

NO. 64359-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

RANAE NAITOKO,

Appellant.

FILED  
COURT OF APPEALS  
STATE OF WASH  
2010 OCT -4 PM 4:35

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HELEN HALPERT

**BRIEF OF RESPONDENT**

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A. ISSUES PRESENTED.

An appellate court should affirm a trial court's determination of a personal restraint petition on the merits following a reference hearing if the trial court's findings are supported by substantial evidence. Substantial evidence supports the trial court's finding that there is no reasonable probability that the four witnesses presented at the reference hearing would have changed the result of the trial, where none of them could credibly support any key facts of Naitoko's self-defense claim. Should this Court defer to the trial court's findings and its conclusion that Naitoko failed to establish ineffective assistance of counsel?

B. STATEMENT OF THE CASE.

1. PROCEDURAL FACTS.

Ranae Naitoko was convicted by jury verdict of two counts of assault in the first degree and one count of unlawful possession of a firearm in the first degree. CP 7. On direct appeal, this Court affirmed his conviction and sentence. CP 29-38. He subsequently filed a personal restraint petition alleging ineffective assistance of counsel. CP 40-41. This Court transferred the matter to the King County Superior Court for an evidentiary hearing and a

determination on the merits of the ineffective assistance of counsel claim. CP 46.<sup>1</sup> The Honorable Judge Helen Halpert concluded that Naitoko failed to establish ineffective assistance of counsel at the hearing, and dismissed the petition. CP 66, 68.

## 2. FACTS OF THE CRIME FROM NAITOKO'S TRIAL.

The evidence presented at trial established that on the evening of February 20, 2004, Michael Schirmer went to the First Avenue Pub in White Center, King County. Trial RP 146.<sup>2</sup> A close friend of Schirmer's, Maua Vaivao, was also in the pub. Trial RP 149, 259. Late in the evening, Schirmer confronted another patron, Ranae Naitoko. Trial RP 148. According to Schirmer, Naitoko was trying to be a "tough guy." Trial RP 148. Schirmer walked up to Naitoko and said, "What's up." Trial RP 148. A fight then broke out between Schirmer, Naitoko, and several other people. Trial RP 148, 279-80. A few punches were thrown, but no one was seriously injured, and no weapons were involved. Trial RP 280-81.

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<sup>1</sup> Other claims raised in the personal restraint petition were dismissed. CP 46.

<sup>2</sup> The relevant verbatim report of proceedings from the trial, which occurred in 2005, was paginated sequentially, and will be referred to herein as "Trial RP." The verbatim report of proceedings from the reference hearing will be referred to as follows: "Ref RP1" is September 10, 2009; "Ref RP2" is September 24, 2009.

The owner of the pub, Michael Mayer, and an employee, Puletua PoPo Letuli, intervened and broke up the fight. Trial RP 116-17, 326-27.

After the fight ended, Naitoko and his friends ran out the back door.<sup>3</sup> Trial RP 117-18. Before they left, someone in Naitoko's group, possibly Naitoko, said, "They're all dead, somebody's dying tonight." Trial RP 327-28. Employee PoPo Letuli locked the back door. Trial RP 327. Shortly thereafter, Schirmer left through the front door and stood near his car, which was parked just north of the front door. Trial RP 106, 151, 130-31, 133-39, 146-47, 150-51, 189. His friend, Vaivao, who was not involved in the earlier confrontation, stepped outside to smoke and was also standing near Schirmer's car. Trial RP 261-63.

Schirmer saw Naitoko come around a corner of the pub, about twenty feet away. Trial RP 151-52. Naitoko said, "What's up now, nigger." Trial RP 152. He was holding a gun in his right hand, pointed at Schirmer. Trial RP 152. Naitoko began firing the gun,

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<sup>3</sup> Upon review of the trial testimony and the exhibits admitted at trial, the State agrees with Naitoko's representation that the First Avenue Pub is located on the west side of 16<sup>th</sup> Avenue SW. The front door of the pub is on the east side of the building. The "back door" referred to by the witnesses is on the south side of the building near the southwest corner. There is a parking lot adjacent to the south side of the building. Trial RP 185-88. The scene diagram marked as Exhibit 1 and admitted for illustrative purposes at Trial RP 110 is attached hereto as Appendix A, and confirms the orientation described above.

and Schirmer started running toward the front door of the pub, which was less than ten feet away. Trial RP 153, 172-73.

Schirmer heard a couple of shots and as he reached the front door, he was shot in his lower right leg. Trial RP 153. He collapsed and began crawling into the pub through the front door. Trial RP 154, 329-30.

Michael Mayer, the tavern owner, heard gunshots outside. Trial RP 120. He dropped to the ground, crawled into the cooler and closed the door behind him. Trial RP 120. After a while he came out and saw Schirmer on the ground inside. Trial RP 120-21. There was blood on the floor. Trial RP 121. Employee PoPo Letuli also heard gunshots and saw Schirmer crawl in the front door, dragging his foot behind him. Trial RP 329-30.

Maua Vaivao was outside at the time of the shooting, and saw Naitoko point his gun at Schirmer and fire. Trial RP 263-64. Vaivao heard more than five shots. Trial RP 263. One shot ricocheted and scattered on Vaivao's face, and another shot hit him in the chest. Trial RP 264, 267. At the time of the shooting, Schirmer was ducking and trying to find a place to hide. Trial RP 272. There was no fight going on outside in front of the pub. Trial RP 272.

Shawn Hunt was across the street from the pub planning to go inside when the shooting occurred. Trial RP 247-48. He heard three to five gunshots. Trial RP 248. He saw the shooter run around a corner with his right hand down, jump into a vehicle and speed off. Trial RP 248, 250. Hunt described the shooter as a dark Samoan male with bushy hair and dark pants. Trial RP 248. He described the vehicle that the shooter jumped into as a white Blazer. Trial RP 249. Hunt believed that two other people were in the vehicle. Trial RP 249. Someone in the Blazer had said, "Hurry up, get in." Trial RP 250.

Ciona Luuga was also outside the pub. Trial RP 281. He saw Maua Vaivao and his friends standing between two cars near the front door of the pub. Trial RP 281-83. He saw Schirmer come out of the pub. Trial RP 283. Seconds later Luuga saw Naitoko come around the corner with a gun in his hand, about fifteen feet away. Trial RP 284-85. Naitoko said something to Schirmer, then pointed the gun and began shooting at him. Trial RP 285. He saw Schirmer trying to get back to the front door of the pub, and saw him fall inside. Trial RP 286. He then saw Naitoko go around the corner and disappear. Trial RP 287. Luuga saw that Vaivao had also been hit by a bullet. Trial RP 286.

Police were called and Deputy Schrimpsher responded quickly to the scene within a minute of the report of "shots fired." Trial RP 104-05, 108. When he arrived he saw Vaivao standing between the two cars parked just north of the front door, bleeding from the head and chest. Trial RP 105-07, 110. Vaivao, who was upset and excited, said he had been standing in front of the pub and had just been shot. Trial RP 107-08. He described the shooter. Trial RP 109. Vaivao said he could identify the shooter if he saw him again. Trial RP 109. Vaivao then went into shock. Trial RP 111. Medics arrived within minutes and transported him to Harborview Medical Center. Trial RP 111, 212. He arrived at Harborview at 2:00 a.m. Trial RP 209. Vaivao suffered no permanent injuries. Trial RP 211. He positively identified Naitoko from a photo montage. Trial RP 244-45.

Michael Schirmer was treated at Harborview Medical Center as well. Trial RP 227-28. He also arrived at Harborview at 2:00 a.m. Trial RP 228. He suffered multiple breaks in his leg bones caused by the bullets. Trial RP 232-33. A fragmented bullet was extracted from his tibia. Trial RP 233. Schirmer also identified Naitoko from a photo montage. Trial RP 183.

Crime scene investigators determined that at least five shots were fired. Trial RP 139. The two cars parked just north of the front door of the pub were damaged in addition to the injuries inflicted upon Schirmer and Vaivao. Trial RP 130-39.<sup>4</sup> A small-caliber projectile was recovered from the radiator of one of the vehicles. Trial RP 131-37, 189. The other vehicle was struck by two bullet fragments. Trial RP 137. Based on the location of the bullet fragments, the shots were fired from the south, as the State's witnesses had testified. Trial RP 137.

Naitoko testified at trial. He claimed that Schirmer and his friends insulted him and began punching him and pulling his hair inside the pub. Trial RP 347. He said employee PoPo Letuli then grabbed him by his shoulders, hit him a couple of times, and kicked him out the back door. Trial RP 350. Later he saw Schirmer and his friends outside. Trial RP 351-52. As he tried to run across the street to get away, Schirmer's group followed him, grabbed his hair, and beat him. Trial RP 257-58. Naitoko began swinging to protect himself, and he grabbed on to a guy who had a big belly. Trial RP

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<sup>4</sup> The scene diagram and the testimony elicited from a number of witnesses confirm that the two cars that were struck with bullets were parked to the north of the front door of the pub, not in the south parking area, as Naitoko claims in his brief. Trial RP 106, 130-31, 133-39, 146-47, 150-51, 170-71, 189, 260-61, 269-70, 281-84, 310.

358. He felt a gun and grabbed it. Trial RP 358. Naitoko claimed that he fired the gun without aiming. Trial RP 358. He fired two or three times and then dropped the gun and ran. Trial RP 359-60.

Naitoko testified that he did not call the police because he did not see any reason to and he did not know anyone had been hurt. Trial RP 360. He admitted he was not allowed to possess a firearm. Trial RP 362. When asked why detectives would not have found the gun at the scene, Naitoko opined that some people must have taken it. Trial RP 379-80.

### 3. EVIDENCE PRESENTED AT THE REFERENCE HEARING.

Ranae Naitoko testified at the reference hearing that he gave his trial counsel, Michael Danko, a list of people who were present at the pub at the time of shooting. Ref RP2 40. According to his testimony, the names he gave to counsel were Lili Makeafi, Foane Hefa, Kanga Tuivai, Joey Latu, Patrick Moimoi, Nesiteko Moimoi, and "Malu." Ref RP2 40. Naitoko did not testify at the reference hearing to the facts of the crime. Ref RP2 32.

Trial counsel testified that he did not attempt to contact any of these people, or have an investigator contact any of these

people. Ref RP1 24, 50, 54. The trial court found that this constituted deficient performance. CP 64.<sup>5</sup>

Naitoko presented the testimony of four witnesses who claimed to be present at the pub on the night of the shooting: Malu Tuifua, Patrick Moimoi, Nesiteko Fainga, and Soeli Latu. Malu Tuifua testified that he arrived at the pub with Naitoko and later in the evening, saw "a bunch of Samoan guys" punching Naitoko in the pub while Schirmer held him by his hair. Ref RP1 94-95. Tuifua saw Naitoko break free and run out the back door. Ref RP1 97. Tuifua then ran out the front door of the pub and ran to his car. Ref RP1 97. When inside his car, he heard a gunshot and saw "a bunch of Samoan guys" ducking. Ref RP1 97. He looked for Naitoko, but did not see him and left. Ref RP1 98. The trial court concluded that Tuifua's testimony was consistent with the State's evidence. CP 62. Thus, the court concluded that there was no reasonable probability his testimony would have changed the outcome of the trial. CP 65.

Patrick Moimoi testified that he was also at the pub on the night of the shooting and noticed Naitoko near closing time. Ref RP1 112. He testified there had been a few scuffles in the pub that

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<sup>5</sup> The State does not assign error to this conclusion.

night, which was "the usual thing." Ref RP1 112, 121. He testified that it is hard to tell people apart in the pub because "everybody's just so-called related to each other or something like that. They all look alike, you know." Ref RP1 122. He testified that he saw Schirmer involved "a little bit" in a scuffle with Naitoko in the pub. Ref RP1 125. Moimoi decided to leave the pub and went back to his car. Ref RP1 126. While in his car waiting for a red light, he heard a gunshot, and then saw 50 to 60 people trying to beat Naitoko with beer bottles. Ref RP1 114. He later clarified that maybe only 40 to 50 people were attacking Naitoko. Ref RP1 128. Much of Moimoi's testimony was bizarre. For example, he testified that he could hear their heavy breathing from inside his car 25 yards away although his windows were rolled up. Ref RP1 129. He testified that "he spent a lot of money" on other lawyers for Naitoko. Ref RP1 136-37. His testimony was the most bizarre in regard to friction between the Samoan community and the Tongan community. He testified, "I've been talked to by many others, and I'm getting yelled at, telling me to stop the violence of Samoans and Tongans." Ref RP1 138. As to why he did not call the police, he testified:

It's just like the older -- like older people that so-called know me, that know me when I was young, their kids are police officers, their uncles, aunties are lawyers and governors, and I don't know what the heck -- and they're yelling at me. . . . They just heard my name, and then they just saying that it's all my fault, I got to stop the violence between Tongans and Samoans.

Ref RP1 138-39. In argument to the trial court, even defense counsel remarked on the unusual nature of Moimoi's testimony, stating, "Mr. Moimoi, while he was difficult to understand and while there were, you know, some potential credibility issues with regard to -- the basic story was still the same." Ref RP2 67. In its findings the court noted that Moimoi's "affect was quite unusual," and concluded, "Mr. Moimoi is simply not a credible witness." CP 63.

Nesiteko Fainga testified that she arrived at the pub with her cousin and noticed a fight outside as she approached the pub from across the street. Ref RP1 144. She could not see who was involved in the fight. Ref RP1 145. She decided not to go to the pub after all, started walking back to the car, and five minutes later, heard gunshots. Ref RP1 145-46, 152-53. She did not see the shooting. Ref RP1 147. She testified that the fight she saw was by the back door to the pub. Ref RP1 150, 152. The trial court

concluded that there was no reasonable probability that her testimony would have changed the outcome of the trial, particularly since the struggle she saw was at the back door, while the evidence was undisputed that the shooting occurred near the front door of the pub. CP 63, 65.

Finally, Sioeli Latu testified that he was playing pool in the pub on the night of the shooting and saw a bunch of people, including Schirmer, fighting with Naitoko inside the pub. Ref RP2 8-9. He saw Naitoko run out the back door, and then he ran out the back door. Ref RP2 10. He saw a bunch of people fighting outside the pub but did not see who it was. Ref RP2 10-11. As he was running from the pub, he heard gunshots. Ref RP2 10. The trial court concluded that there was no reasonable probability that Latu's testimony would have changed the outcome of the trial. CP 65.

The trial court concluded that Naitoko failed to establish that he was prejudiced by trial counsel's deficient performance, and thus failed to establish ineffective assistance of counsel. CP 65-66. The court dismissed the personal restraint petition. CP 66, 68.

C. ARGUMENT.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING THAT NAITOKO FAILED TO ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL.

Naitoko contends on appeal the trial court erred in concluding that he failed to establish ineffective assistance of counsel at the reference hearing. The trial court found that Naitoko failed to establish a reasonable probability that the testimony of any of the four witnesses would have changed the result of the trial. The trial court's findings are supported by substantial evidence and should be affirmed.

A criminal defendant has a constitutional right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The petitioner has the burden of establishing ineffective assistance of counsel. Strickland, 466 U.S. at 687. To prevail on a claim of ineffective assistance of counsel the defendant must meet both prongs of a two-part standard: (1) counsel's representation was deficient, meaning it fell below an objective standard of reasonableness based on consideration of all the circumstances (the performance prong); and (2) the defendant was prejudiced, meaning there is a reasonable probability that the result of the proceeding would have been different (the prejudice

prong). Strickland, 466 U.S. at 687; State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). If the court decides that either prong has not been met, it need not address the other prong. State v. Garcia, 57 Wn. App. 927, 932, 791 P.2d 244 (1990).

The inquiry in determining whether counsel's performance was constitutionally deficient is whether counsel's assistance was reasonable considering all the circumstances. Strickland, 466 U.S. at 688. Counsel is not required to conduct an exhaustive investigation or to call all possible witnesses. In re Personal Restraint of Benn, 134 Wn.2d 868, 900, 952 P.2d 116 (1998).

In addition to overcoming the strong presumption of competence and showing deficient performance, the petitioner must affirmatively show prejudice. Strickland, 466 U.S. at 693. Prejudice is not established by a showing that an error by counsel had some conceivable effect on the outcome of the proceeding. Strickland, 466 U.S. at 693. If the standard were so low, virtually any act or omission would meet the test. Strickland, 466 U.S. at 693. Petitioner must establish a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 694.

The appellate court reviews challenged factual findings to determine whether substantial evidence supports them. In re Personal Restraint of Gentry, 137 Wn.2d 378, 410, 972 P.2d 1250 (1999). Substantial evidence exists when the record contains evidence of sufficient quantity to persuade a fair-minded, rational person that the declared premise is true. In re Personal Restraint of Davis, 152 Wn.2d 647, 679-80, 101 P.3d 1 (2004).

The petitioner appealing the trial court's decision in a reference hearing has a heavy burden to persuade the appellate court that the trial court's assessment of conflicting evidence presented at the reference hearing was erroneous. Gentry, 137 Wn.2d at 410-11. The trial court had the opportunity to evaluate the witnesses' demeanor and judge their credibility. Id. As the state supreme court stated in State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990), "Credibility determinations are for the trier of fact and cannot be reviewed on appeal." See also In re Benn, 134 Wn.2d at 910 (credibility determinations cannot be characterized as inaccurate). Conflicting evidence may still be substantial, so long as some reasonable interpretation of it supports the challenged findings. Gentry, 137 Wn.2d at 410-11. That there may be other

reasonable interpretations of the evidence does not justify appellate court reversal of a trial court's credibility determinations. Id.

In this case, the trial court found that Naitoko failed to establish prejudice because there was no reasonable probability that the testimony of the four witnesses presented at the reference hearing would have changed the result of the trial. CP 65. This determination was based in part on the trial court's credibility determinations. As this Court noted in its Order of Partial Dismissal and Transfer, the credibility and persuasiveness of the potential defense witnesses was a factual question to be resolved by the trial court. CP 45. The trial court's finding that the witnesses were either not credible or not helpful is supported by substantial evidence and must be affirmed.

For example, the trial court's finding that Malu Tuifua's testimony was consistent with the State's evidence is supported by substantial evidence. Tuifua testified that after the fight inside the bar he ran out the front door of the pub and did not see any fight outside before hearing gunshots. His testimony would not have supported Naitoko's self-defense claim, and there is no reasonable probability that his testimony would have changed the outcome of the trial. Naitoko argues that Tuifua would have supported his claim that he

was beat up inside the bar before the shooting. Naitoko contends that the State's witnesses testified to nothing more than a shoving match. This is incorrect. It was undisputed that there was some sort of fight inside the bar involving Schirmer and Naitoko, and some of the State's witnesses testified that blows were exchanged. State's witness Ciona Luuga admitted to throwing "a couple of punches" during the fight. Trial RP 280. State's witness PoPo Letuli testified that he saw the group "on top of the pool table fighting each other." Trial RP 326. State's witness Michael Mayer also testified that a fight broke out between Schirmer and Naitoko in the bar and there was "tussling back and forth." Trial RP 116. He also described it as "wrestling." Trial RP 124. There is no reasonable probability that Tuifua's testimony would have changed the outcome of the trial because it was consistent with evidence that was presented by the State.

The trial court's finding that Patrick Moimoi was simply not a credible witness must be deferred to, particularly in light of the bizarre statements that he made during his testimony. If Moimoi was not a credible witness, his testimony could not have changed the outcome of the trial. See e.g. State v. Macon, 128 Wn.2d 784, 800-03, 911 P.2d 1004 (1996) (affirming trial court's denial of motion for new

trial based on finding that newly discovered evidence was not credible and would not have changed the outcome of the trial).

The trial court's finding that there is no reasonable probability that the testimony of Nesiteko Fainga<sup>6</sup> would have changed the outcome of the trial is also supported by substantial evidence.

Fainga testified that she saw some sort of fight near the back door of the pub between 8 and 10 p.m., but she did not testify that she saw Naitoko involved in that fight. Ref RP1 145. Fainga did not see the shooting. Ref RP1 147. The trial court concluded that her testimony would not have been helpful because the shooting occurred at the front door of the pub. CP 63.

Naitoko argues in his brief that the trial court was mistaken as to whether the shooting occurred near the back door or the front door. But Naitoko is mistaken, not the trial court. The testimony of the witnesses, including Deputy Schrimsher, Deputy Butterfield, Deputy Geis, Schirmer, Vaivao, Ciona Luuga and PoPo Letuli, established beyond any doubt that the shooting occurred just steps from the front

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<sup>6</sup> It is unclear whether Nesiteko Fainga's name was provided to defense counsel. Naitoko testified that he gave defense counsel the name Nesiteko Moimoi. Ref RP2 40. There was no testimony that Nesiteko Fainga is Nesiteko Moimoi. Thus, the trial court's finding that trial counsel was deficient in failing to contact the witnesses whose names he was given arguably does not apply to Nesiteko Fainga.

door of the pub, which was located on the east side of the building, and that the cars that were damaged by bullets were parked just north of the front door. Trial RP 106, 130-31, 133-39, 146-47, 150-51, 170-71, 189, 260-61, 269-70, 281-84, 310. Any fight that Fainga witnessed near the back door of the pub in the parking area to the south of the building between 8 and 10 p.m. could not have been the fight that led to the shooting at the front door that occurred just before 2 a.m. The trial court's finding is supported by substantial evidence.

Finally, the trial court's finding that there is not reasonable probability that the testimony of Siieli "Joey" Latu would not have changed the outcome of the trial is supported by substantial evidence. Latu testified that after the fight inside the bar, he ran out the back door after Naitoko. Ref RP2 10-11. He saw some fighting outside by the back door, but did not see whether Naitoko was involved and ran as soon as he heard gunshots. Ref RP2 11-13. There is no reasonable probability that his testimony would have bolstered Naitoko's self-defense because he could not testify to seeing Naitoko involved in a fight near the front door of the pub when the shots were fired. The trial court's finding that there is no reasonable probability that Latu's testimony would have changed the

outcome of the trial is supported by substantial evidence. Having found no reasonable probability that any of the four witnesses presented at the reference hearing would have changed the outcome of the trial, the trial court properly concluded that Naitoko failed to establish that he was prejudiced by trial counsel's failure to contact these witnesses.

Petitioner also contended in his personal restraint petition that counsel was ineffective in failing to object to Detective Holland's testimony regarding pre-arrest silence. This issue was addressed on direct appeal. This Court found that admission of that testimony was constitutional error that could be raised for the first time on appeal. However, this Court concluded that there was "no doubt" that admission of the testimony was harmless. Appendix B, at 8. This Court directed the trial court to consider the possible prejudice of this evidence *only* if the court found that Naitoko was prejudiced by counsel's deficient performance in regard to securing witnesses. CP 46. Because the trial court concluded that Naitoko was not prejudiced in that regard, this Court's conclusion on direct appeal that the evidence of Naitoko's pre-arrest silence was harmless beyond a doubt remains binding.

The trial court did not abuse its discretion in concluding that Naitoko failed to establish that counsel's performance was prejudicial. The trial court properly concluded that Naitoko failed to establish ineffective assistance of counsel and dismissed the personal restraint petition.

D. CONCLUSION.

The trial court's dismissal of the personal restraint petition should be affirmed.

DATED this 4th day of October, 2010.

Respectfully submitted,

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## APPENDIX A

**SHERIFF**  
King County

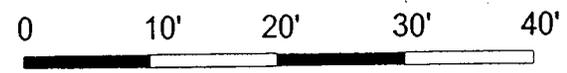
Major Accident Response  
& Reconstruction Unit

04-053516

02/21/2004

ASSUALT HANDGUN  
DETECTIVE JON HOLLAND

Drawn By: Det. Steven Hager

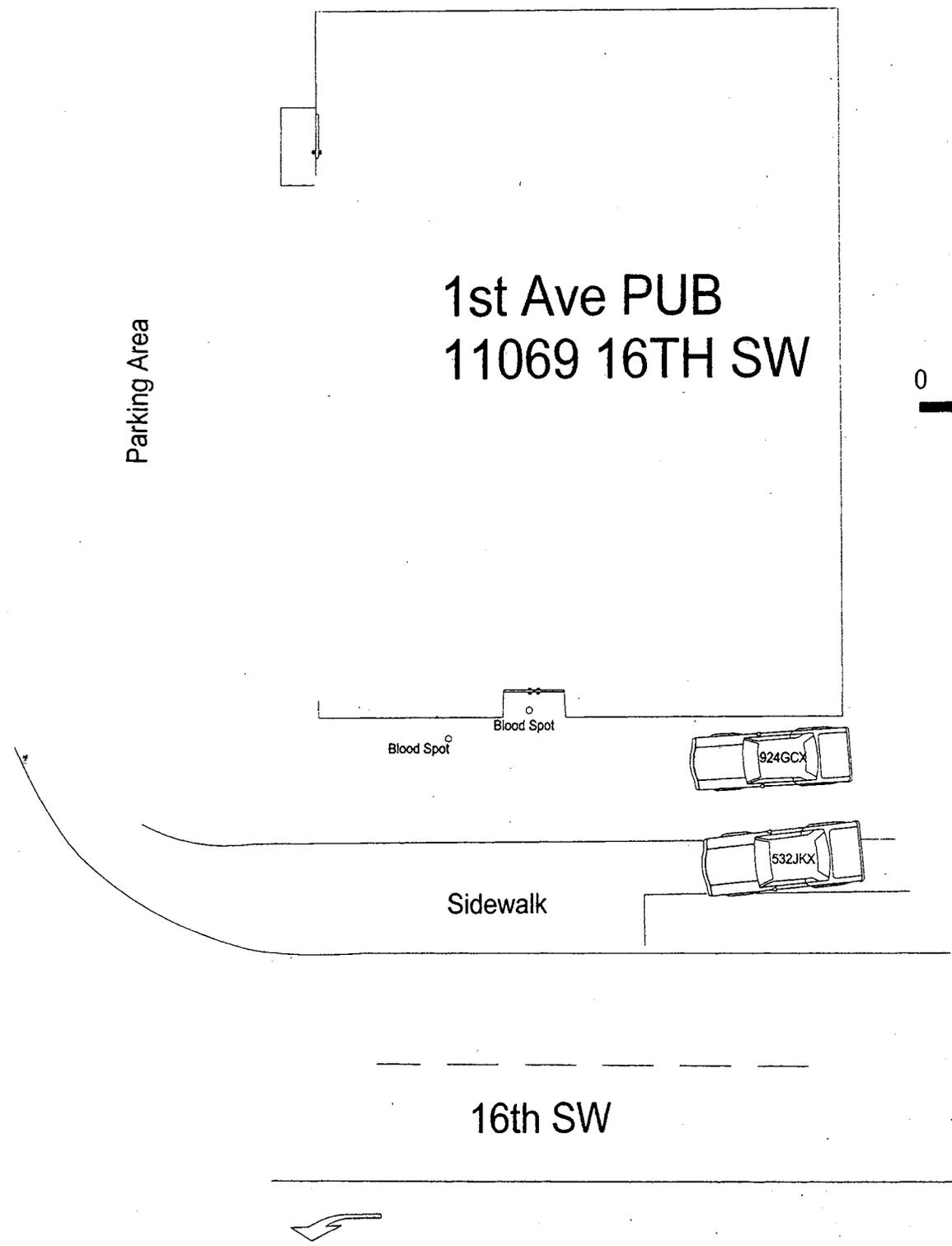


SCALE IN FEET

04 - 053516

Parking Area

1st Ave PUB  
11069 16TH SW



Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to John Dorgan and Eric Broman, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. NAITOKO, Cause No. 64359-2-I, in the Court of Appeals, Division I, for the State of Washington.

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

U Brame  
Name  
Done in Seattle, Washington

10/9/10  
Date

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COURT OF APPEALS  
STATE OF WASHINGTON  
2010 OCT -4 PM 4:35