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ASSIGNMENT OF ERROR

Appellant assigns as error the trial court's refusal to sentence the appellant based on application of RCW 9.94A.589(1)(a), and the merger doctrine.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The appellant was convicted of robbery in the first degree with a deadly weapon enhancement, burglary in the first degree with a deadly weapon enhancement, and assault in the second degree with a deadly weapon enhancement based on events which occurred on November 3, 2006, when the appellant and an accomplice burglarized the residence of Lanita Camba in Longview, Washington in the early morning hours of that date. The appellant and his accomplice accosted Camba in her bedroom, demanding her wallet and money; Julian Leong, a guest of Camba who was sleeping in another room, came to her assistance and struggled with the suspects but he was overpowered and held at knife and gunpoint and tied up with rope by the appellant and his accomplice, who then completed their robbery and escaped from the premises. At the time of sentencing, the appellant argued that the offenses of burglary of the premises, robbery of Camba and assault of Leong all constituted the same course of criminal conduct, and he should have been sentenced pursuant to the terms of RCW 9.94A.589(1)(a), previously codified as

RCW9.94A.400(1)(a). He also argued that the offenses were subject to the merger doctrine, since these offenses were committed in furtherance of one criminal objective. The trial court rejected these arguments and sentenced the appellant accordingly. Did the trial court err in refusing to find that all three offenses comprised the same course of criminal conduct, and in refusing to apply the merger doctrine, in sentencing the appellant?

STATEMENT OF THE CASE

The sentencing of the appellant was conducted on March 15, 2007 in Cowlitz County Superior Court, the Honorable Judge James Warne presiding. The prosecutor began by informing the court that the appellant's offender score on the crimes to which he had entered guilty pleas on March 8, 2007. It was indicated that the appellant had 1 point for being on community custody at the time these offenses had occurred. (RP 1) The prosecutor then began a description of the events giving rise to the charges, and defense counsel objected on the basis that the information, particularly in reference to the presence of children during the course of events, was objectionable and irrelevant, also pointing out that the appellant had never conceded the accuracy or truth of any of the allegations for purposes of an Alford Plea. (RP 2, 3). The prosecutor then asked the court to impose the high-end sentence in this case, which was 102 months plus 60 months for

various enhancements to be added on to whatever the court would impose (RP 3, Lines 21-25. RP 4, Lines 1 & 2).

Defense counsel then argued that the assault in this case based on the facts acknowledged in the appellant's statement of plea of guilty and also based on the probable cause statement, was conducted in furtherance of the robbery and comprised the same course of criminal conduct with that offense. The defense counsel argued that the assault should merge into the robbery, noting that the statute pertaining to the same course of conduct regarding to sentencing was a more specific statute than the anti-merger statute, and thus should be given preference to the more general statute. The defense counsel argued that consequently, the burglary, the robbery, and the assault charges all came within the purview of RCW 9.94A.400, (RP 4, Lines 6-23). It is also argued that all of these offenses were conducted in furtherance of the same planned objective, which was accomplishing the robbery. Defense counsel cited the case of State v Rienks, 46 W.App. 537, which also involved charges of burglary, robbery and assault, wherein the court indicated that even where the assault was conducted against a different victim than the victim of the burglary, it was in furtherance of the same criminal objective, i.e., achieving the robbery, noting this was exactly the same fact pattern which was present in this case. Counsel concluded his argument that based on these facts and law, all three offenses in this case should be scored as

one, rather than scoring the three offenses separately, (RP 5, Lines 1-13).

The prosecutor argued that under the anti-merger statute, burglary and the other crimes are not the same criminal conduct and the assault involved a different victim than the robbery or the victim of the burglary. (RP 5, Lines 14-25).

Defense counsel noted that the statute defining the crime of robbery indicates that if there is assault or force exerted against the victim or someone else in the course of a robbery, that constitutes the offense of robbery. Defense counsel pointed out that the assault, which was conducted against the friend of the robbery victim, within a few feet of the robbery victim, falls exactly into that category. Defense counsel also referenced the ruling of the court in Tresenriter, 102 W.App. 486, which indicated that notwithstanding the anti-merger burglary statute, where all of the offenses comprised the same course of criminal conduct pursuant to RCW 9.94A.400, that statute takes precedence. The court took a brief recess to read the cases cited above (PR 6).

When court reconvened, the court indicated that he was using the probable cause statement as establishing the facts for the purpose of this argument and also indicated that he was struggling with the reasoning set forth in the Rienks case. The court indicated that according to how he interpreted that case, it didn't make any sense to him and that the analysis that did make sense to him, was that if an

element of one of the crimes is a necessary element of the other, then it merges, but if they are separate crimes they do not merge and they are not the same criminal conduct even though they occur at the same time. Consequently, the court ruled that the charge of burglary in the first degree was totally separate from the robbery and so the burglary and the robbery in this case do not merge. The court also held that the assault of the robbery victim's friend is not the assault of the robbery victim, and so those two charges do not merge. The court concluded that all three charges are separate. (RP 7, Lines 2-22).

Defense counsel responded by indicating that the cases cited involve a situation wherein an assault when committed in the course of a robbery, the assault does merge into the robbery. Defense counsel also emphasized for the record is that the defense argument regarding sentencing relied on the theory of merger, as well as the argument concerning the same course of criminal conduct. (RP 8, Lines 1-6). The defense counsel reiterated that one manner in which a robbery can be committed is by taking property from another through the use of force or threatened use of force against that person, or another person, and that the latter option involved exactly what had happened under the facts of this case. (RP 8, Lines 4-12). Defense counsel indicated that the facts of this case involved two people going into the residence of the robbery victim, Ms. Camba. She is held down on the bed and Mr. Leong, the assault victim, was put down on the floor of the room by force, and was assaulted with a knife, in the furtherance of the

defendant's objective of accomplishing a robbery. The robbery was of Camba's property, but the assault of Leong was in the course of and in furtherance of that robbery. Defense counsel contended that even if the court was not open to the idea of these offenses constituting the same course of criminal conduct, the assault clearly merged into the robbery. (RP 8, Lines 13-21). Defense counsel also contended that the reasoning utilized by the court in Rienks is fairly well accepted and was still current law. (RP 8, Lines 22-25). Defense counsel reiterated that that case clearly held that when an assault is conducted against someone other than the robbery victim but the assault is committed in order to accomplish the robbery, it doesn't matter if it involves a different victim (RP 9, Lines 1-6). When the court inquired if it would make any difference if a person was killed during the commission of a robbery, defense counsel responded that the robbery would then merge into the murder and that so a person would not be able to avoid a murder charge simply by virtue of the fact that a robbery had also been committed, which appeared to be the court's concern. The defense counsel concluded that it was clear from the facts that the burglary and the assault had both been committed in order to accomplish a robbery, and all involved the same plan and course of conduct and so that the ruling in Rienks controlled the disposition of this issue, again arguing that the assault and the robbery merged, and that all three offenses involved the same course of criminal conduct. (RP 9, Lines 11-25, RP 10, Lines 1-5). The court again noted that the

intention in assaulting Mr. Leong was to prevent him from rescuing the victim; he came to the rescue and then was assaulted. (RP 10, Lines 6-8). The defense counsel agreed that under those facts, if a person who is trying to accomplish a robbery prevents a person who is attempting to stop the robbery by assaulting that person, the assault is clearly in furtherance of accomplishing the robbery. (RP 10, Lines 9-13). The court then concluded by holding that the ruling in State v Wade, 133 W.App. 855 provided a closer analysis.

The court sentenced the appellant to 102 months for the robbery, 75 months on the burglary, and 43 months on the assault for combined sentence of 102 months, plus a 24-month enhancement added for each offense, (RP 14, Lines 10-25, RP 15, Lines 1-17). After some discussion as to whether the appellant had a right to appeal the sentence, the court finally agreed that he did have such a right to appeal and so advised the appellant. (RP 16).

ARGUMENT

THE THREE OFFENSES COMPRISE THE SAME COURSE OF CRIMINAL CONDUCT.

It is the contention of the appellant that the crimes of robbery in the first degree, burglary in the first degree and assault in the second degree encompass the same criminal conduct and the appellant should have been sentenced accordingly, pursuant to RCW 9.94A.589.

In State v Tili, 139 W2d 107, 985 P2d 365 (1999), our Supreme Court considered the legislative plan underlying RCW 9.94A.400(1)(a), subsequently re-codified as RCW 9.94A.589(1)(a). The court indicated that "RCW 9.94A.400(1)(a) requires multiple-current offenses encompassing the same criminal conduct to be counted as one crime in determining the defendant's offender score. "Same criminal conduct", as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim." RCW 9.94A.400(1)(a). Because sentences determined under RCW 9.94A.400(1)(a) are served concurrently, "it seems clear that the legislative plan accepts the possibility that a single act may result in multiple convictions, and simply limits the consequences of such convictions. State v Calle, 125 W2d 769, 781-82, 888 P2d 155 (1995)." 139 W2d at 119, 120.

The case of State v Rienks, 46 W.App 537, 731 P2d 1116 (1987), involved the same determination which is at issue in the present case, whether the offenses of burglary, robbery and assault all comprised the same course of criminal conduct, and thus considered as one crime in determining criminal history at sentencing. In that case, Rienks and another individual went to a residence for the purpose of collecting money that the occupant owed to a third person. They knocked and when the door was opened by a visitor, Rienks entered, shoved a pistol into the visitor's face and pushed him against the wall, ascertained he was not the occupant and then continued

searching for the occupant, and the effectuated a robbery in the residence. On appeal, Rienks argued that the assault committed against the visitor encompassed the same criminal conduct as the robbery committed against the occupant. In addressing Rienks' claim, the court cited the then recent case of State v Edwards, 45 W.App. 378, 725 P2d 442(1982), which was interpreting the phrase "encompassing the same criminal conduct." In that case, the defendant was in a car of his former supervisor when he pointed a gun at her. Later she drove into a fire station in an attempt to get help and when a paramedic approached the car, Edwards waived the gun at him. On appeal, the court in that case held that the kidnapping of the supervisor and the assault on the paramedic were intimately related and there was no substantial change in the nature of the criminal objective, since the kidnapping was continuing and in progress at the time the assault occurred, and the assault was committed in furtherance of the kidnapping. The court in Rienks noted that there was some slight factual distinction between Edwards and Rienks in that in Edwards, since the assault occurred before the robbery but the court in Rienks held that such a distinction did not make a difference in its analysis of the situation. The court also noted that in Edwards, supra, the court in that case relied in large part on State v Adcock, 36 W.App. 699, 676 P2d 1040 (1984) and State v Callaway, 42 W.App. 420, 711 P2d 382 (1985), which interpreted the phrase "same course of conduct". The court in Adcock defined the term as conduct that is

“committed as part of any ordered or continuing sequence or under any recognizable scheme or plan”. Adcock 36 W.App. at 706. In Callaway, the court further refined the phrase “same course of conduct”, indicating that the phrase implies “some physical or causal connection between offenses that, in many cases, may be more circumscribed than the connection between offenses committed as part of a “recognizable scheme or plan”, Callaway, 42 W.App at 423. In Callaway, the court stated that “two or more offenses are considered to have been committed as part of a “single course of conduct” if during that conduct “there was no substantial change in the nature of the criminal objective.”” Callaway, at 423-24. The court in State v Rienks, supra, upon consideration of the above authorities, held that “under the standard set forth in Callaway and Adcock and adhered to in Edwards, the burglary, robbery, and first degree assault, all occurring on October 18, 1984, encompass the same criminal conduct. Three offenses were committed as part of a recognizable scheme or plan, Adcock, 36 W.App at 706, 676 P2d 1040, and were committed with no substantial change in the nature of the criminal objective, Callaway, 42 W.App at 423-24, 711 P2d 382, i.e., robbing Kenny [the occupant]. Rienks’ only purpose in assaulting Jeffrey [the visitor] was to get to Kenny. As in Edwards, there was no independent motive for the secondary crime; rather, the objective was to accomplish or complete the primary one. Thus we hold that the trial court erred in determining that the burglary, robbery, and first degree assault did not

all encompass the same criminal conduct under RCW 9.94A.400(1)(a)". 46 W.App. at 543, 544.

In the present case, the record reflects that the trial court, in making its determination in regard to whether the three offenses comprise the same course of criminal conduct for sentencing purposes relied on the probable cause statement which had been filed when the case was initiated by the state, and a copy of that probable cause is attached hereto as Appendix A for ease of reference. This statement describes a "home invasion robbery" that occurred in the early morning hours of November 3, 2006 by the appellant and an accomplice for the purpose of robbing the occupant, Lanita Camba, of her wallet and money. They accosted Camba in her bedroom, demanding her wallet and money. Julian Leong, a visitor at the residence who was staying in another room, came into her bedroom to help her and struggled with the suspects, but he was overpowered by the suspects and held at knife and gunpoint by both suspects who then tied Leong up with rope, which then enabled the suspects to effectuate the robbery and leave after committing these offenses. It is clear from this fact pattern that the primary objective of the suspects as described in the probable cause statement was to effectuate the robbery, i.e., the taking of the wallet and money from Camba by force or fear of violence and the only purpose in assaulting Leong was to prevent him from obstructing the robbery by holding him at knife and gunpoint and tying him up. Thus, just as in State v Rienks, supra, the trial court erred in determining that

the burglary, robbery and assault charges did not encompass the same criminal conduct and the appellant should have been sentenced for these offenses on that basis, pursuant to RCW 9.94A.589(1)(a).

THE CHARGED OFFENSES WERE SUBJECT TO THE MERGER DOCTRINE.

The state in State v Calle, 125 W2d 769, 776, 888 P2d 155 (1995), held that although the constitutional guarantee against double jeopardy provided by the Fifth Amendment to the United States Constitution and as set forth in the Washington State Constitution protects against multiple punishments for the same offense, the legislature has the power to define criminal conduct and to assign judgment to it. Therefore, where a defendant's act implicates multiple criminal statutes, a court weighing a double jeopardy challenge must determine if the legislature intended the charged crimes to constitute the same offense. State v Freeman, 153 W2d 765, 771, 108 P3d 753 (2005). In State v Freeman, supra, the court stated that "the merger doctrine is a rule of statutory construction which only applies where the legislature has clearly indicated that in order to prove a particular degree of crime (e.g., first degree rape) the state must prove not only that a defendant committed that crime, (e.g., rape) but that the crime was accompanied by an act which is defined as a crime elsewhere in the criminal statutes (e.g., assault or kidnapping). In State v Freeman,

the court considered the fact pattern in the joined appeal of State v Zumwalt, wherein Zumwalt and an acquaintance offered to sell drugs to a woman, whom they met in a parking lot to conclude the transaction. Instead of selling the woman drugs and leaving, Zumwalt punched the victim in the face causing serious injuries, whereupon she was then robbed of cash and other property. The court held that under the merger rule, assault committed in furtherance of a robbery merges with robbery and without contrary legislative intent or application of an exception, these crimes would merge. The court held that the merger doctrine applied to merge Zumwalt's first-degree robbery and second-degree assault convictions.

In our case, the facts of the case as set forth in the probable cause statement clearly indicate that the assault of Leong was committed in furtherance of the robbery; he was attempting to prevent the robbery, and the assault on him effectively terminated his attempt to prevent the robbery. Consequently, according to the above authority, the assault in this case merged into the robbery. According to RCW 9A.56.190, setting forth the definition of robbery, "a person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property or to prevent or overcome resisting to the taking; in either of which cases

the degree of force is immaterial...” Consequently, when the appellant and his accomplice assaulted Leong, they were using force against a person other than the person from whom they were taking personal property in order to effectuate that unlawful taking, which precisely fits the definition of robbery set forth in the above statute. Consequently, according to the above authorities, he should have been sentenced on the assault and robbery charges as one offense, under the merger doctrine.

The state cited the court to the case of State v Wade, 133 W.App. 855, 138 P3d 168 (2006), which was relied upon by the trial court in making its decision. Initially, it should be noted that the court in State v Wade, supra, made no rulings regarding the application of RCW 9.94A.589, so in that regard, the ruling of the court in Wade is inapposite. Furthermore, the ruling in Wade can be distinguished on the issue of application of the merger doctrine based on the fact pattern in that case. The court cited the ruling by the court in State v Freeman, supra, for the proposition that “a case by case approach is required to determine whether first degree robbery and second degree assault are the same for double jeopardy purposes, noting the court’s conclusion that “generally, the assault will merge with the robbery unless the assault has an independent purpose or effect.” Freeman, 153 W2d at 778-80. Wade, 133 W.App. at 872. In State v Wade, supra, the court held that Wade’s second degree assault conviction did not merge with the first degree robbery conviction, based on the

following analysis: “the assault conviction was based on Wade’s multiple acts of clubbing Ben with the gun when Ben responded that he did not know where the bachelor was or where women’s money was. ...Wade’s robbery conviction occurred when after he had already robbed the Wakefields, he pointed the gun at Ben, thereby committing another assault and demanding Ben’s money and jewelry. While this second assault may have merged with the robbery, it was not the basis for the second-degree assault conviction. The assault conviction was based on acts designed to obtain information; as such, it had a purpose independent of the later robbery of Ben’s money and jewelry. Wade’s conviction for the second degree assault and first degree robbery of Ben do not violate double jeopardy.” Wade, 133 W.App. at 872. Thus, it is clear that the merger doctrine did not apply in that case, since the assault of Ben in the course of attempting to obtain information had an independent purpose or effect from the subsequent assault and robbery of Ben. Consequently, the ruling of the court in State v Wade, supra, has no bearing on our case, which is rather controlled by the ruling of the court in State v Freeman, supra, since the assault of Leong was clearly committed in furtherance of effectuating the robbery.

CONCLUSION

All of the offenses constitute the same criminal course of conduct. Furthermore, according to the merger doctrine, the

appellant's assault conviction should merge into the robbery conviction. Consequently, this matter should be remanded so that the appellant can be re-sentenced on that basis.

Dated this 14th day of August 2007.

Respectfully Submitted,

JAMES K. MORGAN, WSB #9127

APPENDIX A

**COWLITZ COUNTY SUPERIOR COURT
CAUSE #**

ARRESTEE INFORMATION AND PROBABLE CAUSE SHEET

Incident No.	L06-31341	Offense:	Robbery 1 st degree, Assault 2 nd degree, Burglary 1 st degree, felon in possession of a firearm, felony harassment
Offense Date:	11-03-06	Date/Time of Arrest:	11-03-06/0545 hours
		Date/Time of Booking:	11-03-06/1030 hours

ARRESTEE IDENTIFICATION

Name:	JACOBS, Adam Mathew	DOB:	07-08-1978 TSD 08-01-1985
AKA:		SID#:	
Address:	113 Nevada Place Longview, Washington		
Phone:	360-636-0713	Co-Arrestee/Suspects:	None at this time

VICTIM INFORMATION

Note: If child sex offense, DO NOT use child's name, use JANE or JOHN DOE with child's DOB. If victim contact information confidential, DO NOT list.			
Victim Name:	CAMBA, Lanita Raquel LEONG, Julian Edward	Victim DOB:	01-12-1983 04-07-1984
Victim Address:	228-19 th Ave Longview, Washington 852 Douglas St Longview, Washington		
Victim Phone:	360-636-2877 360-414-7276		

PROBABLE CAUSE STATEMENT(S)

You must state probable cause for each new felony, misdemeanor, or traffic offense. Include the types and approximate value of property damage or property taken in property offenses and the type, amount, and field test of controlled substance in drug cases. For citation cases, attach a citation copy in addition to stating probable cause. Failure to provide a statement of probable cause will result in a prisoner's automatic release from custody. Attach extra sheet if necessary.

On 11-03-06 at about 0255 hours, Longview patrol officers responded to 228-19th Ave Longview, Washington 98632, on a report of a home invasion robbery that had just occurred. Longview K-9 Officer Buchholz arrived on scene and contacted the victims.

Officer Buchholz contacted Lanita CAMBA who told him the following. CAMBA said she was asleep in her bed when she woke up to a hand over her face. CAMBA said she was having trouble breathing because of the hand over her face. CAMBA said suspect #1 also was holding a gun to her head while holding his other hand over her mouth. CAMBA said she struggled with suspect #1 who was on top of her in bed. CAMBA said suspect #1 was wearing some type of mask.

CAMBA told Officer Buchholz that there was a second suspect in her room also. CAMBA said the suspects where demanding her wallet and money. CAMBA told the suspects where her purse was in the kitchen and suspect #2 went to get it. Suspect #1 stayed with

CAMBA.

CAMBA's friends, Jennifer MILBURN and MILBURN's boyfriend, Julian LEONG, were staying the night at the residence in another room. CAMBA said LEONG came into help her and struggled with the suspects but that LEONG was overpowered by the suspects and held at knife and gunpoint by both suspects.

CAMBA said that during the incident that the mask fell off of both suspects. CAMBA said she recognized suspect #1 as Adam JACOBS. CAMBA has known JACOBS for a couple of years from around town. CAMBA said she did not get a good look at suspect #2.

CAMBA said LEONG was tied up with rope and they were told not to call the police for 10 minutes or the suspects would kill them. CAMBA waited 10 minutes to call the police and then went next door to use the phone since hers did not work. It was later discovered by Officer Buchholz that the suspects had pulled the phone wires apart on the outside of the house.

CAMBA told Officer Buccholz that Adam JACOBS was suspect #1 and the person who held her down at gunpoint on her bed/

Officer Buccholz then spoke with LEONG. LEONG said he and his girlfriend, Jennifer MILBURN, were staying the night at CAMBA's residence. LEONG said he was woken up in the middle of the night by MILBURN because MILBURN was hearing strange noises coming from CAMBA's bedroom. (LEONG and MILBURN were staying in the second bedroom of the residence.) LEONG said at MILBURN's request that he went to check on CAMBA.

LEONG said he walked in the bedroom, turned on the lights, and saw suspect #1 on CAMBA, straddling her in the bed and holding her down. LEONG said he observed a revolver with brown grips in the waistband of the suspect. LEONG said he picked up a pair of scissors and attempted to stab suspect #1 with them but he was unable to.

LEONG said suspect #2 came up behind him and put a knife to his throat. Officer Buchholz observed small abrasions on LEONG's neck from the knife being held to it. LEONG told Officer Buchholz that suspect #2 pulled out a semi-automatic pistol and held it to him. LEONG was forced to lie on the ground and he was tied up with rope.

LEONG also confirmed that the masks fell off of both suspects during the incident.

Officer Buccholz then spoke with Jennifer MILBURN. MILBURN said she woke up to the muffled sounds coming from CAMBA's room. MILBURN said she woke up LEONG to go check on CAMBA. MILBURN said she stayed with CAMBA's son while LEONG went into the room. MILBURN said she could see through the open doorway that suspect #1 was on CAMBA while in her bed. MILBURN said she also could see a revolver in suspect #1's waistband. MILBURN said she hid in the bedroom with CAMBA's son until the suspects left. MILBURN could hear a second suspect in the residence.

Officer Buchholz observed rope on the ground of the bedroom that was yellow with red and green on it. The rope was collected as evidence since it was used to tie up LEONG.

Officers also collected both masks that the suspects had been wearing.

Officer Buchholz did checked the residence and discovered the suspects had entered the residence by cutting open a screen on a window, opening the bathroom window, and making entry through the window.

Officers on scene ran the name of the suspect, Adam JACOBS, through dispatch and dispatch informed them that Sgt Rehaume had contacted JACOBS earlier in the night at about 2110 hours. Sgt Rehaume stopped a red Jeep (WA/259-TAT) earlier in the shift and contacted JACOBS. JACOBS was in the Jeep with Kyle WOLF and James BOWEN III at the time of the traffic stop. The Jeep was registered to James BOWEN Jr with an address of 809 Columbia St #6 Kelso, Washington.

Kelso Police went to the address and located the Jeep on the street near the apartments. Officer Buchholz responded and observed the Jeep. Officer Buccholz looked into the Jeep and observed the same rope used to tie up the victim was laying in the back of the Jeep in plain view. The rope had a frayed end and was also lying next to a box cutter type knife.

Longview officers and Kelso officers were on scene at 809 Columbia St determining the best way to contact the occupants of apartment #6 when WOLF and JACOBS walked out of the apartment. JACOBS was taken into custody and WOLF was detained. A couple of minutes later, BOWEN walked out of the apartment and was detained. All three were transported to the Longview Police Department.

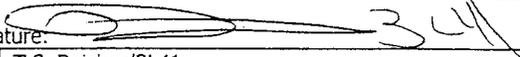
Kelso Officer Moore read JACOBS his Miranda rights. JACOBS did not request a lawyer but exercised his right to remain silent.

Officer Streissguth read BOWEN his Miranda rights. BOWEN agreed to speak. Initially BOWEN said WOLF and JACOBS left his residence last night but did not have permission to take his Jeep. BOWDEN changed what he said on if they took his Jeep or not to Officer Streissguth. Detective Huhta interviewed BOWEN and he admitted that JACOBS, WOLF, and an unidentified black female left his apartment on 11-02-06 around 1130pm with the Jeep and that WOLF and JACOBS brought the Jeep back around 4am on 11-03-06.

JACOBS clothing matched the description provided by CAMBA also.

JACOBS was booked into jail for robbery 1st degree, assault 2nd degree, burglary 1sy degree, felon in possession of a firearm, and felony harassment. Initial bail was set at \$100,000 per DPA Richardson.

The facts of the alleged criminal activity took place in Cowlitz County, WA at: 228-19th Ave Longview

I certify under penalty of perjury and under the laws of the State of Washington that the foregoing statement(s) of probable cause is true and correct.				
Date:	11-03-2006	City:	Longview	Officer's Signature: 
Agency:	Longview PD	Phone:	360-442-5800	Print Name: T.S. Deisher/3L41
				Supervisor's Approval: 

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COURT OF APPEALS, DIVISION II, STATE OF WASHINGTON

STATE OF WASHINGTON,)
Respondent,) No. 36067-5-II
)
)
)
v) CERTIFICATE OF
ADAM JACOBS,) MAILING
Petitioner)

I, Jeanne Struthers, certify and declare:

That on the 15th day of August 2007, I deposited in the mails of the United States of America, next day service a properly stamped and addressed envelope, containing an original and one copy Brief of Appellant, addressed to the following parties:

Court of Appeals
950 Broadway, Suite 300
Tacoma, WA 98402

and in the mails of the United States of America, First Class a properly stamped and addressed envelope containing Petition for Review addressed to;

Prosecuting Attorney
Hall of Justice
312 SW First
Kelso, WA 98626

Adam Jacobs 891812 AD 10 Lower
Clallam Bay Corrections Center
1830 Eagle Crest Way
Callam Bay, WA 98326

FILED
COURT OF APPEALS
DIVISION II
07 AUG 16 AM 9:07
STATE OF WASHINGTON
BY Jeanne Struthers
DEPUTY

I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct.

DATED this 15th day of August 2007.

Jeanne Struthers
Jeanne Struthers