

97-1-00433-2 10888037 MT 04-13-10

or Court of the State of Washington
n and for Pierce County

State of Washington
Plaintiff,

Vs

George A. Wilson
Defendant.

No. 97-1-00433-2

FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON
A.M. DEC 26 2001 P.M.
BY BOB SAN SOUCIE
COUNTY CLERK DEPUTY

Defendant, George A. Wilson, challenges the denial of his Due Process and Equal Protection Constitutional guarantees under Article One Section Three, Article One Section 12 of the Washington State Constitution, and under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

A. PROCEDURAL HISTORY

Defendant was charged via information, in Pierce County superior Court with the crime of murder in the First Degree, in Pierce County Cause Number 97-1-00433-2.

On February 16, 1998 the defendant was found guilty by jury trial and on March 30, 1998 defendant was sentenced to a term of confinement of 304 months.

B. STANDARD OF REVIEW

Pro-se pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. If the court can reasonably read the pleadings to state a valid claim on which the litigant could prevail, the court should do so despite the failure to cite proper authority, confusion of legal theories, poor syntax and sentence construction, or the litigants unfamiliarity with the pleading requirements. See United States vs. MacDougall, 454 U.S. 364, 102 S. Ct 700, 70 L.Ed.2d 551 (1982), Haines vs. Kerner, 404 U.S. 519, 92 S. Ct 594, 30 L.Ed.2d 652 (1972).

Courts in the state of Washington have strong policy of deciding cases on the merits, not on potential defects in the pleadings. See State vs. Olsen, 126 Wn.2d 314, 318, 893 P.2d 629 (1995) (providing that the Supreme Court would rule on an issue which the county prosecutor had failed to find error, because of the policy of reaching the merits of an issue).

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C. WHY RELIEF SHOULD BE GRANTED

The present CrR 7.8 Motion for Relief from judgment is properly before this Court and should be granted because the interest of justice so requires. See In Re Taylor, 105 Wn.2d 683, 717 P.2d 755 (1986), In Re Cook, 114 Wn.2d 802, 809, 792 P.2d 506 (1990), Sanders Vs. United States, 373 U.S. 1, 16, 83 S.Ct 1068, 1077, 10 L.Ed.2d 148 (1963).

The recent Washington State Supreme Court cases of State vs. Roberts, 142 Wn.2d 471 (2000), State vs. Bui, 142 Wn.2d 568 (2000), declared that the accomplice liability jury instructions employed in those cases relieved the state of their burden of proving every element of the crime charged, and were thus unconstitutional.

Defendants jury instructions No. 15 is word for word exactly as the accomplice liability instructions declared unconstitutional in the case of State vs. Cronin, supra, (at page 572), in that it fails to specify "TO WHICH CRIME" was defendant being an accomplice to; "TO WHICH CRIME" did defendant had knowledge of; and "TO WHICH CRIME" did defendant promote or facilitate the commission of.

The Washington State Supreme Court held in Cronin that "the plain language of the complicity statute does not support the states' argument that accomplice liability attaches so long as the defendant knows that he or she is aiding in the commission of a crime." That "the statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged." That "the legislature intended the culpability of an accomplice to extend beyond the crimes of which the accomplice actually has knowledge(.)" That imposing criminal liability on an alleged accomplice can be done "only so long as that individual has general knowledge of 'the crime for which he or she was eventually charged.'" Cronin at 142 Wn.2d 578-79, citing State vs. Roberts, supra. Because State Vs. Roberts, supra, State vs. Cronin, supra, and State vs. Bui, supra constitute a change in the law that is material to a court order, RCW 10.73.100(6) affords defendant an opportunity to bring this CrR 7.8 motion before this court to be considered on the merits. See In Re Greening 9 p.36 206 (2000) at 211 (RCW 10.73.100(6) preserves access to collateral review in cases where there has been a significant change in the law that is material to a court order citing In Re Personal Restraint of Johnson 131 Wn.2d 558, 933 p2d 1019 (1997).

D. ARGUMENT

Jury instruction No. 15 Relieved The State Of Its' Burden of Proving all Essential Elements of the Charged Crime

The state was required to prove every essential element of the crime beyond a reasonable doubt for a conviction to be upheld. See In Re Winship 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L.ED.2d 368 (1970). A criminal defendant is constitutionally entitled to a jury verdict that he is guilty of the crime and absent such a verdict the conviction must be reversed. No matter how inescapable the finding to support that verdict might be. A jury verdict that he is guilty of the crime means of course, a verdict that he is guilty of each necessary element of the crime. California v. Roy 117 S.Ct. 339 (9th Cir. 1996) The fifth and sixth amendments require criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged. United States v. Gaudin 515 U.S. 506, 132 L.Ed.2d 447, 115 S.Ct. 2310 (9th Cir. 1995) State vs. Acosta 101 Wn2d 612, 615, 683 P.2d 1069 (1984) State vs. McCullum 98 Wn.2d 484, 493-94, 656 P.2d 1064 (1983), State vs. Green, 94 Wn.2d 216, 224, 616, P.2d 628 (1980). A conviction cannot stand if the jury instructions relieved the state of its' burden to prove every essential element of the crime charged. See State vs. Jackson 137 Wn.2d 712, 727, 976 P.2d 1229 (1999).

It is reversible error to instruct the jury in a manner that would relieve the state of its' burden of proving every essential element of the crime charged. See State vs. Burd, 125 Wn.2d 707, 713-14, 887 P.2d 396 (1995).

Because accomplice liability requires assistance or agreement to assist in THE CRIME CHARGED, Instruction 15 relieved the state of its' burden of proving the elements of the crime.

A person is legally accountable for the conduct of another person when he or she is an accomplice in the commission of a crime. RCW 9A.08.020 (c). A person is an accomplice when he or she:

(a) with knowledge that it will promote or facilitate the commission of the crime, he (or she)

...

(ii) aids or agrees to aid such other person in planning or committing it;

RCW 9A.08.020(3)(a)(ii). The use of "the" in the statute refers back to the crime charged, i.e., the crime to which a person is an accomplice if he aids or agrees to aid another in planning or committing it. Thus, RCW 9A.08.020 indicates accomplice liability must be read against the crime charge.

Contrary to this law, the trial court's instruction 15 provides:

A person who is an accomplice in the commission of a crime is guilty of that
crime whether present at the scene or not.

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

(1) solicits, commands, encourages, or requests another person to commit
the crime, or

(2) aids or agrees to aid another person in planning or committing a crime.

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

Please see exhibit A.

By using "a" instead of "the crime charged", the instruction overlooks the required link between the crime the accomplice aids or agrees to aid and the crime to which he is alleged to be an accomplice.

By requiring only that the accused aid or agree to aid in the commission of "a crime", defendant's Court Jury Instruction No. 15 marks a *significant departure from the plain language of the accomplice liability statute*. By referring to "it", not some unnamed crime which may or may not include the charged one. The statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged. See State vs. Cronin supra at 579.

The Washington State Supreme Court went on to rule in Cronin that their prior decision in State vs. Roberts, supra directed that "the fact that a purported accomplice knows that the principle intends to commit "a crime" does not necessarily mean that accomplice liability attaches for any and all offenses ultimately committed by the principle." See State vs. Cronin, supra, at 579, citing State vs. Roberts supra.

Even the DISSENT in Roberts, written by Justice Ireland agreed that accomplice liability instruction should have stated: "THE CRIME CHARGED". See State vs. Roberts, supra at 541 (I agree with the majority that the accomplice liability instruction, jury instruction 7 (in defendant's case jury instruction 15) should have stated "THE CRIME CHARGED" rather than 'a crime'" (emphasis added).

The trial court's erroneous jury instruction relieved the state of its' burden of proving that the defendant aided or agreed to aid in the

commission of THE CHARGED CRIME. Accordingly, defendant was denied Due Process of the law and his conviction must be reversed.

The instructional error relieved the State of its' burden of proving the elements of the crime, requiring reversal.

In State vs. Jackson, the Washington State Supreme Court reaffirmed the rule that where jury instructions relieve the State of proving all the essential elements, the error is not susceptible to harmless error analysis, but instead requires reversal. See State vs. Jackson, 137 Wn.2d 712, 726-27, 976 P.2d 1229 (1999). There, the Court found an erroneous accomplice instruction relieved the State of its' burden of proving all essential elements of the crime. *Id.* Therefore, the Court refused to examine the record to determine if the error prejudiced the defendant. Thus, this court must follow Jackson and find that because instruction No. 15 relieved the State of its' burden of proving the elements of accomplice liability, defendant's conviction must be reversed.

E. CONCLUSION

Because defendant's constitutional rights were violated, said rights being his 5th, 6th and 14th amendment rights, (U.S. Constitution) defendant respectfully asks this Court to order a retrial in defendant's case.

Respectfully submitted this 23 day of DECEMBER, 2001.

INSTRUCTION NO. 1

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

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

Charges have been made by the prosecuting attorney by filing a document, called an information, informing the defendants of the charges. You are not to consider the filing of the information or its contents as proof of the matters charged.

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

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

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

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

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

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the

weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed upon defendant George Wilson. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful. The punishment to be imposed upon defendant Cecil Davis will be considered by you in a separate penalty phase only if you unanimously find him guilty of the crime of Premeditated Murder in the First Degree and unanimously find the existence of an Aggravating Circumstance.

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

INSTRUCTION NO. 2

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

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

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

INSTRUCTION NO. 3

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

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

INSTRUCTION NO. 5

Evidence that a witness has been convicted of a crime may be considered by you in deciding what weight or credibility should be given to the testimony of the witness and for no other purpose.

INSTRUCTION NO. 6

Defendant Cecil Davis is not compelled to testify, and the fact that he has not testified cannot be used to infer guilt or prejudice him in any way.

INSTRUCTION NO. 7

Defendant George Wilson is not compelled to testify, and the fact that he has not testified cannot be used to infer guilt or prejudice him in any way.

INSTRUCTION NO. 8

Homicide is the killing of a human being by the voluntary act of another and is either murder, homicide by abuse, manslaughter, excusable homicide, or justifiable homicide.

INSTRUCTION NO. 9

A person commits the crime of Premeditated Murder in the First Degree when, with a premeditated intent to cause the death of another person, he causes the death of such person.

INSTRUCTION NO. 10

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

INSTRUCTION NO. 11

Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

INSTRUCTION NO. 12

To convict defendant Cecil Davis of the charged crime of Premeditated Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25th day of January, 1997, defendant Cecil Davis suffocated or asphyxiated Yoshiko Couch;
- (2) That defendant Cecil Davis acted with intent to cause the death of Yoshiko Couch;
- (3) That the intent to cause the death was premeditated;
- (4) That Yoshiko Couch died as a result of defendant Cecil Davis' acts; and
- (5) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 13

If you find defendant Cecil Davis guilty of Premeditated Murder in the First Degree as defined in Instruction 9, you must then determine whether the following aggravating circumstance exists:

The murder was committed in the course of, in furtherance of, or in immediate flight from a Robbery in the First or Second Degree, a Rape in the First or Second Degree, or a Burglary in the First or Second Degree.

The State has the burden of proving the existence of an aggravating circumstance beyond a reasonable doubt. In order for you to find that there is an aggravating circumstance in this case, you must unanimously agree that the aggravating circumstance has been proved beyond a reasonable doubt. You need not be unanimous as to any one of the crimes listed within the aggravating circumstance.

INSTRUCTION NO. 14

A person commits the crime of Felony Murder in the First Degree when he or an accomplice commits or attempts to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree, and in the course of or in furtherance of such crime or in immediate flight from such crime, he or the other participant causes the death of a person other than one of the participants.

INSTRUCTION NO. 15

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

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

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing a crime.

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

INSTRUCTION NO. 16

A person attempts to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree, when, with intent to commit that crime, he does any act which is a substantial step toward the commission of that crime.

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

A "substantial step" is conduct which strongly indicates a criminal purpose and which is more than mere preparation.

INSTRUCTION NO. 17

A person commits the crime of Robbery in the First Degree when, in the commission of a robbery or in immediate flight therefrom, he inflicts bodily injury.

A person commits the crime of Robbery in the Second Degree when he commits robbery.

"Bodily injury" means physical pain or injury, illness, or an impairment of physical condition.

A person commits "robbery" when he unlawfully and with intent to commit theft thereof, takes personal property from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial. The taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom it was taken, such knowledge was prevented by the use of force or fear.

Cigarettes, packaged food items, canned soda pop, canned beer, and jewelry are all "property".

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

"Theft" means to wrongfully obtain the property of another, with intent to deprive that person of such property.

"Wrongfully obtains" means to take wrongfully the property of another.

INSTRUCTION NO. 18

A person commits the crime of Rape in the First Degree when he engages in sexual intercourse with another person by forcible compulsion, when the perpetrator inflicts serious physical injury or feloniously enters into the building where the victim is situated.

A person commits the crime of Rape in the Second Degree when he engages in sexual intercourse with another person by forcible compulsion or when the victim is incapable of consent by reason of being physically helpless.

"Sexual intercourse" means any penetration of the vagina, however slight, by a penis or by an object, when committed on one person by another.

"Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to oneself.

"Physical injury" means physical pain or injury, illness, or an impairment of physical condition.

A person "feloniously enters a building" if that person enters into a building with the intent to commit a crime against a person or property therein and the person entering is not then licensed, invited or otherwise privileged to enter that building.

"Building" includes any dwelling; "dwelling" means any structure that is ordinarily used by a person for lodging.

"Physically . ipless" means a person.wi. is unconscious or
for any other reason is physically unable to communicate
unwillingness to an act.

INSTRUCTION NO. 19

A person commits the crime of Burglary in the First Degree when, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a dwelling, and in entering, while in the dwelling, or in immediate flight from the dwelling he or an accomplice in the crime assaults any person.

A person commits the crime of Burglary in the Second Degree when, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building.

A person acts with "intent" or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

A person "enters or remains unlawfully" in a building or dwelling when he is not then licensed, invited, or otherwise privileged to so enter or remain.

"Building" includes any dwelling; "dwelling" means any structure that is ordinarily used by a person for lodging.

An "assault" is an intentional touching or striking of another person that is harmful or offensive, regardless of whether any physical injury is done to the person. A touching or striking is offensive if it would offend an ordinary person who is not unduly sensitive.

INSTRUCTION NO. 20

To convict defendant Cecil Davis of the alternative crime of Felony Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 25th day of January, 1997, Yoshiko Couch was killed;

(2) That defendant Cecil Davis was committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree;

(3) That defendant Cecil Davis caused the death of Yoshiko Couch in the course of and in furtherance of such crime or in immediate flight from such crime;

(4) That Yoshiko Couch was not a participant in the crime;
and

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

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

The crimes listed in Element Number (2) are alternatives. You must unanimously agree that defendant Cecil Davis was committing or attempting to commit one of those crimes, but you need not be unanimous as to any particular one of those crimes.

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

INSTRUCTION NO. 21

To convict defendant George Wilson of the charged crime of Felony Murder in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 25th day of January, 1997, Yoshiko Couch was killed;

(2) That defendant George Wilson or an accomplice was committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree;

(3) That defendant George Wilson or an accomplice caused the death of Yoshiko Couch in the course of and in furtherance of such crime or in immediate flight from such crime;

(4) That Yoshiko Couch was not a participant in the crime;
and

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

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

The crimes listed in Element Number (2) are alternatives. You must unanimously agree that defendant George Wilson or an accomplice was committing or attempting to commit one of those crimes, but you need not be unanimous as to any particular one of those crimes.

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

INSTRUCTION NO. 22

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

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

INSTRUCTION NO. 23

It is a defense to a charge of Felony Murder in the First Degree based upon committing or attempting to commit Robbery in the First or Second Degree, Rape in the First or Second Degree, or Burglary in the First Degree that defendant George Wilson:

(1) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(2) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury; and

(3) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(4) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

This defense must be established by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 24

If you are not satisfied beyond a reasonable doubt that defendant Cecil Davis is guilty of the crime of Premeditated Murder in the First Degree, he may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish the defendant's guilt of such lesser crime beyond a reasonable doubt.

The crime of Premeditated Murder in the First Degree necessarily includes the lesser crime of Murder in the Second Degree. However, Murder in the Second Degree is not a lesser crime of Felony Murder in the First Degree. You should only consider the crime of Murder in the Second Degree if you have unanimously agreed that defendant Cecil Davis is not guilty of the felony murder alternative defined above.

When a crime has been proved against a person and there exists a reasonable doubt as to which of two degrees that person is guilty, he shall be convicted only of the lowest degree.

INSTRUCTION NO. 25

A person commits the crime of Murder in the Second Degree when, with intent to cause the death of another person but without premeditation, he causes the death of such person.

INSTRUCTION NO. 26

To convict defendant Cecil Davis of the lesser degree crime of Murder in the Second Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 25th day of January, 1997, defendant Cecil Davis suffocated or asphyxiated Yoshiko Couch;
- (2) That defendant Cecil Davis acted with intent to cause the death of Yoshiko Couch;
- (3) That Yoshiko Couch died as a result of defendant Cecil Davis' acts; and
- (4) That the acts occurred in State of Washington.

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

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

INSTRUCTION NO. 27

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

INSTRUCTION NO. 28

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

You will be furnished with all of the exhibits admitted in evidence and these instructions. You will be furnished with Verdict Form A, an Interrogatories form, a Special Verdict Form, and Verdict Form B for defendant Cecil Davis. You will be furnished with Verdict Form A for defendant George Wilson. You may consider the case against each defendant in the order you choose.

When you are deliberating the case against defendant Cecil Davis, you will first consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty" according to the decision you reach. If you cannot unanimously agree on a verdict as to that charge, do not fill in the blank provided in Verdict Form A.

If you find defendant Cecil Davis guilty on Verdict Form A, complete the form titled "Interrogatories" by answering the two questions either "Yes" or "No". If you answer the first question "Yes", you will then complete the Special Verdict Form. If you

answer the first question "No", do not complete the Special Verdict Form. In order to answer either question "Yes", you must unanimously be satisfied beyond a reasonable doubt that "Yes" is the correct answer to that question. Otherwise, you must answer "No" to that question. If you find defendant Cecil Davis guilty on Verdict Form A, do not use Verdict Form B.

If you unanimously find defendant Cecil Davis not guilty of the crime of Murder in the First Degree, or if, after full and careful consideration of the evidence, you unanimously find him not guilty of Felony Murder in the First Degree and you cannot agree as to Premeditated Murder in the First Degree, you will then consider the lesser crime of Murder in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form B the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot unanimously agree on a verdict, do not fill in the blank provided in Verdict Form B.

When you are deliberating the case against defendant George Wilson, you will only consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty" according to the decision you reach. If you cannot unanimously agree on a verdict as to that charge, do not fill in the blank provided on Verdict Form A.

Since these are criminal cases, each of you must agree for you to return a verdict. When all of you have so agreed, fill in

the proper verdict form or forms to express your decision. The presiding juror will sign it and notify the judicial assistant, who will conduct you into court to declare your verdicts.

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 97-1-00432-4
)	
vs.)	
)	VERDICT FORM A
CECIL EMILE DAVIS,)	(FIRST DEGREE MURDER)
)	
Defendant.)	
)	

We, the jury, find defendant CECIL EMILE DAVIS
 _____ (Not Guilty or Guilty) of the crime of
 Murder in the First Degree as charged.

 PRESIDING JUROR

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

STATE OF WASHINGTON,

Plaintiff,

vs.

CECIL EMILE DAVIS,

Defendant.

CAUSE NO. 97-1-00432-4

INTERROGATORIES

We, the jury, having found defendant CECIL EMILE DAVIS guilty of Murder in the First Degree as charged, answer the following questions submitted by the court:

FIRST QUESTION: Did you unanimously agree that defendant Cecil Davis committed Premeditated Murder in the First Degree as defined in Instruction No. 9 ?

ANSWER:
(Yes/No)

SECOND QUESTION: Did you unanimously agree that defendant Cecil Davis committed Felony Murder in the First Degree as defined in Instruction No. ?

ANSWER:
(Yes/No)

PRESIDING JUROR

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

STATE OF WASHINGTON,

Plaintiff,

vs.

CECIL EMILE DAVIS,

Defendant.

CAUSE NO. 97-1-00432-4

SPECIAL VERDICT
AGGRAVATING CIRCUMSTANCES

We, the jury, having unanimously found defendant CECIL EMILE DAVIS guilty of Premeditated Murder in the First Degree as defined in Instruction _____, answer the following question submitted by the court:

QUESTION: Has the State proved the existence of the following aggravating circumstance beyond a reasonable doubt?

The murder was committed in the course of, in furtherance of, or in immediate flight from a Robbery in the First or Second Degree, a Rape in the First or Second Degree, or a Burglary in the First or Second Degree.

ANSWER: _____
(Yes/No)

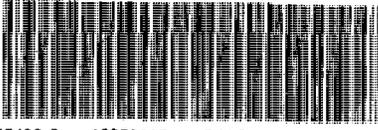
PRESIDING JUROR

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 97-1-00432-4
)	
vs.)	
)	
CECIL EMILE DAVIS,)	VERDICT FORM B
)	(SECOND DEGREE MURDER)
)	
Defendant.)	
)	

We, the jury, having unanimously found defendant CECIL EMILE DAVIS not guilty of the crime of Murder in the First Degree as charged, or having unanimously found him not guilty of Felony Murder in the First Degree and being unable to unanimously agree as to Premeditated Murder in the First Degree, find defendant CECIL EMILE DAVIS _____ (Not Guilty or Guilty) of the lesser included crime of Murder in the Second Degree.

PRESIDING JUROR



97-1-00433-2 10888035 DCLR 04-13-10

Court of the State of Washington
and for Pierce County

State of Washington
Plaintiff,

Vs

George A. Wilson
Defendant.

No. 97-1-00433-2

FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON
A.M. DEC 26 2001 P.M.
BOB SAN SOUCIE
COUNTY CLERK
BY: _____ DEPUTY

State of Washington
County of Walla Walla

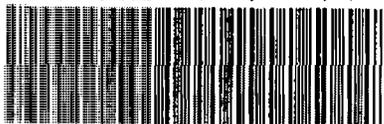
George A Wilson certifies under pain, penalty and perjury that I am over 18 years of age and competent to be a witness herein, that the following is true and correct to be the best of my knowledge.

1. I am the defendant in the above cited Pierce County cause number.
2. Defendant is not a lawyer nor is he attempting to present himself in this court as a lawyer. Defendant is a prisoner who has limited knowledge of the law and is simply attempting to obtain relief from this court for the violations of his constitutional rights.
3. Defendant should not be held to the strict standards that licensed lawyers are concerning the technical matter of filing documents/motions for relief from Judgment under CrR 7.8.
4. Defendant respectfully moves this court to grant the relief requested in the memorandum in support of motion for relief from judgment under CrR 7.8.

Dated this 23 day of DECEMBER, 2001

George A. Wilson

1
DEC 27 2001



97-1-00433-2 10886038 AFSR 04-13-10

Court of the State of Washington
and for Pierce County

FILED
PIERCE COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

A.M. DEC 26 2001 P.M.

BY Bob San Soucie COUNTY CLERK DEPUTY

State of Washington
Plaintiff,

Vs

George A. Wilson
Defendant.

Cause No. 97-1-00433-2

Declaration of Service

Defendant, George A. Wilson declares under penalty of perjury under the laws of the state of Washington that the following is true and correct:

1. That on the 23 day of December, 2001 a copy of the Defendant's Declaration of Service, Motion for Relief from Judgment under CrR 7.8, Affidavit of George A. Wilson in Support of Motion for Relief from Judgment under CrR 7.8 and Memorandum in Support of Motion for Relief from Judgment under CrR 7.8 were served on the parties designated below by giving said documents to a Washington State Penitentiary Correctional Officer (Prison Guard) as directed per Penitentiary Policy.

Clerk's Office
Office of Judicial Adm.
Pierce County Superior Court
Pierce County Courthouse
930 Tacoma Ave. So,
Tacoma, Washington 98405

1 DEC 27 2001

002244 610

Pierce County Prosecuting Atty.
Office of the Prosecutor
Pierce County Superior Court
Pierce County Courthouse
930 Tacoma Ave. So.
Tacoma, Washington 98405

Honorable Frederick W. Fleming, Judge
Pierce County Superior Court
Pierce County Courthouse
930 Tacoma Ave. So.
Tacoma, Washington 98405

Signed in Walla Walla, Washington this 23 day of DECEMBER, 2001

George A. Wilson

