

NO. 34326-6

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

LERON FORD, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Sergio Armijo  
The Honorable Vicki Hogan

No. 86-1-00952-5

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**BRIEF OF RESPONDENT**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly find that the “interests of justice” exception to the mandatory joinder rule should apply when a defendant obtained relief from his murder conviction under In re Address and when strict application of the rule would preclude any further prosecution of the defendant for causing the death of his two-year old daughter?

B. STATEMENT OF THE CASE.

1. Procedural

This is an appeal from a conviction obtained on retrial after the appellant’s original conviction for felony murder in the second degree was vacated pursuant to In re Address, 147 Wn.2d 602, 56 P.3d 981 (2002).

The procedural history of the case is as follows:

In 1986, a jury found LERON FORD, hereinafter “defendant,” guilty of the murder of his two year old daughter, Tianza, and of the assault of his three year old daughter, Solanika. CP 77-82, 98-116. The first trial was on an information that charged defendant with committing felony murder predicated on the crime of assault. CP 42-43. With regard to the homicide charge, the jury was instructed on the lesser included offenses of manslaughter in the first degree and assault in the second degree. CP 46-75. At sentencing the court imposed exceptional sentences

on both counts resulting in a sentence of 600 months on the homicide and 120 months on the assault, to be serve concurrently. CP 77-82. Defendant appealed. In an unpublished opinion, the Court of Appeals, Division II affirmed his judgment and the exceptional sentences. CP 98-116.

Several years passed and when the Supreme Court issued its opinion in In re Address, defendant challenged the validity of his murder conviction via personal restraint petition. CP 117-118. Defendant was granted relief and the felony murder conviction was vacated and “remanded for further proceedings consistent with Address and Hinton.”  
Id.

When the matter was returned to the Pierce County Superior Court, defendant’s murder conviction was vacated. CP 128-129; 7/12 RP 3-7. Over defendant’s objection, the court arraigned defendant on a refiled information charging him with murder in the second degree (intentional). CP 126-127. Defendant filed a motion asking the court to sentence him for assault in the second degree. CP 121-125. The prosecutor noted the pending motions and asked the court to pre-assign the case for trial and let the trial judge rule on the motions. 7/12 RP 3.

The motions were ultimately heard by the Honorable Vicki L. Hogan. RP 58-68. The court allowed the State to proceed on a charge of intentional murder finding that the interests of justice required that the strict mandatory joinder rule not be applied in this case. RP 66. The court

found that the intentional murder charge was not an alternative charge because, under Andress, the initial charge of felony murder predicated on assault never existed. CP 215-217. The court noted that the State had not negligently failed to file intentional murder charges against defendant, but had acted in accordance with a long-standing interpretation of Washington's criminal statutes and that the decision in Andress was beyond the prosecutions control. RP 67. The court found that to not allow the amendment would preclude the State from trying the defendant on any offense because the original charge was void and there are no lesser included offenses of felony murder. CP 215-217; RP 67. It concluded that granting defendant's motion and applying the mandatory joinder rule strictly would defeat the "interests of justice" and that the interests of justice exception to the mandatory joinder rule applied to this case. CP 215-217; RP 67. The court entered orders denying the motions. CP 215-217, 221-222.

The State filed a Third Amended information alleging several aggravating circumstances and informing defendant of its intent to seek an exceptional sentence if convicted. CP 223-24.

Ultimately, the parties entered in to an agreement to resolve the case by a stipulated facts bench trial. CP 229-243. Appendix A. Under the terms of the agreement, the court would render a "verdict" on both the

charge of murder in the second degree and on the lesser included offense of manslaughter in the first degree. Defendant stipulated that there was sufficient evidence for the court to find him guilty beyond a reasonable doubt of these crimes. Id. Under the agreement, defendant would waive all rights to appeal except for preserving his right to appeal whether the State should have been precluded by the mandatory joinder rule from pursuing the charge of intentional murder in the second degree. Id. Defendant agreed that imposition of any sentence on the manslaughter charge would not occur unless he was successful in his appeal on the mandatory joinder issue. The State agreed to file a Fourth Amended Information dropping the aggravating circumstances and ceasing in any effort to obtain an exceptional sentence. RP 200; CP 244-245.

The court went through an extensive colloquy to ensure that the defendant entered into this agreement voluntarily and that he understood its contents and the consequences of his actions. RP 183-199. The validity of this agreement is not challenged on appeal. After being assured that defendant was voluntarily choosing to proceed under the terms of the agreement, the court decided that on the basis of the stipulated facts that defendant was guilty of murder in the second degree and that he was guilty of the lesser included crime of manslaughter in the first degree. RP

199-200. The court entered findings of fact and conclusions of law on its determination. CP 257-266.

The court sentenced defendant to 192 months on the murder conviction. CP 246-255. From entry of this judgment, defendant filed a timely notice of appeal. CP 256.

2. Facts adduced at trial

The following are the facts to which defendant stipulated as part of his agreement. CP 229-243.

The defendant and Cherita Ford were married in 1981. There were two children born during their marriage, S.F.<sup>1</sup>, a girl born on February 11, 1983, and T.F.<sup>2</sup>, a girl born on February 15, 1984. S.F. was born in Germany, while the defendant was stationed there by the United States Army. T.F. was born in Florida, where the defendant and Cherita Ford met and where his parents lived.

Shortly after T.F. was born, the defendant and Cherita Ford moved to Tacoma, Washington, because the defendant was transferred to Ft. Lewis. The two girls stayed in Florida with the defendant's parents. Cherita Ford brought the girls from Florida to Washington, arriving on

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<sup>1</sup> Solanika Ford.

<sup>2</sup> Tianza Ford

September 4, 1984. The defendant, Cherita Ford, and the girls all lived together in Tacoma.

Shortly after the girls arrived, the defendant began abusing S.F. The abuse included hitting her with his hands and with objects like an extension cord and a hairbrush. The abuse was mostly inflicted on S.F. for having accidents during potty training, but there was also at least one occasion when the defendant abused S.F. for not eating her food. The defendant was not physically abusing T.F. at that time.

At some point in time, Cherita Ford sent the girls back to Florida to live with the defendant's parents. She did that because of the defendant's treatment of S.F.

The girls stayed in Florida for approximately 9 or 10 months. Cherita Ford missed her daughters and wanted them back with her, and their birthdays were approaching. The girls got back to Tacoma near the end of January 1986.

On February 1, 1986, the defendant and Cherita Ford moved into an apartment at 1114 N. 4<sup>th</sup> St. in Tacoma. The defendant went AWOL from the Army. He did not work outside the home between February 1, 1986, and May 7, 1986, the date of his arrest. During that same time period, Cherita Ford worked at a deli store on N. Pearl St. She was working nearly 40 hours per week. For part of the time, Cherita Ford

worked graveyard shift, 11:00 p.m. to 6:00 or 7:00 a.m. Later, she was moved to a swing shift that started in the middle to late afternoon and ended at 11:00 p.m. Cherita Ford did not drive, and she would have to take the bus to and from work, so she was gone from the home another hour or so to get to and from work. When Cherita Ford was working, the defendant was home with the girls. The defendant was the only person responsible for their care when Cherita Ford was not there.

The defendant was physically abusive to Cherita Ford throughout their marriage. Cherita Ford was afraid of the defendant, who was older, bigger in height and weight, and stronger than she was. The defendant would hit Cherita Ford with his hands and with objects, like a weight bar. There was one occasion when the defendant beat Cherita Ford so severely she could not go to work for several days. On at least one occasion, the defendant told Cherita Ford that if she ever left him, he would easily find her and he would kill her and both of the girls.

When the girls first came back from Florida early in 1986, the defendant had a bowl filled with candy that he would give to them. S.F. was afraid of the defendant, and he would use the candy to "reward" her for coming to him. Cherita Ford would testify the girls loved the defendant. She would also testify they were afraid of the defendant. As

Cherita Ford looked back in time after T.F.'s death, she recalls T.F. would cry when the defendant would tell her to come over and stand by him.

Shortly after the girls returned from Florida, the defendant began abusing both of the girls. When Cherita Ford was around, that abuse usually took the form of "discipline," where the defendant would spank S.F. and T.F. for doing something wrong, like having an accident in their clothing, not eating their food, or getting into things they were not supposed to touch. Those "spankings" were done with a weight belt, and the result of the spankings would be extensive bruising on both girls.

During this same time period, Keith Peterson and Todd Kamp lived in the apartment above the Fords. They often heard disturbing noises coming from the apartment, including thumping noises that sounded like somebody hitting a wall. They also heard screaming and crying associated with those thumps.

Cherita Ford also disciplined S.F. and T.F. by spanking them. She did not ever spank either girl hard enough to leave a bruise. The defendant told Cherita Ford she was "too soft" on the girls. On at least one occasion, the defendant told Cherita Ford to use his weight belt to spank both girls. More than once, the defendant has told Cherita Ford that if she did not spank the girls for a particular thing, he would do it. On one occasion, Cherita Ford used the weight belt to spank both girls. While she

was doing that, the defendant came into the bedroom and told her she was not hitting them hard enough, and he took the weight belt and hit S.F. and T.F. himself. At the time, S.F. already had bruises on the back of her legs and her buttocks from prior “spankings” by the defendant.

There was no time when either girl was taken to the doctor for any reason. There was one occasion in March or April of 1986 when S.F. appeared to be very sick and in need of medical attention. Right around that time, the defendant had kicked S.F. in the back with his foot. On May 7, 1986, a medical examination of S.F. revealed several old and healing rib fractures in her lower back. That examination also revealed a myriad of injuries, scarred, healing, and fresh, that were inflicted injuries.

On May 5, 1986, Cherita Ford worked a swing shift at her job and she was gone from the apartment from mid-afternoon until after 11:00 p.m. During the time Cherita Ford was gone, the defendant severely beat T.F. using his fists and the weight belt. Before Cherita Ford returned home that night, T.F. was dead.

When Cherita Ford returned from work the night of May 5, 1986, the defendant told her “your baby is dead.” T.F. was lying on one end of the couch in the living room, covered with a blanket, and S.F. was sitting on the other end of the couch. Cherita Ford went over and saw that T.F. was dead. She lifted the blanket and immediately saw large purple bruises

on T.F.'s chest. She asked the defendant what he did. The defendant denied killing T.F., but he admitted spanking her because she would not eat her food.

Cherita Ford told the defendant they needed to call the police. She told him the police could tell when a child had died. The defendant asked Cherita Ford not to call the police, saying if they waited the police would not be able to tell when T.F. died. There was no telephone in the apartment, and Cherita Ford was afraid of what the defendant would do, to her and to S.F., if she left and called the police.

Over the next thirty-plus hours, Cherita Ford repeatedly told the defendant they needed to call the police, and the defendant repeatedly asked for more time. During that period, the defendant talked about having Cherita Ford kill him, and he talked about taking Cherita Ford and S.F. and running away. Cherita Ford would not do either of those things.

Finally, on the morning of May 7, 1986, shortly after 9:00 a.m., Cherita Ford told the defendant she could not take it any longer and she had to call the police. She walked a block or so away and called for medical aid.

The first people to arrive were Tacoma Fire Department personnel and Superior Ambulance personnel. When they walked into the apartment, they found the defendant and Cherita Ford sitting on the couch

and S.F. sitting on the couch, clearly alive, but covered with a blanket. Cherita Ford was extremely emotional and muttering “don’t take my baby” over and over. The defendant was completely calm. The firefighter asked why they were here and the defendant pointed toward a doorway.

The firefighters went through the doorway and entered a kitchen, finding nothing. They went through the kitchen into a bedroom that contained a waterbed with no sheets. There was no other furniture in the room, but there was an area on the floor that looked like a dog bed that had what appeared to be feces on it.

The room was not very large, and within seconds they noticed a blanket on one corner of the waterbed. Moving over there, they moved the blanket and found T.F., who was clearly dead. They immediately noticed bruises covering the front of T.F.’s body and knew this was an unnatural death, so they did not disturb the body and called for police.

While they waited for police, the firefighters went back into the living room and asked what happened to T.F. The defendant responded to them, saying only “She was messing with the stereo.” The defendant said nothing else, and Cherita Ford and S.F. remained silent.

The police arrived at the scene. They took the defendant and Cherita Ford to the police station, where they were interviewed separately.

Cherita Ford told the police a story that was not true. It was a story the defendant told her to say.

The defendant also made statements to the police over a period of several hours and to several different officers. The defendant never admitted intending to kill T.F., and he never admitted actually causing her death. The defendant did admit that he beat T.F. with a weight belt, hitting her "6 or 7 times," one of which "wrapped" around her. The defendant also admitted that he may have spanked or hit T.F. too hard.

The police confiscated the weight belt the defendant used to beat T.F.

An autopsy was conducted on T.F. on May 8, 1986. It is impossible to verbally describe with sufficient accuracy the number, location, and severity of her injuries, so several photographs will be presented to the court as exhibits at this hearing. The patterned injuries on T.F.'s chest, lower abdomen, and back matched exactly with the weight belt, which was physically laid over the injury during the autopsy.

In addition to the bruises that can be seen in the pictures, T.F. had internal injuries. T.F. had a lacerated liver that was injured in a location that corresponded with external bruises that looked like knuckle imprints from a fist. She had bleeding from her diaphragm in that same area.

T.F.'s right kidney was lacerated and bleeding. Her appendix, cecum, and portions of her small intestines were bruised and internally bleeding.

T.F.'s internal injuries were consistent with being forcefully punched in the abdomen and chest. The blows to T.F.'s abdomen were so forceful they caused the broken rib in her back. Those blows also caused the internal lacerations by compressing T.F.'s organs against her spine and ribs.

T.F.'s buttocks were severely bruised. The bruises to her buttocks were three-quarters of an inch deep on both sides. Those injuries would have been so painful as to prevent T.F. from sitting down. She had bitten her tongue and had lacerations on her lip that resulted from being punched in the mouth. T.F.'s tenth rib on her rib side was fractured. That rib is in the lower back.

T.F. also had a bite mark on the outside of her right thigh. The defendant was examined by Peter Hampl, a forensic odontologist. A cast of the defendant's teeth was traced, then laid over the bite mark on T.F.'s leg. The two matched in every respect, including a tooth with an unusual, almost unique position in the lower mouth. The defendant was the person who bit T.F. on the leg.

T.F. had a laceration to her vagina. The laceration was inside and was consistent with penetration, probably forceful penetration.

Cherita Ford would testify that none of the visible injuries seen on T.F. were there when she left for work on May 5, 1986. Microscopic examination of the bruises and internal injuries found on T.F. showed mostly red blood cells, which means the injuries were most likely inflicted within around four hours of her death.

The injuries to T.F. resulted in 200 cubic centimeters of blood being found in her abdominal cavity. There was a considerable, though not quantified, amount of blood that bled into T.F.'s tissues; that bleeding is what caused the observable bruising all over her body. Based on her age and weight, T.F. would have had in the area of 480 to 620 total cubic centimeters of blood in her body. The amount of blood found in her abdomen and in the severe and deep bruises was inconsistent with life. Dr. Lacsina would testify that none of T.F.'s injuries would have caused instant unconsciousness. The internal bleeding would have caused her to slowly lose consciousness and die over the period of about one to two hours. During that time, the need for medical attention would have been obvious.

Dr. Lacsina concluded T.F. was a battered child. T.F. died from multiple blunt force injuries that were inflicted on her.

The injuries found during the autopsy were all inflicted on T.F. by the defendant. Those injuries were all inflicted on May 5, 1986.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY APPLIED THE  
“INTERESTS OF JUSTICE” EXCEPTION TO  
THE MANDATORY JOINDER RULE IN THIS  
CASE.

A prosecutor has broad discretion in determining the content of the initial information. CrR 2.1(a); State v. Haner, 95 Wn.2d 858, 631 P.2d 381 (1981). Amendments are liberally allowed unless the court finds that the substantial rights of the defendant are prejudiced or when the amendment is part of a plea agreement which the court finds is not in the interests of justice. CrR 2.1(d); Haner, 95 Wn.2d at 864-865. The right to add a charge is not unlimited, however, and a criminal defendant always has the opportunity to seek severance of multiple offenses. See CrR 4.3(a); CrR 4.4.

Generally, the criminal rules require the prosecution to file any and all “related offenses” in a single charging document. CrR 4.3(a), CrR 4.3.1 Under the mandatory joinder rule, two or more offenses must be joined if they are related. CrR 4.3.1(b)(3). Offenses are related if they are within the jurisdiction and venue of the same court and are based on the same conduct. CrR 4.3.1(b)(1). “Same conduct” is conduct involving a single criminal incident or episode. State v. Lee, 132 Wn.2d 498, 503, 939 P.2d 1223 (1997). The possible consequences for failing to join

related offenses are set forth in CrR 4.3.1(b), which provides in the relevant part:

A defendant who has been tried for one offense may thereafter move to dismiss a charge for a related offense. . . . The motion to dismiss must be made prior to the second trial, and shall be granted unless the court determines that because the prosecuting attorney was unaware of the facts constituting the related offense or did not have sufficient evidence to warrant trying this offense at the time of the first trial, or for some other reason, the ends of justice would be defeated if the motion were granted.

CrR 4.3.1(b)(3).

The “mandatory joinder” rule has been applied to prevent the prosecution from adding an alternative means of committing a crime after the defendant has been to trial on one means. State v. Anderson, 96 Wn.2d 739, 638 P.2d 1205, (“Anderson II”)cert. denied, 459 U.S. 842, 103 S. Ct. 93, 74 L. Ed. 2d 85 (1982). Anderson was originally charged and found guilty of first degree murder by the alternative means of extreme indifference to human life. State v. Anderson, 94 Wn.2d 176, 616 P.2d 612 (1980) (“Anderson I”). On appeal the Supreme Court found that the “extreme indifference” alternative could not apply on the facts of the case, and dismissed without prejudice to refile. Anderson I, 94 Wn.2d at 192. On remand the prosecution did not file a lesser included charge, but opted to again charged first degree murder but under a different alternative means- premeditated murder. Anderson II, 96 Wn.2d at 743. The Supreme Court dismissed the second, or refiled, first degree murder

charge because it violated the mandatory joinder rule. Anderson II, 96 Wn.2d at 740-41. See also, State v. Russell, 101 Wn.2d 349, 678 P.2d 332 (1984) (Russell was charged with first degree (premeditated) murder; the jury acquitted on that charge but hung on the lesser degree crime of second degree (intentional) murder. After the mistrial, the State tried to file an alternative crime of second degree (felony) murder. The court held that the mandatory joinder rule prohibited the prosecution from adding that crime prior to the second trial.) After Russell and Anderson, the general rule is that once a case has gone to trial, the prosecution is precluded from adding any charges for a second trial, and the second trial can proceed only on the original charges and/or any lesser included offenses of those original charges.

But neither of these cases address the “interests of justice” exception to the mandatory joinder rule. The express language of the rule allows the prosecution to proceed to a second trial on a related offense that was not filed before the first trial when “the interests of justice would be defeated” by granting a defendant’s motion to dismiss the related offense.

In State v. Ramos, 124 Wn. App. 334, 101 P.3d 872 (2004), Division I of the Court of Appeals ruled that the extraordinary circumstances of felony murder convictions vacated under In re Address, 147 Wn.2d 602, 56 P.2d 981 (2002), implicate the ends of justice exception to the mandatory joinder rule. Ramos, 124 Wn. App. at 336.

Ramos and his co-defendant were charged with premeditated murder and convicted of second degree felony murder as a lesser included offense.<sup>3</sup> The Court of Appeals reversed the convictions under Andress and engaged in a lengthy analysis of the application of the mandatory joinder rule when it was deciding on an appropriate remedy on remand. Ultimately, the court rejected the defendant's request for dismissal under the mandatory joinder rule and remanded to the trial court with instructions to consider the interests of justice exception to that rule when it determined what charges could proceed to trial. Ramos, 124 Wn. App. at 343.

In Andress the Supreme Court ruled that under former RCW 9A.32.050 (enacted in 1975; Laws of 1975, 1st Ex. Sess., ch. 260 § 9), assault cannot serve as the predicate felony for second degree felony murder and that felony murder convictions predicated on assault. Andress, 147 Wn.2d at 604. It was well established under numerous decisions that the felony murder statute in effect until 1976 allowed prosecution of second degree murder predicated on assault. State v. Crane, 116 Wn.2d 315, 333, 804 P.2d 10 (1991); State v. Leech, 114 Wn.2d 700, 712, 790 P.2d 160 (1990); State v. Wanrow, 91 Wn.2d 301, 306-10, 588 P.2d 1320 (1978); State v. Thompson, 88 Wn.2d 13, 23, 558 P.2d 202 (1977); State

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<sup>3</sup> There is no authority that concludes second degree felony murder is a lesser included offense of premeditated murder. In fact, all the law is to the contrary.

v. Harris, 69 Wn.2d 928, 421 P.2d 662 (1966); State v. Safford, 24 Wn. App. 783, 787-90, 604 P.2d 980 (1979); State v. Theroff, 25 Wn. App. 590, 593-95, 608 P.2d 1254, rev'd on other grounds, 95 Wn.2d 385, 622 P.2d 1240 (1980); State v. Heggins, 55 Wn. App. 591, 601, 779 P.2d 285 (1989); State v. Creekmore, 55 Wn. App. 852, 858-59, 783 P.2d 1068 (1989); State v. Goodrich, 72 Wn. App. 71, 77-79, 863 P.2d 599 (1993); State v. Bartlett, 74 Wn. App. 580, 588, 875 P.2d 651 (1994), aff'd on other grounds, 128 Wn.2d 383, 907 P.2d 1196 (1995); State v. Duke, 77 Wn. App. 532, 534, 892 P.2d 120 (1995)).

In short, the Washington Supreme Court construed a statute in 2002 that had been in effect since 1976 in a manner that was wholly inconsistent with how the previous version of the second degree felony murder statute had been construed. The court in Andress seemed to recognize its decision was a complete departure from what had been presumed to be the law and that it might have dramatic repercussions. When the opinion was first written, the court vacated the defendant's sentence and remanded "for resentencing in accord with this decision." Andress, 147 Wn.2d at 616. Upon reconsidering, the court added this statement in a footnote:

We do not intend that the State be more restricted on remand than our rules, statutes, and constitutional principles demand. Accordingly, we clarify our instructions for

remand, and direct that the State is not foreclosed from any further, lawful proceedings consistent with our decision.

Id. at 617. The legislature immediately reacted to the Andress decision and reenacted the felony murder statute making it clear that a person commits second degree felony murder when a death results during the commission of “any felony, including assault.” RCW 9A.32.050(1)(b) (created by Laws of 2003, ch. 3, § 2).

Almost two years after the legislature passed a legislative fix to the Andress decision, the Washington Supreme Court issued the decision in In re Hinton, 152 Wn.2d 853, 100 P.3d 801 (2004), holding that any defendant convicted since 1976 of a felony murder predicated on assault could have his conviction vacated. The court in Hinton implicitly recognized the huge impact of its decision by citing to the footnote in Andress that is quoted above when it remanded the cases of the consolidated defendants “for further lawful proceedings consistent with Andress.” Hinton, 152 Wn.2d at 861.

In addition to Ramos, referenced above, one other decision issued by the Court of Appeals provides some guidance on whether a conviction affected by Andress presents a situation where the “interests of justice” exception to the mandatory joinder rule should be applied rather than the general rule.

In State v. DeRosia, 124 Wn. App. 138, 100 P.3d 331 (2004) (Division II), the defendant was convicted of second degree felony murder predicated on a second degree child assault after he entered a Newton plea to that charge. The court vacated the defendant's conviction pursuant to Andress and considered several options for what relief it could grant, including remanding for entry of a conviction on a "lesser included offense." DeRosia, 124 Wn. App. at 150-51. In the end, the court entered an order that "vacate[d] DeRosia's conviction and remand[ed] without prejudice to the State's refileing any lawful charge, *including first degree manslaughter.*" DeRosia, 124 Wn. App. at 153 (emphasis added). Although the DeRosia decision never discussed the mandatory joinder rule, its conclusion that the prosecution could file first degree manslaughter charges on remand was significant because it is well settled that first degree manslaughter is not a lesser included offense of felony murder. See State v. Tamalini, 134 Wn.2d 725, 953 P.2d 450 (1998) (neither degree of manslaughter is a lesser included offense of felony murder in the second degree); State v. McJimpson, 79 Wn. App. 164, 901 P.2d 354 (1995), review denied, 129 Wn.2d 1013, 917 P.2d 576 (1996) (there are no lesser included offenses to second degree felony murder). Given that the general rule under mandatory joinder is that the prosecution is prohibited from proceeding in a second trial on anything other than the original charges and lesser included offenses, the only way that this

remedy would be available was by application of the interests of justice exception to the mandatory joinder rule.

The Ramos decision does not mandate that a trial court allow the prosecution to file additional or different charges under the interests of justice exception to the mandatory joinder rule after a conviction has been vacated under Andress. It does, however, contain a thorough analysis of that issue and suggests a test for its application: “to invoke the ends of justice exception to the mandatory joinder rule, “the State must show there are ‘extraordinary circumstances’ warranting its application.”” Ramos, 124 Wn. App. at 339 (quoting State v. Carter, 56 Wn. App. 217, 223, 783 P.2d 589 (1989)). This language in Carter has been quoted with approval by the Washington Supreme Court. State v. Dallas, 126 Wn.2d 324, 333, 892 P.2d 1082 (1995). The Supreme Court further explained that the necessary “extraordinary circumstances” “must involve reasons which are extraneous to the action of the court or go to the regularity of its proceedings.” State v. Dallas, 126 Wn.2d at 333. The court in Ramos also listed as a factor to be considered the lack of other available charges, and resulting outright dismissal, if the interests of justice exception is not applied in Andress cases. Ramos, at 342-43.

Without going so far as to hold that the interests of justice exception applies to Andress defendants, the court in Ramos did articulate just how surprised prosecutors were by the Andress decision:

For the [Washington Supreme] Court to abandon an unbroken line of precedent on a question of statutory construction after more than 25 years is highly unusual, and the decision to do so was certainly extraneous to the prosecutions of Ramos and Medina. This is not a case in which the State negligently failed to charge a related crime, or engaged in harassment tactics. Rather, the State filed charges and sought instructions in accordance with long-standing interpretations of state criminal statutes. The fact that the convictions thus obtained must now be vacated is the result of extraordinary circumstances outside the State's control.

Ramos, 124 Wn. App. at 342. The court concludes that, based on the facts before it, a strict application of the mandatory joinder rule “presents a scenario where through no fault on its part the granting of a motion to dismiss under the [mandatory joinder] rule would preclude the State from retrying a defendant or severely hamper it in further prosecution.” Ramos, 124 Wn. App. at 343.

The interests of justice exception to the mandatory joinder rule was intended to be a remedy that is available only in limited circumstances. In this particular case, there is no dispute that intentional murder is a related offense of felony murder. There is also no dispute that intentional murder was not charged prior to the defendant's first trial in 1986. The sole issue for this court to determine is whether the interests of justice exception to the mandatory joinder rule should be applied to uphold the trial court's decision to permit the State to file intentional murder in the second degree charges against the defendant after he succeeded in getting his former murder in the second degree conviction vacated. The State submits that

there cannot be a more appropriate application of that exception than the situation presented here.

In this case, the defendant was originally charged with, and convicted of, second degree murder based solely on the felony murder alternative. At the time he was convicted, it was considered well-settled that assault could act as a predicate for felony murder. Defendant's conviction was affirmed by a Court of Appeals. Prior to the decision in Andress the validity of this conviction was unquestioned. Nineteen years after he was convicted, the conviction was vacated based on a decision that dramatically changed the common understanding of the law on felony murder.

Were the court to apply mandatory joinder rule strictly, there are no charges available to the State on which to retry defendant. Under the general rule of Russell and Anderson, the second trial can proceed only on the original charges and/or any lesser included offenses of those original charges. Here, because the original charge is void, the State is left to pursue lesser included offenses of felony murder in the second degree. Under Tamalini and McJimpson there are no lesser included offenses of felony murder in the second degree. Strict application of the mandatory joinder rule would bar further prosecution. Nothing in the Andress and Hinton decisions indicate that the Supreme Court wanted Andress defendants to go without any consequence for causing the death of another person.

At the time of defendant's original trial, there was no way for the State to foresee the change in the law created by the Andress decision. As such, there was no reason for the State to allege the alternative means of intentional second degree murder back in 1986. Clearly the interests of justice exception should allow the State to seek redress for the homicide of a two year old girl. It is difficult to see when the interests of justice exception would apply if it does not apply to the situation presented here. The trial court should be affirmed.

D. CONCLUSION.

The State asks this court to affirm the trial court's ruling finding that the interests of justice exception to the mandatory joinder rule was applicable so as to allow the State to retry defendant on the charge of intentional murder in the second degree. The judgment and sentence should be affirmed.

DATED: December 28, 2006.

GERALD A. HORNE  
Pierce County  
Prosecuting Attorney

*Michelle Hym* <sup>W-PA</sup> 32724 *for*  
KATHLEEN PROCTOR  
Deputy Prosecuting Attorney  
WSB # 14811

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

Date \_\_\_\_\_ Signature \_\_\_\_\_

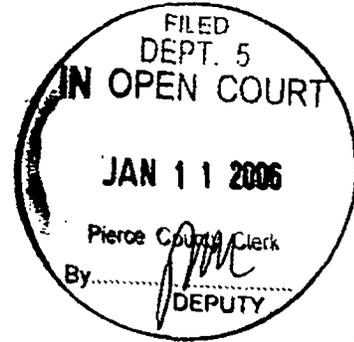
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STATE OF WASHINGTON  
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# **APPENDIX “A”**

*Document Pertaining to Stipulated Facts Trial*



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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

LERON FORD,

Defendant.

NO. 86-1-00952-5

DOCUMENT PERTAINING TO  
STIPULATED FACTS TRIAL

I. IDENTITY OF PARTIES:

The plaintiff, State of Washington, represented by Deputy Prosecuting Attorney John M. Neeb, the defendant, Leron Ford, and the defendant's lawyer, Dick Whitehead, submit this document that sets out the complete terms, conditions, facts, and effects of the defendant's stipulated facts trial.

II. WAIVER OF JURY TRIAL; WAIVER OF TESTIMONIAL BENCH TRIAL:

The defendant understands he has the right to have a jury of his peers seated to hear the evidence in this case at a trial. At trial, the State would be required to call witnesses, present evidence, and prove each charge beyond a reasonable doubt. The defendant would be allowed to cross-examine those witnesses and to call witnesses in his defense at no cost

1 to him. The defendant knowingly, voluntarily, and intelligently waives his right to a jury  
 2 trial. *S.F.*

3 Having waived his right to a jury trial, the defendant is also aware that he could  
 4 have a trial to the court wherein the judge would hear the testimony of witnesses, review  
 5 the exhibits, and make a decision whether the State met its burden of proof that the  
 6 defendant was guilty or not guilty of each of the charges against him beyond a reasonable  
 7 doubt. The defendant knowingly, voluntarily, and intelligently waives his right to have a  
 8 trial to the court with in-person testimony from witnesses. *S.F.*

10  
 11 **III. AGREEMENT TO STIPULATED FACTS TRIAL:**

12 The defendant, having waived his right to a jury trial and having waived his right to  
 13 a bench trial with testimony from witnesses, hereby agrees to have this case decided by the  
 14 presentation of stipulated facts. The defendant understands that means the State will  
 15 prepare a detailed, written statement setting out all the facts the State believes it would be  
 16 able to present through witnesses. The defendant understands this court will review that  
 17 written statement of facts and any photographs that are submitted. The defendant  
 18 understands the court will accept the facts contained herein as having been proved beyond  
 19 a reasonable doubt. *S.F.*

21  
 22 **IV. EFFECT OF AGREEMENT TO STIPULATED FACTS TRIAL:**

23 The defendant understands that the stipulated facts set out in this document will  
 24 establish beyond a reasonable doubt the defendant's guilt on Count I of the Fourth  
 25 Amended Information, charging Murder in the Second Degree (Intentional Murder). As a

1 practical matter, then, the defendant understands and agrees that at the conclusion of this  
 2 stipulated facts trial, he will be found guilty of the crime of Murder in the Second Degree.

3 *J.F.*

4 The defendant also understands and agrees that the State and defendant will jointly  
 5 request that the court also enter a finding of guilt on the crime of Manslaughter in the First  
 6 Degree. The defendant understands that the crime of first degree manslaughter is a lesser  
 7 included offense of second degree <sup>*intentional L.F.*</sup>murder. If this case were to proceed to trial, both the  
 8 State and defense would be requesting the court instruct the jury on the lesser included  
 9 offense of manslaughter. The defendant is aware that a fact finder generally only makes a  
 10 finding on the highest proved crime, which in this case is second degree murder. The  
 11 defendant agrees, however, that the court should enter a finding of guilt on that lesser  
 12 included offense. The defendant understands and agrees that the practical effect of this  
 13 provision is that if his appeal on the second degree murder conviction is successful, he will  
 14 not be remanded for trial, he will only be remanded for sentencing on the manslaughter  
 15 conviction. *J.F.*

16  
 17  
 18 V. STATEMENTS OF DEFENDANT:

19 The defendant understands that he has a right to have a hearing to determine the  
 20 admissibility of any statements he made to the police. At that hearing, the State would  
 21 have to prove the defendant was fully advised of his constitutional rights and made a  
 22 knowing, voluntary, and intelligent waiver of those rights before he made any statements  
 23 about this incident. The defendant would be able to testify at the hearing. *J.F.*

1 The defendant hereby waives his right to have a hearing on the admissibility of his  
 2 statements to police and stipulates the court may consider the statements attributed to him  
 3 herein as having been voluntarily made after a knowing, voluntary, and intelligent waiver  
 4 of his constitutional rights. *R.F.*

5  
 6 VI. EVIDENCE OF PRIOR BAD ACTS (ER 404(b)):

7 The defendant understands that he has the right to contest admission of evidence  
 8 that relates to "other bad acts" he may have committed. For purposes of this stipulation,  
 9 the defendant waives his right to a hearing and agrees the court can consider the evidence  
 10 of prior bad acts set out herein for the purposes listed. *R.F.*

11 Specifically, the defendant agrees the court can consider his prior abuse of S.F. and  
 12 of T.F. as evidence of his intent during the final beating of T.F. In addition, the defendant  
 13 agrees the court can consider his abuse of Cherita Ford to explain why she not protect T.F.  
 14 from the defendant. *R.F.*

15  
 16  
 17 VII. CHARGES AND ELEMENTS:

- 18 1. Murder in the Second Degree (Intentional Murder)  
 19 In the State of Washington  
 20 on or about the 5<sup>th</sup> and 6<sup>th</sup> days of May, 1986  
 21 with intent to cause the death of another person  
 22 beat T.F., a 2-year-old girl  
 23 thereby causing her death *R.F.*

24 VIII. STATEMENT OF FACTS:

25 The defendant understands that the following paragraphs set out a summary of the  
 evidence the State would anticipate presenting at trial. For purposes of this document, the

1 defendant stipulates that the court can consider those facts as true and correct and should  
2 also consider them as proved beyond a reasonable doubt. *J.F.*

3 The defendant and Cherita Ford were married in 1981. There were two children  
4 born during their marriage, S.F., a girl born on February 11, 1983, and T.F., a girl born on  
5 *T.F.* February 15, 1984. S.F. was born in Germany, while the defendant was stationed there by  
6 the United States Army. T.F. was born in Florida, where the defendant and Cherita Ford  
7 met and where his parents lived.

8 Shortly after T.F. was born, the defendant and Cherita Ford moved to Tacoma,  
9 Washington, because the defendant was transferred to Ft. Lewis. The two girls stayed in  
10 Florida with the defendant's parents. Cherita Ford brought the girls from Florida to  
11 Washington, arriving on September 4, 1984. The defendant, Cherita Ford, and the girls all  
12 lived together in Tacoma.

13  
14 Shortly after the girls arrived, the defendant began abusing S.F. The abuse included  
15 hitting her with his hands and with objects like an extension cord and a hairbrush. The  
16 abuse was mostly inflicted on S.F. for having accidents during potty training, but there was  
17 also at least one occasion when the defendant abused S.F. for not eating her food. The  
18 defendant was not physically abusing T.F. at that time.

19 At some point in time, Cherita Ford sent the girls back to Florida to live with the  
20 defendant's parents. She did that because of the defendant's treatment of S.F.

21 The girls stayed in Florida for approximately 9 or 10 months. Cherita Ford missed  
22 her daughters and wanted them back with her, and their birthdays were approaching. The  
23 girls got back to Tacoma near the end of January, 1986.  
24  
25

1 On February 1, 1986, the defendant and Cherita Ford moved into an apartment at  
2 1114 N. 4<sup>th</sup> St. in Tacoma. The defendant went AWOL from the Army. He did not work  
3 outside the home between February 1, 1986, and May 7, 1986, the date of his arrest.

4 During that same time period, Cherita Ford worked at a deli store on N. Pearl St. She was  
5 working nearly 40 hours per week. For part of the time, Cherita Ford worked graveyard  
6 shift, 11:00 p.m. to 6:00 or 7:00 a.m. Later, she was moved to a swing shift that started in  
7 the middle to late afternoon and ended at 11:00 p.m. Cherita Ford did not drive, and she  
8 would have to take the bus to and from work, so she was gone from the home another hour  
9 or so to get to and from work. When Cherita Ford was working, the defendant was home  
10 with the girls. The defendant was the only person responsible for their care when Cherita  
11 Ford was not there.

12 The defendant was physically abusive to Cherita Ford throughout their marriage.  
13 Cherita Ford was afraid of the defendant, who was older, bigger in height and weight, and  
14 stronger than she was. The defendant would hit Cherita Ford with his hands and with  
15 objects, like a weight bar. There was one occasion when the defendant beat Cherita Ford  
16 so severely she could not go to work for several days. On at least one occasion, the  
17 defendant told Cherita Ford that if she ever left him, he would easily find her and he would  
18 kill her and both of the girls.

19 When the girls first came back from Florida early in 1986, the defendant had a  
20 bowl filled with candy that he would give to them. S.F. was afraid of the defendant, and  
21 he would use the candy to "reward" her for coming to him. Cherita Ford would testify the  
22 girls loved the defendant. She would also testify they were afraid of the defendant. As  
23  
24  
25

1 Cherita Ford looked back in time after T.F.'s death, she recalls T.F. would cry when the  
2 defendant would tell her to come over and stand by him.

3         Shortly after the girls returned from Florida, the defendant began abusing both of  
4 the girls. When Cherita Ford was around, that abuse usually took the form of "discipline,"  
5 where the defendant would spank S.F. and T.F. for doing something wrong, like having an  
6 accident in their clothing, not eating their food, or getting into things they were not  
7 supposed to touch. Those "spankings" were done with a weight belt, and the result of the  
8 spankings would be extensive bruising on both girls.

9         During this same time period, Keith Peterson and Todd Kamp lived in the  
10 apartment above the Fords. They often heard disturbing noises coming from the  
11 apartment, including thumping noises that sounded like somebody hitting a wall. They  
12 also heard screaming and crying associated with those thumps.

13         Cherita Ford also disciplined S.F. and T.F. by spanking them. She did not ever  
14 spank either girl hard enough to leave a bruise. The defendant told Cherita Ford she was  
15 "too soft" on the girls. On at least one occasion, the defendant told Cherita Ford to use his  
16 weight belt to spank both girls. More than once, the defendant has told Cherita Ford that if  
17 she did not spank the girls for a particular thing, he would do it. On one occasion, Cherita  
18 Ford used the weight belt to spank both girls. While she was doing that, the defendant  
19 came into the bedroom and told her she was not hitting them hard enough, and he took the  
20 weight belt and hit S.F. and T.F. himself. At the time, S.F. already had bruises on the back  
21 of her legs and her buttocks from prior "spankings" by the defendant.

22         There was no time when either girl was taken to the doctor for any reason. There  
23 was one occasion in March or April of 1986 when S.F. appeared to be very sick and in  
24  
25

1 need of medical attention. Right around that time, the defendant had kicked S.F. in the  
2 back with his foot. On May 7, 1986, a medical examination of S.F. revealed several old  
3 and healing rib fractures in her lower back. That examination also revealed a myriad of  
4 injuries, scarred, healing, and fresh, that were inflicted injuries.

5 On May 5, 1986, Cherita Ford worked a swing shift at her job and she was gone  
6 from the apartment from mid-afternoon until after 11:00 p.m. During the time Cherita  
7 Ford was gone, the defendant severely beat T.F. using his fists and the weight belt. Before  
8 Cherita Ford returned home that night, T.F. was dead.

9  
10 When Cherita Ford returned from work the night of May 5, 1986, the defendant  
11 told her "your baby is dead." T.F. was lying on one end of the couch in the living room,  
12 covered with a blanket, and S.F. was sitting on the other end of the couch. Cherita Ford  
13 went over and saw that T.F. was dead. She lifted the blanket and immediately saw large  
14 purple bruises on T.F.'s chest. She asked the defendant what he did. The defendant  
15 denied killing T.F., but he admitted spanking her because she would not eat her food.

16 Cherita Ford told the defendant they needed to call the police. She told him the  
17 police could tell when a child had died. The defendant asked Cherita Ford not to call the  
18 police, saying if they waited the police would not be able to tell when T.F. died. There  
19 was no telephone in the apartment, and Cherita Ford was afraid of what the defendant  
20 would do, to her and to S.F., if she left and called the police.

21  
22 Over the next thirty-plus hours, Cherita Ford repeatedly told the defendant they  
23 needed to call the police, and the defendant repeatedly asked for more time. During that  
24 period, the defendant talked about having Cherita Ford kill him, and he talked about taking  
25 Cherita Ford and S.F. and running away. Cherita Ford would not do either of those things.

1 Finally, on the morning of May 7, 1986, shortly after 9:00 a.m., Cherita Ford told  
2 the defendant she could not take it any longer and she had to call the police. She walked a  
3 block or so away and called for medical aid.

4 The first people to arrive were Tacoma Fire Department personnel and Superior  
5 Ambulance personnel. When they walked into the apartment, they found the defendant  
6 and Cherita Ford sitting on the couch and S.F. sitting on the couch, clearly alive, but  
7 covered with a blanket. Cherita Ford was extremely emotional and muttering "don't take  
8 my baby" over and over. The defendant was completely calm. The firefighter asked why  
9 they were here and the defendant pointed toward a doorway.  
10

11 The firefighters went through the doorway and entered a kitchen, finding nothing.  
12 They went through the kitchen into a bedroom that contained a waterbed with no sheets.  
13 There was no other furniture in the room, but there was an area on the floor that looked  
14 like a dog bed that had what appeared to be feces on it.

15 The room was not very large, and within seconds they noticed a blanket on one  
16 corner of the waterbed. Moving over there, they moved the blanket and found T.F., who  
17 was clearly dead. They immediately noticed bruises covering the front of T.F.'s body and  
18 knew this was an unnatural death, so they did not disturb the body and called for police.  
19

20 While they waited for police, the firefighters went back into the living room and  
21 asked what happened to T.F. The defendant responded to them, saying only "She was  
22 messing with the stereo." The defendant said nothing else, and Cherita Ford and S.F.  
23 remained silent.  
24  
25

1 The police arrived at the scene. They took the defendant and Cherita Ford to the  
2 police station, where they were interviewed separately. Cherita Ford told the police a story  
3 that was not true. It was a story the defendant told her to say.

4 The defendant also made statements to the police over a period of several hours and  
5 to several different officers. The defendant never admitted intending to kill T.F., and he  
6 never admitted actually causing her death. The defendant did admit that he beat T.F. with  
7 a weight belt, hitting her "6 or 7 times," one of which "wrapped" around her. The  
8 defendant also admitted that he may have spanked or hit T.F. too hard.

9 The police confiscated the weight belt the defendant used to beat T.F.

10 An autopsy was conducted on T.F. on May 8, 1986. It is impossible to verbally  
11 describe with sufficient accuracy the number, location, and severity of her injuries, so  
12 several photographs will be presented to the court as exhibits at this hearing. The  
13 patterned injuries on T.F.'s chest, lower abdomen, and back matched exactly with the  
14 weight belt, which was physically laid over the injury during the autopsy.

15 In addition to the bruises that can be seen in the pictures, T.F. had internal injuries.  
16 T.F. had a lacerated liver that was injured in a location that corresponded with external  
17 bruises that looked like knuckle imprints from a fist. She had bleeding from her  
18 diaphragm in that same area. T.F.'s right kidney was lacerated and bleeding. Her  
19 appendix, cecum, and portions of her small intestines were bruised and internally bleeding.

20 T.F.'s internal injuries were consistent with being forcefully punched in the  
21 abdomen and chest. The blows to T.F.'s abdomen were so forceful they caused the broken  
22 rib in her back. Those blows also caused the internal lacerations by compressing T.F.'s  
23 organs against her spine and ribs.  
24  
25

1 have caused her to slowly lose consciousness and die over the period of about one to two  
2 hours. During that time, the need for medical attention would have been obvious.

3 Dr. Lacsina concluded T.F. was a battered child. T.F. died from multiple blunt  
4 force injuries that were inflicted on her.

5 The injuries found during the autopsy were all inflicted on T.F. by the defendant.  
6 Those injuries were all inflicted on May 5, 1986.

7 The facts set out herein are true and correct beyond a reasonable doubt. *L.F.*  
8

9  
10 **IX. INTENT TO KILL:**

11 The defendant is aware that, if this case proceeded to trial, the State would attempt  
12 to prove his mental state (intent to kill) by circumstantial evidence. That evidence includes  
13 the nature of T.F.'s injuries, their number, type, location, severity, manner of infliction,  
14 resulting internal injuries, the different objects used, the timing involved in her death, and  
15 the amount of force used to inflict those injuries. The State would also present evidence of  
16 the defendant's pattern and practice of prior abuse of T.F., his demeanor at the time of her  
17 death, and his conduct after her death, both before and after medical and police personnel  
18 were called. *L.F.*

19 For purposes of this stipulation, the defendant agrees it is a reasonable inference  
20 from all of the evidence that he intended to kill Tianze at the time he inflicted some or all  
21 of the injuries that caused her death. Further, the defendant affirmatively states that this  
22 court should find beyond a reasonable doubt that he intended to kill Tianze. *L.F.*  
23  
24  
25

1 T.F.'s buttocks were severely bruised. The bruises to her buttocks were three-  
2 quarters of an inch deep on both sides. Those injuries would have been so painful as to  
3 prevent T.F. from sitting down. She had bitten her tongue and had lacerations on her lip  
4 that resulted from being punched in the mouth. T.F.'s tenth rib on her rib side was  
5 fractured. That rib is in the lower back.

6 T.F. also had a bite mark on the outside of her right thigh. The defendant was  
7 examined by Peter Hampl, a forensic odontologist. A cast of the defendant's teeth was  
8 traced, then laid over the bite mark on T.F.'s leg. The two matched in every respect,  
9 including a tooth with an unusual, almost unique position in the lower mouth. The  
10 defendant was the person who bit T.F. on the leg.

11  
12 T.F. had a laceration to her vagina. The laceration was inside and was consistent  
13 with penetration, probably forceful penetration.

14 Cherita Ford would testify that none of the visible injuries seen on T.F. were there  
15 when she left for work on May 5, 1986. Microscopic examination of the bruises and  
16 internal injuries found on T.F. showed mostly red blood cells, which means the injuries  
17 were most likely inflicted within around four hours of her death.

18 The injuries to T.F. resulted in 200 cubic centimeters of blood being found in her  
19 abdominal cavity. There was a considerable, though not quantified, amount of blood that  
20 bled into T.F.'s tissues; that bleeding is what caused the observable bruising all over her  
21 body. Based on her age and weight, T.F. would have had in the area of 480 to 620 total  
22 cubic centimeters of blood in her body. The amount of blood found in her abdomen and in  
23 the severe and deep bruises was inconsistent with life. Dr. Lacsina would testify that none  
24 of T.F.'s injuries would have caused instant unconsciousness. The internal bleeding would  
25

1 X. APPELLATE REVIEW:

2 The defendant understands that, for purposes of appellate review, a stipulated facts  
 3 trial is the same as a jury trial, such that the defendant would normally have the ability to  
 4 appeal any pre-trial ruling, any issue relating to speedy arraignment and trial, and issue  
 5 relating to his guilt on the charges, and issues relating to his offender score and standard  
 6 range sentence. As part of this agreement, the defendant voluntarily gives up his right to  
 7 appeal, with one exception: the defendant can appeal the trial court's ruling that allowed  
 8 the State to file the charge of second degree murder. *intentional* The defendant gives up his right to  
 9 raise any and all other issues, including whether he had a speedy trial, whether the State  
 10 should have been allowed to allege aggravating factors, whether there is sufficient  
 11 evidence of the elements of these crimes, including identifying him as the perpetrator and  
 12 whether he formed the intent to kill, whether he had effective assistance of counsel,  
 13 whether the State could properly charge first degree manslaughter, and whether it is double  
 14 jeopardy to be convicted of first degree manslaughter in addition to second degree murder.

15  
 16  
 17 The defendant understands and agrees that it is the intent of this agreement that the  
 18 defendant only be allowed to appeal the joinder *double jeopardy* issue as it relates to second degree murder  
 19 (intentional murder). In other words, the defendant cannot also claim that the State should  
 20 not have been allowed to prosecute him for first degree manslaughter. If the defendant is  
 21 successful in that appeal, and the second degree murder conviction is reversed, the  
 22 defendant's conviction for first degree manslaughter would remain valid, and the defendant  
 23 would return to court to be sentenced for that conviction. *J.F.*

1 XI. SPEEDY SENTENCING:

2 The defendant waives his right to be sentenced for first degree manslaughter. That  
3 waiver shall remain in effect permanently. So long as the defendant's second degree  
4 murder conviction is valid, the defendant shall not be sentenced on the manslaughter count.  
5 If the defendant is successful in his challenge to second degree murder on the basis of the  
6 mandatory joinder rule, and that conviction is vacated and/or dismissed, the defendant  
7 agrees that he will be sentenced on the first degree manslaughter conviction. *A.F.*

9 XII. VIOLATION OF THIS AGREEMENT:

10 The defendant agrees to be bound to the conditions of this agreement in every  
11 respect. The defendant agrees that if he takes any action that violates the terms of this  
12 agreement in any way, this agreement will be void, and the defendant agrees that the  
13 State's choice of remedy will apply, whether it is holding him to this agreement in all other  
14 respects or moving to vacate his conviction and proceed to trial. *A.F.*

17 XIII. INTERPRETATION OF TERMS OF AGREEMENT:

18 The defendant understands that, when there is a dispute over the terms of a written  
19 document, the courts will normally interpret the document against the writer (State) and in  
20 favor of the non-writer (defendant). With full understanding that he does not have to do  
21 so, the defendant affirmatively waives that right and agrees that a court should consider  
22 this document as if he personally wrote it if he ever challenges his conviction on a basis  
23 not specifically allowed by this document. *A.F.*

1 XIV. CONCLUSION:

2 I, Leron Ford, have reviewed this document with my attorney. I fully understand  
3 the consequences of proceeding in this fashion. I agree with every statement contained  
4 herein. I am asking the court to accept all of my waivers set out herein and proceed to  
5 decide this case based on the facts that are set forth in this document. *L.F.*

6 DATED: January 11, 2006.

7 *Leron Ford*  
8 LERON FORD  
9 Defendant

10 *John M. Neeb*  
11 JOHN M. NEEB  
12 Deputy Prosecuting Attorney  
13 WSB # 21322

14 *Richard Whitehead*  
15 RICHARD WHITEHEAD  
16 Attorney for defendant  
17 WSB # 7896

