

74334-1

74334-1

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

HANS HANSEN,
Defendant,

) No. #74334-1-I
) S.A.G. OF HANSEN
)
)
)
)
)
)
)

V.

STATE OF WASHINGTON,
Respondant.

2016 OCT -6 11:11:39
STATE OF WASHINGTON
COURT OF APPEALS DIVISION I


SEPTEMBER 30, 2016.

HANS HANSEN DOC #387282
WASHINGTON STATE PENITENTIARY

1313 N. 13th Avenue
Walla Walla, Washington
99362

TABLE OF AUTHORITY

ISSUES

I. COUNSEL'S PROPOSAL OF AN INSTRUCTION WHICH MISSTATES THE STATE'S BURDEN OF PROOF DEPRIVED HANS HANSEN OF A FAIR TRIAL

A. Because diminished capacity negates an element of the offense the jury instructions may not relieve the State of its burden disproving that fact.

B. By proposing the defective instruction defense counsel did not act reasonable and provide effective assistance of counsel.

C. Hans Hansen's trial counsel was not reasonable when he never presented evidence that at his diminished capacity from forming the requisite intent.

II. DEFENSE COUNSEL PROPOSED INSTRUCTIONS & DID NOT OBJECT TO INSTRUCTIONS, WHICH FELT BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, BECAUSE HE FAILED TO ADD THE LANGUAGE LIMITING THE INTENTIONAL ACTS FROM WHICH THE JURY COULD INFER RECKLESSNESS.

a. DEFENSE COUNSEL WAS INEFFECTIVE FOR IMPROPER LINE OF QUESTIONING AND PREJUDICIAL TESTIMONY ENTWINED WITH IMPROPER INSTRUCTIONS THAT RELIEVED THE STATE OF ITS BURDEN OF ESTABLISHING DEFENDANT ACTED RECKLESS WAS PREJUDICIAL AND UNREASONABLE ASSISTANCE.

WASHINGTON STATE CASES

PAGE

State v. Allen, 150 Wn. App. 300, 316-17, 207 P.3d 483 (2009)...15.

State v. Buttry, 199 Wn. 228, 251, 90 P.2d 1026 (1939).....14.

State v. Ermert, 94 Wn.2d 839, 848, 621 P.2d 121 (1980).....15.

State v. Dear, 175 Wn.2d 725, 734, 287 P.3d 539 (2012).....5, 8.

State v. Dougless, 128 Wn. App. 555, 562, 116 P.3d 1012 (2005).....10.

State v. Edmond, 28 Wn. App. 98, 104, 621 P.2d 1310 (1981).....4.

State v. Furman, 122 Wn.2d 440, 454, 959 P.2d 1092 (1993).....3.

State v. Goble, 131 Wn. App. 194, 126 P.3d 821 (2005)12., 13.

State v. Gough, 52 Wn. App. 619, 622, 768 P.2d 1028 (1989).....8.

State v. McFarland, 127 Wn.2d 322, 336, 899 P.1d 1251 (1995).....9.

State v. Mertens, 148 Wn.2d 820, 834, 64 P.3d 633 (2003).....11.

State v. Randhawa, 133 Wn.2d 67, 76, 941 P.2d 661 (1997).....10.

State v. Savange, 94 Wn.2d 569, 573, 618 P.2d 82 (1980).....10.

Seattle v. Gelleien, 112 Wn.2d 58, 63, 768 P.2d 470 (1989).....10.

State v. Thomas, 150 Wn.2d 821, 844, 83 P.3d 970 (2004).....10.

State v. Thomas 109 Wn.2d 222, 229, 743 P.2d 816 (1987).....13.

State v. Marchi, 158 Wn. App. 823, 835, 243 P.3d 556 (2010).....3.

State v. Muss, 52 Wn. App. 735, 739, 763, P.2d 1249 (1988).....3.

State v. Rose, 62 Wn.2d 309, 312, 382 P.2d 513 (1963).....14.

State v. Stumpf, 64 Wn. App. 522, 525, 827 P.2d 294 (1992).....3.

State v. Warden, 133 Wn.2d 559, 564, 947 P.2d 708 (1997)....3.

Statre v. W.R., 181 Wn.2d 757, 770-71, 336 P.3d 1134 (2014)..3.,4.,5.

FEDERAL U.S. AUTHORITY

Adams v. United States ex rel. McCann, 317 U.S. 269, 275, 276, 83 S.Ct. 236, 87 L.Ed.2d 268 (1942).....6.

Martin v. Ohio, 840 U.S. 228, 237, 107 S.Ct. 1098, 94 S.Ct. 1098, 94 L.E d.2d 267 (1987).....5.

Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963)6.

Morrisette v. United States, 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288 (1952).....10.

Smith v. United States, ___ U.S. ___, 133 S.Ct. 714, 719, 134 L.Ed.2d 570 (2013).....4.,5.,8.

Sandstrom v. Montana, 422 U.S. 510, 99 S.Ct. 2450, 51 L.Ed.2d 39 (1979)10.

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.ED.2d 6784 (1984).....6.,8.,14.

In re Winship, 397 U.S. 358, 354, 90 S.Ct. 1053 (1970)..10.

CONSTITUTION

U.S. Constitutional Amendment 6,14.....6.& 10

WASHINGTON Const. Art. 1, § 2;

RULES OF APPELLATE PROCEDURE;RAP 1.2(a);RAP2.5(a)(3)

RAP 7.3

III. CONCLUSION16.

I .COUNSEL'S PROPOSAL OF AN INSTRUCTION WHICH MISSTATES THE STATE'S BURDEN OF PROOF DEPRIVED HANS HANSON OF A FAIR TRIAL

A. Because diminished capacity negates an element of the offense the jury instructions may not relieve the state of its burden disproving that fact.

When a defense necessarily negates an element of the crime charged, the State may not shift the burden of proving every element of the crime beyond a reasonable doubt.

State v W.R., 181 Wn.2d 757, 770-71, 336 P.3d 1134 (2014).

It is long-settled that diminished capacity negates the mens rea of the crime. The Washington Supreme Court has recognized;

"Diminished capacity is a mental condition not amounting to insanity which prevents the defendant from possessing the requisite mental state necessary to commit the crime charged. **State v Furman**, 122 Wn.2d 440, 454, 358 P.2d 1092 (1993); **State v Warden**, 133 Wn.2d 559, 564, 947 P.2d 703 (1997). Each division of the Court of Appeals has recognized: "diminished capacity allows a defendant to **negate** the culpable mental state element of a crime" by showing that a given mental disorder had a specific effect by which his ability to entertain that mental state was diminished."

State v. Stumpf, 64 Wn. App. 522, 525, 827 P.2d 294 (1992); **State v. Marchi**, 156 Wn. App. 823, 835, 243 P.3d 556 (2010); **State v. Nuss**, 52 Wn. App. 735, 739, 763 P.2d (1998).

The Washington Supreme Court in W.R. explained a defense

negates an element where the two cannot coexist. 181 Wn.2d at 765. That Court describes the relationship between diminished capacity and **mens rea**. Where a person lacks the ability to form the requisite mental state, they by definition cannot have the culpable mental state. As an example:

[w]henver, "intent" as defined in RCW 9A.08.010(a) is an element of a crime, it may be challenged by competent evidence of a mental disorder that causes an inability to form "intent" at the time of the offense. Premeditation, of course, can still be negated by this defense.

State v. Edmond, 23 Wn. App. 98, 104, 521 P.2d 1310 (1981).

The inability to do something necessarily negates an accusation that a person did it. Just as consent negated forcible compulsion, diminished capacity negates intent.

Thus, if a defendant meets his burden of production he has necessarily presented the jury evidence which negates the **mens rea** element of the offense. The state must always bear the burden of disproving a defense that necessarily negates an element of the charged offense. **W.R.**, , 181 Wn.2d at 754(citing Smith v. United States, __ U.S. __, 133 S.Ct. 714, 719, 134 L.Ed.2d 570 (2013)).

Here, in Hans Hanson's case Instruction # 7 provides; Evidence of mental illness or disorder "... may be taken into consideration in determining whether the defendant had the capacity to act with premeditation, intentionally, recklessly, or willfully." [RP 966, lines 12-15] (Argued in closing argument by defense counsel).

Nothing in this instruction places on the State the burden to disprove diminished capacity-to prove that despite evidence to the contrary Mr. Hansen actually had the ability to form the requisite intent. Worse yet, by using the term "may be taken into account," this instruction permitted the jury to simply ignore that issue altogether, regardless of the State's proof. In fact the State offered very little to prove this going.

The evidence consisted of Dr. Koenen. His testimony is not the same as determining whether, in light of his mental condition at the time of the event, he was able to formulate the requisite legal intent. The instruction permitted the jury to convict even if it concluded there was substantial evidence supporting his claim that he lacked the ability to form the requisite intent. The instruction relieved the State of its burden of proof. Smith, 133 U.S. at 719; W.R., 181 Wn.2d at 755-57.

The Court is urged to apply the negates analysis with W.R. and Smith require. Id. As clear as above, courts have long recognized the defense does negate an element. As W.R. made clear that analysis requires the State bear burden of disproving the defense." State v. Deer, 175 Wn.2d 725, 734, 287 P.3d 539 (2012), cert. denied, 133 S.Ct. 991 (2013).

The State is foreclosed from shifting the burden of proof to the defendant..."when an affirmative defense does negate an element of the crime.

Smith v. United States, ___ U.S. ___, 133 S.Ct. 714, 719, 184 L.Ed.2d ___ (2013)(quoting Martin v. Ohio, 840 U.S. 228, 237, 107 S.Ct. 1093, 94 L.Ed.2d 267 (1987)).

I. TRIAL COUNSEL'S PROPOSAL OF AN INSTRUCTION WHICH MISSTATES THE STATE'S BURDEN OF PROOF DEPRIVED MR. HANSEN OF A FAIR TRIAL.

B). By proposing the defective instruction defense counsel did not act reasonable and provide effective assistance of counsel.

The Sixth Amendment guarantees the right to the effective assistance of counsel in a criminal proceeding. See Gideon v. Wainwright 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). "The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the 'ample opportunity to meet the case of the prosecution' to which they are entitled." Strickland v. Washington, 466 U.S. 668, 685, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)(Quoting Adams v. United States ex rel. McCann, 317 U.S. 269, 275, 276, 83 S.Ct. 236, 87 L.Ed.2d 263 (1942)). The right to counsel includes the right to the effective assistance of counsel. Strickland, 466 U.S. at 686. The proper standard for attorney performance is that of reasonably effective assistance. Id. 466 U.S. at 687. A person is denied the effective assistance of counsel where the record demonstrates the "counsel's performance was deficient" and deficient performance prejudiced the defendant. Id.

In the States Cross of Dr. M. Konen's competency assessment RP___, PG. 896-97; (RP___, Page 897, Line 3 to 12):

Q. And competency assessment, that's the kind of thing you were talking about earlier about the person who's not in touch with reality or doesn't know right from wrong for a variety of reasons; is that right?

A. That's correct. The question usually is can they assist their counsel.

Q. Okay. And none of those things you've talked about for Mr. Hansen come into play for his competency to stand trial here; right?

A. No, not at all.

The diminished capacity instruction provided to the jury, as proposed by defense, told the jury only that the "evidence of mental illness or disorder may be taken into consideration." (CP 46 Instruction # 7)¹.

A proper instruction would have required the State to prove Mr. Hansen's capacity to form the intent was not sufficiently diminished. Instead under the instruction proposed by the defense, it was enough for the State to merely cast doubt or, in fact, do nothing at all. Because defense counsel proposed the instruction, counsel's performance was deficient.

C) Hans Hansen's Trial counsel was not reasonable when he never presented evidence that his diminished capacity from his mental illness prevented him from forming the requisite intent.

"diminished capacity...negates one of the elements of alleged crime." State v. Nuss, 52 Wn. App. 735, 739, 763 P.2d

¹"Evidence of mental illness or disorder may be taken into consideration in determining whether the defendant had the capacity to act with premeditation, intentionally, recklessly or willfully.
S.A.G. OF HANSEN PAGE 7.

1249 (1988); See also State v. Gough, 52 bWn. App. 619, 622, 768 P.2d 1028 (1989)(diminished capacity differs from insanity because diminished capacity "allows a defendant to undermine a specific element of the offense") Because it negates an element the State must disprove the defense. Deer, 175 Wn.2d at 734; Smith 133 S.Ct. at 719.

This a United States Constitutional Issue as well as State constitutional law. Thus, the facts of this case needs to be applied under both State and Federal authority and Constitutions. An instruction which relieved the State of its burden of proof was deficient performance because defence counsel was not reasonable in arguing Mr. Hansen's sever mental problems. Defense counsels could of done a better job messing up this issue if he was working for the state. This means that it was not reasonable for counsel investagation of the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further. Even though Mr. Hansen's counsel limited the scope of his investigation and/or "alcohol induced depression" for strategic reasons, Strickland does not establish that a cursory investigation automatically justifies a tactical decision with respect to Mr. Hansen's diminished capacity and his obvious mental illness. Rather he urges this Court to consider the reasonableness of the investigation said to support the streategy.

Dr. Koenen testified that: RP 899 line 1-6;

C. Okay. After speaking with Mr. Hansen and reviewing

the materials that you told us about, you told us that on Axis I you felt there was some depression there; Right?

A. Correct.

C. Okay, so you didn't get into -- it was "not otherwise specified." You said you kind of didn't delve into it?

A. That's correct.

State asked about what medications Mr. Hansen was taking for antidepressant & the answer was Lexapro. (RP 900, line 9-12). Also, Dr. Koenen stated as far as making determinations about Mr. Hansen having any personality disorders. And Dr. Koenen's stated it's hard to do in one visit; "you have to meet with people a few times before the whole picture emerges for clues of a personality issue." (RP 902, line 8-13).

There was records that was available that actually revealed personality disorders, counsel chose to abandon his investigation at an unreasonable juncture. The record reflects this: (RP 864, 865, 866, 877, 878). And RP 881 that mental illness is probably playing a predominant role.

For these reasons this court is urged to order a hearing in the Superior Court to expand the record based on Mr. Hansen's showing in the record that defense counsel was not reasonable as argued above by proposing an instruction which relieved the state of its burden of proof. State v. McFarland, 127 Wn.2d 322, 336, 899 P.2d 1251 (1995).

For the reasons above Mr. Hansen respectfully asks that this court distinguish this issue and order a hearing to expand the record or rule that this issue has merit and order a new trial.

II. DEFENSE COUNSEL PROPOSED INSTRUCTIONS & DID NOT OBJECT TO INSTRUCTION, WHICH FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, BECAUSE HE FAILED TO ADD THE LANGUAGE LIMITING THE INTENTIONAL ACTS FROM WHICH THE JURY COULD INFER RECKLESSNES.

Due Process Clause of the Fourteenth Amendment requires the state to prove every element of an offense beyond a reasonable doubt. U.S. Constitutional Amendment XIV; In re Winship, 397 U.S. 358 at 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). Jury instructions, when taken as a whole, must properly inform the jury of the applicable law. State v. Dougless, 128 Wn. App. 555 at 562, 116 P.3d 1012 (2005). An omission or misstatement of the law in a jury instruction that relieves the state of its burden to prove every element of the crime charged is erroneous and violates due process. State v. Thomas, 150 Wn.2d 821 at 844, 83 P.3d 970 (2004); State v. Randhawa, 133 Wn.2d 67 at 76, 941 P.2d 661 (1997).

Furthermore, due process prohibits the use of conclusive presumptions in jury instructions. Such presumptions conflict with the presumption of innocence and invade the fact-finding function of the jury. State v. Savage, 94 Wn.2d 569 at 573, 618 P.2d 82 (1980), citing Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979)) and Morissette v. United States 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288 (1952). A conclusive presumption is one that requires the jury to find the existence of an elemental fact upon proof of the predicate fact(s). Seattle v. Gellein, 112 Wn.2d 58, 63, 768 P.2d 470

(1989). The Washington Supreme Court has "unequivocally rejected the [use of] any conclusive presumption to find an element of a crime." Because conclusive presumptions conflict with the presumption of innocence and invade the province of the jury. State v. Mertens, 148 Wn.2d 820 at 834, 64 P.3d 633 (2003). Conclusive presumptions are unconstitutional, whether they are judicially created or derived from statute. Mertens, at 834.

To convict Mr. Hansen of assault as charged, the jury was required to find that he intentionally assaulted, and thereby recklessly inflicted substantial bodily harm. (See Instructions;CP-46;#7,#26,#39). The instructions in question included the following language: "Recklessness is also established if a person acts intentionally or knowingly." (CP CP- 46 #7,#26). & (CP-46; #40).

When these instructions was proposed, defense counsel's performance fell below an objective standard of reasonableness, because he failed to add language limiting the intentional acts from which the jury could infer recklessness. Without such additional language, the instruction (as given) erroneously conflated the two mental states required for a conviction of assault: the jury was likely read Instruction No. 14-18 to mean that any intentional assault necessarily established recklessness in the infliction of substantial bodily harm.

The court and counsel may have meant to tell the jury that intentional infliction of substantial bodily harm satisfied the requirement of reckless infliction of substantial bodily

harm; however, the instructions did not convey this information.

The error in the instructions unconstitutionally relieved the prosecution of its burden of establishing that the defendant acted recklessly with regard to the harm caused. See State v. Goble, 131 Wn. App. 194, 126 P.3d 821 (2005).

Defense counsel's error created a problem similar to that in Gobel, supra, where the accused was charged with assaulting a person whom he knew to be law enforcement officer.

Although not an element of the charged offense, knowledge was included in the "to convict" instruction and thus became an element under the law of the case in Gobel. Gobel at 201. The trial court's "knowledge" instruction included language similar to that used in this case: "Acting knowingly or with knowledge also is established if a person acts intentionally." Goble at 202. The Court of Appeals reversed the conviction because this language could be read to mean that an intentional assault established Mr. Hansen's knowledge, regardless of whether or not he actually knew someone was in the buildings. This conflated the intent and knowledge elements required under the to-convict instruction into a single element and relieved the state's burden of proving that Hansen knew the status of people in the buildings if it found the assault was intentional. And even extends to the other crimes Mr. Hansen was convicted of.

The error is even more obvious here. As in Gobel, Mr. Hansen was charged with offenses that included two mental states: for a conviction of counts #14-18, the prosecution was

required to prove (1) an intentional assault, and (2) reckless infliction of substantial bodily harm. As in Goble the inclusion of the erroneous language required the jury to presume from an intentional assault that Mr. Hansen acted _____ recklessly in causing substantial bodily harm. Since the two mental states here relate to two logically related elements (assault and substantial bodily harm), the likelihood that the jury conflated the two elements is greater here than in Goble, where the two mental states related to two unrelated elements (assault and the victim's status as a police officer). The instruction defining recklessness unconstitutionally relieved the prosecution of its burden to actually prove that Mr. Hansen acted recklessly in causing substantial bodily harm. Gobel.

A reasonably competent attorney would have been familiar with the two mental elements of the offense, and would also have been aware (from the Gobel case) of the danger that the jury would conflate the two elements under the instructions as given. Gobel supra, See, e.g. State v. Thomas, 109 Wn.2d 222 at 229, 743 P.2d 816 (1987)([a] reasonably competent attorney would have been sufficiently aware of relevant legal principles to enable him or her to propose an [appropriate] instruction."). Accordingly, defense counsel's performance fell below an objective standard of reasonableness.

a. DEFENSE COUNSEL WAS INEFFECTIVE FOR IMPROPER LINE OF QUESTIONING AND PREJUDICIAL TESTIMONY ENTWINED WITH IMPROPER INSTRUCTIONS THAT RELIEVE THE STATE OF ITS BURDEN OF ESTABLISHING DEFENDANT ACTED RECKLESS WAS PREJUDICIAL AND UNREASONABLE ASSISTANCE.

Hans Hansen's trial counsel was ineffective for improper line of questioning and raises a substantive claim trial counsel allowed prejudicial line of his questions about a highly publicized "cop Killing" case through Dr. Koenan. The State and Federal Constitutions guarantee accused persons the right to effective representation at trial. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 6784 (1984); State v. Thomas 109 Wn.2d 222, 229, 743 P.2d 816(2006).

The Defense Attorney was not acting in his client's best interests and did a better job if he was working as a prosecutor. I submit do the remarks and testimony call to the attention of the jurors matters which they would not be justified in considering in determining their verdict, and were they, under the circumstances of this case, influenced by these remarks? State v. Rosa, 62 Wn.2d 309, 312, 382 P.2d 513 (1963)(quoting State v. Buttry, 199 Wn. 228, 251, 90 P.2d 1026 (1939)).

What occurred here is defense counsel well publicized cop killings argument in light of Mr. Hansen's intent to kill law enforcement and take away any defense to his mental health state or mens rea. Based on the improper instruction the jury couldn't

remained impartial. Additionally, counsel was ineffective in failing to preserve the error for appellate review. See State v. Ermert, 94 Wn.2d 839, 848, 621 P.2d 121 (1980)(failure to preserve error can constitute ineffective assistance and justifies examining the error on appeal); State v. Allen, 150 Wn. App. 300, 316-17, 207 P.3d 483 (2009)(addressing ineffective assistance claim where attorney failed to raise same criminal conduct issue during sentencing).

Prejudice from deficient performance occurs when there is a reasonable probability that, but for counsel's performance, the outcome of the trial would have been different. Thomas, 109 Wn.2d at 226. Put another way, prejudice requires reversal whenever the attorney's error undermines confidence in the outcome. Id. That confidence is undermined here. Whether Mr. Hansen acted in a diminished capacity.

This Court should order a evidentiary hearing should it need to have a record before it to see how much prejudice defense counsel's ineffectiveness had on the trial.

III. CONCLUSION

For the reasons cited above this Court should;

1. ORDER additional briefing;
2. Remand to trial court for a hearing to expand the record on the amount of prejudice defense counsel's ineffective assistance and Reasonableness his decisions had in light of the argument above;
3. Grant the relief of a New Trial with the proper Instructions.
4. Any other relief this Court deems "In The Interest Of Justice".

RESPECTFULLY SUBMITTED SEPTEMBER ____, 2016.

HANS HANSEN pro-se
WASHINGTON STATE PENITENTIARY
1313 N. 13th Avenue
Walla Walla, Washington 99362

Case Number 14-1-02234-9
COA No. 74334-1-I
INSTRUCTIONS FILED November 12, 2015

EXHIBIT

CP-46

State v. Hansen COURT'S INSTRUCTIONS TO THE JURY

ARGUED

7-14,-15,-16,-17,-18
26
39
40

Presented By: HANS HANSEN S.A.G.
WASHINGTON STATE PENITENTIARY
1313 N. 13th Avenue
Walla Walla, Washington 99362

EXHIBIT

Filed in Open Court

November 12, 20 15

SONYA KRASKI
COUNTY CLERK

By [Signature]
Deputy Clerk



CL17520113

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF SNOHOMISH

STATE OF WASHINGTON)	CASE NO. 14-1-02234-9
)	
Plaintiff,)	
)	
v.)	
)	
HANS ERIC HANSEN)	
Defendant.)	

**COURT'S INSTRUCTIONS
TO THE JURY**

[Signature]
JUDGE

11/9/15
Date given to Jury

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, stipulations, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict. Do not speculate whether the evidence would have favored one party or the other.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

INSTRUCTION NO. 2

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. 4

The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 5

The defendant is not required to testify. You may not use the fact that the defendant has not testified to infer guilt or to prejudice him in any way.

INSTRUCTION NO. 6

No act committed by a person while in a state of voluntary intoxication is less criminal by reason of that condition. However, evidence of intoxication may be considered in determining whether the defendant acted with premeditation, intentionally, recklessly, or willfully.

INSTRUCTION NO. 7

Evidence of mental illness or disorder may be taken into consideration in determining whether the defendant had the capacity to act with premeditation, intentionally, recklessly, or willfully.

INSTRUCTION NO. 8

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

INSTRUCTION NO. 9

To convict the defendant of the crime of Attempted Murder in the First Degree as charged in Count 1, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 15th day of October, 2014, the defendant did an act that was a substantial step toward causing the death of a person;
- (2) That the act was done with the intent to cause the death of a person;
- (3) That the person whom the defendant intended to kill was Sgt. Maples;
- (4) That the defendant's intent to cause the death was premeditated; and
- (5) That the act occurred in State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 10

To convict the defendant of the crime of Attempted Murder in the First Degree as charged in Count 2, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 15th day of October, 2014, the defendant did an act that was a substantial step toward causing the death of a person;
- (2) That the act was done with the intent to cause the death of a person;
- (3) That the person whom the defendant intended to kill was Officer Tolbert;
- (4) That the defendant's intent to cause the death was premeditated; and
- (5) That the act occurred in State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 11

Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

INSTRUCTION NO. 12

A substantial step is conduct that strongly indicates a criminal purpose and that is more than mere preparation.

INSTRUCTION NO. 13

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime.

INSTRUCTION NO. 14

To convict the defendant of the crime of Assault in the First Degree, as charged in count 3, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 15th day of October, 2014, the defendant assaulted Sgt. J. Maples;

(2) That the assault was committed with a firearm;

(3) That the defendant acted with intent to inflict great bodily harm; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 15

To convict the defendant of the crime of Assault in the First Degree, as charged in count 4, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 15th day of October, 2014, the defendant assaulted Officer J. Tolbert;

(2) That the assault was committed with a firearm;

(3) That the defendant acted with intent to inflict great bodily harm; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 16

To convict the defendant of the crime of Assault in the First Degree, as charged in count 5, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 15th day of October, 2014, the defendant assaulted Officer B. Kieland;

(2) That the assault was committed with a firearm;

(3) That the defendant acted with intent to inflict great bodily harm; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 17

To convict the defendant of the crime of Assault in the First Degree, as charged in count 6, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 15th day of October, 2014, the defendant assaulted Officer B. Smith;

(2) That the assault was committed with a firearm;

(3) That the defendant acted with intent to inflict great bodily harm; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 18

To convict the defendant of the crime of Assault in the First Degree, as charged in count 7, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 15th day of October, 2014, the defendant assaulted Sgt. P. Shove;
- (2) That the assault was committed with a firearm;
- (3) That the defendant acted with intent to inflict great bodily harm; and
- (4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 19

An assault is an intentional striking or shooting of another person, with unlawful force, that is harmful or offensive regardless of whether any physical injury is done to the person.

An assault is also an act, with unlawful force, done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

An assault is also an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

INSTRUCTION NO. 20

Great bodily harm means bodily injury that creates a probability of death, or that causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

Assault in the first degree requires that the defendant intended to inflict great bodily harm on some person. There is no requirement that the defendant actually harmed that person.

INSTRUCTION NO. 21

A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

INSTRUCTION NO. 22

To convict the defendant of the crime of Drive-by Shooting as charged in count 8, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 15th day of October, 2014, the defendant recklessly discharged a firearm;

(2) That the discharge created a substantial risk of death or serious physical injury to another person near 10905 Mountain Loop Highway in Granite Falls;

3) That the discharge was either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 23

To convict the defendant of the crime of Drive-by Shooting as charged in count 9, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 15th day of October, 2014, the defendant recklessly discharged a firearm;

(2) That the discharge created a substantial risk of death or serious physical injury to another person near the Granite Falls Police Department at 509 E. Stanley in Granite Falls;

(3) That the discharge was either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 24

To convict the defendant of the crime of Drive-by Shooting as charged in count 10, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 15th day of October, 2014, the defendant recklessly discharged a firearm;

(2) That the discharge created a substantial risk of death or serious physical injury to another person near the Lake Stevens Police Department at 2211 Grade Rd. Lake Stevens;

3) That the discharge was either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 25

To convict the defendant of the crime of Drive-by Shooting as charged in count 11, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 15th day of October, 2014, the defendant recklessly discharged a firearm;
- (2) That the discharge created a substantial risk of death or serious physical injury to another person near 71st Avenue NE and/or Grove Street in Marysville;
- 3) That the discharge was either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge; and
- (4) That this act occurred in the State of Washington.

In this count, the State alleges that the defendant committed multiple acts of drive by shooting. To convict the defendant of drive by shooting in count 11, one particular act of drive by shooting must be proved beyond a reasonable doubt, and you must unanimously agree as to which act has been proved. You need not unanimously agree that the defendant committed all the acts of drive by shooting.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 26

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that death or serious physical injury to another person may occur and this disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation.

When recklessness as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.

INSTRUCTION NO. 27

The defendant is charged in counts 3 through 7 with Assault in the First Degree. If, after full and careful deliberation on any of those counts you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crime of Assault in the Second Degree as to that particular count.

When a crime has been proved against a person, and there exists a reasonable doubt as to which of two or more degrees that person is guilty, he or she shall be convicted only of the lowest degree.

INSTRUCTION NO. 28

To convict the defendant of the crime of Assault in the Second Degree, a lesser included crime of Assault in the First Degree as charged in count 3, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 15th day of October, 2014, the defendant assaulted Sgt. J. Maples with a deadly weapon; and

(2) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 29

To convict the defendant of the crime of Assault in the Second Degree, a lesser included crime of Assault in the First Degree as charged in count 4, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 15th day of October, 2014, the defendant assaulted Officer J. Tolbert with a deadly weapon; and

(2) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 30

To convict the defendant of the crime of Assault in the Second Degree, a lesser included crime of Assault in the First Degree as charged in count 5, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 15th day of October, 2014, the defendant assaulted Officer B. Kieland with a deadly weapon; and

(2) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 31

To convict the defendant of the crime of Assault in the Second Degree, a lesser included crime of Assault in the First Degree as charged in count 6, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 15th day of October, 2014, the defendant assaulted Officer B. Smith with a deadly weapon; and
- (2) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 32

To convict the defendant of the crime of Assault in the Second Degree, a lesser included crime of Assault in the First Degree as charged in count 7, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 15th day of October, 2014, the defendant assaulted Sgt. P. Shove with a deadly weapon; and
- (2) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 33

A firearm, whether loaded or unloaded, is a deadly weapon.

INSTRUCTION NO. 34

The defendant is charged in counts 8 through 11 with Drive-by Shooting. If, after full and careful deliberation on this charge, you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crime of Discharging a Firearm.

When a crime has been proved against a person, and there exists a reasonable doubt as to which of two or more crimes that person is guilty, he or she shall be convicted of the lowest crime.

INSTRUCTION NO. 38

To convict the defendant of Discharging a Firearm, a lesser included crime of Drive-by Shooting as charged in count 11, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about 15th day of October, 2014, the defendant willfully discharged a firearm near 71st Avenue and/or Grove Street in Marysville;

(2) That this act occurred in a public place or in a place where a person might be endangered as a result; and

(3) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 36

To convict the defendant of Discharging a Firearm, a lesser included crime of Drive-by Shooting as charged in count 9, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about 15th day of October, 2014, the defendant willfully discharged a firearm near the Granite Falls Police Department at 509 E. Stanley in Granite Falls;

(2) That this act occurred in a public place or in a place where a person might be endangered as a result; and

(3) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 37

To convict the defendant of Discharging a Firearm, a lesser included crime of Drive-by Shooting as charged in count 10, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about 15th day of October, 2014, the defendant willfully discharged a firearm near the Lake Stevens Police Department at 2211 Grade Road in Lake Stevens;

(2) That this act occurred in a public place or in a place where a person might be endangered as a result; and

(3) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 38

To convict the defendant of Discharging a Firearm, a lesser included crime of Drive-by Shooting as charged in count 11, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about 15th day of October, 2014, the defendant willfully discharged a firearm near 71st Avenue and/or Grove Street in Marysville;

(2) That this act occurred in a public place or in a place where a person might be endangered as a result; and

(3) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 39

A person acts willfully as to a particular fact when he or she acts knowingly as to that fact.

INSTRUCTION NO. 40

A person knows or acts knowingly or with knowledge with respect to a fact or circumstance when he or she is aware of that fact or circumstance. It is not necessary that the person know that the fact or circumstance is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.

INSTRUCTION NO. 41

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

INSTRUCTION NO. 42

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and twenty verdict forms, 1, 2, 3, 3A, 4, 4A, 5, 5A, 6, 6A, 7, 7A, 8, 8A, 9, 9A 10, 10A, 11 and 11A. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

When completing the verdict forms, you will first consider the crimes as charged in counts 1 through 11. With regard to the crime of Attempted Murder in the First Degree as charged in counts 1 and 2, if you unanimously agree on a verdict, you must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in verdict form for that count.

With regard to the crime of Assault in the First Degree as charged in count 3, if you find the defendant guilty on verdict form 3, do not use verdict form 3A. If you find the defendant not guilty of the crime of Assault in the First Degree as charged in count 3, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Assault in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form 3A the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form 3A.

With regard to the crime of Assault in the First Degree as charged in count 4, if you find the defendant guilty on verdict form 4, do not use verdict form 4A. If you find the defendant not guilty of the crime of Assault in the First Degree as charged in count 4, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Assault in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form 4A the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form 4A.

With regard to the crime of Assault in the First Degree as charged in count 5, if you find the defendant guilty on verdict form 5, do not use verdict form 5A. If you find the defendant not guilty of the crime of Assault in the First Degree as charged in count 5, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Assault in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form 5A the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form 5A.

With regard to the crime of Assault in the First Degree as charged in count 6, if you find the defendant guilty on verdict form 6, do not use verdict form 6A. If you find the defendant not guilty of the crime of Assault in the First Degree as charged in count 6, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Assault in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form 6A the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form 6A.

With regard to the crimes of Assault in the First Degree as charged in count 7, if you find the defendant guilty on verdict form 7, do not use verdict form 7A. If you find the defendant not guilty of the crime of Assault in the First Degree as charged in count 7, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Assault in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form 7A the

words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form 7A.

With regard to the crime of Drive-by Shooting as charged in count 8, if you find the defendant guilty on verdict form 8, do not use verdict form 8A. If you find the defendant not guilty of the crime of Drive-by Shooting as charged in count 8, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Discharging a Firearm. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form 8A the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form 8A.

With regard to the crime of Drive-by Shooting as charged in count 9, if you find the defendant guilty on verdict form 9, do not use verdict form 9A. If you find the defendant not guilty of the crime of Drive-by Shooting as charged in count 9, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Discharging a Firearm. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form 9A the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form 9A.

With regard to the crime of Drive-by Shooting as charged in count 10, if you find the defendant guilty on verdict form 10, do not use verdict form 10A. If you find the defendant not guilty of the crime of Drive-by Shooting as charged in count 10, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Discharging a Firearm. If you unanimously agree on a

verdict, you must fill in the blank provided in verdict form 10A the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form 10A.

With regard to the crime of Drive-by Shooting as charged in count 11, if you find the defendant guilty on verdict form 11, do not use verdict form 11A. If you find the defendant not guilty of the crime of Drive-by Shooting as charged in count 11, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of Discharging a Firearm. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form 11A the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form 11A.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the proper form of verdict or verdicts to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.

INSTRUCTION NO. 43

You will also be given special verdict forms for the crimes charged in counts 1-7. If you find the defendant not guilty of these crimes, do not use the special verdict forms. If you find the defendant guilty of these crimes as charged, or if you find the defendant guilty of the lesser included offense for that count, you will then use the special verdict form and fill in the blank with the answer "yes" or "no" according to the decision you reach. Because this is a criminal case, all twelve of you must agree in order to answer the special verdict forms. In order to answer the special verdict forms "yes" you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously have a reasonable doubt to this question, you must answer "no." If you do not unanimously agree on the answer, leave the verdict form blank.

INSTRUCTION NO. 44

For purposes of a special verdict, the State must prove beyond a reasonable doubt that the defendant was armed with a firearm at the time of the commission of the crimes in counts 1-7.

A person is armed with a firearm if, at the time of the commission of the crime, the firearm is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the firearm and the defendant. The State must also prove beyond a reasonable doubt that there was a connection between the firearm and the crime.

A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

HANS HANSEN)
)
v.)
)
STATE OF WASHINGTON)

NO. COA 74334-1-I
AFFIDAVIT OF SERVICE
BY MAILING

I, HANS HANSEN, being first sworn upon oath, do hereby certify that I have served the following documents:

S.A.G. of HANSEN AND Court's Instruction To Jury

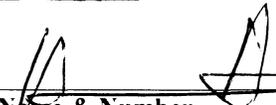
Upon:

SNOHOMISH COUNTY PROSECUTOR
3000 Rockefeller Avenue
Everett, Washington 98201

By placing same in the United States mail at:

WASHINGTON STATE PENITENTIARY
1313 NORTH 13TH AVENUE
WALLA WALLA, WA. 99362

On this 30 day of September, 2016.


Name & Number
Hans Hansen

2016 OCT -6 AM 11:39
STATE OF WASHINGTON
SUPERIOR COURT

Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright 626 F.2d 1184 (1980); Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.