

NO. 34686-9

FILED
COURT OF APPEALS
DIVISION II

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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON
BY 
DEPUTY

STATE OF WASHINGTON, RESPONDENT

v.

JOSHUA SCOTT, PETITIONER

Appeal from the Superior Court of Pierce County
The Honorable Marywave Van Deren

No. 00-1-04425-1

Supplemental Brief

GERALD A. HORNE
Prosecuting Attorney

By
MICHELLE HYER
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WSB # 32724

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Room 946
Tacoma, WA 98402
PH: (253) 798-7400

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

1. Should this court find that the error that occurred when the petitioner was charged with a firearm enhancement but the jury was instructed on and found a deadly weapon enhancement harmless under *State v. Recuenco*?

B. STATEMENT OF THE CASE.

Petitioner, JOSHUA DEAN SCOTT, is restrained pursuant to a Judgment and Sentence entered in Pierce County Cause No. 00-1-04425-

1. Appendix "A." The petitioner was charged by amended information with two counts of robbery in the first degree, two counts of unlawful possession of a firearm in the first degree, possession of stolen property in the first degree, two counts of possession of a stolen firearm, and two counts of theft of a firearm. Appendix "B." The petitioner was found guilty of all counts except the two counts of theft of a firearm. Appendix "C." In the amended information charging the robberies, the State alleged, in part, as follows:

. . . [T]he defendant or an accomplice was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon, to wit: a rifle, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370, contrary to RCW 9A.56.190 and RCW 9A.56.200(1)(a)(b) and 9A.08.020, and against the peace and dignity of the State of Washington.

Appendix “B.”

Similar language is included in the information for the charges of possessing stolen property in the first degree. *Id.* At the close of the case, the jury was instructed as follows:

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime of robbery in the first degree as charged in Counts I and II and possession of stolen property in the first degree as charged in Count V.

A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.

If one participant to a crime is armed with a deadly weapon, all accomplices who know the participant is armed are deemed to be so armed, even if only one deadly weapon is involved.

Appendix “D,” Instruction 49.

The jury found that the petitioner was armed with a deadly weapon as to counts I, II, and V. Appendix “C.”

On April 9, 2004, the court imposed three firearm sentencing enhancements, and sentenced the petitioner to a total of 213 months confinement. Appendix “A.” On April 11, 2006, the petitioner filed this personal restraint petition.¹ This court stayed the petitioner’s case pending

¹ The State does not assert that this petition is untimely.

State v. Recuenco, __ Wn.2d __, __ P.3d __ (2008). This court then lifted the stay and permitted supplemental briefing.

C. ARGUMENT.

1. **STATE V. RECUENCO DOES NOT REQUIRE REVERSAL OF THE FIREARM SENTENCING ENHANCEMENTS IN THIS CASE BECAUSE THE PETITIONER WAS CHARGED WITH FIREARM ENHANCEMENTS IN THE INFORMATION.**

In *State v. Recuenco*, __ Wn.2d __, __ P.3d __ (2008), the court examined whether Washington law requires a harmless error analysis when the information charging the defendant alleges a deadly weapon enhancement, the jury finds a deadly weapon enhancement, and the court sentences the defendant to a firearm enhancement. *Id.* at *1-3. In *Recuenco*, the court held that the State could have elected to allege a firearm enhancement in the information, but instead elected to allege only a deadly weapon enhancement. *Id.* at *10-11. The court also held that the only special verdict the jury was asked to determine related to a deadly weapon, not a firearm. *Id.* at *16. The court concluded:

Not only was Recuenco not informed of the charge of assault with a firearm before opening statements, he was not given notice until sentencing. Recuenco therefore lacked any ability to prepare an adequate defense nor had any reason or opportunity to challenge the information before that time.

Id. at *18.

The present case is distinguishable from *Recuenco* in several respects. The State respectfully submits that any error that occurred in this case is harmless. In this case, the petitioner was charged by amended information with two counts of robbery in the first degree. The elements of robbery in the first degree include the elements that the petitioner be armed with a deadly weapon or display what appears to be a firearm or other deadly weapon during the commission of the robbery. RCW 9A.56.200.

The amended information that was filed charging the petitioner with robbery in the first degree included the allegation that the petitioner was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon. The information then included language for the firearm sentencing enhancement, by stating that the deadly weapon the petitioner displayed, or the item that appeared to be a firearm or deadly weapon was actually a rifle. Appendix “B.” The information then references a statute that specifically address firearms—RCW 9.41.010. The information also references RCW 9.94A.310, which addresses both firearm and deadly weapon enhancements. The information includes similar language for the charges of possession of a stolen property in the first degree. Appendix “B.” The charging language for the possession of stolen property in the first degree does not include any reference to deadly weapons. *Id.*

Unlike *Recuenco*, where the State alleged only a deadly weapon enhancement in the information using the language “with a deadly weapon, to-wit a handgun,” in the present case, the information listed the elements of robbery in the first degree along with a firearm enhancement: “the defendant or an accomplice was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon, to-wit: a rifle, **that being a firearm as defined in RCW 9.41.010**, and invoking the provisions of RCW 9.94A.310 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370, contrary to RCW 9A.56.190 and RCW 9A.56.200(1)(a)(b) and 9A.08.020....” (emphasis added). *Recuenco*, __ Wn.2d __ at *2; Appendix “B.” Similarly, the information references RCW 9.41.010 with respect to the firearm allegations for the possession of stolen property charges. Appendix “B.” Therefore, the petitioner was given specific notice that he would have to defend against an allegation that he was armed with a firearm, specifically a rifle.

Moreover, it appears that the only weapons that were present at the time the petitioner committed the crimes were firearms. Appendix “E.” The petitioner has not presented any evidence that there was any other type of weapon used during the crimes except for firearms.

The petitioner may now allege that the amended information alleges a deadly weapon enhancement, but such assertion is incorrect. In *Recuenco*, the defendant was charged with assault in the second degree, which does not have possession of a deadly weapon or firearm as one of its elements. In the present case, the petitioner was charged with robbery in the first degree—a crime which includes references to both deadly weapons and firearms. It is clear that the references to a deadly weapon in the information refer to the elements of the crime charged, and that it is not simply the State electing which sentencing enhancement to allege. In the information, the petitioner was given notice at the time the amended information was filed that the State was alleging that he was armed with a firearm, specifically a rifle, at the time he committed the robberies. Appendix “B.” The information does not even reference a deadly weapon with respect to the possession of stolen property charges. *Id.*

The State acknowledges that the special verdict form in the present case asked the jury to determine if the petitioner was armed with a deadly weapon, not a firearm, at the time the crimes were committed. Appendix “D,” (Special Verdict Forms). In *Recuenco*, the defendant was charged with a deadly weapon enhancement, and the jury found the deadly weapon enhancement, so no error, even a harmless error, occurred. *Recuneco*, ___ Wn.2d ___ at *19-20. The court found that there was no error because the enhancement alleged in the information and the finding on the special

verdict were the same—both addressed a deadly weapon enhancement. In the present case, however, the information clearly alleges a firearm enhancement, but the jury returned a special verdict for a deadly weapon. Therefore, while no error occurred in *Recuenco*, an error did occur here, and the error was harmless.

The error that occurred in the present case was that the jury was asked to return a special verdict for a deadly weapon, not a firearm. The error is harmless, however, because it is clear that the petitioner was advised that he would have to defend against an allegation that he was armed with a firearm. It also appears that there was no other weapon presented in the case except for firearms. While there was no error in *Recuenco* for the court to find harmless, in the present case harmless error was committed when the jury was asked to consider a deadly weapon enhancement instead of a firearm enhancement. The fact that the firearm enhancement was specifically alleged in the information in the present case is a key distinguishing factor from *Recuenco*. Under the facts of this case, this court should find that the error committed was harmless, and that the trial court properly sentenced the petitioner to a firearm sentencing enhancement.

D. CONCLUSION.

The State therefore respectfully requests that this court find that the error that occurred was harmless, and that the court's sentence be affirmed.

DATED: June 5, 2008.

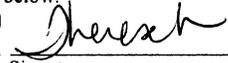
GERALD A. HORNE
Pierce County
Prosecuting Attorney



MICHELLE HYER
Deputy Prosecuting Attorney
WSB # 32724

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.

6-5-08 
Date Signature

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BY _____
DEPUTY

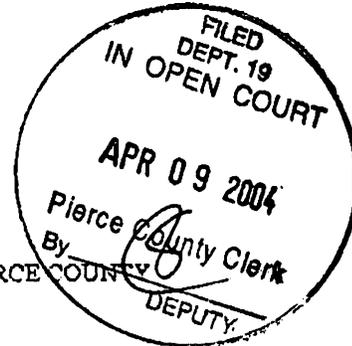
APPENDIX “A”

Judgment and Sentence

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 00-1-04425-1

vs.

JOSHUA DEAN SCOTT,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

APR 12 2004

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

00-1-04425-1

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 4/7/09

By direction of the Honorable

Kevin Stock
JUDGE
KEVIN STOCK

By: Chris Hutton
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

APR 12 2004
Date APR 12 2004 By Chris Hutton Deputy

FILED
DEPT. 19
IN OPEN COURT
APR 09 2004
Pierce County Clerk
By [Signature]
DEPUTY

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____, _____.

KEVIN STOCK, Clerk
By: _____ Deputy

kls



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 00-1-04425-1

vs.

JUDGMENT AND SENTENCE (JS)

NUNC PRO TUNC

JOSHUA DEAN SCOTT

Defendant.

Prison

Jail One Year or Less

First-Time Offender

SSOSA

DOSA

Breaking The Cycle (BTC)

APR 12 2004

SID: WA18835544
DOB: 05/24/1979

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 02/05/01 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ROBBERY IN THE FIRST DEGREE (AAA3)	9.41.00 9.94A.310 9.94A.370 9A.56.190 9A.56.200(1)(a)(b) 9A.08.020	FASE	09/16/00	PCSD 00-20-0368
II	ROBBERY IN THE FIRST DEGREE (AAA3)	9.41.00 9.94A.310 9.94A.370 9A.56.190 9A.56.200(1)(a)(b) 9A.08.020	FASE	09/16/00	PCSD 00-20-0368

01-9-05604-3

00-1-04425-1

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
IV	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a)		09/16/00	PCSD 00-20-0368
V	POSSESSING STOLEN PROPERTY IN THE FIRST DEGREE (BBB1)	9.41.010 9.94A.310 9.94A.370 9A.56.140(1) 9A.56.150(1) 9A.08.020	FASE	09/16/00	PCSD 00-20-0368

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present.

as charged in the Amended Information

- A special verdict/finding for use of firearm was returned on Count(s) I, II, V RCW 9.94A.602, .510.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	RES BURG	1/25/98	Pierce Cty/WA	08/13/98	A	NV

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	5	IX	57-75 MOS.	(F)60 MOS.	117-135 MOS.	LIFE
II	5	IX	57-75 MOS.	(F)60 MOS.	117-135 MOS.	LIFE
IV	64	VII	51-61 MOS. 36-48	NONE	31-61 MOS. 36-48	10 YRS
V	4	II	12+-14 MOS.	(F)36 MOS.	48-50 MOS.	10 YRS.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

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[] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [] as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [X] The court DISMISSES Counts VI & VII. The defendant is found NOT GUILTY of Counts VI & VII.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

- RTN/RIN \$ Restitution to:
PCV \$ 500.00 Crime Victim assessment
DNA \$ 400.00 DNA Database Fee
PUB \$ 2000.00 Court-Appointed Attorney Fees and Defense Costs
FRC \$ 110.00 Criminal Filing Fee
FCM \$ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ Other Costs for:
\$ Other Costs for:
\$ 2610.00 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein. Not less than \$ per month commencing. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

00-1-04425-1

[] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

[] is scheduled for _____

[] defendant waives any right to be present at any restitution hearing (defendant's initials): _____

[] RESTITUTION. Order Attached

4.3 COSTS OF INCARCERATION

[] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

4.7 [] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with witnesses herein (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

(except Melissa Scott)

[] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

Empty rectangular box for additional notes or conditions.

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4.11 BOND IS HEREBY EXONERATED

4.12 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>57</u> months on Count <u>I</u>	<u>12+</u> months on Count <u>IV</u>
<u>57</u> months on Count <u>II</u>	_____ months on Count _____
<u>36</u> months on Count <u>IV</u>	_____ months on Count _____

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

<u>60</u> months on Count No <u>I</u>	<u>36</u> months on Count No <u>V</u>
<u>60</u> months on Count No <u>II</u>	_____ months on Count No _____
_____ months on Count No _____	_____ months on Count No _____

Sentence enhancements in Counts I, II & V shall run
 concurrent consecutive to each other.
 Sentence enhancements in Counts I, II & V shall be served
 flat time subject to earned good time credit

Actual number of months of total confinement ordered is: 213 months

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced. _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: since 9/16/00

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4.13 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months,

Count _____ for _____ months,

Count _____ for _____ months,

COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 18 to 36 Months,

Count II for a range from: 18 to 36 Months,

Count _____ for a range from: _____ to _____ Months,

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: Witnesses herein (except Melissa Scott)

Defendant shall remain [] within [] outside of a specified geographical boundary, to wit: Per CCO

The defendant shall participate in the following crime-related treatment or counseling services: Per CCO

The defendant shall undergo an evaluation for treatment for [] domestic violence [] substance abuse

mental health [] anger management and fully comply with all recommended treatment. Per CCO

The defendant shall comply with the following crime-related prohibitions: Per CCO

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

4.14 [] WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the

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defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.15 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020 The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.

5.4 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.5 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. N/A

5.7 OTHER: _____

00-1-04425-1

DONE in Open Court and in the presence of the defendant this date: 4/9/04 NUNC PRO TUNC.

JUDGE
Print name

Margaret Andersen
Margaret Andersen

[Signature]

Deputy Prosecuting Attorney

Print name: P. Grace Kingman
WSB # 10717

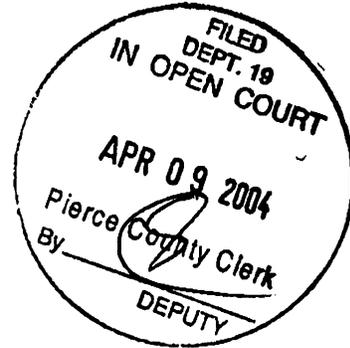
Attorney for Defendant

Print name: Ann Stenberg
WSB # 22596

30332 FOR

Defendant

Print name: Joshua D. Scott



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00-1-04425-1

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 00-1-04425-1

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, by: _____, Deputy Clerk

00-1-04425-1

IDENTIFICATION OF DEFENDANT

SID No. WA18835544
(If no SID take fingerprint card for State Patrol)

Date of Birth 05/24/1979

FBI No. 664588FB5

Local ID No. UNKNOWN

PCN No. UNKNOWN

Other

Alias name, SSN, DOB:



Race:	<input type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/> Black/African-American	<input checked="" type="checkbox"/> Caucasian	Ethnicity:	<input type="checkbox"/> Hispanic	Sex:	<input checked="" type="checkbox"/> Male
	<input type="checkbox"/> Native American	<input type="checkbox"/> Other: :		<input checked="" type="checkbox"/> Non-Hispanic		<input type="checkbox"/> Female	

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb



Right Thumb

Right four fingers taken simultaneously



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, [Signature] Dated: 4-9-04

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: 2017 S. 300TH ST. FEDERALWAY, WA. 98023

APPENDIX “B”

Amended Information

CERTIFIED COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

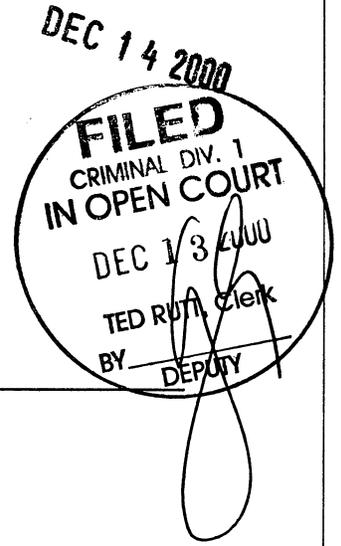
vs.

JOSHUA DEAN SCOTT,

Defendant.

CAUSE NO. 00-1-04425-1

AMENDED INFORMATION



DOB: 05/24/1979
SS#: 535-84-9277

SEX: MALE
SID#: WA18835544

RACE: WHITE
DOL#: UNKNOWN

CO-DEF: DOUGLAS SEAN JAMES-ANDERSON

I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of ROBBERY IN THE FIRST DEGREE, committed as follows:

That DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices, in Pierce County, on or about the 16th day of September, 2000, did unlawfully and feloniously take personal property (other than a firearm) belonging to another with intent to steal from the person or in the presence of Peter Filipiuk and Barrett Thompson of Cascade Custom Jewelers, the owner thereof or a person having dominion and control over said property, against such person's will by use or threatened use of immediate force, violence, or fear of injury to Peter Filipiuk and Barrett Thompson, said force or fear being used to obtain or retain possession of the property or to overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, the defendant or an accomplice was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon, to-wit: a rifle, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370, contrary to RCW 9A.56.190 and RCW 9A.56.200(1)(a)(b) and 9A.08.020, and against the peace and dignity of the State of Washington.

COUNT II

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of ROBBERY IN THE FIRST DEGREE,

AMENDED INFORMATION - 1

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a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices, in Pierce County, on or about the 16th day of September, 2000, did unlawfully and feloniously take personal property (other than a firearm) belonging to another with intent to steal from the person or in the presence of Peter Filipiuk, the owner thereof or a person having dominion and control over said property, against such person's will by use or threatened use of immediate force, violence, or fear of injury to Peter Filipiuk, said force or fear being used to obtain or retain possession of the property or to overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, the defendant or an accomplice was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon, to-wit: a rifle, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370, contrary to RCW 9A.56.190 and RCW 9A.56.200(1)(a)(b) and 9A.08.020, and against the peace and dignity of the State of Washington.

COUNT III

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN JAMES-ANDERSON of the crime of UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That DOUGLAS SEAN JAMES-ANDERSON, in Pierce County, on or about the 16th day of September, 2000, did unlawfully, feloniously, and knowingly own, have in his possession, or under his control a firearm, he having been previously convicted in the State of Washington or elsewhere of a serious offense, to wit: burglary in the second degree, contrary to RCW 9.41.040(1)(a), and against the peace and dignity of the State of Washington.

COUNT IV

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse JOSHUA DEAN SCOTT of the crime of UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, a crime of

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the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That JOSHUA DEAN SCOTT, in Pierce County, on or about on or about the 16th day of September, 2000, did unlawfully, feloniously, and knowingly own, have in his possession, or under his control a firearm, he having been previously convicted in the State of Washington or elsewhere of a serious offense, to wit: residential burglary, contrary to RCW 9.41.040(1)(a), and against the peace and dignity of the State of Washington.

COUNT V

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of POSSESSING STOLEN PROPERTY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices, in Pierce County, on or about on or about the 16th day of September, 2000, did unlawfully, feloniously, and knowingly receive, retain, possess, conceal, or dispose of stolen property other than a firearm, to-wit: a 1990 Chevrolet Blazer, of a value in excess of \$1,500.00, belonging to Esperanza Mattos, with intent to appropriate said property to the use of any person other than the true owner or person entitled thereto, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370, contrary to RCW 9A.56.140(1) and RCW 9A.56.150(1) and 9A.08.020, and against the peace and dignity of the State of Washington.

COUNT VI

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of POSSESSION OF A STOLEN FIREARM, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in

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2 respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of
3 the others, committed as follows:

4 That DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices,
5 in Pierce County, on or about on or about the 16th day of September, 2000, did unlawfully, feloniously, and
6 knowingly receive, retain, possess, conceal, or dispose of a stolen firearm, to-wit: a Colt AR-15 rifle,
7 belonging to Jeff King, with intent to appropriate to the use of any person other than the true owner or
8 person entitled thereto, contrary to RCW 9A.56.140(1) and RCW 9A.56.310(1) and 9A.08.020, and against
the peace and dignity of the State of Washington.

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COUNT VII

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN
JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of POSSESSION OF A STOLEN
FIREARM, a crime of the same or similar character, and/or a crime based on the same conduct or on a series
of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in
respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of
the others, committed as follows:

That DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices,
in Pierce County, on or about on or about the 16th day of September, 2000, did unlawfully, feloniously, and
knowingly receive, retain, possess, conceal, or dispose of a stolen firearm, to-wit: a Ruger mini 14 rifle,
belonging to Jeff King, with intent to appropriate to the use of any person other than the true owner or
person entitled thereto, contrary to RCW 9A.56.140(1) and RCW 9A.56.310(1) and 9A.08.020, and against
the peace and dignity of the State of Washington.

COUNT VIII

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN
JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of THEFT OF A FIREARM, a crime of
the same or similar character, and/or a crime based on the same conduct or on a series of acts connected
together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place
and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as
follows:

That DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices,
in Pierce County, on or about on or about the 16th day of September, 2000, did unlawfully, feloniously, and

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wrongfully obtain or exert unauthorized control over a firearm, to-wit: a Colt .45 pistol, belonging to George Bastich, with intent to deprive said owner of such property, contrary to RCW 9A.56.020 and RCW 9A.56.300(1)(a) and 9A.08.020, and against the peace and dignity of the State of Washington.

COUNT IX

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT of the crime of THEFT OF A FIREARM, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That DOUGLAS SEAN JAMES-ANDERSON and JOSHUA DEAN SCOTT, acting as accomplices, in Pierce County, on or about on or about the 16th day of September, 2000, did unlawfully, feloniously, and wrongfully obtain or exert unauthorized control over a firearm, to-wit: a Smith & Wesson .22 pistol, belonging to George Bastich, with intent to deprive said owner of such property, contrary to RCW 9A.56.020 and RCW 9A.56.300(1)(a) and 9A.08.020, and against the peace and dignity of the State of Washington.

DATED this 16th day of November, 2000.

PIERCE CTY SHERIFF CASE
WA02700

JOHN W. LADENBURG
Prosecuting Attorney in and for said County
and State.

pgc

By: 
P. GRACE COPENHAVER
Deputy Prosecuting Attorney
WSB#: 16717

APPENDIX “C”

Verdict Forms

CERTIFIED COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

CAUSE NO. 00-1-04425-1

SPECIAL VERDICT FORM

FEB 06 2001

We, the jury, return a special verdict by answering as follows:

Was the defendant, Joshua Dean Scott, armed with a deadly weapon at the time of the commission of the crime in Count I?

ANSWER: Yes (Yes or No)

Norman Frink
PRESIDING JUROR

FILED
DEPT. 19
IN OPEN COURT
FEB 05 2001
Pierce County Clerk
By [Signature]
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

CERTIFIED COPY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

CAUSE NO. 00-1-04425-1

SPECIAL VERDICT FORM

We, the jury, return a special verdict by answering as follows:

Was the defendant, Joshua Dean Scott, armed with a deadly weapon at the time of the commission of the crime in Count V?

ANSWER: Yes (Yes or No)

Norman Frink
PRESIDING JUROR

FILED
DEPT. 19
IN OPEN COURT

FEB 05 2001
Pierce County Clerk
By [Signature]
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

CERTIFIED COPY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

CAUSE NO. 00-1-04425-1

SPECIAL VERDICT FORM

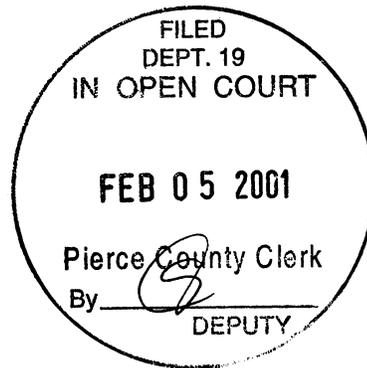
FEB 06 2001

We, the jury, return a special verdict by answering as follows:

Was the defendant, Joshua Dean Scott, armed with a deadly weapon at the time of the commission of the crime in Count II?

ANSWER: Yes (Yes or No)

Norman Frink
PRESIDING JUROR



FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

CERTIFIED COPY

NO. 00-1-04425-1

VERDICT FORM A
Count II

FEB 05 2001

We, the jury, find the defendant, Joshua Dean Scott, Guilty (Not Guilty or Guilty) of the crime of Robbery in the First Degree as charged in Count II.

Noeman Frink
PRESIDING JUROR

FILED
DEPT. 19
IN OPEN COURT

FEB 05 2001
Pierce County Clerk
By [Signature]
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

NO. 00-1-04425-1

VERDICT FORM A
Count I

CERTIFIED COPY

FEB 06 2001

We, the jury, find the defendant, Joshua Dean Scott, Guilty (Not Guilty or Guilty) of the crime of Robbery in the First Degree as charged in Count I.

Noeman Frink
PRESIDING JUROR

FILED
DEPT 19
IN OPEN COURT
FEB 05 2001
Pierce Clerk
By [Signature] DEPUTY

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

CERTIFIED COPY

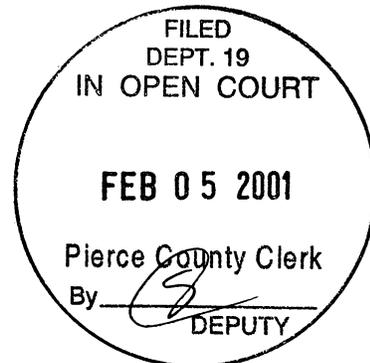
NO. 00-1-04425-1

VERDICT FORM A
Count IV

FEB 05 2001

We, the jury, find the defendant, Joshua Dean Scott, Guilty (Not Guilty or Guilty) of the crime of Unlawful Possession of a Firearm in the First Degree as charged in Count IV.

Norman Frink
PRESIDING JUROR



NO. 00-1-04425-1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

NO. 00-1-04425-1

VERDICT FORM A
Count V

CERTIFIED COPY

FEB 05 2001

We, the jury, find the defendant, Joshua Dean Scott, Guilty (Not Guilty or Guilty) of the crime of Possession of Stolen Property in the First Degree as charged in Count V.

Norman Feink
PRESIDING JUROR

FILED
DEPT. 19
IN OPEN COURT

FEB 05 2001
Pierce County Clerk
By [Signature]
DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff,

vs.

JOSHUA DEAN SCOTT,
Defendant.

NO. 00-1-04425-1

CERTIFIED COPY

VERDICT FORM A
Count VI

We, the jury, find the defendant, Joshua Dean Scott, Guilty (Not Guilty or Guilty) of the crime of Possession of a Stolen Firearm as charged in Count VI.

Norman Frink
PRESIDING JUROR

FILED
DEPT. 19
IN OPEN COURT

FEB 05 2001
Pierce County Clerk
By [Signature]
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

CERTIFIED COPY

NO. 00-1-04425-1

VERDICT FORM A
Count VII

FILED

We, the jury, find the defendant, Joshua Dean Scott, Guilty (Not

Guilty or Guilty) of the crime of Possession of a Stolen Firearm as charged in Count VII.

Norman Firink
PRESIDING JUROR



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

CERTIFIED COPY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

NO. 00-1-04425-1

VERDICT FORM A
Count VIII

100 00 000

We, the jury, find the defendant, Joshua Dean Scott, Not Guilty (Not Guilty or Guilty) of the crime of Theft of a Firearm as charged in Count VIII.

Noeman Frink
PRESIDING JUROR



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA DEAN SCOTT,

Defendant.

CERTIFIED COPY

NO. 00-1-04425-1

VERDICT FORM A

Count IX

FEB 05 2001

We, the jury, find the defendant, Joshua Dean Scott, Not Guilty (Not

Guilty or Guilty) of the crime of Theft of a Firearm as charged in Count IX.

Norman Frink

PRESIDING JUROR



APPENDIX “E”

Unpublished Opinion

CERTIFIED COPY



00-1-04426-9 20419532 MND 02-02-04

IN COUNTY CLERK'S OFFICE

A.M. FEB 02 2004 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.
DOUGLAS SEAN JAMES-ANDERSON,

Appellant.

STATE OF WASHINGTON,

Respondent,

v.
JOSHUA DEAN SCOTT,

Appellant.

No. 27270-9-II Consol.

MANDATE

Pierce County Cause Nos.
00-1-04426-9 & 00-1-04425-1

The State of Washington to: The Superior Court of the State of Washington
in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on April 29, 2003 became the decision terminating review of this court of the above entitled case on January 8, 2004. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs and attorney fees are awarding in the following amounts:

- Judgment Creditor: State of Washington, \$17.91
- Judgment Creditor: Appellate Indigent Defense Fund, \$7,601.57
- Judgment Debtor: Douglas James-Anderson, \$7,619.48

Page Two/Mandate/State v. Douglas James-Anderson, et al., No. 27270-9 Consol.



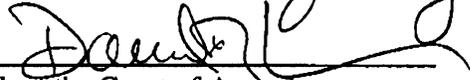
Indeterminate Sentence Review Bd.

**Hon. Marywave Van Deren
Pierce County Superior Court
930 Tacoma Ave. So
Tacoma, WA 98402**

**John Martin Neeb
Attorney at Law
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2102**

**Rita Joan Griffith
Attorney at Law
1305 NE 45th St Ste 205
Seattle, WA, 98105-4523**

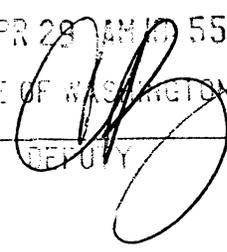
IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Court at
Tacoma, this 28th day of January, 2004.



Clerk of the Court of Appeals,
State of Washington, Div. II

**Kevin R. Cole
Attorney at Law
8015 Se 28th St, STE 214
Mercer Island, WA, 98040**

**Patricia Anne Pethick
Attorney at Law
PO Box 7269
Tacoma, WA, 98406-0269**

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY  DEPUTY

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

STATE OF WASHINGTON, Respondent, v. DOUGLAS SEAN JAMES-ANDERSON, Appellant.
STATE OF WASHINGTON, Respondent, v. JOSHUA DEAN SCOTT, Appellant.

No. 27270-9-II

Consolidated with

No. 27303-9-II

UNPUBLISHED OPINION

HUNT, C.J. -- Douglas James-Anderson and Joshua Scott appeal their convictions for two first degree armed robberies, unlawful possession of a firearm, unlawful possession of stolen property, two counts of possession of a stolen firearm, and other related convictions. Both argue that (1) they were denied the right to a speedy trial under CrR 3.3, and (2) the trial court should have dismissed the special weapons enhancement portion of the information. James-Anderson argues separately that his trial should have been severed from Scott's and that a washed-out

27270-9-II / 27303-9-II

juvenile offense should have been excluded from his offender score. Scott argues separately that the trial court should have dismissed counts VI and VII, possession of a stolen firearm, for insufficient evidence. We reverse counts VI and VII as to Scott, affirm all other convictions for both defendants, and remand James-Anderson for resentencing without including his 1991 juvenile offense in his offender score.

FACTS

I. CRIMES

A. Two Robberies

On September 16, 2000, James-Anderson and Scott parked a Blazer in front of Cascade Custom Jewelers, entered the store, threatened to kill two employees with a rifle, and tied the employees' hands behind their backs. Scott, who was white, was wearing a black or dark blue ski mask and carried the rifle. He guarded the two employees while James-Anderson, who was black, collected items to steal including: loose diamonds, gold, \$700 in cash, three guns, and jewelry from the counters. Scott took a wallet from the pocket of one of the bound employees, Barrett Thompson; they also took a custom-made rose and pearl ring that Thompson had been working on and the store's security video. Scott and James-Anderson conversed with each other during the robbery.

During the robbery, another employee, Peter Filipiuk, had pressed a panic button clipped into his pants pocket. The button alerted the alarm company. Heather Babcock, the shift supervisor at Sonitrol, noticed the "emergency holdup" alarm come onto a computer screen, immediately dispatched the police, and then continued to listen to the robbery in progress; she heard two people who sounded like partners conversing with each other.

27270-9-II / 27303-9-II

Pierce County Sheriff's Department Detective Sergeant Bret Farrar was driving nearby when the "armed robbery in progress" call went out. He pulled into a parking lot just south of the jewelry store and contacted Deputy Anthony Filing, who had just arrived. Filing saw a black male wearing a tan stocking cap, pulled down to his eyebrows, exit the store and open the passenger side door of the Blazer parked in front of the store. Filing ordered the man to stop and to show his hands. The man glanced at Filing and ran away to the north, around the store, and west into a field.

A short time later, a white male left the jewelry store and went to the passenger side of the Blazer. He wore a ski mask and carried an AR-15 semi-automatic rifle and a backpack, which he placed in the Blazer. Farrar ordered the man to drop the rifle and to get on the ground. Instead, the man leaned into the passenger side of the Blazer, did something, stood up, turned, and walked away from the officers, leaving the Blazer's engine running (the ignition was broken). At the corner of the building, the man dropped his hands and started spinning around, which prompted Farrar to fire a shot at him. The man then ran away into the field in the same direction as the first man. Filing attempted to follow but lost sight of the man.

Deputy Kevin Fries also responded to the robbery. He drove west of the store after hearing that one of the suspects had fled in that direction. Fries parked on the street behind the store, exited his patrol car, heard two gunshots, took his position, and observed a black male, later identified as James-Anderson, break through the tree-line running. James-Anderson wore tan pants, as described by the store employees, was naked from the waist up, and wore white socks but no shoes. With Deputy Konkel's assistance, Fries arrested James-Anderson, who falsely identified himself as "Omar Phillips" and gave two different birth dates.

27270-9-II / 27303-9-II

While searching James-Anderson incident to arrest, Konkel found Filipiuk's wallet. As Deputy Page walked from where James-Anderson had been arrested, through the field toward the jewelry store, he found a white "K-Swiss" tennis shoe approximately fifty feet from the store.

Deputy Michael Noel was also in the street behind the jewelry store, where he observed the other deputies arresting James-Anderson. A short distance to the north, a citizen, who had seen a white man running, directed Noel to a location where he found a man matching one of the robber's description's, lying on the ground in some brush. The man, later identified as Scott, was breathing heavily, sweating, covered with "sticker bushes," and wearing white socks but no shoes. Near Scott's right hand was a black ski mask.

Deputy Fries handcuffed Scott and took him to a patrol car. Deputy Filing later confirmed that this man was the same man he had initially chased from the store. Fries advised Scott of his *Miranda*¹ rights on the way to a patrol car. Scott admitted having robbed the jewelry store. At the police station, he gave a full confession, admitting to the robbery and his knowledge that the Blazer was stolen.

B. Possession of Stolen Property and Firearms

Officials recovered almost all of the items taken during the robbery, about eighty thousand dollars worth of goods, in the Blazer. They found a total of two rifles and four pistols on the driver's and passenger's sides of the Blazer, and two backpacks, each containing jewelry items and one containing the security video.

One rifle had a round in its chamber and 18 rounds in its magazine. The other rifle, a .22 caliber Stern Ruger mini 14 semi-automatic rifle, had 36 rounds in its magazine. Both rifles, and

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

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a unique three-faced clock, had been stolen during a residential burglary on September 1. Federal Way Police Department Deputy Jeffrey Paynter recovered the stolen clock at James-Anderson's house on November 21.

One of the pistols found on the Blazer's passenger seat was a loaded .40 caliber semi-automatic pistol that belonged to Filipiuk, who had dropped it when the robbers entered the store. The second pistol was a Ruger Single Six .22 caliber revolver, loaded with five rounds, that belonged to Thompson. The other two pistols, a Colt Mark 4 semi-automatic pistol with a separate magazine containing six rounds, and an unloaded Smith & Wesson .22 caliber semi-automatic pistol, belonged to George Bastaich. Both Thompson's and Bastaich's pistols had been stored in the jewelry store's safe at the time of the robbery.

Esperanza "Hopie" Mattos owned the Blazer that Scott and James-Anderson had driven to the crime scene; neither had her permission to drive the vehicle. Someone had stolen the Blazer from her apartment on September 14. She valued the Blazer at \$5,500. When the vehicle was returned, the driver's side door handle and steering column were damaged.

The only item not recovered immediately after the robbery was the rose-pearl ring. Deputy Curtis Seevers found the ring later when he searched Scott's holding cell at the police station.

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C. Follow-up Investigation

After reviewing the police reports and the surveillance video showing the robbery of the jewelry store, Detective Sergeant Edwin Knutson coordinated a search of the field located behind the jewelry store. The searchers found a green mask, a "K-Swiss" tennis shoe, and a shirt matching the one worn by the black male robber on the video. The items were strewn in a line from the northwest corner of the jewelry store to the spot where police captured Scott and James-Anderson.

II. TRIAL

Scott and James-Anderson were arraigned on September 18, 2000; both remained in custody pending trial, which was set to begin on November 15, the 58th day of the CrR 3.3 speedy trial period. On November 15, the trial court granted a continuance because both defense attorneys needed time to prepare for trial. James-Anderson waived his right to a speedy trial to November 29. Scott did not. Trial was rescheduled for November 29. Scott did not object.

On November 29, the trial date was continued a second time to December 6 because both defense attorneys were involved in other unrelated trials and the deputy prosecutor was absent due to a death in the family. The trial court continued the case to December 6.

On December 6, the trial was continued a third time to December 13 because Scott's attorney was involved in another trial and unavailable to begin Scott's trial. Finding that the continuance was justified for the "due administration of justice" and that the defendants would not be substantially prejudiced, the court continued the case until December 13.

On December 13, trial was postponed one day to December 14 because no courtrooms were available. On the continuance orders, the trial court wrote that the continuance was

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justified for the “due administration of justice” and that the defendants would not be substantially prejudiced.

On December 14, the trial date was continued a fifth time to January 2, 2001, because the judge scheduled to hear the case was assigned to preside in Criminal Division 2 of the Pierce County Superior Court until January 2 and the trial date conflicted with the prosecutor’s vacation schedule.

The jury found both defendants guilty as charged. Before sentencing, James-Anderson stipulated to two previous juvenile adjudications. Scott also had a prior conviction for residential burglary, which was listed as a serious offense.

ANALYSIS

I. CrR 3.3 SPEEDY TRIAL

James-Anderson and Scott assert that their speedy trial rights were violated. We disagree. CrR 3.3(c)(1) requires that a defendant in custody be brought to trial not later than 60 days after arraignment. Here, trial was initially set to begin on November 15, 2000, 58 days after the defendants’ arraignments.

A. Continuances

CrR 3.3(h)(2) gives the trial court discretion to continue a trial when required for the administration of justice and if the defendant will not be substantially prejudiced thereby in the presentation of his defense. Here, the trial court granted the first continuance for two weeks to November 29 because both defense attorneys needed time to prepare for trial and to provide effective representation for the defendants. Under CrR 3.3(g)(3), such a continuance is justified and, therefore, excludable from the 60-day speedy trial period under CrR 3.3(d)(8). *State v*

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Carson, 128 Wn.2d 805, 815, 912 P.2d 1016 (1996). Thus, as of November 29, two days remained to bring the case to trial. Furthermore, James-Anderson waived his right to speedy trial until November 29.

On November 29, the new trial date, both defense counsel requested a second continuance because they were involved in other unrelated trials; moreover, the deputy prosecutor was out of the office due to a death in the family. Acting under CrR 3.3(h)(2), the trial court postponed the trial date one week to December 6. Again, this time was excluded from the 60-day speedy trial period under CrR 3.3(g)(3), and, as of December 6, two days remained in the speedy trial period.

CrR 3.3(d)(8) allows the trial court to extend the time to start trial for “unavoidable or unforeseen circumstances” that cannot be controlled by the parties or the court. On December 6, the new trial date, Scott’s attorney was still engaged in another trial and unable to begin this one. Ruling in writing that the continuance was necessary for the “due administration of justice” and that the defendants would not “be substantially prejudiced in the presentation of the defense,” the trial court “extended” the trial’s start date for five days, “exclusive of Saturdays, Sundays, or holidays,” under CrR 3.3(d)(8) to December 13. CrR 3.3(h)(2). Once again, this extension was excludable from the 60-day speedy trial period, and two days still remained. CrR 3.3(g)(3) and (h)(2).

On December 13, trial was continued a fourth time to December 14 because no courtrooms were available. Defendants argue, and the State concedes, that a continuance for court congestion is improper. *State v. Smith*, 104 Wn. App 244, 252, 15 P.3d 711 (2001). Thus,

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as of December 14, only one day remained of the 60-day speedy trial period and this one-day continuance did not violate the defendants' rights under CrR 3.3.

On December 14, the trial court granted a fifth continuance to January 2, 2001 because the judge assigned to the case was presiding in Criminal Division 2 of the Pierce County Superior Court for the rest of December and attempts to find another judge were eventually abandoned to accommodate the prosecutor's previously scheduled vacation. Additionally, the holiday season was approaching. During the interim two and one-half weeks, punctuated by religious and new year's holidays, the trial court heard and ruled on several substantive pretrial motions, including severance, redaction of Scott's statement, discovery, jury questions, and the size of the jury pool needed to be summoned.

The State argues that the trial effectively commenced when the court began to rule on these pretrial discovery and severance motions on December 14 and 15, the 59th and 60th days of the speedy trial period. The defendants argue that there was no legally sufficient justification for this continuance, thus this period could not be excluded under CrR 3.3(g), and their charges should have been dismissed because they were not brought to trial within 60 days of arraignment as CrR 3.3 requires. Accordingly, we must address two issues: (1) When did the trial commence for purposes of CrR 3.3? (2) If trial actually commenced on January 2, had the speedy trial period expired under CrR 3.3 or was this continuance excludable under CrR 3.3(g)(3) and (h)(2)?

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B. Trial Commencement

Under CrR 3.3, a trial commences when the court calls the case for trial and hears preliminary motions. *Carson*, 128 Wn.2d at 820; *State v. Stackhouse*, 88 Wn. App. 963, 972-73, 947 P.2d 777 (1997). Typically, pretrial motions are heard and the trial immediately follows. James-Anderson contends that his trial did not begin immediately after the pretrial motions because of court congestion, which is not a reason justifying a continuance under CrR 3.3. Br. of App. James-Anderson at 21. We agree with James-Anderson that routine court congestion does not justify a continuance extending beyond speedy trial limits, under either CrR 3.3(d)(8) or CrR 3.3(h)(2). *Smith*, 104 Wn. App. at 252.

The record here shows however, that unlike in *Smith*, trial court congestion did not delay the start of trial. James-Anderson implies that the trial court did nothing but call the case in December and then took no further action until January 2. The record demonstrates otherwise. Here, the trial court spent considerable time resolving substantial pretrial motions before the holidays so that when trial began the first business day in January, there would be no further delays.

On December 14, the 59th day of the speedy trial period, the trial court ruled on a discovery motion by the State. The next day, the 60th day, the trial court read the parties' memoranda and heard argument on James-Anderson's motion for severance, before which the trial proper could not commence. The State requested copies of both defendants' supporting memoranda and case law in support of James-Anderson's CrR 3.5 motion, a CrR 3.6 motion, and another severance motion by December 26, and the trial court so ordered.

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On December 20, the trial court reconvened to address additional preliminary issues, including: (1) a defense motion to exclude evidence of the stolen clock that the State was going to offer under ER 404(b); (2) submission of a short questionnaire for jurors; (3) jury questions and whether the parties could have them prepared by January 2 for the court to review; (4) the number of jurors the parties wanted the Jury Administration to have available the day after the holidays; and (5) the State's redaction of Scott's statement.

Ideally, it would have been preferable to have shortened the two and one-half week period during which the trial court resolved the pretrial motions. But the delay in scheduling was in large part due to defense counsel's trial schedules pushing the trial date unexpectedly into the holiday season and into conflicts with the trial court's previous criminal department obligation and the prosecutor's vacation. Moreover, given the number and complexity of pretrial matters, together with the parties' need to brief and to respond to legal issues, and the intervening holidays, considerable time would have been consumed in any event and the jury likely might not have been empanelled much sooner than it was — the day after New Year's Day.

There is no bright line rule governing the length of permissible continuances under CrR 3.3. Nor does the record here support the defense contention that the trial court called the trial in December simply to avoid the CrR 3.3 speedy trial period. We hold, therefore, that the trial court commenced trial within the 60-day period required by CrR 3.3 when it began hearing the pretrial motions on December 14 and continued resolving multiple, substantial pretrial motions and issues during the following weeks. *Stackhouse, supra*. Accordingly, we cannot say that the trial court abused its discretion by denying defendants' motion to dismiss for failure to bring the case to trial in a timely manner.

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II. MOTION TO SEVER

We review the denial of a motion to sever for an abuse of discretion. CrR 4.4. A defendant must show specific prejudice to support a claim that the trial court abused its discretion. *State v. Alsup*, 75 Wn. App. 128, 131, 876 P.2d 935 (1994).

James-Anderson contends that the trial court abused its discretion by denying his motion to sever. He argues two grounds: (1) Scott's exculpatory redacted statements improperly implied James-Anderson's guilt, and (2) James-Anderson's and Scott's defenses were irreconcilable.

A. Redacted Statement

The officer read to the jury Scott's redacted statement about his participation in the robbery, in pertinent part, as follows:

Scott said he turned around and looked on the floorboard behind the driver and passenger seat of the vehicle and saw a cache of weapons. He noted two assault weapons and several handguns. He said he also observed two ski masks which were in the vehicle. Scott said he looked at the ignition of the vehicle and saw there were no keys in the ignition of the Chevy Blazer. He then assumed he was in a stolen vehicle. Scott said he had never seen the Chevy Blazer prior to today. Scott told me he did not want to go to jail for being caught in a stolen vehicle.

Report of Proceedings (RP) at 1000-01.

James-Anderson asserts that (1) although his name had been excised from Scott's redacted statement, the statement clearly referred to him; (2) because codefendant Scott did not testify at trial, James-Anderson was unable to confront this "witness" against him; and (3) therefore, his Sixth Amendment² constitutional rights were violated.

² U.S. CONST. amend. VI.

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As a general rule, a defendant is deprived of his confrontation rights under the Sixth Amendment when incriminated by a pretrial statement from a codefendant who did not testify during trial. *Bruton v. United States*, 391 U.S. 123, 136, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968). But admission of a non-testifying codefendant's confession redacted to omit all reference to a defendant does not, on its face, violate that defendant's Sixth Amendment confrontation rights. *Richardson v. Marsh*, 481 U.S. 200, 208, 107 S. Ct. 1702, 95 L. Ed. 2d 176 (1987). Nor are these rights violated where the codefendant's statement later becomes incriminating when linked with other evidence. *Richardson*, 481 U.S. at 208.

Here, the trial court allowed Detective Harai to read codefendant Scott's redacted statement. The statement did not mention James-Anderson, contained no suggestive blanks or the word "deleted,"³ and mentioned only a few times that another person was involved in the crime. The statement did not implicate James-Anderson.

Based on the federal cases just cited, we recently laid out a test for properly redacted statements: A redacted statement must be (1) facially neutral; (2) free of obvious deletions, such as "blanks" or "Xs"; and (3) accompanied by a limiting instruction. *State v. Larry*, 108 Wn. App. 894, 905, 34 P.3d 241 (2001). Here, Scott's redacted statement met all three of these requirements.

³ In *Gray v. Maryland*, 523 U.S. 185, 192, 118 S. Ct. 1151, 140 L. Ed. 2d 294 (1998), the prosecution redacted the nontestifying codefendant's statement by replacing the defendant's name with the word "deleted" or a blank space. The Supreme Court held that these redactions violated the *Bruton* rule because use of "deleted" or a blank space "obviously refer[s] directly to someone, often obviously the defendant, and . . . involve[s] inferences that a jury ordinarily could make immediately, even were the confession the very first item introduced at trial." *Gray*, 523 U.S. at 196.

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First, the statement was facially neutral: It did not mention James-Anderson's name. Second, there were no obvious deletions — no “blanks,” “Xs,” strike-throughs, or the word “deleted.” Detective Harai read the statement to the jury as a summary in order to avoid the appearance of a redacted statement. Moreover, the record does not show that the jury received a hard copy of the statement. Third, the trial court gave a limiting instruction before the jury heard the statement.

James-Anderson fails to show prejudice from Scott's redacted statement. Thus, the trial court did not abuse its discretion in denying James-Anderson's motion to sever his trial from Scott's.

B. Irreconcilable Defenses

The burden is on James-Anderson to show irreconcilable defenses and prejudice from the trial court's denial of his motion to sever his trial from Scott's. *See State v. Grisby*, 97 Wn.2d 493, 507, 647 P.2d 6 (1982). James-Anderson fails to meet this burden.

Although at trial both defendants attempted to point to each other as the principal robber, their defenses were not thereby irreconcilable. *See Grisby*, 97 Wn.2d at 508. Mutually antagonistic defenses, such as the ones here, are irreconcilable so as to warrant severance only if the challenging defendant shows that the defenses are mutually exclusive such that one must be believed and the other disbelieved. *State v. McKinzy*, 72 Wn. App. 85, 90, 863 P.2d 594 (1993); *Grisby*, 97 Wn.2d at 508.⁴ Such is not the case here.

⁴ In *Grisby*, the co-defendants' defenses were not inherently antagonistic because they agreed they both had been at the crime scene. Rather, their main disagreement was which of them had killed the victims. The Supreme Court held the trial court did not abuse its discretion in denying severance, which defendants had requested based on their antagonistic defenses. *Grisby*, 97 Wn.2d at 508.

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Similar to *Grisby*, both Scott and James-Anderson agreed and admitted that they were both present at the jewelry store during the robbery, and each wanted the jury to believe that the other was the mastermind of the robbery. As in *Grisby*, the defenses here were not irreconcilable, and the trial court did not abuse its discretion in denying the motion to sever.

III. JUVENILE CONVICTIONS

James-Anderson further asserts that his prior juvenile offenses were erroneously included in his offender score calculation. The State responds that because James-Anderson did not turn 23 until after the 1997 amendment to the Sentencing Reform Act (SRA), his prior juvenile adjudications were properly included in his offender score.

James-Anderson was born on September 27, 1976. He committed his first juvenile offense at age 14 in June 1991. He committed his second juvenile offense at age 18 in September 1994. He turned 23 in September 1999. He committed his current offenses in September 2000.

Before the 1997 SRA amendments, RCW 9.94A.030(12)(b)(ii) provided that an adult offender score would include prior juvenile offenses only if the defendant was 15 or older at the time he committed the crimes.⁵ In 1996, subsection (iii) was added to provide that, in addition to (ii), prior juvenile offenses were includable in an offender score only if the defendant was less

⁵ Former RCW 9.94A.030(12)(b)(ii) (1996), amended by Laws of 1997, ch. 338, §2, provided in pertinent part:

“Criminal history” shall always include juvenile convictions for sex offenses and serious violent offenses and shall also include a defendant’s other prior convictions in juvenile court if: . . .

....

(ii) the defendant was fifteen years of age or older at the time the offense was committed.

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than 23 at the time he committed the offense. *State v. Smith*, 144 Wn.2d 665, 670, 30 P.3d 1245 (2001). In 1997, the Legislature amended RCW 9.94A.030(12)(b) to eliminate these age restrictions such that all prior juvenile offenses would count when calculating an offender score for sentencing purposes.⁶

Inclusion of a prior conviction in an offender score generally depends on the law in effect when the current offense was committed. *Smith*, 144 Wn 2d at 672. But the Supreme Court has held that the 1997 amendment did not “revive” juvenile offenses that had already washed out under former RCW 9.94A.030(12)(b)(ii), before enactment of the 1997 SRA amendment requiring inclusion of such offenses. *Smith*, 144 Wn.2d at 674-75.

Applying the *Smith* rationale here, (1) James-Anderson’s 1991 juvenile offense washed out under former RCW 9.94A.030(12)(b)(ii) because he was 14 years old when he committed it and he turned 18 before the 1997 amendment; (2) this 1991 juvenile offense remained washed out even after the 1997 SRA amendment to RCW 9.94A.030(12); and (3) that offense should not have counted toward his offender score here. *See State v. Cruz*, 139 Wn.2d 186, 193, 985 P.2d 384 (1999); *State v. Dean*, 113 Wn. App. 691, 699, 54 P.3d 243 (2002).

The result differs, however, for James-Anderson’s 1994 juvenile offense, which he committed when he was 18, also before the 1997 SRA amendment. James-Anderson was older than 15 when he committed this offense in 1994, and he did not turn 23 until 1999, two years after the 1997 amendment eliminated the 23-year-old “wash-out” provision. Therefore, because he did not turn 23 before the 1997 amendment, his 1994 juvenile offense did not wash out, and

⁶ RCW 9.94A.030(12) provides, in part: “Criminal history” means the list of a defendant’s prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

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his 1994 juvenile offense was properly included in his offender score under the post-SRA amendment version of RCW 9.94A.030(12).

IV. SUFFICIENCY OF EVIDENCE -- POSSESSION OF STOLEN FIREARMS

Scott contends that the evidence is insufficient to support his two stolen firearm possession convictions, Counts VI and VII (the weapons that the police found in the stolen Blazer) because the State failed to prove beyond a reasonable doubt that he knew the firearms were stolen. He further asserts that the evidence was insufficient to show that he possessed both stolen firearms.

A. Standard of Review

We review a post-conviction challenge to the sufficiency of evidence in the light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). If any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, the evidence was sufficient. *Salinas*, 119 Wn.2d at 201. All reasonable inferences from the evidence are drawn in favor of the State and interpreted strongly against the defendant. *Salinas*, 119 Wn.2d at 201. A claim of insufficiency admits the truth of the State's evidence and all inferences drawn from it. *Salinas*, 119 Wn.2d at 201.

B. Knowledge

In order to convict a defendant of possession of a stolen firearm the State must prove beyond a reasonable doubt that a defendant knew that the firearm in his possession was stolen. *State v. Anderson*, 141 Wn.2d 357, 366, 5 P.3d 1247 (2000). Here, the to-convict jury instructions included this element.

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Scott admitted to the police that he knew the Blazer was stolen, he had looked at its contents on the way to the robbery, and he had noticed two ski masks, several handguns, and two rifles in the stolen Blazer. But he did not admit knowing that these items were stolen, and there is no evidence in the record before us showing that Scott also knew that these firearms were stolen. Nor is there any evidence supporting a reasonable inference of such knowledge.

On the contrary, it is just as reasonable to infer that the ski masks and firearms were already in the stolen Blazer before they set out to rob the jewelry store. For example, in Scott's redacted statement, he refers only to having been in the car, seeing the weapons, seeing the tampered ignition of the Blazer with no keys, and inferring that the vehicle was stolen. Accordingly, we reverse Scott's convictions for possession of stolen firearms because there is insufficient evidence to support these convictions under *Anderson*.

V. FIREARM SENTENCING ENHANCEMENTS

The defendants next argue that because the information charging Count V omitted critical words — “and in the commission thereof the defendant was armed with a firearm, to wit: a rifle” — the trial court should have dismissed the weapon enhancements in that count. Br. of Resp. at 29-30.

A. Standard of Review

RCW 10.37.052 provides that the information must be presented in such a manner “to enable a person of common understanding to know what is intended.” The charging document need not use the exact words of the statute; rather, it is sufficient if the words conveying the same meaning and import are used to give reasonable notice to the defendant of the charged accusation. *State v. Kjorsvik*, 117 Wn.2d 93, 108-09, 812 P.2d 86 (1991). If the information

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contains allegations of the crime that was meant to be charged, it is sufficient even though it does not contain the statutory language. *State v. Campbell*, 125 Wn.2d 797, 801, 888 P.2d 1185 (1995).

Moreover, when a defendant waits until after a verdict to object to the way in which the offense was charged, the reviewing court applies a liberal standard. *Kjorsvik*, 117 Wn.2d at 103. Under this liberal standard, we apply a two-prong analysis: (1) Do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and if so, (2) can the defendant show that he was nonetheless actually prejudiced by the inartful language that caused a lack of notice? *Kjorsvik*, 117 Wn.2d at 105-06. We answer yes to the first question and no to the second.

B. *Kjorsvik* Test

Count V of the information read as follows:

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse JOSHUA DEAN SCOTT and DOUGLAS SEAN JAMES-ANDERSON of the crime of POSSESSING STOLEN PROPERTY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That JOSHUA DEAN SCOTT and DOUGLAS SEAN JAMES-ANDERSON, acting as accomplices, in Pierce County, on or about the 16th day of September, 2000, did lawfully, feloniously, and knowingly receive, retain, possess, conceal, or dispose of stolen property other than a firearm, to-wit: a 1990 Chevrolet Blazer, of a value in excess of \$1,500.00, belonging to Esperanza Mattos, with intent to appropriate said property to the use of any person other than the true owner or person entitled thereto, and in the commission thereof the defendant was armed with a firearm, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370, contrary to RCW

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9A.56.140(1) and RCW 9A.56.150(1) and 9A.08.020, and against the peace and dignity of the State of Washington.

Clerk's Papers (CP) James-Anderson at 3, CP Scott at 18.

The defendants contend that this part of the information provided no alleged facts to support the idea that either defendant or an accomplice was armed with a deadly weapon or displayed what appeared to be a deadly weapon during commission of the crime or immediate flight from the crime.

The State concedes that the language "and in the commission thereof the defendant was armed with a firearm, to wit: a rifle" was inadvertently omitted from the information. Br. of Resp. at 29-30. The State argues that even so, the only "reasonable interpretation" of the language used is that it sought a sentencing enhancement based on use of a weapon. We agree.

Our Supreme Court has held that an information is sufficient if it contains statutory language and cites the statute(s) the State relies on in charging a defendant. *State v. Theroff*, 95 Wn.2d 385, 392, 622 P.2d 1240 (1980) (citing *State v. Cosner*, 85 Wn.2d 45, 50-51, 530 P.2d 317 (1975)). See also *State v. Henthorn*, 85 Wn. App. 235, 239, 932 P.2d 662 (1997). Here, as the State argues, the language used in Count V, "adding additional time to the presumptive sentence as provided in RCW 9.94A.370," gave notice to the defendants that the State sought an enhanced sentence based on possession of a firearm while in possession of the stolen Blazer. Thus, it met the first prong of the *Kjorsvik* test.

B. Prejudice

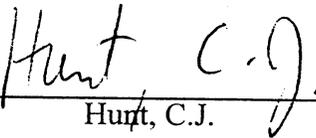
Count V of the information also meets the second prong of the *Kjorsvik* test because the defendants have failed to show (1) lack of notice of the firearm enhancement charge that might have impaired their ability to mount a defense, and (2) any prejudice resulting from the

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inadvertent omission of some of the standard charging language. Accordingly, the trial court did not err in denying the defendants' motion to dismiss the weapons enhancement charge in Count V.

We affirm all convictions except Counts VI and VII, Scott's convictions for possession of stolen firearms, which we reverse. We remand James-Anderson's case for recalculation of his offender score and resentencing without including his 1991 juvenile offense.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.


Hunt, C.J.

I concur:


Bridgewater, J.

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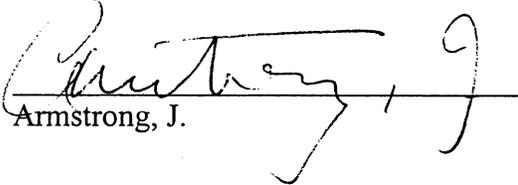
ARMSTRONG, J. (dissenting) -- On December 14, the trial court continued the trial for more than two weeks beyond the defendants' speedy trial time because of a crowded schedule. Nevertheless, the majority holds that the defendants' speedy trial rights were not violated because trial commenced when the court began hearing pretrial motions on December 14.

We have approved minor delays beyond the speedy trial period where the case has been assigned and called for trial, but jury selection, opening statements, and testimony do not start for several days while the trial court hears pretrial motions. For example, we decided that the speedy trial rule was not violated where the court heard pretrial motions on the last day of the speedy trial period, but did not empanel a jury until the following week. *State v. Carlyle*, 84 Wn. App. 33, 925 P.2d 635 (1996). Division One reached a similar conclusion in *State v. Andrews*, 66 Wn. App. 804, 832 P.2d 1373 (1992).

But the delay in these cases was short. In *Carlyle*, the court heard pretrial motions on a Friday, and a jury was empanelled the following Wednesday. In *Andrews*, which involved three consolidated cases, the trial was delayed from Friday to the following Monday, then another three days, and finally one more day. More importantly, we have allowed these delays only where the case has been *called* for trial. “[A] trial commences when the case is assigned or called for trial and the trial court hears and disposes of preliminary motions.” *State v. Carson*, 128 Wn.2d 805, 820, 912 P.2d 1016 (1996); *see also Carlyle*, 84 Wn. App. at 36; *Andrews*, 66 Wn. App. at 810. And our reasoning has been that hearing preliminary motions after a case is called for trial “is considered a customary and practical phase of the trial.” *Andrews*, 66 Wn. App. at 810.

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Here, the majority goes beyond the bounds we have set in earlier cases. This case was not called for trial on December 14 or 15; rather, it was called for the purpose of continuing it more than two weeks. And the fact that during the two week period the trial court heard pretrial motions does not alter this essential reality. In short, this case was not called for a trial that was delayed a few days because of pretrial motions. Because of this, I dissent. I would hold that because the defendants' speedy trial rights were violated, this case should be dismissed.


Armstrong, J.

APPENDIX “D”

Jury Instructions

00-1-04425-1

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CERTIFIED COPY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

State of Washington,
Plaintiff,
v.
**Joshua Dean Scott, and
Douglas Sean James-Anderson,**
Defendant.

NO. 00-1-04425-1
NO. 00-1-04426-9

**COURT'S INSTRUCTIONS
TO THE JURY**

2 FEB - 6 2001

DATED this 1 day of February, 2001.

Marywave Van Deren
HONORABLE MARYWAVE VAN DEREN

FILED
DEPT. 19
IN OPEN COURT
FEB 01 2001
Pierce County Clerk
By *[Signature]*
DEPUTY

ORIGINAL

INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by the prosecuting attorney by filing a document, called an information, informing the defendant of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the

testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

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

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

INSTRUCTION NO. 2

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses.

Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff, and has the burden of proving each element of the crime beyond a reasonable doubt.

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

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

INSTRUCTION NO. 4

Neither defendant is compelled to testify, and the fact that the defendants have not testified cannot be used to infer guilt and/or prejudice either of them in any way.

INSTRUCTION NO. 5

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

INSTRUCTION NO. 6

A separate crime is charged against each defendant. The charges have been joined for trial. You must consider and decide the case of each defendant separately. Your verdict as to one defendant should not control your verdict as to any other defendant.

All of the instructions apply to each defendant unless a specific instruction states that it applies only to a specific defendant.

INSTRUCTION NO. 7

You may give such weight and credibility to any alleged out-of-court statements of the defendant(s) as you see fit, taking into consideration the surrounding circumstances.

INSTRUCTION NO. 2

You may not consider an admission or incriminating statement made out of court by one defendant as evidence against a codefendant.

INSTRUCTION NO. 9

Evidence has been introduced in this case against Douglas Sean James-Anderson on the subject of a stolen clock for the limited purpose of proving identity of the perpetrator on all counts and for the purpose of showing knowledge in counts VI and VII. You must not consider this evidence for any other purpose, nor may you consider this evidence in evaluating the guilt of Joshua Dean Scott.

INSTRUCTION NO. 10

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.

INSTRUCTION NO. 11

A person is an accomplice in the commission of the crime if, with knowledge that it will promote or facilitate the commission of the crime charged, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

INSTRUCTION NO. 12

A person commits the crime of robbery in the first degree when in the commission of a robbery or in immediate flight therefrom he or she is armed with a deadly weapon or displays what appears to be a firearm or other deadly weapon.

INSTRUCTION No. 13

To convict the defendant, Joshua Dean Scott, of the crime of robbery in the first degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 16th day of September, 2000, the defendant or an accomplice unlawfully took personal property not belonging to the defendant or an accomplice, ^{m/ 2/1/01} from the person or in the presence of Peter Filipuk and Barrett Thompson of Cascade Custom Jewelers;
- (2) That the defendant intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or injury to that person or to the property of another;
- (4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (5) That the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon; and
- (6) The acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 14

To convict the defendant, Douglas Sean James-Anderson, of the crime of robbery in the first degree as charged in Count 1, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 16th day of September, 2000 the defendant or an accomplice unlawfully took personal property not belonging to the defendant or an accomplice, from the person or in the presence of Peter Filipiuk and Barrett Thompson of Cascade Custom Jewelers;

(2) That the defendant intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person or to the person or property of another;

(4) That the force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

(5) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon; and

(6) That the acts occurred in the State of Washington.

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

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

INSTRUCTION No. 15

To convict the defendant, Joshua Dean Scott, of the crime of robbery in the first degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 16th day of September, 2000, the defendant or an accomplice unlawfully took personal property not belonging to the defendant or an accomplice, from the person or in the presence of Peter Filipuk; ^{mm 2/1/01}
- (2) That the defendant intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or injury to that person or to the property of another;
- (4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (5) That ^{in the} the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon; and
- (6) The acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 16

To convict the defendant, Douglas Sean James-Anderson, of the crime of robbery in the first degree as charged in Count ~~II~~, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 16th day of September, 2000 the defendant or an accomplice unlawfully took personal property not belonging to the defendant or an accomplice, from the person or in the presence of Peter Filipiuk;

(2) That the defendant intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person or to the person or property of another;

(4) That the force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

(5) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon; and

(6) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 17

A person commits the crime of robbery when he or she unlawfully and with intent to commit theft thereof takes personal property, not belonging to the defendant, from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person or to the person or property of ^{another. MW 2/1/01} anyone. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial.

INSTRUCTION NO. 19

A taking from the presence of another can occur in the presence of a person, even though that person was not immediately present, where that person, by force or fear, had been removed from or prevented from approaching the place from which the taking occurred.

INSTRUCTIONS

INSTRUCTION NO. 20

Theft means to wrongfully obtain or exert unauthorized control over the property or services of another, or the value thereof, with intent to deprive that person of such property or services.

INSTRUCTION NO. 21

Wrongfully obtains means to take wrongfully the property or services of another.

INSTRUCTION NO. 22

The term "deadly weapon" includes any firearm, whether loaded or not.

INSTRUCTION NO. 23

A person is "armed" with a weapon if the weapon is easily accessible and readily available for either offensive or defensive purposes.

INSTRUCTION NO. 24

A person commits the crime of unlawful possession of a firearm in the first degree when he has previously been convicted, or adjudicated as a juvenile, of a serious offense and knowingly owns or has in his possession or control any firearm.

INSTRUCTION NO. 25

To convict the defendant, Douglas Sean James-Anderson, of the crime of unlawful possession of a firearm in the first degree as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 16th day of September, 2000, the defendant knowingly had a firearm in his possession or control;

(2) That the defendant had previously been adjudicated guilty as a juvenile of Burglary in the Second Degree, which is a serious offense; and

(3) That the possession or control of the firearm occurred in the State of Washington.

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

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

INSTRUCTION NO. 26

To convict the defendant, Joshua Dean Scott, of the crime of unlawful possession of a firearm in the first degree as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 16th day of September, 2000, the defendant knowingly had a firearm in his possession or control;
- (2) That the defendant had previously been convicted of a serious offense; and
- (3) That the possession or control of the firearm occurred in the State of Washington.

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

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

INSTRUCTION NO. 27

A defendant constructively possesses an item if the defendant had dominion and control over it or over the premises where the item was found.

A vehicle is “premises” for purposes of determining whether a defendant constructively possessed an item.

A person can be in constructive possession jointly with another person.

Exclusive control by a defendant is not required for a finding of constructive possession.

Evidence of a defendant’s close proximity to an item is not, standing alone, sufficient to establish constructive possession.

INSTRUCTION NO. 28

Possession means having a firearm in one's custody or control. It may be either actual or constructive. Actual possession occurs when the weapon is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item, and such dominion and control may be immediately exercised.

INSTRUCTION NO. 29

A person knows or acts knowingly or with knowledge when he or she is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge.

Acting knowingly or with knowledge also is established if a person acts intentionally.

INSTRUCTION NO. 31

A person commits the crime of possessing stolen property in the first degree when he or she knowingly possesses stolen property other than a firearm which exceeds \$1500 in value.

Possessing stolen property means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

INSTRUCTION NO. 32

To convict the defendant, Joshua Dean Scott, of the crime of possessing stolen property in the first degree in Count V, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 16th day of September, 2000, the defendant knowingly possessed stolen property other than a firearm, to wit: a 1990 Chevrolet Blazer;
- (2) That the defendant acted with knowledge that the property had been stolen;
- (3) That the defendant or an accomplice withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto;
- (4) That the value of the stolen property exceeded \$1500; and
- (5) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 34

Stolen means obtained by theft or robbery.

INSTRUCTION NO. 35

Value means the market value of the property or services at the time and in the approximate area of the act.

INSTRUCTION NO. 36

A person commits the crime of possessing a stolen firearm when he or she knowingly possesses, carries, delivers, sells, or is in control of a stolen firearm.

Possessing a stolen firearm means knowingly to receive, retain, possess, conceal, or dispose of a stolen firearm knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

INSTRUCTION NO. 31

To convict the defendant, Douglas Sean James-Anderson, of the crime of possessing a stolen firearm as charged in Count VI, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 16th day of September, 2000, the defendant knowingly possessed, carried, delivered, sold or was in control of a stolen firearm, a Colt AR-15 rifle;
- (2) That the defendant acted with knowledge that the property had been stolen; and
- (3) That the defendant or an accomplice withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto;
- (4) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 38

To convict the defendant, Joshua Dean Scott, of the crime of possessing a stolen firearm as charged in Count VI, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 16th day of September, 2000, the defendant knowingly possessed, carried, delivered, sold or was in control of a stolen firearm, a Colt AR-15 rifle;

(2) That the defendant acted with knowledge that the property had been stolen; and

(3) That the defendant or an accomplice withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto;

(4) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 39

To convict the defendant, Joshua Dean Scott, of the crime of possessing a stolen firearm as charged in Count VII, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 16th day of September, 2000, the defendant knowingly possessed, carried, delivered, sold or was in control of a stolen firearm, a Ruger mini 14 rifle;
- (2) That the defendant acted with knowledge that the property had been stolen; and
- (3) That the defendant or an accomplice withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto;
- (4) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 40

To convict the defendant, Douglas Sean James-Anderson, of the crime of possessing a stolen firearm as charged in Count VII, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 16th day of September, 2000, the defendant knowingly possessed, carried, delivered, sold or was in control of a stolen firearm, a Ruger mini 14 rifle;

(2) That the defendant acted with knowledge that the property had been stolen; and

(3) That the defendant or an accomplice withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto;

(4) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 41

A person is guilty of theft of a firearm if he or she commits a theft of any firearm.

INSTRUCTION NO. 42

To convict the defendant, Joshua Dean Scott, of the crime of theft of a firearm as charged in Count VIII, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 16th day of September, 2000, the defendant wrongfully obtained or exerted unauthorized control over a firearm belonging to another, a Colt 45 Pistol belonging to George Bastaich;
 - (2) That the defendant intended to deprive the other person of the firearm;
- and
- (3) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 43

To convict the defendant, Douglas Sean James-Anderson, of the crime of theft of a firearm as charged in Count VIII, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 16th day of September, 2000, the defendant wrongfully obtained or exerted unauthorized control over a firearm belonging to another, a Colt 45 Pistol belonging to George Bastaich;

(2) That the defendant intended to deprive the other person of the firearm;
and

(3) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 144

To convict the defendant, Joshua Dean Scott, of the crime of theft of a firearm as charged in Count IX, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 16th day of September, 2000, the defendant wrongfully obtained or exerted unauthorized control over a firearm belonging to another, a Smith & Wesson .22 Pistol belonging to George Bastaich;
- (2) That the defendant intended to deprive the other person of the firearm;
and
- (3) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 45

To convict the defendant, Douglas Sean James-Anderson, of the crime of theft of a firearm as charged in Count IX, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 16th day of September, 2000, the defendant wrongfully obtained or exerted unauthorized control over a firearm belonging to another, a Smith & Wesson .22 Pistol belonging to George Bastaich;
- (2) That the defendant intended to deprive the other person of the firearm;
and
- (3) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 46

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. 47

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted into evidence, these instructions, and a verdict form for each defendant and for each count.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty," according to the decision you reach.

Since this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror will sign it and notify the judicial assistant, who will conduct you into court to declare your verdict.

INSTRUCTION NO. 48

You will also be furnished with special verdict forms. If you find the defendant(s) not guilty do not use the special verdict forms. If you find the defendant(s) guilty, you will then use the special verdict forms and fill in the blank with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict forms "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you have a reasonable doubt as to the question, you must answer "no".

INSTRUCTION NO. 49

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime of robbery in the first degree as charged in Counts I and II and possession of stolen property in the first degree as charged in Count V.

A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.

If one participant to a crime is armed with a deadly weapon, all accomplices who know the participant is armed are deemed to be so armed, even if only one deadly weapon is involved.