

NO. 68957-6-1

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

STATE OF WASHINGTON,

Respondent,

v.

D. N.,

Appellant.

REC'D

DEC 19 2012

King County Prosecutor
Appellate Unit

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

The Honorable Wesley Saint Clair, Judge

BRIEF OF APPELLANT

ANDREW P. ZINNER
Attorneys for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

68957-6-1
DEC 19 2012
6

TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENT OF ERROR</u>	1
<u>Issue Pertaining to Assignment of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	4
BECAUSE ATTEMPTED RESIDENTIAL BURGLARY DOES NOT QUALIFY AS A "SERIOUS OFFENSE" UNDER THE FIREARM STATUTES, D.N.'S FIRST DEGREE UNLAWFUL POSSESSION CONVICTION MUST BE DISMISSED.	4
D. <u>CONCLUSION</u>	9

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>State v. A.M.</u> 163 Wn. App. 414, 260 P.3d 229 (2011).....	4
<u>State v. Breazeale</u> 144 Wn.2d 829, 31 P.3d 1155 (2001).....	6
<u>State v. Bunker</u> 169 Wn.2d 571, 238 P.3d 487 (2010).....	6
<u>State v. Chouinard</u> 169 Wn. App. 895, 282 P.3d 117 (2012).....	5
<u>State v. Crawford</u> 164 Wn. App. 617, 267 P.3d 365 (2011).....	6
<u>State v. Delgado</u> 148 Wn.2d 723, 63 P.3d 792 (2003).....	7, 8
<u>State v. Engel</u> 166 Wn.2d 572, 210 P.3d 1007 (2009).....	5
<u>State v. Gray</u> 174 Wn.2d 920, 280 P.3d 1110 (2012).....	6
<u>State v. Hickman</u> 135 Wn.2d 97, 954 P.2d 900 (1998).....	9
<u>State v. Jones</u> 172 Wn.2d 236, 257 P.3d 616 (2011).....	6
<u>State v. Kintz</u> 169 Wn.2d 537, 238 P.3d 470 (2010).....	6
<u>State v. O'Brien</u> 164 Wn. App. 924, 267 P.3d 422 (2011).....	6

TABLE OF AUTHORITIES

	Page
<u>RULES, STATUTES AND OTHER AUTHORITIES</u>	
CrR 3.6.....	3, 4
JuCR 7.11.....	3, 4
RCW 9.41	4
RCW 9A.41	8
RCW 9.41.010	5, 7
RCW 9.41.040	5, 6
RCW 9A.52.025	8

A. ASSIGNMENT OF ERROR

The State failed to prove D.N. has a previous conviction for a "serious offense" as required to sustain a conviction for first degree possession of a firearm.

Issue Pertaining to Assignment of Error

Did the State prove D.N. had a previous conviction for a "serious offense," as required to prove first degree possession of a firearm, where attempted residential burglary did not qualify as a "serious offense?"

B. STATEMENT OF THE CASE

Billy Motshepe was on his way to basketball practice at Cleveland High School in Seattle with a friend when a man came up behind them, robbed them at gunpoint, and fled. When the boys reached the school gym at about 8:30 a.m., they reported the incident and their coach called police. 1RP 35-37.¹ During the conversation with the 911 operator, Motshepe expressed confusion as to exactly where the robbery occurred. 1RP 39-41.

Seattle Police officer Farrior happened to be in the high school's parking lot when the police dispatcher notified officers of the robbery at 8:52. 1RP 120-24. The suspect was described by the dispatcher as an

¹ "1RP" refers to the verbatim report of the May 21 proceedings and "2RP" refers to the report of proceedings held May 22, June 5, and June 21, 2012.

Asian male, 20 years old, and wearing a black hoody. 1RP 125. Farrior proceeded to meet with Motshepe and his friend in the gym a few minutes later. 1RP 126-27.

Meanwhile, other officers heard the same description and approached the area to look for the suspect. 1RP 57-60, 66-68, 99; 2RP 50-56. Neither Officer Leenstra nor Officer Squires recalled seeing any pedestrians as they approached the area. 1RP 66-67; 2RP 62. At about 8:58, Squires spotted D.N. walking toward him. D.N. wore a black jacket and had a black, hooded sweatshirt slung over his shoulder. 2RP 63.

Squires pulled alongside D.N., stopped his police car, and told him to approach and put both hands on the hood. D.N. complied. 2RP 64-65. He was not free to leave. 2RP 86. Squires radioed his location and Leenstra joined him at a point when D.N. had his hands on the hood. 1RP 82-83. Leenstra described D.N. as a teenage male wearing a black, hooded sweatshirt. 1RP 72.

Squires began to frisk D.N. for a weapon. 1RP 83; 2RP 86-87. He asked D.N. if he was armed, and D.N. said no. Leenstra saw D.N. lift his right hand off the hood, so he grabbed it while Squires continued the frisk. 1RP 73. Squires felt something like a pistol in D.N.'s back pocket. 2RP 65-66. He announced this discovery to Leenstra, who responded by

tightening his grip and pushing D.N.'s chest to the hood. 1RP 73-74, 83. Leenstra then saw the barrel of the gun sticking up out of D.N.'s back pocket. 1RP 74. Squires removed the pistol from the pocket. 1RP 74-75; 2RP 66.

In a showup identification procedure conducted moments later, both Motshepe and his friend said D.N. was not the person who robbed them. 1RP 47-48; 2RP 74.

The police arrested D.N., who was 15 years old, for "underage weapons possession." 2RP 74-75. The State went on to charge D.N. with first degree possession of a firearm, predicated on an earlier conviction for attempted residential burglary. CP 1.

Because D.N. moved to suppress the gun, the juvenile court judge held a combined suppression hearing under CrR 3.6 and adjudication hearing under JuCR 7.11. 1RP 31-32. D.N. first asserted the State failed to establish the information provided by "informants" Motshepe and his friend was sufficiently reliable, or that it was adequately corroborated. CP 8-11; 2RP 102-12. Second, D.N. contended the officers lacked sufficient information to justify the investigative detention. 2RP 112-14.

The trial court disagreed and denied D.N.'s motion to suppress. 2RP 124-29. The court entered written findings of fact and conclusions of

law as required by CrR 3.6(b) that are attached as Appendix A. Supp. CP ___ (sub. no. 61, CrR 3.6 Findings of Fact and Conclusions of Law, filed 9/11/12).

After the State rested its case-in-chief, D.N. argued he could not be found guilty of first degree unlawful possession because the State failed to prove the predicate conviction – attempted residential burglary – qualified as a "serious offense" as defined by Chapter 9.41 RCW. 2RP 132-38, 152-56.

The trial court disagreed. The court found attempted residential burglary was a serious offense. And the court found D.N. guilty as charged. Supp. CP ___ (sub. no. 60, Findings of Fact and Conclusions of Law Pursuant to [JuCR 7.11(d)], filed 9/11/12); 2RP 161.

The court entered a standard range disposition of local sanctions. CP 16-19.

C. ARGUMENT

BECAUSE ATTEMPTED RESIDENTIAL BURGLARY DOES NOT QUALIFY AS A "SERIOUS OFFENSE" UNDER THE FIREARM STATUTES, D.N.'S FIRST DEGREE UNLAWFUL POSSESSION CONVICTION MUST BE DISMISSED.

Due process requires the State to prove each essential element of a crime beyond a reasonable doubt. State v. A.M., 163 Wn. App. 414, 419, 260 P.3d 229 (2011). In assessing a challenge to the sufficiency of the

evidence, a reviewing court views the evidence in the light most favorable to the State. State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). The State did not prove beyond a reasonable doubt D.N. had previously been convicted of a serious offense. Because the existence of such a conviction is an element of first degree possession of a firearm, D.N.'s conviction must be reversed and the charge dismissed.

To sustain a conviction for first degree possession of a firearm, the State must prove actual or constructive possession by a person who has previously been convicted "of any serious offense as defined in this chapter." RCW 9.41.040(1)(a); State v. Chouinard, 169 Wn. App. 895, 899, 282 P.3d 117 (2012). "Serious offense" is defined in RCW 9.41.010(16) as including, in pertinent part, "any of the following felonies or a felony attempt to commit any of the following felonies . . . (a) any crime of violence."

The following are crimes of violence:

Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or *an attempt to commit* a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, *residential burglary*, and robbery in the second degree[.]

RCW 9.41.040(3)(a) (emphasis added).

D.N.'s argument requires statutory interpretation, which this Court reviews de novo. State v. Breazeale, 144 Wn.2d 829, 837, 31 P.3d 1155 (2001). The goal is to determine and foster the legislature's intent. State v. Gray, 174 Wn.2d 920, 926, 280 P.3d 1110 (2012).

If a statute's meaning is plain on its face, courts give effect to that meaning. State v. Jones, 172 Wn.2d 236, 242, 257 P.3d 616, 619 (2011). Plain meaning is derived from reviewing the language of the text according to its ordinary meaning, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. State v. Kintz, 169 Wn.2d 537, 547, 238 P.3d 470 (2010); State v. Crawford, 164 Wn. App. 617, 622, 267 P.3d 365 (2011). Finally, statutory provisions should be harmonized rather than rendering any superfluous. State v. Bunker, 169 Wn.2d 571, 578, 238 P.3d 487 (2010).

Where a statute nevertheless remains ambiguous, i.e., subject to two reasonable interpretations, courts apply the rule of lenity and resolve the ambiguity in the defendant's favor. State v. O'Brien, 164 Wn. App. 924, 930, 267 P.3d 422 (2011).

According to the plain language of the pertinent provisions here, the only way attempted residential burglary can qualify as a "serious

offense" is if it is a "crime of violence" under RCW 9.41.010(16)(a). This is because residential burglary is not one of the felony offenses (one class A, two class A or B, seven class B) specified in subsection (16).

Giving the plain language of the "crime of violence" definition its ordinary meaning, the only inchoate crimes (attempt, solicitation, or conspiracy) that qualify are class A felonies, as set forth in the first clause of RCW 9.41.010(3)(a):

Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter . . . residential burglary, and robbery in the second degree[.]

In other words, the comma between "class A felony" and "manslaughter" is read as an "and."

Had the legislature intended for the remaining listed felonies to qualify as crimes of violence – whether completed or inchoate – it could have written subsection (3) as it wrote subsection (16). In other words, the operative portion of subsection (3)(a) would state "or a felony attempt, solicitation of, or conspiracy to commit any class A felony or any of the following felonies, as now existing or hereinafter amended:", followed by a list of the crimes specified in subsection (3)(a). See State v. Delgado, 148 Wn.2d 723, 728-29, 63 P.3d 792 (2003) ("[T]he legislature knew how to include comparable offenses in the definition of a persistent

offender. Yet, the legislature neither directly included a comparability clause, nor incorporated the definition of 'most serious offense,' into the definition of two-strike persistent offenders directly following the three-strike definition. . . . We therefore presume the absence of such language in the two-strike scheme was intentional.").

D.N.'s proposed reading harmonizes the two statutory definitions and gives effect to the language and punctuation differences between subsections (3) and (16). It considers the statutory provision as a whole and renders no portion superfluous. Applying the inchoate modifiers to anything other than class A felonies is the result of a strained reading of the legislature's words.

This Court must be mindful to assume the legislature meant precisely what it said. Delgado, 148 Wn.2d at 727. It said inchoate crimes are "crimes of violence" under chapter 9A.41 RCW only if they are class A offenses. Residential burglary is a class B offense. RCW 9A.52.025(2).

For these reasons, attempted residential burglary is not a "serious offense" for purposes of elevating unlawful possession of a firearm to the first degree. Alternatively, the statute is ambiguous and the rule of lenity warrants a reading that favors D.N. Either way, the State failed to prove an element of the crime beyond a reasonable doubt. Such failure requires

reversal of D.N.'s conviction and dismissal with prejudice. State v. Hickman, 135 Wn.2d 97, 106, 954 P.2d 900 (1998).

D. CONCLUSION

Because the State failed to prove D.N. had a prior conviction for a "serious offense," this Court should reverse his conviction and remand for dismissal with prejudice.

DATED this 19 day of December, 2012.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



ANDREW P. ZINNER
WSBA No. 18631
Office ID No. 91051
Attorneys for Appellant

APPENDIX A

FILED
KING COUNTY, WASHINGTON

SEP 11 2012

SUPERIOR COURT CLERK
By ~~Shanice Sch...~~
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DIVISION

STATE OF WASHINGTON,

Plaintiff,

No 11-8-02451-4

vs

DJ NGUYEN
DOB 07/27/96

Respondent

CrR 3 6 FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THE ABOVE-ENTITLED CAUSE having come on for fact-finding on May 21, 2012, before Judge Wesley Saint Clair in the above-entitled court, the State of Washington having been represented by Deputy Prosecuting Attorney Greta Jibbensmith, the respondent appearing in person and having been represented by his attorney, Amy Parker, the court having heard sworn testimony and arguments of counsel, now makes and enters the following findings of fact and conclusions of law

FINDINGS OF FACT

1 On November 25, 2011, at approximately 8 30 a m , Mr Billy Motshepe and another individual ^{had been} were robbed at gunpoint as they got off a bus on their way to basketball practice that Friday, the day after Thanksgiving This was near the steps of Lucille St

2 Approximately twenty minutes later Mr Motshepe and the other individual reported the robbery to their junior varsity basketball coach

3 The basketball coach called 911 at approximately 8 51 a m , and reported that two of his students had been robbed at gunpoint He identified himself as the Junior Varsity basketball coach As the basketball coach was talking to the 911 dispatcher it is possible to hear the two victims in the background talking to the coach and relaying information to him as the 911 operator asked him questions

CrR 3 6 FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 1

Daniel T Satterberg, Prosecuting
Attorney
Juvenile Court
1211 E Alder
Seattle Washington 98122
(206) 296 9025 FAX (206) 296 8869

ORIGINAL

61

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

4 At 8 52 29 a m the 911 operator started talking to Billy Motshep At 8 52 36 a m Billy Motshep informed the 911 operator that the suspect was Asian Between 8 52 36 a m and 8 52 52 a m the victim informed the 911 operator that the suspect was an Asian male, approximately 20 years old with a black hoodie on At 8 54 03 a m Billy Motshep gave his name to the 911 operator

5 The remainder of the call was a discussion between the 911 operator and Mr Motshep attempting to determine the exact location of the robbery

6 The 911 operator originally thought that the robbery occurred at the school Throughout the 911 call there is reference to three locations for the crime, Cleveland High School, the Lucille St stairs, and there is also reference to a Red Apple

7 A new location of the crime was given to 911, near the Lucille St stairs

8 A description of the robber was given, than of an Asian male in his 20s wearing a black hoodie

9 Seattle Police Department officers began closing in on the area One officer went to the school to get clarification from Mr Motshepe regarding the actual location of the crime

10 There were very few pedestrians in the area

11 There were only two males who fit the descriptors in the area

12 Officer K Squires's #7437 in car video started at approximately 8 55 a m and continued until approximately 8 57 a m when he turned it off At 8 58 a m Officer K Squires's #7437 in-car video started again and showed the Respondent detained on the hood of his car

13 Between 8 57 a m and 8 58 a m Officer K Squires had noticed an Asian male in the vicinity of the robbery and decided to detain the male as a possible suspect, given the close location to the armed robbery and the fact that the male matched the description provided through dispatch, an Asian male who appeared 20 years old with a black hoodie

14 Due to the nature to the nature of the call, an armed robbery in which a firearm was displayed, Officer Squires requested additional units to respond to the location

15 At 8 55 a m Officer Leenstra #7479 was dispatched At 8 58 a m Officer Leenstra #7479 arrived in the area

16 At 8 59 a m 911 was informed that the suspect was a male with a gun in his pocket At 9 01 a m 911 was informed that the suspect was wearing a black and grey hoodie

17 Officer Leenstra arrived to assist Officer Squires During the "frisk" for weapons to determine if the Asian male was armed, Officer Squires located a small caliber, semi-automatic pistol in the Asian male's left back pocket

1 18 The Respondent was detained at the location so the victims could perform a show-up
 2 identification Neither of the victims identified the Respondent as the person who robbed them
 The Respondent was placed under arrest for a weapons violation

3 19 A check of the Respondent's information revealed that he had a prior conviction for a felony,
 4 Attempted Residential Burglary The Respondent was read his rights, and transported to the Youth
 Services Center

5 20 Billy Motshepe's testimony is credible The confusion regarding the actual location of the
 6 crime does not degrade the credibility of Mr Motshepe who was acting as a victim informant to
 such a degree that it should be disregarded

7 ~~21 Seattle Police Department Detective Damon Deese's testimony is credible~~

8 ~~22 Seattle Police Department Officer Jacob Leenstra's testimony is credible~~

9 ~~23 Seattle Police Department Officer Sean Farnior's testimony is credible~~

10 ~~24 Seattle Police Department Officer Jason Tucker's testimony is credible~~

11 ~~25 The Respondent had previously pled guilty on December 17, 2010, to the crime of
 Attempted Residential Burglary~~

12
 13 And having made those Findings of Fact, the court also now enters the following

14 CONCLUSIONS OF LAW

15 I

- 16 a The responding officers had a reasonable, articulable suspicion that DJ Nguyen was a
 17 suspect in an unrelated robbery,
 18 b Given the totality of the circumstances the stop of DJ Nguyen was reasonable,
 19

20 II

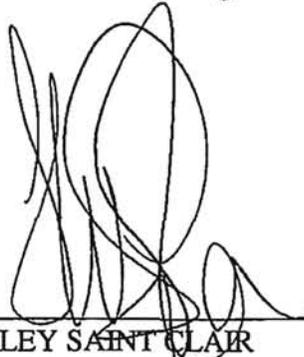
21 The police officers' stop of DJ Nguyen was justified under the guidelines of Terry The defense
 motion to suppress the firearm evidence is denied

22 III

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

Judgment should be entered in accordance with Conclusion of Law II In addition to these written findings and conclusions, the court hereby incorporates its oral findings and conclusions as reflected in the record

Signed this 11 day of ^{Spt}~~August~~, 2012



JUDGE WESLEY SAINT CLAIR

Presented by

As to form!



Greta Jibbensmith, WSBA #41737

Deputy Prosecuting Attorney



Amy Parker, ACA, WSBA #36598

Attorney for Respondent

APPENDIX B

FILED
KING COUNTY, WASHINGTON

SEP 11 2012

SUPERIOR COURT CLERK
By ~~Shawnee Schaeffer~~
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DEPARTMENT

STATE OF WASHINGTON,

Plaintiff,

No 11-8-02451-4

vs

DJ NGUYEN,
B D 07/27/1996,

Respondent

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
PURSUANT TO CrR 6 1(d)

THE ABOVE-ENTITLED CAUSE having come on for trial on May 21, 2012, before the Honorable Judge Wesley St Clair in the above-entitled court, the State of Washington having been represented by Deputy Prosecuting Attorney Greta Jibbensmith, the Respondent appearing in person and having been represented by his attorney, Amy Parker, the court having heard sworn testimony and arguments of counsel, and having received exhibits, now makes and enters the following findings of fact and conclusions of law

FINDINGS OF FACT AND CONCLUSIONS OF LAW
PURSUANT TO CrR 6 1(d) - 1

Daniel T Satterberg, Prosecuting Attorney
Juvenile Court
1211 E Alder
Seattle Washington 98122
(206) 296 9025 FAX (206) 296 8869

ORIGINAL

60

FINDINGS OF FACT

I The following events took place within the State of Washington

1 On November 25, 2011, at approximately 8 30 a m , Mr Billy Motshepe and another individual ^{had been} ~~were~~ robbed at gunpoint as they got off a bus on their way to basketball practice that Friday, the day after Thanksgiving This was near the steps of Lucille St

2 Approximately twenty minutes later Mr Motshepe and the other individual reported the robbery to their junior varsity basketball coach

3 The basketball coach called 911 at approximately 8 51 a m , and reported that two of his students had been robbed at gunpoint He identified himself as the Junior Varsity basketball coach As the basketball coach was talking to the 911 dispatcher it is possible to hear the two victims in the background talking to the coach and relaying information to him as the 911 operator asked him questions

4 At 8 52 29 a m the 911 operator started talking to Billy Motshepe At 8 52 36 a m Billy Motshepe informed the 911 operator that the suspect was Asian Between 8 52 36 a m and 8 52 52 a m the victim informed the 911 operator that the suspect was an Asian male, approximately 20 years old with a black hoodie on At 8 54 03 a m Billy Motshepe gave his name to the 911 operator

5 The remainder of the call was a discussion between the 911 operator and Mr Motshepe attempting to determine the exact location of the robbery

6 The 911 operator originally thought that the robbery occurred at the school Throughout the 911 call there is reference to three locations for the crime, Cleveland High School, the Lucille St stairs, and there is also reference to a Red Apple

7 A new location of the crime was given to 911, near the Lucille St stairs

8 A description of the robber was given, than of an Asian male in his 20s wearing a black hoodie

9 Seattle Police Department officers began closing in on the area One officer went to the school to get clarification from Mr Motshepe regarding the actual location of the crime

10 There were very few pedestrians in the area

11 There were only two males who fit the descriptors in the area

12 Officer K Squires's #7437 in car video started at approximately 8 55 a m and continued until approximately 8 57 a m when he turned it off At 8 58 a m Officer K Squires's #7437 in-car video started again and showed the Respondent detained on the hood of his car

13 Between 8 57 a m and 8 58 a m Officer K Squires had noticed an Asian male in the vicinity of the robbery and decided to detain the male as a possible suspect, given the close

FINDINGS OF FACT AND CONCLUSIONS OF LAW
PURSUANT TO CrR 6 1(d) - 2

Damel T Satterberg, Prosecuting Attorney
Juvenile Court
1211 E Alder
Seattle Washington 98122
(206) 296 9025 FAX (206) 296 8869

1 location to the armed robbery and the fact that the male matched the description provided
2 through dispatch, an Asian male who appeared 20 years old with a black hoodie

3 14 Due to the nature to the nature of the call, an armed robbery in which a firearm was
4 displayed, Officer Squires requested additional units to respond to the location

5 15 At 8 55 a m Officer Leenstra #7479 was dispatched At 8 58 a m Officer Leenstra #7479
6 arrived in the area

7 16 At 8 59 a m 911 was informed that the suspect was a male with a gun in his pocket At
8 9 01 a m 911 was informed that the suspect was wearing a black and grey hoodie

9 17 Officer Leenstra arrived to assist Officer Squires During the "frisk" for weapons to
10 determine if the Asian male was armed, Officer Squires located a small caliber, semi-automatic
11 pistol in the Asian male's left back pocket

12 18 The Respondent was detained at the location so the victims could perform a show-up
13 identification Neither of the victims identified the Respondent as the person who robbed them
14 The Respondent was placed under arrest for a weapons violation

15 19 A check of the Respondent's information revealed that he had a prior conviction for a
16 felony, Attempted Residential Burglary The Respondent was read his rights, and transported to
17 the Youth Services Center

18 20 Billy Motshepe's testimony is credible

19 ~~21 Seattle Police Department Detective Damon Deese's testimony is credible~~

20 ~~22 Seattle Police Department Officer Jacob Leenstra's testimony is credible~~

21 ~~23 Seattle Police Department Officer Sean Farnior's testimony is credible~~

22 ~~24 Seattle Police Department Officer Jason Tucker's testimony is credible~~

23 25 The Respondent had previously pled guilty on December 17, 2010, to the crime of
24 Attempted Residential Burglary

1 And having made those Findings of Fact, the Court also now enters the following

2 CONCLUSIONS OF LAW

3 I The above-entitled court has jurisdiction of the subject matter and of the Respondent, DJ
4 Nguyen, DOB 07/27/1996, in the above-entitled cause

5 II The following elements of the crime charged have been proven by the State beyond a
6 reasonable doubt

7 1 That on or about the 25th of November, 2011, the Respondent

8 a Knowingly had a firearm in his possession or control,

9 b The respondent had previously been convicted or adjudicated as guilty as
10 a juvenile of a serious offense, and

11 2 That these acts occurred in the State of Washington

12 III Attempted Residential Burglary is a serious offense

13 1 Within Chapter 9 41, "serious offense" is defined in pertinent part as follows "serious
14 offense" means any of the following felonies or a felony attempt to commit any of the
15 following felonies, as now existing or hereafter amended Any crime of violence RCW
16 9 41 010(12)(a)¹ (emphasis added)

17 2 "Crime of violence" is defined within the statute as follows

18 Any of the following felonies, as now existing or hereafter amended Any felony
19 defined under any law as a class A felony or an attempt to commit a class A
20 felony, criminal solicitation of or criminal conspiracy to commit a class A felony,
21 manslaughter in the first degree, manslaughter in the second degree, indecent
22 liberties if committed by forcible compulsion, kidnapping in the second degree,
23 arson in the second degree, assault in the second degree, assault of a child in the
24 second degree, extortion in the first degree, burglary in the second degree,
residential burglary, and robbery in the second degree RCW 9 41 010(11)(a)²
(emphasis added)

3 For purposes of RCW 9 41 040(1)(a) the term crime of violence must be interpreted
along with the term serious offense

¹ This definition, unchanged in content, has been renumbered and now appears at RCW
9 41 010(16)(a) See 2009 c 216 § 1, eff July 26, 2009

² This definition, unchanged in content, has been renumbered and now appears at RCW
9 41 010(3)(a) See 2009 c 216 § 1, eff July 26, 2009

1 4 A "serious offense" includes an attempt to commit a crime of violence The statute
2 provides that "serious offense" means "a felony attempt to commit *any* crime of
3 violence " RCW 9 41 010(12)(a) "Any" means "all" and "every " State v Smith, 117
4 Wn 2d 263, 271, 814 P 2d 652 (1991), State v Harris, 39 Wn App 460, 463, 693 P 2d
5 750, rev denied, 103 Wn 2d 1027 (1985)

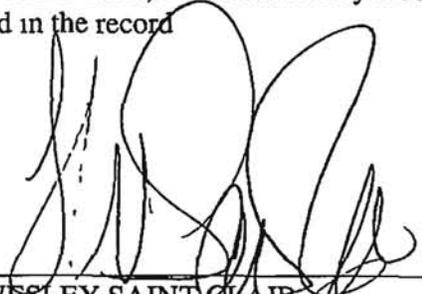
6 5 Attempted Residential Burglary is a predicate offense to find the Respondent guilty of
7 Unlawful Possession of a Firearm in the First Degree

8 IV The Respondent is guilty of the crime of Unlawful Possession of a Firearm in the First
9 Degree as charged in the information

10 V Judgment should be entered in accordance with Conclusion of Law IV

11 VI In addition to these written findings and conclusions, the Court hereby incorporates its
12 oral findings and conclusions as reflected in the record

13 Signed this 11 day of ^{Sept} ~~August~~, 2012



JUDGE WESLEY SAINT CLAIR

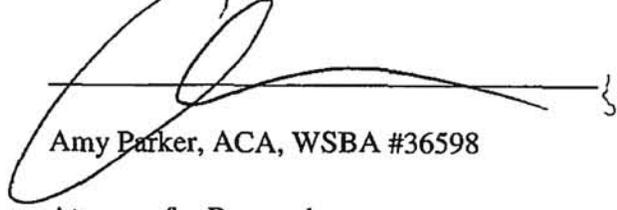
14 Presented by



15 Greta Jibbensmith, WSBA #41737

16 Deputy Prosecuting Attorney

Amy Parker



Amy Parker, ACA, WSBA #36598

Attorney for Respondent

17
18
19
20
21
22
23
24
FINDINGS OF FACT AND CONCLUSIONS OF LAW
PURSUANT TO CrR 6 1(d) - 5

Daniel T Satterberg, Prosecuting Attorney
Juvenile Court
1211 E Alder
Seattle Washington 98122
(206) 296 9025 FAX (206) 296 8869

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 68957-6-I
)	
DJ NGUYEN,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 19TH DAY OF DECEMBER, 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] DJ NGUYEN
5570 21ST AVENUE S.
SEATTLE, WA 98108

SIGNED IN SEATTLE WASHINGTON, THIS 19TH DAY OF DECEMBER, 2012.

x *Patrick Mayovsky*