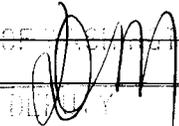


FILE  
COURT OF APPEALS  
DIVISION II

NO. 40539-3-II

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STATE OF WASHINGTON  
BY 

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

MARCUS THADDEUS CLAYTON, APPELLANT

---

Appeal from the Superior Court of Pierce County  
The Honorable Frank Cuthbertson

No. 09-1-01363-4

---

**BRIEF OF RESPONDENT**

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

1. Whether sufficient evidence was adduced to support the jury's verdict finding defendant guilty of conspiracy to commit theft and murder in the first degree.

B. STATEMENT OF THE CASE.

1. Procedure

On March 12, 2009, the Pierce County Prosecutor's Office charged MARCUS THADDEUS CLAYTON, hereinafter "defendant" with one count of murder in the first degree. CP 1-2. The information was later amended to include count two for conspiracy to commit theft in the first degree, counts three and four for unlawful possession of a firearm in the second degree, count five for possession of a stolen firearm, count six for theft of a firearm, and count seven for tampering with a witness. CP 80-83.

Trial commenced before the Honorable Frank Cuthbertson on March 2, 2010. After hearing all the evidence, the jury returned a verdict finding defendant guilty of murder in the first degree, conspiracy to commit theft, two counts of unlawful possession of a firearm, possession of a stolen firearm, and theft of a firearm. CP 338, 343, 344, 345, 346, 347. The jury also returned a special verdict, finding that defendant was

armed with a firearm during the commission of the murder and that defendant committed or attempted to commit robbery in the first degree during the commission of murder. CP 340, 341. The jury found defendant not guilty of tampering with a witness. CP 348.

Defendant was sentenced to a standard range sentence of 291-388 months for murder in the first degree plus 60 months for the enhancements, 10.5-13.5 months for the conspiracy to commit theft, 9-12 months for each count of unlawful possession of a firearm, and 26-34 months for theft of a firearm (which merged with possession of a stolen firearm). CP 438-451. Defendant filed a timely notice of appeal from entry of this judgment. CP 452.

## 2. Facts

On March 9, 2009, Celestine Nathan (“Celestine”) called defendant on the phone. (3/3/2010) RP 47. Airreale McCowan (“Ms. McCowan”) heard defendant say to Celestine “Lick, two G’s, how much.” (3/3/2010) RP 48. Ms. McCowan testified that “lick” means “robbery.” (3/3/2010) RP 49. Defendant also said “he’s [Darryl Bracey] an easy mark. He’s a trick. He smokes crack, 2 G’s.” (3/3/2010) RP 50.

Defendant admitted that after Celestine suggested robbing Mr. Bracey, defendant asked what was in it for him. (3/11/2010) RP 559.

After hanging up the phone, defendant drove himself and Ms. McCowan to pick up Celestine from her apartment. (3/3/2010) RP 54.

Once in the car, Celestine began talking about how Darryl Bracey smoked crack and that he was an “easy mark.” (3/3/2010) RP 55.

Celestine told defendant that Mr. Bracey has a metal box where he kept everything. (3/3/2010) RP 55. Defendant asked Celestine what kind of gun Mr. Bracey had. (3/10/2010) RP 503. Celestine responded that Mr. Bracey keeps a big gun under his couch. (3/3/2010) RP 56, 58.

Defendant then drove to Mr. Bracey’s apartment (3/3/2010) RP 55. Defendant initially dropped Celestine off at Mr. Bracey’s apartment while defendant and Ms. McCowan went to run errands. (3/3/2010) RP 56, 58. A short time later, Celestine called defendant and told him that Mr. Bracey wanted to buy crack so defendant and Ms. McCowan returned to Mr. Bracey’s apartment complex. (3/3/2010) RP 58.

When defendant and Ms. McCowan arrived back at Mr. Bracey’s apartment, Celestine came outside and got in defendant’s car. (3/3/2010) RP 58. Celestine told defendant that “now would be the easy time” and “you [defendant] should do it,” referring to robbing Mr. Bracey. (3/3/2010) RP 58, 59. Defendant took his gun from the back of his car and put it in his pocket. (3/11/2010) RP 567-568.

Defendant, Ms. McCowan, and Celestine proceeded into Mr. Bracey’s apartment. (3/3/2010) RP 59. Defendant went in the bathroom to break up crack to sell to Mr. Bracey. (3/3/2010) RP 59. After selling

Mr. Bracey the crack, defendant and Celestine left Mr. Bracey's apartment for a short time while Ms. McCowan stayed behind. (3/3/2010) RP 61, 63. Ms. McCowan stated that she stayed in the apartment to see if Mr. Bracey wanted to pay her for sex. (3/3/2010) RP 63.

After a while, Celestine returned and smoked crack with Mr. Bracey while Ms. McCowan took a shower. (3/3/2010) RP 64. When Ms. McCowan returned to the room, Mr. Bracey seemed fidgety and he and Celestine were arguing. (3/3/2010) RP 64.

There was a knock at the door and it was defendant. (3/3/2010) RP 64. Defendant asked if Ms. McCowan was ready to go so Ms. McCowan and Celestine walked outside but defendant stayed inside and closed the door. (3/3/2010) RP 65.

Defendant testified that his hand was in his pocket and he clicked the safety off of his gun. (3/11/2010) RP 521. Defendant testified that Mr. Bracey went for the closet and grabbed a gun. (3/11/2010) RP 522. Defendant tackled Mr. Bracey and the two fell to the ground. (3/11/2010) RP 522, 574. Defendant testified that Mr. Bracey was on the ground and defendant was on top of him. (3/11/2010) RP 522. Defendant claimed that Mr. Bracey put his gun to defendant's head downward and that defendant reached up and the gun went off. *Id.*

After shooting Mr. Bracey in the head, defendant grabbed Mr. Bracey's gun and put it in his pocket. (3/11/2010) RP 524. Defendant then opened the door and told Celestine and Ms. McCowan "he's dead."

(3/3/2010) RP 67. Defendant had his gun in his hand. (3/3/2010) RP 67. Celestine and Ms. McCowan went inside Mr. Bracey's apartment. (3/3/2010) RP 67. Mr. Bracey was on the floor and he wasn't breathing. (3/3/2010) RP 69. Ms. McCowan grabbed Mr. Bracey's laptop while Celestine was putting other items in her purse. (3/3/2010) RP 67, 68, 69.

Defendant testified that he went to his car, put both guns in the trunk, then went back to Mr. Bracey's apartment through the back door to "make sure things were getting cleaned up. . ." (3/11/2010) RP 525. Defendant also testified that he put a bicycle up against the front door because he "didn't want nobody to come in while I [defendant] was there." (3/11/2010) RP 531.

After grabbing the laptop, Ms. McCowan left the apartment and went to defendant's car. (3/3/2010) RP 70. Defendant's car was unlocked and the keys were in the ignition. (3/3/2010) RP 71. Ms. McCowan testified that it is unusual for defendant to leave keys in the ignition. *Id.*

Ms. McCowan drove defendant's car to the front of Mr. Bracey's apartment where defendant and Celestine got inside, and they drove off. (3/3/2010) RP 71-72. During the car ride, defendant and Celestine were arguing about whether everything got wiped down and Celestine ensured defendant that she was "not going to say anything." (3/3/2010) RP 73.

Defendant then dropped Celestine off and gave her some crack for free. (3/3/2010) RP 73. Ms. McCowan testified that it is unusual for defendant to give crack away for free. (3/3/2010) RP 73.

After dropping Celestine off, defendant and Ms. McCowan went to defendant's sister's house where they showered and slept for a while. (3/3/2010) RP 73-74. Defendant testified that he returned to Mr. Bracey's apartment later that night and entered Mr. Bracey's apartment through the back sliding glass door. (3/11/2010) RP 576. Defendant wiped down the ashtray where he had been smoking and the bathroom where he had cut up the crack. (3/11/2010) RP 577.

Defendant also testified that he burned the clothes he was wearing during the murder and gave his gun to his cousin in Seattle asking him to "get rid of it." (3/11/2010) RP 583-584.

On March 10, 2009, defendant and Ms. McCowan went shopping and defendant purchased an internet card for Mr. Bracey's laptop and some shoes for himself and Ms. McCowan. (3/3/2010) RP 76, 81. Defendant and Ms. McCowan then went to Quayvis Thomas's house where they spent the night. (3/3/2010) RP 76. Defendant testified that he sold Mr. Bracey's gun to Quayvis. (3/11/2010) RP 586.

On March 11, 2009, a team of police officers from the Pierce County Sheriff's Department apprehended defendant, Ms. McCowan, and several others at a McDonald's parking lot in Renton. (3/2/2010) RP 44-45, 109. Quayvis Thomas was present and accompanied Deputy Kory

Shaffer to the Thomas residence. (3/2/2010) RP 70. Once at the Thomas residence, Deputy Shaffer informed Tera Thomas, Quayvis's mother, that the police had someone in custody who they believed had just come from Ms. Thomas's house and that there may be evidence of the crime there. (3/2/2010) RP 70-71. Ms. Thomas gave the police consent to search her house. (3/2/2010) RP 72.

During the search, the police discovered a handgun under the couch cushion on the front porch, and a .38 caliber handgun in a coat pocket in Quayvis's bedroom. (3/2/2010) RP 74-76. It was later discovered that the .38 caliber handgun found in Quayvis's bedroom belonged to Mr. Bracey. (3/2/2010) RP 93-94.

Detective Darrin Rayner testified that he transported defendant from the McDonald's parking lot in Renton to headquarters in the County City Building and then booked defendant into jail. (3/2/2010) RP 110, 113. While booking defendant into jail, defendant he let out a sigh and said that he "cannot believe this is happening." (3/2/2010) RP 113. Defendant's eyes teared up and he said "this is heavy shit." (3/2/2010) RP 115. Defendant then told Detective Rayner that he "would have to ask God for forgiveness" and that "God was the only one" he had to answer to. (3/2/2010) RP 115.

At trial, several deputies testified that when they investigated the homicide at Mr. Bracey's apartment, the apartment appeared to have been rummaged through. *See* (3/1/2010) RP 44; (3/9/2010) RP 318-319.

Steven Mell, a Forensic Investigator for the Pierce County Sheriff's Department, testified that he assisted in searching Mr. Bracey's apartment. (3/9/2010) RP 298, 300. A purse with a checkbook belonging Celestine Nathan was located under the kitchen sink in Mr. Bracey's apartment. (3/9/2010) RP 310. There was a spent shell casing lying next to Mr. Bracey's body. (3/9/2010) RP 311. There was a bicycle inside up against the front door. (3/9/2010) RP 314. Officer Mell also testified that a gun holster was located on the top shelf of the closet in the living room and that there is a wall between where the victim was found and the living room where the gun holster was located. (3/9/2010) RP 317-318.

Detective James Loeffelholz testified that he applied for a search warrant for defendant's car on March 12, 2009. (3/9/2010) RP 361-363. Mr. Bracey's laptop was found in defendant's car. (3/9/2010) RP 363, (3/10/2010) RP 448-449.

At trial, defendant admitted that he told Detective Denny Wood "I can't even claim self-defense. I was in his house." (3/11/2010) RP 527, 588. Defendant testified that he didn't call the police after the shooting because he didn't want to do jail time. (3/11/2010) RP 531. Defendant also admitted telling his girlfriend to tell her father that defendant murdered somebody, and admitted saying that if he ever killed somebody again, he is going to make sure that all the witnesses are killed as well. (3/11/2010) RP 594, 602.

Dr. Sigmund Menchel testified that Mr. Bracey died from a gunshot wound to the head. (3/4/2010) RP 186.

C. ARGUMENT.

1. SUFFICIENT EVIDENCE WAS ADDUCED TO SUPPORT THE JURY'S VERDICT FINDING DEFENDANT GUILTY OF CONSPIRACY TO COMMIT THEFT AND MURDER IN THE FIRST DEGREE.

Due process requires the State to bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. *See Seattle v. Gellein*, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); *State v. Mabry*, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the State met the essential elements of the crime beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). Additionally, challenging the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences therefrom. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1988) (*citing State v. Holbrook*, 66 Wn.2d 278, 401 P.2d 971 (1965)); *State v. Turner*, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981). All reasonable inferences from the evidence must be drawn in a

light most favorable to the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. *Id.*; see also *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

In considering this 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) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987)).

The written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. Credibility determinations are necessary because witness testimony can conflict; these determinations should be made by the trier of fact, who is best able to observe the witnesses and evaluate their testimony as it is given. On this issue, the Supreme Court of Washington said:

[G]reat deference . . . is to be given the trial court’s factual findings. It, alone, has had the opportunity to view the witness’ demeanor and to judge his veracity.

*State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (*internal citations omitted*). Therefore, if the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

a. Conspiracy to commit theft

A formal agreement is not necessary to prove the formation of a conspiracy. *State v. Smith*, 65 Wn. App. 468, 471, 828 P.2d 654 (1992), quoting *State v. Casarez-Gastelum*, 48 Wn. App. 112, 116, 738 P.2d 303 (1987). “An agreement can be shown by a “concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common purpose.” *Id.* (internal citations omitted). Proof of a conspiracy may be established by overt acts. *Id.*

The jury was instructed that

A person commits the crime of conspiracy to commit theft in the first degree, when, with intent that conduct constituting the crime of theft in the first degree be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

CP 282-337; Jury Instruction 33. The jury was instructed that in order to find defendant guilty of conspiracy to commit theft in the first degree, each of the following elements must be proved beyond a reasonable doubt:

- (1) That on or about the period between March 8<sup>th</sup>, 2009 and March 9, 2009, the defendant agreed with one or more persons, to-wit: Celestine Nathan, to engage in or cause the performance of conduct constituting the crime of theft in the first degree;
- (2) That the defendant made the agreement with the intent that such conduct be performed;
- (3) That any one of the persons involved in the agreement took a substantial step in pursuance of the agreement; and

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

CP 282-337; Jury Instruction 35.

Defendant alleges that there was insufficient evidence to support the jury's finding that defendant conspired to commit a theft. Appellant's Brief, p. 9. However, the record does not support that assertion.

At trial, Ms. McCowan testified that she was with defendant when he received a phone call from Celestine. (3/3/2010) RP 47. Ms. McCowan heard defendant and Celestine talking about robbing Mr. Bracey and heard defendant say "he's [Mr. Bracey] an easy mark" and "what do I get out of it." (3/3/2010) RP 50, 51. After having this phone conversation, defendant and Ms. McCowan picked up Celestine and drove to Mr. Bracey's apartment. (3/3/2010) RP 53-54.

During the car ride, Celestine continued to talk about robbing Mr. Bracey and defendant asked Celestine what kind of gun Mr. Bracey had. (3/3/2010) RP 56, 58, (3/10/2010) RP 503. After Celestine went up to Mr. Bracey's apartment, she came back to defendant's car and told defendant "now would be the easy time" and "you should do it." (3/3/2010) RP 58. Defendant then went into Mr. Bracey's apartment, bringing his gun with him. (3/11/2010) RP 513.

After a while, defendant told Ms. McCowan and Celestine that it was time to leave but when Ms. McCowan and Celestine walked out the door, defendant stayed inside. (3/3/2010) RP 65. Defendant shot Mr.

Bracey in the head, stole Mr. Bracey's gun, then opened the door and said "he's dead." (3/3/2010) RP 67, (3/11/2010) RP 524. This prompted Celestine and Ms. McCowan to enter Mr. Bracey's apartment and begin stealing things.

The testimony at trial established that defendant did not say "no" when Celestine suggested robbing Mr. Bracey. (3/3/2010) RP 137, (3/11/2010) RP 563. To the contrary, after Celestine suggested robbing Mr. Bracey, defendant picked Celestine up and drove to Mr. Bracey's apartment.

Ms. McCowan testified that after defendant shot Mr. Bracey, Ms. McCowan grabbed Mr. Bracey's laptop and went to defendant's car. (3/3/2010) RP 70. Defendant's car was unlocked and the keys were in the ignition. (3/3/2010) RP 71. Ms. McCowan testified that it is unusual for defendant to leave keys in the ignition. (3/3/2010) RP 71. A reasonable inference from this testimony is that defendant left the car unlocked and the keys in the ignition because he planned to rob Mr. Bracey and wanted a quick getaway.

Defendant relies on *State v. Smith*, 65 Wn. App. 468, 828 P.2d 654 (1992), to support his assertion that there is insufficient evidence to prove conspiracy. Appellant's Brief, p. 10-11. However, defendant's reliance is misplaced. In *State v. Smith*, Smith agreed to drive his friend, Erickson, to meet up with a third person, Hensler. *Id.* Smith's primary purpose for driving Erickson was so he could retrieve money that Hensler owed Smith.

*Id.* However, the court found that the secondary purpose was to assist Erickson in selling LSD, even though Smith had not specifically agreed to help Erickson sell the LSD. *Id.* The court affirmed Smith's conviction, holding that agreeing to drive Erickson with the knowledge that Erickson planned to sell LSD was sufficient to support Smith's conviction for conspiracy. *Id.* at 472-473.

In the present case, just as in *Smith*, defendant knew about Celestine's plan to rob Mr. Bracey. Defendant proceeded to pick Celestine up and drive her to Mr. Bracey's apartment. Although there was no formal agreement by defendant to steal from Mr. Bracey, defendant's conversation with Celestine and defendant's overt acts after that conversation prove that defendant conspired to commit theft. After Celestine suggested robbing Mr. Bracey, defendant asked what was in it for him and then picked Celestine up and drove to Mr. Bracey's apartment. (3/11/2010 RP 559, 561. Defendant asked questions about Mr. Bracey's gun and brought his own gun with him into Mr. Bracey's apartment. (3/11/2010) RP 567-568. Defendant left his car unlocked and the keys in the ignition during the robbery. (3/3/2010) RP 71. After shooting Mr. Bracey, defendant wiped down the apartment and got rid of Mr. Bracey's gun. (3/11/2010) RP 577, 586. Furthermore, the day after killing Mr. Bracey, defendant went shopping for an internet card to use in the computer stolen from Mr. Bracey's apartment. (3/3/2010) RP 76, 81.

These overt acts prove that defendant conspired with Celestine to rob Mr. Bracey.

The evidence presented at trial supports the jury's verdict finding defendant guilty of conspiracy to commit theft in the first degree.

b. Murder in the first degree

First degree felony murder has two elements: (1) a homicide; (2) committed "in the course of or in furtherance of . . . or in immediate flight" from a robbery. *State v. Bottrell*, 103 Wn. App. 706, 718, 14 P.3d 164 (2000), quoting RCW 9A.32.030(1)(C). A homicide is committed in connection with the perpetration of a felony if it is in "close proximity in terms of time and distance between the felony and the homicide and there was no break in the chain of events from the inception of the felony to the time of the homicide." *State v. Bottrell*, 103 Wn. App. at 720, quoting (CHARLES E. TORCIA, 2 WHARTON'S CRIMINAL LAW § 150 at 312-314). The fact that the homicide preceded the final act of the robbery does not fragment the chain of events. *State v. Bottrell*, 103 Wn. App. at 720, citing *State v. Temple*, 5 Wn. App. 1, 8, 485 P.2d 93 (1971).

The jury was instructed that:

A person commits the crime of murder in the first degree when he commits or attempts to commit robbery in the first or second degree and in the course of or in furtherance of such crime or in immediate flight from such crime he or another participant cause the death of a person other than one of the participants.

CP 282-337; Jury Instruction 9. The jury was instructed that in order to find defendant guilty of murder in the first degree, each of the following elements must be proved beyond a reasonable doubt:

- (1) That on or about March 9, 2009, the defendant committed or attempted to commit robbery in the first or second degree;
- (2) That the defendant caused the death of Darryl Bracey in the course of or in furtherance of such crime or in immediate flight from such crime;
- (3) That Darryl Bracey was not a participant in the crime of or attempted crime of robbery in the first or second degree; and
- (4) That any of these acts occurred in the State of Washington.

CP 282-337; Jury Instruction 19. The jury was also instructed that

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

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

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her

presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person is present as an accomplice.

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

CP 282-337; Jury Instruction 26.

There is no question that defendant shot and killed Mr. Bracey. Defendant admitted that he killed Mr. Bracey but claimed that it was self-defense. (3/11/2010) RP 522.

Defendant's sole argument is that there was insufficient evidence to support the jury's finding that defendant killed Mr. Bracey in the course of, in the furtherance of, or in immediate flight from a robbery. Appellant's Brief, p. 13.

At trial, evidence was presented that defendant knew Celestine wanted to rob Mr. Bracey and that defendant not only transported Celestine to Mr. Bracey's apartment but also asked questions about Mr. Bracey's gun. Furthermore, defendant asked Celestine "what do I get out of it." (3/3/2010) RP 51. Defendant admitted that after Celestine said "this is the perfect time to rob" him, defendant grabbed him gun and went inside Mr. Bracey's apartment. (3/11/2010) RP 567, (3/11/2010) RP 567-568.

Immediately after shooting Mr. Bracey and stealing his gun, defendant told Ms. McCowan and Celestine "he's dead," prompting Ms.

McCowan and Celestine to enter Mr. Bracey's apartment and begin stealing items. Defendant admitted that he put a bicycle up against the front door because he "didn't want nobody to come in while I [defendant] was there." (3/11/2010) RP 531. The jury could conclude from defendant's testimony about bracing the bicycle up against the door that defendant was attempting to give Ms. McCowan and Celestine more time to steal items from Mr. Bracey's home. Furthermore, Defendant went to his car and put both guns in the trunk then went back to Mr. Bracey's through the back door to "make sure things were getting cleaned up. . . ." (3/11/2010) RP 525. The jury could infer that defendant wiped down Mr. Bracey's apartment in an attempt to conceal his assistance in the robbery.

Defendant admitted that the day after shooting Mr. Bracey, defendant got rid of the gun he used to shoot Mr. Bracey, and sold Mr. Bracey's gun to Quayvis Thomas. (3/11/2010) RP 583-584, 586. Defendant's own testimony at trial proves that defendant killed Mr. Bracey in furtherance of the robbery.

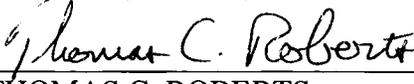
Sufficient evidence was adduced to support the jury's verdict finding defendant guilty of murder in the first degree.

D. CONCLUSION.

For the above reasons, the State respectfully requests the court affirm defendant's conviction and sentence below.

DATED: May 17, 2011.

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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.

5/18/11   
Date Signature

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