

NO. 34533-1-II
Consolidated with NO. 34304-5-II and
NO. 34534-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER KNOBLOCK and CALEB J. TUCKER,

Appellants.

APPEAL FROM THE SUPERIOR COURT
FOR THURSTON COUNTY
CAUSE NOS. 05-1-01204-1 and 005-1-02456-2 and
05-1-02457-1

HONORABLE JUDGES PAULA CASEY and RICHARD A. STROPHY

RESPONDENT'S BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
ARGUMENT	13
1. <u>The trial court correctly imposed a firearm sentencing enhancement for defendant Knoblock's conviction for second-degree assault, based on the special verdict returned by the jury, and also correctly ran that enhancement consecutive to all other sentences, including th sentence imposed for unlawful possession of a firearm in the first degree.</u>	13
2. <u>Considering the evidence in the light most favorable to the State, the evidence was sufficient for a rational trier of fact to find that the State had proved beyond a reasonable doubt that Christopher Knoblock was guilty of perjury in the first degree.</u>	17
3. <u>Considering the evidence in the light most favorable to the State, there was sufficient evidence for the trial court to find it proved beyond a reasonable doubt that defendant Tucker was guilty of perjury in the first degree.</u>	31
CONCLUSION	35

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>State v. Bencivenga</u> , 137 Wn.2d 703, 974 P.2d 832 (1999)	18
<u>State v. Camarillo</u> , 115 Wn.2d 60, 794 P.2d 850 (1990)	18,26
<u>State v. Delmarter</u> , 94 Wn.2d 634, 618 P.2d 99 (1980)	18
<u>State v. DeSantiago</u> , 149 Wn.2d 402, 68 P.3d 1065 (2003)	15
<u>State v. Garrett</u> , 124 Wn.2d 504, 881 P.2d 185 (1994)	17
<u>State v. Green</u> , 94 Wn.2d 216, 616 P.2d 628 (1980)	18
<u>State v. Joy</u> , 121 Wn.2d 333, 851 P.2d 654 (1993)	18
<u>State v. Mierz</u> , 127 Wn.2d 460, 901 P.2d 286 (1995)	17
<u>State v. Olson</u> , 92 Wn.2d 134, 594 P.2d 1337 (1979)	26
<u>State v. Salinas</u> , 119 Wn.2d 192, 829 P.2d 1068 (1992)	18
<u>State v. Stevenson</u> , 128 Wn. App. 179, 114 P.3d 699 (2005)	19
<u>State v. Stump</u> , 73 Wn. App. 625, 870 P.2d 333 (1994)	19

<u>STATUTES AND COURT RULES</u>	<u>PAGE</u>
RCW 9A.72.010(1)	29
RCW 9A.72.010(4)	31
RCW 9A.72.020	19
RCW 9.94A.533(3)(b)	8
RCW 9.94A.533(3)(e)	9, 15
CrR 3.5	29, 30, 31

A. STATEMENT OF THE ISSUES

1. Whether the trial court properly imposed a firearm sentence enhancement for second-degree assault by running it consecutive to both that assault conviction and defendant Knoblock's conviction for unlawful possession of a firearm in the first degree.

2. Considering the evidence in the light most favorable to the State, whether there was sufficient evidence for the trial court to find beyond a reasonable doubt that defendant Knoblock was guilty of perjury in the first degree.

3. Considering the evidence in the light most favorable to the State, whether there was sufficient evidence for the trial court to find beyond a reasonable doubt that defendant Tucker was guilty of perjury in the first degree.

B. STATEMENT OF THE CASE

On June 30, 3005, Travis McEntire met with defendant Christopher Knoblock to purchase marijuana from Knoblock. 12-19-05 Trial RP 106-108. They proceeded to a residence to complete the transaction. 12-19-05 Trial RP 108-109. While there, a dispute developed between McEntire and Knoblock. They ended up engaged in a verbal confrontation outside the residence. Knoblock pointed a handgun at McEntire and fired multiple shots. 12-19-05 Trial RP 86, 94; 12-21-05 Trial

RP 36, 80-81. As a result, McEntire was shot in the elbow, fracturing his humerus bone. 12-19-05 Trial RP 87; 12-21-05 Trial RP 74-75, 84. Knoblock then drove off. 12-19-05 Trial RP 86, 116.

In the Thurston County Sheriff's investigation that followed, an effort was made to locate Knoblock. Information was conveyed to other law enforcement agencies concerning a vehicle linked to persons reportedly assisting Knoblock. 12-19-05 Trial RP 33. On the evening of July 3, 2005, Lacey Police Sergeant Joe Upton spotted and made an investigatory stop of this vehicle. Lacey Police Detective David Miller assisted in the contact. Defendant Caleb Tucker was the sole occupant of the vehicle. 12-19-05 Trial RP 12. This contact occurred about 6:51 that evening. 2-27-06 Trial RP 21.

Miller arrested Tucker pursuant to a separate criminal investigation, and transported Tucker to the Lacey Police Department around 7:14 in the evening. 12-19-05 Trial RP 13. Miller offered to

release Tucker and assist him in any determination of charging regarding this separate matter if Tucker helped put Knoblock in custody that same evening. Tucker claimed he was willing to assist. 12-19-05 Trial RP 13-14.

Thurston County Sheriff Detectives David Haller and Eric Kolb arrived at the Lacey Police Department to interview Tucker. They began speaking with him about 8:36 that evening. 2-27-06 Trial RP 92-93. Tucker used a cell phone to make calls in a supposed effort to locate Knoblock. However, as time passed, Haller and Kolb became convinced that Tucker was not making a serious effort and decided to leave. 2-27-05 Trial RP 107. Miller let Tucker know this was his last chance, and then Tucker identified a motel in Lakewood where Knoblock had been staying. 2-27-05 Trial RP 25. Haller and Kolb traveled to this motel, leaving at about 10:15 p.m. and arriving at around 10:35 that evening. 2-27-05 Trial RP 95.

After Haller and Kolb had left the Lacey Police Department, Tucker received a call on his

cell phone from Knoblock. Miller got on the phone. Knoblock stated he was willing to turn himself in, and arranged to meet Miller at a nearby fast food business. Knoblock was arrested by Miller at that location about 10:47 that evening and was transported to the Lacey Police Department. 2-27-05 Trial RP 25-27.

At the police department, Knoblock was first taken upstairs for a few minutes, and then brought down to where Tucker was located. They were allowed to visit for a short while, and then Tucker was taken to a separate room. 2-27-05 Trial RP 27, 79. Lacey Police Community Service Officer Carrie Nastansky arrived back at the Lacey Police Department about 11:20 that evening. At that time, Knoblock and Tucker were in separate rooms. 2-27-05 Trial RP 65.

A call was made to Haller and Kolb to let them know that Knoblock was in custody. They returned to the Lacey Police Department, arriving at about 11:40 that evening. 2-27-05 Trial RP 67, 96, 108. Knoblock was still in a separate room

from Tucker. 2-27-05 Trial RP 28, 67, 96, 109-110. Haller informed Knoblock of his Miranda rights, which Knoblock then chose to waive. 2-27-05 Trial RP 96, 109.

Knoblock was then interviewed concerning what had occurred on June 30, 2005. Knoblock admitted he had shot in the direction of McEntire that evening, but insisted he had aimed at the ground and had shot in self-defense. When Haller brought up the subject of a marijuana transaction, Knoblock chose to invoke his right to be silent, and the interview was ended. 2-27-05 Trial RP 96, 109; 12-21-05 Trial RP 34-36, 39.

In Thurston County Superior Court Cause No. 05-1-01204-1, Knoblock was charged by Information with six counts: Count I, attempted murder in the first degree while armed with a firearm; Count II, kidnapping in the first degree while armed with a firearm; Count III, robbery in the first degree while armed with a firearm; Count IV, assault in the second degree while armed with a firearm; Count V, unlawful possession of a firearm in the

first degree; Count VI, conspiracy to deliver a controlled substance, to wit: marijuana, while armed with a firearm. 34304-5 II CP 5-6. On 12-19-05, the matter proceeded to a CrR 3.5 hearing concerning the admissibility at trial of Knoblock's admissions to Haller which were made on the evening of July 3, 2005. That hearing was held before the Honorable Superior Court Judge Paula Casey.

At that hearing, Knoblock testified under oath that when he was taken to the Lacey Police Department after his arrest on 7-3-05, he was placed in a room with Tucker, and that the two of them were still together in that room when Haller and Kolb arrived. He stated that while with Tucker he made a number of phone calls to his mother, girl friend, and sister-in-law using Tucker's cell phone. Knoblock claimed that when Haller and Kolb came into the room, he told Haller that he did not want to say anything and demanded a lawyer. 12-19-05 Trial RP 57-58.

Tucker also testified under oath at this

hearing. He also claimed that Knoblock was put in a room with him at the Lacey Police Department on the evening of July 3, 2005. Tucker stated that he was together with Knoblock in that room for 10 to 15 minutes, and that during this time Haller and another detective came in to question Knoblock. According to Tucker, Knoblock insisted he did not want to say anything and wanted a lawyer. Tucker added that Haller did not accept this and continued to question Knoblock, and at that point Tucker spoke up in support of Knoblock's efforts to stop the questioning. Tucker claimed that it was at this point that he was taken out of that room. 12-19-05 Trial RP 49-50.

The trial court did not find this testimony by Knoblock and Tucker to be credible. Rather, the court found that Knoblock had been properly informed of his Miranda rights and had chosen to waive them. 12-1905 Trial RP 64.

The matter proceeded to a jury trial. At the beginning of the trial, the State moved to dismiss

Count 6, conspiracy to deliver a controlled substance, and then proceeded to trial on the other five counts. 12-19-05 Trial RP 9. Neither Tucker nor Knoblock testified at this trial. Knoblock was convicted of Count IV, assault in the second degree, and Count V, unlawful possession of a firearm in the first degree. As to the assault in the second degree conviction, the jury found by special verdict that the State had proved Knoblock was armed with a firearm at the time he committed that offense.

A sentence hearing took place on January 13, 2006. At that hearing, the State contended that the defendant's standard sentence range for second-degree assault was 33 to 43 months, and the sentence range for unlawful possession of a firearm in the first degree was 41 to 54 months. 1-13-06 Hearing RP 2-3. The special firearm enhancement was for 36 months since second-degree assault is a Class B felony. RCW 9.94A.533(3)(b).

The State pointed out that Washington law requires that a firearm enhancement must run

consecutive to all other sentencing provisions, even though the second-degree assault and first-degree unlawful possession of a firearm sentences would run concurrently. RCW 9.94A.533(3)(e). Therefore, since the sentence for first-degree unlawful possession of a firearm would be longer than that for second-degree assault, the State asked that the 36-month enhancement be ordered to follow the unlawful possession of a firearm sentence. 1-13-06 Hearing RP 3. Defense counsel agreed that the firearm enhancement must run consecutive to both of the other sentences. 1-13-06 Hearing RP 3.

The trial court imposed a sentence of 50 months for unlawful possession of a firearm in the first degree, and 43 months for second-degree assault. The 36-month enhancement was ordered to run consecutive to the other sentences, creating a total penalty of 86 months in prison. 1-13-06 Hearing RP 9; 34304-5-II CP 93-101.

On December 27, 2005, an Information was filed in Thurston County Superior Court Cause No.

04-1-02456-2 charging Christopher Knoblock with one count of perjury in the first degree. 34533-1-II CP 4. On that same date, an Information was filed in Thurston County Superior Court Cause No. 05-1-02457-1 charging Caleb Tucker also with one count of perjury in the first degree. 34534-0-II CP 46. Both cases were joined for trial.

The allegations in each case pertained to testimony given by Knoblock and Tucker at the CrR 3.5 hearing in Cause No. 05-1-01204-1, as detailed above. It was alleged that both defendants had lied under oath in testifying that Tucker was in the room when Haller and Kolb began questioning Knoblock on the evening of July 3, 2005. It was further alleged that both defendants lied in stating that Knoblock had not been informed of his Miranda rights by Haller that evening, and that Knoblock had invoked those rights, rather than waiving them, and in claiming that Knoblock had not made statements attributed to him. On February 27, 2006, both defendants filed a written waiver of jury trial. 34533-1-II CP 10 and 34534-

0-II CP 10. The matter proceeded to a bench trial before the Honorable Judge Richard Strophy on that date.

In addition to testimony from Detective Haller, Detective Kolb, and Detective Miller that Tucker and Knoblock were in separate rooms when Knoblock was interviewed, the State also presented testimony from Lacey Police Community Service Officers Emily Logsdon and Carrie Nastansky, who were both at the Lacey Police Department that evening. Lacey Police Officer Ed McClanahan also testified that Tucker and Knoblock had been separated before Haller and Kolb arrived to interview Knoblock. 2-27-06 Trial RP 79, 88.

The defense case focused on three witnesses who testified they received phone calls from Knoblock late that evening. This testimony was coupled with cell phone records for the phone Tucker had with him that evening, showing calls on that phone to those three individuals during the time period from 11:09 p.m. to 11:15 p.m. that evening. 2-27-06 Trial RP 123-131.

The trial court found that the State had proved beyond a reasonable doubt that both defendants had committed perjury as alleged. The court noted that the testimony of defense witnesses and the cell phone records simply indicated that Tucker and Knoblock were together at the Lacey Police Department from 11:09 to 11:15 p.m., a slightly longer time period than State's witnesses remembered. However, Haller and Kolb did not arrive to interview Knoblock until around 11:40 that evening, and so the evidence of cell phone calls did not contradict the State's evidence that Knoblock and Tucker were in separate rooms at the time Knoblock was questioned by Detective Haller. 2-27-06 Trial RP 171-172. The court's Findings of Fact and Conclusions of Law with regard to this bench trial were entered on March 9, 2006. 34533-1-II CP 13-16; 34534-0-II CP 15-18.

On March 3, 2006, a sentence hearing was held in Cause 05-1-02457-1, concerning Caleb Tucker's conviction for first-degree perjury. Tucker was

given a standard range sentence of 16 months in prison. 3-3-06 Hearing RP 10; 34534-0-II CP 22-30.

On March 14, 2006, a sentence hearing was held in Cause 05-1-02456-2, concerning Christopher Knoblock's perjury conviction. Knoblock was given a standard range sentence of 41 months in prison, to run consecutive to his sentence in Cause 05-1-01204-1. 3-14-06 Hearing RP 9-10; 34533-1-II CP 27-35.

C. ARGUMENT

1. The trial court correctly imposed a firearm sentencing enhancement for defendant Knoblock's conviction for second-degree assault, based on the special verdict returned by the jury, and also correctly ran that enhancement consecutive to all other sentences, including the sentence imposed for unlawful possession of a firearm in the first degree.

On appeal, defendant Knoblock contends that the court erroneously imposed a firearm enhancement for the crime of first-degree unlawful possession of a firearm in Cause 05-1-01204-1. However, that is simply incorrect. There was only one firearm enhancement imposed by

the court, and that was based on the jury's special verdict finding that the defendant had been armed with a firearm when he committed the crime of second-degree assault. Special Verdict Form EE, 34304-5-II CP 49. The 36 months for this enhancement were added to the 50-month sentence for first-degree unlawful possession of a firearm because the enhancement ran consecutive to that sentence.

Thus, page 2 of the Judgment and Sentence shows specifically that the 36-month firearm enhancement was for Count IV, which is the second-degree assault conviction. An arrow was then used to show that this enhancement had then been added to the sentence range for Count V, unlawful possession of a firearm in the first degree, to fully show the range of prison time the defendant could receive by a consecutive imposition of the enhancement. This was further explained by a note handwritten into the Judgment and Sentence just below, which stated: "THE ENHANCEMENT IS CONSECUTIVE TO COUNT V". 34304-5-

II CP 94.

Essentially, the defendant makes the argument that the firearm enhancement should have run consecutive to the second-degree assault conviction, but concurrent with the sentence for first-degree unlawful possession of a firearm. However, no authority is cited for this proposition, nor is there any discussion of RCW 9.94A.533(3)(e). That provision states as follows, in pertinent part:

Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. . . .

RCW 9.94A.533(3)(e). This provision unambiguously requires that a firearm enhancement run consecutive to all other sentences imposed in a case, and not just consecutive to the particular crime found to have been committed while armed with the weapon. State v. DeSantiago, 149 Wn.2d 402, 416, 68 P.3d 1065

(2003). Thus, the court properly required that the firearm enhancement in this case be served following not only the 43-month sentence for second-degree assault but also following the 50-month sentence for unlawful possession of a firearm in the first degree.

The defendant also contends that his trial counsel provided ineffective assistance of counsel by failing to object to imposition of the firearm enhancement consecutive to the sentence for unlawful possession of a firearm in the first degree. When a convicted defendant claims that his trial counsel's assistance was ineffective, he has the burden to show that counsel's performance fell below an objective standard of reasonableness. The appellate court must apply a strong presumption that the defendant was properly represented. Deficient performance is not shown by matters that go to trial strategy and tactics. The defendant must also show prejudice by establishing a reasonable probability that, but for counsel's errors, the

result of the trial would have been different. State v. Garrett, 124 Wn.2d 504, 517-519, 881 P.2d 185 (1994); State v. Mierz, 127 Wn.2d 460, 471, 901 P.2d 286 (1995).

In the present case, as argued above, the court properly applied the law in running the firearm enhancement for second-degree assault consecutive to the sentence for unlawful possession of a firearm in the first degree. Therefore, defense counsel's agreement to this manner of imposing the enhancement did not constitute deficient performance, and so was not ineffective assistance.

2. Considering the evidence in the light most favorable to the State, the evidence was sufficient for a rational trier of fact to find that the State had proved beyond a reasonable doubt that Christopher Knoblock was guilty of perjury in the first degree.

On appeal, defendant Knoblock contends that the evidence at the trial of this cause was not sufficient for the trial court to find it proved beyond a reasonable doubt that he was guilty of perjury in the first degree. The evidence is sufficient to prove the charge if, viewed in the

light most favorable to the State, it is enough to permit a rational trier of fact to find that it was proved beyond a reasonable doubt. State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A claim of insufficiency requires that all reasonable inferences from the evidence be drawn in favor of the State and interpreted most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). It is also the function of the fact finder, and not the appellate court, to discount theories which are determined to be unreasonable in the light of the evidence. State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). Circumstantial evidence is accorded equal weight with direct evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

After a bench trial, the appellate court

determines whether substantial evidence supports the trial court's findings of fact and, in turn, whether the findings support the conclusions of law. State v. Stevenson, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). Unchallenged findings of fact are verities on appeal and conclusions of law are reviewed de novo. Id. at 193.

The State was required to prove six elements of the offense of perjury in the first degree: first, that on or about December 19, 2005, defendant Knoblock made a false statement; second, that Knoblock knew his statement in response to the question asked was false; third, that the false statement was material; fourth, that the false statement was made at an official proceeding; fifth, that the statement was made under an oath required or authorized by law; and sixth, that the statement was made in the State of Washington. RCW 9A.72.020; State v. Stump, 73 Wn. App. 625, 628, 870 P.2d 333 (1994).

The defendant assigns error to Finding of Fact No. 5, which stated as follows:

5. Detective Haller testified that during that interview, defendant Tucker was not present and that defendant Knoblock had admitted being in possession of a firearm and discharging the firearm at the victim, Travis McEntire.

Cause No. 34533-1-II CP 14. In fact, this is an accurate summary of Haller's testimony given at the CrR 3.6 hearing in this case. 12-19-05 Trial RP 35-38.

The defendant also assigns error to Finding of Fact No. 6, wherein the court found as follows:

6. When defendant Knoblock testified at the hearing, he told the court that he had been locked up with Caleb Tucker on the evening of July 3, 2005, at the Lacey Police Department, that when Detective Haller and Detective Kolb entered the room, defendant Knoblock immediately requested a lawyer, and that defendant Knoblock had not made the incriminating statements set forth by Detective Haller in Detective Haller's testimony.

Cause No. 34533-1-II CP 14. However, this also is accurate. Knoblock testified as follows at the CrR 3.6 hearing:

Q. Were you put in a cell or holding area with Caleb?

A. After they done - he [Miller] was done talking to me, he took me downstairs into a

holding cell that's right in front of his desk. And Caleb was in there. They handcuffed behind my back, and he gave me a hug. He was crying and told me he love (sic) me. And they sat me next to him and then end up taking one of my hands and cuffing it to the bench. . . .

Q. When was the first time you saw Detective Haller that evening?

A. I was sitting in there with Caleb talking, and then I seen Detective Haller and another Detective walk in, and then I - right then I didn't want to talk because we had past history together, and I didn't have nothing to say to him, so I told him I didn't want to talk, I want to talk to my lawyer.

Q. During the time period in which you were sitting in the holding cell with Caleb, did Detective Miller ever leave the two of you alone together?

A. Yeah. We were in there for a little bit alone the whole time I was making phone calls.

Q. When Detective Haller arrived and contacted you in the holding cell, wherein you just indicated that you requested an attorney, was Detective Miller present at that time?

A. I can't recall him, but there was a different detective that was with Detective Haller.

Q. And do you recall if Detective Haller ever read you any rights?

A. I don't.

Q. But do you recall specifically that you requested an attorney?

A. Several times, and I recall Detective Haller walking in while Caleb was next to me, and he said, take off your do-rag, and he told Caleb, you been identified as the driver who took Chris Knoblock up to the motel.

Q. Did you subsequently speak to Detective Haller and give him a statement?

A. No. I told him I didn't want to talk. I told him, take me to jail, take me to jail. I don't want to say nothing at all about it.

Q. So previously you were sitting at defense table with me, and you heard Detective Haller indicate what information he elicited from you during a statement that he obtained from you?

A. Yes.

Q. Is that accurate?

A. No.

12-19-05 Trial RP 57-59. Thus, as stated in the court's Finding of Fact No. 6, Knoblock contradicted Haller's testimony at the CrR 3.6 hearing on a number of key points. Knoblock claimed Tucker was in the room when Haller came in to speak with him, that he (Knoblock) immediately refused to answer questions and

demanded the assistance of an attorney, and that he did not make any of the statements attributed to him by Haller.

With regard to this conflicting testimony, the trial court made findings regarding what actually occurred on the evening of July 3, 2005. Defendant Knoblock has assigned error to a number of those findings.

Finding of Fact No. 13, referring to the point in time after Knoblock had been allowed to visit with Tucker for a short while at the Lacey Police Department, stated as follows:

13. Defendant Knoblock was then placed in the Lacey Police Department holding room and defendant Tucker was separated and sat in the report writing room.

Cause No. 34533-1-II CP 15. This was specifically testified to by Detective Miller, CSO Officer Emily Logsdon, and Officer Ed McClanahan. 2-27-06 Trial RP 27 and 54 and 79.

Finding of Fact No. 14 stated as follows:

14. At 11:40 p.m. on July 3, 2005, Detective Haller and Detective Kolb entered the Lacey Police Department holding room where they spoke with defendant Knoblock. Defendant Tucker was not in the room when

the two detectives interviewed defendant Knoblock.

Cause No. 34533-1-II CP 15. Both Haller and Kolb testified to the above. 2-27-06 Trial RP 96 and 108-110. Corroboration was provided by Detective Miller, CSO Officer Logsdon, and CSO Officer Carrie Nastansky. 2-27-06 Trial RP 28, 39, 41, 55-56, 67-68.

Finding of Fact No. 15 stated as follows:

In speaking with defendant Knoblock, Detective Haller read defendant Knoblock his Miranda rights, defendant Knoblock agreed to speak with the detectives and defendant Knoblock admitted possessing a firearm and discharging that firearm at Travis McEntire on June 30, 2005.

34533-1-II CP 15. Both Haller and Kolb testified to the above at the trial concerning the charge of perjury. 2-27-06 Trial RP 96 and 109.

Finding of Fact No. 18 stated as follows:

At no time between defendant Knoblock's arrest on July 3, 2005 at 10:47 pm and his transport to the Thurston county Jail on July 4, 2005, at 12:19 am, were defendant Knoblock and defendant Tucker interviewed together nor placed in the holding room together.

34522-1-II CP 15. This was the testimony of Detective Miller. 2-27-06 Trial RP 27-28, 39,

41. Corroboration was provided by Logsdon and Nastansky. 54, 60, 65, 67-68. Miller did indicate Knoblock and Tucker were allowed to briefly visit before being separated. 2-27-06 Trial RP 27. As regards the evidence of cell phone calls by Knoblock using Tucker's cell phone, the trial court noted that, at most, this evidence suggested that Knoblock and Tucker were allowed to be together a little longer than Miller recalled, but provided no support for the claim that they were together when Haller and Kolb arrived at 11:40 that evening. 12-27-06 Trial RP 171-172.

Finding of Fact No. 19 stated as follows:

The testimony of Detective Haller, Detective Miller, Detective Kolb, Officer Ed McClanahan, CSO Carrie Nastansky and CSO Emily Logsdon was credible.

34533-1-II CP 15. Finding of Fact No. 20 stated:

The testimony of defendant Knoblock was not credible.

34533-1-II CP 15. As noted previously, credibility determinations are the province of the trier of fact and are not subject to review.

Camarillo, 115 Wn.2d at 71.

Thus, there was substantial evidence to support each of the trial court's findings of fact. To prove perjury, the State must present at least one credible witness which is directly contradictory to the defendant's alleged perjurious statements, and either one other credible witness directly contradicting the defendant or independent evidence of corroborating circumstances of such a character as to overcome the legal presumption of the defendant's lack of guilt. State v. Olson, 92 Wn.2d 134, 136, 594 P.2d 1337 (1979). Such evidence supports each of the findings of fact challenged by defendant Knoblock in this case.

The trial court also concluded that each element of the offense of perjury in the first degree, as charged against defendant Knoblock, had been proved beyond a reasonable doubt. Cause No. 34533-1-II CP 15-16. Thus, the court found it proved that Knoblock's presented false testimony at the CrR 3.5 hearing on December 19,

2005. This conclusion is supported by the findings of fact discussed above.

First, Knoblock testified that Tucker was in the room with him when Haller and Kolb first entered. However, Tucker was in a different room at the time. Second, Knoblock testified he immediately refused to answer any questions from Haller and demanded the assistance of an attorney. However, the court found that the truth was Knoblock waived his right to remain silent and spoke to the detectives about what had happened. Third, Knoblock denied he had ever made the statements attributed to him by Haller and Kolb. However, the court found that the defendant did admit to firing a gun at McEntire on the date of the incident that the detectives were investigating.

The court also found that Knoblock knew his statements were false. This conclusion was also supported by the findings of fact. Knoblock told a completely different version of what had occurred in contrast to what the court found to

be the truth. Knoblock's version was consistently directed at preventing the admission of his statements at the trial by denying he had waived his right to remain silent, and directed at denying he had ever made such statements. The court found that his testimony on 2-27-06 regarding what had occurred on the evening of July 3, 2005, was not credible.

The defendant argues on appeal that he never denied that he had been read his Miranda rights, only that he could not remember. However, this argument is beside the point. Examining the court's findings of fact, it is clear that is not the basis for the court's conclusion that defendant Knoblock committed perjury. The false statements that the court focused on are those set forth in Finding of Fact No. 6, which are the ones discussed above.

The court further concluded that the defendant's false statements were material. The defendant argues that they were not material, because Knoblock had claimed self-defense and so

his statements to Haller were not inculpatory. A false statement is material if it could have affected the course or outcome of the official proceeding in which the statement was made. Whether a false statement is material is determined by the court as a matter of law. RCW 9A.72.010(1).

The defendant's argument is flawed for several reasons. First of all, the proceeding in which defendant Knoblock made the false statements was a CrR 3.5 hearing, in which the court had to determine whether statements by the defendant had been obtained legally, and were therefore admissible at trial. Knoblock's claim that he refused to answer questions and demanded a lawyer went to the heart of what was at issue in that hearing. At the CrR 3.5 hearing, Tucker corroborated Knoblock's supposed assertion of his rights. Thus, Knoblock's claim that Tucker was in the room at the time was designed to bolster Tucker's ability to corroborate Knoblock's key false testimony, and therefore was also material.

Knoblock's denial that he had made the statements attributed to him was a part of his claim that he had refused to waive his right to remain silent. Further, if materiality is viewed in terms of the trial itself, the statements attributed to Knoblock by Haller were inculpatory. Knoblock admitted to Haller that he was the one who had fired at McEntire. Neither of the eyewitnesses at trial were able to identify Knoblock as the person who fired the gun. McEntire did not know Knoblock. While McEntire had identified Knoblock from a photo line-up, part of the defense strategy was to attack McEntire's credibility and challenge that line-up as suggestive. 12-21-05 Trial RP 67-68. Thus, Knoblock's admission he was the shooter was material to the trial, and his false claim that he had never made that admission was material to both the CrR 3.5 hearing and the trial.

The trial court further concluded that Knoblock's false statements at the CrR 3.5 hearing were made at an official proceeding and

were made under an oath required or authorized by law. An "official proceeding" includes testimony presented before a judicial officer authorized to hear evidence under oath. RCW 9A.72.010(4). On appeal, the defendant does not appear to challenge the court's conclusion that the CrR 3.5 hearing was an official proceeding held in the State of Washington, or that Knoblock was under an oath authorized by law when he gave his testimony.

Thus, the trial court's conclusions of law regarding defendant Knoblock are supported by the evidence and the court's findings of fact. There was sufficient evidence for the court to conclude that Knoblock was guilty beyond a reasonable doubt of the offense of perjury in the first degree.

3. Considering the evidence in the light most favorable to the State, there was sufficient evidence for the trial court to find it proved beyond a reasonable doubt that defendant Tucker was guilty of perjury in the first degree.

Defendant Tucker also claims on appeal that the evidence was not sufficient to prove the

charge of first-degree perjury as alleged against him. The discussion in the previous section regarding the legal standards that apply when the sufficiency of the evidence at a bench trial is challenged on appeal, and the discussion of the elements of perjury in the first degree are incorporated herein by reference.

In Finding of Fact No. 7, the trial court summarized the CrR 3.5 hearing testimony of defendant Tucker which the court found to have been false.

When Defendant Tucker testified, he also told the Court that he had been locked up with Defendant Knoblock on the evening of July 3, 2005 at the Lacey Police Department, that when Detective Haller and Detective Kolb entered the room, Defendant Knoblock immediately requested a lawyer, and that Defendant Knoblock made no statement to Detective Haller and Detective Kolb.

34533-1-II CP 15. This is an accurate summary of what Tucker claimed in his testimony.

Q. How long were you in the holding cell with Mr. Knoblock?

A. About total of 10, 15 minutes maybe.

Q. Did - any time while you were in that holding cell with Mr. Knoblock, did law enforcement come in to try and question him?

A. Yes.

Q. Do you recall who that was?

A. Detective Haller. And I think Detective Miller was in there for a little bit and the other detective. I don't know what the other detective's name is.

Q. And do you recall what was said during that time?

A. Yeah. They asked Chris what happened, why - they asked him specifically why did he shoot that guy. He said, I want my lawyer, I didn't do anything. I told, Chris, no, be quiet, you don't have to say anything. They again asked him again, what happened, why don't you explain to us what happened. Chris says, I need my lawyer, and all that.

When I looked at the cop and said, look, he doesn't want to say anything, he's asking for his lawyer and they kept doing that for a little bit, when I intervened, they uncuffed me and took me out of the room. . . .

Q. Did you ever see any law enforcement review Chris's rights with him? Read him his rights?

A. I heard no rights being read to Chris, no I didn't.

12-19-05 Trial RP 49-50.

On appeal, defendant Tucker focuses solely on the last of his answers in the excerpt quoted above, and argues his answer about whether Knoblock was informed of his rights was not

actually a lie. On this point, the State agrees. The court found that Tucker was not in the room when Knoblock was informed of his rights, and so it is literally true that Tucker did not hear Knoblock being informed of those rights.

However, Tucker's argument on appeal ignores all the other statements Tucker made which were false, as summarized in the court's Finding of Fact No. 7. Tucker specifically stated he was in the room when Knoblock was questioned, that Knoblock repeatedly refused to answer questions and demanded an attorney. As discussed in the previous section, the evidence supported the court's conclusion that these claims were false, and that Tucker knew they were false.

Tucker also argues on appeal that his false statements were not material. He also focuses on the fact that the statements attributed to Knoblock by Haller claimed self-defense. Therefore, Tucker argues that his corroboration of Knoblock's denial that he made such statements was not material of the outcome of the trial.

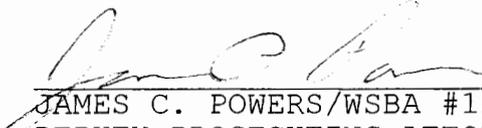
This same argument against materiality was made by Knoblock and was addressed in the previous section. That discussion is incorporated herein by reference. Tucker's claims went directly to what was at issue in the CrR 3.5 hearing in which those false statements were made. Thus, Tucker's false statements were material.

D. CONCLUSION

Based on the above, the State respectfully requests that this court affirm defendant Knoblock's sentence for second-degree assault and unlawful possession of a firearm in the first degree in Thurston County Superior Court Cause No. 05-1-01204-1, including the consecutive 36-month firearm enhancement, and affirm defendant Knoblock's conviction and defendant Tucker's conviction for perjury in the first degree.

DATED this 27th day of November, 2006.

Respectfully submitted,



JAMES C. POWERS/WSBA #12791
DEPUTY PROSECUTING ATTORNEY

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COURT OF APPEALS

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NO. 34533-1-II

STATE OF WASHINGTON
BY IN THE COURT OF APPEALS
 OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
 Respondent) DECLARATION OF
) MAILING
 v.)
)
CHRISTOPHER KNOBLOCK and)
CALEB J. TUCKER,)
 Appellants)

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

James C. Powers declares and affirms:

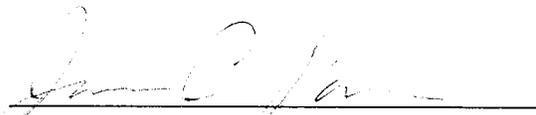
I am a Senior Deputy Prosecuting Attorney in the Office of Prosecuting Attorney of Thurston County; that on the 27th day of November, 2006, I caused to be mailed to attorney for Appellant Christopher Knoblock, THOMAS E. DOYLE, and to attorney for Appellant Caleb J. Tucker, PETER B. TILLER, a copy of the Respondent's Brief,

addressing said envelopes as follows:

Thomas E. Doyle,	Peter B. Tiller
Attorney at Law	Attorney at Law
P.O. Box 510	P.O. Box 58
Hansville, WA 98340-0510	Centralia, WA 98531-0058

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 27th day of November, 2006 at Olympia, WA.


James C. Powers/WSBA #12791
Senior Deputy Prosecuting Attorney