

No. 35693-7-II

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

STATE OF WASHINGTON,
Respondent,

v.

STEVEN E. PINK,
Appellant.

yn

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE DAVID FOSCUE, JUDGE

BRIEF OF RESPONDENT

H. STEWARD MENEFEE
Prosecuting Attorney
for Grays Harbor County

BY: *Gerald R Fuller*
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Chief Criminal Deputy
WSBA #5143

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RESPONDENT'S COUNTER-STATEMENT OF THE CASE

The defendant was convicted of Conspiracy to Commit Murder in the First Degree, RCW 9A.28.040 / 9A.32.030(1)(a), and Assault in the First Degree, RCW 9A.36.011(1)(a)(c) on October 25, 1999, following jury trial. The court imposed an exceptional sentence of 600 months on Count I, Conspiracy to Commit Murder in the First Degree, and a standard sentence range of 147 months on Count II, Assault in the First Degree. The counts were ordered to run consecutively pursuant to the former RCW 9.94A.400(1)(b), now RCW 9.94A.589(1)(b), as both offenses were serious violent offenses. The offender score included a point because the court determined that the defendant was on community custody at the time of the offenses. Notice of Appeal was filed on November 8, 1999, Court of Appeals Cause No. 25327-5-II.

On direct appeal the defendant challenged the calculation of his offender score, alleging that the State had failed to prove the comparability of a prior conviction from Oregon for Robbery in the Second Degree. (Brief of Appellant, p. 43-47). He also challenged the trial court's finding that the offenses were not the same criminal conduct.

An order was signed by the Court commissioner remanding the

matter to the superior court to determine whether the defendant's Oregon robbery conviction was properly included in his offender score. Following hearing, the trial court determined that the defendant's robbery conviction was comparable to Robbery in the First Degree under Washington law.

By unpublished opinion dated September 23, 2003, the defendant's convictions were affirmed. Court of Appeals Cause No. 25327-5-II. In particular, the Court of Appeals affirmed the decision of the trial court determining that the offenses were not same criminal conduct and the trial court's determination regarding the Oregon robbery conviction.

Initially, the Court of Appeals also affirmed the exceptional sentence. Subsequently, by order amending the opinion dated November 15, 2005, the exceptional sentence was vacated and the matter was remanded to the Superior Court for resentencing.

At the resentencing, the defendant once again raised the issue of same criminal conduct, as well as the comparability of the prior Oregon conviction. The defendant also challenged for the first time, the court's ability to make a finding that the defendant was on community custody at the time of the commission of the offense. The trial court refused to revisit these issues. The trial court imposed a standard range sentence on each offense and order that they run consecutively.

RESPONSE TO ASSIGNMENTS OF ERROR

1. The law of the case doctrine prohibits relitigation of the issue concerning whether the defendant's convictions constitute "same criminal conduct."

The issue of whether the defendant's convictions constitute "same criminal conduct" was litigated and decided against the defendant in his first direct appeal. The "law of the case" doctrine prohibits this Court from redeciding the same legal issue. State v. Clark, 143 Wn.2d 731, 745, 24 P.3d 1006 (2001). Subsequent appellate reconsideration of an identical legal issue will only be granted where the holding of the prior appeal is clearly erroneous and would result in a manifest injustice. Colson v. County of Spokane, 111 Wn.2d 256, 264, 759 P.2d 1196 (1988).

Such is not the case here. The Court of Appeals in its initial determination made a reasonable, rational determination that the two offenses did not constitute same criminal conduct.

2. The trial court properly imposed consecutive sentences. (Response to Assignments of Error 1, 2 and 3.)

Offenses which are found to constitute "same criminal conduct" are to be counted as one offense with the standard range being the range of the offense that yields the highest offender score. RCW 9.94A.589. This is an exception to the default rule that all convictions must be counted separately. In re Markel, 154 Wn.2d 262, 274, 111 P.2d 249 (2005). A finding that two offenses are "same criminal conduct" can operate only to

decrease the otherwise applicable sentencing range. Markel, 154 Wn.2d at 274.

In Markel, supra, the defendants were charged with multiple counts of child rape. They claimed that under the principles of Apprendi and Blakely, that the determination of same criminal conduct was a jury issue. The Washington Supreme Court specifically rejected this argument holding as follows, 154 Wn.2d at 274-75:

The jury determined that the Markels were guilty of four separate counts, and aggravating factors were considered by the judge. Accordingly, Apprendi and Blakely are not implicated under the facts of the Markels' cases because the "same criminal conduct" finding could only have lowered their applicable sentencing range and, therefore, the Markels are not entitled to resentencing.

Interesting enough, the Supreme Court in Markel pointed out that the same argument had been rejected on direct appeal and in their first Personal Restraint Petition.

The trial court made the determination that the offenses did not constitute same criminal conduct at the original sentencing. This determination was affirmed by the Court of Appeals. Accordingly, upon remand, under the terms of RCW 9.94A.589, since they are both serious violent offenses, the trial court had no discretion but to determine that these offenses must run consecutively. The sentences imposed were expressly authorized by statute. They are within the "statutory maximum" as defined in Blakely.

3. The defendant may not relitigate the validity of his robbery conviction.

The issue of the defendant's Oregon robbery conviction was raised on the defendant's first appeal. The defendant alleged in his first appeal that the court improperly calculated his offender score by including the Oregon conviction and that the Oregon conviction must be disregarded because no comparability hearing was held at the initial sentencing.

The Court of Appeals remanded the matter to the trial court for the entry of findings concerning the comparability of the Oregon conviction and one other matter not related to this appeal. The validity of the defendant's Oregon conviction was before the court at the time of its decision in the initial appeal. The court declined to overrule the finding of the trial court that the Oregon robbery conviction was comparable to Robbery in the Second Degree in the State of Washington.

The issue was fully briefed by both sides during the first appeal. All exhibits and pertinent documents from the remand hearing were before the court. (CP 25327-5-II, 1-9, 10-20, 29-30). The Court of Appeals, by its decision, affirmed the finding of the trial court that the robbery conviction was comparable and properly included in the defendant's offender score. Copies of pertinent documents from the remand hearing are attached as Appendix A.

4. The trial court properly determined the comparability of the Oregon robbery conviction. (Response to Assignment of Error 4 and 5).

Washington law employs the two-part test to determine the comparability of a foreign conviction. The trial court first determines whether the out-of-state conviction is legally comparable - whether the elements of the out of state offense are substantially similar to elements of the Washington offense. If the elements of the foreign offense are broader than Washington counterpart, the sentencing court must then determine whether the offense is factually comparable-whether the conduct underlying the foreign offense would have violated comparable Washington state law. See State v. Morley, 134 Wn.2d 588, 606, 952 P.2d 167 (1998). In making the factual comparison, the sentencing court is entitled to rely on facts in the foreign record that are admitted, stipulated to or proven beyond a reasonable doubt. State v. Thiefault, 160 Wn.2d 409, 158 P.3d 580 (2007).

The pertinent Oregon statutes are as follows:

- 164.395 Robbery in the third degree. (1)**
A person commits the crime of robbery in the third degree if in the course of committing or attempting to commit theft or unauthorized use of a vehicle as defined in ORS 164.135 the person uses or threatens the immediate use of physical force upon another person with the intent of:
- (a) Preventing or overcoming resistance to the taking of the property or to retention thereof immediately after the taking; or
 - (b) Compelling the owner of such property or another person to deliver the property or to engage in other conduct which might aid in the commission of the theft or

unauthorized use of a vehicle.

(2) Robbery in the third degree is a Class C felony. [1971 c.743 §148; 2003 c.357 §1]

164.405 Robbery in the second degree.

(1) A person commits the crime of robbery in the second degree if the person violates ORS 164.395 and the person:

(a) Represents by word or conduct that the person is armed with what purports to be a dangerous or deadly weapon; or

(b) Is aided by another person actually present.

(2) Robbery in the second degree is a Class B felony. [1971 c.743 §149]

In the case at hand, it is apparent that the Oregon conviction is legally comparable. There is no necessity to go behind the record to determine the actual facts of the Oregon offense. The record in the final appeal included a copy of the indictment to which the defendant pled guilty and a copy of the judgment and sentence, see Appendix A.

The indictment, on its face, sets forth the essential elements of the crime of Robbery in the Second Degree under Oregon law: (1) threatened use of physical force upon the victim with intent to prevent resistance to the defendant's taking of the property; (2) the theft of property from the person of the victim; and (3) being armed with a purported to be a revolver. This is the exact equivalent of Robbery in the First Degree under Washington law, RCW 9A.56.200(1).

The trial court, in order to make this determination, did not need to go into the facts of the prior conviction. The defendant pled guilty to an

Information which charged a crime, the elements of which are identical to Robbery in the First Degree under Washington law.

This assignment of error must be denied.

5. The fact of the defendant's community custody was properly included in the calculation of the offender score.

There is no dispute that the defendant was on community custody at the time of the commission of these offenses. Indeed, the testimony at trial reflected that these offenses were committed against the officer who was supervising his community custody. A warrant had issued for his arrest for violation of his community custody.

RCW 9.94A.525(17) directs that a point shall be added to the offender score if the defendant was on community placement. Community custody is part of community placement. RCW 9.94A.030(7).

The issue raised herein by the defendant has been expressly addressed by the Washington Supreme Court. State v. Jones, 159 Wn.2d 231 (2006). The fact of the defendant's community custody is the equivalent to the fact of a prior conviction and as such, proof of the defendant's prior community custody need not be proven beyond a reasonable doubt to the trier of fact. Jones, supra, 159 Wn.2d at 246-247.

This assignment of error must be rejected.

CONCLUSION

The sentence imposed must be affirmed.

Respectfully Submitted,

By: *Gerald R Fuller*
GERALD R. FULLER
Chief Criminal Deputy
WSBA #5143

APPENDIX A

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III.

Ms. Lash did not marry the defendant subsequent to May 7, 1999.

IV.

The Oregon conviction is comparable to Robbery in the First Degree under Washington law.

Based upon the foregoing findings of fact, the court enters the following:

CONCLUSIONS OF LAW

I.

The court has jurisdiction over the parties and subject matter herein.

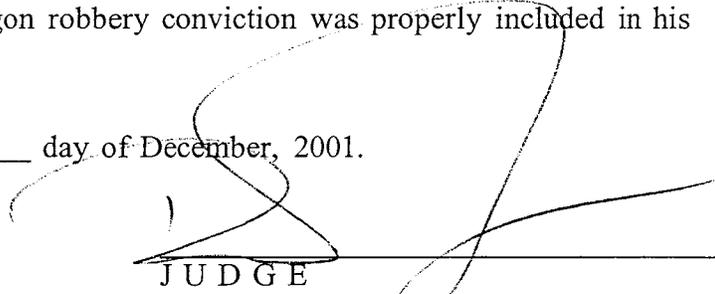
II.

Trial counsel had no basis to assert the marital privilege.

The purported marriage of 1/3/99 between Steven Pink and Michelle Lash was void ab initio.

The defendant's prior Oregon robbery conviction was properly included in his offender score.

DATED this 11th day of December, 2001.



JUDGE

Presented by:

Approved (for entry) (as to form)

GERALD R. FULLER
Chief Criminal Deputy
WSBA #5143

HAROLD KARLSVIK
Attorney for Defendant
WSBA #23026

Certificate of Clerk of the Superior Court of Washington in and for Grays Harbor County. The above is a true and correct copy of the original instrument which is on file or of record in this court.

FILED IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT OF WASHINGTON COUNTY DEC -6 1992

Done this _____ day of AUG 2007
Cheryl Brown, Clerk By _____ Deputy Clerk

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 STEVEN E. PINK,)
)
 Defendant(s).)

NO. ⁹⁹ 01-1-60-1

MEMORANDUM OF AUTHORITIES
RE: HEARING ON REMAND

FACTUAL BACKGROUND

As the Court knows, the defendant was convicted of Assault in the First Degree while armed with a deadly weapon and Conspiracy to Commit Murder in the First Degree. One of the witnesses at trial was Michelle Lash. Ms. Lash testified at trial that she and the defendant went to Reno, Nevada, and "...ended up getting married, so Steve would have an alibi." (RP 389-90). This "marriage" was on January 1, 1999. This is the entire reference in the record concerning their alleged marriage. Based on this single reference, the defendant asserted to the Court of Appeals that trial counsel was incompetent for not invoking the marital privilege to preclude Ms. Lash from testifying.

The defendant also asserted that the trial court had improperly calculated the defendant's sentence range because it could not be determined from the record whether the defendant's conviction from the State of Oregon for robbery was comparable to a felony offense under the laws of the State of Washington.

304

1 The Brief of Respondent, when filed, contained appendices including a marriage certificate
2 showing a marriage between Michelle Lash and Patrick McFadden on August 30, 1998, and
3 a petition for dissolution of that marriage that had been filed by Ms. Lash subsequent to her
4 purported marriage to the defendant. Also, the State attached a copy of the Judgment and
5 Sentence and Information for the Oregon robbery conviction.

6 The defendant moved to strike Respondent's Brief, ultimately on April 20, 2001, the
7 court commissioner granted a motion to supplement the record and ordered that the matter
8 be remanded to the trial court for a factual hearing. A copy of that order is attached.

9
10 ISSUE PRESENTED

11 **(1) Was there a valid objection to Michelle Lash's testimony under the**
12 **marital privilege?**

13 **Answer: No.**

14 The facts concerning the validity of the defendant's "marriage" are undisputed. Ms.
15 Lash and Patrick McFadden were married on April 6, 1998, in Aberdeen, Washington. A
16 copy of the marriage certificate is attached. Ms. Lash filed a petition for dissolution of that
17 marriage in Grays Harbor County Cause 99-3-3-0 on January 6, 1999. A petition for
18 dissolution of marriage was granted on May 7, 1999. They did not subsequently remarry.

19 The marital privilege, RCW 5.60.060(1), applies only where there is a valid existing
20 marriage. If one of the spouses has a prior undissolved marriage, there can be no
21 application of the marital privilege. State v. Denison, 78 Wn.App. 566, 897 P.2d 437
22 (1995).

23 In Denison, the defendant attempted to assert on appeal that trial counsel had been
24 incompetent for failure to assert an alleged marital privilege. The court in Denison held
25 that there could not ineffective of counsel for failure to assert the marital privilege when
26

1 trial counsel was aware that the prior marriage was void and the marital privilege did not
2 apply. Denison, 78 Wn.App. at 565:

3 The privilege applies only where there is a valid existing
4 marriage. *State v. Cohen*, 19 Wn.App. 600, 608, 576 P.2d 933
5 (1978). Here, Tamara Denison testified she married Mr.
6 Denison after the events at issue in this case had occurred. She
7 also testified she later learned he had been married previously
8 and had not obtained a divorce before their marriage. If that is
9 true, the marriage Tamara and Mr. Denison was void ab initio.
10 RCW 26.09.040(4)(b)(i): Barker v. Barker, 31 Wn.2d 506, 197
11 P.2d 439 (1948).

12 This is exactly the case at hand. Any attempt by the defendant to assert marital
13 privilege is frivolous.

14 **(2) Is the defendant's prior conviction for robbery in Oregon comparable to
15 a Washington offense?**

16 **Answer: Yes.**

17 This issue was not raised at sentencing because the defendant agreed that it was
18 appropriate to include the Oregon conviction in the offender score. For the first time of
19 appeal, the defendant asserted that this conviction could not be used to calculate the
20 offender score because the trial court did not go through the process of making a
21 comparison to the Oregon conviction and existing Washington law.

22 At sentencing the trial court found that the defendant had an offender score of 8
23 calculated as follows: Theft in the Second Degree, Taking a Motor Vehicle Without
24 Owner's Permission, Unlawful Possession of a Firearm, Violation of the Uniform
25 Controlled Substances Act - Possession of Marijuana in Excess of 40 grams, and Violation
26 of the Uniform Controlled Substances Act - Delivery of Methamphetamine - 1 point each;
defendant's status on community placement at the time of the commission of the offense -

1 1 point, and Oregon Robbery in the Second Degree conviction - 2 points (this was a violent
2 offense).

3 This Court must now conduct a "comparability" analysis. See State v. Berry, 141
4 Wn.2d 121, 131 (2000):

5 The first step in the comparability analysis is to identify any
6 comparable Washington offenses by comparing the elements of
7 the out of state crime with the elements of the potentially
8 comparable Washington crimes. ...If comparable offenses are
9 found, the court decides which is the most comparable offense
and determines its classification under Washington law....
After determining its classification under Washington law, the
court treats the out of state conviction "as if it were a
conviction for the comparable Washington offense."

10 Application of this analysis to the case at hand renders an obvious result. The
11 certified copy of the indictment sets forth the elements of the Oregon offense. It is
12 immediately apparent that the defendant's Oregon conviction is comparable to Robbery in
13 the First Degree, RCW 9A.56.200. Robbery in the First Degree and Robbery in the Second
14 Degree are violent offense. RCW 9.94A.030(41). Accordingly, when scoring the
15 defendant's present convictions, this prior conviction counts as 2 points since Assault in the
16 First Degree and Conspiracy to Commit Murder in the First Degree are also violent
17 offenses. RCW 9.94A.360(8).

18 The defendant's offender score was properly calculated.

19 DATED this 5 day of December, 2001.

20 Respectfully Submitted,

21
22 By: Gerald R. Fuller
23 GERALD R. FULLER
24 Chief Criminal Deputy
25 WSBA #5143

26 GRF/jab

The Court of Appeals
of the
State of Washington

DAVID PONZOHA, CLERK
DIVISION II

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950 BROADWAY
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April 20, 2001

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CASE #: 25327-5-II/State vs Steven E. Pink

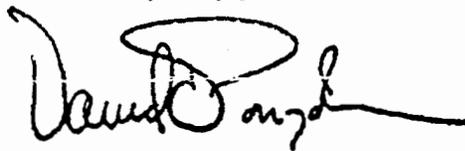
Counsel:

The action indicated below was taken in the above-entitled case.

COMMISSIONER SKERLEC ENTERED THE FOLLOWING RULING:

Respondent's motion for additional evidence pursuant to RAP 9.11 is granted. This matter is remanded to the trial court, so that court may determine 1) whether there was a valid objection to Ms. Lash's testimony under the marital privilege, and 2) whether appellant's Oregon robbery conviction was properly included in his offender score. Within 60 days of the date of this ruling, the trial court shall enter findings and conclusions with respect to these matters. Proceedings in this court are stayed pending the determination of the trial court.

Very truly yours,



David C. Ponzoha
Court Clerk

RECEIVED
APR 23 2001
PROSECUTING ATTORNEY
GRAYS HARBOR COUNTY

MARRIAGE CERTIFICATE

STATE OF WASHINGTON }
County of Grays Harbor } ss

No 50214

THIS IS TO CERTIFY that the undersigned a District Court Judge
by authority of a Marriage License bearing the date of the 30 day of March A.D. 1998
and issued by the County Auditor of Grays Harbor County did on the 6th day of April
A.D. 1998 at the hour of 5:20^{PM} at Morrison Park Aberdeen
in the County of Grays Harbor and State aforesaid, join in LAWFUL WEDLOCK
Patrick Joseph McFadden of Aberdeen State of Washington
and Michelle Lynette Lash of Aberdeen State of Washington
with their mutual assent, in the presence of Lor Wilson witness
and Steven Lash witness.

IN TESTIMONY WHEREOF, Witness the signatures of the parties to said ceremony, the witnesses and myself this 6 day of
April A.D. 1998

WITNESSES	PARTIES	OFFICIATING CLERGYPERSON OR OFFICER
<u>Lor Wilson</u> SIGNATURE	<u>Michelle Lash</u> SIGNATURE	<u>Thomas A. Copland</u> PRINT NAME
<u>Steven Lash</u> SIGNATURE	<u>Patrick J. McFadden</u> SIGNATURE	<u>[Signature]</u> SIGNATURE
		<u>400 W. 4th - Aberdeen</u> ADDRESS

Filed <u>4-16</u> 19 <u>98</u>	<u>Vern Spatz</u> County Auditor
Book <u>124</u> Page _____	By <u>[Signature]</u> Deputy

NOTE— This certificate must be returned to the Auditor of Grays Harbor County, Montesano, Washington within 30 days of the ceremony, under penalty of a fine of not less than \$25.00 or more than \$300.00.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

No. 143,876

THE STATE OF OREGON,)
)
Plaintiff,))
)
vs.)
)
STEVEN E. PINK,)
)
Defendant.)

RECEIVED
OCT 3 2000
PROSECUTING ATTORNEY
GRAYS HARBOR COUNTY

JUDGMENT

This matter coming on regularly before the Court on the 27th day October, 1983; the State of Oregon appearing by John B. Wilson, Deputy District Attorney for Marion County, and the defendant, above-named, appearing in open court in person and by his attorney, Tim O'Neill; and

IT APPEARING TO THE COURT that on the 15th day of September, 1983, the defendant entered a plea of guilty to the criminal offense of ROBBERY IN THE SECOND DEGREE, and the Court having inquired of the defendant of the facts and circumstances surrounding the charge and his plea; and the Court having inquired of the defense attorney and the prosecutor concerning the facts and circumstances surrounding the charge; and the Court being fully advised in the premises accepted the plea of guilty and ordered a Pre-Sentence Investigation; NOW, THEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that the plea of guilty be and it hereby is, entered of record; and

IT IS FURTHER ORDERED AND ADJUDGED that the defendant, above-named, is guilty of the criminal offense of ROBBERY IN THE

CHRIS VAN DYKE
DISTRICT ATTORNEY FOR MARION COUNTY, OREGON
MARION COUNTY COURTHOUSE
SALEM, OREGON 97301

1 SECOND DEGREE; and

2 IT IS FURTHER ORDERED AND ADJUDGED that the defendant be
3 committed to the legal and physical custody of the Oregon State
4 Corrections Division for an indeterminate period of time, the
5 maximum of which is ten (10) years; and

6 IT IS FURTHER ORDERED AND ADJUDGED that the State Board
7 of Parole shall not release the defendant on parole until he has
8 served a mandatory minimum of five (5) years imprisonment, pur-
9 suant ot ORS 161.610; the Court finding beyond a reasonable doubt
10 that the defendant used a firearm during the commission of the
11 criminal offense in this case, and there were no mitigating
12 circumstances; and

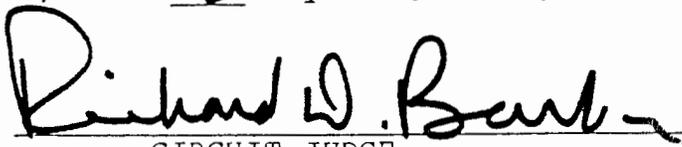
13 IT IS FURTHER ORDERED AND ADJUDGED that upon parole,
14 the defendant shall pay restitution, through the Trial Court
15 Clerk, in the amount of \$180.00 to the U.S. Postal Office and
16 \$328.00 to American Economy Insurance Co.; and

17 IT IS FURTHER ORDERED AND ADJUDGED that the Trial Court
18 Clerk shall disburse said restitution as follows:

19 U. S. Postal Office
20 West Sayton Contract Station
21 West Stayton, Oregon.....\$180.00

22 American Economy Insurance Co.
23 c/o Commack Insurance Agency
24 First Street
25 Stayton, Oregon.....\$328.00

26 Dated at Salem, Oregon, this 1st day of Nov., 1983.

27 
28 RICHARD W. BARKER
CIRCUIT JUDGE

CHRIS VAN DYKE
DISTRICT ATTORNEY FOR MARION COUNTY, OREGON
MARION COUNTY COURTHOUSE
SALEM, OREGON 97301

In the Circuit Court, of the State of Oregon

FOR THE COUNTY OF MARION

THE STATE OF OREGON, Plaintiff

vs,

STEVEN E. PINK,

Defendant

143874
SECRET
INDICTMENT

ORS 164.415 - F/A
405 F/B

CLERK OF CIRCUIT COURT

AUG 31 1983 PM 4:11

STATE OF OREGON
CIRCUIT COURT
CLERK

The above named defendant is accused by the Grand Jury of the County of Marion and State of Oregon, by this indictment of the criminal offense of

second
ROBBERY IN THE ~~FIRST~~ DEGREE

committed as follows:

The above named defendant on the 22nd day of July, 1983, in the County of Marion and State of Oregon then and there being, did then and there knowingly, unlawfully and feloniously threaten the immediate use of physical force upon Linda Smiley, and was armed with ^{what purports to be} a deadly weapon, to-wit: a revolver, while in the course of committing theft of property, to-wit: lawful currency of the United States of America, with the intent of preventing resistance to the said defendant's taking of the said property,

contrary to the Statutes in such cases made and provided, and against the peace and dignity of the State of Oregon.

Dated at Salem, in the county aforesaid, this 31st day of August, 1983.

Witnesses examined before the Grand Jury:

David Watts - MCSO
Linda Smiley

CHRIS VAN DYKE
District Attorney

By: *[Signature]*
Deputy District Attorney

SMM:dw

Yun

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

STATE OF WASHINGTON,

Respondent,

No.: 35693-7-II

v.

DECLARATION OF MAILING

STEVEN E. PINK,

Appellant.

DECLARATION

I, Barbara Chapman hereby declare as follows:

On the 8-28-07 day of August, 2007, I mailed a copy of the Brief of Respondent to Peter B. Tiller; Attorney at Law; P. O. Box 58; Centralia, WA 98561-0058, and Steven E. Pink 277511; Washington State Penitentiary; 1313 North 13th Avenue; Walla Walla, WA 99362, by depositing the same in the United States Mail, postage prepaid.

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

Barbara Chapman