

NO. 43681-7-II

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

STATE OF WASHINGTON, RESPONDENT

v.

JICOREY RICCARDO BRADFORD AND JAMES EARL GRAY, APPELLANTS

Appeal from the Superior Court of Pierce County
The Honorable John A. McCarthy, Judge

No. 11-1-04125-7 & 11-1-04126-5

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANTS' ASSIGNMENTS OF ERROR.

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of the crime of possession of a stolen firearm beyond a reasonable doubt with respect to Defendant Bradford.

B. STATEMENT OF THE CASE.

1. Procedure

On October 10, 2011, Jicorey Riccardo Bradford and James Earl Gray, hereinafter referred to as the “defendants,” were charged by information with two counts of first degree assault, one count of drive-by shooting, one count of second degree unlawful possession of a firearm, one count of possession of a stolen firearm, and one count of unlawful possession of a controlled substance, cocaine. CP 1-3, 109-11.

On May 14, 2012, the State filed an amended information in Defendant Gray’s case, which changed count IV from second to first degree unlawful possession of a firearm. CP 116-18. *See* RP 9-10.

The cases were called for a joint trial the same day. RP 3. Defendant Gray pleaded not guilty to the amended information. RP 10.

Defendant Bradford moved for new appointed counsel, but that motion was denied. RP 16-24

The parties selected a jury. RP 24-28. .

The parties stipulated to admission of all statements of Defendant Bradford to police, including a video-recorded statement. RP 28-34.

The parties gave opening statements. RP 36.

The State called Tifni Buchanan, RP 36-47, Kerry Edwards, RP 47-83, 105-31, 135-203, Lakewood Police Officer Jeff Hall, RP 203-16, Denise Delacruz, RP 216-32, Wayne Nedley, RP 239-57, and John Reynolds, RP 266-73.

The parties stipulated to the admissibility of video-recorded interviews of Gray and Bradford, and played both for the jury. RP 257-58, 273-74.

The parties also stipulated (1) that Defendant Bradford had been convicted of a felony prior to October 7, 2011, and that, as a result, was not permitted by law to possess a firearm, (2) that Defendant Gray had been convicted of a felony defined as a serious offense prior to October 7, 2011, and (3) that exhibit 8 is a small paper sack containing five small plastic baggies of the controlled substance, cocaine. RP 274- 75. *See* RP 35, 235-37.

The State then called Dandre Long, RP 284-330, Lakewood Police Officer Mark Holthaus, RP 331-51, Lakewood Police Officer Paul Osness, RP 351- 57, Howard Graves, RP 357-68, Kyle Thissell, RP 369-88, Sean Lester, RP 388-401, David Smaley, RP 401-08, and Vincent-e Romo Reyes, RP 409-18,

The parties stipulated (1) that the firearm admitted as plaintiff's exhibit 7 is a fully-operational Springfield XD 9-millimeter handgun, which was collected on October 7, 2011, at the scene of Defendant Bradford's arrest, (2) that the ten shell casings found in the area of Steilacoom Boulevard in front of Burs restaurant on October 7, 2011 were determined by the Washington State Patrol Crime Laboratory to have been fired from that handgun, (3) that the two shell casings found in the area of 88th Street Southwest and Bridgeport Way on October 7, 2011 were determined by the Washington State Patrol Crime Laboratory to have been fired from that handgun, and (4) that a spent bullet collected from the headrest of the victim vehicle was determined by the Washington State Patrol Crime Laboratory to have been fired from that handgun. RP 418-19.

The State continued with its case-in-chief, calling Erik Bergren, RP 424-38, Lakewood Police Forensic Services Manager Bryan Johnson, RP 438-85, and Lakewood Police Officer Sean Conlon, RP 485-574. The State then rested. RP 576, 627.

Both Defendants Gray and Bradford moved to dismiss all charges for insufficient evidence, but the court denied their motions with respect to all counts except the unlawful possession of a controlled substance count, which it dismissed. RP 576-611.

The defendants testified, RP 627-64 (Gray), 665-715 (Bradford). Defendant Gray then called Shenae Humphrey, RP 727-42, and Micahel Humphrey, RP 742-50.

Both defendants rested. RP 751.

The State called Tacoma Police Detective John Ringer, RP 751-70, Kerry Edwards, RP 773-79, and Juantae Clovsky, RP 779-86, in rebuttal and rested. RP 786.

The parties discussed jury instructions. RP 613-19, 787-92, and the court instructed the jury. RP 794-95. *See* CP 26-69, 211-54.

The parties gave their closing arguments. RP 798-809 (State's closing); RP 809-23 (Defendant Bradford's closing); RP 823-45 (Defendant Gray's closing); RP 845-57 (State's rebuttal argument).

On May 24, 2012, the jury returned verdicts finding Defendant Bradford guilty of first degree assault, as charged in count II, drive-by shooting, as charged in count III, second degree unlawful possession of a firearm, as charged in count IV, and possession of a stolen firearm, as charged in count V. RP 875-76; CP 72-76. The jury also returned a special verdict form indicating that the Bradford was armed with a firearm at the time of the commission of the first degree assault charged in count III. RP 875; CP 73. However, the jury could not reach a decision as to count I with respect to Defendant Bradford. RP 874; CP 70.

It returned verdicts finding Defendant Gray not guilty of first degree assault, as charged in counts I and II, not guilty of possession of a stolen firearm, as charged in count V, and guilty of drive-by shooting, as charged in count III, and first degree unlawful possession of a firearm, as charged in count IV. RP 876-77; CP 255-59

On July 11, 2012, the court sentenced Defendant Bradford to 190 months plus 60 months for the firearm sentence enhancement, or a total of 250 months on count II, 75 months on count III, 22 months on count IV, and 12 months on count V. 07/11/12 RP 19; CP 90-103. The court also imposed 36 months in community custody on count II and 18 months in community custody on count III. 07/11/12 RP 19; CP 90-103.

It sentenced Defendant Gray to 90 months in total confinement on count III and 60 months in total confinement on count IV. 07/11/2012 RP 24; CP 264-76. It also sentenced him to 18 months in community custody on count III. 07/11/2012 RP 24, 21; CP 264-76.

Both defendants filed timely notices of appeal at the July 11, 2012 sentencing hearing. RP 19-20, 25. CP 104, 283-94.

2. Facts

On October 7, 2011, Kerry Edwards was riding in a blue and black Chevrolet Caprice with his friend, Dandre Long. RP 48-52, 287. Between

4:00 and 6:00 that afternoon, they went to the apartment building where Long's girlfriend Natasha lived. RP 51-52, 141, 287-88. While inside that building, they saw Defendant Gray pass by. RP 53-54, 142-47, 289-90. Edwards felt that Gray was looking at them "funny." RP 174. Gray was wearing a blue coat and sweats. RP 55.

After Long realized that Natasha was not home, he and Edwards left the apartment building and returned to his vehicle. RP 53-55, 290, 316-17. As they left in that vehicle, Long called Natasha, and then turned his car around to go back to her apartment. RP 55-56.

While driving back, Long and Edwards saw Defendant Gray in a vehicle stopped by a stop sign. RP 55-61. Edwards described that vehicle as a blue Oldsmobile, and identified a photograph of it. RP 83. According to Edwards, the vehicle had one other occupant, who Edwards identified as Defendant Bradford. RP 62. *But see* RP 312. Gray opened the door to his vehicle in an apparent attempt to garner the attention of Long and Edwards. RP 62.

Long stopped his vehicle and Gray asked if they had a problem. RP 62, 185, 295. Long then continued driving, but Gray got out of his vehicle, stood in the middle of the street holding a firearm, and began shooting at Long's vehicle. RP 62-63. Gray fired four to five shots, including one that shattered the rear window of Long's vehicle. RP 62-64.

Long and Edwards ducked down. RP 63. Edwards could hear bullets hitting the car. RP 64.

Long continued to drive forward and turned a corner, but lost control of the vehicle and spun out as he turned the corner. RP 64-65. The defendant's vehicle then drove past their car. RP 65-66. Gray again exited that vehicle with a gun and fired it six to seven more times at them. RP 65-68. Once the shooting stopped, Long and Edwards drove off. RP 68.

Long and Edwards did not call the police because Long did not want to. RP 71. According to Edwards, they went to the B&I shopping center parking lot, where Long called his uncle, Mike Long, and then drove to his uncle's residence. RP 68-73, 182, 300.

However, Edwards testified that he called Lakewood Police Detective Jeff Hall about twenty minutes afterwards. RP 73.

Long testified that he did not stop at the B&I, but later stated that he was not sure. RP 299-301. Long also testified that his marijuana use that day affected his ability to perceive and understand what was happening to him. RP 299-300. He testified that where he comes from "you don't talk to the police." RP 303. In fact, he testified that he "didn't want to tell them anything." RP 330. Long indicated and that he was testifying only because a warrant was issued after a prior failure to appear to testify. RP 303.

Several people, who happened to be in the area, witnessed the incidents.

Kyle Thissell was visiting a friend at an apartment off of Steilacoom Boulevard when he saw a car, which was being followed by a second car spin out. RP 370-71. Thissell described the first car as an old Caprice, and testified that it carried two people. RP 371, 376. After it spun out, a second green or blue car came by, shooting at the Caprice. RP 375-76. Although Thissell didn't see anyone shooting, he saw bullets hit the windows of the first car. RP 375. He estimated that there were around six shots fired. RP 377. According to Thissell, the second car did not stop; it continued moving as these shots were fired. RP 376.

Wayne Nedley was leaving Burs restaurant when he saw two cars speeding down a side street. RP 240, 245. The lead car was black and green or blue and had "low profile tires" with "bigger wheels that appeared to be chrome."¹ RP 242, 249-50. Nedley described it as "between a 1977 and a 1989 either Chevrolet Impala or a Caprice." RP 242. It was "fishtailing" as it turned the corner from Lockburn to Steilacoom Boulevard. RP 245-46, 251. The second car then "did a fishtail," which resulted in that car facing the first car. RP 246.

¹ Long testified that his vehicle had 22-inch chrome rims. RP 287.

Nedley saw two people in this car. RP 253. The passenger, who was wearing a hood, exited, and began running towards the first car, while shooting a firearm. RP 246, 253. Nedley estimated that this man fired eight to ten shots in about thirty seconds from the southwest corner of the Burs parking lot. RP 246-47, 251-52. The man then ran back to the second car, got into its passenger side, and the car sped away. RP 247.

Nedley found ten shell casings in the middle of the street on Steilacoom Boulevard, which he collected. RP 250, 253. He called 911, and about twenty minutes later, gave the casings to the police officer who responded. RP 252-53. Nedley testified that there were at least two other people who were outside, in the area of the shooting at the time, and that they came from a nearby apartment building. RP 254.

Denise Delacruz was working as a server at Burs restaurant when, in the late afternoon of October 7, 2011, she saw a person firing a gun. RP 218-20. She testified that the shooter was firing shots from the parking lot of the restaurant into Steilacoom Boulevard at a purple car. RP 222, 227. Delacruz could not give a specific number of shots fired, but estimated it was five to seven. RP 222-23. She described the shooter as a black male, who was wearing jeans and a hooded sweatshirt or jacket. RP 227, 231.

After this man started shooting, Delacruz told customers to get down, RP 219, while the restaurant's door was locked and 911 called. RP 224. Police arrived within a few minutes. RP 225.

Vincent-e Romo Reyes was sitting in the bar of the restaurant waiting for a classmate when he heard three to five gunshots. RP 411, 417. He looked back and heard a waitress yell his name before throwing him the keys to the restaurant door. RP 413. Romo Reyes saw an elderly couple outside the door, and told them to run inside. RP 413. Once they had done so, he locked the door, and stood behind a brick wall. RP 413.

Sean Lester was inside a friend's residence on Lockburn Lane when he heard gunfire outside. RP 390-92. He looked out a window and saw a car stop at the intersection of Lockburn Lane and Steilacoom Boulevard. RP 393-94. The vehicle turned left onto Steilacoom Boulevard, "peeled out," and stopped. RP 394. Someone then got out of the vehicle, started walking towards Burs restaurant and shooting, but Lester could not see at what he was shooting. RP 394-95.

Erik Bergren was at work at a shop on the corner of Steilacoom Boulevard and Bridgeport Way when he heard two gunshots. RP 426-28. When he looked outside, he saw two vehicles parked facing opposite of each other at the intersection. RP 426. There was a man outside of one of the vehicles. RP 428. One car sped off, after which the man outside the

second car got back inside that car, and that car raced away. RP 428. The man who was outside the car, had his back to Bergren, but Bergren was able to testify that this man was a black male in his twenties. RP 429. He later observed two shell casings and a remote control within a couple feet of where this person had been standing. RP 431-32. One of Bergren's neighbors placed cups over the casings, and Bergren and the neighbors stayed on scene until an officer arrived. RP 432.

Howard Graves, who lived in the area, testified that he was standing in his home when he heard several "popping noises." RP 359. He walked out his front door and saw a vehicle leaving the area, which he described as a blue Chevrolet, possibly an Impala. RP 359. There were two people inside. RP 366. Graves called the police and noticed sirens and patrol cars in the area several minutes later. RP 360. He then found shell casings and what appeared to be a remote control to a CD player at the intersection of Bridgeport and 88th Street Southwest. RP 361.

David Smaley, who lived in a residence on Steilacoom Boulevard, was working in his garage when he heard five to seven gunshots. RP 403. As he was walking from his garage towards the street, he saw a Caprice traveling from the area of the gunshots. RP 403. The car's accelerator "was floored" and the vehicle was moving at a high speed. RP 404. It was also missing at least its rear and rear, passenger-side windows. RP 404-07.

Smaley then saw a Lakewood Police vehicle and he and his neighbor, Vincent-e Reyes, flagged it down. RP 406. While he was giving the officer the description of what he had seen, a call came across the officer's radio indicating that police had located "the car," and the officer left. RP 406-07.

Lakewood Police Officer Mark Holthaus testified that he was driving on Steilacoom Boulevard in the area of Burs restaurant when he was flagged down by people on the side of the road. RP 332. They told him that "there were some shots fired across the street there," and that "[a] bluish car just took off eastbound on Steilacoom toward Lakewood Drive." RP 332. As Holthaus was speaking to them, another officer went towards the intersection to try to locate the vehicle. RP 332. About ten seconds later, Hothaus learned via radio that the officer had found the suspect vehicle at a fire station located about a quarter of a mile from the shooting on Steilacoom Boulevard near Lakewood Drive. RP 332-33.

When Holthaus arrived at the fire station, he observed a blue Oldsmobile Cutlass on a grass embankment. RP 333. It appeared as though the vehicle had lost control. RP 333. The other officer had his weapon drawn on the passenger, who was still in the car, but reported that the driver had fled on foot. RP 333-34. No one else appeared to have been in the vehicle. RP 334.

Officers secured the passenger, who Holthaus identified as Defendant Bradford, in handcuffs. RP 334, 337. Holthaus read Bradford the *Miranda* warnings and interviewed him. RP 337-38.

Bradford stated that he and his friend, "Q," were in the area and decided to look at a vehicle that was for sale. RP 337-38. Bradford said that they pulled up next to the vehicle, which was occupied by two people, and that the passenger of that vehicle produced a gun. RP 338. So, Bradford "quickly *exited the vehicle and shot off several rounds,*" though he could not recall how many. RP 338-39(emphasis added), 492. Bradford stated that he got back in the car, which Q was driving, and that they drove off. RP 338-39. Bradford did not tell the officer about any other shooting incident. RP 341. However, he later admitted to Officer Conlon that there were two separate shootings, one on 88th and one by Burs Restaurant. RP 544.

When they saw the patrol vehicle with its lights activated, Q quickly pulled into the fire station lot, where he lost control of the vehicle and went up the embankment where they were found. RP 340. Q then got out of the car, climbed over a fence topped with barbed wire, and ran away. RP 340, 551. The driver's side door was left open. RP 550.

Officers tried to track Q with dogs, but were unsuccessful. RP 342. Bradford later identified a photograph of Defendant Gray as “Q.” RP 355, 493-94.

Bradford stated that he threw the gun he fired out the window, and admitted that the gun officers found about twenty feet away from the car was the one he had used and later thrown out. RP 339, 343-44.

Bradford stated that the car was also his, but that he was not driving because he did not have a driver’s license. RP 341.

During trial, Bradford testified that he got a phone call from Defendant Gray, who asked him to pick him up. RP 668. He testified that he did so and then drove to his brother’s apartment. RP 668-69. Bradford later testified that, while at the apartment complex, he went to see if his cousin, Karl, was home. RP 671. He testified that he saw Long and Edwards while doing so, but that they exchanged no words. RP 671. Bradford testified that he got back into his car, with Gray in the passenger seat, and began driving before stopping at a stop sign to change CDs. RP 673. As they were discussing which CD to use, a Chevy Caprice stopped next to his vehicle and slightly beyond it. RP 673. Bradford testified that the driver, who was the same person he saw at the apartment complex, “leaned down,” and Bradford asked him, what’s up. RP 674-75. According to Bradford, Long responded, “I feel a funny-ass vibe coming

from over there, and you got me messed up.” RP 674. Bradford testified that the passenger of the other car then displayed a firearm, and pointed it in his direction. RP 675. Bradford testified that he reached under his seat, grabbed a gun, and fired two to three shots from inside of his vehicle. RP 675-76. He indicated that this shooting occurred on 99th Street. RP 677.

Bradford testified that the other vehicle then sped off, and that he got out of his vehicle to see if there were any bullet holes, though he testified that he did not know whether the passenger of the other car had fired. RP 676. Bradford testified that he did not see any bullet holes, and got back into his vehicle. RP 676. He turned from Steilacoom to Bridgeport, but the second car came from Lockburn Lane, and cut him off. RP 679. Bradford testified that he slammed on the brake of his car, and slid past Long’s vehicle. RP 679. Bradford testified that he saw the passenger point a gun. RP 679. Bradford testified that, instead of driving away, he fired his weapon at Long’s vehicle, and then got out of his car, and continued to fire at that vehicle. RP 680.

In fact, Bradford testified that he noticed the other car accelerating away, but that he just kept shooting at it. RP 705-06. Bradford indicated that he shot the front, back, and both sides of the other car. RP 705-06.

He testified that, as he was running back to the car, Gray moved from the passenger to the driver’s seat. RP 681. So, Bradford got in the

passenger seat, and told Gray where to go. RP 682. Bradford testified that the car crashed and that he threw his gun out of the window when it hit the embankment. RP 682-83. He also testified that, between the time that he returned to the car and the time at which the car crashed, he took off his coat. RP 683-84.

Bradford testified that although he told police that Gray had been driving the vehicle since before the shooting, this was inaccurate. RP 688-89.

Bradford was transported to the police station while Officer Holthaus waited with the vehicle until a tow truck arrived. RP 342-43. Holthaus took photographs of the defendant's car, secured the car with crime scene tape, and followed it while it was taken to the police station for service of a search warrant. RP 342.

Defendant Gray, who goes by the name "Q or QP," RP 644, testified that, on October 7, 2011, he got a ride from Bradford. RP 629. Bradford picked him up on T Street between 35th and 44th. RP 629. Bradford then drove to his brother's residence, which was located in an apartment house near Burs restaurant, because he needed to pick up work clothes. RP 629-30. Gray testified that he waited by the car until Bradford returned. RP 630-32, 645-46. Gray testified that Bradford then got into the driver's seat and that he got into the passenger seat. RP 632-33. Gray

testified that, after Bradford started driving, he stopped to change CDs at the side of the road in front of a stop sign. RP 633-36, 648. He testified that, as Bradford was doing so, a two-tone car pulled alongside their vehicle. RP 636. Bradford opened his door. RP 636. Gray testified that he glanced to his side and saw Dandre Long, who was yelling something to the effect of, "Do you guys got a problem? I feel something fishy." RP 637. According to Gray, Bradford responded, "I don't know what you are talking about." RP 637. Long and Bradford continued to exchange words until Gray noticed Bradford ducking like he was trying to hide from something. RP 637. On direct examination, Gray testified that Bradford then picked up a gun "from under the seat" and fired two shots. RP 638. On cross-examination, Gray testified that Bradford fired three shots. RP 650. He testified that he fired the first one from inside that car, and then got out of the car to fire the subsequent shots. RP 649-50.

Gray testified that he did not know the gun was in his car. RP 638. After Bradford fired the shots, he drove towards the stop sign, and when traffic allowed, turned right. RP 638.

According to Gray, Long's vehicle then "came so fast in front of us that it did a 180 and stopped behind us." RP 639, 651. Gray testified that Bradford then jumped out of the car and fired more shots. RP 639, 651.

Gray testified that he moved from the passenger side to the driver's side after Bradford left the vehicle. RP 640, 655. Bradford then got back into the passenger side of the vehicle and began giving Gray driving directions. RP 641, 659. Gray testified that, after making two left turns and a right turn, he found himself on Steilacoom Boulevard. RP 641-42. He testified that when he saw the fire station, he panicked, turned into that station, and lost control of the vehicle. RP 642. Gray testified that he was scared, so he jumped out of the vehicle. RP 642-43. On cross-examination, Gray testified that he ran from the car and jumped over a fence topped with barbed wire. RP 659. Gray then hid in a tree on the campus of Clover Park Technical College for hours. RP 659-60. Gray testified that he did not know the police were chasing him. RP 660-61.

Gray testified that he saw Bradford throw the pistol from the car as he was losing control of the car. RP 660. However, Gray indicated that before Bradford initially retrieved the gun and fired it, he did not know there was a gun in the car, and denied handling it that day. RP 643. Gray also testified that he never saw a gun in the vehicle driven by Long. RP 664.

Officer Hall had Edwards meet him and Investigator Sean Conlon at the Lakewood Police Department. RP 204-05, 495. Edwards told them that Long's vehicle was at 17502 11th Avenue Court East in Spanaway,

Washington. RP 207. Officer Hall, accompanied by other officers, then contacted Michael Long at that residence, and got his consent to take the vehicle to the police station to be forensically processed. RP 208-09.

Both Edwards and Long testified that neither of them had a firearm at the time. RP 68-69, 300, 322.

Edwards testified that he was a former member of the Hilltop Crips street gang. RP 192. *See* RP 206-07. He testified that he had pleaded guilty to fourteen felonies. RP 191. However, ten were dismissed in exchange for his agreement to testify against any of approximately 35 gang-member co-defendants about whom he had knowledge and to provide the police with information about the Hilltop Crips' organization. RP 191-95. Edwards was sentenced on convictions of residential burglary and second degree robbery. RP 169-72, 193. He served almost a year in jail and the conditions of his community custody thereafter included no possession of firearms. RP 197-98. Violation of this condition could have resulted in thirty or more years in prison. RP 198.

Lakewood Police Department Officer Sean Conlon was dispatched to the shooting. RP 487. When he arrived, he found other officers had already arrived, and spoke with witnesses who had found shell casings. RP 487. However, within a few minutes, he was advised that the suspect's vehicle had been located at a fire station in the 5000 block of Steilacoom

Boulevard. RP 487-88. Defendant Bradford had been in the front passenger seat of that vehicle. RP 488.

When Officer Conlon arrived, he noticed that Bradford was wearing a dark-colored, long-sleeved T-shirt, which was wet in the front, but not on the shoulders or sleeves. RP 492-93. Conlon saw a wet jacket in the back seat, and the defendant stated that he had been wearing it. RP 493. *See* RP 497-98, 560-62. It was raining at the time. RP 543.

Conlon also found a paper bag that contained cocaine and a magazine spring from a firearm at the scene the following day. RP 502-03. Officer Holthaus examined photographs of the scene taken the previous day and saw that they depicted the bag that Conlon found “just off in front of the [defendants’] vehicle.” RP 505-07.

The suspect vehicle was towed to the Lakewood Police department and placed in a secured lot. RP 496. Officer Conlon later participated in the service of a search warrant on that vehicle. RP 516. He found a shell casing in the driver’s door window well. RP 516-17. Bradford told Conlon that he was in the passenger seat of the vehicle and had leaned over the driver of the vehicle to discharge his firearm. RP 522. Conlon also found a bill of sale for the vehicle in the name of Defendant Bradford. RP 516-17.

On October 11, 2011, Officer Conlon asked Lakewood Police forensic services manager Bryan Johnson to process the victim vehicle for “shooting-related evidence.” RP 442. Johnson was assisted by several officers, and they took photographs of the exterior of the vehicle and left markers where they found evidence of bullet impacts. RP 443-44. They then marked and photographed bullet impacts in the interior of the vehicle, correlating them, where possible, with the external impacts. RP 444-46. They used path rods and collected bullets. RP 447-48. One bullet was found in the driver’s side headrest, another recovered from the driver’s-side back seat, RP 447, and minute bullet fragments were found embedded in the glass of the vehicle. RP 484. Although, Detective Johnson found that the car was struck by twelve to thirteen bullets, RP 461, he testified that bullets tend to disintegrate or fragment when they strike items, and that they did not disassemble the vehicle to search for fragments. RP 481. There was no evidence of bullets coming from the interior of that vehicle. RP 480.

John Reynolds testified that his Springfield XD 9mm pistol was stolen from his home in Graham, Washington, sometime in 2010. RP 268-73. Reynolds identified a handgun marked as plaintiff’s exhibit 7 as the pistol which was stolen from him. RP 269-70.

Defendant Bradford testified that he purchased the pistol from a stranger he met at a store while he was getting gas. RP 690, 708. Bradford testified that this man approached him, asked Bradford if he wanted to “check out something,” pulled him to a vehicle, and offered to sell the gun to him for approximately \$250.00. RP 690. Bradford testified that he happened to have \$250.00, and bought the gun. RP 709. He testified that he did not know the pistol was stolen. RP 690. He testified that people sell laptop computers, cell phones, and all kinds of things from their trunks and inside their cars at convenience stores and gas stations. RP 708.

Bradford, however, did admit that he knew when he bought the gun that he did not have a right to possess a firearm due to a prior criminal conviction. RP 689-90.

C. ARGUMENT.

1. VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, THERE WAS SUFFICIENT EVIDENCE FROM WHICH A RATIONAL FACT FINDER COULD HAVE FOUND THE ESSENTIAL ELEMENTS OF THE CRIMES OF DRIVE-BY SHOOTING AND FIRST DEGREE UNLAWFUL POSSESSION OF A FIREARM BEYOND A REASONABLE DOUBT WITH RESPECT TO DEFENDANT GRAY.

In a criminal case, a defendant may challenge the sufficiency of the evidence before trial, at the end of the State’s case in chief, at the end of

all of the evidence, after the verdict, and on appeal. *State v. Lopez*, 107 Wn. App. 270, 276, 27 P.3d 237 (2001). “In a claim of insufficient evidence, a reviewing court examines whether ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,’ ‘viewing the evidence in the light most favorable to the State.’” *State v. Brockob*, 159 Wn.2d 311, 336, P.3d 59 (2006) (quoting *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)). Thus, “[s]ufficient evidence supports a conviction when, viewing it in the light most favorable to the State, a rational fact finder could find the essential elements of the crime beyond a reasonable doubt.” *State v. Cannon*, 120 Wn. App. 86, 90, 84 P.3d 283 (2004). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.* (quoting *State v. Myers*, 133 Wn.2d 26, 37, 941 P.2d 1102 (1997)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “Determinations of credibility are for the fact finder and are not reviewable on appeal.” *Brockob*, 159 Wn.2d at 336; *State v. McPhee*, 156 Wn. App. 44, 62, 230 P.3d 284 (2010).

In the present case, Defendant Gray argues (1) that there was insufficient evidence of drive-by shooting because there was insufficient

evidence that he discharged a firearm, Brief of Appellant Gray, p. 8-10, and (2) that there was insufficient evidence of first degree unlawful possession of a firearm because there was insufficient evidence that he possessed a firearm. Brief of Appellant Gray. P. 10-11.

With respect to the drive-by shooting charge, the trial court instructed the jury that

[t]o convict the defendant James Gray of the crime of drive-by shooting as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 7th day of October, 2011, the defendant or an accomplice recklessly discharged a firearm;

(2) That the discharge created a substantial risk of death or serious physical injury to another person;

(3) That the discharge was either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge; and

(4) That this act 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 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.

CP 211-54 (Instruction No. 26); CP 26-69 (Instruction No. 26); Appendix A. *See* RCW 9A.36.045.

Because no party objected to this instruction, *see* RP 613-19, 787-92, it became the law of the case under the law of the case doctrine. *State v. Hickman*, 135 Wn.2d 97, 101, 954 P.2d 900 (1997).

Although Defendant Gray argues that the evidence of element (1) was insufficient in that there was insufficient evidence “to support a finding that [he] discharged a firearm beyond a reasonable doubt,” Brief of Appellant, p. 9, the record shows otherwise.

Specifically, Kerry Edwards testified that during the first incident, it was Gray who got out of his vehicle, stood in the middle of the street holding a firearm, and began shooting at Long’s car with that firearm. RP 62-63, 185, 295. According to Edwards’ testimony at trial, Gray fired four to five shots, including one that shattered the rear window of Long’s vehicle. RP 62-64. Edwards went on to testify that after Long and he turned the corner in their car, and the defendants’ vehicle drove past their own, it was again Gray who exited that vehicle with a gun and fired six to seven more times at them. RP 65-68.

Because “[a] claim of insufficiency admits the truth of the State’s evidence,” *Cannon*, 120 Wn. App. 86, 90, 84 P.3d 283 (2004), this testimony must be considered true for purposes of review here. When it is, it is clear that Defendant Gray discharged a firearm, and that there is sufficient evidence of element (1).

Although Gray argues that “Edwards’ testimony was an insufficient basis to support a finding that [he] discharged a firearm beyond a reasonable doubt” because, in his view, “Edwards’ testimony

lacked any credibility,” Brief of Appellant, p. 9, “[d]eterminations of credibility are for the fact finder and are not reviewable on appeal.”

Brockob, 159 Wn.2d at 336; *McPhee*, 156 Wn. App. at 62. See *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

Thus, viewing as is required, Edwards’ testimony in the light most favorable to the State, a rational fact finder could find the first element of the crime of drive-by shooting beyond a reasonable doubt. *State v. Cannon*, 120 Wn. App. 86, 90, 84 P.3d 283 (2004).

Because neither defendant disputes the sufficiency of the evidence supporting the remaining elements, there is “[s]ufficient evidence to support Gray’s conviction of drive-by shooting, and that conviction should be affirmed.

Defendant Gray next argues that there was insufficient evidence to support his conviction of first degree unlawful possession of a firearm.

With respect to this charge, the trial court instructed the jury that

[t]o convict the defendant James Gray of the crime of unlawful possession of a firearm in the first degree as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant knowingly had a firearm in his possession or control;
- (2) That the defendant had previously been convicted of a serious offense; and
- (3) That the possession or control of the firearm 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 the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

CP 211-54 (Instruction No. 32); CP 26-69 (Instruction No. 32); Appendix A. *See* RCW 9.41.040(1).

Defendant Gray contends that “the State presented insufficient evidence to establish that Mr. Gray possessed the firearm.” Brief of Appellant Gray, p. 10.

However, given Edwards’ testimony that Gray both possessed and fired the pistol in question, RP 62-68, and the fact that “[a] claim of insufficiency admits the truth of the State’s evidence,” *Cannon*, 120 Wn. App. 86, 90, 84 P.3d 283 (2004), it must be taken as true for purposes of this Court’s review that Gray possessed the firearm. As a result, there is sufficient evidence of element (1) of first degree unlawful possession of a firearm.

Because neither defendant disputes the sufficiency of the evidence supporting the remaining elements, there is sufficient evidence to support Gray’s first degree unlawful possession of a firearm conviction, and that conviction should be affirmed, as well.

2. DEFENDANT BRADFORD WAIVED ANY ISSUE OF THE TRIAL COURT'S FAILURE TO GIVE A SELF DEFENSE INSTRUCTION PERTAINING TO THE DRIVE-BY SHOOTING CHARGE BECAUSE HE MADE NO REQUEST FOR SUCH AN INSTRUCTION FROM THAT COURT.

Proposed jury instructions must be served and filed when a case is called for trial, CrR 6.15(a), and “[n]o error can be predicated on the failure of the trial court to give an instruction where no request for such an instruction was ever made.” *State v. Kroll*, 87 Wn.2d 829, 843, 558 P.2d 173 (1977); *State v. Lucero*, 140 Wn. App. 782, 787, 167 P.3d 1188 (2007)(quoting *McGarvey v. City of Seattle*, 62 Wn.2d 524, 533, 384 P.2d 127 (1963), for the proposition that if a party fails to propose a desired jury instruction, that party “cannot predicate error on its omission.”); CrR 6.15(c); RAP 2.5(a).

In the present case, although Defendant Bradford argues that the trial court erred in failing to instruct the jury that self-defense was available for the drive-by shooting charge, Brief of Appellant Bradford, p. 16-21, he never requested that the court give such an instruction. *See* RP 613-19, 787-92. Therefore, no error can be predicated on the court’s failure to give that instruction here, and the trial court should be affirmed.

Although Defendant Bradford argues that the trial court’s Instruction 16 misstated the law, “relieved the State of its burden to

disprove self-defense and is, therefore, manifest constitutional error that may be raised for the first time on appeal,” Brief of Appellant Bradford, p. 19-20, the record shows otherwise.

While Bradford takes issue with the fact that Instruction 16 did not apply to the drive-by shooting charge, this does not mean that this instruction in any way misstated the substantive law of self-defense. To the contrary, Instruction 16 was modeled after Washington Pattern Jury Instruction Criminal (WPIC 17.02), *compare* CP 26-69 *with* WPIC 17.02, which has been held to correctly instruct the jury on the law of self-defense. *State v. Prado*, 144 Wn. App. 227, 247-48, 181 P.3d 901 (2008).

Nor did this instruction relieve the State of its burden to disprove self-defense because it plainly stated that “[t]he State has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful.” CP 26-29 (instruction 16).

Hence, the defendant has failed to show that instruction 16 constituted a “manifest error affecting a constitutional right” that may be raised for the first time in an appellate court under RAP 2.5(a)(3).

Rather, because Bradford never requested that the court instruct the jury that self-defense was available for the drive-by shooting charge, *see*

RP 613-19, 787-92, no error can be predicated on the court's failure to so instruct here.

Therefore, the trial court should be affirmed.

3. DEFENDANT BRADFORD FAILED TO SHOW INEFFECTIVE ASSISTANCE OF COUNSEL IN HIS TRIAL COUNSEL'S FAILURE TO PROPOSE AN INSTRUCTION APPLYING SELF-DEFENSE TO THE DRIVE-BY SHOOTING COUNT BECAUSE HE HAS FAILED TO SHOW THAT HE WAS ENTITLED TO SUCH AN INSTRUCTION.

"Effective assistance of counsel is guaranteed by both the United States Constitution amendment VI and Washington Constitution article I, section 22 (amendment X)." *State v. Yarbrough*, 151 Wn. App. 66, 89, 210 P.3d 1029, 1040-41 (2009); *State v. Johnston*, 143 Wn. App. 1, 177 P.3d 1127 (2007). A claim of ineffective assistance of counsel is reviewed *de novo*. *Yarbrough*, 151 Wn. App. at 89.

"Washington has adopted the *Strickland* test to determine whether a defendant had constitutionally sufficient representation." *State v. Cienfuegos*, 144 Wn.2d 222, 25 P.3d 1011 (2001) (citing *State v. Bowerman*, 115 Wn.2d 794, 808, 802 P.2d 116 (1990)); *State v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987). That test requires that the defendant meet both prongs of a two-prong test. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). See also *State v.*

McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). “First, the defendant must show that counsel’s performance was deficient” and “[s]econd, the defendant must show that the deficient performance prejudiced the defense.” *Strickland*, 466 U.S. at 687; *Cienfuegos*, 144 Wn.2d at 226-27. A reviewing court is not required to address both prongs of the test if the defendant makes an insufficient showing on either prong. *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d 563, 571 (1996); *In Re Personal Restraint of Rice*, 118 Wn.2d 876, 889, 828 P.2d 1086 (1992); *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987). “A failure to establish either element of the test defeats an ineffective assistance of counsel claim.” *Riofta v. State*, 134 Wn. App. 669, 693, 142 P.3d 193 (2006).

The first prong “requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland*, 466 U.S. at 687. Specifically, “[t]o establish deficient performance, the defendant must show that trial counsel’s performance fell below an objective standard of reasonableness.” *Johnston*, 143 Wn. App. at 16. “The reasonableness of trial counsel’s performance is reviewed in light of all the circumstances of the case at the time of counsel’s conduct.” *Id.*; *State v. Garrett*, 124 Wn.2d 504, 518, 881 P.2d 185 (1994). “Competency of counsel is determined

based upon the entire record below.” *State v. Townsend*, 142 Wn.2d 838, 15 P.3d 145 (2001) (citing *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); *State v. Gilmore*, 76 Wn.2d 293, 456 P.2d 344 (1969).

“To prevail on a claim of ineffective assistance of counsel, the defendant must overcome a strong presumption that defense counsel was effective.” *Yarbrough*, 151 Wn. App. at 90. This presumption includes a strong presumption “that counsel’s conduct constituted sound trial strategy.” *Rice*, 118 Wn.2d at 888-89. “If trial counsel’s conduct can be characterized as legitimate trial strategy or tactics, it cannot serve as a basis for a claim that the defendant received ineffective assistance of counsel.” *Yarbrough*, 151 Wn. App. at 90 (citing *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002), *State v. Adams*, 91 Wn.2d 86, 90, 586 P.2d 1168 (1978)).

An ineffective assistance of counsel claim must not be allowed to “function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest ‘intrusive post-trial inquiry’ threaten the integrity of the very adversary process the right to counsel is meant to serve.” *Harrington v. Richter*, 131 S. Ct. 770, 778, 178 L. Ed. 2d 624 (2011). “It is ‘all too tempting’ to ‘second-guess counsel’s assistance after conviction or adverse sentence.’” *Id.* (quoting *Strickland*, 466 U.S. at 689). “The

question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms,' not whether it deviated from best practices or most common custom." *Id.* (quoting *Strickland*, 466 U.S. at 690).

This Court "defer[s] to an attorney's strategic decisions to pursue, or to forego, particular lines of defense when those strategic decisions are reasonable given the totality of the circumstances." *Riofta*, 134 Wn. App. at 693. If reasonable under the circumstances, trial counsel need not investigate lines of defense that he has chosen not to employ." *Id.*

With respect to the second prong, "[p]rejudice occurs when, but for the deficient performance, there is a reasonable probability that the outcome would have differed." *Id.* "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Cienfuegos*, 144 Wn.2d at 229.

In the present case, Defendant Bradford argues that his trial counsel was ineffective by either "fail[ing] to propose an instruction applying self-defense to t[he drive-by shooting] charge" or by "fail[ing] to object to the State's proposed instruction limiting self-defense to assault charges." Brief of Appellant Bradford, p. 21-23. However, the record shows otherwise.

To find that a defendant received ineffective assistance of counsel based on the failure of trial counsel to request a jury instruction, an appellate court must find (1) that the defendant was entitled to the instruction, (2) that counsel's performance was deficient per se in failing to request the instruction, and (3) that the failure to request the instruction prejudiced the defendant. *Cienfuegos*, 144 Wn.2d at 227.

In this case, Defendant Bradford was not entitled to a self-defense instruction

Self-defense is a "lawful act" that negates the *mens rea* of criminal intent, *State v. Box*, 109 Wn.2d 320, 328-29, 745 P.2d 23 (1987), and the element of "recklessness." *State v. Dyson*, 90 Wn. App. 433, 438, 952 P.2d 1097 (1997).

However, to instruct the jury on self-defense, there must be evidence that: "(1) *the defendant subjectively feared that he was in imminent danger of death or great bodily harm*; (2) this belief was objectively reasonable; (3) *the defendant exercised no greater force than was reasonably necessary*; and (4) the defendant was not the aggressor." *State v. Callahan*, 87 Wn. App. 925, 929, 943 P.2d 676 (1997) (citations omitted)(emphasis added); *State v. Werner*, 170 Wn.2d 333, 337-38, 241 P.3d 410 (2010).

In the present case, the only witness who testified that either Long or Edwards had a firearm or threatened anyone in anyway on the day in question was Bradford. *Compare* RP 675, 338 *with* RP 37-337, 339-674, 675-786. Bradford testified that Long's vehicle stopped next to his and that the passenger of that vehicle displayed a firearm, which he pointed in Bradford's direction. RP 675. *See* RP 338.

Assuming *arguendo* this is true, there is reason to question whether Bradford subjectively feared that he was in imminent danger of death or great bodily injury given that he left the relative safety of his own car and approached Long's vehicle on foot. RP 680. This is particularly true given that he may have done this not just once, but twice. RP 649-50; RP 680. If Bradford truly feared that he was in imminent danger of death or great bodily harm from Long and Edwards, it seems unlikely that he would approach them on foot rather than driving away from them in his car. This seems especially true during the second incident, in which Long's vehicle was actually positioned behind his own, then-currently running car. RP 639, 651, 679.

Even, assuming *arguendo*, that such testimony is sufficient to establish the first two prongs required for self-defense instructions, however, Bradford failed to show that he "exercised no greater force than

was reasonably necessary.” *Callahan*, 87 Wn. App. at 929. Indeed, his testimony established the contrary conclusion.

He testified that instead of driving away, he fired his weapon at Long’s vehicle. RP 680. In fact, Bradford testified that even when he saw Long’s car trying to escape by accelerating away from him, he continued shooting at it. RP 705-06. Bradford indicated that he shot the front, back, and both sides of Long’s car in the process. RP 705-06.

If Long’s vehicle and the gun it purportedly carried were accelerating away from Bradford, Bradford could have no need to continue firing his gun at that vehicle. The fact that he continued to do so establishes that he exercised greater force than was reasonably necessary under the circumstances, even according to his own testimony. *See* CP 26-69 (instruction No. 26).

Hence, Bradford did not establish, as is required to obtain self-defense instructions, that he “exercised no greater force than was reasonably necessary,” *Callahan*, 87 Wn. App. at 929, and, as a result, he was not entitled to self-defense instructions. Because Bradford was not entitled to such instructions, his trial counsel’s failure to propose them or to object to the State’s instructions omitting them with respect to the drive-by shooting count, cannot be ineffective assistance of counsel. *See Cienfuegos*, 144 Wn.2d at 227.

Therefore, the defendant's conviction of drive-by shooting should be affirmed.

4. VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, THERE WAS SUFFICIENT EVIDENCE FROM WHICH A RATIONAL FACT FINDER COULD HAVE FOUND THE ESSENTIAL ELEMENTS OF THE CRIME OF POSSESSION OF A STOLEN FIREARM BEYOND A REASONABLE DOUBT WITH RESPECT TO DEFENDANT BRADFORD.

In a criminal case, a defendant may challenge the sufficiency of the evidence before trial, at the end of the State's case in chief, at the end of all of the evidence, after the verdict, and on appeal. *State v. Lopez*, 107 Wn. App. 270, 276, 27 P.3d 237 (2001). "In a claim of insufficient evidence, a reviewing court examines whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,' 'viewing the evidence in the light most favorable to the State.'" *State v. Brockob*, 159 Wn.2d 311, 336, P.3d 59 (2006) (quoting *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)). Thus, "[s]ufficient evidence supports a conviction when, viewing it in the light most favorable to the State, a rational fact finder could find the essential elements of the crime beyond a reasonable doubt." *State v. Cannon*, 120 Wn. App. 86, 90, 84 P.3d 283 (2004). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be

drawn therefrom.” *Id.* (quoting *State v. Myers*, 133 Wn.2d 26, 37, 941 P.2d 1102 (1997)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “Determinations of credibility are for the fact finder and are not reviewable on appeal.” *Brockob*, 159 Wn.2d at 336; *State v. McPhee*, 156 Wn. App. 44, 62, 230 P.3d 284 (2010).

In the present case, the trial court instructed the jury that

To convict the defendant Jicory Bradford of the crime of possessing a stolen firearm as charged in Count V, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about 7th day of October, 2011, the defendant possessed, carried, delivered, sold or was in control of a stolen firearm;

(2) That the defendant acted with knowledge that the firearm had been stolen;

(3) That the defendant withheld or appropriated the firearm to the use of someone other than the true owner of person entitled thereto; and

(4) That any of these 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 the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

CP 26-69 (Instruction No.35). See CP 211-54 (Instruction No. 35);

Appendix A (emphasis added). See RCW 9A.56.310.

Because no party objected to this instruction, *see* RP 613-19, 787-92, it became the law of the case under the law of the case doctrine. *Hickman*, 135 Wn.2d 97, 101, 954 P.2d 900 (1997).

However, Defendant Bradford now argues that there was insufficient evidence of element (2) in that, in his view, “the State failed to prove beyond a reasonable doubt that he knew the weapon was stolen.” Brief of Appellant, p. 23-28.

This Court, relying on *State v. Couet*, 71 Wn.2d 773, 430 P.2d 974 (1967), has held that “possession of recently stolen property in connection with other evidence tending to show guilty is sufficient” to support a conviction of possessing a stolen firearm. *State v. McPhee*, 156 Wn. App. 44, 62, 230 P.3d 284 (2010).

The Court in *Couet* noted that

[p]ossession of recently stolen property, in connection with other evidence tending to show guilt, is sufficient to warrant a conviction. When a person is found in possession of recently stolen property, slight corroborative evidence of other inculpatory circumstances tending to show his guilt will support a conviction. When the fact of possession of recently stolen property is supplemented by the giving of a false or improbable explanation of it... a case is made for the jury.

Couet, 71 Wn.2d at 776.

Here, the owner of the pistol in question testified that it was stolen from his home in Graham, Washington, sometime in 2010, RP 268-73,

and Bradford indicated that he came into possession of that pistol in Tacoma, Washington sometime around August, 2011. RP 689-90.

Defendant Bradford testified that he purchased the pistol from a stranger he met at a store while he was getting gas. RP 690, 708. He testified that this man spontaneously approached him, asked if he wanted to “check out something,” pulled him to a vehicle, and then offered to sell the gun to him for approximately \$250.00. RP 690. Bradford testified that he just happened to have \$250.00 in cash, which he gave to the man to buy the gun. RP 709. According to Bradford, people sell laptop computers, cell phones, and all kinds of things from their trunks and inside their cars at convenience stores and gas stations. RP 708.

However, the probability of a complete stranger approaching a person while that person is fueling his or her vehicle and asking that person if he or she wants to “check out something” is obviously low. The likelihood of the person actually agreeing to the request and following the stranger to his vehicle while in the process of fueling his or her own car is lower still. The probability of then offering to sell a pistol to a complete stranger for a value that one might surmise is sub-market is also low. Finally, the probability of actually having precisely the not-insignificant amount of cash requested by the stranger, and then giving it to that person for the purchase of this previously-unknown pistol is absurdly low. This

seems especially true when the person came to the gas station to purchase gasoline rather than a firearm. Moreover, when each of these events, improbable in themselves, are placed together in an unbroken series, their probability plummets lower still. In sum, the explanation offered by Bradford as to how he came into possession of the pistol in question in this case is wildly improbable.

Its improbability raises the reasonable inference that Defendant Bradford acquired the pistol by some other means, which raises the question why he would not disclose this means. Given that he admitted that he was not supposed to possess any firearms it cannot be a fear of conviction of unlawful possession of a firearm. Given that he admitted to shooting the pistol, it could not have been fear of conviction of the assault or drive-by charges. Rather, it would be reasonable to infer from his improbable explanation that he was attempting to disguise some other fact. However, the only relevant fact left to be disguised was that he knew the pistol in question was stolen. Thus, given the facts of this case, it would be reasonable to infer from Defendant Bradford's improbable explanation as to how he acquired the pistol that he knew the pistol was stolen when he possessed it.

This inference is lent credence by the fact that when a patrol car stopped his vehicle, Bradford threw the pistol out the window and about

twenty feet from his car. RP 339, 343-44. If Bradford was, as he has been, willing to admit to unlawfully possessing a firearm and to shooting that firearm, *see* RP 339, 689-90, there would be no need to try to distance himself from that firearm in this case, unless he also knew that it was stolen.

Thus, given the facts in this case, it can reasonably be inferred from both Bradford's explanation as to how he came into possession of the pistol and from his actions in throwing that pistol out the window when he encountered police, that he knew that pistol was stolen.

Because all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant, *Salinas*, 119 Wn.2d at 201, these inferences must be drawn. When they are, there is sufficient evidence of element "(2) that the defendant acted with knowledge that the firearm had been stolen." CP 26-69 (Instruction No.35). *See* CP 211-54 (Instruction No. 35).

Because the defendant does not challenge the sufficiency of the evidence underlying the remaining elements, when the evidence is viewed in the light most favorable to the State, a rational fact finder could have found the essential elements of the crime of possessing a stolen firearm beyond a reasonable doubt.

Therefore, the defendant's conviction should be affirmed.

D. CONCLUSION.

Viewing the evidence in the light most favorable to the State, there was sufficient evidence from which a rational fact finder could have found the essential elements of the crime of drive-by shooting and first degree unlawful possession of a firearm beyond a reasonable doubt with respect to Defendant Gray.

Defendant Bradford waived any issue of the court's failure to give a self defense instruction pertaining to the drive-by shooting charge where he made no request for such an instruction of that court.

Defendant Bradford failed to show ineffective assistance of counsel in his trial counsel's failure to propose an instruction applying self-defense to the drive-by shooting count because he has failed to show that he was entitled to such an instruction.

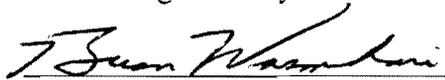
Finally, viewing the evidence in the light most favorable to the State, there was sufficient evidence from which a rational fact finder could

have found the essential elements of the crime of possession of a stolen firearm beyond a reasonable doubt with respect to Defendant Bradford.

Therefore, the defendants' convictions should be affirmed.

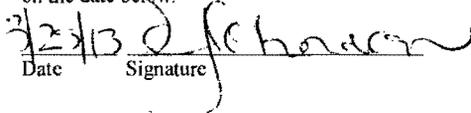
DATED: March 25, 2013

MARK LINDQUIST
Pierce County
Prosecuting Attorney


BRIAN WASANKARI
Deputy Prosecuting Attorney
WSB # 28945

Certificate of Service:

The undersigned certifies that on this day she delivered by ~~U.S. mail~~ ^{file} or ABC-1.MI 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.

3/25/13 
Date Signature

APPENDIX A



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,

CAUSE NO. 11-1-04125-7 ✓
11-1-04126-5

vs.

JOCOREY RICCARDO BRADFORD, ✓
JAMES EARL GRAY,
Defendant.

COURT'S INSTRUCTIONS TO THE JURY

DATED this 22ND day of May, 2012.

John A. McCarthy JUDGE

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, stipulations, and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the judicial assistant and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict. Do not speculate whether the evidence would have favored one party or the other.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value

of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

INSTRUCTION NO. 2

The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 3

Each defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A 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.

INSTRUCTION NO. 4

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

INSTRUCTION NO. 5

A separate crime is charged in each count. You must separately decide each count charged against each defendant. Your verdict on one count as to one defendant should not control your verdict on any other count or as to any other defendant.

INSTRUCTION NO. 6

A person commits the crime of assault in the first degree when, with intent to inflict great bodily harm, he or she assaults another with a firearm.

INSTRUCTION NO. 7

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

INSTRUCTION NO. 8

Great bodily harm means bodily injury that creates a probability of death, or that causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

INSTRUCTION NO. 9

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

An assault is also an act done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

INSTRUCTION NO. 16

A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

INSTRUCTION NO. 11

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 present is an accomplice.

INSTRUCTION NO. 12

To convict the defendant Jicorey Bradford of the crime of assault in the first degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant or an accomplice assaulted Kerry Edwards;
- (2) That the assault was committed with a firearm;
- (3) That the defendant or an accomplice acted with intent to inflict great bodily harm; and
- (4) That this act 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 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

To convict the defendant Jicorey Bradford of the crime of assault in the first degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant or an accomplice assaulted Dandre Long;
- (2) That the assault was committed with a firearm;
- (3) That the defendant or an accomplice acted with intent to inflict great bodily harm; and
- (4) That this act 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 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. 14

To convict the defendant James Gray of the crime of assault in the first degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 7th day of October, 2011, the defendant or an accomplice assaulted Kerry Edwards;

(2) That the assault was committed with a firearm;

(3) That the defendant acted with intent to inflict great bodily harm; and

(4) That this act 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 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. 15

To convict the defendant James Gray of the crime of assault in the first degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant or an accomplice assaulted Dandre Long;
- (2) That the assault was committed with a firearm;
- (3) That the defendant or an accomplice acted with intent to inflict great bodily harm; and
- (4) That this act 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 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. 16

It is a defense to a charge of assault in the first degree that the force used was lawful as defined in this instruction.

The use of force upon or toward the person of another is lawful when used by a person who reasonably believes that he is about to be injured in preventing or attempting to prevent an offense against the person, and when the force is not more than is necessary.

The person using the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of the incident.

The State has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty as to this charge.

INSTRUCTION NO. 17

A person is entitled to act on appearances in defending himself or another, if he believes in good faith and on reasonable grounds that he or another is in actual danger of great personal injury, although it afterwards might develop that the person was mistaken as to the extent of the danger. Actual danger is not necessary for the use of force to be lawful.

INSTRUCTION NO. 18

It is lawful for a person who is in a place where that person has a right to be and who has reasonable grounds for believing that he is being attacked to stand his ground and defend against such attack by the use of lawful force.

The law does not impose a duty to retreat. Notwithstanding the requirement that lawful force be "not more than is necessary," the law does not impose a duty to retreat. Retreat should not be considered by you as a "reasonably effective alternative."

INSTRUCTION NO. 19

No person may, by any intentional act reasonably likely to provoke a belligerent response, create a necessity for acting in self defense or defense of another and thereupon use, offer or attempt to use force upon or toward another person. Therefore, if you find beyond a reasonable doubt that the defendant was the aggressor, and that defendant's acts and conduct provoked or commenced the fight, then self-defense or defense of another is not available as a defense.

INSTRUCTION NO. 20

Necessary means that, under the circumstances as they reasonably appeared to the actor at the time, (1) no reasonably effective alternative to the use of force appeared to exist and (2) the amount of force used was reasonable to effect the lawful purpose intended.

INSTRUCTION NO. 21

A person commits the crime of drive-by shooting when he or she recklessly discharges a firearm in a manner that creates a substantial risk of death or serious physical injury to another person and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge.

INSTRUCTION NO. 22

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and this disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation.

When recklessness as to a particular result or fact is required to establish an element of a crime, the element is also established if a person acts intentionally or knowingly as to that result or fact.

INSTRUCTION NO. 23

A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct. This inference is not binding upon you and it is for you to determine what weight, if any, such inference shall be given.

INSTRUCTION NO. 24

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

INSTRUCTION NO. 25

To convict the defendant Jicorey Bradford of the crime of drive-by shooting as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant or an accomplice recklessly discharged a firearm;
- (2) That the discharge created a substantial risk of death or serious physical injury to another person,
- (3) That the discharge was either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge;
and
- (4) That this act 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 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. 26

To convict the defendant James Gray of the crime of drive-by shooting as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant or an accomplice recklessly discharged a firearm;
 - (2) That the discharge created a substantial risk of death or serious physical injury to another person;
 - (3) That the discharge was either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge;
- and
- (4) That this act 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 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

A person commits the crime of unlawful possession of a firearm in the second degree when he or she knowingly has a firearm in his or her possession or control and he or she has previously been convicted of a felony.

INSTRUCTION NO. 28

Possession means having a firearm in one's custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.

Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.

In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant had the immediate ability to take actual possession of the item, whether the defendant had the capacity to exclude others from possession of the item, and whether the defendant had dominion and control over the premises where the item was located. No single one of these factors necessarily controls your decision.

INSTRUCTION NO. 29

A person knows or acts knowingly or with knowledge with respect to a fact, circumstance or result when he or she is aware of that fact, circumstance or result. It is not necessary that the person know that the fact, circumstance or result is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.

INSTRUCTION NO. 30

To convict the defendant Jicorey Bradford of the crime of unlawful possession of a firearm in the second degree as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011 the defendant knowingly had a firearm in his possession or control;
- (2) That the defendant had previously been convicted of a felony; and
- (3) That the possession or control of the firearm 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. 31

A person commits the crime of unlawful possession of a firearm in the first degree when he has previously been convicted of a serious offense and knowingly owns or has in his possession or control any firearm.

INSTRUCTION NO. 32

To convict the defendant James Gray of the crime of unlawful possession of a firearm in the first degree as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant knowingly had a firearm in his possession or control;
- (2) That the defendant had previously been convicted of a serious offense; and
- (3) That the possession or control of the firearm 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 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. 33

A person commits the crime of possessing a stolen firearm when he or she possesses, carries, delivers, sells, or is in control of a stolen firearm.

Possessing a stolen firearm means knowingly to receive, retain, possess, conceal, or dispose of a stolen firearm knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

INSTRUCTION NO. 34

Stolen means obtained by theft.

INSTRUCTION NO. 35

To convict the defendant Jicorey Bradford of the crime of possessing a stolen firearm as charged in Count V, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant possessed, carried, delivered, sold or was in control of a stolen firearm;
- (2) That the defendant acted with knowledge that the firearm had been stolen;
- (3) That the defendant withheld or appropriated the firearm to the use of someone other than the true owner or person entitled thereto; and
- (4) That any of these 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 the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 31b

To convict the defendant James Gray of the crime of possessing a stolen firearm as charged in Count V, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 7th day of October, 2011, the defendant possessed, carried, delivered, sold or was in control of a stolen firearm;
- (2) That the defendant acted with knowledge that the firearm had been stolen;
- (3) That the defendant withheld or appropriated the firearm to the use of someone other than the true owner or person entitled thereto; and
- (4) That any of these 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 the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 37

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the 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 to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

INSTRUCTION NO. 38

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the judicial assistant. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and the verdict forms for recording your verdicts. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form(s) to express your decision. The presiding juror must sign the verdict forms and notify the judicial assistant. The judicial assistant will bring you into court to declare your verdicts.

INSTRUCTION NO. 39

You will also be given special verdict forms for the crime of assault in the first degree. If you find the defendant not guilty of this crime, do not use the special verdict form for that count. If you find the defendant guilty of this crime, you will then use the special verdict forms. In order to answer the special verdict forms "yes," all twelve of you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you do not unanimously agree that the answer is "yes" then the presiding juror should sign the section of the special verdict form indicating that the answer has been intentionally left blank.

INSTRUCTION NO. 46

For purposes of a special verdict, the State must prove beyond a reasonable doubt that the defendant was armed with a firearm at the time of the commission of the crime in Counts I and/or II.

A person is armed with a firearm if, at the time of the commission of the crime, the firearm is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the firearm and the defendant or an accomplice. The State must also prove beyond a reasonable doubt that there was a connection between the firearm and the crime. In determining whether these connections existed, you should consider, among other factors, the nature of the crime and the circumstances surrounding the commission of the crime, including the location of the firearm at the time of the crime.

If one participant in a crime is armed with a firearm, all accomplices to that participant are deemed to be so armed, even if only one firearm is involved.

A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

PIERCE COUNTY PROSECUTOR

March 25, 2013 - 11:35 AM

Transmittal Letter

Document Uploaded: 436817-Respondent's Brief.pdf

Case Name: State v. Jicorey Bradford & James Gray

Court of Appeals Case Number: 43681-7

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

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Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: hjohns2@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:

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