, the state argued that in each one of the bank robberies the defendant was identified. Here the records speaks for itself. Only the witness that the state was able to lead into identifying the petitioner as the robbery suspect. Here with EX.4 the record shows that the State denied petitioner's request for a

line-up with all victim/teller's and witnesses from the four robberies incidents on May 15, 2006. This would have clarified any and all identification issues, but instead, petitioner's conviction was based on a bias and prejudicial photo-montage.

Fourth, although the trial court Judge dismissed the alleged bank-note, which the State's informant would have testified, asserting that the petitioner confessed to having someone else, to-wit, Ms. Mary Young, write the note. Petitioner's expert handwriting examiner Ms. McFareland would have testified that petitioner or Ms. Young ~~wasn't~~ the author of the alleged bank-demand note. See (RP)3 11 at 16-25, and 12 at 1-11. By defense counsel not moving the court, pursuant to CrR 3.5 to suppress the prejudicial testimony of the State's informant, See (RP)3 4 at 15-25 and 5 at 1-10, denied petitioner effective assistance, and representation pursuant to Six Amendment of the U.S. constitution. It has been settled throughout our history that the constitution protects every criminal defendant "against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged". In re Winship, 397 U.S. 358, 364, 25 L.Ed.2d 368, 90 S.Ct. 1068 (1970). It is equally clear that the "constitution gives a criminal defendant the right to demand that the jury find him guilty of all the elements of the crime with which he is charged". United States V. Gaudin, 515 U.S. 506, 511, 132 L.Ed.2d 444, 115 S.Ct. 2310 (1995). These basic precepts, firmly rooted in the common law, have provided the

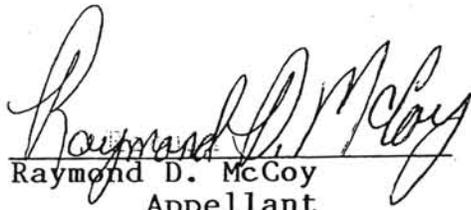
basis for recent decisions interpreting modern criminal statutes and sentencing procedures. See United States V. Booker, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), citing In re Winship and U.S. V. Gaudin, *Supra*. For the reasons stated above, and according to the record pursuant to the above cause number, the evidences relied upon and the mis-representation of the facts, to-wit, the contents of the surveillance tape, the evidence here use to convict petitioner was insufficient to substantiate the conviction of three counts of first degree bank robberies, or prove beyond a reasonable doubt each and elements of the crimes pursuant to RCW 9A.56.200(1)(b), and for these reasons petitioner asks that this court vacate and dismiss without prejudice.

#### ENCLOSURE CONCLUSION

Petitioner was denied equal protection and due process of law when the trial court, 1) denied petitioner's criminal motion for a line-up on May 15, 2006; 2) The trial court, criminal presiding Judge, denied petitioner's motion to dismiss pursuant to CrR 8.3(b) and CR 26(4)(b). on February 23, 2007 without balancing the record with any judicial controlling authorities. Finally, the evidence presented in the State's Case-In-Chief was insufficient to with stand the check and balance of constitutional scrutiny of the elements to charge and convict pursuant to RCW 9A.56.200(1)(b). Therefore, in the fairness of justice, the conviction pursuant to cause

number 06-1-03538-7SEA should be vacate and dismiss without prejudice.<sup>22</sup>

Submitted this 18 day of January 2008

  
Raymond D. McCoy  
Appellant

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<sup>22</sup> Petitioner submits Appendixs A&B to assist the court with petitioner's ineffective assistance and representation, error and assignment of error. Although defense counsel failed to turn over the report from Mr. Blank or use the impeachment vehicle, to-wit, Investigation report on State's witness Mr. Lee. Petitioner ask that the Appeals Court consider these appendixs under the res gestae exception.

# **Appendix D**

**State's Response to Defendant's Motions**



1 Based on one sentence in a follow-up report submitted in this case by Seattle Police Detective Dag  
2 Aakervik, the defendant is claiming misconduct on the part of the police and State. His claim is  
3 without merit, as outlined below, and should be denied.

4 Det. Dag Aakervik will testify that he was contacted by an FBI agent and a local detective regarding  
5 an interview that was occurring on September 1, 2006, with a known FBI source. When the Agent and  
6 Detective were interviewing the source (later identified as Kevin Scott Olsen) the source offered  
7 information regarding bank robberies allegedly committed by defendant Raymond McCoy. Det.  
8 Aakervick sat in the room and documented statements made by Mr. Olsen. No information about the  
9 pending robberies was provided to Mr. Olsen. According to Detective Aakervik's follow-up report,  
10 Mr. Olsen stated the following (see also attachment #2, the follow-up report by Det. Aakervik):

- 11 • He had regular contact with McCoy and that he knew that Mr. McCoy was defending  
himself on bank robbery charges.
- 12 • That Mr. McCoy had admitted to him that he robbed some banks in Seattle and that he  
13 used the money to buy crack cocaine. He told the source that he got caught when he was  
arrested for narcotics and the police found a demand note on him.
- 14 • McCoy said that his right palm print was lifted from the bank counter at one of the  
robberies.
- 15 • He said that Mr. McCoy was having a handwriting expert examine the note to show that he  
did not write it. The defendant added that the note was actually written by a female friend.
- 16 • The defendant discussed possible defense for having his handprint on the teller counter.  
Olsen suggested that McCoy might say that he was at the counter at an earlier time.
- 17 • At this point in the report, at the end of the entry for that day the detective wrote the  
following:
- 18 • "The source stated that he would continue his relationship with McCoy and contact us if he  
obtains further information."

19 This last entry in the report is the basis of the defendant's motion. Detective Aakervik will testify  
20 that it was not his intention to send Mr. Olsen back in the jail to spy on the defendant. He did not ask  
21 Mr. Olsen to get more information and did not consider Mr. Olsen his "agent." Moreover, Mr. Olsen  
22 will testify that he did not consider himself an agent and did not go back into the jail with the express

1 purpose to obtain more information about the defendant. Mr. Olsen is expected to testify that he did  
2 not approach Mr. McCoy in order to obtain more information.

3 The evidence and testimony will demonstrate that no one asked Mr. Olsen to spy on the defendant  
4 or inquire as to his legal strategy. In fact, most of the usable information or evidence was essentially  
5 known to Detective from his interview on September 1, 2006.

6 On September 11, 2006, Detective Aakervik took a written and tape recorded statement from Mr.  
7 Olsen. These statements were promptly turned over to the defense. When the State disclosed the  
8 reports and identity of the witness, the State's DPA, Ferrell, called over to the jail to ensure that a "keep  
9 separate order" was entered. The purpose of that order, at that time, was to ensure the safety of the  
10 witness, Mr. Olsen. See Attachment #3 for the copies of the handwritten statement and transcribed  
11 taped statement.

12 In State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2203), the Washington State Supreme Court  
13 ruled on the issue of dismissal pursuant to CrR 8.3 (b) by observing, "In light of the prior case law and  
14 the 1995 amendment, this court has determined that a trial court may not dismiss charges under CrR  
15 8.3 (b) unless the defendant shows by a preponderance of the evidence (1) "arbitrary action or  
16 governmental misconduct" and (2) "prejudice affecting the defendant's right to a fair trial." *Citing*  
17 Michielli, 132 Wn.2d at 239-40. "Dismissal of charges is an extraordinary remedy. . . available only  
18 when there has been *prejudice to the rights of the accused which materially affected the rights of the*  
19 *accused to a fair trial.* Rohrich, at 653, citing *State v. Baker*, 78 Wn.2d 327, 332-33, 474 P.2d  
20 254(1970).

21 In this case, the defendant will be unable to prove either prong of the two part test required for  
22 dismissal. In retrospect, the better practice would have been to separate the defendant from Mr. Olsen,

STATE'S RESPONSE TO DEFENDANT'S MOTIONS

- 3

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1 but that was not required here. There is no evidence to suggest that Mr. Olsen was sent back to the jail  
2 as an agent of the State or with any kind of directive to spy of the defendant. It just simply did not  
3 occur. The State denies any and all claims of such agency or actions. Instead, the detective just  
4 included one line in his report that stated Mr. Olsen would let him know if anything else came to his  
5 attention.

6 Mr. Olsen will testify that he did not obtain any additional information from Mr. McCoy between  
7 September 1<sup>st</sup> through the 11<sup>th</sup>. At the very most, this court would be in a position to suppress any  
8 statements made by the defendant during this time-frame from the 1<sup>st</sup> through the 11<sup>th</sup>. However, the  
9 defendant will be unable to demonstrate that any new information was garnered during that time  
10 period.

11 The defendant will be unable to prove any kind of misconduct of the State. Additionally, the  
12 defendant will be unable to prove that his rights or ability to defend himself were compromised in any  
13 way. Defendant's motion is wholly without merit and should be denied.

14 **B. State's motion to join offenses (Counts I and II joined in September of 2006).**

15 **1. Joinder is within the Court's discretion and is appropriate here.**

16 Joinder of offenses is governed by CrR 4.3 and RCW 10.37.060. The rule does not  
17 supersede the statute, and they are consistent. State v. Thompson, 88 Wn.2d 518, 525, 564 P.2d 315  
18 (1977).

19 RCW 10.37.060 provides:

20 When there are several charges against any person \* \* \* for two or more acts or  
21 transactions of the same class of crimes or offenses . . . which may be properly  
22 joined, instead of having several indictments or information the whole may be joined  
in one indictment, or information, in separate counts; and, if two or more indictments  
are found, or two or more information filed, in such cases, the court may order such  
indictments or information to be consolidated.

1 Similarly, CrR 4.3 provides in part:

2 **Joinder of Offenses.** Two or more offenses may be joined in one charge, with each offense  
3 stated in a separate count, when the offenses, whether felonies or misdemeanors or both:

- 4 (1) are of the same or similar character, even if not part of a single scheme or plan; or  
5 (2) are based upon the same conduct or on a series of acts connected together or  
6 constituting part of a single scheme or plan.

7 In the present case, all three counts allege robberies from financial institutions in downtown  
8 Seattle. Counts I and II allege violation dates of December 27, 2005, and February 13, 2006,  
9 respectively. Count III alleges the robbery took place on February 6, 2006. All of these robberies  
10 are of the same nature and character and within a narrow geographical area. These counts should be  
11 joined for trial.

12 Washington courts have consistently treated CrR 4.3 as a liberal joinder rule that vests the  
13 trial court with broad discretion. State v. Eastabrook, 58 Wn. App. 805, 811, 795 P.2d 151 (1990);  
14 Thompson, 88 Wn.2d at 525; accord State v. Robinson, 38 Wn. App. 871, 881, 691 P.2d 213  
15 (1984); State v. Hentz, 32 Wn. App. 186, 189, 647 P.2d 39 (1982). See also State v. Bythrow, 114  
16 Wn.2d 713, 717 (1990) (trial court refusal to sever counts "is reversible only upon a showing that  
17 the court's decision was a manifest abuse of discretion").

18 "Separate trials are not favored in Washington, and defendants seeking severance have the  
19 burden of demonstrating that a joint trial would be so manifestly prejudicial as to outweigh the  
20 concern for judicial economy." State v. Phillips, 108 Wn.2d 627, 640, 741 P.2d 24 (1987)(emphasis  
21 supplied). A broad joinder rule comports with the "important public policy of conserving judicial  
22 and prosecutorial resources." Heintz, 32 Wn. App. at 189. See Bythrow, 114 Wn.2d at 722  
(defendant seeking severance must not only show prejudicial effects of joinder, "but . . . must also  
demonstrate that a joint trial would be so prejudicial as to outweigh concern for judicial economy").

1 Absent a showing of substantial prejudice to the defendant, liberal use of joinder is favored.  
 2 State v. Culver, 36 Wn. App. 524, 529-30, 675 P.2d 622 (1984). The following factors can be  
 3 analyzed in deciding if there is undue prejudice to the defendant:

- 4 (1) The strength of the state's evidence on each count;
- 5 (2) The clarity of defense to each count;
- 6 (3) Proper jury instructions to consider the evidence of each crime; and
- 7 (4) The admissibility of the evidence of the other crimes even if charged separately, or  
 8 never charged or joined.

9 Eastabrook, 58 Wn. App. at 811-12; Robinson, 38 Wn. App. at 881-82; State v. Sanders, 66 Wn.  
 10 App. 878, 833 P.2d 452 (1992); State v. Harris, 36 Wn. App. 746, 750, 677 P.2d 202 (1984); State  
 11 v. Dowell, 16 Wn. App. 583, 585, 557 P.2d 857 (1976). See also Bythrow, 114 Wn.2d at 718  
 12 (explaining factors).

13 The Supreme Court analyzed the factors listed in Robinson and affirmed joinder of two  
 14 unrelated robbery charges in State v. Bythrow, 114 Wn.2d 713, 790 P.2d 154 (1990). The defendant  
 15 in that case was convicted of both robberies at trial. He had argued it was inevitable that the jury  
 16 would use evidence of one charge to infer guilt on the other, and that it would use evidence of one  
 17 to discount the proffered defense to the other. Bythrow, 114 Wn.2d at 718.

18 Even though evidence of one of the robberies would not have been independently admissible  
 19 in the trial of the other robbery, the court affirmed joinder of the two trials:

20 Even where the evidence of one count would not be admissible in a separate trial of  
 21 the other count, defendant's proposition that severance is required in every case is  
 22 erroneous.

1 *Id.* 114 Wn.2d at 721. The court gave credit to the jurors' ability to separately consider the evidence,  
2 especially when the trial involves relatively uncomplicated factual issues and is not lengthy:

3           When the issues are relatively simple and the trial lasts only a couple of days, the jury  
4           can be reasonably expected to compartmentalize the evidence. Under these  
5           circumstances, there may be no prejudicial effect from joinder even when the  
6           evidence would not have been admissible in separate trials.

7 *Id.* 114 Wn.2d at 721 (emphasis supplied). In the immediate case, the allegations are simple and  
8 straight-forward. The evidence is even more compelling when considering the closeness in time,  
9 the similarity of the offenses and the evidence. There is nothing to indicate that joinder would pose  
10 any particular difficulty to a jury in their decision-making process.

11           The court also considered the strength of the State's case and stated that where there is strong  
12 evidence of guilt, joinder is appropriate:

13           . . . [W]e look to the strength of the State's evidence to determine whether a  
14           prejudicial effect will be produced by joinder. When the State's evidence is strong on  
15           each count, there is no necessity for the jury to base its finding of guilt on any one  
16           count on the strength of the evidence of the other.

17 *Id.* 114 Wn.2d at 721.

18           The court heavily stressed the importance of judicial economy when weighed against the  
19 minimal likelihood of prejudice through joinder:

20           [A defendant] must not only establish that prejudicial effects of joinder have been  
21           produced, but . . . must also demonstrate that a joint trial would be so prejudicial as  
22           to outweigh concern for judicial economy.

23 *Id.* 114 Wn.2d at 722.           As shown in Bythrow, even if the court finds that the evidence of the  
24 separate crimes is inadmissible under ER 404(b), that decision alone does not require severance.  
25 Considerations of judicial economy may justify joinder even when evidence of other crimes is  
26 inadmissible under ER 404(b). See, e.g., State v. York, 50 Wn. App. 446, 749 P.2d 683 (holding

1 that the defendant bears the burden of proving that the denial of severance was an abuse of  
2 discretion). (1987); State v. Standifer, 48 Wn. App. 121, 127, 737 P.2d 1308, review denied, 108  
3 Wn.2d 10335 (1987). For example, in Phillips, 108 Wn.2d 627, the court held that "The mere fact  
4 that evidence admissible against one defendant would not be admissible against a codefendant if the  
5 latter were tried alone does not necessitate severance."

6 Like Bythrow, the charges in these cases involve simple factual issues. Trial will be  
7 relatively short. The jury can be expected to follow the court's instructions to separately consider  
8 the evidence on each count. The State's evidence is relatively strong. The defense is anticipated to  
9 be similar in all cases, and no confusion will result to the defendant in presenting those defenses by  
10 joinder of the charges.

11 The defendant can point to no substantial prejudice which would outweigh the judicial  
12 efficiency and economy obtained through joinder. Any prejudice that exists is that which exists  
13 anytime there are multiple charges against a defendant.

14 **2. Joinder of "same or similar" crimes is appropriate.**

15 Washington courts have repeatedly allowed joinder of the counts charging different crimes  
16 on the ground that the charges were of the "same or similar" character. See State v. Ben-neth, 34  
17 Wn. App. 600, 663 P.2d 156 (1983) (joinder of six counts of unlawful bank check issuance allowed  
18 as charges of "same or similar" character and part of common scheme). See also State v. Long, 65  
19 Wn.2d 303, 396 P.2d 990 (1964) (joinder of two robberies committed minutes apart in adjacent  
20 motels upheld); State v. Weddel, 29 Wn. App. 461, 629 P.2d 912 (1981) (joinder of burglary and  
21 separate attempted burglary). Even joinder of crimes committed over a period of months is likewise  
22 proper. See, e.g., State v. Ramel, 65 Wn.2d 326, 396 P.2d 988 (1964) (four counts of indecent

1 liberties over 5-month period); State v. Dowell, 16 Wn. App. 583, 587, 557 P.2d 457 (1976)  
2 (joinder of sex offenses against separate victims although "separated in time by several months.").

3 Clearly, these crimes are all related, were all committed against financial institutions within  
4 a very close and defined geographical location. Joinder is highly appropriate for this reason alone.

5 **3. Judicial economy will be accomplished.**

6 The key in deciding joinder issues is efficiency and judicial economy. As the Washington  
7 Supreme Court observed in Bythrow:

8 Any residual prejudice resulting from joinder in this case must be weighed against  
9 the concerns for judicial economy. Foremost among these concerns is the  
10 conservation of judicial resources and public funds. A single trial obviously only  
11 requires one courtroom and judge. Only one group of jurors need serve, and the  
12 expenditure of time for jury voir dire and trial is significantly reduced when the  
13 offenses are tried together. Furthermore, the reduced delay on the disposition of the  
14 charges, in trial and through the appellate process, serves the public. We find these  
15 considerations outweigh the minimal likelihood of prejudice through joinder of the  
16 charges in this case.

13 114 Wn.2d at 723 (emphasis supplied). To try Counts I and II separately from count III would  
14 merely waste scarce judicial resources, especially since evidence of these crimes separately would  
15 be admissible anyway. The jury would surely hear about the defendant's actions in the other causes,  
16 based on their admissibility under an ER 404(b) analysis to prove identity, motive, and intent.

17 The jury is entitled to hear all of the evidence at the same time and consider the entire  
18 version of events.

19 **D. CONCLUSION**

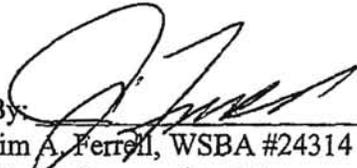
20 Joinder of the charges here is appropriate under CrR 4.3(a) and RCW 10.37.060. The three  
21 counts being charged are not factually complex, they all involve the same narrow geographical area,  
22 that all occurred within a fairly short period of time. The defendant cannot demonstrate substantial

1 prejudice warranting separate trials. In the interest of judicial economy and promotion of justice,  
2 joinder of offenses is proper, and the charges should be joined for trial.

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DATED this 21<sup>st</sup> day of February, 2007.

NORM MALENG  
King County Prosecuting Attorney

By:   
Jim A. Ferrell, WSBA #24314  
Deputy Prosecuting Attorney  
Attorneys for King County

CAUSE NO. \_\_\_\_\_



SEATTLE  
POLICE  
DEPARTMENT

**CERTIFICATION FOR DETERMINATION  
OF PROBABLE CAUSE**

INCIDENT NUMBER	05-547018
UNIT FILE NUMBER	91A-SE-92016

That D.T. Aakervik is a Detective with the Seattle Police Department and has reviewed the investigation conducted in Seattle Police Department Case Number 05-547018;

There is probable cause to believe that Raymond McCoy committed the crime(s) of Robbery.

This belief is predicated on the following facts and circumstances:

**(1) SPD 05-547018**

On 12-27-2005 at about 123PM a lone B/M entered and robbed the Sterling Savings Bank, 1406 4<sup>th</sup> Ave, Seattle WA. The suspect approached the victim teller, reached over the counter and said "GIVE ME THE MONEY." The teller was holding money in her hand and reacted as if he were joking. The suspect stated 'THIS IS NO JOKE, THIS IS A ROBBERY, GIVE ME THE MONEY.' The teller complied and the suspect fled the bank on foot.

The robbery was captured on the banks surveillance system and a subsequent audit revealed a loss of \$450.00.

The suspect was described as:

Race: Black  
Sex: Male  
Age: 40's  
Height: 600  
Build: Slim  
Complexion: Dark  
Clothing: Dark jacket & baseball type cap

**(2) SPD 05-552486**

On 12-31-2005 at about 11AM a lone B/M entered and attempted to rob the Washington Mutual Bank, 1501 4<sup>th</sup> Ave, Seattle WA. The suspect approached the victim teller, and in a low voice stated "GIVE ME." When the teller asked him to repeat himself the suspect again stated "GIVE ME." When asked to repeat himself a third time the suspect stated "RIGHT NOW, I'M NOT JOKING." At this time the branch manager approached and the suspect fled the bank without any money. The attempt robbery was captured on the bank surveillance system.

The suspect was described as:

Race: Black  
Sex: Male  
Age: 40's  
Height: 602-604  
Build: Medium  
Complexion: Dark  
Clothing: Black windbreaker-type zippered jacket, dark pants, dark Nike cap



SEATTLE  
POLICE  
DEPARTMENT

**CERTIFICATION FOR DETERMINATION  
OF PROBABLE CAUSE**

INCIDENT NUMBER	05-547018
UNIT FILE NUMBER	91A-SE-92016

**(3) SPD 06-052027**

On 02-06-2006 at about 1130AM a lone B/M entered and robbed the US Bank, 2401 3<sup>rd</sup> Ave, Seattle WA. The suspect approached the victim teller and produced a demand note that read something to the effect of "PULL OUT MONEY, THIS IS NOT A GAME." The suspect verbally stated "THIS IS NOT A GAME, DO IT! As the teller was collecting the money the suspect became impatient, reached over the counter and grabbed the remaining money. The fled the bank on foot.

The robbery was captured on the banks surveillance system and a subsequent audit revealed a loss of \$2,081.85.

The suspect was described as:

Race: Black  
Sex: Male  
Age: 35-40  
Height: 600  
Weight: 170-180  
Build: Medium  
Complexion: Dark  
Clothing: Grey polar fleece type jacket, blue jeans, red Nike cap, glasses

On 02-09-2006 the Seattle Police Department W-ACT team conducted a buy / bust operation in the downtown corridor. At about 10PM a B/M, later identified as Raymond McCoy DOB 08-10-1959, sold rock cocaine to an undercover police officer for \$20.00. McCoy was immediately taken into custody without incident. The pre-recorded buy money (\$20.00 bill) was recovered from McCoy and the crack cocaine field-tested positive for the presence of cocaine. Also located on McCoy was a demand note that read "ATTENTION THIS IS A HOLD UP PLEASE NO DYE PACKS OR TRACKING DEVICES." McCoy was booked into the King County Jail for VUCA Delivery (See SPD 06-056860).

On 02-10-2006 Detective Aakervik of the Puget Sound Violent Crimes Task Force received a copy of the narcotics arrest report and quickly noted that McCoy's physicals closely match that of the robbery suspect. Detectives Aakervik and Rodgers responded to the King County Jail in an attempt to interview McCoy regarding the demand note. McCoy refused to cooperate or leave his cell. Later that evening McCoy was released from jail.

On 02-13-2006 Detective Aakervik created a montage containing a photo of McCoy and made arrangements to meet with victims and witnesses from the three robberies.

**(4) SPD 06-062738**

On 02-14-2006 at about 320PM a lone B/M entered and robbed the Key Bank, 666 S. Dearborn, Seattle WA. The suspect approached the victim teller and presented a demand note that stated something to the effect of 'ATTENTION THIS IS A HOLD UP PLEASE REACH INTO



SEATTLE  
POLICE  
DEPARTMENT

**CERTIFICATION FOR DETERMINATION  
OF PROBABLE CAUSE**

INCIDENT NUMBER	05-547018
UNIT FILE NUMBER	91A-SE-92016

DRAWER AND GET YOUR \$100'S AND CAREFULLY PLACE INTO THE PLASTIC BAG.' The victim teller complied and the suspect fled the bank on foot.

The robbery was captured on the banks surveillance system and a subsequent audit revealed a loss of \$845.00. Latent prints were lifted from the victim teller's window and submitted into SPD Evidence for analysis.

The suspect was described as:

Race: Black  
Sex: Male  
Age: 30's  
Height: 602  
Build: Medium  
Complexion: Dark  
Clothing: Black jacket

While investigating the robbery at the bank Detective Aakervik showed the montage to two victim / witness tellers. One teller pointed to McCoy's photo in the montage, but was not positive and thought that the suspect may have been a little younger. The second teller was unable to make a pick. The wording on this demand note was very similar to the wording on the demand note recovered from McCoy.

On 02-16-2006 Detective Aakervik received a SPD Fingerprint Analysis Report. One of two cards of lifted prints from the Key Bank robbery (06-62738) was of comparison value.

On 02-21-2006 McCoy was re-arrested for an outstanding \$50,000.00 VUCSA warrant and booked into the King County Jail. Detective Aakervik requested Raymond D. McCoy's fingerprints be compared to the latent prints recovered from the Key Bank robbery.

Detective Aakervik contacted witnesses & victims from the first three robberies and showed them montages containing a photo of McCoy. The results were:

**Sterling Savings Bank, 1406 4<sup>th</sup> Ave, Seattle  
12-27-2005**

One wrong pick  
One pointed to McCoy, but was not certain  
One picked McCoy

**Washington Mutual Bank, 1501 4<sup>th</sup> Ave, Seattle  
12-31-2005**

Two no picks



**CERTIFICATION FOR DETERMINATION  
OF PROBABLE CAUSE**

INCIDENT NUMBER	05-547018
UNIT FILE NUMBER	91A-SE-92016

US Bank, 2401 3<sup>rd</sup> Ave, Seattle  
02-07-2006

Two pointed to McCoy, but were not certain.

On 03-15-2006 Detective Aakervik received the results From the SPD Latent Print Comparison Request. A positive match was made. Latent Print Examiner, Lloyd Thomas, made a match with McCoy's right palm and latent prints lifted at the teller's window at the Key Bank (06-062738).

All four robberies occurred in the City of Seattle, County of King, State of Washington.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 4<sup>th</sup> day of APRIL, 2006, at Seattle, Washington.



SEATTLE  
POLICE  
DEPARTMENT

### CONTINUATION SHEET

INCIDENT NUMBER 05-547018 (Master)
UNIT FILE NUMBER 91A-SE-92016

ITEM OR ENTRY	INCIDENT INCIDENT AND ARREST ARREST ONLY	FOLLOW-UP TRAFFIC / COLLISION SUPERFORM	OTHER: (specify)	PAGE <u>5</u> OF <u>6</u>
31	03-31-06	~1115 hr.	P/C to the King County Prosecutor's Office. Advised them that I will be filing additional charges of robbery against McCoy.	
32	08-24-06	1000 hr.	Met with Hannah McFarland (Certified Document Examiner) at SPD Evidence to examine demand note recovered from McCoy under SPD 06-056860.  The note was sealed in an evidence envelope and initialed by submitting officer. With a pair of scissors I opened the bottom of the envelope and removed its contents. The note was folded in such a way that only the handwritten demand was visible. I unfolded the note and discovered that it was written on the back of an 8X10 document. The document was a Social Security Administration letter issued to Raymond Dewayne McCoy.  McFarland examined the note in my presence for about 20-minutes. After the examination I made copies of the document (both sides) for McFarland and my file. I re-sealed the envelope and initialed across the tape. The envelope (demand note) was re-submitted into SPD Evidence.	
33	09-01-06	0955 hr.	Interview with FBI source at the FBI building. The source is a King County Jail inmate being interviewed by an FBI agent and a local detective regarding an unrelated case when he offered information regarding local bank robberies and another inmate - Raymond McCoy. The agent and detective contacted me in the office and sat-in as I interviewed the source regarding Raymond McCoy. The source was never provided with any information regarding McCoy or the robberies and all the information the source provided was told to him by McCoy himself. The source provided the following information:  <ul style="list-style-type: none"> <li>• He stated that has regular contact with McCoy and that he knew he was defending himself on bank robbery charges.</li> <li>• The source stated that McCoy admitted to him that he robbed some banks in Seattle and that he used the money to buy crack cocaine. He told the source that he got caught when he was arrested for narcotics and the police found a demand note on him.</li> <li>• McCoy told the source that his palm print was lifted from the bank counter at one of the robberies.</li> <li>• McCoy also told the source that he is having a handwriting expert examine the note to show that he did not write it. McCoy added that the note was actually written by a female friend.</li> <li>• When McCoy discussed possible defenses for having his handprint on the teller counter the source suggested that he might say that he was at the counter at an earlier time.</li> </ul> <p>The source stated that he would continue his relationship with McCoy and contact us if he obtains further information.</p>	
34	09-11-06	~1615 hr.	Detective Rodgers and I transported the King County Jail source to SPD Headquarters for an interview. The source agreed to provide a tape recorded statement regarding his relationship with McCoy and information he has regarding bank robberies committed by McCoy. Prior to the recorded statement the source was given note paper to organize his thoughts. The source handed me a King County Jail Service Request Kite he used in the jail to make a few notes on. At no time was the source provided information regarding the bank robberies or Raymond McCoy and all the information he provided he stated he received from McCoy in conversation at the Jail. The source was told he would not receive anything for his testimony and that the statement was by his free will. He agreed.	
35	09-15-06	1300 hr.	Made copy of taped statement on TELEX machine at SPD HQ.	

INVESTIGATING OFFICER <i>D. AAKERVILK 4810 717</i>	SERIAL <i>4810</i>	UNIT <i>717</i>	INVESTIGATING OFFICER	SERIAL	UNIT	APPROVING OFFICER	SERIAL
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*Att. # 2*

~~1~~

I came to know Raymond McCoy when I was housed in the King County Jail He came to my tank About 5 weeks ago EXACT DATE? spelling?

Ray, Nick Name "MAC", Had Heard I was also being prosecuted for Bank Robbery, He was interested in numerous issues in my case as he told me that he actually Robbed (4-) Banks Although he only was working on one Bank Rob at the moment as he chose to represent himself 'prose' status Hence his interest in my cases, we began to exchange ideas and case laws on account I had also sought (A) prose status But I was precluded from doing so so by the Court Along the way I shared <sup>ko</sup> my personal history in my Rob, which was a Bank Rob He then told me that in one of his Bank Robs he had actually left his hand print and although it was his and he knows that it was his he was going to have a expert witness testify ~~that~~ "hopfully" that it was inconclusive or that who would be to say he had been in the Bank on another day? he also felt very comfortable helping each other in each others cases & even defense strategies

on another occasion Ray (MAC) told me that I Robbed 4- Banks in all but his case was full of mistakes and that he could & would seek dismissal

Over →

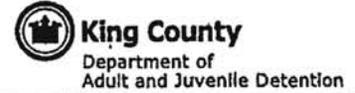
Att # 3

#2

Ray (Mae) Again had told me even more about his Robs particularly that when he was originally arrested in these Banks via a Drug Buy sting when being searched the Drug Cops had found one of his Rob Notes and that he was flipping dumb founded that he had still had the orig Bank Rob Note on him he was very upset by this and by a through his legal studies he believes this Note can not be directly linked to him and the without other like wise evidence, he <sup>also</sup> discussed with me at length defenses to this Note but it had now been revealed his personal Billing Info was printed on the back of this particular Note, and he is absolutely freaking out on how to explain it away to a Jury, his claim at this point is to exclude in pre hearing that prosecutor withheld it until 11<sup>th</sup> hour and or wrote or planted the Note entirely he has also evidence issue with the Id of him that the One Teller could only Id him 90% and the Asian Teller who is 2 weeks new somehow Id him 100% he told me that one Bank he Robbed is Sterling Bank on 4<sup>th</sup> Ave sea downtown and Another Bank is located in China town and one in Belltown also He did mention one Bank that he Walked up & Grabbed Cash out of the tellers hand

LC 9-11-06

# Service Request Kite



Name \_\_\_\_\_ BA# \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ Location \_\_\_\_\_

**Mark one (1) recipient per kite from the list below:**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Officer   | <input type="checkbox"/> Commissary                              | <input type="checkbox"/> Programs Office   |
| <input type="checkbox"/> Sergeant  | <input type="checkbox"/> Inmate Funds/Accounts                   | <input type="checkbox"/> Veterans  |
| <input type="checkbox"/> Property Room   | <input type="checkbox"/> Library                                 | <input type="checkbox"/> School / Education  |
| <input type="checkbox"/> Dept. Records Section   | <input type="checkbox"/> Legal Materials Service                 | <input type="checkbox"/> Chaplain / Religious Services   |
| <input type="checkbox"/> Mail Room   | <input type="checkbox"/> Corrections Program Administrator (CPA) | <input type="checkbox"/> Food Services   |
| <input type="checkbox"/> Booking / Release / Commitments / ITR   | <input type="checkbox"/> Recreation                              | <input type="checkbox"/> Pre-Trial Services - <input type="checkbox"/> County <input type="checkbox"/> Seattle |
| <input type="checkbox"/> Community Corrections (WER Work Release, EHD Electronic Home Detention, Work Crew, and Day Reporting) |  |  |

ASIAN  
L

W  
1/15

Note Brick  
55# or Fucker  
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Bill Reverse  
if it cards in

Print your request or change of emergency contact name and phone number: \_\_\_\_\_

\_\_\_\_\_

Response from Recipient: \_\_\_\_\_

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Feb 13 06  
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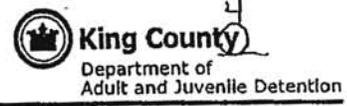
Be...  
Be...

Handwritten notes and initials

Date \_\_\_\_\_

Do not use this kite for Medical Issues (Use a PINK kite for Medical Service request)  
KCOAJD F-530 Front (Rev. 10/04)

<sup>312</sup> **Forma (Kite) Para Solicitar Servicios**



*Mary Christmas young lady*

Nombre XMAS BA# \_\_\_\_\_ Fecha \_\_\_\_\_ Hora \_\_\_\_\_ Ubicacion \_\_\_\_\_

**De La Siguiete Lista Marque Solo Un (1) destinatario Por Cada Forma de Solicitud:**

- Oficial
  - Sargento
  - Almacen de Propiedad
  - Seccion de Archivos
  - Cuarto de Correo
  - Oficina de ficheo, Liberacion y Salida, Admision y Sentencias / ITR
  - Correcciones en la Comunidad: Programas de Libertad Condicional (WER: Libertad bajo Trabajo / Educacion, EHD: Detencion Domiciliaria Electronica, Work Crew: Cudrilla de Trabajo, Day Reporting: Atendancia Diurna)
  - Tienda
  - Contaduria de Fondos
  - Biblioteca
  - Servicio de Materiales Legales
  - Administrado de Programas Correccionales (CPA)
  - Servicios Recreativos
  - Oficina de Programas
  - Veteranos
  - Programas Educativos
  - Servicios Religiosos / Ministro
  - Cocina y Servicios Alimenticios
  - Servicios antes de Juicio
- 4th pike pine 12-27-05*
- 2-13-06*
- 11-27-05*

Escriba su peticion o los datos de su nuevo contacto de emergencia: \_\_\_\_\_

Respuesta: \_\_\_\_\_

Fecha \_\_\_\_\_

No use esta forma para solicitar Servicios Medicos (Use la forma color ROSA para Servicios Medicos)  
KCDAJD F-530 Back (Rev. 10/04)



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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
	)	No. 06-1-03538-7 SEA
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	WITNESS STATEMENT OF KEVIN
RAYMOND DWAYNE MCCOY,	)	SCOTT OLSEN
	)	
	)	
Defendant.	)	
	)	
	)	

AAKERVIK: Good this is, uh, Detective Aakervik of the Seattle Police Department Robbery Unit. Today's date is 9/11/2006 and the time is 4:36 p.m. I'm talking with, uh, Kevin Scott Olson. Detective Jim Rodgers is also present. Are you aware that, uh, Mr. Olsen are you aware that this conversation is being taped?

OLSEN: I guess I am.

AAKERVIK: Do I have permission to tape this conversation?

OLSEN: Uh, yes you do.

AAKERVIK: Uh, have you ever been promised anything for your testimony?

OLSEN: No I have not.

AAKERVIK: Okay, how do you know Raymond McCoy?

WITNESS STATEMENT OF  
KEVIN SCOTT OLSEN - 1  
0609-118

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FAX (206) 296-0955

1 OLSEN: Uh, about four or five weeks ago approximately he was, uh, brought to my tank  
2 where I was already housed, uh, in Nine East. Up in B, I was in cell number two.  
3 He lived in, he was assigned to cell number nine which was at the other end, uh,  
4 of the tank actually. Uh, I came to know Ray by, uh, just people talking in the  
5 tank and I was also charged with a similar crime of a bank robbery, uh, and that I  
6 had, was doing a lot of my own, uh, legal work and research to help my lawyer on  
7 my case. Also I had, uh, saw to you know the a pro se status at one point in time  
8 during my case which was subsequently turned down and, uh, uh, but I still  
9 helped out in kind of a hybrid fashion with my lawyer doing some leg work and  
10 research on my case. Uh, cause I knew a few things about, well let's say I believe  
11 I know a few things about my case, and, uh, I how, uh, the bank robbery laws and  
12 laws, robbery laws in the State of Washington. I'm familiar with them anyway,  
13 uh, so, uh, actually he had approached me, uh, and explained he'd been, uh,  
14 charged also with bank robbery. And that, uh, so I said okay I'll befriend with  
15 each other on that, on that, uh, issue there. And over a period of time of a couple  
16 of weeks we got to talking normal or, uh, back and forth about our cases or the  
17 law about our cases. And, uh, he started sharing, uh, some particulars with me.  
18 Uh, one, uh, uh, mainly identification issues in, in his robberies. He actually had  
19 told me that he had robbed four banks, uh, and he had claimed that, uh, even  
20 though he was going to trial that they were not going to be able to prove, uh, the  
21 bank robberies. He was going on trial (unintelligible)...as a matter of fact, any of  
22 the bank robberies, uh, due to the fact that, uh, there was mistakes made and, uh,  
23 uh, identifications were, uh, an issue in his case, in his police reports he said. And

WITNESS STATEMENT OF  
KEVIN SCOTT OLSEN - 2  
0609-118

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1 he thought that he could explain that away, uh, at a prelude or a hearing or even in  
2 front of a jury I guess. Uh, he's a pro se status himself so he does all his work  
3 himself. Uh, he spends a lot of time, uh, researching the case law and stuff like.  
4 Uh, that we're all allowed to use and check out from the law library. Uh, he had  
5 mentioned that there was a, uh, photographic line-up that, uh, one of the tellers, I  
6 don't know if he said her name was Will, it started with a W, I believe it was or  
7 Willis, or Wills, Williamson or something like that. I don't know exactly what it  
8 was, I can't remember. Uh, he had only mentioned it a couple of times, the name  
9 of the lady, and that she was a seasoned bank teller. And that she was only a  
10 percentage of 90 percent sure that it was him. Uh, although he was complaining  
11 that there was a new, a training teller, who was only approximately working for  
12 about two weeks or so, uh, and identified him a hundred, by a hundred per cent.  
13 Uh, that it was him that robbed the, robbed the bank that day. Uh, he is disputing  
14 it, not, not as much factually cause he admitted to me, to me that, uh, it, it was  
15 him. That the fact he can get him, his, his point is that he can get the, uh, he  
16 believes he can get the identification, uh, either stricken or not allowed or, uh,  
17 explained it away in court that, uh, uh, it was actually misidentification because  
18 the lady she, uh, kind of hem hawed around about it. Uh, big enough to identify  
19 him but, uh, his main concern was that it was a new bank teller who had only been  
20 on a couple of weeks. He's concerned that, uh, uh, that her identification of him  
21 was one hundred, one hundred per cent. Uh, although he thinks that because she's  
22 a new teller that her training is, uh, uh, suspect to, uh, being accurate because of  
23 the fact that she's probably not trained to recognize people's faces or something

WITNESS STATEMENT OF  
KEVIN SCOTT OLSEN - 3  
0609-118

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1 like that. And how could she be more accurate than somebody who has worked  
2 there a lot. Uh, quite a lot long, longer time. Uh, we would discuss, uh, many  
3 aspects of, uh, caselaw and stuff like that, uh, we kind of bounced things back and  
4 forth of each other. Uh, I let him know right away that I'm not a lawyer and I'm  
5 not an authority on the law and that, uh, the study of the law and the science of the  
6 law is very complicated. And, uh, can give you, uh, false insights and false, uh,  
7 uh, conclusions about, uh, your case. Uh, although he, uh, diligently, uh,  
8 assuming that they, that, uh, charges won't even make it to the court because of,  
9 uh, the possibilities that the pre-hearing would, uh, not, not allow, uh, the  
10 testimony for, uh, one reason or another. Uh, also there was an issue of, uh, when  
11 he was actually going back, initially he had told me that he was arrested in a drug  
12 bust/buy sting in, uh, the Yesler and Capitol Hill area. And during that arrest he  
13 was searched and they had located a note in his pocket that indicated it was a bank  
14 robbery note. And, uh, that he might be possibly a bank robber. And the note  
15 was in there possession and, uh, and they were a couple hearings in front of the  
16 judge, uh, the judge released him on the drug charge. And, uh, was returned later,  
17 uh, on the bank, bank and the drug charges actually later he was returned to the  
18 jail. Uh, and I'm not sure of the exact circumstances of his return a lot, uh,  
19 although he's made some mention of it but I can't, uh, pinpoint exactly what it  
20 was. Uh, he believes that, uh, uh, police and investigators are cooking the books  
21 on him and either they, uh, some planted the note, uh, somehow or another or, uh,  
22 they had some kind of dirty business in putting the note in his or whatever the  
23 note was, uh, planted that's gonna be his defense anyway. But although he

WITNESS STATEMENT OF  
KEVIN SCOTT OLSEN - 4  
0609-118

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1 admitted to me that the note was actually written, uh, by a lady friend of his and it  
2 was actually his note. Uh, he just couldn't believe that he still had it in his pocket.  
3 Uh, but his defense to the note, uh, to straighten out earlier that when I first  
4 started with, uh, explaining about the note. His defense to the note is the fact that  
5 he is going to either say that note was withheld until the last minute so it's not a, a  
6 well represented because of a lack of diligence and presenting it in discovery  
7 package or that, uh, the note was actually just out and out manufactured. Uh, and  
8 he had written a bunch of supplemental briefs that according to this note and then  
9 in the last minute, uh, the prosecution had turned over newly discovered evidence  
10 that on the back side of the note was written on a, uh, article or a bill or, uh, a  
11 piece of paper that, uh, attached to him personally to the note. Uh, it was either a  
12 bill of some kind or his name, uh, and identification, uh, issues were on the back  
13 of the note. Now he is having to start, start over and try to, uh, brainstorm on  
14 what he was going to do at this point. Uh, uh, he's hoping that the fact that, uh,  
15 withholding the note for the last minute that, uh, it will get thrown out in as much  
16 that, uh, any good investigator would have looked on the back side of the note and  
17 noticed that the information was there. Uh, as a matter of fact, uh, he did attest,  
18 uh, he, somebody was walking by the tank and he had written enough, wrote  
19 something on, uh, one side of a piece of paper and set it down and asked the  
20 person that, uh, if, uh, well asked him what, no asked him what his name was  
21 doing on this piece of paper he found on the floor. And the person picked the  
22 paper up and looked at it and then turned it over and he grabbed the paper back  
23 and said see there's my point there. Nobody looks at a piece of paper and does not

WITNESS STATEMENT OF  
KEVIN SCOTT OLSEN - 5  
0609-118

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1 look on both sides. Uh, that the prosecutor knew or should have known the  
2 information was there and he purposely with, withheld it. Uh, that's as far as he  
3 got on that and he was working diligently on trying to get that explained away or  
4 dismissed actually on, uh, uh, a Brady, a Brady versus Maryland case where, it  
5 was a discovery case where, uh, uh, specific evidence was not turned over in a  
6 timely manner or not at all. So he was banking on that issue. Uh, he also has, uh,  
7 uh, issues about, uh, I think at one of the banks, uh, he had left a palm print and,  
8 uh, and although he readily admits that it was possible he had left his print in the  
9 bank when he robbed it that, uh, even if he did, uh, uh, it was made honor, and  
10 honorable mention the fact is that he could always explain it away that perhaps  
11 nobody could or nobody could say differently that he had been in the bank prior to  
12 that date and inadvertently left that or apparently it was left on the counter or  
13 wherever it was that they took it from. And it was never washed or wiped away  
14 by anybody and it just happened to stay there and, uh, that's how he's attacking  
15 that basically. And also with the fingerprint expert might say that the finger or the  
16 print that was lifted, uh, even though it was his, uh, there's not enough points of  
17 identification on the print itself to establish that it was his. So he's working on  
18 that. Uh, mostly he is chasing a lot of, a lot of theories and (unintelligible) and  
19 issues about, uh, uh, evidence and issues or, uh, discovery packages delivered to  
20 him and for him to, uh, uh, exploit or use to his benefit or whatever. And so that's  
21 one of his major complaints to the court is to hopefully dismiss the case out right  
22 because there are other cases or how, I'm not sure exactly how many he's charged  
23

WITNESS STATEMENT OF  
KEVIN SCOTT OLSEN - 6  
0609-118

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1 with. Well I know for sure he's charged with one of them at this time. And, uh,  
2 perhaps that, uh, uh, he can get all of them dismissed away and be on his way.

3 AAKERVIK: Okay, who did he say, uh, wrote the demand note? Uh, that was found on him.

4 OLSEN: Yeah, backing up I think I mentioned that already, uh, a lady friend of his that  
5 was helping him sell drugs, uh, on the street. He has, she would come to him  
6 when she had somebody to buy drugs or, uh, somebody that looked like they  
7 wanted to buy drugs. Cause he was hold, holding on to drugs and, uh, this lady  
8 friend of his, uh, Mary Young, I believe that's what her name is, uh, had been  
9 accompanying him, accompanying him on these drug sales down town to make  
10 money or to actually he was buying Cocaine and selling it and he was hanging  
11 around on the streets anyway. Uh, but, uh, she anyway, she unwittingly or  
12 actually he doesn't know what, uh, whether she knowingly brought the police to  
13 him or unwittingly brought the police him to him but she had brought this  
14 gentleman to see him or he was peddling the drugs at him and approached him  
15 and said this guy would like to get twenty dollars worth. And he said that, uh, he  
16 checked him out a little bit and figured he could trust him and sold him some  
17 drugs and the next thing you know he was under arrest and he knew he was under  
18 arrest and being searched and that's when the note was found in his pocket.

19 AAKERVIK: And is this, and who actually wrote that note?

20 OLSEN: He said that the, uh, the, the note was actually his, it was in his pocket. Uh,  
21 although legally he's gonna try to explain it away but he said that, uh, the lady  
22 friend, Mary Young is actually the one that wrote it so he's sure that the, uh, hand  
23 analysis, uh, handwriting exemplar that he's also hired somebody to do that will

WITNESS STATEMENT OF  
KEVIN SCOTT OLSEN - 7  
0609-118

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1 be able to conclusively say that it's not his writing. Uh, vocabulary-wise or, uh,  
2 penmanship-wise but this, uh, lady friend of his actually wrote the note.

3 AAKERVIK: Okay, how many banks did he tell you he robbed?

4 OLSEN: He said he robbed four.

5 AAKERVIK: Mr. McCoy told you he robbed four banks?

6 OLSEN: Right, and that he is, uh, and he is presently working on one of them right now.

7 And I believe, I don't know exactly which one he's working on. I know cause one  
8 of the witnesses is the, uh, lady her name starts with a W, I believe Wilhis, Willis  
9 or Willaman or something like that, I believe that's it. Uh, and I think it's the one  
10 with the palm print in it also, I'm not sure.

11 AAKERVIK: Okay, did he, do you have any names of the banks? Did he ever tell you the  
12 names or the locations of these banks?

13 OLSEN: Yeah, uh, one was locate in the China Town area, uh, which the name of that bank  
14 he didn't say he just said it was in China Town. Uh, one that he does know, he did  
15 mention where it was at was on 4<sup>th</sup> Avenue in downtown Seattle I think it was  
16 between Pine or Pike and, uh...

17 AAKERVIK: Do you know the name of that bank?

18 OLSEN: Uh, the name of the bank is Sterling Bank.

19 AAKERVIK: Okay.

20 OLSEN: Located on the, between 4<sup>th</sup> and 3<sup>rd</sup> Avenue, 3<sup>rd</sup> or 4<sup>th</sup>.

21 AAKERVIK: And any other banks that he described to you?

22 OLSEN: Uh, not by description, no.

23 AAKERVIK: Location?

WITNESS STATEMENT OF  
KEVIN SCOTT OLSEN - 8  
0609-118

**Norm Maleng, Prosecuting Attorney**  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000  
FAX (206) 296-0955

1 OLSEN: Uh, just the China Town and oh no actually I'm gonna take that back, uh, there  
2 was one mentioned, uh, in Bell Town but, uh, I forgot about it because he only  
3 made a slight mention of it and it was the kind of conversation where he was kind  
4 of bragging about he had gone into one of the banks, uh, at the same time I'm not  
5 sure if he was talking about the Bell Town bank but he was, uh, talking about that  
6 specific area and a bank that he had robbed there. But he had also, uh, in the same  
7 conversation, uh, had said that he had also robbed one of those banks, one of the  
8 four banks, that when he went in, uh, one of the ladies had been counting some of  
9 her cash and he just walked up and took it from her. And, uh, she shockingly I  
10 guess, uh, had said, uh, well why'd you do that or what are you doing or what do  
11 you think you're doing or something like that and gave him a really weird, weird  
12 look I guess. That's about all I know about that.

13 AAKERVIK: What'd he tell you about that when he said that he, uh, what did he think about  
14 that?

15 OLSEN: He, he seemed to be bragging about it. He had thought that it was kind of a, uh,  
16 you know he definitely thought, he didn't think it was a bank robbery though. He  
17 said that he thought it was nothing more than a simple theft. And, uh, I reminded  
18 him that, uh, to read the case, at least the legislative, uh, out, overview, outline  
19 and intent of robbery, uh, basic robbery.....end of tape.

20 END OF TAPE ONE - SIDE ONE

21 AAKERVIK: The Seattle Police Department Robbery Unit. Again, today's date 9/11/2006, it is  
22 now 4:55 p.m. Uh, the tape was stopped for a few minutes. We ran out of tape  
23 space and this is a new tape and we're still here with, uh, Kevin Scott Olsen.

WITNESS STATEMENT OF  
KEVIN SCOTT OLSEN - 9  
0609-118

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1 Detective Jim Rodgers is here also and, uh, this interview is continuing. Okay, go  
2 ahead where you left off you were talking about Mr. McCoy, uh, talking to you  
3 about, uh, taking money out of a, the hands of a teller.

4 OLSEN: Okay, uh, I believe that on the, where the tape stopped on the other tape I was  
5 explaining, I was, uh, trying to conclude to, uh, uh, Ray McCoy, I call him Mac  
6 though that's his nickname, at least that's what I call him anyway. Everybody  
7 calls him that actually. Uh, anyway I was explaining to him that, uh, uh, in all, in  
8 the eyes of the law and at least through written law from the legislature and the  
9 law on the books is that, uh, no matter how you relieve somebody of their  
10 property or their money how slight the threat or, uh, intimidation or injury or, uh,  
11 the, it's actually the person that you're stealing the money or taking it from it's, uh,  
12 they put it in the receiver's and how they took it. Uh, the intimidation or threat or  
13 injury or any of those, the above and the law spells out that, uh, all those elements  
14 are applicable to robbery itself. Uh, it just goes up in degree by, uh, injury,  
15 weapon or, uh, statute. So, but we kind of got into a little difference of opinion on  
16 that so. Yeah, we pretty much, uh, concluded that, that little session at that point  
17 in time. Uh, about the way there was money being taken out of her hand, uh,  
18 while she was counting it out in the bank. Uh, he, uh, uh, he was, he was, uh, he  
19 had repeated it on a couple, on a couple different, uh, times during our  
20 conversation that, uh, she was giving him this real weird look that, uh, like what  
21 are you doing or how dare you or, uh, what do you think you're doing. Uh, that  
22 was her reply or that's what the, the shock reply was from the way he explained it  
23 to me anyway. Uh, but I told him it's, didn't really matter, uh, that they probably

WITNESS STATEMENT OF  
KEVIN SCOTT OLSEN - 10  
0609-118

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1 could charge him with robbery so but he didn't believe that's true so, uh, I left it  
2 like that. I didn't want to argue with him, he's, uh, older and wiser. Anyhow, uh,  
3 that's about that, uh, about the end on that so.

4 AAKERVIK: Okay, is there anything else that you'd like to add?

5 OLSEN: Uh, no I can't think of anything else actually really, uh, there probably is but it's  
6 not coming to mind at this point in time. Uh, oh, yeah and a couple of the banks  
7 he had mentioned one of them was done he said in February, early February. Uh,  
8 and one of them was, uh, I believe around the 13<sup>th</sup> or something. And, uh, another  
9 one was done, one of the other banks was done on the 27<sup>th</sup> and, uh, I don't, it  
10 escapes me right off the top of head so I don't want to say exactly what bank those  
11 dates went to but they were two of the banks that he was being charged in or  
12 investigated for so, uh, that's all I can think of at this point right now.

13 AAKERVIK: Okay, uh, the date again is 9/11/2006 and the time now is 4:59 p.m. and that's the  
14 end of the statement.

15 End of Statement

16  
17  
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23  
WITNESS STATEMENT OF  
KEVIN SCOTT OLSEN - 11  
0609-118

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# **Appendix E**

**Report of Proceedings**

**February 22 & 23, 2007**

**State v. McCoy,**

**06-1-03538-7 SEA**

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SUPERIOR COURT IN AND FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

COPY

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STATE OF WASHINGTON	)	
	)	
Plaintiff,	)	KING COUNTY CAUSE
	)	No. 06-1-03538-7 SEA
vs.	)	
	)	COURT OF APPEALS
RAYMOND MCCOY	)	No. [] 60134-2
	)	
Defendant.	)	

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AUG 21 2007

Nielsen, Broman & Koch, P.L.L.C.

REPORT OF PROCEEDINGS  
FEBRUARY 22, 2007

BEFORE THE HONORABLE CATHERINE SHAFFER

\*\*\*\*\*

PETE S. HUNT  
 CSR Reference No. HUNTPS5708P  
 Official Court Reporter  
 King County Superior Court  
 516 Third Avenue, C912  
 Seattle, Washington, 98104

(206) 296-9356

A P P E A R A N C E S :

JAMES FERRELL  
Attorney at Law,

appeared on behalf of the Plaintiff;

ROBERT MCKAY  
Attorney at Law,

appeared on behalf of the Defendant.

## EXAMINATION INDEX

Witness	Direct	Cross	Redirect	Recross
Dag Aakervik	9	25		
Kevin Scott Olsen	41	49		
Jon Nelson	63	66		

## EXHIBIT INDEX

Exhibit No.	Description	Marked	Offered	Admitted
1	Report	14	15	16
2	Statement	20	20	21
3	Report	23		
4	Document	29	54	55
5	Statement	29	54	55
6	Document	52	54	55
7	Document	55	62	62
8	Document	55	62	62
9	Document	57	57	57

1 THE COURT: Good afternoon.

2 MR. FERRELL: Good afternoon, Your Honor.

3 This is the matter of State of Washington vs.  
4 Raymond McCoy, 06-1-03538-7 SEA. Mr. McCoy is present  
5 representing himself pro se. Also present appearing  
6 via telephone is standby counsel Mr. Robert McKay. And  
7 for the record, we also have Mr. Brad Hampton - -

8 THE COURT: Go ahead.

9 MR. FERRELL: Also present is Mr. Brad  
10 Hampton, sitting at counsel table, for the record, as a  
11 courtesy to Mr. McCoy. And just for convenience sake.  
12 But Mr. Hampton is actually here as a fact witness.  
13 That's my understanding according to Mr. McCoy.

14 Also, in the back, in the jury room, with the  
15 door shut, I asked the detective to let me know if they  
16 could hear us communicating. It's Detective Dag  
17 Aakervik, the witness we expect to call today, along  
18 with informant Kevin Scott Olsen.

19 THE COURT: Have they indicated whether they  
20 can hear you or not?

21 MR. FERRELL: Let me go back and check.

22 THE COURT: Why don't you go check.

23 MR. FERRELL: They indicate no.

24 THE COURT: Great.

25 Continue, Mr. Ferrell.

1 MR. FERRELL: Your Honor, we're here for  
2 defendant's motions, the motions I received were  
3 defendant's motion to dismiss pursuant to CRR 8.3(b),  
4 and also a motion to sever Count III, which was added,  
5 I believe, in December. And as the Court's aware from  
6 the State's briefing Counts I and II were joined, I  
7 believe on September 14th, I believe, by Judge Jones.

8 THE COURT: And I have a Knapsted motion and I  
9 have a motion for discovery.

10 MR. FERRELL: I don't have a Knapsted motion.

11 THE COURT: It's in the motion to dismiss  
12 pursuant to 8.3.

13 MR. MCCOY: Your Honor, may I address the  
14 record?

15 THE COURT: No, Mr. McCoy, I'm waiting for  
16 Mr. Ferrell to finish.

17 MR. FERRELL: And the discovery, I'm not quite  
18 sure what the discovery motion is.

19 THE COURT: All right. What I have here is  
20 Mr. McCoy's motion to dismiss and his memorandum in  
21 support which appears to be a hand-written document.  
22 Contained within it are his Knapsted motion. I also  
23 have his brief in support of the motion to dismiss.  
24 Which again appears to be a handwritten document, which  
25 goes primarily to the 8.3 motion but also alleges a

1 violation of Civil Rule 26.

2 And then I also have supplemental exhibits  
3 that Mr. McKay submitted on behalf of Mr. McCoy. And  
4 then I have a motion to sever counts and memorandum in  
5 support, which you have referred to.

6 And then finally, I have a criminal motion  
7 requesting disclosure under Criminal Rule 4.7,  
8 specifically, disclosure of the names of the FBI agent  
9 and a local detective who interviewed Mr. Olsen on  
10 September 1, 2006. And notes from any meeting with  
11 examiner L. Thomas SPD by Detective Aakervik and by  
12 you, Mr. Ferrell, taking place before the December  
13 19th, 2007 interview.

14 MR. FERRELL: I don't have any notes from that  
15 meeting.

16 THE COURT: Do you have an objection to  
17 disclosing the name of the FBI agent and the local  
18 detective?

19 MR. FERRELL: Actually, I will have Detective  
20 Aakervik testify to that. I think there are some  
21 concerns. Detective Aakervik discussed with me on  
22 previous occasions his concerns about getting too  
23 involved with the FBI end of this. He's concerned - -  
24 I'll let him express his concerns about that.

25 THE COURT: Those are the motions I have

1 before me. Those are the pleadings I have reviewed  
2 from Mr. McCoy. And I also received your response,  
3 Mr. Ferrell, and your attachments.

4 I'm not clear on any of the attachments of the  
5 two kites from the jail.

6 MR. FERRELL: Those were part and parcel of  
7 the written statement provided by Mr. Olsen.  
8 Essentially some of them were in code. In an abundance  
9 of disclosure I wanted to show the Court the notes that  
10 Kevin Scott Olsen provided when he provided his written  
11 statement. This was part and parcel - - he wrote in  
12 code. Probably, my understanding is, and I could be  
13 wrong, that these are the notes that he took  
14 contemporaneous to the disclosures by Mr. McCoy. And  
15 for greater memory sake he was essentially writing in  
16 code. So he can recall later.

17 THE COURT: All right, thank you.

18 Mr. McCoy, I'm going to turn to you in just a  
19 moment. I want to make sure Mr. McKay has been able to  
20 hear so far.

21 MR. MCKAY: Yes, I have.

22 THE COURT: Mr. McCoy, I reviewed all the  
23 pleadings I just told Mr. Ferrell I have from you. And  
24 you can argue now, if you wish. Or if you want you can  
25 wait for the State to present its evidence and then

1 argue. It' up to you.

2 MR. MCCOY: Your Honor, at this time I will  
3 just like to go on the record to state that I'd like to  
4 make an objection to the 11th hour of the State  
5 responding to my motions and brief. As the State was  
6 served a copy of this brief, I think it was January  
7 7th. So he's had ample enough time to reply. So for  
8 him to come at the day of the hearing to serve me a  
9 response to the brief and that I have never had a  
10 chance to go over it. I'm just requesting that the  
11 State disregard it.

12 THE COURT: That's noted and overruled.

13 Is there anything else you want to say right  
14 now to present your motions or do you want to wait for  
15 the State to present its evidence?

16 MR. MCCOY: Yes. One more thing.

17 THE COURT: Okay.

18 MR. MCCOY: Your Honor, I would like the  
19 record to show that on - - I would like the record to  
20 show that this hearing was scheduled for February 8th,  
21 2006. I'd also would like to note for the record a  
22 violation of my due process right pursuant to  
23 061.303.5387 by the State being allowed to continue the  
24 February 8th, 2007 hearing without the defendant being  
25 present. And I'd just like to make that for the record

1 to probably be readdressed up in - -

2 THE COURT: Mr. McCoy, I won't conduct a  
3 hearing where one party can't be present. The State  
4 was in trial. And I was contacted by the trial judge  
5 to notify me that the prosecutor was in trial and was  
6 unable to attend the day you had selected for this  
7 hearing. Moreover, as it turned out, the prosecutor  
8 became ill that day and was not in court at all. So, we  
9 were unable to conduct a hearing on the date you had  
10 hoped for.

11 The Court has discretion to set its own  
12 schedule to make sure all parties are represented, and  
13 that's what I did.

14 I note your objection, Mr. McCoy, but that's  
15 the reason I moved this hearing and I don't see any  
16 prejudice to your right to be heard.

17 Anything further before I hear the State's  
18 evidence?

19 MR. MCCOY: Yes, Your Honor.

20 I was going to ask that I be allowed to give  
21 an opening statement and if the State choose to respond  
22 and being that the State and defense are presenting  
23 witness that calls for direct and cross examination and  
24 then complete the hearing with a brief closing  
25 statement.

1 THE COURT: That's denied, Mr. McCoy. I'll  
2 let you argue your motion now or you can argue at the  
3 end of the State's evidence.

4 During the State's presentation of evidence of  
5 course you can cross examine. Do you want to argue  
6 your motion now or do you want to wait?

7 MR. MCCOY: I'll wait, Your Honor.

8 THE COURT: Go ahead, Mr. Ferrell.

9 MR. FERRELL: Thank you, Your Honor.

10 I'll call Detective Aakervik first.

11 Dag Aakervik, being first duly sworn,  
12 testified as follows:

13  
14 DIRECT EXAMINATION

15 BY MR. FERRELL:

16 Q. Good afternoon, Detective.

17 A. Good afternoon.

18 Q. Would you please state your full name and  
19 spell your last for the record.

20 A. Dag Aakervik. A-A-K-E-R-V-I-K.

21 Q. And where do you work?

22 A. I'm a Seattle police officer.

23 Q. And what's your current assignment?

24 A. I'm a detective in the Puget Sound Violent  
25 Crimes Task Force for the FBI office.

1 Q. How long have you been there?

2 A. Almost three years now.

3 Q. How long you been with the Seattle Police  
4 Department in total?

5 A. Just over 22 years.

6 Q. How long have you been a detective?

7 A. Approximately eight years.

8 Q. All right. During the course of your time as  
9 a detective and with the task force have you ever had  
10 occasion to work with informants?

11 A. Yes.

12 Q. Informants that are housed in the jail?

13 A. Yes.

14 Q. Are you familiar with the case involving  
15 Mr. McCoy, the case for which we are here for today?

16 A. Yes.

17 Q. Who is the major case detective for that case?

18 A. I am.

19 Q. When you were investigating that case, you, I  
20 take it, you submitted the Certification for  
21 Determination of Probable Cause?

22 A. That is correct.

23 Q. An how many suspected bank robberies were  
24 contained in that certification?

25 A. Four bank robberies.

1 Q. Do you know generally, I don't want to go item  
2 by item, but do you know generally what those time  
3 frames were?

4 THE COURT: I should note that I have reviewed  
5 the certification.

6 MR. FERRELL: Okay, thank you.

7 Q. (Mr. Ferrell continuing) Let's get right to  
8 it, Detective. At some point can you tell us did you  
9 meet an individual by the name of Kevin Scott Olsen?

10 A. Yes, I did.

11 Q. And when and under what circumstances did you  
12 meet Mr. Olsen?

13 A. It was September 1st, 2006 and it was in my  
14 office.

15 Q. Can you tell us, tell the judge, how Mr. Olsen  
16 first came to your attention?

17 A. He was at the office on an unrelated matter  
18 and he offered up some information to another  
19 detective, an agent, regarding some bank robberies.

20 Q. Okay. Are we talking the FBI office?

21 A. That's correct.

22 Q. This was an FBI agent involved?

23 A. That is correct.

24 Q. Are you able to tell us who the FBI agent was?

25 A. I believe it was Agent Distajo.

1 Q. And how do you spell that?

2 A. D-I-S-T-A-J-O.

3 THE COURT: And the first name?

4 THE WITNESS: Alan.

5 THE COURT: A-L-A-N or A-L-L-E-N?

6 THE WITNESS: I think it's A-L-A-N.

7 Q. (Mr. Ferrell continuing) Do you remember who  
8 the other detective was?

9 A. Yes. It was Jon Nelson. King County  
10 Detective Jon Nelson.

11 THE COURT: Okay. That's your first inquiry,  
12 Mr. McCoy. That's the name of the FBI agent, Alan  
13 Distajo. And the name of the King County detective is  
14 Jon Nelson.

15 Q. (Mr. Ferrell continuing) And that's the  
16 detective that's actually back in the back with  
17 Mr. Olsen right now?

18 A. That is correct.

19 Q. Now, do you recall how you first - - do you  
20 recall whether you got a phone call or did somebody  
21 come to you in person?

22 A. They came to me in person.

23 Q. Who came to you?

24 A. I don't recall. It was one of the two, but I  
25 don't recall which one, actually, that I talked to

1 first.

2 Q. Did you get any information before you went  
3 into the room where Mr. Olsen was at, were you advised  
4 of anything?

5 A. Other than he had some information regarding  
6 this series of bank robberies with a gentleman in the  
7 jail named Raymond McCoy.

8 Q. Did you have any more information before you  
9 went into that room?

10 A. No.

11 Q. All right. Tell us what happened when you  
12 went into the room.

13 A. I went into the room, introduced myself, and  
14 listened to what Mr. Olsen had to say.

15 Q. Tell us what the room was like.

16 A. It's an interview room, it's approximately 12  
17 by 15 feet. There's a table in there, a couple of  
18 chairs. We're all seated around the table.

19 Q. What was your role in the interview?

20 A. My role in the interview was just to try to  
21 gather the information that he wanted to provide. I  
22 just wanted to see what information he had regarding  
23 the robberies.

24 Q. Did you provide any information to Mr. Olsen?

25 A. No.

1 Q. And did you take an active role in the  
2 questioning or were you more of a passive listening  
3 role?

4 A. No, I was taking an active role in the  
5 questioning. I was the one who was asking the  
6 questions. I don't even recall, I can't recall if the  
7 agent and the other detective were in the room at the  
8 time, I don't recall.

9 Q. Okay. What do you recall Mr. Olsen  
10 disclosing?

11 A. He told me that there was an inmate at the  
12 jail named Raymond McCoy who was basically confiding in  
13 him regarding numerous bank robberies from last year.  
14 And providing information that Mr. McCoy told him about  
15 the robberies.

16 Q. Do you remember any of the specifics?

17 A. Specifics? Yeah. In my notes. But,  
18 specifically, that there were numerous bank robberies.  
19 That when he was arrested there was a demand note on  
20 his person. That one of the robberies his fingerprints  
21 were found at the scene. And also that the demand note  
22 wasn't written by him, it was written by somebody else.

23 Q. I'll just stop you short here.

24 Let me just show - -

25 THE CLERK: State's Exhibit No. 1 marked for

1 identification.

2 (Exhibit No. 1 marked for identification)

3 Q. (Mr. Ferrell continuing) Detective Aakervik,  
4 I'm handing what has been marked and identified as  
5 State's No. 1. Can you tell us what this is?

6 A. This is Page 5 of the follow-up report that I  
7 completed.

8 MR. FERRELL: And for the record, Your Honor,  
9 I believe it's also the Attachment No. 2.

10 THE COURT: I have seen it.

11 Q. (Mr. Ferrell continuing) Detective, when - -  
12 there is an entry dated for 9-1 of 2006. When did you  
13 fill out those entries for that date?

14 A. Right after I talked to Mr. Olsen. So,  
15 sometime within an hour of the interview. Probably  
16 shorter time than that.

17 Q. Let me just ask you, is State's Pretrial 1 a  
18 true and accurate copy of at least a portion of your  
19 chronological report in this case?

20 A. Yes.

21 MR. FERRELL: State offers Pretrial 1.

22 THE COURT: Any objection for the purpose of  
23 this hearing only?

24 MR. MCCOY: Excuse me?

25 THE COURT: Mr. Ferrell is offering Exhibit 1,

1 which is a copy of the detective's follow-up report for  
2 the purpose of this hearing only. Are you objecting?

3 MR. MCCOY: No objection.

4 THE COURT: It's admitted.

5 (Exhibit No. 1 admitted into evidence)

6 Q. (Mr. Ferrell continuing) So, that's the  
7 information you received from him; is that right?

8 A. That is correct.

9 Q. And you documented it that same day?

10 A. That is correct.

11 THE COURT: Did you take any notes at the time  
12 of the interview?

13 THE WITNESS: I'm sure I took some handwritten  
14 notes, but once I put them on the report then we  
15 typically destroy them.

16 THE COURT: Was there any more in your notes  
17 than what you included in your report?

18 A. No, I think this was it at that point.

19 THE COURT: Okay, go ahead.

20 Q. (Mr. Ferrell continuing) Detective, I want to  
21 ask you about the last entry for 9-1 of '06. Can you  
22 please read the last entry of the last line?

23 A. The source stated he would continue his  
24 relationship with McCoy and contact us if he obtained  
25 further information.

1 Q. What did you mean when you wrote that, what  
2 was your intention?

3 A. My intention was to see if Mr. Olsen had  
4 anything else he wanted to add he could somehow get  
5 ahold of me.

6 Q. Did you in anyway imply to Mr. Olsen that he  
7 should go back into the jail and obtain more  
8 information from Mr. McCoy?

9 A. No.

10 Q. Did you at any point consider him an agent of  
11 yours?

12 A. No.

13 Q. Was there any discussion with him about trying  
14 to obtain the legal strategy of Mr. McCoy?

15 A. No, absolutely not.

16 Q. Now, it's clear at that point that you knew  
17 that Mr. McCoy was representing himself, correct?

18 A. That is correct.

19 Q. Because that's in the report.

20 A. Right.

21 Q. Were you interested in trying to find out what  
22 his strategy was or what tack he was trying to take in  
23 this case?

24 A. No.

25 Q. Okay. Did you ask Mr. Olsen to do what is

1 described in that last sentence or was that something  
2 that he offered up?

3 A. I know I never asked him to go back and do  
4 anything. And I'm not even sure if he really offered  
5 it up. Other than - - I don't recall the exact  
6 conversation. But, it was just a fairly brief  
7 interview that lasted perhaps 15 minutes, maybe. And  
8 he was never asked to go back and do anything. And all  
9 the information he provided was something - - I already  
10 knew everything that he had already provided. He just  
11 provided information that he got from Mr. McCoy that he  
12 could have only gotten from Mr. McCoy.

13 Q. Okay. Now, who brought Mr. Olsen back to the  
14 King County Jail? I assume the jail was where  
15 Mr. Olsen was being kept?

16 A. Could you repeat that? At what time after  
17 this interview?

18 Q. What was your understanding about where  
19 Mr. Olsen was housed at that time?

20 A. The King County Jail.

21 Q. Was there any thought or discussion with any  
22 of the detectives about possibly separating out  
23 Mr. Olsen from Mr. McCoy?

24 A. Not at that point, no.

25 Q. Now, after that interview what did you do with

1 that information? Other than the report, after you  
2 documented it.

3 A. I put it on the report, and at some time I  
4 relayed the information to you. But I don't exactly  
5 recall the date and time.

6 Q. Okay. You don't have it documented in your  
7 chronological - -

8 A. No. It could have been that day or it could  
9 have been the next day, or within a couple of days.  
10 But, after that that was it. It was documented.

11 Q. Okay. What was the next thing you did in  
12 regard to following up with this investigation,  
13 following up these disclosures?

14 A. The next thing we did?

15 Q. In regard to Mr. Olsen.

16 A. Mr. Olsen. On the 11th we brought - -  
17 September 11th of '06 we brought Mr. Olsen back over to  
18 the SPD office this time where he provided a taped  
19 statement. And he also provided his own written  
20 statement regarding the information that he had about  
21 Mr. McCoy from, basically putting the information that  
22 he had from the week before on paper and tape.

23 Q. Okay. And did you later have the - - did you  
24 have the conversation with him, the statement from him,  
25 tape-recorded on the 11th?

1 A. Yes, we did.

2 Q. And did you have that transcribed?

3 A. I made copies of it. I don't recall whether  
4 it was transcribed by us or not.

5 MR. FERRELL: Just for purposes of the record,  
6 Your Honor, I'm going to have these items marked.

7 THE COURT: Sure, go ahead. Hand them to the  
8 clerk.

9 THE CLERK: State's Exhibit No. 2 marked for  
10 identification.

11 (State's Exhibit No. 2 marked for  
12 identification)

13 Q. (Mr. Ferrell continuing) Handing you what has  
14 been marked and identified as State's Exhibit No. 2,  
15 can you tell us what these items are?

16 A. Yes. This is the statement that Mr. Olsen  
17 wrote himself on the 11th of September. And the other  
18 pieces of paper were King County kites that he used to  
19 write his own notes on, he said, when he was in jail.  
20 And the last few pages were the transcript of the tape-  
21 recorded statement.

22 Q. And those all appear to be true and accurate?

23 A. That is correct.

24 MR. FERRELL: State offers Pretrial 2 for this  
25 hearing only.

1 THE COURT: Mr. McCoy, are you objecting?

2 MR. MCCOY: No objection.

3 THE COURT: Two is admitted.

4 (Exhibit No. 2 admitted into evidence)

5 THE COURT: Let me ask you if you're aware of  
6 whether or not any of the information that Mr. Olsen  
7 gave you on September 11th had been obtained between  
8 September 1st and September 11th?

9 THE WITNESS: I don't believe so, I think it's  
10 basically the same information he first provided.

11 THE COURT: Go ahead.

12 Q. (Mr. Ferrell continuing) In fact, that was  
13 actually my next question. But, as a follow-up to  
14 that, did you actually go back at a later time once you  
15 found out about this motion, did you ever re-contact  
16 Mr. Olsen and ask him that information?

17 A. Yes, we did.

18 Q. What did you learn? Tell us - - did you ask  
19 him what he learned during that ten day period?

20 A. Yes. We were - - we picked him up on an  
21 unrelated matter to discuss an unrelated case. And I  
22 also brought up this, that I just wanted to know if  
23 there was - - did he gather any more information from  
24 McCoy from the time we have first - - I first had  
25 contact with him on the 1st until the time that he

1 provided this statement. He said that he didn't  
2 believe that he did.

3 Q. What did he tell you about the nature of their  
4 interaction or who would approach who?

5 A. Mr. Olsen said that Mr. McCoy would actually  
6 approach him in the cell and any conversation that they  
7 had was fairly brief. And they never really talked too  
8 much about the case, if any.

9 Q. Okay. Did you document this in a report?

10 A. Yes, I did.

11 Q. And, do you recall attributing a statement to  
12 Mr. Olsen that you never contacted McCoy about this  
13 case, and the only conversation that they had had had  
14 been brief and initiated by Mr. McCoy?

15 A. That is correct.

16 Q. Did he tell you that Mr. Olsen did not believe  
17 he obtained any new information from Mr. McCoy after  
18 their initial interview on 9-1?

19 A. Yes.

20 Q. And is that documented in your statement?

21 A. That is correct.

22 Q. So, did you also track jail movements, the  
23 movements of Mr. McCoy and Mr. Olsen?

24 A. Yes, I did.

25 Q. And did you document that in the follow-up

1 report?

2 A. Yes, I did.

3 Q. And what did you find?

4 A. I talked to - - both Mr. McCoy and - - I  
5 believe when they arrived at the jail and the different  
6 locations that they moved at the jail until they were  
7 separated.

8 Q. And when were they finally separated?

9 A. I'd have to take a look at my notes. I  
10 believe it's like about eight days after.

11 Q. Would it refresh your recollection if you  
12 looked at your report?

13 A. Yes.

14 Q. Let me give you a clean copy.

15 THE COURT: Show it to Mr. McCoy.

16 MR. FERRELL: Yes, Your Honor.

17 THE COURT: You may approach.

18 MR. FERRELL: All right.

19 THE CLERK: State's Exhibit No. 3 is marked  
20 for identification.

21 (Exhibit No. 3 marked for identification)

22 Q. (Mr. Ferrell continuing) Handing you what has  
23 been marked for identification as State's Pretrial No.  
24 3. Can you tell us what this is?

25 A. This is the follow-up report also created by

1 me.

2 MR. FERRELL: Mr. McCoy, are you still there?  
3 I'm sorry, Mr. McKay?

4 MR. MCKAY: Yes.

5 Q. (Mr. Ferrell continuing) All right. And,  
6 where do you have documented as far as the movement of  
7 Mr. Olsen and Mr. McCoy?

8 A. Entry No. 8 on January 24th of '07 at  
9 3:35 p.m. I called the jail, obtained a following  
10 movement information regarding Mr. McCoy and Mr. Olsen.  
11 And, it was on 9-14-2006 there was a keep separated  
12 order.

13 Q. Initiated by whom?

14 A. Initiated by you.

15 Q. On 9-14?

16 A. On 9-14.

17 Q. Does that correspond roughly with when the  
18 tape-recorded statement and the other material was  
19 provided to our office?

20 A. I believe so. That is correct.

21 Q. Other than the conversations you have  
22 documented have you talked to Mr. Olsen about his  
23 testimony today?

24 A. No.

25 Q. About his possible thoughts on whether he was

1 an agent with - - for you or the State?

2 A. No.

3 MR. FERRELL: All right. I have no further  
4 questions at this time.

5 THE COURT: Thank you.

6 Any cross examination, Mr. McCoy?

7 MR. MCCOY: Yes.

8 May I approach?

9 THE COURT: No. Stay where you are and let me  
10 know if you need to approach for any reason.

11

12 CROSS EXAMINATION

13 BY MR. MCCOY:

14 Q. According to your report, Detective, on  
15 September 1st you was called to the FBI by a agent and  
16 a detective; is that correct?

17 A. I was already at my desk. The place where  
18 they were having this interview was probably about 15  
19 feet away.

20 Q. You also gave the testimony that it was an  
21 individual that had information pertaining to unrelated  
22 charge. Was that unrelated charge bank robbery?

23 A. I'm sorry, repeat that.

24 Q. You stated that the FBI was having an  
25 interview with the FBI source regarding an unrelated

1 charge. And as a result of that he volunteered  
2 information about bank robberies concerning me. The  
3 unrelated charge that he was being interviewed, was  
4 those unrelated charges bank robberies?

5 A. It wasn't regarding an unrelated charge it was  
6 an unrelated case. And, I'll be honest with you, I  
7 don't believe so. And, I don't believe I'd be at  
8 liberty to discuss what his conversation was with the  
9 agent.

10 Q. So you don't know what's the unrelated charge  
11 - - I mean, the unrelated case was regarding the  
12 charges of bank robbers?

13 A. I don't believe so.

14 Q. During your interview with Mr. Olsen on  
15 September 1st he provided you information about bank  
16 robbers, correct?

17 A. On September 1st? He provided information  
18 regarding a series of bank robberies involving you.

19 Q. Okay. For the record, you are the leading  
20 investigator on these bank robberies?

21 A. That is correct.

22 Q. Are you also the officer that filed a  
23 Certification for Determination of Probable Cause?

24 A. That is correct.

25 Q. I'd like to ask you at this time, Detective

1 Aakervik, the information that you received from Kevin  
2 Olsen on the 1st, was it consistent with your  
3 Certification for Determination of Probable Cause?

4 A. I'd say it was accurate, that is correct. I  
5 don't believe anything that Mr. Olsen told me on the  
6 1st wasn't anything that I already had knowledge of.

7 Q. Okay. Again, for the record, I'm trying to  
8 make declaration and the substance of the declaration  
9 real clear. Was the information you received from  
10 Kevin Olsen on September 1st accurate and consistent  
11 with your Certification for Determination of Probable  
12 Cause?

13 A. I believe so.

14 Q. That's not a straight answer. Either it was  
15 or it wasn't.

16 A. I believe so. I haven't read my Certification  
17 for Determination of Probable Cause.

18 MR. MCCOY: Your Honor, can you direct the  
19 witness to give a straight answer to the question?

20 THE COURT: Mr. McCoy, he did answer you and  
21 you just interrupted him.

22 THE WITNESS: I said, I believe so.

23 Q. (Mr. McCoy continuing) You believe so?

24 A. That is correct.

25 MR. MCCOY: May I approach the witness, Your

1 Honor?

2 THE COURT: No. Not unless you tell me why.

3 MR. MCCOY: I need to bring up an exhibit to -

4 -

5 MR. FERRELL: I can hand it up.

6 THE COURT: That's fine.

7 Give it to Mr. Ferrell, he will have it

8 marked.

9 MR. MCCOY: Well, I can have - -

10 THE COURT: That's fine.

11 Mr. Hampton, do you want to do that?

12 MR. HAMPTON: I can.

13 Remember, I'm not your actual attorney. Do  
14 you know what - - I'm sorry.

15 THE COURT: That's up to you, Mr. Hampton.

16 I'd be happy to have Mr. Ferrell do it.

17 MR. HAMPTON: He's going to have to look at it  
18 at some point, anyway.

19 THE COURT: You sit down, Mr. Hampton.

20 Go ahead and take a look at the document,  
21 Mr. Ferrell, and have it marked at the same time, if  
22 you would.

23 MR. FERRELL: Would you mark this first one?

24 THE COURT: May I look at it? Thank you.

25 I'm passing Exhibit 4 to the witness. There

1 we go.

2 MR. FERRELL: What we want to do is have this  
3 marked as one document, but the reference is 2A, 2B,  
4 2C. Three pages of documents. Thank you.

5 THE COURT: Mr. McCoy, one moment.

6 THE CLERK: Defendant's Exhibits 4 and 5 are  
7 marked for identification.

8 (Exhibit Nos. 4 and 5 marked for  
9 identification)

10 THE COURT: And are you offering four and five  
11 for purposes of this hearing?

12 MR. MCCOY: Yes, Your Honor.

13 THE COURT: I've passed the witness Exhibits 4  
14 and 5 if you want to question him about them.

15 MR. MCCOY: Yes, Your Honor. I think it would  
16 be better if I could come up there.

17 THE COURT: I'm sure you do, Mr. McCoy. But  
18 you need to follow my rules. Go ahead and ask your  
19 question. The witness has the exhibits you wanted him  
20 to look at in front of him.

21 Q. (Mr. McCoy continuing) Detective Aakervik,  
22 if you have Exhibit 2A it should be a statement from  
23 Marlena Wallace; is that correct?

24 THE COURT: That's Exhibit 5.

25 THE WITNESS: Willey? Marlena Willey?

1 Q. (Mr. McCoy continuing) Yes.

2 According to your discovery, Ms. Willey was the  
3 bank teller at the incident, I think it was 12-27-05.  
4 It was the incident concerning Sterling Savings Bank,  
5 correct?

6 A. It's not my statement, but I believe - -

7 Q. No, it's not your statement - - it's a  
8 statement that was given by Ms. Willey?

9 A. Right.

10 Q. You gave testimony that information that you  
11 received from Mr. Olsen was accurate and you believe it  
12 was accurate, right?

13 A. It was just information that I took down.

14 Q. Okay, well, on Mr. Olsen - - if you can refer  
15 to counsel exhibit that Mr. Olsen's statement?

16 THE COURT: That's Exhibit No. 2?

17 THE WITNESS: One.

18 THE COURT: One.

19 Mr. Ferrell, is it one or two, Mr. Olsen's  
20 statement? One is the detective's follow-up report.  
21 Two I thought was the compilation of statements of  
22 Mr. Olsen.

23 MR. FERRELL: That is correct.

24 THE COURT: All right. Look at No. 2.

25 THE WITNESS: Okay.

1 Q. (Mr. McCoy continuing) Go to Page 3 along  
2 Line 9 and 10.

3 A. Page 3.

4 THE COURT: Page 3 of which part of Exhibit  
5 2? What is Page 3?

6 MR. MCCOY: Page 3 of Mr. Olsen's statement.

7 THE COURT: The transcript or the written  
8 statement?

9 MR. MCCOY: The transcript.

10 THE COURT: Okay. Look at Page 3 of the  
11 transcript, that's part of Exhibit 2.

12 THE WITNESS: Page 3, what line?

13 Q. (Mr. McCoy continuing) Okay. It would be  
14 nine and ten. Line number - - or ten. Mr. Olsen  
15 stated to you that the teller was 90 percent sure that  
16 I was the suspect; is that correct?

17 A. This transcript says she was only about - -  
18 only a percentage of 90 percent sure that it was him.

19 Q. Okay. Would him be referring to Raymond  
20 McCoy?

21 A. I believe so.

22 Q. You believe so. Okay.

23 According to your discovery the teller was quite  
24 sure, 90 percent sure that it wasn't me; is that  
25 correct?

1 A. What are we looking at?

2 MR. MCCOY: Counsel, I don't have a copy of  
3 his Certification for Determination of Probable Cause.

4 MR. FERRELL: I'll see if I have an extra  
5 copy.

6 MR. MCCOY: Excuse me, Your Honor, I should  
7 have had a copy.

8 THE COURT: That's all right, Mr. McCoy, take  
9 your time.

10 (Pause)

11 MR. MCCOY: Okay, back on the record.

12 Q. (Mr. McCoy continuing) Detective Aakervik,  
13 can you recall - -

14 THE COURT: Mr. McCoy, this is all on the  
15 record.

16 Q. (Mr. McCoy continuing) Do you recall  
17 conducting a photo montage on September - - I mean, on  
18 February 22nd with the teller and victims at the bank?

19 A. I don't the recall the exact dates but I  
20 recall showing - - creating a montage and showing it to  
21 the witnesses and victims at Sterling Savings Bank,  
22 that is correct.

23 Q. Okay. It can be verified by the record, even  
24 though I don't have a copy here by me now, but it can  
25 be verified on the record that Mrs. Marlena Willey was

1 made a pick of your montage, I think she picked the  
2 Photo No. 1. I was Photo No. 5. And she says she was  
3 90 percent sure that it was Photo No. 1, not Photo No.  
4 5, correct?

5 A. I'd have to take a look at my report.

6 MR. FERRELL: Your Honor, while I do have it,  
7 I guess at this point I just don't know what the  
8 relevance is.

9 THE COURT: I think Mr. McCoy is pursuing his  
10 argument that you don't have equally strong evidence on  
11 each count.

12 MR. FERRELL: So we're doing the severance  
13 motion essentially at the same time?

14 THE COURT: If you're objecting I'm certainly  
15 willing to entertain your objection.

16 MR. FERRELL: I am objecting. This is for the  
17 purpose of the misconduct allegations.

18 THE COURT: Sustained.

19 Mr. McCoy, we're having an evidentiary hearing  
20 only on the issue about Mr. Olsen. When Mr. Olsen made  
21 contact, how much he was directed to talk to you,  
22 whether in fact if he knew he talked to, whether he  
23 talked to you after the first time he talked to  
24 officers, things like that. We're not getting to the  
25 strength of the case against you. I'm not going to

1 have a mini trial on the strength of the case against  
2 you.

3 And let me remind you that a Knapsted motion,  
4 which is what you brought, is decided on the State's  
5 written evidence against you only, and presumes that  
6 the State's evidence is true and draws all inferences  
7 in favor of the State. So it's not appropriate on a  
8 Knapsted motion for you to question witnesses. You are  
9 going to have to wait for a trial assuming I don't  
10 dismiss this case on your Knapsted motion to question  
11 the detective about the strength of witness  
12 identification.

13 So I sustain the objection. And I'm asking  
14 you to return to the topic at hand, which is Mr. Olsen,  
15 and his contact with these officers. All right? Go  
16 ahead and ask your next question.

17 MR. MCCOY: Your Honor, I'm just saying for  
18 the record, I don't see - - all I'm doing is making a -  
19 -

20 THE COURT: Mr. McCoy - -

21 MR. MCCOY: - - comparison and contrast with  
22 the information that he received on the 31st to show  
23 that he knew that information was incorrect and it was  
24 inconsistent. So why would he want to say - - agree to  
25 have him to come back to eavesdrop and spy on me for

1 ten days.

2 THE COURT: I guess what you're missing,  
3 Mr. McCoy, is this, the question before me is not what  
4 this officer's thinking was about the evidence against  
5 you. The question before me is what was his contact  
6 with Mr. Olsen. Okay? If you don't think that what  
7 Mr. Olsen said is an accurate reflection of what's in  
8 the reports then ask that question. Go right to it.

9 Q. (Mr. McCoy continuing) Okay, and I asked you  
10 before, did the information that Mr. Olsen give you on  
11 the 24th, was it accurate with your investigation with  
12 the witness interview?

13 And, the reason I'm asking this here, Detective  
14 Aakervik, is because you was the leading officer. You  
15 was the one to be able to determine was Mr. Olsen  
16 giving you accurate information or was Mr. Olsen giving  
17 you inaccurate information.

18 THE COURT: Mr. McCoy, ask a question.

19 Q. (Mr. McCoy continuing) After the meeting with  
20 Mr. Olsen on - - during the meeting with Mr. Olsen on  
21 September 1st, the first thing Mr. Olsen advised you  
22 was that I was defending myself; is that correct?

23 A. I don't recall if that was the first thing he  
24 told me. The information I put down on there was just  
25 bullet points of the conversation that - - the brief

1 conversation that I had with him in the interview  
2 room. What he was able to demonstrate to me was that  
3 he had information regarding the robberies that he had  
4 to get from somebody that knew about the robberies or  
5 did the robberies themselves. When he identified you,  
6 and it was my case, he provided very accurate  
7 information regarding the case that could have only  
8 been provided by you.

9 Q. If I was able to demonstrate I could show that  
10 that is incorrect. But for some reason my hands are  
11 tied to ask you questions.

12 THE COURT: Yes, Mr. McCoy, that's what  
13 happens on cross examination, you ask questions. Ask a  
14 question.

15 Q. (Mr. McCoy continuing) Although Mr. Olsen  
16 informed me that I was representing myself, you gave  
17 testimony that you didn't ask him to come back to the  
18 jail to get information; is that right?

19 A. There really wasn't any information for me to  
20 gather. Everything Mr. Olsen provided I already knew.  
21 There wasn't any information that I needed, even if I  
22 wanted to, there wasn't any information that I needed  
23 to get.

24 Q. Did you agree - - did you agree to the  
25 proposition for him to come back and continue his

1 relationship with me and report back to you if he  
2 obtained further information?

3 A. I can't recall the exact conversation, but it  
4 was more along the lines of, he was going back and he  
5 would contact me if he had any other information he  
6 wanted to get ahold of me about.

7 Q. Okay. So, eventually you guys had come to  
8 some type of agreement because if not you wouldn't have  
9 come back and escort Mr. Olsen from the King County  
10 Jail to give you a tape-recorded statement on September  
11 11th; is that correct?

12 A. Basically, we wanted to bring him back to the  
13 - - the initial interview occurred in the FBI building  
14 and in the FBI building we are unable to tape-record  
15 statements in the Federal building. In the SPD  
16 building, the Seattle Police Department, we are able to  
17 tape-record statements. We brought him back over on  
18 the 11th to provide a tape-recorded statement in his  
19 own words regarding his contact with you in the jail.

20 THE COURT: Would you agree with what  
21 Mr. McCoy asked you? He asked you if it was correct.

22 THE WITNESS: I never sent Mr. Olsen back in  
23 to spy on you, no.

24 Q. (Mr. McCoy continuing) But what I was asking  
25 was correct. Even though you did not send him back in

1 to spy you agreed to the proposition for him to come  
2 back and do that because if you didn't Mr. Olsen cannot  
3 just leave the county jail to get down to your police  
4 headquarters; isn't that correct?

5 A. I never agreed one way or another, I just took  
6 down the information and that was it.

7 Q. Okay. Why did you come back to the jail and  
8 escort - - and take Mr. Olsen to the precinct, I mean,  
9 to the police headquarter September 11th, after your  
10 interview with him on September 1st?

11 A. To provide - - to get his statement on tape in  
12 his own words.

13 Q. Detective Aakervik, you just gave testimony  
14 that the information that you received from Mr. Olsen  
15 on September 21st you already knew, you already had  
16 that information. So what possibly did you need to get  
17 a recording from information that you already had?

18 A. Mr. Olsen was going to be a witness, so  
19 basically supporting what we already knew. So he was a  
20 witness in this case. I was doing an interview getting  
21 his statement down on - - having it recorded in his own  
22 words and transcribed.

23 Q. Okay. Mr. Aakervik - - Detective Aakervik,  
24 you gave testimony earlier that you kept track of me  
25 and Mr. Olsen's movement when we came to the jail.

1 When did Mr. Olsen, according to your investigation,  
2 arrive here at the King County Jail?

3 A. I'd have to take a look at my notes. I  
4 believe it's on Exhibit No. 3, Entry No. 8, which was  
5 January 24th of this year. And I got the information  
6 from the person at the King County Jail who provided me  
7 with your movement from 8-15-06 to 9-30 of '06, and  
8 Mr. Olsen's from 7-15 of '06 to 9-14 of '06 where he  
9 was separated due to a separation order from  
10 Mr. Ferrell.

11 Q. Okay, Detective Aakervik, let me read a phrase  
12 back to you.

13 Do you have any knowledge when was Mr. Olsen booked  
14 in the county jail?

15 A. No.

16 Q. Were you aware that prior to me moving into  
17 the cell with Mr. Olsen that Mr. Olsen had been in the  
18 county jail for almost two years?

19 A. I don't recall how long that he's been in the  
20 jail. But I know he had been in the jail.

21 Q. My question is if Mr. Olsen was in jail for  
22 two years, during the time that these alleged  
23 allegations took place, which was from December 27th,  
24 2005 to February 13th, 2006 he was in custody, how can  
25 he be a witness for something that you said a witness

1 to the investigation if he was in here how can he be a  
2 witness for your case?

3 A. He's a witness because you talked to him in  
4 jail and provided information about the bank robberies  
5 that only the bank robber would have known. So that  
6 makes him a witness.

7 Q. Detective Aakervik, you keep saying that - - I  
8 asked you a question, was the information that  
9 Mr. Olsen gave you accurate? And you said, you think  
10 so. But you still said on the record that the  
11 information that he give you only could come from  
12 someone that robbed the bank. So are you saying that  
13 the information is accurate or is not accurate?

14 A. He provided accurate information.

15 Q. Okay, thank you, I appreciate that.

16 MR. MCCOY: I have no further questions.

17 THE COURT: Any further direct examination?

18 MR. FERRELL: No, Your Honor.

19 THE COURT: Thank you, Detective, you can step  
20 down. And if you would return to the jury room. And  
21 you can return the exhibits to my clerk on the way, I  
22 would appreciate it.

23 MR. FERRELL: I may call the other detective  
24 first and then I would call Mr. Olsen - - check on  
25 Mr. Olsen first?

1 THE COURT: I think you should.

2 MR. FERRELL: And then if it's okay I'll have  
3 Detective Aakervik here at the same time.

4 THE COURT: That's fine.

5 Kevin Scott Olsen, being first duly sworn  
6 testified as follows:

7

8 DIRECT EXAMINATION

9 BY MR. FERRELL:

10 Q. Good afternoon, Mr. Olsen.

11 A. Good afternoon.

12 Q. Would you please tell us your name and spell  
13 your last name for the record.

14 A. Kevin Scott Olson. O-L-S-E-N.

15 Q. What is your date of birth?

16 A. 12-30-59.

17 Q. Where are you currently residing?

18 A. The King County Jail.

19 Q. And what are you in the King County Jail on,  
20 what charges?

21 A. Bank robbery and robbery.

22 Q. And have you already been sentenced on those  
23 matters?

24 A. I have.

25 Q. What sentence did you receive?

1 A. I received upwards of 17 years.

2 Q. Mr. Olsen, let me just - - I want to get right  
3 to it. Do you recall ever meeting Detective Aakervik?

4 A. Yes, I do.

5 Q. Tell us about the very - - what led to you  
6 meeting Detective Aakervik?

7 A. I had some information about a meeting I had,  
8 or actually, I live in a living situation, living unit  
9 in the King County Jail with another person who was in  
10 the jail for robbery and I had some information from  
11 that person about his robberies.

12 Q. Did that allegation involve Mr. McCoy?

13 A. Yes, it did.

14 Q. Were you meeting - - for what purpose were you  
15 at the FBI building when you first met Detective  
16 Aakervik?

17 A. I was on a different matter, giving  
18 information on a different matter, case.

19 Q. Was it related to Mr. McCoy whatsoever?

20 A. No, it was not.

21 Q. Who brought up the issue over there about  
22 Mr. McCoy?

23 A. I did.

24 Q. And why did you do so?

25 A. It was compelling information that I had and I

1 thought it could be used by the police at that time.

2 Q. Do you remember who you were meeting with?

3 A. I was meeting with Jon Nelson.

4 Q. Do you remember if you were meeting with  
5 anyone else?

6 A. Yes, Alan Distajo.

7 Q. The FBI agent?

8 A. FBI, right.

9 Q. Now, at what point in the conversation with  
10 the special agent and Detective Nelson did you bring up  
11 the issue regarding Mr. McCoy?

12 A. I was done talking and interviewing with the  
13 FBI at that point in time. And, I said, by the way, I  
14 may have some information that may be useful to a bank  
15 robbery, a couple of bank robberies in the area.

16 Q. How long do you think you had been speaking  
17 with them prior to bringing this up?

18 A. I'd been there about, probably a couple hours,  
19 probably, at the most.

20 Q. And did you tell them something about what you  
21 knew about the McCoy case?

22 A. I did.

23 Q. And what happened after telling the special  
24 agent and Detective Nelson about your initial  
25 disclosure, what happened then?

1           A. I reviewed some bank photographs to be sure  
2 about who I was talking about, to see if it actually  
3 was the person I was speaking about and to see if they  
4 had a bulletin on him, and they did.

5           Q. My question is, at that point when you were  
6 shown the photographs, was Detective Aakervik in the  
7 room?

8           A. No, he was not.

9           Q. And at some point was Detective Aakervik  
10 brought into the room or come into the room?

11          A. Yes. They had - - they didn't know whose case  
12 it was, they had to figure out whose case it was. And  
13 they weren't sure exactly who was in charge of the  
14 case. And they had to actually track down who was, and  
15 it took about 20 minutes.

16          Q. Okay. Once Detective Aakervik came into the  
17 room did you tell the detectives and Detective Aakervik  
18 what you knew about the case?

19          A. I did, yes.

20          Q. What kind of things, if you recall, did you  
21 tell them?

22          A. I had basically some bits and pieces of some  
23 different scenarios and robberies and discussions that  
24 I had with Mr. McCoy at the jail concerning his  
25 robberies, and, in conjunction with my case also that I

1 was sharing with him back and forth.

2 Q. Okay. And did you see Detective Aakervik or  
3 any of the other detectives taking notes about what you  
4 were saying?

5 A. At that point in time, I don't recall exactly  
6 if they were taking notes at that very moment in time  
7 or not.

8 Q. All right. Do you recall, how long do you  
9 think you spoke with Detective Aakervik in the room?

10 A. I don't recall exactly.

11 Q. Generally? I mean, were you in there three  
12 hours, one hour, 20 minutes?

13 A. Oh, I would say about an hour.

14 Q. Did you feel at that time that you had given  
15 all the information that you had or did you hold any  
16 back, that you recall?

17 A. Well, I didn't give all of it. I just gave  
18 kind of a summary of it.

19 Q. All right. Can you tell us, when the meeting  
20 ended, did you know you were going to go back to the  
21 King County Jail?

22 A. Yes, I did.

23 Q. Did anybody ever ask you to go back to the  
24 King County Jail to spy on Mr. McCoy?

25 A. No, they did not.

1 THE COURT: Did they ask you to go back and  
2 pay attention to what Mr. McCoy said about his case?

3 THE WITNESS: No, they did not.

4 Q. (Mr. Ferrell continuing) Was there any  
5 discussion about trying to find anything more out?

6 A. No, there was - - well, no, there was not.  
7 The only thing that was said was that they wanted to  
8 have me moved at that point in time. That was a  
9 consideration, to have me moved.

10 Q. Now, after that - - so did you consider  
11 yourself essentially an agent for the State or an agent  
12 for the police to go back in there?

13 A. No, I did not.

14 Q. Did you re-approach Mr. McCoy for any purpose  
15 between that meeting and a subsequent meeting you had  
16 with the detective?

17 A. No.

18 Q. Did you obtain any additional information from  
19 the first meeting you had with Detective Aakervik until  
20 you were moved out of that unit?

21 A. No, I did not.

22 Q. Did you at a later time provide a handwritten  
23 statement to the police?

24 A. Yes, I did.

25 Q. And some notes?

1 A. I did.

2 Q. And what was the significance of the notes on  
3 the forms?

4 A. I had in between conversations and in between  
5 being interrupted in our conversation and whatnot, I  
6 had gotten up from my place where I was sitting and we  
7 were walking back and forth or standing - - there was  
8 occasions where I went in the room and jot down some  
9 things in particular, like some names and stuff like  
10 that. In a way which I could remember them. Without  
11 anybody knowing what I was doing.

12 Q. Was that prior to or after your meeting with  
13 Detective Aakervik?

14 A. Oh, it was prior to.

15 Q. You're sure about that?

16 A. Yes.

17 Q. Do you recall any specific conversations you  
18 may have had with Mr. McCoy after your first meeting  
19 with Detective Aakervik?

20 A. About his case, you mean?

21 Q. Yes.

22 A. No, none.

23 Q. What about social, did you guys have any - -

24 A. In passing.

25 Q. And, since you were moved on September 14th,

1 have you had any contact with Mr. McCoy?

2 A. No, I haven't.

3 Q. Did you make any offer to the detective that  
4 you would report back to him or recontact him for any  
5 purpose at the conclusion of that meeting?

6 A. I don't remember specifically. If I  
7 remembered something else I may have. But I didn't  
8 make any meeting or appointment or anything like that,  
9 no.

10 Q. Okay. Now, you had provided also a tape-  
11 recorded statement on the 11th of September, do you  
12 remember that?

13 A. Yes, I do.

14 Q. You probably don't remember the exact date?

15 A. I don't remember the date.

16 Q. Have you had a chance to review the tape-  
17 recorded statement?

18 A. Yes, real quickly, I did.

19 Q. Down at my office before we got started?

20 A. Yes.

21 Q. Did you have a chance to review your  
22 handwritten statement?

23 A. Yes, I did.

24 Q. Does either your handwritten statement or the  
25 tape-recorded statement that was taken on that day, is

1 any of the information contained in either of those,  
2 was any of that information garnered or gathered by you  
3 after you first spoke to Detective Aakervik?

4 A. No, it was not, no.

5 MR. FERRELL: No further questions. Thank  
6 you.

7 THE COURT: Any cross examination, Mr. McCoy?

8 MR. MCCOY: Yes, Your Honor.

9  
10 CROSS EXAMINATION

11 BY MR. MCCOY:

12 Q. How's it going, Mr. Olsen?

13 A. Fine, thank you.

14 Q. According to your statement you and I met when  
15 I was moved from A South up to 9 East, and think that  
16 was in mid August or something?

17 A. I don't recall the exact date, but we met in 9  
18 East, yes.

19 Q. And you said that, you know, you was in there  
20 for bank robbery - - actually, I remember you when I  
21 went to get - -

22 MR. FERRELL: Your Honor, I object.

23 THE COURT: Sustained.

24 Mr. McCoy, I'll let you testify at this  
25 hearing you if you really, really want to. But, right

1 now you are asking questions, remember?

2 Go ahead.

3 MR. MCCOY: I apologize.

4 Q. (Mr. McCoy continuing) Mr. Olsen, you said  
5 that after the meeting on September 1st you did not  
6 have any other conversations with me pertaining to my  
7 cases; is that correct?

8 A. I don't remember the exact date but I had no  
9 further conversations with you about your case after I  
10 talked to the detectives.

11 Q. An the statement that you gave to the  
12 detective you mentioned that you and I shared  
13 information concerning the case law about bank  
14 robberies and our case in general; is that right?

15 A. Yes. That would be correct.

16 THE COURT: How many times did you do that?

17 THE WITNESS: Excuse me?

18 THE COURT: How many times did you do that,  
19 Mr. Olsen? Share information about your cases in  
20 general, and about the law and bank robberies?

21 THE WITNESS: With?

22 THE COURT: Mr. McCoy.

23 THE WITNESS: We had several conversations.

24 MR. MCCOY: Several conversations.

25 Q. (Mr. McCoy continuing) Mr. Olsen, how did you

1 come to get in contact with Detective Aakervik to go  
2 down on September 11th to give your tape-recorded  
3 statement?

4 A. Like I said, the exact dates I don't recall.  
5 The exact dates when the recorded statement took place,  
6 I was brought down by the, I think I was picked up by  
7 Detective Aakervik and the FBI. From the jail.

8 Q. During our conversations about our case, you  
9 were sort of like a consultant for me, I would say,  
10 because you helped me prepare - -

11 MR. FERRELL: Objection, Your Honor.

12 THE COURT: I'm going to rephrase that,  
13 Mr. McCoy.

14 Did you consider yourself Mr. McCoy's  
15 consultant in any way?

16 THE WITNESS: No. As a matter of fact, I made  
17 it very clear on several occasions I wasn't a lawyer  
18 and I wasn't educated on the science of law by any  
19 means.

20 THE COURT: Did Mr. McCoy ever tell you he  
21 thought you were his consultant?

22 THE WITNESS: No, not that I recall.

23 THE COURT: Go ahead, Mr. McCoy.

24 MR. MCCOY: At this time, Your Honor, I would  
25 like to hand up an exhibit to the witness.

1 THE COURT: Sure.

2 MR. FERRELL: I guess I don't understand.

3 THE COURT: First have them marked.

4 MR. FERRELL: Yes, Your Honor.

5 THE COURT: Then tell me your concern. I  
6 assume Mr. McCoy is offering those.

7 MR. FERRELL: Do you want them stapled  
8 together?

9 MR. MCCOY: You can staple them together.

10 MR. FERRELL: All right. I'll just look at  
11 them real quick.

12 THE COURT: Sure.

13 There's some material in the back of them.

14 THE CLERK: Defendant's Exhibit No. 6 is  
15 marked for identification.

16 (Exhibit No. 6 marked for identification)

17 THE COURT: Do you want the witness to look at  
18 six?

19 MR. MCCOY: Yes.

20 THE COURT: I'll hand it to Mr. Olsen.

21 Tell me when you are done.

22 Q. (Mr. McCoy continuing) Have you had a chance  
23 to go over them?

24 THE COURT: I told him to let us know when  
25 he's done.



1 MR. MCCOY: Sorry to interrupt, Mr. Olsen.

2 THE COURT: Wait.

3 THE WITNESS: I apologize.

4 THE COURT: Take your time.

5 THE WITNESS: Thank you.

6 THE COURT: Keep that, Mr. McCoy had some  
7 questions.

8 Q. (Mr. McCoy continuing) Mr. Olsen, are you  
9 familiar with the document in your hand?

10 A. Yes, I am, vaguely.

11 Q. Is this your handwriting?

12 A. Yes, it looks like my handwriting, yes.

13 Q. Okay. Mr. Olsen, you just gave testimony that  
14 you was not a consultant, or, you didn't work with me  
15 as a consultant?

16 A. That's true.

17 Q. And is that document you got in your hand, is  
18 that a legal document you prepared for me for my motion  
19 to sever that was on, I think, on September 14th or  
20 September 15th, motion to sever?

21 A. Yes, it is.

22 Q. And the motion to sever was the two counts,  
23 one count was the Sterling Bank and the other one was  
24 the Key Bank; is that right?

25 A. I don't know that it says that in here.

1 Q. So, as a fact, you did sort of like work with  
2 me, again, I can say as a consultant, and you and I  
3 exchanged - - we was in conversation about trial  
4 strategies, or defense strategies and all that?

5 A. You shared some strategies with me, yes.

6 Q. And you, as you stated in your statement, that  
7 you was familiar with the robbery laws, and that you  
8 was giving me some information. As a matter of fact,  
9 that document you got there you also gave me some case  
10 law pertaining to that; is that correct?

11 A. Not entirely, no.

12 What I recall is that this is a copy of the  
13 information you gave me to write down and I was just  
14 helping you because your handwriting was so bad. You  
15 had directed me to write this, this is your words, but  
16 in my writing.

17 Q. No, those are your words in your writing,  
18 Mr. Olsen.

19 MR. MCCOY: At this time, Your Honor, I have -  
20 - would like some more documents - -

21 THE COURT: Hold on. Are you offering Exhibit  
22 6 into evidence?

23 MR. MCCOY: Yes, I am.

24 THE COURT: And while we're at it, I think I  
25 failed to ask about your response to four and five as

1 well. So, four, five and six, Mr. Ferrell, are you  
2 objecting?

3 MR. FERRELL: No.

4 THE COURT: Four, five and six are admitted.

5 (Exhibit Nos. 4-6 admitted into evidence)

6 THE COURT: And if you could pass me four and  
7 five.

8 MR. MCCOY: Mr. Ferrell, can I take a look at  
9 that?

10 MR. FERRELL: Yes.

11 Aren't four and five actually related to the  
12 Knapsted motion versus the - -

13 THE COURT: Well, I think Mr. McCoy has some  
14 argument here about relevance to the dismissal motion.

15 MR. FERRELL: All right.

16 THE COURT: It's a tangential argument, but  
17 there's an argument there.

18 THE CLERK: Defendant's Exhibits 7 and 8 are  
19 marked for identification.

20 (Exhibit Nos. 7 and 8 marked for  
21 identification)

22 THE COURT: If you could take a look at seven  
23 and eight, if you would, Mr. Olsen, and let me know  
24 when with you are done reviewing them.

25 While I'm waiting for Mr. Olsen, can we reach

1 an agreement on what date Mr. McCoy's motion for  
2 joinder was brought, his first motion for - - strike  
3 that - - for severance was brought?

4 MR. FERRELL: I've got a document dated May  
5 27th. But I don't have a file stamp on it.

6 THE COURT: Okay. Do you agree that's when  
7 you brought your first motion to sever, Mr. McCoy, was  
8 May?

9 MR. MCCOY: No. My motion was heard by, Your  
10 Honor, Richard Jones on September 14th.

11 THE COURT: The question was when did you  
12 draft your motion, not when was it heard. Obviously  
13 you draft lots of things before the hearing.

14 MR. MCCOY: Yes. I'm not sure. But I was  
15 thinking it was - - yes, that was quite a bit, because  
16 it was quite a while before - -

17 THE COURT: Long before September.

18 MR. MCCOY: Yes.

19 MR. FERRELL: I actually have a copy - -

20 THE COURT: No, I just wanted to place that in  
21 time. Because Exhibit 6 seems to pertain to a motion  
22 to sever in its entirety.

23 MR. FERRELL: I actually did find the last - -  
24 I have a copy of what's entitled criminal motion for  
25 severance of defense's pursuant to CRR 4.4. Copy

1 received from our office September 1, 2006, dated by  
2 Mr. McCoy August 28th.

3 I'm going to have this marked and offered for  
4 the purpose of the record.

5 THE COURT: Sure, go ahead.

6 MR. FERRELL: I do think it's important.

7 THE COURT: Show it to Mr. McCoy first.

8 Mr. McCoy, any objection?

9 MR. MCCOY: This is dated August 28th?

10 THE COURT: Right.

11 Any objection?

12 MR. MCCOY: No objection, Your Honor.

13 THE CLERK: That will be State's Exhibit No.

14 9.

15 THE COURT: Okay, nine is admitted.

16 (Exhibit No. 9 admitted into evidence)

17 THE COURT: Let's come back to seven and  
18 eight.

19 Did you want to ask Mr. Olsen some questions?

20 Q. (Mr. McCoy continuing) Mr. Olsen, one of  
21 those documents is also in your handwriting, isn't it?

22 A. Yes, it is.

23 THE COURT: Which one?

24 THE WITNESS: It's No. 7.

25 Q. (Mr. McCoy continuing) That document you're

1 holding in your hand, is the name on it, I think the  
2 gentleman's last name is Lee, right?

3 A. Woods?

4 Q. Lee Woods, right?

5 A. Larry Woods?

6 Q. Right.

7 Do you know who Larry Woods is?

8 A. Your roommate.

9 Q. Exactly. And that is a note that you drafted  
10 for Mr. Woods to give to the court, right?

11 A. This is one that I help helped him write, yes.

12 Q. This is your handwriting?

13 A. Yes. At his direction, yes.

14 Q. Is it fair to say that Mr. Woods I think gave  
15 you an advance of commissary for you to do that for  
16 him?

17 A. No, he did not.

18 Q. Not only for Mr. Woods, Mr. Olsen, but you  
19 used to be like the quote, unquote, the person that  
20 people would come to when they had any type of legal  
21 questions, right?

22 A. Yes, they tried to, yes.

23 Q. So, even me sometimes, I have offered you, you  
24 know, coffee, candies and stuff for helping me out from  
25 time to time.

1           A. No, the only time I ever received anything,  
2 offer or anything tangible in trade was for actual  
3 items that I got for you off the commissary, which was  
4 socks in a drawer, I believe. That happened a couple  
5 times.

6           Q. Mr. Olsen, I'd like to ask you the time that  
7 you knew me how would you describe me, was I, I mean, a  
8 character - - let me - - have I ever did anything to  
9 offend you?

10          A. No.

11          Q. Have I ever did anything to disrespect you?

12          A. No, you have not.

13          Q. Have I always treated you with respect?

14          A. Yes, you have. Far as I can tell.

15          Q. Mr. Olsen, when you had the meeting over at  
16 the FBI building on September 1st, the first thing you  
17 informed them was that I was representing myself,  
18 right?

19          A. I don't recall that, no. As being the first  
20 thing I informed them, no.

21          Q. I think it says, I can read it from here, you  
22 said, he stated that he had regular contact with McCoy,  
23 and that McCoy - - that he knew McCoy was defending  
24 himself on the bank robberies?

25          A. I don't recall that. If it's written you can

1 refresh my memory, I guess. I don't know if that was  
2 the very first thing I talked about.

3 Q. Mr. Olsen, you is - - can you tell me, do you  
4 know anything about work product?

5 A. Pertaining to?

6 Q. Attorney/client work product?

7 THE COURT: Mr. McCoy, where are you going  
8 with this? Because he's not a lawyer, and even if he  
9 were he wouldn't be allowed to give testimony about the  
10 law.

11 MR. MCCOY: I apologize.

12 THE COURT: That's all right.

13 Go ahead and ask a different question.

14 Q. (Mr. McCoy continuing) I ask these questions  
15 on the surface just to indicate to see - - and I would  
16 ask, are you familiar with the attorney/client  
17 privileges?

18 A. I'm aware of them, yes.

19 Q. Knowing that I was representing myself,  
20 Mr. Olsen, and knowing that the stuff that we  
21 discussed, do you think that it was a violation - -

22 THE COURT: That would be a legal opinion,  
23 which is for me and not for Mr. Olsen.

24 Ask a different question.

25 Q. (Mr. McCoy continuing) Again, Mr. Olsen, I

1 just would like to say that you and I confided in each  
2 other - -

3 MR. FERRELL: Objection, Your Honor, that's  
4 not a question.

5 THE COURT: Well, he's going to be asking if  
6 this was true.

7 Go ahead and finish your question, Mr. McCoy.

8 You confided in each other - -

9 Q. (Mr. McCoy continuing) We have - - that we  
10 have - - that we have known each other - - the little  
11 time that we knew each other and that I'll say that we  
12 really had a rapport, what is common to doing legal  
13 research and talking about legal matters, case law and  
14 all that, right?

15 A. Well, I don't think we ever had a contract or  
16 an agreement by any means, no.

17 Q. I didn't say we had a contract.

18 A. Verbal or otherwise.

19 MR. MCCOY: Your Honor, at this time I am  
20 going to say that that's all I have.

21 THE COURT: Any redirect?

22 MR. FERRELL: No.

23 I do have Officer Nelson.

24 THE COURT: Go ahead and step down, Mr. Olsen.

25 I'm going to ask that you return to the jury

1 room with the detective.

2 And before you call your next witness let's  
3 talk about timing, gentlemen.

4 MR. FERRELL: Detective Nelson will be very  
5 brief.

6 THE COURT: Mr. McCoy, I have a matter at 3:30  
7 today. So we are going to need to stop fairly soon. I  
8 don't want to cut off your cross examination or your  
9 introduction of evidence.

10 Which reminds me, are you offering seven and  
11 eight into evidence?

12 MR. MCCOY: Yes, I am.

13 THE COURT: Any objection?

14 MR. FERRELL: No objection.

15 THE COURT: Seven and eight are admitted.

16 (Exhibit Nos. 7 & 8 admitted into evidence)

17 THE COURT: If we don't get finished by 3:30,  
18 and I don't see how we will get through argument today,  
19 we need to reschedule to conclude the hearing.

20 I'm just putting you both on notice.

21 MR. FERRELL: Right.

22 THE COURT: Also, if Mr. McCoy wants to  
23 testify we won't get to that today either.

24 MR. FERRELL: I'm gone all next week.

25 THE COURT: We'll figure out a time to

1 reschedule.

2 When is the trial?

3 MR. FERRELL: The 6th of March. Tuesday. The  
4 day after I get back.

5 MR. MCCOY: - - requesting a continuance, for  
6 that day.

7 THE COURT: Requesting a what?

8 MR. MCCOY: A continuance.

9 THE COURT: Is there going to be an  
10 objection?

11 MR. FERRELL: I won't.

12 I mean, you know, if it's going to facilitate  
13 this, I think there is a good faith basis to do it. I  
14 just - - should we get an indication of whether  
15 Mr. McCoy is going to testify?

16 THE COURT: We probably should. But let's get  
17 through your next witness and see where we are.

18 Jon Nelson, being first duly sworn testified  
19 as follows:

20

21 DIRECT EXAMINATION

22 BY MR. FERRELL:

23 Q. Detective, would you please state and spell  
24 your name for the record.

25 A. My name is Jon Nelson. J-O-N, N-E-L-S-O-N.

1 Q. Who do you work for?

2 A. King County Sheriff's Office.

3 Q. In what capacity?

4 A. I'm a detective.

5 Q. For how long?

6 A. Approximately 23 years.

7 Q. All right. Did you have a special assignment  
8 back in September of last year?

9 A. Yes. I'm currently assigned to the FBI  
10 Violent Crime Task Force here in Seattle.

11 Q. Detective, let's get right to it.

12 Were you in the room when Detective - - over in the  
13 room in the FBI building here in Seattle when a  
14 conversation occurred between Detective Aakervik,  
15 yourself and John Olsen?

16 A. Mr. Olsen?

17 Q. Yes.

18 A. Yes.

19 Q. Excuse me. Mr. Kevin Scott Olsen.

20 A. Yes.

21 Q. And, I don't want to get into all the details,  
22 but what I want to ask you about it, do you recall  
23 Mr. Olsen giving details about a case that Detective  
24 Aakervik was involved in?

25 A. I recall him talking about it. When I learned

1 that it was Detective Aakervik's case I left, went out  
2 and got Detective Aakervik and brought him in. I was  
3 basically in and out of the room all the time. So I  
4 never really sat through the interview.

5 Q. Okay. During the course of the interview, or  
6 as the interview was ended, do you recall anyone in the  
7 room ever asking Mr. Olsen to go back and essentially  
8 spy on Mr. McCoy or obtain more information as a result  
9 of him going back to the jail?

10 A. No.

11 Q. Do you recall Detective Aakervik saying  
12 anything of the sort?

13 A. No.

14 Q. Do you recall Mr. Olsen offering to go back in  
15 to try to find out the defendant's legal strategy?

16 A. No.

17 Q. All right. What was your understanding - -

18 MR. FERRELL: That's all I have, thank you.

19 THE COURT: Mr. McCoy.

20 MR. MCCOY: Yes, Your Honor.

21 If I can, I'd like to give the exhibit that I  
22 think was five, but I numbered it Exhibit 2A, B and C.

23 THE COURT: I think that was five, but take a  
24 look, Mr. Ferrell, if you would.

25 MR. FERRELL: Yes.

1 THE COURT: Go ahead and pass that back to  
2 Mr. McCoy, if you would. And he can take a look at  
3 it.

4 And, Mr. McCoy, you can use it right now if  
5 you want to, you just need to give it back to the clerk  
6 when you are done.

7 MR. MCCOY: I would like the - -

8 MR. FERRELL: I'm handing up the third page of  
9 five.

10 THE COURT: Thank you. Go ahead.

11

12

CROSS EXAMINATION

13

BY MR. MCCOY:

14

Q. How you doing, Detective?

15

A. I'm doing fine.

16

17

Q. If you could look at the bottom of that page,  
I think that is one of your cases that you, I think you  
18 responded you took statements?

19

A. Yes.

20

21

Q. That is an incident that took place, I believe  
that was US Bank?

22

A. Yes, the Belltown branch.

23

24

25

Q. You stated that you wasn't in the room during  
the interview that you was in and out of the  
interview. So did you really get an opportunity to

1 even hear the testimony or the statement that Mr. Olsen  
2 was giving to Detective Aakervik?

3 A. I didn't hear all of it, no.

4 Q. If you didn't hear the statement I guess there  
5 is no - -

6 A. I wasn't involved in that process.

7 Q. You wasn't involved. I will say, I don't have  
8 any questions for this witness.

9 THE COURT: Thank you.

10 Detective, could you go ahead and put that  
11 exhibit back with the clerk and step down.

12 No more questions, Mr. Ferrell?

13 MR. FERRELL: That is correct.

14 THE COURT: All right, gentlemen.

15 Mr. McCoy, you don't have any obligation to  
16 testify. If you want to testify obviously Mr. Ferrell  
17 gets to cross examine you. And as you are your own  
18 lawyer here I don't need to remind you about what an  
19 awkward position that would be.

20 Having said that, if you want to testify you  
21 are welcome to, I just need to find some time on my  
22 calendar for you to do it.

23 Are you thinking about testifying in this  
24 matter?

25 MR. MCCOY: Well, Your Honor, I wouldn't

1 consider testifying if I have the option to give a  
2 closing statement. That would probably take the place  
3 of testifying.

4 THE COURT: Remember what I said to you, I  
5 said you could argue your motions before Mr. Ferrell  
6 presented his evidence or afterwards. That hasn't  
7 changed. Since you didn't argue before, I'm going to  
8 let you argue all your motions after Mr. Ferrell has  
9 finished his evidence. If you want to testify in this  
10 matter I will delay anybody arguing until you're done.

11 Do you want to testify in this matter? That  
12 doesn't mean you lose your right to argue to me, it  
13 means you won't be able to present your own information  
14 as evidence unless you are ready to put up with  
15 Mr. Ferrell cross examining you.

16 MR. MCCOY: No, I will say that I'm not going  
17 to testify. But I do have two witnesses that I wanted  
18 to present.

19 THE COURT: Okay. And who are they?

20 MR. MCCOY: Actually, one.

21 THE COURT: And who is that?

22 MR. MCCOY: Mr. Brad Hampton.

23 THE COURT: Mr. Hampton, do you have any  
24 objection to testifying?

25 MR. FERRELL: Your Honor - -

1 THE COURT: One moment.

2 MR. HAMPTON: Do I?

3 THE COURT: Yes.

4 MR. HAMPTON: No.

5 THE COURT: Mr. Ferrell.

6 MR. FERRELL: I don't think this is material  
7 to the issue at hand.

8 THE COURT: What is it Mr. Hampton would be  
9 called to testify about, can you tell me, Mr. McCoy?

10 MR. MCCOY: Yes. It's concerning the State  
11 delaying our discovery pertaining to this matter that  
12 caused me to unnecessary delay. This motion would have  
13 been come forward to court had the State disclosed in  
14 discovery.

15 THE COURT: That's a different question than  
16 the one we're dealing with through evidence, which is  
17 Mr. Olsen.

18 MR. MCCOY: I think I put that in the motion  
19 and I think it's dealing with the Bradley violation.

20 THE COURT: Right, you did. And to the extent  
21 that there is some dispute when things happened I'll  
22 let Mr. Hampton tell me. But he doesn't have to  
23 testify about it. He's an officer of the court. When  
24 it comes to people telling me what happened in court, I  
25 let people tell me. We don't need formal testimony.

1 Mr. Olsen is a different matter.

2 So, the question is, do you want to call any  
3 witness with regard to Mr. Olsen and whether or not the  
4 State is engaged in misconduct sufficient to warrant  
5 dismissal under 8.3?

6 MR. MCCOY: No, Your Honor.

7 THE COURT: All right, gentlemen, then we just  
8 need to set a time to argue this.

9 MR. FERRELL: Your Honor, I'm ready to argue  
10 this right now.

11 THE COURT: I'm sure you are, but  
12 unfortunately I have a 3:30 matter, remember?

13 MR. MCCOY: And, Your Honor, I don't want to  
14 be rushed to argument. So I really appreciate if I can  
15 come back another time.

16 MR. FERRELL: My argument would take 30  
17 seconds.

18 THE COURT: I'm sure it would. But Mr. McCoy  
19 has a right to be heard and I'm sure you might want to  
20 say something after he's heard. Because he has a  
21 number of motions before me.

22 Let's see if I can get you folks back on for  
23 tomorrow.

24 My availability would be tomorrow morning  
25 before 11:00 o'clock.

1 MR. FERRELL: 10:00 o'clock would work.

2 MR. MCKAY: Your Honor, I have a 10:00 omnibus  
3 wit a six codefendant case. And I don't have anyone -  
4 - I have to be there. I can't send anyone else. I'm  
5 free in the afternoon - - actually, I'm not free in the  
6 afternoon.

7 THE COURT: I don't know if we need you for  
8 this argument, Mr. McKay, I'm going to defer to  
9 Mr. McCoy on that question.

10 Do you need Mr. McKay tomorrow?

11 MR. MCCOY: In case I have some legal  
12 questions, I would like him to be standing by.

13 MR. MCKAY: Just to make sure, Mr. McCoy, I  
14 was planning to come and see him at the jail prior to  
15 my 10:00 o'clock omnibus hearing. If need be, I can  
16 always be reached by cell phone while I'm on the road.

17 THE COURT: Here's my preference, folks, if we  
18 can get Mr. McCoy back I'd like to do it at 9:00 a.m.  
19 tomorrow.

20 Can you do it then, Mr. McKay?

21 MR. MCKAY: Yes.

22 THE COURT: Can you, Mr. Ferrell?

23 MR. FERRELL: Yes.

24 THE COURT: And let's take a look at my  
25 bailiff, can you get Mr. McCoy back here tomorrow at

1 9:00 o'clock?

2 THE BAILIFF: I will order him.

3 THE COURT: Mr. Hampton, how about you? It  
4 sounds like you might be important for issues about  
5 when things were disclosed.

6 MR. HAMPTON: Possibly. I think I can. I may  
7 have to be in court, but it sounds like it's going to  
8 be fairly brief.

9 THE COURT: Well, it's going to be argument.

10 MR. HAMPTON: I don't need to be here for the  
11 argument. I just need to be here in case he wants me  
12 to say something - -

13 MR. MCCOY: Yeah, Your Honor.

14 This is concerning the continuation sheet. I  
15 think that states that on 9-1-06 the meeting was  
16 conducted in the FBI building.

17 THE COURT: That's Exhibit 1.

18 When did you first get that, Mr. Hampton?

19 MR. HAMPTON: That, I couldn't say, when I got  
20 it or if I got it.

21 THE COURT: Then what do you want to talk  
22 about, Mr. McCoy?

23 MR. MCCOY: And then, Mr. McKay also didn't  
24 get it. And I want to say that this was according to  
25 the report was delivered to the State on 9 of 15, '06.

1 THE COURT: Right. And when are you saying  
2 you got it, Mr. McCoy?

3 MR. MCCOY: I got it from the Honorable Judge  
4 Invene at a motion hearing on December 14th.

5 THE COURT: Okay. That's Judge Invene.

6 Do you agree with that that's when the defense  
7 received it?

8 MR. FERRELL: Your Honor, I'm showing you what  
9 is essentially almost six to eight inches of the trial  
10 notebook. I have supplied over and over and over again  
11 every - - essentially it's a continuation sheet. It  
12 was my understanding that this was previously provided  
13 to him. We had a dispute at the December 14th hearing,  
14 it was my understanding it had been previously done.  
15 But in an abundance of caution I provided it again  
16 because he at that time said he didn't have it. So, I  
17 thought he already had it.

18 THE COURT: Mr. McKay, do you remember when  
19 your first saw the continuation sheet involving the  
20 September 1 interview with Mr. Olsen?

21 MR. MCKAY: Yes, it was at the same time  
22 Mr. McCoy said. That was the first I had seen of that  
23 document.

24 But, you have to understand that the discovery  
25 that I have, I obtained from TDA. So, I can't either -

1 - I can't say what the prosecutor sent to TDA and I  
2 believe that's why Mr. Hampton was there, because he  
3 was the first to have gotten it. And would remember  
4 whether or not he had seen it.

5 THE COURT: Mr. Hampton, when do you remember  
6 first seeing Exhibit 1?

7 MR. HAMPTON: Actually, I don't ever remember  
8 seeing it until today. I can't say that I didn't for  
9 sure. I know my - - whatever I got in discovery I gave  
10 to Mr. McCoy. I gave all the discovery I had to  
11 Mr. McKay.

12 THE COURT: Okay. Then it sounds to me like I  
13 have a dispute between Mr. McCoy, who has the best  
14 memory, I think, of what he's seen, and between  
15 Mr. Ferrell, who has the best memory of what he's  
16 turned over.

17 Mr. Ferrell sincerely believes that he turned  
18 this information over shortly after he got it. And  
19 Mr. McCoy believes it was first turned over as a result  
20 of the hearing before judge Invene on December 14th.  
21 And that's what I'm going to take as my state of facts  
22 for our argument tomorrow. All right?

23 See you all tomorrow morning at 9:00. Except  
24 for you, Mr. Hampton, you are excused.

25 MR. HAMPTON: Thank you, Your Honor.

## 1 REPORTER'S CERTIFICATE

2 STATE OF WASHINGTON)

3 ) SS:

4 COUNTY OF KING )

5  
6 I, PETE S. HUNT, an official reporter  
7 of the state of washington, was appointed an official  
8 court reporter in the superior court of the state of  
9 washington, county of king, on march 16, 1987, do  
10 hereby certify that the foregoing proceedings were  
11 reported by me in stenotype at the time and place  
12 herein set forth and were thereafter transcribed by  
13 computer-aided transcription under my supervision and  
14 that the same is a true and correct transcription of my  
15 stenotype notes so taken.

16 I further certify that I am not employed  
17 by, related to, nor of counsel for any of the parties  
18 named herein, nor otherwise interested in the outcome  
19 of this action.

20  
21   
22 OFFICIAL COURT REPORTER

23

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SUPERIOR COURT IN AND FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON )  
 )  
 Plaintiff, ) KING COUNTY CAUSE  
 ) No. 06-1-03538-7 SEA  
 vs. )  
 ) COURT OF APPEALS  
 RAYMOND MCCOY ) No. 60134-2-I  
 )  
 Defendant. )

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REPORT OF PROCEEDINGS  
FEBRUARY 23, 2007

BEFORE THE HONORABLE CATHERINE SHAFFER

\*\*\*\*\*

PETE S. HUNT  
CSR Reference No. HUNTPS5708P  
Official Court Reporter  
King County Superior Court  
516 Third Avenue, C912  
Seattle, Washington, 98104

(206) 296-9356

A P P E A R A N C E S:

JAMES FERRELL  
Attorney at Law,

appeared on behalf of the Plaintiff;

ROBERT MCKAY  
Attorney at Law,

appeared on behalf of the Defendant.

EXHIBIT INDEX

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Exhibit No.	Description	Marked	Offered	Admitted
10	Document	6		

1 THE COURT: Good morning.

2 MR. MCKAY: Good morning.

3 THE COURT: Please be seated.

4 We had the State present its evidence and  
5 Mr. McCoy cross examined. And I have reviewed all of  
6 the documents I told about yesterday including all of  
7 Mr. McCoy's pleadings and the State's response. And  
8 all the exhibits that were admitted into evidence for  
9 this hearing.

10 Mr. McCoy, you've got a number of motions  
11 before me, a motion to dismiss, a motion, if I deny  
12 that, to sever, a discovery motion. And I'll let you  
13 figure out what order you want to take them up in.

14 When I talk about your motion to dismiss you  
15 are aware that you are moving to dismiss pursuant to  
16 Criminal Rule 8.3 and pursuant to State V. Knapsted.  
17 So you can argue either one of those issues or both, if  
18 you want, when you talk about the motion to dismiss.

19 Go ahead.

20 MR. MCCOY: Okay. Can you state, you said a  
21 motion - - a Knapsted motion and rule - -

22 THE COURT: Well, the way I count your  
23 motions, I've got four of them, okay? One motion is to  
24 dismiss for State mismanagement and misconduct under  
25 Criminal Rule 8.3. One motion to dismiss is for

1 insufficient evidence under State v. Knapsted. One  
2 motion is to sever the newly added count from the other  
3 counts, and that assumes of course that I deny the  
4 motion to dismiss. And the last motion I have from you  
5 is a discovery motion.

6 MR. MCCOY: Okay.

7 THE COURT: Go ahead.

8 MR. MCCOY: First for the record I would like  
9 to put - - make a notice that at this time I would like  
10 to reserve the motion to severance until the end of the  
11 State's evidence.

12 THE COURT: Sure. We'll handle the motion to  
13 dismiss up front if you want to.

14 Go ahead.

15 MR. MCCOY: At this time I like, Your Honor, I  
16 did bring a motion forward to dismiss other than the  
17 Knapsted motion. I was concerned about then the  
18 Knapsted.

19 So, with that I will start my argument.

20 The record will show that on or about April of  
21 2006 lead Detective Aakervik from the Seattle Police  
22 Department filed a Certification for Determination of  
23 Probable Cause charging that the defendant, Raymond  
24 McCoy, with two counts of Robbery in the First Degree  
25 and amended the information on December 14th, 2006 to

1 Count III, First Degree Robbery.

2 The record will show that on April 12th, 2006  
3 the defendant was granted a motion to proceed pro se.  
4 With standby counsel. This motion was heard by the  
5 Honorable Ronald Kessler.

6 THE COURT: May I ask you if Mr. Hampton was  
7 your standby counsel or whether Mr. McKay was?

8 MR. MCCOY: Mr. Hampton was the standby  
9 counsel due to a new discovery when Mr. Olsen was a  
10 conflict of interest therefore he had to withdraw and  
11 Mr. McKay was assigned.

12 THE COURT: And when did Mr. McKay become  
13 standby counsel? Was that in September or later?

14 MR. MCCOY: It was September.

15 MR. MCKAY: September.

16 Thank you, Your Honor, for asking me a  
17 question that it's embarrassing that I have no answer  
18 for.

19 THE COURT: It would suggest that that's when  
20 you knew or Mr. Hampton knew that Mr. Olsen might be a  
21 witness. If I could figure out the date of  
22 substitution.

23 MR. FERRELL: Your Honor, if I could. When we  
24 had the hearing - - may I remain seated?

25 THE COURT: Sure.

1 MR. FERRELL: When we had the evidentiary  
2 hearing, or the first motion to sever, in front of  
3 Judge Jones on September 14th, at that time I informed  
4 the judge, Judge Jones, and the parties, that we did  
5 have at that point, an unnamed source. At that point  
6 on September 14th we had not named that person. It was  
7 shortly thereafter, I think probably the next day, or  
8 the 15th, when I hand delivered the discovery that I  
9 had in my possession to Mr. Hampton. That, as soon as  
10 I handed that material over is when I did a separate  
11 order for the safety of all the parties. And, the  
12 reason why is that Mr. Olsen's name was not disclosed  
13 on the 14th for the same reason. Just for the security  
14 of the parties. And I explained to the Court. I think  
15 it was probably around the 14th or 15th, probably the  
16 15th, the Friday of September that Mr. Olsen's name was  
17 first disclosed. Shortly after that I would assume is  
18 when Mr. Hampton had to withdraw.

19 THE COURT: That was my question. Does  
20 anybody have a memory after having had a chance to look  
21 at your notes when Mr. Hampton withdrew and Mr. McKay  
22 substituted?

23 MR. MCCOY: Well, Your Honor, here I have a -  
24 - I will say that it happened around September 21st.  
25 The reason is that, what I have here, Your Honor, that

1 I'm going to present, is an e-mail that I received the  
2 day that I received the Olsen statement from Hampton,  
3 and that's an e-mail that I received from Mr. Ferrell  
4 indicating that due to Mr. Olsen's statement that he  
5 was going to amend the charges and add the other two  
6 bank robberies.

7 And I think that was the same thing that I  
8 received the e-mail, so that was I think September  
9 21st.

10 THE COURT: Thank you.

11 I've read this document from Mr. Ferrell to  
12 Mr. Hampton. And it does refer to Mr. Olsen's  
13 statements and the State's consideration of adding  
14 additional bank robberies for trial.

15 I'm going to ask that the clerk mark this as  
16 an exhibit as well. I think it's helpful in this  
17 case.

18 THE CLERK: That will be State's Exhibit No.  
19 10.

20 THE COURT: Go ahead. You were telling me  
21 that you were granted pro se status on April 12th and  
22 that standby counsel was appointed by Judge Kessler.

23 MR. MCCOY: And also for the record - - Your  
24 Honor, is it okay if I sit?

25 THE COURT: Yes.

1 MR. MCCOY: And also for the record the Court  
2 should agree that although a pro se defendant is not an  
3 attorney he or she is held accountable by the Court to  
4 function the same as an attorney. The Court will also  
5 - - should agree that the Court will also hold a pro se  
6 defendant responsible for abiding by and following the  
7 rules of evidence and the criminal rules or  
8 procedures. Therefore it would be fair to say that a  
9 pro se defendant has a substantial right to the full  
10 protection and due process of law under the United  
11 States Constitution Fifth and Sixth Amendment and the  
12 Constitution of the State of Washington Article 1  
13 Section 22 Amendment 10. Which is right to effective  
14 representation and effective assistance of counsel.

15 One of these protected due process and equal  
16 protection rights under the local, federal and the  
17 State Constitution is that the accused person be able  
18 to prepare a defense without government intrusion.

19 As a result, my rights to effective  
20 representation and right to protection against  
21 unreasonable search and due process of law has been  
22 violated by the State, a third party intrusion into my  
23 pro se defense work product.

24 As a citizen of the United States I am  
25 entitled to these protections of - - of these

1 protections under the Fifth and Sixth Amendment of the  
2 Constitution of the United States, and, by Amendment 10  
3 Article 1 Section 22 of the Constitution of the State  
4 of Washington.

5 Being aware of these rights the State  
6 nevertheless in bad faith agreed with Mr. Olsen to  
7 obtain information and report the information  
8 concerning the pending allegations and violations of  
9 both Criminal Rule 4.7 Subsection F Subsection 1 and  
10 also the Civil Rules of Procedure 26 Subsection B  
11 Subsection 4.

12 The State has stated over and over, we did not  
13 provide Mr. Olsen with any information. Mr. Olsen  
14 volunteered information. This assertion by the State  
15 does not justify turning a blind eye to justice and  
16 engaging in a blatant violation of discovery rules  
17 pursuant to Criminal Rule 4.7 Subsection F Subsection A  
18 and Civil Rules of Procedure 24.B which relate to the  
19 work product.

20 According to Hickman versus Taylor, 329 U.S. 495,  
21 is the leading case on work product which is codified  
22 in both Federal Rules of Procedure 26(B)(3) and  
23 Criminal Rules of Procedures 24(B).

24 The Court has already heard testimony from both  
25 Detective Aakervik and Mr. Olsen. Detective Aakervik

1 stated that Detective Nelson sat in during his  
2 interview with Mr. Olsen.

3 THE COURT: Well, he didn't remember if anyone  
4 sat in. That's what he said.

5 MR. MCCOY: Detective Aakervik said he didn't  
6 remember.

7 THE COURT: Right.

8 MR. MCCOY: So - -

9 THE COURT: He said that there may have been  
10 the other two officers there, the agent and the  
11 detective, but he didn't remember. That's what he  
12 said.

13 MR. MCCOY: Well, I was assuming due to the  
14 discovery he said that he was called in the office and  
15 the detective sat in while he interviewed him. That's  
16 what the discovery says, Your Honor.

17 THE COURT: Well, you're right that when  
18 Mr. Olsen communicated that he had information about  
19 you, that there were three officers there. The  
20 detective assigned to this case, Detective Nelson, and  
21 the agent responsible for Mr. Olsen. But when the  
22 detective in this case testified he said that when he  
23 actually interviewed Mr. Olsen that he didn't recall  
24 whether or not the other officers were there.

25 MR. MCCOY: Okay. Let the record show that

1 the State have clarified that Mr. Olsen - - that  
2 Mr. Nelson was there. Because, my testimony was to be  
3 that Mr. Nelson was called to the stand by the State,  
4 Mr. Nelson - - Detective Nelson clearly stated, you're  
5 right, that he wasn't there. Therefore he couldn't  
6 give any testimony concerning what was said between  
7 Mr. Olsen and Detective Aakervik. For the Detective  
8 Aakervik stated that he did in fact take notes. But,  
9 he destroyed them. Therefore like the Defendant McCoy  
10 is left to wonder really was the extent of the  
11 information the State received from Mr. Olsen on  
12 September 21st by Detective Aakervik.

13 Concerning Mr. Olsen, turning to the testimony  
14 of Mr. Olsen, one, Mr. Olsen testified that he only  
15 communicated with the defendant was brief and in  
16 passing.

17 THE COURT: You mean with Mr. Olsen.

18 MR. MCCOY: With Mr. Olsen.

19 According to Mr. Olsen's statement.

20 On Page 2 Mr. Olsen clearly stated that he,  
21 pertaining to myself, the defendant, Raymond McCoy,  
22 discussed with me at length the defenses to this bank  
23 note. Indicating that this was not a brief  
24 communication but we communicated at length.

25 Second, Mr. Olsen also testified that somewhat

1 to the effect that he never had any conversation with  
2 the defendant concerning the defendant's defense  
3 strategies. Again referring to Page 1 of Mr. Olsen's  
4 written statement he clearly states he also felt very  
5 comfortable helping each other on each of the cases and  
6 even defense strategies. Therefore, Mr. Olsen also is  
7 clear from the evidence that that statement was also  
8 consistent.

9 Three, Mr. Olsen testified that after he was  
10 interviewed with Detective Aakervik on September 1st,  
11 2006 he didn't obtain any other information and  
12 communicating with the defendant about this case.

13 The Court received a document prepared by  
14 Mr. Olsen for defendant's criminal motion for severance  
15 on September 24th. That document was authenticated,  
16 was prepared by Mr. Olsen in Mr. Olsen's handwriting.  
17 It was stated that that motion for severance was  
18 pertaining to the two charges, one, the KeyBank  
19 incident and second the Sterling Bank incident. There  
20 it was discussed about dates and times and  
21 circumstances surrounding those two incidents only for  
22 the purpose of consulting Mr. Olsen about case law and  
23 trial strategies.

24 Fourth, Mr. Olsen gave - - Mr. Olsen testified  
25 that the information he gave at a September 1st - - on

1 September 11th, 2006 interview with Detective Aakervik  
2 was the same information he gave in the September 1st  
3 interview with Detective Aakervik. According to the  
4 transcribed statement that Mr. Olsen gave on 2006,  
5 27th.

6 THE COURT: Which is in Exhibit 5, right?

7 MR. MCCOY: Yes, which is in Exhibit 5.

8 THE COURT: Let me double check. I want to  
9 make sure we've got the right exhibit.

10 Go ahead. What are you looking at?

11 MR. MCCOY: I'm looking at the exhibit on Page  
12 5 at Line 17. Mr. Olsen goes into detail about  
13 theories and opinions and strategy concerning the note  
14 and he states as a matter of fact he did attest  
15 somebody was walking by and was writing, wrote  
16 something on one side of a piece of paper and sat it  
17 down, and asked the person, well, asked him what - -  
18 questioned him what his name was doing on the piece of  
19 paper he found on the floor. And the person picked the  
20 paper up and he looked at it then turned over and he  
21 grabbed the paper and said, see, that's my point.  
22 Nobody looks at a piece of paper and don't look on both  
23 sides of it.

24 Also if we go to Page 6 Mr. Olsen states the  
25 testimony concerning the defendant, he said also with

1 the fingerprint expert might say that the fingerprint  
2 was - - that the print was there even though it was  
3 there not enough parts of such and such to go into  
4 detail to say that.

5 Further, if you go down to Page 9 he goes on  
6 about an issue, an evidence issue, discovery package  
7 delivery to him for him to explore and use to his  
8 benefit, and that is one of his many complaints to the  
9 Court and is hopefully that is hopefully dismissed.

10 We go on to Page 7, Mr. Olsen gives testimony  
11 concerning the written note and about a gentleman by  
12 the name of Barry Young. Here he said a lady friend of  
13 Young was actually the one who wrote it so he assures  
14 that hand analysis, handwritten example that he also  
15 hired somebody to do that will be able to conclusively  
16 say that it is not his handwriting. That the friend  
17 actually wrote it.

18 With that information - -

19 THE COURT: I need you to stop for just a  
20 moment, Mr. McCoy.

21 (Pause)

22 THE COURT: Another issue, Mr. Ferrell, as you  
23 may recall, Mr. McCoy was in trial in Judge Spector's  
24 court when you initially set this matter on for  
25 hearing. That was the initial problem. And his jury

1 has a question in that case.

2 Judge Spector has informed our court that she  
3 has both defense counsel.

4 Is that right, Christine?

5 THE BAILIFF: Yes.

6 THE COURT: So, if I let Mr. Ferrell go she  
7 promises me I'll have him back in five or ten minutes.

8 What I'd like to do is hold Mr. McCoy here  
9 rather than taking him downstairs because it should be  
10 a short break.

11 Mr. McCoy, keep thinking about your argument.  
12 I understand you're arguing that Mr. Olsen incorporated  
13 your defense theory into his statement. So, I'm  
14 following your argument. Just remember where you are  
15 and we'll pick up when Mr. Ferrell gets back.

16 (Recess)

17 THE COURT: Be seated.

18 I've reviewed Exhibit 2, Mr. Olsen's  
19 transcribed statement and his statements about your  
20 defense theories.

21 MR. MCCOY: Yes, and continuing, Your Honor.

22 Mr. Olsen was basically saying that the  
23 information that he gave during the interview on  
24 September 11th was the same information that he gave on  
25 September 1st. And I was demonstrating for the record

1 that Detective Aakervik, Mr. Olsen goes into detail  
2 concerning my mental expression and opinion and  
3 strategies.

4 THE COURT: I didn't catch what it was in his  
5 transcript that had to do with your motion to sever.  
6 Your first motion to sever. Where was that?

7 MR. MCCOY: Motion to sever?

8 Motion to sever is the introduction that he  
9 prepared with the - -

10 THE COURT: I understand that. I understand  
11 where in his statement to the detective he mentioned  
12 your motion to sever.

13 MR. MCCOY: He mentioned a motion to discover.

14 THE COURT: I thought you were telling me he  
15 mentioned a motion to sever in this transcript. I know  
16 he wrote out some material for you for the motion to  
17 sever. But, I don't see any reference to it here in  
18 this statement.

19 MR. MCCOY: If you look there, he gives some  
20 case law, I think it was State vs. James and was  
21 talking about that it wasn't a mandatory for a joinder  
22 and discovery. And stuff like that. And I think the  
23 Court should consider that an indication that the  
24 motion was severed was pertaining to my motion to  
25 sever.

1 Another fact, the hearing for the - - the  
2 September 14th hearing that was done with the Honorable  
3 Jones.

4 THE COURT: Judge Jones.

5 MR. MCCOY: That document was read into the  
6 record at that hearing.

7 MR. FERRELL: What document?

8 THE COURT: Apparently, the follow-up  
9 statement.

10 MR. FERRELL: Which follow-up statement?

11 THE COURT: The detective's.

12 MR. FERRELL: On 9/1.

13 THE COURT: On 9/14, or 9/15 when Judge Jones  
14 heard the motion to sever.

15 I think what I'm hearing Mr. McCoy tell me is  
16 that he read the document that Mr. Olsen prepared for  
17 him into the record when he argued his motion to sever  
18 before Judge Jones.

19 MR. FERRELL: Physically impossible. I  
20 didn't have it then.

21 THE COURT: No, I think he's arguing that he  
22 used the notes that he produced in court.

23 MR. FERRELL: Oh, I see. I see what you are  
24 saying.

25 THE COURT: I think I misunderstood Mr. McCoy

1 the first time.

2 Right, Mr. McCoy? You're telling me you used  
3 the notes that Mr. Olsen prepared for you to argue your  
4 motion to sever before Judge Jones?

5 MR. MCCOY: Yes.

6 MR. FERRELL: I misunderstood.

7 THE COURT: I misunderstood Mr. McCoy to begin  
8 with too.

9 Okay, go ahead.

10 MR. MCCOY: Then the record will reflect  
11 that.

12 At this time, Your Honor, I want to briefly  
13 read some excerpts from that September 11th interview  
14 with Detective Aakervik of Mr. Olsen.

15 THE COURT: I read it, Mr. McCoy, you don't  
16 need to reread it to me. I did read it.

17 MR. MCCOY: Okay.

18 To proceed on, also, Detective Aakervik  
19 testified that he was already aware of the information  
20 he received from Mr. Olsen during the interview of  
21 September 1st and 11th, 2006. My understanding  
22 Mr. Aakervik saying that the information that Mr. Olsen  
23 gave on September 11th was a repeat of the information  
24 he received on September 1st.

25 As I just explained for the record it's

1 impossible that Mr. Aakervik could have been aware that  
2 I hired an expert witness the way that he should have  
3 been aware that the testimony that was going to be  
4 given by my handwriting expert been on requesting these  
5 services from OPD, requesting that that information be  
6 sealed.

7           Again, for the record, at this time the action  
8 by Mr. Olsen - - okay, the State had to have Mr. Olsen  
9 obtain information from the pending robbery  
10 allegation. Had the State allowed the Court to  
11 determine the circumstances surrounding the State  
12 engagement and intrusion, intruding on the defendant by  
13 having a representative present to hear conversation  
14 and to help with defense strategies and report back to  
15 the State, I am confident that the Court would have  
16 ruled that the prejudice to the defendant's right to  
17 effective representation outweighed any probated value  
18 in allowing the State to intrude on the defendant's  
19 trial preparation.

20           The work product doctrine is very clear. The  
21 Court of Appeals had made it very clear that both  
22 counsel should respect each other's work product.  
23 Which is the preparation for trial.

24           Here, I think the State is trying to have its  
25 cake and eat it too. After Detective Aakervik filed

1 charges and I was granted the status of a pro se, I was  
2 granted - - I had protection of the constitution to  
3 prepare a defense without any intrusion by the State  
4 into my work product. By the State, in bad faith,  
5 receiving the information from Mr. Olsen have tainted  
6 any trial proceeding. Any trial then result after that  
7 information will be fundamentally unfair to me.

8 There is no way that the State - - the State  
9 claimed that this information have in no way effected  
10 my right to a fair trial, and I think the record show  
11 that is contrary to the facts. Mr. Olsen's statement  
12 is tainted with work product. Mr. Olsen's statement is  
13 just really exposing the defense strategy. And for the  
14 State to assume that that's not a violation that it  
15 doesn't prejudice me is in a way preposterous.

16 As I stated in my motion to dismiss, once the  
17 charges was filed and I was representing myself any  
18 discovery should have been handled through the Court.  
19 The State and - - and the proposition and engagement  
20 for Mr. Olsen, the State had an obligation to confer  
21 with the Court concerning the circumstances surrounding  
22 the agreement that they had with Mr. Olsen. The State  
23 also state for the record that there wasn't an  
24 agreement. It's obvious that it was an agreement. If  
25 it wasn't an agreement after Mr. Olsen was returned

1 from the FBI building back to the King County Jail ten  
2 days later he was picked up by the State, transported  
3 to the Seattle Police Department when he gave an 11  
4 page statement tainted with my work product.

5 Here the State had an obligation to realize  
6 that even though the information was volunteered that  
7 it was a violation of my due process right. It was - -  
8 they had an obligation to say, to at least step to the  
9 plate and say, well, Mr. McCoy is representing himself,  
10 this here is a violation of the discovery rules and we  
11 are not allowed for you to give this information  
12 pertaining to Mr. McCoy's defense. Nevertheless the  
13 State allowed Mr. Olsen to leak my defense strategy to  
14 the State and instead of correcting Mr. Olsen on that  
15 the State went as far as informing me due to the fact  
16 that Mr. Olsen did give them the statement that they  
17 are going to amend the charges and charge me with an  
18 additional two bank robberies based on Mr. Olsen's  
19 statement.

20 The record also should show that it is not  
21 Mr. Olsen's responsibility to comply with the rules of  
22 criminal procedures and the rules of discovery. That  
23 responsibility falls on the State, not Mr. Olsen.  
24 Because Mr. Olsen volunteered to violate my rights the  
25 State is not allowed to engage in a blatant violation

1 of the discovery rules.

2           Again, with that, the Court of Appeals had  
3 made it plain. In my motion I have cited authority  
4 from State vs. Mcatee, State vs. Corey. In State vs.  
5 Renacky the Court is aware considering the product a  
6 lead detective was to look at the defense paper and the  
7 case was dismissed there. The State argued that the  
8 action by the detective wasn't as egregious as the  
9 action by the detective in State vs. Corey where a  
10 sheriff officer eavesdropped on a conversation between  
11 the defendant and his attorney by having a bug there.  
12 But we use this particular case in analysis to Corey  
13 although the State did not eavesdrop or nothing, they  
14 allowed to have a representative present. And I will  
15 say that they allowed to have a representative  
16 present. Mr. Olsen left the meeting on September 1st  
17 with the knowledge to come back and continue his  
18 relationship with me. And get further information and  
19 report back to the State. Therefore, Mr. Olsen  
20 functioned as a representative for the State.

21           When the State came back ten days later,  
22 picked Mr. Olsen up, took him down and had Mr. Olsen  
23 give a statement that was tainted with my work product,  
24 violated my right to effective assistance of counsel  
25 and denied me a right to a fair trial.

1           Again, the analysis in State vs. Renacky and  
2 State vs. Corey, the State should apply the same  
3 analysis here.

4           Here is the same, lead Detective Aakervik,  
5 Aakervik is the lead detective, the information that  
6 Mr. Olsen gave Detective Aakervik, Aakervik was the one  
7 to know what that information valid or invalid. The  
8 record will show, when Mr. Aakervik, was the  
9 information Mr. Olsen gave you consistent with your  
10 Certification for Determination of Probable Cause?  
11 Detective Aakervik stated that maybe it was. He thinks  
12 so. When asked if Mr. Olsen had gave him information  
13 on the 1st that he already know why would he pick  
14 Mr. Olsen up on the 11th to come back and give a  
15 statement, Detective Aakervik stated that Mr. Olsen was  
16 a witness in the case.

17           I explained to Mr. Aakervik that Mr. Olsen  
18 wasn't present on the time that these incidents  
19 occurred, how can he be a witness for your case?  
20 Therefore, Mr. Aakervik came back and said that the  
21 information that he gave - - that he got from Mr. Olsen  
22 on September 1st was accurate. I came back around,  
23 said, therefore, the information that you received on  
24 the 1st was accurate. He said, yes, it was accurate.  
25 Nonetheless the record will show that I have

1 demonstrated that Mr. Olsen stated that one of the  
2 victims was 90 percent sure that I was the suspect in a  
3 bank robbery. The discovery shows that the victim said  
4 that she was 90 percent sure that I was not the suspect  
5 in the bank robbery.

6 Nevertheless Detective Aakervik is making a  
7 claim that that information is accurate.

8 Therefore, in accordance with justice the  
9 Court should dismiss Count I, II and III with prejudice  
10 under Criminal Rule 8.3 because of mismanagement of the  
11 action of the government and misconduct which  
12 prejudiced the defendant, Raymond McCoy's right to  
13 effective representation and a fair trial.

14 Further, the defendant's right to a fair trial  
15 has been denied due to the State third party intrusion  
16 into the impression of work product of the defendant  
17 pro se defense. The record would show that the State  
18 was given notice by the Court that any violation of the  
19 defendant's work product would result in a dismissal.

20 There is no way to isolate the present and  
21 resulting from the information obtained by Mr. Olsen  
22 concerning the defendant's allegation. Therefore again  
23 in the furtherance of justice the State should dismiss  
24 Count I - - the Court should dismiss Count I, II and  
25 III of the above cause number pursuant to Criminal Rule

1 8.3(B).

2 With that, the defense closes.

3 THE COURT: Thank you.

4 Mr. Ferrell.

5 MR. FERRELL: Your Honor, as the Court is well  
6 aware under an 8.3 motion and under State versus Ward,  
7 the defendant bears the burden by a preponderance.  
8 Number one, an arbitrary action or misconduct, and  
9 number two, that his rights have been materially  
10 prejudiced as a result of that conduct. Or arbitrary  
11 action. And the defendant has failed to meet either  
12 burden.

13 Number one, it was not arbitrary action or  
14 misconduct by the State not to separate the parties in  
15 this case. It is clear that neither party considered  
16 Mr. Olsen an agent of the State. The detective did not  
17 ask him to go back in there and essentially spy on him  
18 and get more information. And Mr. Olsen did not  
19 believe that he was an agent of the State.

20 Now, and so there was no kind of meeting of  
21 the minds as to what was going to occur.

22 Now, again, the defendant needs to meet a  
23 burden of a preponderance here. And, really, the only  
24 issue are the ten days between 9/1 and 9/11. There is  
25 no evidence before this Court that Mr. Olsen obtained

1 more information during those ten days. That's the  
2 issue. And what's more than helpful here is I believe  
3 State's Exhibit No. 1 which is the - -

4 THE COURT: I have it here in front of me.

5 MR. FERRELL: Right. State's Exhibit No. 1,  
6 which details what the State knew at that time. And as  
7 the Court takes a look at that, that's a moment in time  
8 in which the detective has a snapshot essentially, of  
9 what he's going - - the information he's going to get.

10 Now, the detective is really under an  
11 obligation at some point to go back and make sure that  
12 he clearly understands and gets a complete statement.  
13 And so the fact - - there's nothing insidious about the  
14 fact that the detective at some point pulled him and  
15 got a more complete statement about the issues that  
16 were disclosed to him.

17 I think it's important to know that obviously  
18 the defendant had admitted to the bank robberies, just  
19 sort of a condensed version here. That there was a  
20 note that Mr. Olsen was aware of. Essentially the bank  
21 robbery note, during a VUCSA arrest on the 9th of  
22 February. That he was concerned about his palm print.  
23 And that he was aware that the palm print in one of the  
24 charged counts that he did not write the note. That a  
25 female friend did. And that he was exploring defenses

1 to the hand print and his efforts there.

2 So, that's really instructive as to what was  
3 essentially locked in on 9/1. There is nothing new or  
4 materially different other than expanding that  
5 information and getting a little bit more detail.  
6 Absent that, absent by a preponderance that he obtained  
7 more information during that time that any substantive  
8 contact occurred, then the defendant's motion is  
9 clearly without merit.

10 Now, obviously, Your Honor, candidly, the  
11 better practice would have been an immediate separation  
12 of the parties. But I don't think that's mandated  
13 here, and I don't think that CR 26(B) is even  
14 implicated unless there is some sort of showing that a  
15 work product was sought by the parties or by the agent.  
16 I don't believe that an agency existed - - relationship  
17 existed.

18 So, that's really the issues. At the time it  
19 seemed at some point Mr. McCoy was sort of morphing or  
20 moving his motion to the fact that Detective Aakervik  
21 should have been precluded at all from receiving this  
22 information presented to him. But I don't think the  
23 detective is under an obligation to turn the other way  
24 when presented with the information by the detective.

25 So, I really do not believe, Your Honor, that

1 either prong of 8.3 has been met and that the defendant  
2 has essentially failed to meet his burden. We ask that  
3 this motion be denied. Thank you.

4 THE COURT: Thank you.

5 I'll hear from you very briefly in response,  
6 Mr. McCoy.

7 MR. MCCOY: First, the State says that the  
8 lead detective didn't have a right to turn away from  
9 information. I would say yes he did. Why? Because  
10 the information that Mr. Olsen gave him concerning the  
11 bank robberies was inconclusive. The only conclusive  
12 that Mr. Olsen gave Detective Aakervik was pertaining  
13 to my work product. That's the only valid information  
14 that can be verified.

15 Here, Mr. Olsen said that I had another lady  
16 write the note, Ms. Mary Young. The State was aware,  
17 here he said in their response to my motion, should  
18 compare handwriting to Ms. Mary Young who was currently  
19 in custody at the county jail. If there was any type  
20 of investigation why not go verify with Ms. Mary Young,  
21 have her give a writing example, to prove that she did  
22 write the note.

23 So therefore, the question is, it is beyond me  
24 how - - this case has been sitting here now for over a  
25 year, and the only evidence that the State have is a

1 jail house snitch that they are going to come and put  
2 as a potential witness. What is his testimony?

3 Therefore, I think that the defendant met  
4 every burden of proof showing that at this point he has  
5 been denied a fair trial due to the information that  
6 the State, inadvertently, received from Mr. Olsen.

7 Briefly, I want to put for the record that the  
8 State saying that Mr. Olsen wasn't an agent. That  
9 opening statement, questioning on direction examination  
10 with Mr. Ferrell and Detective Aakervik, did you have  
11 experience working with an informant. He said himself  
12 that Mr. Olsen was an informant. What does an  
13 informant do? An informant informs about information.  
14 When he informed the State about that information  
15 regarding if he wasn't an agent he was a representative  
16 for the State.

17 With that, I close.

18 THE COURT: All right. Thank you everybody.

19 This would be a very different case if the  
20 State had contacted Mr. Olsen and asked him to speak to  
21 Mr. McCoy. It would also be a very different case if  
22 the State had bugged Mr. McCoy's jail cell and  
23 overheard discussions with Mr. Olsen. It would be a  
24 different case if the State had uncovered the materials  
25 that Mr. Olsen and Mr. McCoy apparently prepared

1 together to get ready for court and used them against  
2 Mr. McCoy. It would be a different case if, as in one  
3 of the cases that Mr. McCoy cited to me, the State had  
4 had the detective check Mr. McCoy's notes at counsel  
5 table.

6 The State did none of these things. What  
7 happened here is something that I didn't hear anybody  
8 talk about, but frankly it's not all that uncommon, and  
9 that is that there was waiver in this case. There's  
10 certainly an attorney/client privilege for anybody who  
11 is represented by counsel. But it's easily waived by  
12 speaking to people in custody. And I think that one of  
13 the most frequent pieces of advice that good counsel  
14 give their clients is, don't talk to anybody. Because  
15 you can't trust anyone in here. And indeed, Mr. Olsen  
16 proves that. I'm sure he implicitly promised  
17 confidentiality if not explicitly, but clearly that was  
18 not something that could be relied upon.

19 Likewise when attorneys make notations to  
20 themselves, write down their thoughts and impressions,  
21 the classic Hickman vs. Taylor situation, if they turn  
22 those papers over to opposing counsel they lose the  
23 privilege. They waive it.

24 It's not a safe thing to talk about one's  
25 legal theory or defenses unless one is talking within

1 the boundaries of an established privilege.

2 It's plain to me from cross examination here,  
3 if not from direct, that Mr. Olsen served as what we  
4 might call a jail house lawyer, in the area he was  
5 being confined in when he met Mr. McCoy. But that  
6 doesn't make him into a lawyer, and it doesn't make any  
7 of the statements made to him deserving of privileged  
8 treatment. Nor does it make any of the work that he  
9 did in conjunction with Mr. McCoy work product, either  
10 Mr. McCoy or Mr. Olsen.

11 What we have here frankly, Mr. McCoy, was an  
12 unwise decision by you to talk to somebody else who  
13 wasn't a lawyer about your case. And in doing that,  
14 you gave up your right to privacy if that person chose  
15 to disclose what you said further. In fact, you gave  
16 it up at the moment you disclosed it to a third party.

17 Had that third party been a State agent there  
18 would be a different question here. But at the moment  
19 that you spoke to Mr. Olsen, who was not a State agent,  
20 he chose to come forward on September 1st and volunteer  
21 the information you had given him. Including all the  
22 information he had about your defenses.

23 Now, one question that has been raised before  
24 me quite aside from the fact that there's this  
25 disclosure on September 1, is what happened between

1 September 1 and September 15th. I actually think the  
2 inquiry is a little bit broader than that. Because I  
3 have apparent disclosure by the State, at least standby  
4 counsel and probably Mr. McCoy himself via standby  
5 counsel as of September 14th that there was a source  
6 that had spoken to the State.

7 Mr. Ferrell has indicated that he hand-  
8 delivered a disclosure that Mr. Olsen was that source  
9 on September 15th. Mr. McCoy has given me an e-mail  
10 from Mr. Ferrell which we made Exhibit 10.

11 That was sent on September 21st. So it's  
12 clear by then that Mr. Olsen had been disclosed as a  
13 source for further information in the case as a witness  
14 to statements that Mr. McCoy had made.

15 It's also clear from the court file that  
16 Mr. Hampton withdrew as of September 28th. I have an  
17 order here from Judge Kessler permitting withdrawal on  
18 September 28th. It's plain it was a fairly quick  
19 disclosure of the fact that Mr. Olsen was the source  
20 the State had. The question that Mr. McCoy has raised,  
21 and it's a fair question, which the State responded to  
22 with live evidence, is what happened between the time  
23 that Mr. Olsen came forward and the time that Mr. Olsen  
24 gave his taped and written statement and was separated  
25 from Mr. McCoy by way of a separation order that was

1 entered with the jail.

2           It was about a two week period, all together.  
3 It appears to this Court however from all the evidence  
4 I've heard that there wasn't any further communication  
5 with Mr. McCoy about his case nor was there any  
6 direction by the detective to communicate with  
7 Mr. McCoy about his case. There was certainly no  
8 communication between Mr. Ferrell and Mr. Olsen to  
9 communicate with Mr. McCoy about his case.

10           I agree with Mr. McCoy that there's a very  
11 detailed statement by Mr. Olsen on September 10th, both  
12 the written statement and oral statement. But, it also  
13 appears to me that that's all based on conversations  
14 that had occurred between him and Mr. McCoy before  
15 September 1. All the references appear to be with  
16 regard to Mr. McCoy thinking about and trying out  
17 various explanations of the evidence he was aware of  
18 against him.

19           I agree with him that Mr. Olsen doesn't appear  
20 to have been completely accurate in relaying his  
21 understanding of the evidence. But, I don't really  
22 think that makes much of a difference. It's clear that  
23 what Mr. Olsen had to say on September 10th came from  
24 information that he had gotten before September 1.

25           And, I do advise Mr. Ferrell that one of the

1 things that leads me to that conclusion besides my  
2 assessment of the detective in this case is very  
3 credible, is Exhibit 1. Which essentially summarizes  
4 everything that appears on September 10th in Exhibit  
5 2. In a more detailed statement that Mr. Olsen gave.

6 So, to come back to the issue before me, I do  
7 not agree with some of the fundamental propositions  
8 that you've given me, Mr. McCoy, I don't agree that the  
9 State had an obligation to come and get permission from  
10 the court for every bit of discovery it did in this  
11 case. And there's nothing in the criminal rules that  
12 requires that. All the State has to do is give you  
13 prompt notice when they come up with material  
14 information. Which it appears to me they did. Because  
15 I know that you were aware of Mr. Olsen and the fact  
16 that he was giving information against you certainly no  
17 later than September 21st when Mr. Ferrell sent his  
18 e-mail to Mr. Hampton.

19 It also is not accurate to say that the State  
20 is not allowed to find out from someone that you have  
21 unwisely spoken to what your defenses are. Provided  
22 the State doesn't inspire that disclosure in any way,  
23 or eavesdrop on you or look into your private papers.  
24 Provided that that information comes to them through no  
25 act of their own there's nothing wrong with the State

1 accepting that information. And frankly jail house  
2 snitches are not anything new in criminal litigation.  
3 They do come forward occasionally, and when they do so  
4 without any prompting or urging, or advance request  
5 from the State, the State can use their information.  
6 They are of course obligated to tell you about it, but  
7 they did do that here.

8 I can't find any misconduct here or  
9 mismanagement by the State.

10 I do think, Mr. McCoy, it was not wise for you  
11 to speak to Mr. Olsen. Something I'm sure is  
12 abundantly clear to you now. But, there's not much we  
13 can do to fix that. These misjudgments happen, even  
14 when lawyers are involved in a case.

15 In terms of whether there's been prejudice to  
16 you, of course there's been material prejudice to you.  
17 But, again, not because of anything the State did  
18 here. Because of your own, I think, lack of wisdom in  
19 speaking to Mr. Olsen.

20 So, I deny the motion to dismiss for State  
21 misconduct or mismanagement. I do not think it's well-  
22 founded on the factual scenario I have before me.

23 But I will turn to argument about whether or  
24 not the State has adequate evidence to convict you  
25 under State vs. Knapsted inquiry if you want to argue

1 that.

2 Obviously, when I think about what evidence  
3 the State has I include Mr. Olsen in the State's  
4 evidence. Because they clearly have him as a witness.  
5 But if you want to tell me why it is you think that  
6 information set forth in the Certification for  
7 Determination of Probable Cause, plus what Mr. Olsen  
8 has given the State, plus the test results you both  
9 have told me about isn't enough for the State to get to  
10 the jury I'm happy to hear from you.

11 Do you want to argue that? That's your next  
12 portion of your motion to dismiss.

13 MR. MCCOY: Yes. The Knapsted motion that I  
14 was arguing is that the fact that again the case has  
15 been going parts of the time, and I think that there  
16 was an indication by the State all of a sudden's got  
17 Mr. Olsen as their witness is evidence that they didn't  
18 have the, what I said the first time, they didn't have  
19 the evidence to prove the elements of a Robbery in the  
20 First Degree.

21 Mr. Olsen being a witness is kind of worried  
22 to me, I'm kind of having mixed messages about the  
23 State, about the Court saying that it wasn't wise.  
24 But, I think it was - - that issue was addressed in  
25 Silvy that it wasn't - - the State - - or nobody could

1 be prohibited for assisting each other.

2 Therefore, I don't think that I just by  
3 talking to Mr. Olsen that I made some mistake.

4 THE COURT: I think you did, Mr. McCoy.

5 MR. MCCOY: The evidence that Mr. Olsen gave  
6 you was saying, although it wasn't accurate, I mean, it  
7 should be obvious that it was fabricated. And, that is  
8 a smoke screen for the State to be able to use the  
9 other information that Mr. Olsen provided, which was  
10 the information pertaining to my expert witnesses,  
11 information pertaining to my defense strategies.

12 Now, that information that we had, yes, it was  
13 accurate. But for the State to claim that Mr. Olsen  
14 had information, accurate information pertaining to the  
15 bank robberies, the record don't support that.

16 So, with that, that was my assertion for  
17 bringing a Knapsted dismissal. I think it would be  
18 futile to argue that any further since the State have  
19 already made a decision that the State was justified  
20 for receiving information from Mr. Olsen. Therefore I  
21 will just probably seek a further ruling especially on  
22 this issue from the Court of Appeals.

23 THE COURT: Any response?

24 MR. FERRELL: Your Honor, I think the  
25 Certification for Probable Causes as well as the

1 admissions by the defendant through Mr. Olsen and to  
2 Mr. Olsen, as well as I think probably the strongest  
3 piece of evidence in the matter is the fingerprint  
4 obtained, I think leaves the State with enough  
5 evidence, number one, for probable cause, number two,  
6 to go to a jury. I think there's enough evidence here  
7 concerning all the circumstances set forth in the  
8 statement of probable cause to go forward to a jury. I  
9 don't think there is insufficient evidence.

10 THE COURT: All right. I will hear from you  
11 in response. They say even on the certification alone  
12 they have enough to go forward to a jury.

13 MR. MCCOY: Yes, there's been an indication  
14 that the State says that the fingerprint, as you know,  
15 Mr. Olsen mentioned that a strategy for that and the  
16 criminal motion that I made requesting any notes that  
17 I'm quite sure the State destroyed that was taken  
18 between Mr. Ferrell on the fingerprint expert with whom  
19 I had an interview with and it was obvious that he was  
20 aware of the legitimate access defense that I was going  
21 to put on because of the very prompt mention about the  
22 cleaning lady and all that. And it was just part of me  
23 why would a fingerprint expert that is an expert in the  
24 forensics of fingerprints have any concern about a  
25 cleaning person. Therefore, yes, they had prejudiced

1 me in a way, and again, the State is going to be  
2 allowed to go into the - - take this to trial.

3 And, the trial is going to be fundamentally  
4 unfair to the defense. I don't have a defense. The  
5 only defense I have has been exposed by Kevin Olsen.

6 And, again, like I say, the rule says it's not  
7 prohibited nor can the jail or anyone prohibit inmates  
8 from assisting each other. What I think is prohibited  
9 is for the State to be allowed to intrude on that. And  
10 by intruding on that by a third party, I feel it's  
11 fundamentally unfair, and again, is denying my due  
12 process to effective representation.

13 With that, I close.

14 THE COURT: All right. Let me see if I can  
15 explain it more clearly to you, Mr. McCoy.

16 You don't get rights beyond what you get if  
17 you were represented by counsel when you represent  
18 yourself. The fact that we give you access to research  
19 and access to discovery and access to the advice of  
20 standby counsel doesn't mean that you get more rights  
21 than you would get if you actually were represented by  
22 counsel. People who are represented by counsel who  
23 speak to other people about their legal matters run a  
24 risk. And the risk is that those people they speak to,  
25 with whom they do not have a privilege, will disclose

1 that information. The only way you can be sure that  
2 your information that you share with somebody else is  
3 protected by privilege is if you actually share it  
4 within a privileged relationship. The fact that you  
5 may be permitted to assist each other with legal  
6 matters does not create a privilege and there is no  
7 law, no statute, no case, that does create such a  
8 privilege. If there were, then we would have the  
9 strange situation where people who decided to represent  
10 themselves would have more rights than someone who is  
11 actually represented by an attorney and covered by the  
12 attorney/client privilege. That's not how it works.

13 What we have here is a bad decision by you to  
14 speak to someone who turned out not to be trustworthy.  
15 In the sense that he wasn't willing to keep your  
16 confidences to himself. He may have other credibility  
17 issues. I suspect he does. Just given the fact that  
18 you met him where you did and he's been convicted of  
19 robbery.

20 But, having said that, that doesn't mean that  
21 what you say to him is something that is shielded from  
22 disclosure or that you can have confidence will be kept  
23 from the State. And that's why I said I don't think it  
24 was a wise decision by you.

25 Let me turn back to the Knapsted issue. On a

1 Knapsted motion the State assumes that all - - the  
2 Court assumes that all of the State's presented  
3 evidence is true. And draws all inferences in favor of  
4 the State. That means if there is an issue about  
5 credibility the Court assumes that the State's  
6 witnesses are truthful. If there's an issue about how  
7 to construe something like a fingerprint, then the  
8 Court construes it in favor of the State. That's how a  
9 Knapsted motion is assessed.

10 When I look at the Certification for  
11 Determination of Probable Cause alone, it appears to me  
12 that if I accept all of the information stated in that  
13 Certification for Determination of Probable Cause as  
14 true, and I draw all inferences from the information in  
15 the Certification for Determination for Probable Cause  
16 in favor of the State, as I must, then there is  
17 sufficient evidence for the State to get a jury on  
18 whether you committed the charged offenses.

19 I also think on a Knapsted motion at this  
20 juncture knowing as I do now that Mr. Olsen is a  
21 State's witness and the content of the evidence that  
22 he's likely to present at trial about what you had to  
23 say about your culpability for these robberies, and  
24 given what I know now about the State's ability to  
25 obtain a print that matched your print, it appears to

1 me that the State's case is certainly strong enough to  
2 go to a jury on a Knapsted inquiry.

3 Again, I'll remind you that for purposes of a  
4 Knapsted motion I assume Mr. Olsen is truthful. Which  
5 is not an assumption that would necessarily get made by  
6 a jury.

7 All right. So that's the ruling on the  
8 Knapsted motion, I'm denying the motion to dismiss  
9 under Knapsted because if I take the State's evidence  
10 as true and draw all inferences in favor of the State  
11 it's clear to me there is sufficient evidence here to  
12 reach a jury.

13 Let's turn to the next question, which is the  
14 request to sever the new count that the State filed  
15 against you. Go ahead and argue that if you'd like to,  
16 Mr. McCoy.

17 MR. MCCOY: I thought I was going to reserve  
18 that for after the State's evidence at trial. And I  
19 will reserve that for a pretrial motion.

20 THE COURT: All right. You don't have to  
21 argue that now if you don't want to. We'll defer that  
22 to the trial judge. I'm assuming you are going to want  
23 to argue that to the trial judge before the jury is  
24 impaneled, but I will leave that to you.

25 MR. FERRELL: May, I briefly?

1           The State is, and we're here for a motion, the  
2 State actually countered with a motion to join. And I  
3 would like to address that now.

4           THE COURT: I don't have a State's motion, I  
5 have a State's response.

6           MR. FERRELL: State's response, and then Page  
7 4 of the State's response brief, State's motion to join  
8 offenses.

9           THE COURT: Are you moving to amend?

10          MR. FERRELL: No, it's already been amended.

11          THE COURT: That's what I thought.

12          MR. FERRELL: So, they have been, I think they  
13 are presumptively - -

14          THE COURT: They are joined.

15          MR. FERRELL: All right.

16          THE COURT: If it's already been amended I  
17 fail to see how I can join them anew.

18                I can see how they can be disjoined by the  
19 motion to sever. But that's up to Mr. McCoy and he  
20 doesn't want to argue that today. He wants to wait for  
21 a trial judge.

22          MR. FERRELL: So they are presumptively joined  
23 unless they are severed.

24          THE COURT: Right.

25                And then the last issue is the discovery

1 issue that you raised, Mr. McCoy. We've partly gotten  
2 an answer to your discovery request during this  
3 proceeding. You asked for disclosure of the names of  
4 the FBI agent and the local detective who conducted the  
5 interview with Mr. Olsen. The information we got was  
6 the name of the FBI agent responsible for Mr. Olsen and  
7 the name of the King County Sheriff's Office detective  
8 who was present when Mr. Olsen came forward on  
9 September 1st. Although I don't have any information  
10 to tell me who besides the assigned detective was  
11 present for the initial interview on September 1.

12 You also asked for any notes taken, it  
13 appears with the information that I was given that the  
14 only notes were taken by the assigned detective and he  
15 says he incorporated them into a follow-up statement,  
16 which is Exhibit 1. And then he destroyed the  
17 remaining notes. I think that discovery request has  
18 been met.

19 Mr. McKay, if you talk to Mr. McCoy when I'm  
20 talking to him he will never be able to hear me.

21 MR. MCKAY: Sorry.

22 THE COURT: So I think your first discovery  
23 request has been met in these proceedings.

24 The second discovery request you made is for  
25 notes from any meeting with Examiner L. Thomas SPD by

1 the detective, and by Mr. Ferrell prior to an interview  
2 conducted on December 19th, 2007.

3 MR. FERRELL: It was a criminal motion on  
4 December 14th, 2006.

5 THE COURT: Were there any meetings with an  
6 Examiner L. Thomas at which anybody took notes,  
7 Mr. Ferrell?

8 MR. FERRELL: Oh, are we talking about - - I'm  
9 sorry. Are we talking about - - could you read that  
10 last part again?

11 THE COURT: Mr. McCoy wanted notes from any  
12 meeting with Examiner L. Thomas SPD by Detective  
13 Aakervik and by you, Mr. Ferrell, taking place before  
14 an interview conducted, he says December 19th, 2007.  
15 But I think he means 2006.

16 MR. FERRELL: I have no notes.

17 THE COURT: Do you know if the detective  
18 does?

19 MR. FERRELL: Your Honor, we all met, I do not  
20 know, and here's why. Because we all met outside the  
21 courtroom, or outside the meeting room in a hallway, in  
22 which literally I was coming from court, I grabbed my  
23 notebook, got a diet Coke and then we all proceeded  
24 into the room. We literally did not have a substantive  
25 meeting. I just told the witness to be truthful.

1 THE COURT: Okay. Check in with the  
2 detective, if you would, and the examiner, and double-  
3 check to see if they made any notes after the meeting.

4 MR. FERRELL: Yes, Your Honor.

5 THE COURT: And if they did, obviously, turn  
6 them over.

7 And then the last request Mr. McCoy made is  
8 notes from any follow-up meetings with Mr. Olsen.

9 Have there been any besides the transcript of  
10 the interview on September 10th when his written  
11 statement was provided on September 10th?

12 MR. FERRELL: There have been occasions in  
13 which we have - - I remember being in a meeting room  
14 with him, I've taken no notes. In which he was on the  
15 other side of the table. And then yesterday he was in  
16 my office where he was allowed an opportunity to read  
17 his statements, which are Exhibit 2. No substantive  
18 discussion. In fact, I informed the parties, do not  
19 have a conversation with each other about their  
20 testimony. Because it was immediately proceeding the  
21 hearing.

22 THE COURT: Has Mr. McCoy interviewed  
23 Mr. Olsen yet?

24 MR. FERRELL: That actually was scheduled for  
25 today at 11:00 a.m. And we discussed this at the

1 omnibus on Wednesday, I believe that was the date we  
2 had the omnibus. And, because of the hearing today,  
3 and in consultation with both Mr. McCoy and Mr. McKay,  
4 we struck the interview for today by agreement of the  
5 parties, because it's just not necessary.

6 THE COURT: Because of the testimony.

7 MR. FERRELL: Because of the testimony.

8 My understanding is they do not want to  
9 interview him any longer.

10 THE COURT: Okay. Mr. Olsen should be  
11 contacted to see if he has taken any notes about his  
12 meeting with you.

13 MR. FERRELL: Mr. Olsen?

14 THE COURT: Yes. Ask him if he has, and if he  
15 has, get the notes and provide them to Mr. McCoy. The  
16 detective should be contacted to see if he has taken  
17 any notes from his meetings with you or with Mr. Olsen  
18 and you. Or with Mr. Olsen alone. And if so, those  
19 should be turned over. All right.

20 Anything else on the discovery request,  
21 Mr. McCoy?

22 MR. MCCOY: Yes. If I can get the two names  
23 of the agent and the detective. I know one was  
24 Detective Nelson, and it was the agent, the FBI agent,  
25 I didn't catch his name.

1 THE COURT: I have it is in my notes. You  
2 didn't write it down? His name is Alan Distajo,  
3 D-I-S-T-A-J-O, first name Alan, A-L-A-N.

4 MR. MCKAY: Your Honor, could you spell that  
5 once again?

6 THE COURT: D-I-S-T-A-J-O, Alan.

7 Of course the other sheriff's detective here  
8 was John Nelson, who testified at the hearing.

9 MR. FERRELL: So, any notes regarding the  
10 interview on the 1st in which the FBI agent and  
11 Detective Nelson were there; is that right?

12 THE COURT: No, I'm looking for any notes at  
13 all. Because that's what he's asking for. To the  
14 extent that any of you have taken notes, Mr. Olsen, or  
15 you, or the detective, about your meetings together.  
16 It should get turned over.

17 MR. FERRELL: Okay. I want to go back,  
18 because I want to make sure I get it.

19 Do you want me to ask Detective Aakervik to  
20 get any notes - - I guess any notes at all like from  
21 the FBI agent from the September 1st meeting?

22 THE COURT: Yes. If they exist. I'm not sure  
23 if he was present for that interview.

24 MR. FERRELL: Right. I don't know either.

25 THE COURT: Let me explain, what I'm looking

1 for is notes pertaining to what Mr. Olsen had to say  
2 about Mr. McCoy. And then in terms of other notes, I'm  
3 looking for any notes that have arisen at a follow-up  
4 meeting since September 1 with Mr. Olsen. Whether you  
5 took them, Mr. Olsen took them or the detective took  
6 them.

7 MR. FERRELL: And I can tell the Court, number  
8 one, when I interview a witness, I don't usually take  
9 notes.

10 THE COURT: Understood. Just directing that.

11 And the last thing is, if anybody took notes  
12 other than you, whether it was the examiner or the  
13 detective about the meeting with the examiner, that  
14 should get turned over.

15 Anything else, Mr. McCoy?

16 MR. MCCOY: No.

17 MR. FERRELL: To clarify the record, there was  
18 no official meeting between myself, the examiner and  
19 Detective Aakervik.

20 THE COURT: I understand. I don't know what  
21 anybody noted after.

22 Mr. Ferrell, I want an order from you  
23 reflecting the Court has denied Mr. McCoy's motion to  
24 dismiss under 8.3, and denied his request to dismiss  
25 under State vs. Knapsted, and the motion to sever has

1       been reserved to the trial court.

2               MR. FERRELL:  It's already been done.  All I  
3       need is a signature.

4               THE COURT:  All right.  Thank you everybody.

5               MR. MCKAY:  Your Honor, Mr. McCoy has prepared  
6       an order staying trial pending discretionary review.

7               THE COURT:  I'm not going to grant that.  I  
8       don't think this is dispositive.  I will let him take  
9       it up with the Court of Appeals, maybe they'll grant  
10      it.

11              MR. MCKAY:  Okay.

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REPORTER'S CERTIFICATE

STATE OF WASHINGTON)

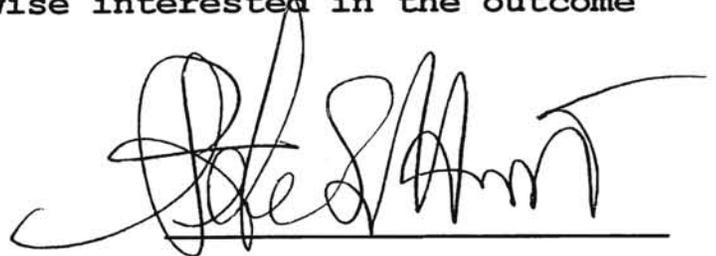
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COUNTY OF KING )

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I, PETE S. HUNT, an official reporter of the state of washington, was appointed an official court reporter in the superior court of the state of washington, county of king, on march 16, 1987, do hereby certify that the foregoing proceedings were reported by me in stenotype at the time and place herein set forth and were thereafter transcribed by computer-aided transcription under my supervision and that the same is a true and correct transcription of my stenotype notes so taken.

I further certify that I am not employed by, related to, nor of counsel for any of the parties named herein, nor otherwise interested in the outcome of this action.



OFFICIAL COURT REPORTER

# **Appendix F**

**Order on Criminal Motion**

**State v. McCoy,**

**06-1-03538-7 SEA**

**FILED**  
KING COUNTY, WASHINGTON

FEB 23 2007

SUPERIOR COURT CLERK  
EILEEN L. MCLEOD  
DEPUTY,

SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

STATE OF WASHINGTON

Plaintiff,

NO. 06-1-03538-7 SEA

vs.

ORDER ON CRIMINAL MOTION

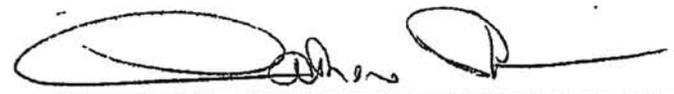
Raymond McCoy,

Defendant.

The above-entitled Court, having heard a motion by defendant to dismiss his case due to alleged misconduct by the state, pursuant to CrR 8.3(b). Defendant also moves to dismiss pursuant to a Knapsdal motion. Defendant also moved to Sever Ct. III from Ct's I+II

IT IS HEREBY ORDERED that upon hearing all of evidence and considering the arguments, defendant's motion to dismiss is denied. Court finds no mismanagement or misconduct by the state. Defendant's motion to dismiss on Knapsdal grounds is denied. Defendant reserves Severance of Ct. III to trial court. Ct. III is currently joined with cts I+II for trial.

DATED: FEB 23 2007



JUDGE CATHERINE SHAFFER

Jim Ferrell #24314  
Deputy Prosecuting Attorney Jim Ferrell

Raymond P. McCoy  
Attorney for the Defendant

# **Appendix G**

**Letter from Eric Blank**

**June 10, 2008**

VIA FIRST CLASS MAIL

June 10, 2008

Mr. Raymond D. McCoy  
#270764-H4-LB-52-1  
Stafford Creek Correctional Facility  
191 Constantine Way  
Aberdeen, Washington 98520

FILED  
COURT OF APPEALS DIV #1  
STATE OF WASHINGTON  
2008 JUN 30 AM 11:18

**Re: *Response to Your Letters Dated June 5 & 6, 2008***

Dear Mr. McCoy:

Thank you for your recent correspondence. I also want to note at the outset that I am sending a copy of this letter to Mr. McKay.

I have reviewed the materials you sent me and also my own correspondence over the course of my participation in this matter. I want to make the following points:

1. Mr. McKay, although I do not particularly care for his choice of words, is correct that I would have been a “lackluster” witness of dubious benefit. As stated clearly in my report, while I do not personally think that the video shows the subject’s hand touching the counter (and remember, I never fully enhanced the video), I could not opine as I was originally asked to do: to state that the subject’s hand did not touch the counter during his visit to the bank. Apart from the poor tape quality, the fact that multiple cameras shared the same tape meant that 90% of the visit was not recorded by a camera in a position to show whether or not the subject’s hands touched the counter. Although I did not attend the trial, as a general matter I agree with Mr. McKay that such testimony is better elicited from the state’s witness than from a person retained by the defense.
2. In my work, I am often retained as a “consulting” expert and never disclosed or put forth as a “testifying” expert. There are many reasons for this, foremost among them that my work has turned out to be unhelpful, or even harmful, to the party that retained me. This is normal. I am retained by a party, yes, and therefore have a natural desire to advocate for them, but I have to follow the facts and sometimes my investigation cannot support the opinions that the party retaining me originally sought. I believe that that is what happened here.
3. I strongly disagree with Mr. McKay’s assertion that, “incredibly,” I never returned the videotape placed into my custody to the FBI, and that I had to be “tracked down” by Detective Aakervik. The facts are as set forth in my

contemporaneous letter to you, a copy of which is attached. The prosecutor, Mr. Ferrell, frankly admitted to me that the state had lost the evidence receipt and forgotten that I had the tape, until Detective Aakervik was reminded by sight of my business card, which I left with him when I accepted custody of the tape. When Mr. Ferrell first talked to me on the telephone on the morning that I returned the tape, he assured me that I was not in any trouble. This caused me to become angry, because it had not occurred to me that I could be in any trouble, given that I had done nothing wrong, that I had been assured that there was no date to return the tape (in fact, Det. Aakervik told me when I received the tape that it was being given to me because the defense had agreed that if I lost it, a DVD copy could be used instead.), and that no one had ever contacted me, prior to that morning, to ask for the tape back. This is why I remember the incident so well; I am certain that Mr. Ferrell remembers also.

4. Six months is not a long period of time in the world of criminal and civil litigation. My office has hundreds of copies of electronic media that we have held for years. Moreover, as you will recall, I had asked whether or not you wanted me to do any additional work (for example, enhancement) and you were as far as I knew considering it. I did not know that you were in trial until Mr. Ferrell contacted me. Also, Mr. McKay was by his own admission out of the picture when I obtained the tape, and has no idea what he is talking about as far as what expectations were set with respect to its return. In fact, if I had been invited to explain the circumstances to Judge Kallas—that is, if I had been notified that there was any issue with respect to the tape—Judge Kallas might have ruled differently on admissibility. Then again, he might have made the same ruling.
5. You and I spoke shortly after this incident. I want to reiterate what I said then: once contacted, I was absolutely committed, on ethical grounds, to returning the tape immediately. I did not give any thought as to whether my immediate cooperation with the prosecutor's office would help, or hurt, your case. If I had given it any thought, I would have assumed in any event that the FBI had a copy of the tape—as represented to me—and that your attorney had a copy also. I would also assume that your attorney would have reviewed the entire tape.
6. I also disagree with Mr. McKay's statements regarding the number of times he and I spoke and my supposed unavailability. Mr. McKay was clear from the outset that you, not he, had retained me and that he thought it was a waste of time. Our conversations were accordingly, at his insistence, brief. I do not recall if we discussed whether the tape in my possession was full-length or merely a segment. My role was limited to observing one subject's partially videotaped visit. If Mr. McKay wanted to rely upon me for an analysis and description of the other contents of the tape, he should have asked me.

7. In response to your question regarding testimony I could have given as to whether the identified subject came into the bank earlier in the day, my answer is that I do not know. With 10-second intervals, each person entering the bank should appear on at least a few seconds of film. Identifying such persons, given the quality, would be a challenge. Identifying what such persons did, or more importantly did not do, would be just as problematic as my original task.
8. In response to your question regarding whether I was available on the morning that I was contacted by the state and asked to return the tape, I was absolutely available. In fact, when I later learned of the turmoil surrounding the state's loss of its records, followed by the discovery of my business card, I was surprised that Mr. McKay did not contact me on the morning I returned the tape.

To summarize the above, I think that Mr. McKay is self-serving and offensive in his comments regarding my role in this matter. I do not appreciate being the subject of made-up suppositions and negative innuendo. However: his essential point, that I would have not have been helpful and could even have harmed the defense, is in my opinion correct. I also think that Mr. McKay, who is vastly more experienced in criminal defense than I (I have no experience at all), deserves deference with respect to his defense strategy.

I want you to know that I have enjoyed making your acquaintance, and I have no wish to cause you any additional frustration. For this I apologize. However, I have tried all along to be absolutely frank with you (and, although he will not credit it, with Mr. McKay) even when my news is not helpful.

Please feel free to contact me if you have any questions. The materials you sent me are enclosed.

Sincerely yours,

**BLANK LAW & TECHNOLOGY P.S.**



Eric P. Blank

encl.

cc: Robert S. McKay, Esq.

*(without enclosures)*

