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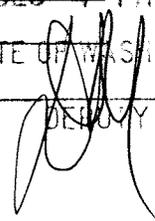
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COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY



STATE OF WASHINGTON, RESPONDENT

v.

DOMINIQUE SHAVIES, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Beverly G. Grant

No. 08-1-02897-8

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**BRIEF OF RESPONDENT**

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

1. Whether the evidence was sufficient that defendant committed robbery in the first degree when defendant grabbed the victim's purse that sat right next to the victim; ran from the victim; and displayed a screwdriver to retain the victim's wallet (Appellant's Assignment of Error 1).

2. Whether defendant failed to meet his burden and overcome the presumption that his legislatively prescribed sentence of 145 months was constitutional when the sentence was proportionate to the seriousness of defendant's crime of conviction; his criminal history of 12 prior felonies; and punishments defendant would have received in other jurisdictions (Appellant's Assignment of Error 2).

B. STATEMENT OF THE CASE.

1. Procedure

On June 19, 2008, the State charged Dominique Shavies, hereafter "defendant," in Pierce County Cause No. 08-1-02897-8, with robbery in the first degree, aggravated by the circumstance that defendant committed

the current offense shortly after being released from incarceration. CP 1-2. The case proceeded to a jury trial in front of the Honorable Judge Grant. 2RP 39.<sup>1</sup>

At the close of evidence, the court instructed the jury in the lesser offenses of robbery in the second degree and theft in the second degree. 3RP 61; 4RP 98; CP 62-85, 95-101 (Instructions 11, 12, 13, 14, 16); CP 90, 91, 92, 93.

The jury found defendant guilty of robbery in the first degree. 4RP 145; CP 89. In the special verdict form, the jury found that defendant was not armed with a deadly weapon at the time of the commission of the crime. 4RP 145; CP 94. After a bifurcated hearing on an aggravating factor, the jury found that defendant committed the robbery shortly after being released from incarceration. 5RP 187; CP 102.

At sentencing, the State presented evidence of defendant's prior record and calculated his offender score at 12. 6RP 4; Exhibits 1-12 (Sentencing). This resulted in an applicable standard range of 129 to 171 months. 6RP 6. Based on the jury's finding of the aggravating factor, the

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<sup>1</sup> The record contains multiple verbatim reports of proceedings that are not numbered. For convenience purposes, the State will use the following citations to the record: 1RP for report dated 9/29/2008; 2RP for report dated 9/30/2008; 3RP for report dated 10/1/2008; 4RP for report dated 10/7/2008; 5RP for report dated 10/8/2008; and 6RP dated 3/13/2009 (Sentencing).

State requested the court to give defendant an exceptional sentence of 240 months. 6RP 6. The court sentenced defendant to a standard range sentence of 145 months. 6RP 10; CP 113-125.

Defendant filed a timely notice of appeal. CP 134-147.

## 2. Facts

On June 17, 2008, defendant was released from incarceration. 5RP 181; Exhibit 1 (Bifurcated Hearing). On June 18, 2008, defendant chose to rob Miss Sara Margaret Nix.

On that day, at about 8:00 or 9:00 p.m., Ms. Nix was taking a break from work as a night manager at Stadium Thriftway in Tacoma. 2RP 50, 51, 52, 53. Ms. Nix was sitting on the stairs near the store; her purse was underneath the stair railing, right next to her. 2RP 53, 55.

While Ms. Nix was talking on her cell phone and smoking a cigarette, a man she later identified as defendant, approached the stairs. 2RP 56. Ms. Nix did not think much of defendant approaching the stairs because she thought he was just going to walk up the right side of them. 2RP 56. Instead, defendant darted toward Ms. Nix, grabbed her purse, and ran up the stairs. 2RP 56, 57, 58. Ms. Nix went after defendant. 2RP 58.

As defendant was running, Ms. Nix kept chasing him and yelling to drop her purse; that she did not have any money in it; and that she could not afford to get new identification and social security cards. 2RP 59-60. Near a church, two men noticed Ms. Nix chasing defendant and asked what was going on. 2RP 59, 60. When the two men joined Ms. Nix in

chasing defendant, defendant opened Ms. Nix's purse, looked inside, and then threw the purse back at Ms. Nix. 2RP 59, 60.

Ms. Nix stopped and picked up her purse. 2RP 61. Her legs gave in and she fell. 2RP 61. One of the men came towards her to help. 2RP 61. Defendant stopped as well and was standing nearby. 2RP 61.

As Ms. Nix was trying to dial 911, she kept following defendant, who was backing away from her. 2RP 62, 63. Ms. Nix was still about nine feet away from defendant, when he crouched down and pulled out a screwdriver from his pants. 2RP 63, 64, 80, 84. Although defendant did not swing at Ms. Nix and the two men, he displayed the screwdriver to them in a way that Ms. Nix interpreted as defendant showing "this is what I have". 2RP 64, 81.

Ms. Nix expected defendant to pull out a gun; so the screwdriver did not impress her. 2RP 64, 65. When neither Ms. Nix nor the two men reacted to the screwdriver, defendant indicated that he wanted to go back to the store with Ms. Nix. 2RP 64, 65. But after walking a short distance with Ms. Nix and the two men, defendant darted toward a park and then to a gas station. 2RP 66. Ms. Nix chased him again. 2RP 66.

Defendant ran toward a car, pounded on it, and was let in. 2RP 66, 67. The car drove off, but not before the observers got its license plate number, make, and model. 2RP 67; 3RP 5.

As Ms. Nix was walking back to work, she discovered that her wallet was missing from the purse. 2RP 67, 68.

Shortly thereafter, the police located the car in question at South 10th and Sprague and detained its four occupants, including defendant. 3RP 6. Defendant had been sitting in the rear passenger seat, and the police found Ms. Nix's wallet on the ground, right outside the car, underneath the rear passenger door. 3RP 6-7, 9.

Upon locating the car in question, the police fetched Ms. Nix at work so she could identify the suspect. 2RP 68, 69, 87. During the "field elimination", the police showed Ms. Nix two or three suspects, one at a time, and she identified the second man, defendant, as the person who had taken her purse. 2RP 70, 71, 89; 3RP 11.

When the police questioned defendant, he admitted to taking Ms. Nix's purse but denied threatening anybody. 3RP 29; Exhibit 8. Defendant made the statement only after the police had told him about the difference between a robbery and a purse snatch. 3RP 30, 31

At trial, defendant testified that the purse was about two feet away from Ms. Nix when he grabbed it, and that he threw the purse back to Ms. Nix only a short distance from the stairs, after she had indicated that there was nothing in it and that she needed her identification cards. 3RP 38-39, 45. Defendant had not seen any men chasing him – only Ms. Nix. 3RP 54. Defendant denied ever stopping after he had thrown the purse back to Ms. Nix. 3RP 55-56. Defendant denied having or displaying a screwdriver. 3RP 41, 44, 45. He said he only had had a crack pipe on him but denied showing it to Ms. Nix. 3RP 41, 45. Defendant denied going

through Ms. Nix's purse and taking her wallet - he had no idea how the wallet ended up right next to the car he was in. 3RP 55. Finally, defendant denied ever making a verbal statement to the police. 3RP 58.

Defendant admitted that he had been smoking crack cocaine throughout the day in question up until about half an hour before the incident. 3RP 48. Defendant also admitted that he had been convicted of giving a false statement to police. 3RP 46.

Because Ms. Nix did not know who the two men who helped her chase defendant were, they could not be called to testify. 2RP 72.

C. ARGUMENT.

1. THE EVIDENCE, TAKEN IN THE LIGHT MOST FAVORABLE TO THE PROSECUTION, PROVES THAT DEFENDANT COMMITTED ROBBERY IN THE FIRST DEGREE.

The evidence is sufficient when, viewed in the light most favorable to the prosecution, it allows a rational trier of fact to find, beyond a reasonable doubt, the essential elements of the crime. *See State v. Gentry*, 125 Wn.2d 570, 596-597, 888 P.2d 1105 (1995); *State v. Amenzola*, 49 Wn. App. 78, 85, 741 P.2d 1024 (1987). However, when this Court reviews the sufficiency of the evidence, it "does not need to be convinced of the defendant's guilt beyond a reasonable doubt, but must only

determine whether substantial evidence supports the State's case." *State v. Potts*, 93 Wn. App. 82, 86, 969 P.2d 494 (1998).

"A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980). Circumstantial evidence is as reliable as direct evidence. *See State v. Turner*, 103 Wn. App. 515, 520, 13 P.3d 234 (2000). In considering the evidence, "[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal." *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

To convict defendant of the crime of robbery in the first degree, the State had to prove that: (1) on June 18, 2008, defendant unlawfully took personal property, not belonging to him, from Ms. Nix or in her presence; (2) defendant intended to commit theft of the property; (3) the taking was against the person's will by defendant's use or threatened use of immediate force, violence or fear of injury to Ms. Nix; (4) the force or fear was used by defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking; (5) in the commission of these acts or in immediate flight therefrom defendant displayed what appeared to be a deadly weapon; and (6) that the acts occurred in the State of Washington. CP 62-85 (Instruction 9); *see also* RCW 9A.56.190, RCW 9A.56.200.

On appeal, defendant does not challenge the date and place of the crime and that he had taken Ms. Nix's purse and wallet with intent to steal. *See* Opening Brief of Appellant, p. 9-12. Defendant argues that the State failed to prove that he took Ms. Nix's property in her presence, by use or threatened use of force, and with what appeared to be a deadly weapon. *Id.* Defendant's argument, however, does not have any merit.

First, the State presented substantial evidence that defendant unlawfully took Ms. Nix's property in her presence.

Robbery can occur in two alternative ways: defendant can unlawfully take property from a victim's person *or* in a victim's presence. *State v. Nam*, 136 Wn. App. 698, 705, 150 P.3d 617 (2007). "Personal property is within a victim's presence when it is within the victim's reach, inspection, observation or control, that she could, if not overcome with violence or prevented by fear, retain her possession of it." *Nam*, 136 Wn. App. 698, 705 (*quoting State v. Manchester*, 57 Wn. App. 765, 768-769, 790 P.2d 217 (1990)).

Here, Ms. Nix placed her purse one foot away from her – the purse was within her reach, inspection, and observation. 2RP 53, 55. Therefore, defendant took it in her presence.

Second, the State presented substantial evidence that defendant used or threatened use of force to obtain or retain possession of Ms. Nix's property.

Washington has adopted the “transactional view” of robbery. *State v. Robinson*, 73 Wn. App. 851, 856, 872 P.2d 43 (1994) (citing *Manchester*, 57 Wn. App. 765, 770). Pursuant to that view, a robbery can be considered an ongoing offense, and the force element of robbery can be satisfied when “force was used to obtain property, ...[or] to retain the stolen property or to effect an escape”. *Robinson*, 73 Wn. App. 851, 856.

The force used during the robbery does not have to be contemporaneous with the taking: the requirement is satisfied when defendant peaceably or outside the owner’s presence takes the property, but then uses force to retain it. See *State v. Handburgh*, 119 Wn.2d 284, 293, 830 P.2d 641 (1992). The degree of force is immaterial. RCW 9A.56.190; see also *Handburgh*, 119 Wn.2d 284, 293 (“any...threat, no matter how slight, which induces an owner to part with his property is sufficient to sustain a robbery conviction”). Threat of immediate force may be implied. See *State v. Shcherenkov*, 146 Wn. App. 619, 624-625, 626, 191 P.3d 99 (2008).

For example, in *Manchester*, defendant challenged his convictions for two robberies in the first degree, arguing insufficiency of the evidence. 57 Wn. App. 765, 766. On appeal, the court found the evidence sufficient and affirmed both robbery convictions. *Manchester*, 57 Wn. App. at 770. The circumstances of Manchester’s robberies were similar to the circumstances of the case at bar.

During the first robbery, Manchester placed several cartons of cigarettes in his coat and left a store without paying. *Id.* at 766. Two store employees followed Manchester and attempted to escort him back into the store. *Id.* Manchester resisted, broke away, and displayed a knife as he was making his way to the exit. *Id.* When one of the store employees pushed a grocery cart at him, Manchester also waved the knife. *Id.*

During the second robbery, Manchester again placed a carton of cigarettes in his coat and walked out of a store without paying. *Id.* The store manager followed Manchester and asked what he did with the cigarettes. *Id.* Manchester said he had a gun, threatened to blow out the manager's brains and then pulled an ice pick out of his pocket and displayed it. *Id.*

In *Handburgh*, defendant took a girl's bicycle when she left it unattended outside a recreation center. 119 Wn.2d 284, 285. The girl then saw defendant riding her bicycle and confronted him. *Id.* at 285. Defendant refused to return the bicycle and subsequently dropped it into a ditch, threw rocks at the girl, and the two got into a fight. *Id.* at 286. The Supreme Court affirmed defendant's conviction of robbery finding the evidence sufficient, when Handburgh used force to either retain property or to overcome resistance to the taking. *Id.* at 293, 294.

In *Shcherenkov*, defendant argued that the State failed to present sufficient evidence of use or threatened use of immediate force, when he had handed bank tellers notes stating the bank was being robbed and

demanding money, but never displayed any weapons or said he had weapons. 146 Wn. App. 619, 626. The court disagreed with Shcherenkov, holding that the jury's finding that Shcherenkov's conduct implied a threat of immediate force was supported by sufficient evidence, when defendant communicated to the tellers that they were being robbed, and when a reasonable person would interpret such communication as a threat of immediate force. *Shcherenkov*, 146 Wn. App. at 628-629.

In *Collinsworth*, an earlier bank robbery case, defendant did not even tell the clerks that he was robbing them and merely demanded the money; he displayed no weapons and made no overt threats. *State v. Collinsworth*, 90 Wn. App. 546, 548-550, 966 P.2d 905 (1998).

Nevertheless, on appeal, the court held that the evidence was sufficient to support a finding that Collinsworth took the bank's property through the use or threatened use of immediate force, violence, or fear of injury and affirmed his convictions. *Collinsworth*, 90 Wn. App. 546, 548, 554.

Whether defendant used or threatened use of force to obtain or retain possession of Ms. Nix's wallet and effect an escape was a question for the jury, and the jury decided that he did. The jury could have reasonably found that defendant used force to obtain Ms. Nix's purse when he suddenly snatched it. Also, the jury could have reasonably found that, under the circumstances of a flight and still in possession of Ms. Nix's wallet, when the victim and two Good Samaritans were keeping up with defendant and not letting him get away, defendant was implicitly

threatening immediate use of force, when he pulled out a screwdriver from his pants and displayed it.

Just because Ms. Nix is a brave person, who dared to chase her offender and confront him, and who was not impressed with defendant's display of the screwdriver, does not change the threatening nature of *his* actions and does not mean that defendant's gesture would not scare an ordinary person in Ms. Nix's shoes.<sup>2</sup> Although waving a screwdriver in Ms. Nix's face or verbally threatening her would make for a more overt threat of immediate force, such distinction went to degree of explicitness and was for the jury to weigh.

In this case, the evidence, viewed in the light most favorable to the prosecution, shows that defendant forcibly took Ms. Nix's purse and wallet, and then resisted the return of the property, when he snatched the purse, ran, threw the purse at Ms. Nix, and then displayed a screwdriver in a threatening manner while retaining her wallet. By definition, this force or threatened use of force amounted to the use of force contemplated by RCW 9A.56.190.

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<sup>2</sup> It should also be noted that Ms. Nix never tried to forcibly take her property from defendant or stop defendant from leaving. Thus, the jury could reasonably infer that, despite her statements, Ms. Nix, in fact, felt threatened by defendant.

While the Supreme Court has held that using force to escape after the stolen property had been abandoned does not amount to robbery, this holding does not affect the outcome of the case at bar. *See State v. Johnson*, 155 Wn.2d 609, 121 P.3d 91 (2005)<sup>3</sup>. In this case, although defendant abandoned Ms. Nix's purse, he kept her wallet. 2RP 59, 60; 3RP 6-7, 9.

Third, the State presented substantial evidence that, during the immediate flight after taking Ms. Nix's property, defendant displayed what appeared to be a deadly weapon. As indicated above, the jury could have reasonably concluded that defendant pulled out an object that was or looked like a screwdriver as he was trying to flee and retain the possession of Ms. Nix's wallet.

Defendant argues that because the jury found that he had not been "armed with" a deadly weapon that somehow also means that he could not have displayed what appeared to be a deadly weapon. *See* Opening Brief of Appellant, p. 11. However, such argument is misplaced and has already been rejected in *State v. Hauck*, 33 Wn. App. 75, 651 P.2d 1092 (1982).

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<sup>3</sup> In *Johnson*, defendant stole a television set from Wal-Mart and was confronted in the parking lot by two security guards. *Id.* at 610. Defendant left the shopping cart with the television set in it and started to run away. *Id.* He then turned back, and one of the guards grabbed defendant's arm. *Id.* At that point, defendant punched the guard in the nose. *Id.* The court reversed defendant's robbery conviction, holding that defendant could not be convicted of robbery because he abandoned the stolen item and used force to escape rather than retain the stolen property. *Id.* at 611.

Hauck, like this defendant, was convicted of the first-degree robbery, but the jury found that he had not been “armed with” a deadly weapon for the enhancement provision. *Hauck*, 33 Wn. App. 75, 76. The only weapon presented during Hauck’s trial was a knife six and three fourth inches in length, which belonged to the victim and was picked up by Hauck in the victim’s presence. *Hauck*, 33 Wn. App. at 76-77. On appeal, Hauck argued that the verdict of guilty of the robbery in the first degree was inconsistent with the special verdict that he had not been “armed with” a deadly weapon. *Id.* at 77.

The court rejected Hauck’s argument, holding that “a person may be found guilty of robbery in the first degree even though he is not actually armed with a deadly weapon and inflicts no bodily injury.” *Id.* at 77, 78. The court reasoned that the jury could have found that Hauck had “displayed” the knife, but believed that displaying the knife was not the same as being “armed with” a weapon. *Id.*

In this case, the jury also could have found that defendant displayed the screwdriver but was not armed with it. Also, because the screwdriver was never found, the jury could have concluded that what defendant had pulled out and displayed was not a screwdriver, but some other object that Ms. Nix thought was a screwdriver; and thus, the jury could have found that defendant displayed what *appeared* to be a deadly weapon, but not be convinced beyond a reasonable doubt that the object *was* a deadly weapon.

Although the facts of this case are not an example of extreme violence, the Legislature chose to treat thieves who use force to obtain or retain property more seriously and set a very low threshold for the amount of force necessary to elevate theft to robbery in order to deter any aggressiveness and use of force by thieves. *See, e.g., Handburgh*, 119 Wn.2d 284, 292-293 (“broadening of the definition of robbery is warranted and desirable because [t]he thief’s willingness to use force against those who would restrain him in flight suggests that he would have employed force to effect the theft had the need arisen”)(internal citation and quotation marks omitted); *see also Manchester*, 57 Wn. App. 765, 770 (emphasizing the Legislature’s intent to broaden the scope of robbery by including violence during flight immediately following the taking). To avoid a robbery charge, a thief, who is confronted by a lawful owner, should return or abandon the stolen property and not attempt to retain it with the use of force or fear.

In sum, the State presented substantial evidence establishing that, to retain possession of the stolen wallet and to escape, defendant implicitly threatened to use force and displayed an object that looked like a deadly weapon. The jury evaluated the evidence and the witnesses’ credibility and convicted defendant of robbery in the first degree, and not of the lesser-included offenses. Because “this Court must defer to the trier of fact on issues involving conflicting testimony, credibility of the witnesses, and the persuasiveness of the evidence,” the defendant’s conviction should

be affirmed. *State v. Hernandez*, 85 Wn. App. 672, 675, 935 P.2d 623 (1997).

2. DEFENDANT’S SENTENCE WAS PROPORTIONATE

“The legislature has the power to define offenses and set punishments.” *State v. Freeman*, 153 Wn.2d 765, 771, 108 P.3d 753 (2005). “The legislature represents the people when it determines that a law is necessary, wise, or desirable, and the court is not empowered to substitute its judgment for that of the legislature.” *State v. Smith*, 93 Wn.2d 329, 337, 610 P.2d 869 (1980). When determining whether defendant’s criminal penalty violates the constitutional prohibition against cruel and unusual punishment, this Court should presume that the legislative determination or enactment is constitutional and should not invalidate defendant’s penalty because it believes that a less severe penalty would adequately serve the ends of public policy. *See State v. Sweet*, 36 Wn. App. 377, 383, 675 P.2d 1236 (1984).

A criminal penalty is grossly disproportionate to the offense so as to constitute cruel and unusual punishment only if the conduct should never be proscribed, or the punishment is clearly arbitrary and shocking to the sense of justice. *State v. Farmer*, 116 Wn.2d 414, 433, 805 P.2d 200 (1991); *Smith*, 93 Wn.2d 329, 344-345. Because Washington’s constitutional provision barring cruel punishment is more protective than the Eighth Amendment, this Court need not examine defendant’s claim

under the Eighth Amendment if it is satisfied that defendant's sentence is proportionate under the Washington Constitution. U.S. Const. amend. VIII; RCW Const. art. I, § 14; *State v. Thorne*, 129 Wn.2d 736, 772-773, 921 P.2d 514 (1996) (citing *State v. Fain*, 94 Wn.2d 387, 617 P.2d 720 (1980)). In employing the proportionality analysis, Washington has adopted objective standards "to minimize the possibility that the merely personal preferences of judges will decide the outcome of each case." *Fain*, 94 Wn.2d 387, 397.

In determining whether the sentence is proportionate, this Court evaluates: (1) the nature of the offense; (2) the legislative purpose behind the criminal statute; (3) the punishment defendant would have received in other jurisdictions for the same offense; and (4) the punishment meted out for other offenses in the same jurisdiction. *Fain*, 94 Wn.2d at 397. These are the only factors to consider and no one factor is dispositive. *State v. Gimarelli*, 105 Wn. App. 370, 380-81, 20 P.3d 430 (2001).

Here, all four factors show that defendant's sentence of 145 months was constitutionally proportionate.

a. Defendant's sentence was proportionate to the nature and gravity of his offenses

A standard range sentence for a crime is derived from the seriousness level of defendant's current offense and from defendant's offender score, which is calculated based on defendant's criminal history. *See* RCW 9.94A.510. Because both defendant's criminal history and his

current offense affect defendant's sentence, courts have looked at the nature of defendant's prior and current offenses when analyzing the first *Fain* factor. See e.g., *State v. Manussier*, 129 Wn.2d 652, 677, 921 P.2d 473 (1996); *Wahleithner v. Thompson*, 134 Wn. App. 931, 939, 143 P.3d 321 (2006).

“In weighing the proportionality between an offense and the punishment imposed, courts consider whether the crime caused or threatened injury to persons or property.” *Wahleithner*, 134 Wn. App. 931, 938-939 (citing *Fain*, 94 Wn.2d at 397-398). “The repetition of criminal conduct aggravates the guilt of the last conviction and justifies a heavier penalty.” *State v. Lee*, 87 Wn.2d 932, 937, 558 P.2d 236 (1976) (holding that a life sentence under the habitual criminal statute was not unconstitutionally disproportionate where prior convictions were for robbery, two burglaries in the second degree, and assault in the second degree).

Here, at the time of his sentencing, defendant had an offender score of 12 - well within the maximum offender score category of “nine or more” - and had been convicted of: (1) theft in the second degree; (2) burglary in the second degree; (3) unlawful possession of a controlled substance; (4) burglary in the second degree; (5) burglary in the second degree; (6) willfully failing to return to work release program; (7) unlawful delivery of material in lieu of controlled substance; (8) unlawful solicitation to deliver a controlled substance; (9) unlawful possession of a

controlled substance; (10) unlawful possession of a controlled substance; (11) unlawful possession of a controlled substance cocaine; (12) unlawful possession of a controlled substance.

Although all of the above crimes were nonviolent, they, nevertheless, were grave crimes that presented danger of violence to persons and property. *See Manussier*, 129 Wn.2d 652, 675 (noting that the United States Supreme Court rejected proportionality challenge to a mandatory sentence of life without possibility of parole for the crime of possession of more than 650 grams of cocaine and distinguished such crime from nonviolent crimes against property).

Defendant's current crime of robbery in the first degree is classified as a class A felony and carries a maximum sentence of life in prison. RCW 9A.56.200(2); RCW 9A.20.021(1)(a). Robbery in the first degree is also classified as a most serious offense, a violent offense, a crime against a person, and has a seriousness level of nine out of 16. RCW 9.94A.411(2); RCW 9.94A.515; RCW 9.94A.030(29)(a).

Washington courts have held that the nature of robbery includes the threat of violence against another person. *See, e.g., Thorne*, 129 Wn.2d 736, 774; *see also Manussier*, 129 Wn.2d 652, 676 (noting that the United States Supreme Court would likely consider robbery in the first and second degree to be very serious offenses because of their potential for violence). Therefore, this defendant committed a very serious offense with potential for violence. *See Thorne*, 129 Wn.2d at 773-774.

In his “nature of the offense” analysis, defendant improperly injects an argument akin the sufficiency of the evidence. *See* Opening Brief of Appellant, p. 14-15. Such argument is improper because the jury convicted defendant of robbery in the first degree, and defendant does not get to reargue the facts of the case here; rather, defendant must show that his punishment was somehow disproportionate to the crime of robbery in the first degree. *See State v. Morin*, 100 Wn. App. 25, 30, 995 P.2d 113 (2000). Although the nature of the offense is also a factual question, the facts should be viewed as the jury found them. Here, the jury found that defendant used force or threat of force and displayed what appeared to be a deadly weapon to obtain or retain the property of another.

Finally, that the sentencing court considered the non-extreme nature of this robbery in the first degree can be inferred from the sentence itself. Prior to this robbery in the first degree, defendant had committed 12 other felonies. 6RP 4. Defendant robbed Ms. Nix a day after his release from incarceration. 5RP 181. The State recommended an exceptional sentence of 240 months. 6RP 6. Yet, the court mercifully sentenced defendant to 145 months - the middle of his standard range of 129 to 171 months. 6RP 6, 10; CP 113-125. Under those circumstances, defendant should not be heard to complain that his sentence was arbitrary or shocking to the sense of justice as to constitute cruel and unusual punishment.

- b. Defendant's sentence satisfied the legislative purpose behind the Sentencing Reform Act and the robbery statute

The Legislature listed the purposes of the Sentencing Reform Act of 1981 (SRA), stating that it wanted to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself;
- (6) Make frugal use of the state's and local governments' resources; and
- (7) Reduce the risk of reoffending by offenders in the community.

RCW 9.94A.010.<sup>4</sup>

Defendant's sentence in this case is proportionate to the seriousness of his offense – robbery in the first degree - classified as a Class A felony, an offense against a person, a most serious offense, and a violent offense. Defendant's sentence is also proportionate to his criminal history of 12 prior felonies.

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<sup>4</sup> See also *Wahleithner v. Thompson*, 134 Wn. App. 931, 941, 143 P.3d 321 (2006) (The Sentencing Reform Act of 1981 (SRA) “represents a significant limitation on judicial discretion, and as a determinate system, permits none of the sentencing flexibility available for misdemeanors... . Rehabilitation is secondary to retribution, and courts have little leeway for the carrot-and-stick incentive...”) (internal citations omitted).

Defendant's sentence is just and promoted respect for the law because it considered the nature of defendant's current offense and his criminal history. The court's sentence acknowledged that, after having been imprisoned 12 times for felonies, defendant still showed inability to obey the law and had to be appropriately punished for both his current crime and his recidivist behavior.

Defendant's sentence is commensurate with the sentences of other offenders who have an offender score of 12 and are convicted of a level nine offense because the Legislature established a range within which such offenders must be sentenced.

Defendant's sentence protects the public because it keeps defendant - a recidivist, who re-offended a day after his release - away from the public. Defendant's lengthy sentence reduces the risk of him re-offending and, at the same time, offers him an opportunity to improve himself.

Defendant's sentence made frugal use of the State's and government's resources because the sentencing court did not need to delve into defendant's extensive criminal history. Rather, using the offender score, the court easily calculated defendant's sentencing range. Although the State will incur expenses in connection with defendant's incarceration, such spending is prudent because it will punish defendant, protect the public, give defendant an opportunity for rehabilitation, and potentially

save the State's resources that would have otherwise been directed at investigating and prosecuting defendant again.

Finally, to deter and punish violence, the Legislature sought to elevate thieves, who use violence to effect the theft, to robbers and punish such offenders more severely. The Legislature has amended the definition of robbery to include the use of force by a defendant in trying to retain the stolen property, and included the display of object that appears to be a deadly weapon into the definition of robbery in the first degree. *See, e.g., Handburgh*, 119 Wn.2d 284, 292-293; *Manchester*, 57 Wn. App. 765, 770. Thus, as intended by the Legislature, defendant's lengthy sentence for using threat of force to retain the stolen property and for displaying what appeared to be a screwdriver, deters such conduct and punishes it.

c. Defendant would have received similar punishment in other jurisdictions

All types of robbery are considered felonies in every jurisdiction. *See* Appendix A. Most States have varying degrees of robbery, depending on the type of force or weapons used by the offender or the type of harm inflicted.<sup>5</sup> *Id.* Most States elevate an offender's sentence if he is a habitual offender. *Id.*

For example, in Alaska, robbery in the first degree is a Class A felony punishable by a definite term of imprisonment of not more than 20

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<sup>5</sup> It should also be noted that a few jurisdictions have robbery by sudden snatching or include sudden snatching as one of the ways to commit robbery. *See e.g.*, Fla. Stat. Ann. § 812.131; Ga. Code Ann. § 16-8-40(a)(3); La. Rev. Stat. Ann. § 14:65.1.

years. Alaska Stat. §§ 11.41.500; 12.55.125. But if the current offense is a third felony conviction, defendant will be sentenced in the 15 to 20 years range. Alaska Stat. §§ 12.55.155; 12.55.175.

Arizona treats a defendant as a category three repetitive offender upon a third felony conviction, with a presumptive sentence of 15.75 years for a Class 2 felony (e.g., armed robbery) and a presumptive sentence of 10 years for a Class 4 felony (e.g., robbery). Ariz. Rev. Stat. Ann. §§ 13-1902; 13-1904; 13-703.

Indiana allows the State to sentence defendant as a habitual offender for any felony, when the State can show that defendant had two prior unrelated felony convictions. Ind. Code § 35-50-2-8(a). A habitual offender is sentenced to an *additional* fixed term that is not less than the advisory sentence for the underlying offense (four years for non-deadly-weapon robbery) and not more than three times the advisory sentence for the underlying offense (12 years for non-deadly-weapon robbery). Ind. Code § 35-50-2-8(h).

Defendant would receive a comparable sentence in most States that have a robbery provision akin “what appears to be a deadly weapon” provision of RCW 9A.56.200.

For example, Alabama has a robbery provision similar to Washington’s, where defendant commits robbery in the first degree, a Class A felony, if he possesses “an article used or fashioned in a manner to lead any person who is present reasonably to believe it to be a deadly

weapon or dangerous instrument”. Ala. Code § 13A-8-41(b). Alabama punishes a non-deadly-weapon Class A felony with imprisonment between 10 years and life. Ala. Code § 13A-5-6.

Colorado qualifies a robbery as an “aggravated robbery” when defendant “possesses any article used or fashioned in a manner to lead any person who is present reasonably to believe it to be a deadly weapon”. Colo. Rev. Stat. Ann. § 18-4-302(1)(d). Aggravated robbery is a class 3 felony and “is an extraordinary risk crime”. Colo. Rev. Stat. Ann. § 18-4-302(3). A class 3 felony has a minimum sentence of four years and a maximum sentence of 12 years, but the maximum is multiplied by four if defendant is qualified as a “habitual criminal,” a person who has been three times previously convicted of a felony. Colo. Rev. Stat. Ann. §§ 18-1.3-801(2); 18-1.3-401(V)(A).

Delaware Code states that defendant commits a robbery in the first degree if, in the course of the commission of the crime or of immediate flight therefrom, he displays what appears to be a deadly weapon or represents by word or conduct that he is in possession or control of a deadly weapon. Del. Code Ann. tit. 11, § 832(a)(2). In Delaware, robbery in the first degree is a class B felony, punishable with a *minimum* sentence of three years, which is enhanced up to a life sentence when defendant has any three prior felonies or two specifically named felonies. Del. Code Ann. tit. 11, § 832; Del. Code Ann. tit. 11, § 4214.

Georgia qualifies a robbery as “armed robbery” when defendant, with intent to commit theft, takes property of another from the person or the immediate presence of another by use of an offensive weapon, or any replica, article, or device having the appearance of such weapon. Ga. Code Ann. § 16-18-41. Armed robbery is punishable by death or imprisonment for life or by imprisonment for not less than ten and not more than 20 years. *Id.* Simple robbery is punished by imprisonment for not less than one and not more than 20 years. Ga. Code Ann. § 16-8-40(b).

Illinois too qualifies a robbery as “aggravated robbery” when defendant takes property from the person or presence of another by the use of force or by threatening the imminent use of force while indicating verbally or by his actions to the victim that he is presently armed with a firearm or other dangerous weapon, including knife, club, ax, or bludgeon; and the offense is applicable even though it is later determined that he had no firearm or other dangerous weapon in his possession when he committed the robbery. 720 Ill. Comp. Stat. 5/18-5. Aggravated robbery is a Class 1 felony, and as such is punishable for not less than four years and not more than 15 years. 730 Ill. Comp. Stat. 5/5-4.5-30(a).

Under Michigan’s armed robbery statute, a person who possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon is guilty of a felony punishable by imprisonment for life or for any term of

years. Mich. Comp. Laws Ann. § 750.529. Minnesota's aggravated robbery in the first degree has almost the exact language as Michigan's armed robbery statute. Minn. Stat. Ann. § 609.245. Under the Minnesota statute, defendant is imprisoned for not more than 20 years. Minn. Stat. Ann. § 609.245.

Missouri's robbery in the first degree is similar to Washington's and contains the provision "displays or threatens the use of what appears to be a deadly weapon or dangerous instrument." Mo. Ann. Stat. § 569.020(1)(4). Robbery in the first degree is also a class A felony and is punished by not less than ten years and not more than 30 years, or life imprisonment. Mo. Ann. Stat. § 558.011(1)(1).

In his brief, defendant analyzes punishments he would have received in Oregon, Idaho, and California. *See* Opening Brief of Appellant, p. 22-29. However, defendant's analysis has fatal flaws.

First, defendant again attempts to reargue the facts of this case, and fails to consider that the Washington jury found him guilty of robbery in the first degree. Defendant analyzes theft statutes as if they could apply to him, when the jury rejected the lesser included offenses of robbery in the second degree and theft in the second degree. Defendant disregards the jury's findings that he *displayed* what appeared to be a deadly weapon and *used* threat of force to retain the stolen property. Defendant also forgets about his 12 prior felony convictions that would be considered in sentencing him in almost every State.

Second, Idaho's and California's robbery and sentencing statutes are very different from Washington's and do not necessarily help defendant's argument. Idaho has one general definition of robbery, which is punishable by imprisonment between five years and life sentence. Idaho Code Ann. §§ 18-6501; 18-6503. Thus, unlike the Washington SRA that significantly limits judicial discretion, Idaho criminal code gives Idaho judges almost limitless discretion in sentencing. *Wahleithner*, 134 Wn. App. 931, 941. More importantly, under the Idaho's sentencing scheme, defendant could be sentenced to 12 years in prison (approximately 145 months), and the sentence would be on the lower end of the permissible range.

California Penal Code divides robbery into two degrees that have nothing in common with the Washington robbery scheme. Robbery in the first degree encompasses taking of property from the operators of public transport and persons using an ATM, as well as taking perpetrated on inhabited dwellings; while robbery in the second degree serves as a catch-all provision. Cal. Penal Code. §§ 212.5; 213. The California robbery scheme does not even mention a "deadly weapon" or an object that appears to be a deadly weapon, or consider defendant's criminal history the way Washington does. More importantly, although robbery in the second degree is punishable by imprisonment for two, three, or five years, defendant's sentence is enhanced with an additional term of three years per each prior separate prison term served for a violent felony and with an

additional term of one year per each prior separate prison term served for any felony. Cal. Penal Code. §§ 667.5; 213.

Finally, the Oregon robbery classification is somewhat similar to Washington's, but does not contain the pertinent provision "displayed what appeared to be a deadly weapon". Under Or. Rev. Stat. § 164.415(1), a person commits the crime of robbery in the first degree if the person is armed with a deadly weapon; uses or attempts to use a dangerous weapon; or causes or attempts to cause serious physical injury to any person. Robbery in the first degree is a Class A felony. Or. Rev. Stat. § 164.415(2). A person commits the crime of robbery in the second degree if the person represents by word or conduct that the person is armed with what purports to be a dangerous or deadly weapon; or is aided by another person actually present. Or. Rev. Stat. § 164.405(1). Robbery in the second degree is a Class B felony. Or. Rev. Stat. § 164.405(2).

In Oregon, the maximum term of an indeterminate sentence of imprisonment is 20 years for a Class A felony, and 10 years for a Class B felony. Or. Rev. Stat. § 161.605.

Because Oregon robbery statutes do not have the provision "displayed what appeared to be a deadly weapon", it is impossible to predict if defendant would be convicted of robbery in the first degree under the provision "uses or attempts to use a dangerous weapon" or of robbery in the second degree under the provision "represents...that he is armed with what purports to be a dangerous or deadly weapon".

However, it is reasonable to presume that defendant would be sentenced close to a maximum term of imprisonment because of his extensive criminal history. Thus, defendant could be convicted of 20 or 10 years of imprisonment – neither term being grossly disproportionate to his Washington sentence.

In sum, defendant’s sentence of 145 months is proportionate to sentences he would have received in other jurisdictions.

- d. Defendant’s sentence was proportionate to the overall sentencing scheme in Washington

The Washington Supreme Court in *Manussier* has held that:

There is no logical or practical basis for comparison of punishment appellant might receive for other crimes committed in Washington. Sentences under the Sentencing Reform Act vary with each defendant’s criminal history and the presence or absence of aggravating or mitigating factors.

129 Wn.2d at 578.

It is important to note, however, that defendant, with his offender score of 12, would have been sentenced within the sentencing range of 129 to 171 months for any other crime with a seriousness level of nine, including abandonment of dependent person in the first degree, assault of a child in the second degree, hit and run, and inciting criminal profiteering, if the court chose not to give an exceptional sentence. RCW 9.94A.510; RCW 9.94A.515.

While defendant's sentence would have been significantly less had defendant been convicted of robbery in the second degree or theft in the second degree<sup>6</sup>, this point is moot because the jury found defendant guilty of robbery in the first degree, and not of the lesser included offenses. 4RP 145; CP 89. Moreover, the significant difference in sentences for robbery in the first degree as opposed to robbery in the second degree and theft in the second degree is expected because the Legislature classified the offenses differently. Robbery in the first degree is a Class A felony and a "most serious offense", while robbery in the second degree is a Class B felony and theft in the second degree is a Class C felony. RCW 9A.56.040(2); RCW 9A.56.200(2); RCW 9A.56.210(2).

In sum, defendant failed to meet his burden and overcome the presumption that his legislatively authorized sentence of 145 months was constitutional. Defendant's sentence meet the purpose behind the Sentencing Reform Act and was constitutionally proportionate to the seriousness of defendant's crime of conviction, his extensive criminal history, and punishments defendant would have received in other jurisdictions.

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<sup>6</sup> Robbery in the second degree has a seriousness level of four; thus, defendant's sentencing range would have been 63 to 84 months. Theft in the second degree has a seriousness level of one; defendant's sentencing range would have been 22 to 29 months.

D. CONCLUSION.

For the foregoing reasons, the State respectfully requests that this Court affirm defendant's conviction of robbery in the first degree and his sentence of 145 months.

DATED: December 4, 2009.

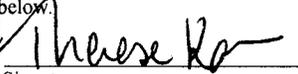
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Certificate of Service:

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.

12/3/09   
Date Signature

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STATE OF WASHINGTON  
BY  DEPUTY

# **APPENDIX “A”**

*50 State Statutory Survey: Robbery*

50 STATE STATUTORY SURVEYS  
**CRIMINAL LAWS**  
**CRIMES**

Thomson Reuters/West July 2009

**Robbery**

All states and jurisdictions have statutes criminalizing the act of robbery. Generally speaking, robbery is a crime that involves the use of force (or threat of force) in the taking or attempted taking of the victim's property. Jurisdictions have varying precise definitions for what constitutes robbery; a small number of jurisdictions have not created their own definition but rely instead on the common law definition of robbery. Most states have varying degrees of robbery on the books; these degrees correlate to type of force, bodily harm, or weapons used in the commission of the crime. All types of robbery are considered felonies in every jurisdiction.

This survey includes felony levels and penalties as contained within each jurisdiction's robbery statute. Some states have specific carjacking statutes, and these are also included in this survey. This survey does not encompass extortion statutes, statutes relating exclusively to juvenile defendants, or statutes solely relating to venue or jurisdiction of prosecution.

The attached table organizes the content into the following subtopics:

- General Statutory Definition of (Simple) Robbery
- Degrees of Robbery
- Possible Penalties/Felony Classifications
- Separate Carjacking Statutes

**Alabama**

AL ST § 13A-8-40 Definitions

AL ST §13A-8-41 Robbery in the first degree

AL ST § 13A-8-42 Robbery in the second degree

AL ST § 13A-8-43 Robbery in the third degree

AL ST § 13A-8-44 Claim of right not defense in robbery prosecution

AL ST § 13A-8-50 Short title

AL ST § 13A-8-51 Definitions

AL ST § 13A-8-52 Penalty for violation of article

**Alaska**

AK ST § 11.41.500 Robbery in the first degree

AK ST § 11.41.510 Robbery in the second degree

**Arizona**

AZ ST § 13-604 Dangerous and repetitive offenders; definitions

AZ ST § 13-411 Justification; use of force in crime prevention; applicability

AZ ST § 13-703 Sentence of death or life imprisonment; aggravating and mitigating circumstances; definition

AZ ST § 13-1901 Definitions

AZ ST § 13-1902 Robbery; classification

AZ ST § 13-1903 Aggravated robbery; classification

AZ ST § 13-1904 Armed robbery; classification

**Arkansas**

AR ST § 5-1-102 Definitions

AR ST § 5-4-501 Habitual offenders -- Sentencing for felony

AR ST § 5-12-102 Robbery, defined

AR ST § 5-12-103 Aggravated robbery

**California**

CA PENAL § 211 Definition

CA PENAL § 212 Fear defined

CA PENAL § 212.5 Robbery; degrees

CA PENAL § 213 Robbery; punishment

CA PENAL § 214 Train robbery; acts with intention of committing

CA PENAL § 215 Carjacking; punishment

**Colorado**

CO ST § 18-4-301 Robbery

CO ST § 18-4-302 Aggravated robbery

CO ST § 18-4-303 Aggravated robbery of controlled substances

CO ST § 18-4-305 Use of photographs, video tapes, or films of property

CO ST § 18-6.5-103 Crimes against at-risk adults and at-risk juveniles-- classifications

**Connecticut**

CT ST § 53a-40 Persistent offenders: Definitions; defense; authorized sentences

CT ST § 53a-133 Robbery defined

CT ST § 53a-134 Robbery in the first degree: Class B felony

CT ST § 53a-135 Robbery in the second degree: Class C felony

CT ST § 53a-136 Robbery in the third degree: Class D felony

CT ST § 53a-136a Robbery involving occupied motor vehicle. Penalty

**Delaware**

DE ST TI 11 § 831 Robbery in the second degree; class E felony

DE ST TI 11 § 832 Robbery in the first degree

DE ST TI 11 § 835 Carjacking in the second degree; class E felony; class D felony

DE ST TI 11 § 836 Carjacking in the first degree; class C felony; class B felony

DE ST TI 11 § 837 Definitions relating to carjacking

**District of Columbia**

DC CODE § 22-2801 Robbery

DC CODE § 22-2802 Attempt to commit robbery

DC CODE § 22-2803 Carjacking

DC CODE § 22-3701 Definitions

DC CODE § 22-3601 Enhanced penalty for crimes committed against senior citizen victims

DC CODE § 24-403 Indeterminate sentences; life sentences; minimum sentences

**Florida**

FL ST § 812.13 Robbery

FL ST § 812.131 Robbery by sudden snatching

FL ST § 812.133 Carjacking

FL ST § 812.135 Home-invasion robbery

FL ST § 921.0022 Criminal Punishment Code; offense severity ranking chart

**Georgia**

GA ST § 16-8-40 Robbery

GA ST § 16-8-41 Armed robbery; robbery by intimidation

GA ST § 17-10-30 Mitigating and aggravating circumstances; death penalty

**Hawaii**

HI ST § 708-840 Robbery in the first degree

HI ST § 708-841 Robbery in the second degree

HI ST § 708-842 Robbery; "in the course of committing a theft"

**Idaho**

ID ST § 18-6501 Robbery defined

ID ST § 18-6502 Fear which constitutes robbery

ID ST § 18-6503 Punishment for robbery

**Illinois**

IL ST CH 725 § 170/12 Reward by Governor

IL ST CH 720 § 5/18-1 Robbery

IL ST CH 720 § 5/18-2 Armed robbery

IL ST CH 720 § 5/18-3 Vehicular hijacking

IL ST CH 720 § 5/18-4 Aggravated vehicular hijacking

IL ST CH 720 § 5/18-5 Aggravated robbery

**Indiana**

IN ST 35-42-5-1 Robbery

IN ST 35-42-5-2 Carjacking

**Iowa**

IA ST § 702.11 Forcible felony

IA ST § 711.1 Robbery defined

IA ST § 711.2 Robbery in the first degree

IA ST § 711.3 Robbery in the second degree

**Kansas**

KS ST 21-3426 Robbery

KS ST 21-3427 Aggravated robbery

**Kentucky**

KY ST § 515.010 Definition

KY ST § 515.020 Robbery in the first degree

KY ST § 515.030 Robbery in the second degree

**Louisiana**

LA R.S. § 14:64 Armed robbery

LA R.S. § 14:64.1 First degree robbery

LA R.S. § 14:64.2 Carjacking

LA R.S. § 14:64.3 Armed robbery; attempted armed robbery; use of firearm; additional penalty

LA R.S. § 14:64.4 Second degree robbery

LA R.S. § 14:65 Simple robbery

LA R.S. § 14:65.1 Purse snatching

LA R.S. § 14:107.2 Hate crimes

**Maine**

ME ST T. 17-A § 651 Robbery

ME ST T. 17-A § 1252 Imprisonment for crimes other than murder

**Maryland**

MD CRIM LAW § 3-401 Definitions

MD CRIM LAW § 3-402 Robbery

MD CRIM LAW § 3-403 Robbery with dangerous weapon

MD CRIM LAW § 3-404 Charging document

MD CRIM LAW § 3-405 Carjacking

**Massachusetts**

MA ST 265 § 17 Armed robbery; punishment

MA ST 265 § 18 Assault with intent to rob or murder; weapons; punishment; victim sixty years or older; minimum sentence for repeat offenders

MA ST 265 § 19 Robbery by unarmed person; punishment; victim sixty or older; minimum sentence for repeat offenders

MA ST 265 § 20 Simple assault; intent to rob or steal; punishment

**Michigan**

MI ST 750.529 Armed robbery

MI ST 750.529a Carjacking; sentencing

MI ST 750.530 Robbery

MI ST 750.531 Stealing from bank, safe, vault, or other depository

**Minnesota**

MN ST § 609.24 Simple robbery

MN ST § 609.245 Aggravated robbery

**Mississippi**

MS ST § 97-3-73 "Robbery" defined

MS ST § 97-3-75 Robbery, punishment

MS ST § 97-3-77 Robbery, threatening injury at different time

MS ST § 97-3-79 Robbery using deadly weapon; punishment

MS ST § 97-3-83 Robbery of intangibles; punishment

**Missouri**

MO ST 569.010 Chapter definitions

MO ST 569.020 Robbery in the first degree

MO ST 569.025 Pharmacy robbery in the first degree, definitions, penalty

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MO ST 569.030 Robbery in the second degree

MO ST 569.035 Pharmacy robbery in the second degree, definitions, penalty

MO ST 571.015 Armed criminal action, defined, penalty

**Montana**

MT ST 45-5-401 Robbery

**Nebraska**

NE ST § 28-324 Robbery; penalty

**Nevada**

NV ST 200.380 Definition; penalty

**New Hampshire**

NH ST § 636:1 Robbery

**New Jersey**

NJ ST 2C:43-7.1 Persistent offenders; sentencing

NJ ST 2C:15-1 Robbery

NJ ST 2C:15-2 Carjacking

**New Mexico**

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