

No. **45365-7**

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL RESTRAINT PETITION OF:

MICHAEL LAR,

PETITIONER.

PERSONAL RESTRAINT PETITION

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DIVISION II
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STATE OF WASHINGTON
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A. STATUS OF PETITIONER

Michael Lar (hereinafter “Lar”) challenges his Lewis County judgment of conviction for first degree kidnapping, burglary and attempted robbery. *Judgment* attached as Appendix A. Lar is currently incarcerated on these convictions serving a “life without parole” sentence as a persistent offender. This is Mr. Lar’s first collateral attack on this judgment of conviction.

B. FACTS

Procedural History

Mr. Lar was convicted and sentenced to life in prison as a persistent offender in Lewis County (Case No. 10-1-00055-5). He appealed. His convictions and sentences were affirmed on appeal (Case No. 40801-5-II). The *Direct Appeal Opinion* is attached as Appendix B. The Washington Supreme Court denied review on September 5, 2012 (Case No. 873680-2). This Court issued a mandate on September 18, 2012.

This petition timely follows.

Facts

The facts of the crimes were described by this Court on direct appeal as follows:

Around 6:30 am on January 25, 2010, Holly Weitz arrived at the Twin Star Credit Union in Centralia to begin her opening shift as a bank teller. When Weitz approached the bank's parking lot, she saw fellow employee Esperanza Mejia-Tellez waiting in her vehicle. The credit union's opening procedures required Weitz to call Mejia-

Tellez on her cell phone and then to enter the building, turn off the security system, turn on the bank's lights, and eventually tell MejiaTellez by cell phone that she could safely enter the building.

After Weitz parked her car, she established a cell phone connection with Mejia-Tellez, entered the credit union's side entrance, and disarmed the alarm. She heard a noise that sounded like "wind" coming from the assistant manager's office. Verbatim Reports of Proceedings (VRP) (March 25, 2010) at 23. She went to investigate, pushed open the door to the office, turned on the light, and saw a man wearing dark clothing with a ski mask over his face crouched in the corner. According to Weitz, the man was about 6'3" tall and approximately 60 years old. Although the mask covered most of his face, Weitz noticed his unusually blue eyes and white stubble on his upper lip. He appeared to be holding a handgun in his right hand and a knife in his left hand. The man, later identified as Michael Anthony Lar, rushed toward Weitz and hit her on the back of the head with a metal object, which she believed was his handgun. Weitz screamed and dropped her cell phone. Lar held his gun to the back of her head, placed his knife on her throat, told her not to touch her cell phone, and threatened to take her hostage if she "screwed" anything up for him. VRP (March 25, 2010) at 26.

Weitz explained that she needed to talk to Mejia-Tellez, who otherwise would immediately call the police. Lar handed Weitz her cell phone. Weitz tried to call Mejia-Tellez four or five times, but she was so upset that she misdialed and was unable to get a call through. Lar took Weitz to the side entrance of the building and told her to stick her head outside and to wave for Mejia-Tellez to come inside, while pointing his gun at Weitz's head and telling her, "[Y]ou better not [f*ck] this up, [b*tch or] I'll take you with me." VRP (March 25, 2010) at 29. Weitz opened the side door and waived her cell phone at Mejia-Tellez, beckoning her inside.

Mejia-Tellez did not respond because she had already called the police. Weitz noticed Centralia Police Officer Neil Hoium with a gun, approaching on the right side of the credit union. Holding her thumb and index finger in the shape of a "gun," Weitz mouthed silently to Hoium that a male intruder inside had a gun. VRP (March 25, 2010) at 111. Hoium grabbed Weitz's arm and pulled her out of the doorway. According to Hoium, a male figure inside the credit union appeared out of the shadows holding what appeared to be a .45 caliber handgun. Hoium fired two shots at the man, who disappeared

from view.

Additional facts relevant to the claims of error raised below appear in the respective sections.

C. ARGUMENT

- 1A. MR. LAR IS NOT A PERSISTENT OFFENDER BECAUSE HIS FEDERAL BANK ROBBERY CONVICTIONS ARE NOT COMPARABLE TO A WASHINGTON “MOST SERIOUS OFFENSE.”
- 1B. TRIAL COUNSEL WAS INEFFECTIVE FOR NOT CHALLENGING COMPARABILITY.
- 1C. APPELLATE COUNSEL WAS INEFFECTIVE FOR NOT CHALLENGING COMPARABILITY.

Introduction

Federal bank robbery is not a “strike.” *In re PRP of Lavery*, 154 Wash.2d 249, 111 P.3d 837 (2005).

The two prior “most serious offenses” that resulted in Mr. Lar “striking out” both were for federal bank robbery.

It is clear (and should have been clear both at the time of his sentencing and appeal) that Mr. Lar is not a “persistent offender.” *Lavery* was controlling law when Lar was charged, sentenced, and on appeal.

This Court can correct this fundamental error either by addressing this issue directly or by finding that trial counsel and/or appellate counsel was ineffective.

Facts

Mr. Lar was twice charged and convicted (1985 and 1997) in federal court of bank robbery. *Exhibits* attached as Appendix C and D. In the 1985 case, Lar pleaded guilty to an information alleging two incidents where he robbed a bank with a gun. The plea agreement simply indicates that Lar was entering a guilty plea to the charges. Likewise, in 1997 Lar pleaded guilty to two counts of bank robbery while displaying a gun. In the 1997 case, Lar agreed to a factual statement of the robberies described in the plea agreements.

These two convictions form the basis for Lar's current "persistent offender" life sentence.

Argument

Federal bank robbery is not a "most serious offense" or "strike." *Lavery, supra*. The issue in *Lavery*, which was also a PRP, was "whether Lavery's federal conviction was properly included as a strike offense under the POAA. An offender who has been convicted of two strike offenses must be sentenced to life without parole upon conviction for a third such offense." *Id.* at 254. Foreign convictions count as strikes if they are comparable to a Washington strike offense. In determining whether foreign convictions are comparable to Washington strike offenses, courts employ a two part test for comparability. *State v. Morley*, 134 Wash.2d 588, 952 P.2d 167 (1998).

The court first compares the elements of the crimes. 134 Wash.2d at 605–06. In cases in which the elements of the Washington crime and the foreign crime are not substantially similar, we have held that the sentencing court may look at the defendant's conduct, as evidenced by the indictment or information, to determine if the conduct itself would have violated a comparable Washington statute. 134 Wash.2d at 606. However, “[w]hile it may be necessary to look into the record of a foreign conviction to determine its comparability to a Washington offense, the elements of the charged crime must remain the cornerstone of the comparison. Facts or allegations contained in the record, if not directly related to the elements of the charged crime, may not have been sufficiently proven in the trial.” *Id.*

Federal bank robbery differs from the Washington crime of robbery because it does not require proof of intent to steal. *Lavery, supra.*

The crime of robbery in Washington requires specific intent to steal as an essential, nonstatutory element. *Lavery*, 154 Wash.2d at 255. See also *State v. Kjorsvik*, 117 Wash.2d 93, 98, 812 P.2d 86 (1991) (“our settled case law is clear that ‘intent to steal’ is an essential element of the crime of robbery.”) (citing *State v. Hicks*, 102 Wash.2d 182, 184, 683 P.2d 186 (1984)). “Its definition is therefore narrower than the federal crime's definition. Thus, a person could be convicted of federal bank robbery without having been guilty of second degree robbery in Washington.” *Lavery, supra.*

Lavery unambiguously holds: “Because the elements of federal bank robbery and robbery under Washington's criminal statutes are not substantially similar, we conclude that federal bank robbery and second degree robbery in Washington are not legally comparable.” *Id.*

Like in *Lavery*, Lar was convicted on two occasions of federal bank robbery—the same crime with the same elements discussed in *Lavery*. Those crimes are not legally comparable to a “most serious offense” for the exact same reason as in *Lavery*—the federal charges did not require proof of specific intent to steal.

The *Lavery* court also conducted “factual comparability” review. It began by noting “(w)here the foreign statute is broader than Washington’s, that examination may not be possible” because “(a)ny attempt to examine the underlying facts of a foreign conviction, facts that were neither admitted or stipulated to, nor proved to the finder of fact beyond a reasonable doubt in the foreign conviction, proves problematic. Where the statutory elements of a foreign conviction are broader than those under a similar Washington statute, the foreign conviction cannot truly be said to be comparable.”

Lavery continued:

Lavery had no motivation in the earlier conviction to pursue defenses that would have been available to him under Washington's robbery statute but were unavailable in the federal prosecution. Furthermore, *Lavery* neither admitted nor stipulated to facts which established specific intent in the federal prosecution, and specific intent was not proved beyond a reasonable doubt in the 1991 federal robbery conviction. We conclude that *Lavery*'s 1991 foreign robbery

conviction is neither factually nor legally comparable to Washington's second degree robbery and therefore not a strike under the POAA.

Id. at 258.

Just as in *Lavery*, because federal bank robbery is not legally comparable, it is not factually comparable in this case.

Lar did not stipulate to facts that establish specific intent to steal. In fact, his 1985 conviction does not appear to include a stipulation to any set of facts. Like in *Lavery*, Lar had no incentive to pursue defenses that would have been available in Washington but were unavailable in the federal prosecution. There is no place in any of the federal conviction documents where Lar affirmatively states that these defenses do not factually apply to his commission of any of the bank robberies. As a result, it is clear that the convictions do not count as “most serious offenses.” Lar is not a persistent offender.

Trial counsel challenged Lar’s convictions, although he did not specifically contest their comparability. Because counsel did not stipulate to comparability, this Court can reach this issue directly. However, this Court can also easily find ineffective assistance of both trial and appellate counsel. In *State v. Thieffault*, 160 Wash.2d 409, 158 P.3d 580 (2007), the Washington Supreme Court found defense counsel's performance deficient when counsel mistakenly failed to object to the sentencing court's incorrect

conclusion that the defendant's prior conviction from Montana was legally comparable.

This Court should grant this petition and reverse Lar's "persistent offender" sentence.

2. LAR'S CONVICTION FOR KIDNAPPING MERGES WITH HIS ROBBERY CONVICTION.

Article I, section 9 of the Washington Constitution and the Fifth Amendment to the federal constitution protect persons from a second prosecution for the same offense and from multiple punishments for the same offense imposed in the same proceeding. *State v. Turner*, 169 Wash.2d 448, 454, 238 P.3d 461 (2010). If the evidence proving one crime is also necessary to prove a second crime or a higher degree of the same crime, we consider whether the facts show that the additional crime was committed incidental to the original crime. *State v. Johnson*, 92 Wash.2d 671, 680, 600 P.2d 1249 (1979) (*Johnson I*). If one crime was incidental to the commission of the other, the merger doctrine precludes additional convictions; but if the offenses have independent purposes or effects, the court may impose separate punishment. To establish an independent purpose or effect of a particular crime, that crime must injure the person or property of the victim or others in a separate and distinct manner from the crime for which it also serves as an element. *State v. Lindsay*, 171 Wash.App. 808, 288 P.3d 641(2012).

Because *Lindsay* controls, Lar discusses it at length.

Like this case, Lindsay argued that the trial court's imposition of first degree robbery and second degree kidnapping convictions violated double jeopardy protections because the kidnapping was merely incidental to the robbery. The facts in *Lindsay* were described as follows:

Here, Lindsay burst through Wilkey's front door with a pipe in his raised hand. Lindsay struck and choked Wilkey with the pipe until Wilkey lost consciousness. Wilkey awoke in the living room area, hog-tied with zip ties, a telephone cord, and a dog leash. While the zip ties, cord, and leash restrained Wilkey, Holmes and Lindsay moved substantial amounts of property from Wilkey's home into their truck. The State argues that the robbery was complete before Lindsay tied up Wilkey, thus, Lindsay's restraint of Wilkey using zip ties was a separate act. Specifically, the State argues that for the purpose of robbery, Lindsay subdued Wilkey by striking him and choking him unconscious; thus, it was only after he was subdued that Lindsay restrained him with zip ties, a telephone cord, and a dog leash.

Id.

As a matter of law, a kidnapping is incidental to robbery when (1) the restraint was for the sole purpose of facilitating robbery; (2) the restraint was inherent in the robbery; (3) the victims were not transported from their home; (4) the duration of restraint was not substantially longer than necessary to complete the robbery; and (5) the restraint did not create an independent, significant danger. *Lindsay, supra; State v. Korum*, 120 Wash.App. 686, 707, 86 P.3d 166 (2004), *rev'd in part on other grounds and aff'd in part*, 157 Wash.2d 614, 620, 141 P.3d 13 (2006). All robberies

necessarily involve some degree of forcible restraint, however, does not mean “that the legislature intended prosecutors to charge every robber with kidnapping.” *Korum*, 120 Wash.App. at 705. Restraint and movement of a victim that are merely incidental and integral to commission of another crime, such as rape or murder, do not constitute the independent, separate crime of kidnapping.

In *Lindsay*, this Court found that Lindsay and Holmes restrained Wilkey (1) for the purpose of facilitating robbery; (2) the restraint was necessary to allow Lindsay and Holmes to take a substantial amount of property from Wilkey's home and move it into the waiting truck; (3) Lindsay and Holmes did not transport Wilkey from his home; (4) the duration of Wilkey's restraint lasted no longer than necessary for Lindsay and Holmes to complete the robbery and leave; and (5) the restraint did not create significant danger. As a result, this Court concluded that Wilkey's restraint (charged as kidnapping) was incidental to the crime of first degree robbery and these convictions merge.

This case presents the same restraint incidental to a robbery. According to the testimony, Lar restrained the victim while attempting the rob the financial institution. He may have transported her inside the bank, including to signal to the employee outside. However, any movement was incidental to the attempted robbery.

Once again, this Court can reach this issue any one of three ways. However, what is clear is that entry of convictions for both robbery and kidnapping based on these facts violates double jeopardy/merger.

This Court should reverse and remand with instructions to dismiss the kidnap charge.

3. MR. LAR WAS DENIED EFFECTIVE ASSISTANCE DURING THE PLEA BARGAINING PROCESS WHERE HE ADVISED LAR TO REJECT A PLEA OFFER BASED ON HIS MISTAKEN BELIEF THAT FEDERAL BANK ROBBERY IS A “STRIKE.”

Facts

This claim of error is supported by the attached declarations of Donald Blair, trial counsel in this case, and Mr. Lar. Those *Declarations* are Appendix E and F, respectively.

Prior to trial, the State extended a plea offer to Mr. Lar that involved entering a guilty plea to some, but not all of the offenses—Mr. Blair does not exactly recall and Mr. Lar does not have access to the State’s file. In any event, the plea offer included “at least one strike offense.” *Appendix E*. Because trial counsel was not aware of *Lavery*, he could not accept the offer because it would still result in a life sentence given Blair’s mistaken belief that the federal bank robberies counted as strikes. If Blair had been aware of *Lavery*, he would have “recommended otherwise,” given that the plea offer “presented obvious advantages” to Lar. *Id.* Mr. Blair also writes that he expects that Lar would have taken the deal, but for the mistaken

belief that Lar's criminal history rendered the reduced charges irrelevant because to the mandatory penalty attached to a persistent offender finding.

Mr. Lar's declaration is similar. Lar states that he would have taken the deal, but for the deficient advice.

Argument

“Where the issue is whether to advise the client to plead or not ‘the attorney has the duty to advise the defendant of the available options and possible consequences’ and the failure to do so constitutes ineffective assistance of counsel.” *United States v. Wilson*, 719 F. Supp. 2d 1260, 1269 (D. Or. 2010). *See also, Libretti v. United States*, 516 U.S. 29, 50-51(1995) (counsel must advise client of advantages and disadvantages of a plea agreement).

To establish ineffective assistance of counsel, the defendant must show deficient performance and prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). It is clear that the *Strickland* analysis applies to claims of ineffective assistance of counsel involving counsel's advice offered during the plea bargain process. *See Hill v. Lockhart*, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

A defense attorney has an obligation not only to communicate any plea offers to a client (*See State v. James*, 48 Wash.App. 353, 362, 739 P.2d 1161 (1987)), but also to provide him with sufficient information to make

an informed decision on whether or not to plead guilty. *In re Restraint of McCready*, 100 Wn.App. 259, 263- 64, 996 P.2d 658 (2000); *State v. Holm*, 91 Wash.App. 429, 435, 957 P.2d 1278 (1998).

A California case, decided by the 9th Circuit in a habeas proceeding, provides further support for the conclusion that counsel's failure to provide his/her client with accurate sentencing advice constitutes deficient performance. In *Riggs v. Fairman*, 399 F.3d 1179 (9th Cir. 2005), a "three strikes" case where neither the State nor defense counsel were aware of Riggs' recidivist status during unsuccessful plea negotiations, the Ninth Circuit held that defense counsel's investigatory failures constituted deficient performance. 399 F.3d at 1183. "The investigatory omissions made by Riggs' attorney were numerous. Among the most egregious omissions were counsel's failure to investigate Riggs' prior robbery convictions, failure to obtain Riggs' rap sheet, and failure to seek sufficient information from Riggs about his prior robbery convictions." *Id.*

The *Riggs* court continued:

Informed only by her limited knowledge of his criminal record, Riggs' counsel advised him that his maximum exposure under California law was only nine years and that he should therefore reject the state's offer of a five-year prison term. However, Riggs' actual exposure under California's three strikes law was 25-years-to-life. Defense counsel's advice to Riggs was not only erroneous, but egregious, considering the discrepancy between the two punishments. *See Iaea v. Sunn*, 800 F.2d 861, 865 (9th Cir.1986) ("Though a mere inaccurate prediction, standing alone, would not constitute ineffective assistance, the gross mischaracterization of the

likely outcome presented in this case, combined with the erroneous advice on the possible effects of going to trial, falls below the level of competence required of defense attorneys.”) (citations omitted).

Simply stated, Riggs' counsel had a duty to investigate whether California's three strikes law would be applicable to Riggs. Riggs' counsel unjustifiably failed to discover such information in this case. Her omission fell below an objective standard of reasonableness. *See Iaea*, 800 F.2d at 865.

Id. See also *Turner v. Calderon*, 281 F.3d 851, 879 (9th Cir. 2002)

(“More importantly, he offered this flawed advice without conducting reasonable research into the legal landscape.”).

This case suffers from the same failure. Lar is not a persistent offender. Trial counsel advised Lar to reject a beneficial offer only because he did not adequately research the law. As a result, he told Lar that he could not accept the plea offer. If he had adequately researched the law, his advice would have differed.

Having satisfied the first prong, Lar must next show a “reasonable probability” that, but for his counsel's ineffectiveness, the result of his proceedings would have differed. *Strickland*, 466 U.S. at 694. This burden represents a fairly low threshold. *See Sanders v. Ratelle*, 21 F.3d 1446, 1461 (9th Cir.1994) (stating that a “reasonable probability” is actually a lower standard than preponderance of the evidence).

Lar can easily satisfy this standard—at least to entitle him to an evidentiary hearing, if not definitively. *See Mask v. McGinnis*, 233 F.3d 132, 142 (2d Cir.2000) (holding that the prejudice requirement was

satisfied when defendant stated his willingness to accept a reasonable plea bargain and a great disparity existed between the sentence exposure at trial and in the plea bargain).

In this context, Lar must show a reasonable likelihood that he would have pleaded guilty. The declarations of both counsel and Lar make out a claim of prejudice.

This Court should either (1) grant relief and remand with directions that the State reinstate the offer; or (2) remand for an evidentiary hearing.

4. THE SENTENCING COURT DID NOT FIND THAT MR. LAR WOULD REASONABLY BE ABLE TO PAY BEFORE IMPOSING FINANCIAL OBLIGATIONS.

If a court intends on imposing *discretionary* legal financial obligations as a sentencing condition, such as court costs and fees, it must consider the defendant's present or likely future ability to pay. *State v. Lundy*, __ P.3d __, 2013 WL 4104978 (2013).

Here, the court imposed a \$1000 jail recoupment fee and \$11,025 “court appointed attorney fees.” The Court did not make any finding of defendant’s present or future ability to pay. See *Sentencing Transcript* Appendix G. In fact, it imposed these discretionary fees after imposing a life sentence.

This Court should reverse and remand either with directions to conduct a hearing on defendant’s ability to pay.

D. CONCLUSION AND PRAYER FOR RELIEF

Based on the above, this Court should grant Mr. Lar's PRP.

DATED this 16th day of September, 2013.

Respectfully Submitted:

/s/Jeffrey Ellis

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APPENDIX A

Received & Filed
LEWIS COUNTY, WASH
Superior Court

MAY 27 2010

Kathy A. Brack, Clerk
Deputy

Superior Court of Washington
County of Lewis

State of Washington, Plaintiff,

vs.

Michael Anthony Lar,
Defendant.

SID: WA13944197
DOB: 11-10-1952

No. 10-1-00055-5

Felony Judgment and Sentence --
Persistent Offender
(FJS)

[x] Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2
5.3, 5.5 and 5.7

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon
[] guilty plea (date) _____ [x] jury-verdict (date) 03-31-2010 [] bench trial (date) _____:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
I	Burglary 1 st Degree	9A.52.020(1)(a) or (b)	FA	01-25-2010
II	Kidnapping 1 st Degree	9A.40.020(1)(a) or (b)	FA	01-25-2010
III	Attempted Robbery 1 st Degree	9A.56.200(1)(a) or (b)	FB	01-25-2010

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

[] Additional current offenses are attached in Appendix 2.1a.

[x] Count I is a most serious offense and the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

[x] Count II is a most serious offense and the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

[x] Count III is a most serious offense and the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

ORIGINAL

211

The jury returned a special verdict or the court made a special finding with regard to the following:

- The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A._____.
- The offense was predatory as to Count _____. RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count _____ RCW 9.94A.837.
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count I. RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count II. RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count III. RCW 9.94A.602, 9.94A.533.
- Count _____ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense. Laws of 2008, ch. 276, § 302.
- Count _____ is the crime of **unlawful possession of a firearm**. The defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.545
- Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. Laws of 2008, ch. 219 § 2.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030. The crime(s) charged in Count _____ involve(s) **domestic violence**. **RCW 10.99.020**.
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

	<i>Crime</i>	<i>Cause Number</i>	<i>Court (county & state)</i>
1.			
2.			

(If the crime is a drug offense, include the type of drug in the second column.)

- Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

	<i>Crime</i>	<i>Date of Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County & State)</i>	<i>A or J Adult, Juv.</i>	<i>Type of Crime</i>
1	Armed Bank Robbery	11-17-1984	11-08-1985	United States District Court – Western District of Washington	A	V-F
2	Armed Bank Robbery	03-28-1985	11-08-1985	United States District Court – Western District of Washington	A	V-F
3	Armed Bank Robbery	05-31-1996	01-31-1997	United States District Court – Western District of Washington	A	V-F
4	Bank Robbery	07-12-1996	01-31-1997	United States District Court – Western District of Washington	A	V-F
5						

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior offenses listed as number(s) 1,2 and 3,4 above, or in appendix 2.2, require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570).
- The prior convictions listed as number(s) _____ above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525).
- The prior convictions listed as number(s) _____ above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

<i>Count No.</i>	<i>Offender Score</i>	<i>Seriousness Level</i>	<i>Standard Range (not including enhancements)</i>	<i>Plus Enhancements*</i>	<i>Total Standard Range (including enhancements)</i>	<i>Maximum Term</i>
I	6	VII	57-75 Months	24 Months (D)	81-99 Months	Life
II	6	X	98-130 Months	24 Months (D)	122-154 Months	Life
III	6	IX	57.75-76.5 Months	12 Months (D)	69.5-88.5 Months	10 Years

* (F) Firearm, (D) Other deadly weapons, (VH) Veh. Hom, see RCW 46.61.520, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended **sentencing agreements or plea agreements** are attached as follows: _____

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that:

- The defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.
- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

- The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

III. Judgment

3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 The court **dismisses** Counts _____ in the charging document.

IV. Sentence and Order

It is ordered:

4.1 Confinement. The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.570. The court sentences the defendant to the following term of total confinement in the custody of the Department of Corrections:

<u>Life without the possibility of early release</u>	on Count	<u> I </u>
<u>Life without the possibility of early release</u>	on Count	<u> II </u>
<u>Life without the possibility of early release</u>	on Count	<u> III </u>

Actual number of months of total confinement ordered is: life without the possibility of early release.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

_____ The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

Court Ordered Treatment: If the defendant is currently undergoing court ordered mental health or chemical dependency treatment, the defendant must notify DOC and must release treatment information to DOC.
RCW 9.94A.562.

(b) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served unless the credit for time served prior to sentencing is specifically set forth here by the court: 118 days.

4.2 Other: _____

4.3 Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE

PCV \$ 500.00 Victim assessment RCW 7.68.035

\$ _____ Domestic Violence assessment RCW 10.99.080

CRC \$ _____

Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 200.00 FRC

Witness costs \$ _____ WFR

Sheriff service fees \$ 825.80 SFR/SFS/SFW/WRF

Jury demand fee \$ _____ JFR

Extradition costs \$ _____ EXT

Other \$ _____

PUB \$ TBD Fees for court appointed attorney RCW 9.94A.760

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ _____ Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/FCD \$ _____ Drug enforcement fund of Lewis County. RCW 9.94A.760
 NTF/SAD/SDI

CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690

\$ 100.00 DNA collection fee RCW 43.43.7541

\$ 1000.00 Other fines or costs for: Jail recoupment fee.

RTN/RJN \$ TBD Restitution to: Twin Star Credit Union; 1320 S. Gold St., Centralia, WA 98531

\$ _____ Restitution to: _____

\$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

\$ _____ Total RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor.

[] is scheduled for _____ (Date).

[] The defendant waives any right to be present at any restitution hearing (sign initials): _____

[] Restitution Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with:

Name of other defendant Cause Number (Victim's name) (Amount-\$)
 RJN _____

- The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).
- All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$25.00 per month commencing 60 days from today's date. RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 No Contact: The defendant shall not have contact with _____ including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.6 Other: _____

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

216

5.3 Notice of Income-Withholding Action. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 Reserved.

5.5 Firearms. You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

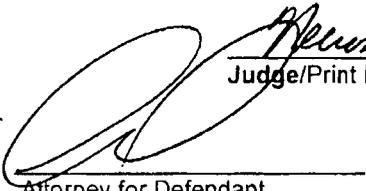
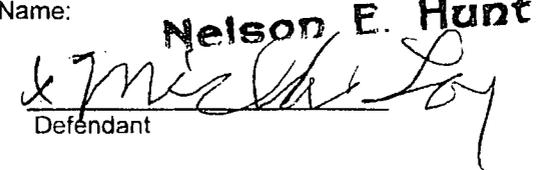
5.6 Reserved.

5.7 Motor Vehicle: If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

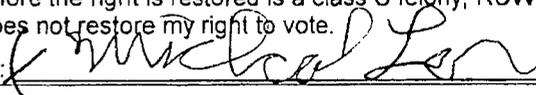
5.8 Other:

Done in Open Court and in the presence of the defendant this

Date: MAY 27, 2010

		
Deputy Prosecuting Attorney WSBA No. 33810 Print Name: Kjell C. Werner	Attorney for Defendant WSBA No. 24637 Print Name: Donald A. Blair	Judge/Print Name: Nelson E. Hunt Defendant Print Name: Michael Anthony Lar

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140. Termination of monitoring by DOC does not restore my right to vote.

Defendant's signature: 

SUPERIOR COURT
LEWIS COUNTY, WASH
REC'D & FILED
2010 MAY 27 AM 11:45
KATHY BRACK, CLERK
BY [Signature]
DEPUTY

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF LEWIS

3 STATE OF WASHINGTON,

4 Plaintiff,

5 vs.

6 MICHAEL LAR,

7 Defendant.

)
)
)
) No. 10-1-55-5
) **ORDER FOR PAYMENT OF**
) **ATTORNEY'S FEES AND**
) **AMENDMENT OF JUDGEMENT AND**
) **SENTENCE**
)

8 THE COURT having heretofore appointed Donald Blair as an attorney to represent the
9 Defendant at public expense, and

10 It appearing that said attorney has performed services, and is entitled to compensation for the
11 same, now, therefore, it is heretofore,

12 ORDERED, ADJUDGED AND DECREED that said Donald Blair be, and he is allowed
13 \$11,025.00. The auditor is authorized and directed to issue a warrant in payment of the same.

14 THIS MATTER coming before the Court this day, the defendant appearing by and through his
15 prior attorney Donald Blair, and the State appearing by and through the undersigned Deputy Prosecuting
16 Attorney, and the Court finding that good cause exists for the entry of this order, and the Court being in
17 all things fully advised, it is now, therefore,

18 HEREBY ORDERED that the Judgment and Sentence shall include in Paragraph 4.1 additional
19 court appointed attorneys fees and costs to be paid by the defendant in the sum of \$11,025.00.

20 DONE IN OPEN COURT this 27 day of MAY, 2010.

21 ORDER FOR PAYMENT OF ATTORNEY'S FEES
22 AND AMENDING JUDGMENT AND SENTENCE
23 Page 1

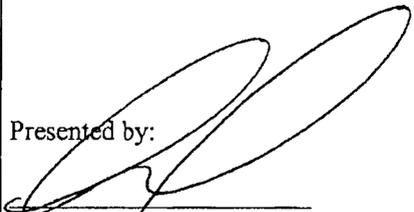
Donald Blair
Attorney at Law
PO Box 1207
Centralia, WA 98531
(360) 807-0516

ORIGINAL

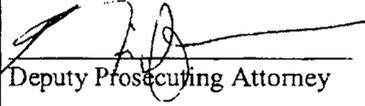
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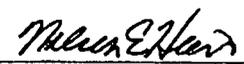
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Presented by:


Donald Blair, WSBA #24637
Attorney for Defendant

Approved as to form:
Notice of presentation waived:


Deputy Prosecuting Attorney


JUDGE

199

APPENDIX B

FILED
COURT REPORTER

APR 14 10:33

JUL 14 2010

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 40801-5-II

Respondent,

v.

MICHAEL ANTHONY LAR,

UNPUBLISHED OPINION

Appellant.

HUNT, J. — Michael Anthony Lar appeals his jury convictions for first degree burglary, first degree kidnapping, and first degree attempted robbery. He argues that (1) the trial court violated his state and federal constitutional rights when it refused to suppress evidence obtained after police arrested him without a warrant in a “high risk”¹ stop; (2) he received ineffective assistance when defense counsel failed to file a timely motion to suppress evidence flowing from Lar’s allegedly unlawful arrest and from his allegedly coerced statements; (3) the trial court violated his right to a fair and impartial jury trial when it denied his motion to excuse a juror who had failed to disclose that he was acquainted with a State witness; and (4) the trial court erred in sentencing him to life in prison under the Persistent Offender Accountability Act (POAA)²

¹ Verbatim Report of Proceedings (VRP) (March 26, 2010) at 136.

² Chapter 9.94A RCW.

because the State did not produce substantial evidence that he had two prior bank robbery convictions. In his Statement of Additional Grounds (SAG), Lar asserts that the trial court erred during voir dire by conducting an “inadequate inquiry” into the possible prejudicial effect that adverse pretrial publicity might have had on the jury pool. SAG at 1. We affirm.

FACTS

I. BURGLARY, KIDNAPPING, AND ATTEMPTED ROBBERY

A. Credit Union

Around 6:30 AM on January 25, 2010, Holly Weitz arrived at the Twin Star Credit Union in Centralia to begin her opening shift as a bank teller. When Weitz approached the bank’s parking lot, she saw fellow employee Esperanza Mejia-Tellez waiting in her vehicle. The credit union’s opening procedures required Weitz to call Mejia-Tellez on her cell phone and then to enter the building, turn off the security system, turn on the bank’s lights, and eventually tell Mejia-Tellez by cell phone that she could safely enter the building.

After Weitz parked her car, she established a cell phone connection with Mejia-Tellez, entered the credit union’s side entrance, and disarmed the alarm. She heard a noise that sounded like “wind” coming from the assistant manager’s office. Verbatim Reports of Proceedings (VRP) (March 25, 2010) at 23. She went to investigate, pushed open the door to the office, turned on the light, and saw a man wearing dark clothing with a ski mask over his face crouched in the corner. According to Weitz, the man was about 6’3” tall and approximately 60 years old. Although the mask covered most of his face, Weitz noticed his unusually blue eyes and white stubble on his upper lip. He appeared to be holding a handgun in his right hand and a knife in his left hand. The man, later identified as Michael Anthony Lar, rushed toward Weitz and hit her on

No. 40801-5-II

the back of the head with a metal object, which she believed was his handgun. Weitz screamed and dropped her cell phone. Lar held his gun to the back of her head, placed his knife on her throat, told her not to touch her cell phone, and threatened to take her hostage if she “screwed” anything up for him. VRP (March 25, 2010) at 26.

Weitz explained that she needed to talk to Mejia-Tellez, who otherwise would immediately call the police. Lar handed Weitz her cell phone. Weitz tried to call Mejia-Tellez four or five times, but she was so upset that she misdialed and was unable to get a call through. Lar took Weitz to the side entrance of the building and told her to stick her head outside and to wave for Mejia-Tellez to come inside, while pointing his gun at Weitz’s head and telling her, “[Y]ou better not [f*ck] this up, [b*tch or] I’ll take you with me.” VRP (March 25, 2010) at 29. Weitz opened the side door and waived her cell phone at Mejia-Tellez, beckoning her inside.

Mejia-Tellez did not respond because she had already called the police. Weitz noticed Centralia Police Officer Neil Hoium with a gun, approaching on the right side of the credit union. Holding her thumb and index finger in the shape of a “gun,” Weitz mouthed silently to Hoium that a male intruder inside had a gun. VRP (March 25, 2010) at 111. Hoium grabbed Weitz’s arm and pulled her out of the doorway. According to Hoium, a male figure inside the credit union appeared out of the shadows holding what appeared to be a .45 caliber handgun. Hoium fired two shots at the man, who disappeared from view.

B. Arrest

About five minutes later, officers established a perimeter around the credit union; they then spent several hours trying to establish communication with Lar, whom they believed was inside. Eventually two SWAT teams stormed the building, but Lar was not there. Police officers

No. 40801-5-II

searched the bank and the surrounding area with a K-9 unit, which found no trace of the suspect and no additional evidence. Processing the scene inside the credit union, detectives found a broken window in the assistant manager's office, blood on the window frame and wall, and glass shards with what appeared to be blood on them below the window.

Later that same evening, Kimberly Ronnell observed a man walking down the street near her house a couple blocks from the credit union: He was "average" size with blonde or grayish hair, wearing a dark jacket and jeans, limping, holding his side, and looking "groggy." VRP (March 26, 2010) at 68. As Ronnell pulled into her front driveway, the man asked her to call him a taxi so he could go to Olympia; she did. A few minutes later, taxi driver Joey McKnight picked up Lar in front of Ronnell's house. Lar was wearing jeans and a coat and carrying a gray shoulder bag; he insisted on sitting in the back seat. According to McKnight, Lar wore black gloves, which he did not remove, even when paying for his fare. Lar told McKnight that he had hurt his arm in a car accident in Chehalis; but he did not ask to stop for treatment, even when McKnight picked up another passenger at the Centralia hospital on the way to Olympia. After delivering Lar to "Peppers,"³ a bar in downtown Olympia, McKnight noticed that Lar was carrying a pair of bloody jeans and duct tape; McKnight called the Centralia Police Department, to which he had provided tips, and provided a description of Lar.

Around 8:45 PM, Lar walked into the Phoenix Inn, four blocks from Peppers, and asked the front desk attendant, Emma Alexander, to call him a taxi to go to Seattle or as "far north as possible." VRP (March 26, 2010) at 82. According to Alexander, Lar was wearing black workout pants, leather shoes, a dark navy-blue jacket, and a black glove on his right hand. He

³ VRP (March 26, 2010) at 77.

No. 40801-5-II

had blood splashes on his clothing, a pair of denim jeans wrapped around his right arm, and a roll of duct tape. Lar told Alexander that he had injured his arm in a car accident in Chehalis. Although Lar appeared to be in extreme pain, he repeatedly told Alexander not to call paramedics to assist him because he did not have health insurance. Alexander arranged for a taxi to take Lar to Sea-Tac Airport. Around 9:05 PM, a white taxi with a red top picked Lar up at the inn. Lar conversed with the taxi driver for about five minutes before entering the cab.

Another Phoenix Inn employee, Crystal Schultz, called the Olympia Police Department and provided a description of Lar and the taxi. At approximately 9:15 PM, six or seven blocks from the inn, Olympia Police Officer Jacob Brown spotted a taxi matching this description, drove behind the taxi, and noticed a white male with "lightish or gray hair" crouched in the back seat. VRP (March 26, 2010) at 135. Earlier in the day, the Olympia Police Department had briefed Brown about the attempted Centralia credit union robbery; and dispatch had informed him that they suspected the man Schultz had reported to have been involved. Brown called for backup.

The Olympia police shut down the street, conducted a "high risk" stop, pulled Lar out of the taxi at gunpoint, and put him face down on the sidewalk. VRP (March 26, 2010) at 136. According to Brown, Olympia police "detained" Lar and put him in handcuffs. VRP (March 26, 2010) at 143. Centralia police officers, also present, (1) observed that Lar had "blue"⁴ eyes; that he was wearing "layers,"⁵ including black sweats and a jacket; that he appeared to have wounded

⁴ VRP (March 26, 2010) at 44.

⁵ VRP (March 26, 2010) at 46.

No. 40801-5-II

his arm; and that he was holding duct tape and a pair of jeans; (2) “arrested” Lar; and (3) took him to the Olympia police station, where police confiscated several layers of his clothing and photographed his injuries. Because Lar had gunshot wounds to his arm and to his hip, they had him transported to the hospital.

C. Investigation

Lar spent several days hospitalized under heavy sedation, restrained to his bed. As he drifted in and out of consciousness that first evening, Centralia police officers discussed with him aspects of the attempted robbery without first reading him *Miranda*⁶ rights. At one point, Lar told Detective Carl Buster that he did not want to talk; and Buster stopped discussing the case with Lar. Later, however, according to Officer Gary Byrnes, before the officers engaged in any overt questioning, Lar volunteered the following information: (1) he was “going to prison for the rest of his life”⁷; (2) he was not mad at the officer who had shot him; and (3) if the girl at the credit union had done what he had told her, none of this would have happened.

Early the next morning, at approximately 1:00 AM, Byrnes read Lar his *Miranda* rights for the first time at the hospital. According to Byrnes, Lar indicated that he understood his rights, said that he did not want any attorneys to visit him, reiterated that he was not angry at the officer who had shot him, described how he had carried out the attempted robbery and how he had eluded the police, and explained that he had hidden in the bushes near at the north end of the credit union until around 6:00 PM, when the police left. Lar also explained that he then had buried his gun across the street from the credit union, had looked for but could not find his lost

⁶ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

⁷ VRP (March 10, 2010) at 12.

No. 40801-5-II

car keys, and had caught a taxi to Olympia. Lar drifted in and out of sleep while he had this conversation with Byrnes, repeatedly pushing an intravenous pain medication button.

Later that day, Centralia police officers returned to the credit union to look for more evidence. Using canine dogs to track Lar's scent, they discovered a black ski mask and an electronic key fob for a Cadillac in the bushes. On the credit union's exterior wall, they found a red spot that appeared to be blood; they also found a straw of grass saturated in blood and two glass shards. Later tests revealed that the blood on one of the glass shards matched Lar's DNA profile.

Buried in the bushes on the property across the street from the credit union, officers found a knife with a three-inch blade and a black BB gun that looked like a pistol. Three or four blocks away, officers found a white Cadillac with Montana plates registered to Lar's wife; its doors and lights activated when they pressed a button on the key fob that they had found in the bushes outside the credit union. After obtaining a search warrant, the police found Lar's wallet inside the Cadillac.

II. PROCEDURE

The State charged Lar with first degree burglary, first degree kidnapping, and attempted first degree robbery, with deadly weapon sentence enhancements. The State also notified Lar that it would request life in prison without parole under the Persistent Offender Accountability Act ("POAA").⁸

⁸ RCW 9.94A.555.

A. Pretrial Motions

Following a CrR 3.5 hearing to determine the admissibility of Lar's statements to the police officers at the hospital, the trial court ruled that Lar had been "in custody"⁹ at the hospital and suppressed all of the statements that Lar had made to the officers because (1) Lar's heavy medication rendered his pre-*Miranda* statements involuntary; (2) after the police read him his *Miranda* rights, Lar did not knowingly and voluntarily waive them; and (3) the officers violated Lar's Fifth Amendment¹⁰ rights when they continued questioning him after he invoked his right to remain silent during questioning about a different offense.¹¹

Lar did not move to suppress the BB gun and knife. But he did move to suppress his medical records, which police officers had seized from the hospital without a warrant. The court granted the motion. Lar later moved to suppress all evidence that the police had obtained following his warrantless detention, arrest, and subsequent search. Lar argued that the police lacked probable cause or reasonable suspicion to stop his taxi and, therefore, the State needed to show an exception to the warrant requirement before any evidence flowing from his detention and arrest was admissible. The trial court refused to hear this untimely motion because Lar had

⁹ Clerk's Papers (CP) at 62.

¹⁰ U.S. CONST. amend. V.

¹¹ At the hospital around "mid-day" on January 26, a detective from Ellensburg had read Lar his *Miranda* rights and then had spoken to Lar about an unrelated crime; apparently, Lar had invoked his right to remain silent. CP at 61. Centralia police officers then questioned Lar about the Centralia bank robbery, believing that Lar had not, however, invoked his right to remain silent about the attempted credit union robbery that they were investigating.

not filed it by the time of the omnibus hearing.¹² When the State rested its case, Lar renewed his motion to suppress this evidence, and the trial court again denied it.

On the eve of trial, Lar moved for a continuance and waived his speedy trial rights after learning that the Centralia Police Department had allegedly issued a press release to newspapers, radio stations, and television stations in Lewis County and surrounding areas. The media reported that DNA evidence linked Lar to the Centralia credit union robbery and to an earlier bank robbery at the same credit union, and that he might have committed seven other bank robberies in western states. Lar expressed concern that this information could affect the jurors in his trial. The trial court denied Lar's motion, noting that (1) it was "totally speculative" about what information would be available to prospective jurors and whether it would affect any juror's ability to be fair and impartial in his trial; and (2) the parties could deal with the publicity during voir dire. VRP (March 23, 2010) at 7. The trial court asked the parties to remind it to inquire about the publicity during voir dire if it forgot to ask.¹³

B. Trial

During voir dire, the trial court apparently read the State's witness list and asked the jurors if they were acquainted with any of the State's witnesses. Juror 32 initially indicated that he did not know any of the State's witnesses, and the parties accepted him as the eighth member

¹² The trial court also commented that the motion was "generic" and that Lar could have submitted it at an earlier date. VRP (March 24, 2010) at 20.

¹³ The parties did not designate a verbatim report of the jury selection proceedings as part of the record on appeal. See VRP (March 24, 2010) at 8. Nevertheless, nothing in the record suggests that the trial court failed to question the jury pool about the pretrial publicity as planned. The record also shows that the trial court instructed the empanelled jury not to read or to listen to any publicity about the case. See VRP (March 24, 2010) at 12.

No. 40801-5-II

of Lar's jury panel. According to the clerk's notes, Lar exercised four of his six peremptory challenges during voir dire. The parties accepted twelve jurors and two alternates for the jury panel.

During noon recess on the second day of trial, Lar's counsel observed juror 32 greet a person whom counsel realized was State witness Joey McKnight, the taxi driver who had transported Lar from Centralia to Olympia. Counsel immediately notified the trial court, and the parties questioned the juror out of the presence of the other jurors. Juror 32 testified that (1) McKnight was "the boyfriend of a former girlfriend of [juror 32's] stepson," (2) he did not know McKnight very well, (3) he (juror 32) had originally indicated that he did not know any of the State's witnesses because he did not know McKnight's last name, (4) he had not spoken to McKnight in over six months, and (5) he would not give McKnight's testimony more weight than other witnesses' testimonies. VRP (March 25, 2010) at 57. Lar moved to excuse juror 32, arguing that he would have used one of his two remaining peremptory challenges to strike juror 32 during voir dire had he known about the juror's acquaintance with McKnight. Ruling that juror 32 had sufficiently shown that he could be fair and impartial, the trial court denied Lar's motion.

C. Verdict and Sentencing

The jury found Lar guilty of all three charges, committed while armed with a deadly weapon. At sentencing, the State presented two certified copies of Lar's 1985 and 1997 federal judgment and sentences and asked the trial court to sentence Lar to life in prison without the possibility of parole under the POAA. Jennifer Tien authenticated the documents, testifying that she was a federal probation officer familiar with Lar's criminal record and had supervised him

following his earlier federal convictions, beginning in October 2008. The 1985 judgment and sentence showed that the federal court had sentenced a “Michael Anthony Lar” on two counts of armed bank robbery; the 1997 judgment and sentences on two separate cases similarly showed that the federal court had sentenced a “Michael Anthony Lar” on one count of armed bank robbery and one amended count of armed bank robbery.¹⁴

Lar objected to admission of these prior federal judgment and sentences, arguing that the State had not provided a sufficient foundation to show that he had committed these crimes. Overruling Lar’s objection, the trial court admitted the documents as court records and sentenced Lar to life in prison without the possibility of parole under the POAA. Lar appeals his convictions and sentence.

ANALYSIS

I. PRETRIAL PUBLICITY

In his SAG, Lar contends that (1) during voir dire, the trial court erred by conducting an “inadequate inquiry” into the prospective jury pool’s familiarity with adverse pretrial publicity from the local news and radio stations the day before jury selection; and (2) the “probability of prejudice” was so great that it requires reversal of his conviction. SAG at 3 (quoting *United States v. Smith*, 790 F.2d 789, 795 (9th Cir. 1986)). We disagree.

Trial courts have broad discretion to determine how best to conduct jury voir dire. *State v. Davis*, 141 Wn.2d 798, 826, 10 P.3d 977 (2000). The trial court’s exercise of discretion is limited “*only when the record reveals* that the [trial] court abused its discretion and thus

¹⁴ The State appears to have amended this conviction in 2001 to “armed bank robbery.” Sentencing Ex. 2; *see also* VRP (May 26-27, 2010) at 12.

prejudiced the defendant's right to a fair trial by an impartial jury." *Davis*, 141 Wn.2d at 826 (emphasis added). Absent an abuse of discretion and a showing that the rights of an accused have been substantially prejudiced, we will not disturb on appeal a trial court's ruling on the scope and content of voir dire. *Davis*, 141 Wn.2d at 826. Where trial-related publicity creates a probability of prejudice, the defendant is denied due process of law if the trial court does not take sufficient steps to ensure a fair trial. *State v. Wixon*, 30 Wn. App. 63, 67, 631 P.2d 1033, review denied, 96 Wn.2d 1012 (1981).¹⁵ Such is not the case here.

Lar did not designate a transcript of voir dire as part of the record on appeal.¹⁶ Thus, we cannot review specific questions that the trial court and counsel asked prospective jurors about their exposure to Lar's pretrial publicity. The record that we do have before us, however, shows that (1) the trial court expressly planned to question the jury pool about their familiarity with the publicity; (2) to assure that this inquiry happened, the trial court specifically asked both counsel to remind it to ask such questions if it forgot; (3) Lar was represented by counsel at the pretrial hearing where the publicity was discussed and during jury selection and, therefore, presumably followed through with this voir dire component¹⁷; and (4) at the end of voir dire, Lar had two

¹⁵ We found no probability of prejudice where (1) Wixon's counsel had the opportunity to make "general inquiries" of the prospective jurors about their familiarity with the pretrial publicity, (2) counsel chose not to do so, and (3) he did not exercise all of his peremptory challenges. *Wixon*, 30 Wn. App. at 70-71.

¹⁶ RAP 9.2 (b) provides: "A party should arrange for the transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review."

¹⁷ Lar does not assert that his trial counsel rendered ineffective assistance by failing to make sure that the trial court asked the jury venire about pretrial publicity. Moreover, "[t]here is a strong presumption that [trial] counsel's performance was reasonable." *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009); see also *State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011).

unused peremptory challenges, which he could have used to excuse any remaining jurors that he believed might have been tainted by pretrial publicity.¹⁸ That Lar chose not to exercise these remaining peremptory challenges suggests that he was satisfied of the jury's freedom from such pretrial publicity taint.

Lar is not required to include in his SAG citations to the record. Nevertheless, "the appellate court is not obligated to search the record in support of claims made in a defendant/appellant's statement of additional grounds for review." RAP 10.10(c). The record before us contains no support for Lar's assertions that the trial court failed to inquire about potential jurors' exposure to adverse pretrial publicity and that such failure prejudiced him. On the contrary, as we set forth above, the record supports an opposite conclusion.

II. MOTION TO EXCUSE JUROR

Lar next argues that, in denying his motion to excuse juror 32 on the second day of trial, the trial court violated his right to a fair and impartial jury, guaranteed by the Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution. He contends that (1) juror 32 failed to disclose during voir dire his acquaintance with a State witness; (2) had he (Lar) known this fact during voir dire, he would have used one of his remaining peremptory challenges to remove juror 32; and (3) because there were two alternates available in the jury box when the trial court denied his motion, excusing juror 32 would not have delayed the trial. The State responds that the juror sufficiently demonstrated that he could

¹⁸ We note that Lar does not assert nor does the record suggest that the trial court refused to excuse for cause any juror exposed to and affected by the pretrial publicity.

No. 40801-5-II

be fair and impartial in trying Lar's case and, therefore, the trial court did not abuse its discretion in denying Lar's motion. We agree with the State.

A. Standard of Review

We review for abuse of discretion a trial court's decision about whether to excuse a juror. *State v. Depaz*, 165 Wn.2d 842, 852, 204 P.3d 217 (2009). A trial court abuses its discretion when it bases its decision on untenable grounds or reasons. *Depaz*, 165 Wn.2d at 852. The question for the trial court is whether the challenged juror can set aside preconceived ideas and try the case fairly and impartially. *Ottis v. Stevenson-Carson Sch. Dist.* No. 303, 61 Wn. App. 747, 752-53, 812 P.2d 133 (1991). The trial court has authority to find facts before deciding to dismiss a juror as unfit under RCW 2.36.110; the trial court also weighs the credibility of the challenged juror based on its observations. *State v. Jordan*, 103 Wn. App. 221, 229, 11 P.3d 866 (2000), *review denied*, 143 Wn.2d 1015 (2001). We defer to the trial court's factual determinations in such matters. *Jordan*, 103 Wn. App. at 229.

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee a defendant the right to a trial by an impartial jury. *State v. Brett*, 126 Wn.2d 136, 157, 892 P.2d 29 (1995). A defendant is entitled to a fair trial, not a perfect one. *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 553, 104 S. Ct. 845, 78 L. Ed. 2d 663 (1984).

To invalidate the result of a . . . trial because of a juror's mistaken, though honest response to a [voir dire] question, is to insist on something closer to perfection than our judicial system can be expected to give.

McDonough, 464 U.S. at 555. "The motives for concealing information may vary, but only those reasons that affect a juror's impartiality can truly be said to affect the fairness of a trial."

McDonough, 464 U.S. at 556. A juror's failure to speak during voir dire about a material fact *can* also amount to juror misconduct. *Allyn v. Boe*, 87 Wn. App. 722, 729, 943 P.2d 364 (1997). But there is no such misconduct alleged or shown here.

B. Juror 32's Ability To Try Case Fairly and Impartially

Because Lar did not arrange for transcription of voir dire, we do not have that part of the record before us. Nevertheless, it appears that, as Lar asserts, (1) during voir dire, the trial court asked the prospective jurors if they were acquainted with any State witnesses, juror 32 did not respond, and he was accepted for the jury; (2) on the second day of trial, Lar moved to excuse juror 32 after his counsel saw this juror greet State witness McKnight in the hallway; and (3) counsel questioned juror 32, who explained that he did not know McKnight well ("the boyfriend of a former girlfriend of [juror 32's] stepson"¹⁹), had not spoken to him in over six months, would not be influenced by this acquaintance, had not known McKnight's last name to respond during voir dire, and would not give McKnight's testimony more weight than the other witnesses. Satisfied that this juror was unbiased, the trial court denied Lar's motion to excuse him.

But Lar does not contend that juror 32 committed misconduct in failing to disclose during voir dire that he had a passing acquaintance with McKnight or in sharing during jury deliberations any personal views about the witness's credibility. Nor does Lar claim that juror 32 was biased against him or that juror 32 intentionally disobeyed the trial court's instructions not to speak to witnesses. On the contrary, the record shows that juror 32 did not realize that his stepson's former girlfriend's boyfriend, whose surname (McKnight) he did not know, was a

¹⁹ VRP (March 25, 2010) at 57.

No. 40801-5-II

State witness during voir dire or when juror 32 greeted him in the hallway on the second day of trial because McKnight did not testify as a State witness until the *third* day of trial.

Lar appears to argue that, because he had two unused peremptory challenges when the jury was empanelled, (1) he could have used one challenge to excuse juror 32 during voir dire if he had known about the juror's acquaintance with McKnight; (2) the trial court deprived him of his right to exercise a peremptory challenge when it denied his motion to remove juror 32 on the second day of trial; and (3) therefore, automatic reversal is required. Lar's reliance on *State v. Bird*, 136 Wn. App. 127, 148 P.3d 1058 (2006), is misplaced: *During jury selection*, the trial court miscalculated the number of Bird's remaining peremptory challenges, thereby denying him an available challenge to which he was entitled. *Bird*, 136 Wn. App. at 131-32. Under those circumstances, our court held that the trial court's erroneous denial of a peremptory challenge left an objectionable juror on the jury, which required reversal without a showing of prejudice. *Bird*, 136 Wn. App. at 134. The facts here differ significantly: The trial court neither miscalculated Lar's peremptory challenges nor denied Lar's use of them during voir dire; rather, Lar simply did not use them all. And it was not until the second day of trial that Lar moved to excuse Juror 32, allegedly to exercise an "available peremptory challenge," after the trial court found no reason to excuse him for cause and to replace him with an alternate juror. Br. of Appellant at 33. Contrary to RAP 10.3(a)(6), Lar cites no authority for his proposition that he is entitled to exercise peremptory challenges after the jury has been selected, sworn, and empanelled and the trial has begun. Thus, we do not further address this argument.

We turn instead to the question of whether the trial court abused its discretion when it found juror 32 did not exhibit any "prejudice" and could continue to try the case fairly and

impartially, and it denied Lar's motion to excuse this juror. VRP (March 25, 2010) at 60. Under RCW 2.36.110, the trial court has a duty

to excuse from further jury service any juror, who *in the opinion of the judge*, has manifested unfitness as a juror by reason of bias, prejudice . . . or by reason of conduct or practices incompatible with proper and efficient jury service.

(Emphasis added). The trial court fulfilled this duty here. Away from the other jurors, counsel questioned juror 32 about his relationship with McKnight. Juror 32 testified that he had not known and, therefore, not recognized McKnight's name when the court read the witness list during voir dire; that McKnight was a "boyfriend of a former girlfriend of [his] stepson,"²⁰ with whom he had not spoken in over six months; and that McKnight's testimony would not have any effect on his ability to serve as a juror and cause him to give McKnight's testimony more weight than that of other witnesses. The trial court found that juror 32 had not exhibited any "prejudice," that he had "answered the questions appropriately," and that there was not a "legal basis" for excluding him. VRP (March 25, 2010) at 60. Deferring to the trial court's broad discretion in such findings and rulings, we find no abuse in denying Lar's motion to excuse Juror 32 during the second day of trial.

III. EVIDENCE

Lar next argues that the trial court erred in denying his motion to suppress evidence that police unlawfully seized after they detained, arrested, and searched him without a warrant. The State responds that (1) the trial court did not abuse its discretion in denying Lar's CrR 3.6 motion

²⁰ VRP (March 26, 2010) at 57.

No. 40801-5-II

as untimely under the Lewis County Local Rules; and (2) even if the trial court had ruled on the merits of Lar's motion, he would not have prevailed. We agree with the State.

We review for abuse of discretion a trial court's admission of evidence. *State v. Finch*, 137 Wn.2d 792, 810, 975 P.2d 967 (1999). A trial court abuses its discretion when its decision is manifestly unreasonable or is based on untenable reasons or grounds. *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003). A trial court's evidentiary error that does not result in prejudice to the defendant is not grounds for reversal. *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). "[E]rror is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred." *State v. Tharp*, 96 Wn.2d 591, 599, 637 P.2d 961 (1981). Where an error violates a constitutional mandate, we apply the more stringent "harmless error beyond a reasonable doubt" standard. *State v. Cunningham*, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980). In addition, we can affirm the trial court on any ground the record supports. *State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004).

Assuming then, without deciding, that the trial court should not have ruled Lar's motion untimely, any error was harmless because the record shows that the challenged seizure of evidence was legal. Generally, warrantless searches and seizures are per se unreasonable and violate the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution, unless the State shows that an exception to the warrant requirement applies.²¹ Such exceptions include exigent circumstances, searches incident to a valid arrest,

²¹ *State v. Duncan*, 146 Wn.2d 166, 171-72, 43 P.3d 513 (2002).

No. 40801-5-II

inventory searches, seizure of objects in plain view, and *Terry*²² investigative stops. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009).

Under both *Terry* and Washington case law, a police officer may stop a person for investigative purposes without a warrant if the officer has reasonable suspicion that the person has been involved in criminal activity. *Terry*, 392 U.S. at 27.²³ To justify a *Terry* stop and an investigatory detention, an officer must have “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry*, 392 U.S. at 21; see also *State v. Kennedy*, 107 Wn.2d 1, 5, 726 P.2d 445 (1986). Articulable suspicion means “a substantial possibility that criminal conduct has occurred or is about to occur.” *Kennedy*, 107 Wn.2d at 6. When evaluating the reasonableness of an investigative stop, we consider the totality of the circumstances, including the officer’s training and experience, the location of the stop, and the conduct of the person detained. *State v. Acrey*, 148 Wn.2d 738, 747, 64 P.3d 594 (2003).

An informant’s tip may justify an investigative stop if the tip

possesses sufficient indicia of reliability, *i.e.*, the circumstances suggest the informant’s reliability or there is some corroborative observation which suggests the presence of criminal activity or that the information was obtained in a reasonable fashion.

Kennedy, 107 Wn.2d at 7. Although an anonymous informant’s accurate description of a vehicle alone is “not [sufficient] corroboration or indicia of reliability” for an investigative stop,²⁴ our

²² *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

²³ See also *State v. Glover*, 116 Wn.2d 509, 513, 806 P.2d 760 (1991).

²⁴ *State v. Lesnick*, 84 Wn.2d 940, 943, 530 P.2d 243 (1975).

No. 40801-5-II

Supreme Court has upheld an investigative stop based on two informant tips where the officer had experience with the crime investigated and corroborated some of the informants' factual information before he conducted the stop. *Kennedy*, 107 Wn.2d at 8-9. Here, as in *Kennedy*, the Centralia and Olympia police departments received telephone tips from two citizens (McKnight and Schultz), describing the same suspicious man with visible injuries who had traveled from Ronnell's house (near the Centralia credit union) to Olympia; based on these tips, the police suspected that this was the same man who had burglarized and attempted to rob the Centralia credit union with a knife and a gun earlier that day.

After receiving a call from dispatch that the suspect was last seen leaving Olympia's Phoenix Inn in a white taxi with a red top, Officer Brown independently corroborated the tips: Six or seven blocks from the Phoenix Inn, he saw a taxi with the same logos dispatch had described, pulled up behind the taxi, and observed, crouched in the back seat, a white male with "lightish or gray hair"²⁵ who matched the descriptions of the Centralia robbery suspect and the suspicious person from the Phoenix Inn. At this point, Officer Brown and other Olympia and Centralia police officers had sufficient evidence to form a reasonable suspicion that the man in the taxi, Lar, had been involved in the attempted robbery to justify conducting an investigative

²⁵ VRP (March 26, 2010) at 135.

stop.²⁶ They also had reason to believe that he was armed and dangerous and to treat the stop as “high risk.”²⁷ Olympia police conducted a “high risk” stop of Lar’s taxi, with their weapons drawn.²⁸

Centralia police officers independently corroborated the citizen tips as they took note of Lar’s physical characteristics, his bloody jeans and duct tape, and his probable gunshot wounds, which, taken together with the totality of circumstances, gave the officers probable cause to arrest Lar. *See State v. Lee*, 147 Wn. App. 912, 922, 199 P.3d 445 (2008), *review denied*, 166 Wn.2d 1016 (2009) (applying totality of circumstances test to *Terry* stops). After arresting Lar for the burglary and the attempted credit union robbery, they searched his person incident to

²⁶ Lar relies on *State v. Meckelson*, 133 Wn. App. 431, 135 P.3d 991 (2006), from Division Three of our court, to argue ineffective assistance of counsel. Br. of Appellant at 22-26. This reliance is similarly misplaced based on its distinguishing facts. Unlike the officer in *Meckelson*, here, Officer Brown did not pull Lar’s taxi over for a “pretextual” traffic stop or because he believed Lar might have committed some generalized crime that the police had yet to discover. *Meckelson*, 133 Wn. App. at 436. On the contrary, the officers were pursuing this *particular* suspect for a *particular* crime; and, when they stopped Lar’s taxi, they reasonably suspected that that he had committed the attempted credit union robbery in Centralia and that he was armed with a knife and a gun. Consistent with *Kennedy*, the officers did not pull Lar’s taxi over until Officer Brown had independently corroborated the citizens’ tips.

²⁷ The officers knew the following facts: (1) A white male, approximately 6’ 3” and 60 years old with gray or light-colored hair, had displayed a knife and a gun while attempting to rob a credit union in Centralia earlier in the day; (2) he had threatened to take the robbery victim hostage; (3) he had been seen wearing bloody clothing and may have been shot; (4) he had recently traveled by taxi to Olympia, where he had last been seen leaving the Phoenix Inn in a white taxi with a red top; (5) shortly after receiving the dispatch description of the taxi, Officer Brown saw a taxi matching the description six or seven blocks from the Phoenix Inn; and (6) the man Officer Brown observed in the back seat of the taxi matched the description of the robbery suspect.

²⁸ That officers point weapons at a suspect they believe to be dangerous does not automatically convert an investigative stop to an arrest. *State v. Belieu*, 112 Wn.2d 587, 604, 773 P.2d 46 (1989).

arrest and seized evidence from Lar, including the blood-stained clothing and duct tape that both citizens had reported he had been carrying. *State v. O'Neill*, 148 Wn.2d 564, 585, 62 P.3d 489 (2003) (valid search incident to arrest if there is probable cause to arrest and an “actual custodial arrest” takes place). The police later used a court order to obtain Lar’s DNA and compared it to one of the blood-stained glass shards found at the credit union.

We hold that, because the initial stop, subsequent arrest, search incident to arrest, and seizure of evidence were legal, the trial court would have been justified in denying Lar’s motion to suppress had it ruled on the merits. Accordingly, we affirm the trial court’s denial of Lar’s motion to suppress on this alternative ground.

IV. EFFECTIVE ASSISTANCE OF COUNSEL

Lar also argues that he received ineffective assistance when his trial counsel failed to file a timely motion to suppress evidence seized after his warrantless detention and arrest and a motion to suppress the BB gun and the knife that the police found after they “coerced” his statements at the hospital. Br. of Appellant at 26.

A. Standard of Review

We review de novo ineffective assistance of counsel claims.²⁹ To establish ineffective assistance of counsel, a defendant must show both that his counsel’s performance was deficient and that this deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Reichenbach*, 153 Wn.2d 126, 130, 101

²⁹ *State v. White*, 80 Wn. App. 406, 410, 907 P.2d 310 (1995).

No. 40801-5-II

P.3d 80 (2004). A defendant must meet both prongs; failure to show either prong will end our inquiry. *State v. Fredrick*, 45 Wn. App. 916, 923, 729 P.2d 56 (1986).

The threshold for deficient performance is high; a defendant must overcome “a strong presumption that counsel’s performance was reasonable.” *State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011) (quoting *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009)).

“When counsel’s conduct can be characterized as legitimate trial strategy or tactics, performance is not deficient.’ Conversely, a criminal defendant can rebut the presumption of reasonable performance by demonstrating that ‘there is no conceivable legitimate tactic explaining counsel’s performance.’ Not all strategies or tactics on the part of defense counsel are immune from attack. ‘The relevant question is not whether counsel’s choices were strategic, but whether they were reasonable.’”

Grier, 171 Wn.2d at 33-34 (citations omitted) (quoting *Kylo*, 166 Wn.2d at 863; *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004); *Roe v. Flores-Ortega*, 527 U.S. 470, 481, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000)).

B. Failure To File Timely Motion To Suppress Evidence Seized Following Arrest

The State concedes that Lar’s counsel was deficient in failing to file timely his motion to suppress the evidence flowing from Lar’s warrantless detention and arrest: his identity, his clothing, his statements, his DNA, the police officers’ observations that Lar had probable gunshot wounds, and the BB gun and knife. We accept the State’s concession that counsel was deficient in failing to file the motion to suppress within the timeframe specified by the court rules. Therefore, we address the second prong of the ineffective assistance test—prejudice: Lar must demonstrate that, but for his counsel’s deficient performance, there is a reasonable probability that the outcome of the trial would have been different. *In re Pers. Restraint of Pirtle*, 136 Wn.2d 467, 487, 965 P.2d 593 (1998). Because we have already held that the record

supports the seizure of evidence incident to Lar's arrest, we cannot say there is a reasonable probability that the trial court would have granted counsel's motion to suppress had he timely filed it or that the result of the trial would have been different. Because Lar has not shown prejudice, his ineffective assistance of counsel claim fails.

C. Failure To Move To Suppress BB Gun and Knife

Lar also argues that he received ineffective assistance when his counsel failed to move to suppress the BB gun and the knife, which the police discovered by allegedly exploiting his "coerced statements" at the hospital.³⁰ Br. of Appellant at 26. Because Lar has not shown that this failure shows his counsel's performance was deficient, we disagree.

The trial court suppressed all of Lar's statements to the officers at the hospital, including his statements about where he had hidden the BB gun and the knife. Clerk's Papers (CP) at 62. Lar's counsel did not, however, move to suppress the BB gun and knife, which police later found and seized after learning their locations from Lar. As a matter of legitimate strategy, Lar's trial counsel may have wanted the BB gun in evidence to argue in closing that it was not a real gun and, thus, not a "deadly weapon," thereby partially negating one element of Lar's first degree burglary³¹ and attempted first degree robbery³² charges, as well as the deadly weapon sentencing

³⁰ The State does not address Lar's second ineffective assistance claim based on counsel's failure to move to suppress the BB gun and knife as fruits of Lar's illegal hospital interrogation.

³¹ RCW 9A.52.020(1) provides:

A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is *armed with a deadly weapon*, or (b) assaults any person.

(Emphasis added).

enhancements³³ on all counts.

Because the officers found and seized the BB gun and the knife at the same time, it appears unlikely that Lar could have moved to suppress only the knife while keeping the BB gun before the jury. Moreover, Weitz had already described the knife in her testimony about Lar's robbery attempt at the credit union, and she had pointed it out for the jury when they viewed the credit union's surveillance video. Consistent with his argument that the BB gun was not a "deadly weapon," defense counsel also argued in closing that the knife's blade was "less than three inches" long and, thus, it, too, was not a "deadly weapon." VRP (March 31, 2010) at 48. Because Lar has not shown the absence of a legitimate strategic reason for counsel's decision not to move to suppress the BB gun and knife, he fails to meet the deficient performance prong of his ineffective assistance of counsel claim. *Grier*, 171 Wn.2d at 33; *State v. McFarland*, 127 Wn.2d 322, 336, 899 P.2d 1251 (1995). Accordingly, we need not address the second, prejudice prong in holding that Lar has not shown ineffective assistance of counsel on this ground.

³² RCW 9A.56.200(1) provides:

A person is guilty of robbery in the first degree if:

(a) In the commission of a robbery or of immediate flight therefrom, he or she:

(i) Is *armed with a deadly weapon*; or

(ii) Displays what appears to be a firearm or other deadly weapon; or

(iii) Inflicts bodily injury; . . .

(Emphasis added).

³³ Former RCW 9.94A.533(4) (2009). The Legislature amended this statute in 2011, but the changes do not affect the issues in this case.

V. PERSISTENT OFFENDER SENTENCE

Lastly, Lar argues that the trial court erred in sentencing him to life in prison without the possibility of parole under the POAA because the State did not submit “substantial evidence” that he had two prior convictions for bank robbery.³⁴ Br. of Appellant at 35. Lar contends that Tien’s testimony that he (Lar) was the defendant named on the two federal felony judgment and sentence documents was insufficient proof of his prior convictions because (1) although familiar with Lar’s criminal record, Tien had not been physically present when the federal court sentenced Lar for his earlier crimes; and (2) her testimony was insufficient to prove that he was the same Michael Anthony Lar named in the documents because the State presented no fingerprint comparisons or testimony from a person who had been physically present at the sentencings for these prior convictions. These arguments fail.

We review de novo a sentencing court’s offender score calculation and its interpretation of the POAA. *State v. Knippling*, 166 Wn.2d 93, 98, 206 P.3d 332 (2009); *State v. Birch*, 151 Wn. App. 504, 515, 213 P.3d 63 (2009). To establish a defendant’s criminal history for POAA and Sentencing Reform Act of 1981³⁵ sentencing purposes, the State must prove the existence of his prior convictions by a mere preponderance of evidence.³⁶ Although this burden of proof

³⁴ Lar does not argue that he had a Sixth Amendment right to a jury trial before the trial court sentenced him under the POAA. Therefore, we do not address this issue in our opinion.

³⁵ Ch. 9.94A RCW.

³⁶ *Knippling*, 166 Wn.2d at 100; *State v. Wheeler*, 145 Wn.2d 116, 121, 34 P.3d 799 (2001) (citing *State v. Thorne*, 129 Wn.2d 736, 782, 921 P.2d 514 (1996), *abrogated on other grounds by Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)), *cert. denied*, 535 U.S. 996 (2002); RCW 9.94A.500(1).

requires “some showing that the defendant before the court for sentencing and the person named in the prior conviction[s] are the same person,” when the prior convictions at issue are under the same name as the defendant before the sentencing court, identity of names is sufficient proof of this requirement.³⁷ *State v. Ammons*, 105 Wn.2d 175, 190, 713 P.2d 719, 718 P.2d 796, *cert. denied*, 479 U.S. 930 (1986).

A defendant may rebut such showing by declaring under oath that he is not the person named in the prior convictions. *Ammons*, 105 Wn.2d at 190. Only then does the burden shift back to the State to prove by independent evidence—such as fingerprints, testimony from court personnel present at the prior adjudication, or institutional packets—that the defendant before the court for sentencing and the defendant named in the prior conviction are the same person. *Ammons*, 105 Wn.2d at 190. If, however, a defendant files no such declaration, the identity of the names alone is sufficient to include the prior conviction in the defendant’s offender score. *Ammons*, 105 Wn.2d at 190; *see also State v. Priest*, 147 Wn. App. 662, 670, 196 P.3d 763 (2008), *review denied*, 166 Wn.2d 1007 (2009).

Under the POAA, the trial court must sentence a persistent offender to life in prison without the possibility of parole. *Knippling*, 166 Wn.2d at 98; RCW 9.94A.570. A “persistent offender” is someone who, at sentencing for a most serious offense conviction, has previously been convicted on two separate occasions of most serious offenses under RCW 9.94A.525.³⁸ A

³⁷ We acknowledge that “[t]he best evidence of a prior conviction is a certified copy of the judgment.” *State v. Lopez*, 147 Wn.2d 515, 519, 55 P.3d 609 (2002) (quoting *State v. Ford*, 137 Wn.2d 472, 480, 973 P.2d 452 (1999)).

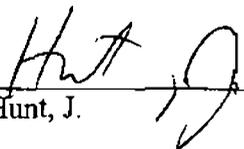
³⁸ Former RCW 9.94A.030(34)(a) (Laws OF 2009 ch. 28 § 4).

No. 40801-5-II

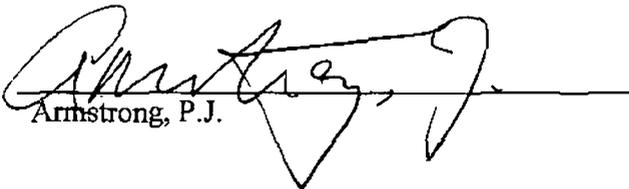
Lar's two prior most serious offenses and that the trial court did not err in sentencing Lar to life in prison without the possibility of parole under the POAA.

We affirm Lar's convictions and sentence.

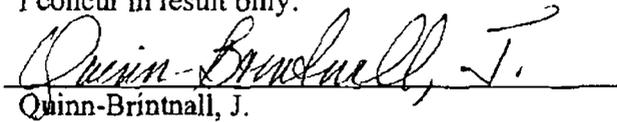
A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Hunt, J.

I concur:


Armstrong, P.J.

I concur in result only:


Quinn-Brintnall, J.

APPENDIX C

PLTF IDENT 1 EX. 1

**LEWIS COUNTY
SUPERIOR COURT**

CASE
NO 10-1-55-5

DEFT IDENT _____ EX. _____

5/26/10 Sentencing

(Sent 1)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

all to whom these presents shall come. Greeting:

In virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives and Records Administration, that the attached reproduction(s) is a true and correct copy of documents in his custody



SIGNATURE	
<i>Candace Lein-Hayes</i>	
NAME	DATE
Candace Lein-Hayes	3/8/10
TITLE	
Regional Administrator	
NAME AND ADDRESS OF DEPOSITORY	
National Archives and Records Administration 6125 Sand Point Way NE Seattle, WA 98115	

FILED ENTERED
LODGED RECEIVED

Judge Dimmick

NOV 26 1985

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8	UNITED STATES OF AMERICA,)	
)	
9	Plaintiff,	)	NO CR85-280D
	v)	
)	
10	MICHAEL ANTHONY LAR,	)	AMENDED JUDGMENT
11	6549 27th NE	)	AND COMMITMENT
	Seattle, WA 98115)	
)	
12	Defendant)	
13)	

On this 8th day of November, 1985, came the attorney for the Government and the defendant appeared in person and with counsel, Richard J Troberman

IT IS ADJUDGED that the defendant upon his plea of GUILTY, and the Court being satisfied there is a factual basis for the plea, has been convicted of the offenses of violation of Title 18, United States Code, Sections 2113(a) and (d), as charged in the Information and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted

UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

AMENDED JUDGMENT AND
COMMITMENT/LAR - 1

CC: USMO, USPT

1 IT IS ADJUDGED that as to Count I the defendant is hereby
2 committed to the custody of the Attorney General or his
3 authorized representative for a term of TWENTY-FIVE (25) YEARS

4 IT IS ADJUDGED that as to Count II the defendant is hereby
5 committed to the custody of the Attorney General or his
6 authorized representative for a term of TWENTY-FIVE (25) YEARS

7 Said sentence on Count II to run concurrently with the
8 sentence on Count I and both Counts I and II to run concurrently
9 with federal sentences the defendant is presently serving

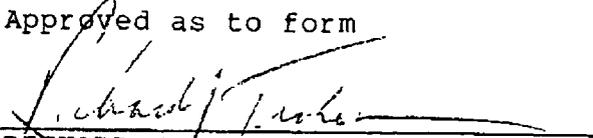
10 IT IS ORDERED that, pursuant to Title 18, United States
11 Code, Section 3013, defendant shall pay the sum of \$50 00 as a
12 mandatory penalty assessment to be deposited in the Crime Victims
13 Fund

14 IT IS ORDERED that the Clerk deliver a certified copy of
15 this judgment and commitment to the United States Marshal or
16 other qualified officer and that the copy serve as the commitment
17 of the defendant

18
19 Presented by


UNITED STATES DISTRICT JUDGE

20
21 
22 DAVID V MARSHALL
Assistant United States Attorney

23 Approved as to form
24 
25 RICHARD J TROBERMAN
26 Attorney for Defendant

UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

FILED ENTERED
LODGED RECEIVED

NOV - 8 1985

Judge Dimmick

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

FILED ENTERED
LODGED RECEIVED

NOV 8 1985

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

8	UNITED STATES OF AMERICA,)	
9)	
	Plaintiff,	)	NO CR85-280D
)	
10	v	)	JUDGMENT AND COMMITMENT
)	
11	MICHAEL ANTHONY LAR,)	
	6549 27th NE)	
12	Seattle, WA 98115)	
)	
13	Defendant)	

On this 8th day of November, 1985, came the attorney for the Government and the defendant appeared in person and with counsel, Richard J Troberman

IT IS ADJUDGED that the defendant upon his plea of GUILTY, and the Court being satisfied there is a factual basis for the plea, has been convicted of the offenses of violation of Title 18, United States Code, Sections 2113(a) and (d), as charged in the Information and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

JUDGMENT AND
COMMITMENT/LAR - 1

Cc USMO, USPO, AUSST, A Seal, v H O

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IT IS ADJUDGED that the defendant is guilty as charged and convicted

IT IS ADJUDGED that as to Count I the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a term of TWENTY-FIVE (25) YEARS

IT IS ADJUDGED that as to Count II the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a term of TWENTY-FIVE (25) YEARS

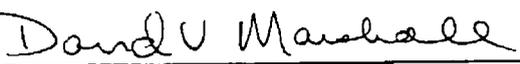
Said sentence on Count II to run concurrently with the sentence on Count I and with federal sentences the defendant is presently serving

IT IS ORDERED that, pursuant to Title 18, United States Code, Section 3013, defendant shall pay the sum of \$50 00 as a mandatory penalty assessment to be deposited in the Crime Victims Fund

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant


UNITED STATES DISTRICT JUDGE

Presented by


DAVID V MARSHALL
Assistant United States Attorney

UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

JUDGMENT AND
COMMITMENT/LAR - 2

NORABLE CAROLYN R DIMMICK
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CLERK Elva McGregor

CT REPORTER
CT RECORDER *K LAMBORN*

9 30 am

CR85-280D United States D Marshall
vs
Michael Anthony Lar R Troberman
IMPOSITION OF SENTENCE DEFT'S PLEA OF GUILTY W Meyer, Probatic
TO CT I & GUILTY TO CT II OF INFORMATION
Called Deft cns1 & probation present
SENTENCE Deft committed to the custody of the Atty Gen for
a term of TWENTY FIVE (25) YEARS Ct I and TWENTY FIVE (25) YEARS
Ct II to be served concurrently and concurrent to the sentence
imposed in Wyoming
Special assessment \$50 00
Deft REMANDED

CR85-270D United States T Wales
vs
Michael J Lawrence M Martin
IMPOSITION OF SENTENCE DEFT'S PLEA OF GUILTY G Bosler, Prob
TO AN INFORMATION
Called Deft cns1 & probation present
SENTENCE Deft committed to the custody of the Atty Gen
for a term of TWO (2) YEARS Court recommends Pleasanton
Deft to surrender at the direction of probation
Special assessment \$50 00

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Kir FILED _____ ENTERED _____
LOGGED _____ RECEIVED _____

SEP 24 1985

1
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5 UNITED STATES OF AMERICA,)
6 Plaintiff,)
7 v)
8 MICHAEL ANTHONY LAR,)
9 Defendant)

NO CR85-2806
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

WAIVER OF INDICTMENT

10 I, MICHAEL ANTHONY LAR, having been advised of the
11 nature of the charge and that it may be punishable by imprisonment for
12 a term exceeding one year and having been advised of my right to
13 prosecution by indictment pursuant to the Fifth Amendment to the
14 Constitution and pursuant to Rule 7(a) of the Federal Rules of
15 Criminal Procedure; having been advised that, pursuant to Rule 7(b)
16 of the Federal Rules of Criminal Procedure, I may waive prosecution
17 by indictment and may be prosecuted by information, do knowingly, and
18 with advice of counsel, waive in open court my right to be prosecuted
19 by indictment and do hereby consent to prosecution by information

20 DATED this 24th day of September, 1985

21
22 *Michael A Lar*
23 MICHAEL ANTHONY LAR
24 Defendant

25 *Richard J Troberman*
26 RICHARD J TROBERMAN
27 Counsel for Defendant

APPROVED

28 *Carolyn Klum*
UNITED STATES DISTRICT JUDGE

David V Marshall
DAVID V MARSHALL
Assistant United States Attorney

WAIVER OF INDICTMENT/LAR

UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
Seattle, Washington 98104
206-442-7970

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Judge Dimmick

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_____ LODGED _____ RECEIVED

SEP 24 1985

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
)
 Plaintiff,) NO CR85-280D
)
 v)
) PLEA AGREEMENT
 MICHAEL ANTHONY LAR,)
)
 Defendant)

Plaintiff United States, through counsel, and defendant,
MICHAEL ANTHONY LAR, with his counsel, Richard J Troberman,
enter into the following plea agreement pursuant to
Rule 11(e)(1)(A), Federal Rules of Criminal Procedure

1 Defendant agrees to enter pleas of guilty to two counts
alleging violations of Title 18, United States Code,
Sections 2113(a) and (d) (Bank Robbery), as charged in the
Information filed herein Defendant agrees to waive indictment
to permit entry of his guilty plea to the Information The
maximum possible penalty for Count I of the Information is a term
of imprisonment of up to 25 years and a fine of up to Ten

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Seattle, WA 98104
(206) 442-7970

PLEA AGREEMENT - 1
(5861C)

1 Thousand Dollars (\$10,000) under 18 U S C §§ 2113(a) and (d)
2 The maximum possible penalty for Count II of the Information is
3 imprisonment for up to 25 years, a fine of up to Ten Thousand
4 Dollars (\$10,000) under 18 U S C §§ 2113(a) and (d), or
5 alternative fines of up to Two Hundred and Fifty Thousand Dollars
6 (\$250,000) or twice the net gain or net loss incurred during the
7 robbery charged in Count II, which amount is set forth in
8 Count II of the Information, pursuant to Title 18, United States
9 Code, Section 3623 In addition, defendant is subject to an
10 imposition of a mandatory assessment penalty on Count II,
11 pursuant to Title 18, United States Code, Section 3013, of Fifty
12 Dollars (\$50) Pursuant to the Victims and Witness Compensation
13 Act, 18 U S C § 3663, defendant may be required to make
14 restitution in the amount of the loss to the banks, for both
15 Counts

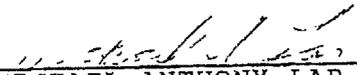
16 2 In exchange for defendant's agreement to plead guilty
17 to these two bank robberies, plaintiff United States agrees to
18 decline further prosecution of defendant for other bank robberies
19 believed to have been committed by defendant in this District,
20 which other bank robberies are known to the United States as of
21 the time of this plea agreement

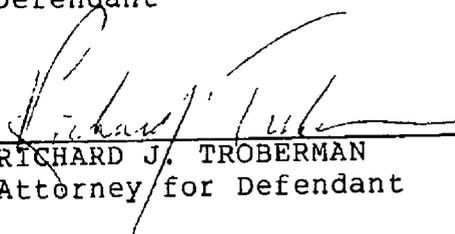
22 3 There are no other terms or conditions to this plea
23 agreement Defendant understands that the matter of sentencing
24 on the two counts plead to herein is wholly within the discretion
25 of the Court and that plaintiff is free to make specific
26

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Seattle, WA 98104
(206) 442-7970

1 recommendations and to inform the Court concerning facts relevant
2 to sentencing

3 SO AGREED this 24th day of SEPTEMBER, 1985

4
5 
6 MICHAEL ANTHONY LAR
7 Defendant

8 
9 RICHARD J. TROBERMAN
10 Attorney for Defendant

11 
12 DAVID V MARSHALL
13 Assistant United States Attorney

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Seattle, WA 98104
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HONORABLE CAROLYN R DIMMICK
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CLERK Elva McGregor

CT REPORTER
CT RECORDER KARYN LAMBORN

9 00 am

CR85-280D

United States

vs

Michael Anthony Lar

ENTRY OF PLEA

Called Deft cns1 & probation present

Deft sworn & Court advises him of his rights and the charges
against him Plea agreement excepted for filing

PLEA - Ct I of INFORMATION - GUILTY - Court accepts plea

PLEA - Ct II of INFORMATION - GUILTY - Court accepts plea and
makes findings

J & S set for Fri Nov 8, 1985 at 9 30 am

Court signs waiver of indictment

Deft remanded

David Marshall

Richard Troberman
W Meyers, Probator

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v)
)
 MICHAEL ANTHONY LAR,)
)
 Defendant)

CR85 - 230D

NO. INFORMATION

The United States Attorney charges that

COUNT I

On or about November 17, 1984, at Mount Vernon, within the Western District of Washington, MICHAEL ANTHONY LAR, by force, violence and intimidation, did take from the person and presence of bank employees, approximately Three Thousand One Hundred Fifty Dollars (\$3,150 00), in money belonging to and in the care, custody, control, management and possession of the Interwest Savings Bank, at 1511 Riverside Drive, Mount Vernon, Washington, the accounts of which were then insured by the Federal Savings and Loan Insurance Corporation; that in committing the offense of robbery hereinabove charged, the defendant MICHAEL ANTHONY LAR assaulted and put in jeopardy the life of the aforementioned bank

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Seattle, WA 98104
(206) 442-7970

1 employees, by the use of a dangerous weapon and device, to wit, a
2 handgun

3 All in violation of Title 18, United States Code,
4 Sections 2113(a) and (d)

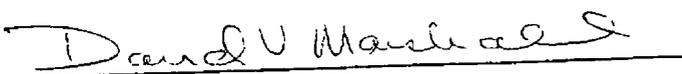
5 COUNT II

6 On or about March 28, 1985, at Arlington, within the Western
7 District of Washington, MICHAEL ANTHONY LAR, by force, violence
8 and intimidation, did take from the person and presence of bank
9 employees, approximately Twenty-Five Thousand Nine Hundred Eighty
10 Dollars and Sixty-One Cents (\$25,980 61), in money belonging to
11 and in the care, custody, control, management and possession of
12 the Everett Federal Savings and Loan, 535 North Olympic,
13 Arlington, Washington, the accounts of which were then insured by
14 the Federal Savings and Loan Insurance Corporation; that in
15 committing the offense of robbery hereinabove charged, the
16 defendant MICHAEL ANTHONY LAR assaulted and put in jeopardy the
17 life of the aforementioned bank employees, by the use of a
18 dangerous weapon and device, to wit, a handgun

19 All in violation of Title 18, United States Code,
20 Sections 2113(a) and (d)

21 DATED this 12th day of September, 1985

22
23 
24 GENE S ANDERSON
United States Attorney

25 
26 DAVID V MARSHALL
Assistant United States Attorney

UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

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APR 04 1995

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v

MICHAEL ANTHONY LAR,
a/k/a MICHAEL ROBERT LUKITCH,

Defendant

MAGISTRATE'S DOCKET NO
CASE NO 85-686 m-01
COMPLAINT for VIOLATION of
U S C Title 18
Section 2113(a) and (d)

BEFORE John L Weinberg 103 U S Courthouse, Seattle, WA
(U S Magistrate) (Address)

The undersigned complainant being duly sworn states

COUNT I

On or about December 22, 1984, at Stanwood, within the
Western District of Washington, MICHAEL ANTHONY LAR, a/k/a
MICHAEL ROBERT LUKITCH, by force, violence and intimidation, did
take from the person and presence of Sharon M Leque, and other
bank employees, approximately Thirteen Thousand Six Hundred
Forty-Six Dollars and Twenty Cents (\$13,646 20), in money
belonging to and in the care, custody, control, management and
possession of the Interwest Savings Bank, at 9916 - 270th N W ,

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3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

COMPLAINT/LAR aka LUKITCH - 1

1 Stanwood, Washington, the accounts of which were then insured by
2 the Federal Savings and Loan Insurance Corporation that in
3 committing the offense of robbery hereinabove charged, the
4 defendant MICHAEL ANTHONY LAR, a/k/a MICHAEL ROBERT LUKITCH,
5 assaulted and put in jeopardy the life of the aforementioned
6 Sharon M Leque, and other bank employees, by the use of a
7 dangerous weapon and device, to wit, a handgun

8 All in violation of Title 18, United States Code,
9 Sections 2113(a) and (d)

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COUNT II

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On or about February 21, 1985, at Stanwood, within the
Western District of Washington, MICHAEL ANTHONY LAR, a/k/a
MICHAEL ROBERT LUKITCH, by force, violence and intimidation, did
take from the person and presence of Nanette L Bowdish, and other
bank employees, approximately Twenty-Eight Thousand Six Hundred
Eighty-One Dollars (\$28,681 ²⁰), in money belonging to and in the
care, custody, control, management and possession of the First
Interstate Bank, at 27116 - 90th Avenue, Stanwood, Washington, the
accounts of which were then insured by the Federal Deposit
Insurance Corporation; that in committing the offense of robbery
hereinabove charged, the defendant MICHAEL ANTHONY LAR, a/k/a
MICHAEL ROBERT LUKITCH, assaulted and put in jeopardy the life of
the aforementioned Nanette L Bowdish, and other bank employees,
by the use of a dangerous weapon and device, to wit, a handgun

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Seattle, WA 98104
(206) 442-7970

1 All in violation of Title 18, United States Code,
2 Sections 2113(a) and (d)

3
4 And the complainant states that he is a Special Agent of the
5 Federal Bureau of Investigation (FBI), stationed in Seattle, and
6 that he has participated in an investigation of the above matter
7 and has reviewed the FBI files relating to said matters;

8 1 According to employees of the Interwest Savings Bank, at
9 9916 - 270th N W , Stanwood, Washington, on December 22, 1984, a
10 lone white male, wearing a woman's nylon stocking pulled over his
11 face, and carrying a small handgun, which appeared to be an
12 automatic, blue in color, entered the bank and demanded that bank
13 employee Terry V Vail get on the floor of the bank and that bank
14 teller Sharon M Leque take money from the bank's teller cages and
15 put them in a sack While teller Sharon M Leque was obtaining
16 money from the various teller cages, the robber continued to
17 display the firearm After the sack was filled, the robber
18 grabbed the sack and hastily left the bank, ripping off the
19 stocking from his face as he left the bank and exposing his face
20 to view as he departed As he left the building, a bank customer
21 named Katherine Fort chased after the robber, and was thereafter
22 joined by another bank customer named Clifford Larson, who
23 similarly chased after him According to Mr Larson, he had an
24 opportunity to see the robber, prior to the time he entered the
25 bank, across the street from the bank, and he knows the individual
26

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Seattle, WA 98104
(206) 442-7970

1 he had then observed to have been the same individual he chased
2 after later Another customer of the bank, Glenn Lough, was also
3 present when the robber hastily left the bank building A
4 photograph of an individual named Michael Robert Lukitch has been
5 obtained from the Washington State Department of Licensing from a
6 driver's license photograph taken in February 1985 This
7 photograph was placed in a montage of photos of other similarly
8 appearing white males and was displayed to witnesses Leque, Fort,
9 Larson, and Lough Each of these four witnesses selected the
10 photograph of Michael Robert Lukitch as the person who committed
11 the robbery of the Interwest Savings Bank on December 22, 1984
12 Inquiry at the bank revealed that the Interwest Savings Bank was
13 insured by the Federal Savings and Loan Insurance Corporation on
14 December 22, 1984, and that an audit of the bank teller cages
15 after the robbery revealed that the sum total of \$13,646 20 had
16 been taken during the robbery

17 2 According to employees of the First Interstate Bank, at
18 27116 - 90th Avenue, Stanwood, Washington, on February 21, 1985, a
19 lone white male entered the bank, then pulled on a nylon stocking
20 over his face, displayed a small blue handgun, and demanded that
21 teller Nanette L Bowdish produce the bank's money The robber
22 ordered teller Judy Ochampaugh to get down on the floor and
23 directed Bowdish to get the bank's money from multiple teller
24 cages The robber instructed victim teller Nanette Bowdish not to
25 activate any alarms and further told her, " don't want any dye or
26

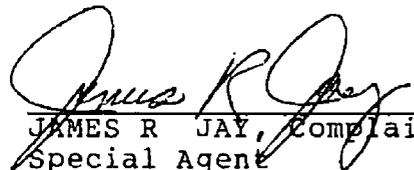
UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

1 any red money " After teller Bowdish had placed what was
2 subsequently determined to be \$28,681 ~~28~~ of bank funds in a bag
3 supplied by the robber, the robber fled the bank The same
4 driver's license photograph referred to in the paragraph above,
5 was displayed as part of a multiple photo montage to bank tellers
6 Bowdish and Ochampaugh Both tellers positively identified the
7 photograph corresponding to Michael Robert Lukitch as being that
8 of the robber of February 21, 1985 Each of these individuals had
9 been able to see the robber's face when he entered the bank prior
10 to the time that he pulled a women's stocking over his face
11 Inquiry of bank employees by FBI agents revealed that the deposits
12 were insured by the Federal Deposit Insurance Corporation at the
13 time of the robbery

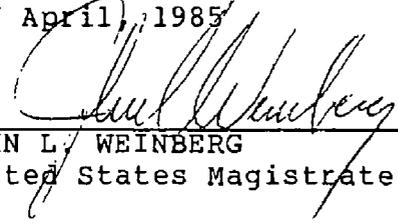
14 3 The address given to the Washington State Department of
15 Licensing by Michael Robert Lukitch has been investigated by FBI
16 agents Investigation has revealed that the address is used as a
17 mail drop, pursuant to an arrangement with a Gloria Hoefflin, who
18 has identified the individual known to her, whose description and
19 photo corresponds to Lukitch, as Michael Anthony Larri~~A~~ the former
20 owner of a bar located in Seattle, known as "Bimbo's " Prior to
21 the robbery of the First Interstate Bank in February, a witness
22 observed an individual whose description corresponded to that of
23 the robber exit what was identified as a two-toned beige or tan
24 Buick Skylark, and walk toward the bank FBI agents have
25 interviewed an individual by the name of Kami L Hull, who has
26

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Seattle, WA 98104
(206) 442-7970

1 indicated that she has rented several vehicles for Michael Anthony
2 Lar One such vehicle was a Buick Skyhawk, which was rented in
3 February 1985 at Lar's request Ms Hull was told by Lar that he
4 needed her to rent the car because he did not have any credit
5 cards and the rental agencies would not accept cash The Buick
6 Skyhawk rented in February by Ms Hull on Lar's behalf was
7 two-toned, beige in color

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9
10 
11 JAMES R JAY, Complainant
12 Special Agent
13 Federal Bureau of Investigation

14 Complaint and affidavit sworn to before me, and subscribed
15 in my presence, this 3 day of April, 1985

16 
17 JOHN L. WEINBERG
18 United States Magistrate

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UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

APPENDIX D

PLTF IDENT 2 EX. 2

**LEWIS COUNTY
SUPERIOR COURT**

CASE NO. 10-1-55-5

DEFT IDENT _____ EX. _____

5/26/10 Sentencing

(Sent 2)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives and Records Administration, that the attached production(s) is a true and correct copy of documents in his custody.



SIGNATURE <i>Candace Lein-Hayes</i>	
NAME Candace Lein-Hayes	DATE FEB 22 2010
TITLE Regional Administrator	
NAME AND ADDRESS OF DEPOSITORY National Archives and Records Administration 6125 Sand Point Way NE Seattle, WA 98115	

NA FORM 13040 (10-86)

UNITED STATES DISTRICT COURT

Western District of Washington

UNITED STATES OF AMERICA

AMENDED JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

v.

MICHAEL ANTHONY LAR

Case Number: CR96-5529T

CR96-5583T

Date of Original Judgment: January 31, 1997

(or Date of Last Amended Judgment)

Reason for Amendment:

- Correction of Sentence on Remand (Fed.R.Crim.P. 35(a))
- Reduction of Sentence for Changed Circumstances (Fed.R.Crim.P. 35(b))
- Correction of Sentence by Sentencing Court (Fed.R.Crim.P. 35(c))
- Correction of Sentence for Clerical Mistake (Fed.R.Crim.P. 36)

Robert Gombiner

Defendant's Attorney

- Modification of Supervision Conditions (18 U.S.C. § 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Direct Motion to District Court Pursuant to 28 U.S.C. § 2255, 18 U.S.C. § 3559(c)(7), or XXX Modification of Restitution Order

FILED _____ RECEIVED _____ LODGED _____

AUG 31 2001

CLERK OF DISTRICT COURT
DISTRICT OF WASHINGTON AT TACOMA DEPUTY

THE DEFENDANT:

XX pleaded guilty to the Indictment in CR96-5529T and the Indictment in CR96-5583T

 pleaded guilty nolo contendere to count(s) _____ which was accepted by the court.

 was found guilty on count _____ after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 2113	Armed Bank Robbery (CR96-5529T)	05/31/96	One (of One)
18 U.S.C. § 2113	Armed Bank Robbery (CR96-5583T)	07/12/96	One (of One)

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

 The defendant has been found not guilty on count(s) _____, and is discharged as to such count(s).

 Counts _____ are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc.Sec.No.: 516-54-8079

Defendant's Date of Birth: 11/10/52

Defendant's USM No.: 03085-091

Defendant's Residence Address: c/o U.S. Marshals

Defendant's Mailing Address: Same

ROBB LONDON
Assistant United States Attorney

1-31-97
Date of Imposition of Sentence

Jack E. Tanner
Signature of Judicial Officer

THE HONORABLE JACK E. TANNER
United States District Judge
Name & Title of Judicial Officer

8-31-2001
Date

27

ant: MICHAEL ANTHONY LAR
Number: CR96-5529T
CR96-5583T

IMPRISONMENT

The Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of TWO HUNDRED AND THIRTY FIVE (235) MONTHS

___ The court makes the following recommendations to the Bureau of Prisons:

XX The defendant is remanded to the custody of the United States Marshal.

___ The defendant shall surrender to the United States Marshal for this district:

___ at ___ a.m./p.m. on _____
___ as notified by the United States Marshal.

___ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

___ before 2 p.m. on _____
___ as notified by the United States Marshal.
___ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

United States Marshal

By: _____
Deputy U.S. Marshal

ant: MICHAEL ANTHONY LAR
 Number: CR96-5529T
 CR96-5583T

Judgment—Page 3 of 6

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of FIVE (5)
YEARS

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

XX The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

_____ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check if applicable.)

XX The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below):

SEE ATTACHED SPECIAL CONDITIONS OF SUPERVISION

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer 10 days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substance, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: MICHAEL ANTHONY LAR
Case Number: CR96-5529T
CR96-5583T

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant shall be prohibited from possessing a firearm or destructive device as defined in 18 U.S.C. § 921.
2. The defendant shall submit to a search of his person, residence, office, property, storage unit or vehicle conducted in a reasonable manner and at a reasonable time by a probation officer.
3. The defendant shall submit to mandatory drug testing pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).
4. The defendant shall participate as directed in a mental health program approved by the United States Probation Office.
5. The defendant shall provide her probation officer with access to any requested financial information, including authorization to conduct credit checks and obtain copies of defendant's Federal Income Tax Returns.
6. The defendant shall be prohibited from incurring new credit charges or opening additional lines of credit.
7. The defendant shall pay immediately restitution in the amount of \$78,296.00. Any unpaid amount is to be deducted from defendant's inmate recovery program while incarcerated. The remaining balance is to be paid during any period of supervision in monthly installments as directed by defendant's U.S. Probation Officer. Interest on restitution shall be waived.
8. The defendant shall be prohibited from gambling. Further, the defendant is prohibited from entering any gambling establishment, or any place where gambling occurs.

Defendant: MICHAEL ANTHONY LAR
 Case Number: CR96-5529T
 CR96-5583T

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS:	\$200.00	\$	\$ 78,296.00

_____ If applicable, restitution amount ordered pursuant to plea agreement..... \$ _____

FINE

XX The Court finds that the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived.

The above fine includes costs of incarceration and/or supervision in the amount of \$ _____

RESTITUTION

_____ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

XX The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

<u>Name of Payee</u>	<u>*Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order Percentage of Payme</u>
Bank One - Arizona Asset Recovery Unit P.O. Box 52680 Phoenix, AZ 85072-2680	\$11,296.00	\$11,296.00	
First Community Bank 5210 Capitol Boulevard Tumwater, WA 98501	\$67,000.00	\$67,000.00	
<u>Totals:</u>	<u>\$78,296.00</u>	<u>\$78,296.00</u>	

INTEREST ON FINES AND RESTITUTION

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine is paid in full before the fifteenth day after date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

XX The court has determined that the defendant does not have the ability to pay interest on any fine and/or restitution, and it is ordered that:

XX The interest requirement is waived.

_____ The interest requirement is modified as follows:

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

ant: MICHAEL ANTHONY LAR
Number: CR96-5529T

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A XX in full immediately; or
- B ___ \$ _____ immediately, balance due (in accordance with C, D, or E); or
- C ___ not later than _____; or
- D ___ in installments to commence ___ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or
- E ___ in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

XX MAKE CHECK(S) FOR ALL CRIMINAL MONETARY PENALTIES, INCLUDING SPECIAL ASSESSMENTS, FINES, AND RESTITUTION, PAYABLE TO:

United States District Court Clerk, Western District of Washington. For restitution payments, the Court is to forward money received to the payees listed on page 5 of this judgment.

___ The defendant shall pay the cost of prosecution.

___ The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States Attorney.

Document
Name: MICHAEL ANTHONY LAR
Number: CR96-5529T
CR96-5583T

IMPRISONMENT

The Defendant is hereby committed to the custody of the United States Bureau Prisons to be imprisoned for a total term of TWO HUNDRED AND THIRTY-FIVE MONTHS.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district,

at _____ a.m.\p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____ Defendant

delivered on _____ to _____ at _____
_____, with a certified copy of this judgment.

United States Marshal

By: _____
Deputy Marshal

Defendant: MICHAEL ANTHONY LAR
Case Number: CR96-5529T
CR96-5583T

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of FIVE YEARS

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check if applicable.)

The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall comply with the additional conditions on the attached page (if indicated below):

SEE ATTACHED

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer 10 days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

MICHAEL ANTHONY LAR
CR96-5529T
CR96-5583T

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant shall be prohibited from possessing a firearm or destructive device as defined in Title 18, U.S.C. § 921.
2. The defendant shall submit to a search of his person, residence, office, property, or vehicle conducted in a reasonable manner and at a reasonable time by a probation officer.
3. The defendant shall submit to mandatory drug testing pursuant to 18 U.S.C. § 3563(a)(4) and 18 U.S.C. 3583(d).
4. The defendant shall participate in a mental health program approved by the United States Probation Office.
5. The defendant shall provide the probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's Federal Income Tax Returns.
6. The defendant shall be prohibited from incurring new credit charges or opening additional lines of credit.
7. The defendant shall pay immediately restitution in the amount of \$78,296.00. Any unpaid amount is to be deducted from defendant's inmate recovery payment program while incarcerated. The remaining balance is to be paid during any period of supervision in monthly installments as directed by defendant's U.S. Probation Officer.
8. The defendant shall be prohibited from gambling. Further, the defendant is prohibited from entering any gambling establishment, or any place where gambling occurs.

Defendant: MICHAEL ANTHONY LAR
Number: CR96-5529T
CR96-5583T

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A in full immediately; or
- B \$ _____ immediately, balance due (in accordance with C, D, or E); or
- C not later than _____; or
- D in installments to commence _____ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or
- E in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The National Fine Center will credit the defendant for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

- The defendant shall pay the cost of prosecution.
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States Courts National Fine Center, Administrative Office of the United States Courts, Washington, DC 20544, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. If the National Fine Center is not operating in this district, all criminal monetary penalty payments are to be made as directed by the court, the probation officer, or the United States attorney.

Judge Tanner

FILED	LODGED
RECEIVED	
NOV - 8 1996	
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL ANTHONY LAR,

Defendant.

NO. CR96-5529T
NO. CR96-5583FDB (formerly
No. CR96-462PHX, D. Arizona)

PLEA AGREEMENT

The United States of America, by and through Katrina C. Pflaumer, United States Attorney for the Western District of Washington, and Janet A. Napolitano, United States Attorney for the District of Arizona, and Robb London, Assistant United States Attorney for the Western District of Washington, and Charles Hyder, Assistant United States Attorney for the District of Arizona, and the defendant, MICHAEL ANTHONY LAR, by and through counsel, Robert Gombiner, Assistant Federal Public Defender, enter into the following Plea Agreement pursuant to Rule 11(e) of the Federal Rules of Criminal Procedure:

1. The defendant, having been advised of his right to have these matters tried by federal jury, agrees to waive that right and enter pleas of guilty to one count of Armed Bank Robbery in violation of Title 18, United States Code, Sections 2113(a) and (d), and one count of Bank Robbery (unarmed) in violation of Title 18, United States Code, Section 2113(a). The two counts are charged by separate Indictments, one in the Western District of Washington and the second in the District of Arizona. The defendant has agreed to the transfer of the Arizona case for resolution by entry of a plea of guilty in the Western District of Washington, pursuant to Fed. R. Crim. P. 20, and that case has been transferred and is now before this Court.

2. The defendant understands that the term "guilty plea" as used in this Agreement means the admission by him that he in fact committed the crimes charged in the two Indictments. It does not mean an Alford plea, that is, merely an admission that the Government could prove the crimes; and it does not mean a nolo contendere plea.

3. The defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. The right to persist in his plea of not guilty;
- b. The right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;
- c. The right to a trial by a jury of his peers, and at that trial, the right to the effective assistance of counsel;
- d. The right to confront and cross-examine witnesses against him;
- e. The right to compel or subpoena witnesses to appear on his behalf; and
- f. The right to remain silent at trial, at which such silence could not be used against him.

4. The defendant understands that upon his plea of guilty to the Armed Bank Robbery count, the maximum penalty the Court may impose for this Class B Felony is imprisonment for a term of up to twenty-five (25) years, a fine of up to Two Hundred and Fifty Thousand Dollars (\$250,000), or both. The defendant also understands that the Bank Robbery charge (unarmed), which is a Class C felony, carries a maximum penalty of up to twenty (20) years in prison, a fine of up to Two Hundred and Fifty Thousand Dollars (\$250,000), or both. The defendant understands further that, pursuant to Title 18, United States Code, Section 3013, he is subject to a mandatory special assessment of "Not Less Than One Hundred Dollars" (\$100) for each count, for a victims' fund.

5. The defendant understands that in addition to any term of imprisonment and fine that will be imposed, the Court may order him to pay restitution and that an order of restitution will be entered if required by the Mandatory Victims Restitution Act, Title 18, United States Code, Section 3663A et. seq.

1 6. The defendant understands that in addition to any term of imprisonment, fine, and
2 restitution obligation that may be imposed, the Court may also impose a term of supervised
3 release of at least three (3) years with a possible maximum of up to five (5) years, pursuant to
4 Title 18, United States Code, Section 3583(b)(1), and U.S. Sentencing Guidelines Section
5 5D1.2, and that the Court must impose a such a period of supervised release if a sentence of
6 imprisonment of more than one year is ordered, as required by U.S. Sentencing Guidelines
7 Section 5D1.1.

8 7. The Government agrees that at time of sentencing, it will acknowledge that the
9 defendant timely notified the Government of his intention to enter pleas of guilty, and that he
10 provided complete information to the Government concerning his involvement in the offenses of
11 conviction and in still other offenses to which he has admitted, thereby permitting the Court and
12 the Government to allocate their resources efficiently within the meaning of U.S. Sentencing
13 Guidelines subsections 3E1.1(b)(1) and (2). Accordingly, if the Court finds, pursuant to
14 U.S.S.G. Sec. 3E1.1(a), that the defendant is entitled to a two-level downward adjustment in the
15 calculation of his offense level to reflect his acceptance of responsibility in these matters, the
16 United States agrees to recommend that the defendant receive an additional one-level downward
17 adjustment pursuant to U.S.S.G. 3E1.1(b)(1) and (2).

18 8. The Government and the defendant acknowledge that during their discussions of a
19 possible Plea Agreement, they have assumed the possibility that, for purposes of calculating the
20 applicable sentencing guidelines range, the defendant will be considered a Career Offender
21 within the meaning of the U.S. Sentencing Guidelines, Section 4B1.1, with a corresponding
22 offense level of 34 before any deduction is made for Acceptance of Responsibility, and a
23 Criminal History Category of VI. Presuming that the defendant receives the three-level
24 reduction for timely Acceptance, his final offense level would be 31. The Government has
25 promised that if the applicable offense level turns out to be 31 or above, the Government will
26 recommend a sentence at the low end of the corresponding guideline range. The Government
27 has made no promises, however, regarding its recommendation should the defendant's offense
28 level turn out to be less than 31 after all the applicable adjustments and deductions are made.

1 Furthermore, the defendant hereby acknowledges that no one has promised him or guaranteed
2 him what the sentence of the Court will be, or even what the applicable range will ultimately
3 turn out to be. The defendant understands further that the Court can and may impose the
4 maximum sentence provided by law.

5 9. Defendant understands that:

6 a. the United States Sentencing Guidelines are applicable to this case, and that
7 the Court will determine the defendant's applicable sentencing guideline range at the time of
8 sentencing;

9 b. the Court may impose any sentence authorized by law, including a sentence
10 which, under some circumstances, departs from the applicable sentencing guideline range;

11 c. the Court is not bound by any recommendation regarding the sentence to be
12 imposed, nor by any calculation or estimation of the applicable sentencing guideline range
13 offered by the United States Attorney, the United States Probation Office, or the defendant; and

14 d. the Court will order the defendant to pay to the victims of his offenses any
15 restitution that is required by law to be paid, and may order the payment of any additional
16 restitution that is within the Court's discretion.

17 10. The Government agrees that in the event the defendant is found by the United
18 States Parole Commission to have violated the conditions of his parole, the Government will
19 recommend that any remaining time imposed pursuant to a revocation of his parole be served
20 concurrently with any sentence of imprisonment that is imposed for the two counts of conviction
21 that are the subject of this Plea Agreement.

22 11. The Government agrees not to seek convictions of the defendant for any additional
23 offenses known to it and admitted by him as of the time of this Agreement. In this regard, the
24 defendant recognizes that it is only because of the admissions and promises which he has made
25 in this Agreement that the United States has agreed not to seek judgments of conviction for all of
26 the criminal charges that could be brought against him.

1 12. If the defendant repudiates this Plea Agreement after entering into it, the
2 Government retains the right to proceed on both of the pending Indictments and also to
3 prosecute the defendant for any other offenses which the Government has probable cause to
4 believe he committed. The defendant also understands that if he repudiates this Plea Agreement
5 or withdraws his pleas of guilty and is ultimately convicted of either of the pending charges or of
6 any additional charges that may then be brought, the Government may seek a sentence at the
7 high end of the applicable guideline range, and may even move for an upward departure as the
8 facts may warrant. Finally, the defendant understands that if he breaches this Agreement and is
9 then ultimately convicted of either of the pending charges or of any additional charges that may
10 then be brought, the Government will not commit itself to a recommendation that any sentence
11 imposed for a robbery conviction be served concurrently with whatever term might be imposed
12 for a violation of parole.

13 13. The defendant understands that he may not withdraw his pleas of guilty solely
14 because of the sentence that is ultimately imposed by the Court, and, furthermore, that he hereby
15 agrees to waive his right to withdraw his pleas of guilty without first showing a "fair and just
16 reason" for such a withdrawal as required by Rule 32(e) of the Federal Rules of Criminal
17 Procedure, and that his waiver of this right will become effective at the time he enters his guilty
18 pleas.

19 14. The defendant understands that the United States remains free on appeal or
20 collateral proceedings to defend the legality and propriety of the sentence actually imposed if the
21 Court chooses not to follow the Government's recommendation.

22 15. The defendant stipulates to the following factual basis for his pleas of guilty to the
23 two counts contained in the respective Indictments, and admits that these facts are true and
24 correct:

25 (A) As to the count charged in the Western District of Washington:

26 At approximately six o'clock p.m. on May 31st, 1996, the defendant,
27 MICHAEL ANTHONY LAR, entered the First Community Bank branch at 5210 Capitol
28 Boulevard in Tumwater, within the Western District of Washington, as bank employees Barbara
L. Hutchinson, Jacqueline Barnes and others were preparing to close the bank for the evening.
He was wearing sunglasses, a black and blue ski hat with a diamond pattern on it, a red scarf

1 (covering his mouth), a tan hooded sweatshirt with small brown lettering over the left chest area,
2 and dark gloves. He carried a black or dark navy bag, and he displayed a gun that appeared to
be a black semi-automatic pistol but which in fact was an air pistol.

3 Once inside the bank, he ordered Barnes and Hutchinson and two other employees to go
4 into the vault and to produce the keys to the safe. The keys were produced and the safe was
5 opened. LAR took from the person and presence of Hutchinson and Barnes a sum of \$67,000.00
6 in U.S. currency belonging to, and in the care, custody, control, management, and possession of
the First Community Bank, 5210 Capitol Boulevard branch, in Tumwater. LAR put the money
into his bag. During the robbery, the bank's surveillance camera was activated.

7 At the time he took the money, the First Community Bank was a member of the Federal
Deposit Insurance Corporation (FDIC), with an FDIC number of 228681. An audit taken after
8 the robbery revealed a loss of \$67,000.00.

9 LAR ordered the bank employees to leave the bank by the exit doors on the Capitol
Boulevard side of the building. He then walked out the opposite exit, near the drive-through
10 banking lane, and walked quickly to a red Toyota Tercel two-door sedan that was parked in an
adjacent parking lot. Several witnesses observed him walk out of the bank and to the car. One
11 of these witnesses was a fourteen-year-old girl who was sitting with other members of her
family in her father's car in the drive-through banking lane of the bank. She had watched the
12 robbery transpire through the auto-teller window. She continued to watch LAR as he exited the
bank, and she saw him take off the scarf as he walked past her to his car.

13 Another witness telephoned 911 to report the robbery, and then pointed out LAR and the
red Toyota to a Washington State Trooper, M.L. Stone, who was parked in the same lot, just as
14 the 911 dispatch call came over the Trooper's car radio. The Trooper pulled in behind LAR's
Toyota as LAR pulled out of the parking lot into the traffic of Capitol Boulevard. The Trooper
15 recorded the Toyota's Washington State license plate number as 746 GGV. He gave pursuit for
several miles through Tumwater and into Olympia, but LAR managed to get away.

16 Washington license plate number 746 GGV was registered to a 1995 Toyota Tercel
17 owned by Agency Rent-A-Car located in Everett, Washington. LAR had rented the car in his
own name on May 24th. He returned the car to the agency in the early morning hours of June
18 1st, approximately eight and a half hours after the robbery.

19 The fourteen-year-old witness who saw LAR take off the scarf outside the bank was
shown a six-photo montage by detectives of the Tumwater Police Department. She pointed to
20 LAR's picture and identified him as the man she had seen taking off the scarf as he left the bank.

21 (B) As to the count charged in the District of Arizona:

22 On Friday, July 12th, 1996, at approximately 3:00 o'clock p.m., the
defendant, MICHAEL ANTHONY LAR, walked into the Bank One branch located at 4401 East
23 Camelback Road in Phoenix, Arizona. He was wearing a tan-colored straw hat with a wide
brim, a white T-shirt with a "Prince" logo and three vertical stripes on the left side, jean shorts,
24 and stocking hose pulled down over his face. He was carrying a green nylon backpack. He
approached teller Linda Brenneisen and handed her the bag. Brenneisen recognized him as the
25 same man she had seen through the glass of the main doors, loitering and sitting outside the
bank, on a planter ledge, during the previous half-hour. When she had noticed him sitting
26 outside the bank, he had not yet put the stocking hose over his face. As he handed Brenneisen
the bag, he told her to "fill it up, put money in here, hurry up and don't set off an alarm." As she
27 was putting money into the bag, he said "Hurry up or I'll get the gun." He did not display a gun,
however, and none of the witnesses saw a gun.
28

1 After Brenneisen put the cash from her top drawer and a lower drawer into the bag, LAR
2 took the bag and fled out the same door by which he had entered. At the time of the robbery, the
3 East Camelback Road branch of Bank One was federally insured by the FDIC under Certificate
Number 150-25-8, which had been issued on December 23, 1969. An audit after the robbery
revealed a loss of \$11,296.00 in federally insured U.S. currency from Brenneisen's drawers.

4 Brenneisen and two other witnesses were interviewed by the FBI and were each and
5 separately shown photo montages containing a photo of LAR and photos of five other men. All
6 three witnesses identified LAR as the man whom they had seen waiting outside the bank and
then robbing it.

7 After LAR's arrest on August 11, 1996 in Las Vegas, Nevada, federal investigators
8 obtained a search warrant for six items of luggage that had been turned over to them by Wendy
9 Porter, who was his girlfriend and co-tenant in an apartment they shared at 3000 Highview in
10 Henderson, Nevada. A green zippered backpack was one of the items searched. It was shown to
Brenneisen, who said it looked the same as the one LAR had used to take the money out of the
bank on July 12th. Among the items searched, the FBI also found a T-shirt that matched the one
which LAR wore during the robbery. The T-shirt's design was clearly visible in surveillance
photos taken by the bank's security camera system.

11 16. As part of this Plea Agreement, the defendant has agreed to admit that he
12 committed certain other offenses that have not been charged, and the Government has agreed not
13 to charge the defendant for these offenses. However, the defendant understands that the
14 Government could still charge him for these additional offenses if he abrogates or repudiates this
15 Plea Agreement, and that the Government's use of any admissions made herein by the defendant
16 would be proscribed by Fed. R. Evidence 410. The defendant expressly waives his right to
17 challenge the initiation of any and all such charges by the Government if he repudiates this Plea
18 Agreement. With these understandings, the defendant admits that the following facts are true
19 and correct:

20 (1) On the morning of March 13, 1996, shortly before 10:45 a.m., MICHAEL
21 ANTHONY LAR walked into the Anchor Savings Bank branch at 2610 Harrison Avenue in
22 Olympia, within the Western District of Washington. He was wearing sunglasses, gloves, a blue
23 stocking cap, a dark-colored knit neck gaiter which covered his nose and mouth, a dark coat
24 which reached below his waist, and stone-washed jeans. He was carrying a plastic shopping
25 bag. He waved his arms as he approached the teller counter, and loudly ordered teller Jean
26 Etchey to put her hands up. He did not display a gun, however. He repeated the order, and
27 ordered Etchey to put money in his bag. While she began to take money from her top
28 drawer, he walked over toward another teller, Rebecca Coverdell, and told her to get money out
of her drawers. He ordered a third teller, Janet Fredericks, to go to her teller station and open
her drawers. He ordered all three tellers to put the money in the bag. After Etchey emptied her
top drawer, he told her that he also wanted the money from her bottom drawer. He told
Fredericks "no red dye." He asked where the bank manager was. One of the tellers told him
that the manager was in the men's room. When the tellers finished putting the money in the bag,
he told them to go to a back room. They complied. LAR then walked out of the bank, and fled
on foot.

1 An audit revealed a loss of \$3,358.00 in U.S. funds belonging to the Olympia branch of
2 Anchor Savings Bank. At the time of the robbery, that bank and branch were insured by the
FDIC, under Certificate Number 28454-8.

3 (2) On March 14, 1996, between 1:00 and 1:30 p.m., MICHAEL ANTHONY LAR
4 walked into the Riverview Savings Bank branch at 1011 Washington Way in Longview, within
5 the Western District of Washington. He was wearing a dark knit cap, a navy blue scarf or neck
6 gaiter, sunglasses, a blue down vest, blue jeans, and a long-sleeved, cream-colored shirt. He was
7 carrying a paper shopping bag imprinted with the logo of the "Pier 1 Imports" chain stores. He
8 pulled the gaiter up over his nose and mouth and said, "This is a holdup." He lifted his shirt
9 slightly to reveal the butt of an air pistol that was tucked into his jeans at the waistline. He
10 ordered a customer to stand to the side of the teller window, and then ordered tellers Linda
11 Marie Gipson and Renee Lee and Branch Manager Gwenna Meyer to "give it to me." He said
12 he wanted all the money but no bait bills, dye packs, or coins. As Meyer was putting money
13 into the bag, LAR told the other tellers to stand back from the counter and to keep their hands up
14 in the air. He told Meyer to hurry. He told Gipson to "watch your hands." After Meyer
15 handed him the bag, LAR told her and the tellers to "hit the floor," and told them not to get up.
16 He then walked out of the back entrance of the bank.

17 At the time of the robbery, the Riverview Savings Bank branch was insured by the FDIC,
18 under charter number 29922-7. An audit revealed that LAR had taken \$6,385.00 in U.S.
19 currency belonging to the bank.

20 (3) On March 29, 1996, at approximately 5:15 p.m., MICHAEL ANTHONY LAR
21 walked into the First Community Bank, Centralia branch, at 1230 S. Gold Street, in Centralia,
22 within the Western District of Washington. He was wearing dark glasses, a blue knit ski cap, a
23 pink scarf pulled across his nose and mouth, dark gloves, a dark blue sweatshirt, and light
24 cream-colored trousers. He was carrying a rectangular, red, heavy-gauge nylon rip-stop bag
25 about sixteen inches long by twelve inches wide with black draw strings. He approached the
26 bank's customer service manager, Pamela A. Jennings, who was sitting at her desk. He raised
27 his sweatshirt to reveal the butt of an air pistol tucked into his waistband. In a quiet voice, LAR
28 told Jennings to "get up now." Jennings began to move in the direction of the teller windows.
LAR told her: "I don't want the drawer -- I want the vault. Now. Hurry up." Jennings called
over to a teller, Maria Nunez, and explained to LAR that it took two employees to open the
vault. Once inside the vault, Jennings and Nunez used their separate combinations to open the
cash safe. LAR knelt down by the cash vault and filled his bag with currency. He asked, "Is
there a dye pack in here?" He warned that "there better not be a dye pack or one of you is going
out with me." Jennings assured him there was no dye pack. When LAR was finished filling up
the bag, he ordered Jennings and Nunez to leave the bank by the main door. He walked out of
the bank by a separate exit.

21 At the time of the robbery, the Centralia branch of the First Community Bank was insured
22 by the FDIC under charter number 22868. An audit revealed that LAR had taken \$71,000.00 in
23 U.S. currency belonging to the bank.

24 (4) On the evening of July 23rd, 1996, MICHAEL ANTHONY LAR asked his
25 girlfriend, Wendy Porter, to drive with him in her car from Las Vegas, Nevada, to Laughlin,
26 Nevada. They drove to Laughlin and checked into the Riverside Casino and Hotel. When
27 Porter woke up around 7:30 a.m. the next morning (July 24th), LAR was gone from their hotel
28 room, and he had taken her car with him. Porter waited for him to return.

27 At approximately 10:55 a.m., LAR walked into the Mohave Community Federal Credit
28 Union in Bull Head City, Arizona. [Bull Head City is directly across the Colorado River from
Laughlin, Nevada.] He was wearing a straw hat with a built-in green visor, and was carrying a
white shopping bag. A black nylon stocking was pulled over his face. As he entered the bank

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18. The United States and the defendant acknowledge that the above-stated terms and conditions comprise the entire Plea Agreement between the parties, and deny the existence of any other terms or conditions not expressly stated herein.

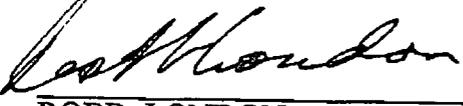
DATED this 8th day of November, 1996.


MICHAEL ANTHONY LAR
Defendant


ROBERT GOMBINER
Attorney for Defendant


CHUCK HYDER
Assistant United States Attorney

per written approval and telephone authorization


ROBB LONDON
Assistant United States Attorney

Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in the U.S. DISTRICT COURT at Seattle, Washington.

September 18 1996
BRUCE RIFKIN, Clerk
Dane Boyd Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,
Plaintiff,
v.
MICHAEL ANTHONY LAR,
Defendant.

CR96-5529
JET
INDICTMENT

The Grand Jury charges that:

On or about May 31, 1996, at Tumwater, within the Western District of Washington, MICHAEL ANTHONY LAR, by force, violence and intimidation, did take from the person and presence of Barbara L. Hutchinson, Jacqueline Barnes and other bank employees, approximately Sixty-Seven Thousand Dollars (\$67,000.00), in money belonging to and in the care, custody, control, management and possession of the First Community Bank, 5210 Capitol Boulevard, Tumwater, Washington, a federally-insured bank as defined in Title 18, United States Code, Section 2113(f); and in committing such offense, MICHAEL ANTHONY LAR assaulted and put in jeopardy the life of Barbara L. Hutchinson, Jacqueline Barnes and others, by the use of a dangerous weapon, to wit, a handgun.

UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
800 Fifth Avenue
Seattle, Washington 98104
(206) 553-7970
su
10

1 All in violation of Title 18, United States Code, Section
2 2113(a) and 2113(d).

3 A TRUE BILL:

4 DATED: 9/18/96

5
6 Chas L White
7 FOREPERSON

8 Robert Pflaumer
9 KATRINA C. PFLAUMER
10 United States Attorney

11 William H. Redkey Jr.
12 WILLIAM H. REDKEY JR.
13 Assistant United States Attorney

14 Robb London
15 ROBB LONDON
16 Assistant United States Attorney
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CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

CERTIFIED TRUE COPY
 ATTEST: BRUCE RIFEIN
 Clerk, U.S. District Court
 Western District of Washington

By *[Signature]*
 Deputy Clerk

COPY FOR YOUR
 INFORMATION

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT TACOMA

Mag. 96-0147-M-LRL

UNITED STATES OF AMERICA,	)	MAGISTRATE'S DOCKET NO.
	)	CASE NO. 96-5077 M
Plaintiff,	)	COMPLAINT for VIOLATION
	)	U.S.C. Title 18
v.	)	Section 2113(a) and (d)
)	
MICHAEL ANTHONY LAR,)	
)	
Defendant.)	

BEFORE J. Kelley Arnold, United States Magistrate Judge,
 Union Station Courthouse, 1717 Pacific Avenue, Tacoma, Washington

The undersigned complainant being duly sworn states:

On or about May 31, 1996, at Tumwater, within the Western District of Washington, MICHAEL ANTHONY LAR, by force, violence and intimidation, did take from the person and presence of Barbara L. Hutchinson, Jacqueline Barnes and other bank employees, approximately Sixty-Seven Thousand Dollars (\$67,000.00), in money belonging to and in the care, custody, control, management and possession of the First Community Bank, 5210 Capitol Boulevard, Tumwater, Washington, a bank as defined in Title 18, United States Code, Section 2113(f); and in committing such offense, MICHAEL ANTHONY LAR assaulted and put in jeopardy the life of Barbara L. Hutchinson, Jacqueline Barnes and others, by the use of a dangerous weapon, to wit, a handgun.

UNITED STATES ATTORNEY
 3600 Seafirst Fifth Avenue Plaza
 800 Fifth Avenue
 Seattle, Washington 98104
 (206) 553-7970
 (206) 553-1110

1 All in violation of Title 18, United States Code,
2 Section 2113(a) and (d).

3 And the complainant states that this complaint is based on
4 the following information:

5 1. I am a Special Agent of the Federal Bureau of
6 Investigation, in the Olympia, Washington, office, and am familiar
7 with the facts of this case by my personal review of reports and
8 information provided to me by other law enforcement officials and
9 witnesses.

10 2. On May 31, 1996, the First Community Bank, 5210 Capitol
11 Boulevard, Tumwater, Washington, was robbed by a lone white male.
12 The robber entered the bank, displayed a gun and ordered the four
13 bank tellers into the vault. Once in the vault and after
14 obtaining the keys to the safe, the robber took all the \$20s, \$50s
15 and \$100s and left behind the smaller denomination bills. The
16 robber placed the money in a dark colored nylon bag. He then
17 ordered the employees to go out the front door while he left
18 through the back door. During the robbery, the bank surveillance
19 camera was activated.

20 3. An audit taken after the robbery revealed a loss of
21 approximately Sixty-Seven Thousand Dollars (\$67,000.00), in U.S.
22 currency. The First Community bank is member of the Federal
23 Deposit Insurance Corporation (FDIC) with an FDIC number of
24 228681.

25 4. Victims and witnesses described the robber as a white
26 male, 25 to 35 years of age, 6-2 inches tall, and weighing over
27 200 pounds. He was wearing sunglasses, a pink ski hat with a
28

1 black and blue ^{blue} ~~with~~ diamond pattern, a red scarf over his face,
2 a tan pull-over drawstring hooded sweatshirt with small brown
3 lettering over the left chest area, tan painter's pants, dark
4 gloves, and black suede shoes with laces. He carried a black or
5 dark-colored nylon bag, and was armed with a black semi-automatic
6 handgun. Shortly after the robbery, a witness observed the robber
7 taking off the ski hat.

8 5. Witnesses saw the robber drive away in a red automobile,
9 and notified Washington State Patrol Trooper M. L. Stone, who
10 found and followed the car, described as a red Toyota Tercel two
11 door sedan bearing Washington license plate number 746 GGV.
12 Trooper Stone also saw that the driver of the car was a white male
13 in his mid-thirties with sandy blond wavy shoulder length hair who
14 was wearing an off-white sweatshirt. Trooper Stone pursued the
15 driver in the red Toyota, sometimes at high speeds, during which
16 time the driver ran several stop signs. Trooper Stone then broke
17 off pursuit of the car for safety reasons.

18 6. Investigation by the Tumwater Police Department
19 indicates that Washington license plate number 746 GGV is
20 registered to a 1995 Toyota Tercel owned by Agency Rent-A-Car
21 located in Everett, Washington, and that the vehicle had been
22 rented on May 24, 1996, to MICHAEL A. LAR, 1300 Mill Creek
23 Boulevard, Apartment L-203, Mill Creek, Washington 98012. LAR is
24 described as a white male, date of birth November 10, 1952, 6 feet
25 2 inches in height and weighs 205 pounds. This vehicle was
26 returned to Agency Rent-A-Car on June 1, 1996, at approximately
27 2:30 a.m.

1 7. It should be noted that an individual matching the same
2 physical description and using the same modus operandi as MICHAEL
3 ANTHONY LAR has robbed the Anchor Savings Bank, 2610 Harrison
4 Avenue, Olympia, Washington, on March 13, 1996; the Riverview
5 Savings Bank, 1011 Washington Way in Longview, Washington, on
6 March 14, 1996; and the First Community Bank, Centralia Branch,
7 1230 S. Gold Street in Centralia, Washington, on March 29, 1996.

8 8. A photo montage containing a photograph of MICHAEL
9 ANTHONY LAR was shown to a witness to the robbery at First
10 Community Bank on May 31, 1996. The witness picked the photograph
11 of MICHAEL ANTHONY LAR as that of the robber.

12 9. On June 3, 1996, Jeffrey Thomasen, U.S. Probation
13 Officer, told me that MICHAEL ANTHONY LAR is currently on
14 supervised release and is under his supervision, based upon a
15 federal bank robbery conviction. Thomasen advised that LAR
16 resides at 1300 Mill Creek Boulevard, Apartment L-203, in Mill
17 Creek, Washington.

18 10. On June 7, 1996, I again spoke with U.S. Probation
19 Officer Jeffrey Thomasen, who was shown a bank surveillance
20 photograph taken from the robbery at the Anchor Savings Bank on
21 March 13, 1996. It was Thomasen's opinion that the person
22 depicted in photograph strongly resembles MICHAEL ANTHONY LAR
23 based on his height and build.

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9. Based upon the foregoing information, I believe that probable cause exists to believe that MICHAEL ANTHONY LAR committed the May 31, 1996 bank robbery of the First Community Bank.

Keith G. Wilson

KEITH WILSON, Complainant
Special Agent

Complaint and affidavit sworn to before me and subscribed in my presence, June 7, 1996.

J. Kelley Arnold

J. KELLEY ARNOLD
United States Magistrate Judge

ENTERED
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By Deputy *JW*

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs

MICHAEL ANTHONY LAR,

Defendant.

CASE NO. CR96-5583FDB

MINUTE ORDER

NOW, on this 6TH day of November, 1996, the Court directs the Clerk to enter the following Minute Order:

This matter is reassigned to the Honorable Jack E. Tanner, as being related to CR96-5529JET. All future filings shall be directed to the attention of Judge Tanner and reflect the modified case number of CR96-5583(FDB)JET.

The foregoing Minute Order entered at the direction of the Honorable FRANKLIN D. BURGESS, United States District Judge.

B Kay McDermott
B. Kay McDermott
Courtroom Deputy

4

CERTIFICATE OF SERVICE
I certify that a copy of the foregoing document to which this certificate is attached, was mailed to the attorney(s) of record of the defendant(s) on the 16 day of November, 1996
United States Attorney

By: Lisa Brown

Judge Burgess

[Handwritten Signature]

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NO. CR96-5583FDB
NOTICE OF RELATED CASE

UNITED STATES OF AMERICA,
Plaintiff,

v.

MICHAEL ANTHONY LAR,
Defendant.

COMES NOW the United States of America, by and through Katrina C. Pflaumer, United States Attorney for the Western District of Washington, and Robb London, Assistant United States Attorney for said District, and submits the following notice.

The above-captioned cause is directly related to the case of United States v. Michael Anthony Lar, CR96-5529T, in which Michael Anthony Lar is charged with one count of armed bank robbery, in violation of Title 18, United States Code, Sections 2113(a) and (d). Because United States District Judge Jack E. Tanner is already familiar with the procedural history in the other case and because the

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NOTICE OF RELATED CASE/LAR - 1

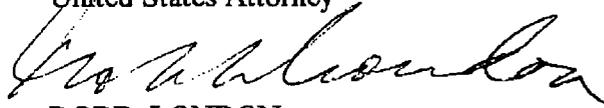
UNITED STATES ATTORNEY
SEAFIRST FIFTH AVENUE PLAZA BUILDING
800 FIFTH AVENUE, SUITE 3600
SEATTLE, WASHINGTON 98104
(206) 533-7970

conduct giving rise to the charge in this case is similar, we believe the cases are related cases such that a consolidation of the two would be in the interests of judicial efficiency.

DATED this 6th day of November, 1996.

Respectfully submitted,

KATRINA C. PFLAUMER
United States Attorney



ROBB LONDON
Assistant United States Attorney

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN AT EAST LANSING

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OCT 23 1996

CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY *DLW* DEPUTY

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

CR 96-55831 DE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MICHAEL ANTHONY LAR,)
)
Defendant.)

NO. **CR 96-462 PHX**
I N D I C T M E N T
VIO: 18 U.S.C. § 2113(a)
(Bank Robbery)

THE GRAND JURY CHARGES:

On or about July 12, 1996, in the District of Arizona, MICHAEL ANTHONY LAR, by force, violence and intimidation, did take from the person and presence of Linda Brenneisen, a teller, approximately \$11,296.00 in monies, belonging to, and in the care, custody, control, management and possession of the Bank One 4401 E. Camelback Road, Phoenix, Arizona, the deposits of which were then federally insured.

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In violation of Title 18, United States Code, Section 2113(a).

A TRUE BILL

J. L. Dieckbusch
FOREPERSON OF THE GRAND JURY
Date: October 23, 1996

JANET NAPOLITANO
United States Attorney
District of Arizona

Charles P. Hyder
CHARLES P. HYDER
Assistant U.S. Attorney

11/1/96
I, the undersigned, Clerk of the Court, do hereby certify and control
the true and correct copy of the foregoing and return it to the
proper authorities.
CLERK, U.S. DISTRICT COURT
DISTRICT OF ARIZONA
By Walker Deputy

for the _____ District of Arizona

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NOV 1 1996

U.S. DISTRICT COURT
DISTRICT OF ARIZONA *DL*

United States of America

v.

MICHAEL ANTHONY LAR

Criminal No. CR96-462PHX-RCB

Consent to Transfer of Case

NOV 04 1996

for Plea and Sentence

(Under Rule 20)

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

I, Michael Anthony Lar, defendant, have been informed that a Indictment (*indictment, information, complaint*) is pending against me in the above designated cause. I wish to plead guilty (*guilty, nolo contendere*) to the offense charged, to consent to the disposition of the case in the Western District of Washington in which I am held (*am under arrest, am held*) and to waive trial in the above captioned District.

Dated: 10-30, 1996 at Tacoma, WA

Michael A. Lar
(Defendant)

Cindy Shaw
(Witness)

Robert Sh
(Counsel for Defendant)

11/1/96
I, the undersigned, Clerk of Court, do hereby certify that this is a true and correct copy of the original filed in my office and in my custody.

CLERK, U.S. DISTRICT COURT
DISTRICT OF ARIZONA

By Walker Deputy

Approved

3

[Signature]
Asst United States Attorney for the

[Signature]
United States Attorney for the

District of _____

Western

District of _____

Washington

a

APPENDIX E

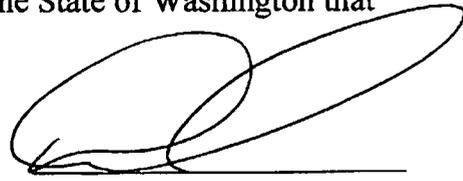
DECLARATION OF DONALD A. BLAIR

I, Donald A. Blair, declare as follows:

1. I am an attorney. I was admitted to the Washington State Bar in 1995.
2. I represented Michael Lar in Lewis County Case No. 10-1-00256-6.
3. Mr. Lar was charged by information with robbery, kidnapping, and burglary, all in the first degree. His criminal history revealed two separate convictions for bank robbery in federal court.
4. Mr. Lar was convicted after a jury trial.
5. Prior to trial, the State made Mr. Lar a plea offer which involved entering guilty pleas to several crimes, including at least one strike offense.
6. At the time, I was not aware of the *Lavery* decision which holds that federal bank robbery is not a "most serious offense," or "strike." As a result, through discussions with Mr. Lar, he decided that he could not take the offer because he would still "strike out."
7. If I had known that Mr. Lar's prior convictions did not count as "strikes," I would have advised him to take the offer because it presented obvious advantages.
8. I reasonably expect that Mr. Lar would have accepted the offer. The main reason we went to trial was because of the persistent offender allegation.

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

9-5-13 Centralia, WA
Date and Place


Donald A. Blair

APPENDIX F

DECLARATION OF MICHAEL LAR

I, Michael Lar declare:

1. I am the Petitioner in this case.
2. I am making this declaration to the best of my memory.
3. Donald Blair represented me in this case.
4. Prior to trial, he told me that the prosecutor had made an offer that involved dropping charges in return for a guilty plea.
5. However, Mr. Blair then told me I could not take the deal because it still included a current "strike."
6. Mr. Blair told me that my prior bank robbery convictions were also strikes.
7. As a result, Mr. Blair told me that a guilty plea to any one strike would strike me out.
8. Mr. Blair never told me that caselaw holds that federal bank robbery is not comparable to a strike.
9. If I had been told that federal bank robbery was a strike, I would have taken the deal.
10. The reason I did went to trial was because I did not think I had anything to gain and everything to lose by pleading guilty.
11. If I had known that I was subject to a standard range, I would have agreed to a deal that lowered my range by dismissing charges in return for a guilty plea.

I, Michael Lar, declare under the penalty of perjury that the attached is true and correct to the best of my ability and recollection.

9/9/13 WSP Wallo Walla
Date and Place

Michael O. Lar
Michael Lar

APPENDIX G

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	
Vs.)	
	)	NO. 10-1-00055-5
MICHAEL ANTHONY LAR,	)	COA. 40801-5-II
)	
Defendant.)	
)	
)	

COPY

VERBATIM REPORT OF PROCEEDINGS
May 26, 27, 2010
(Sentencing)

A P P E A R A N C E S

For the State:	MR. KJELL WERNER DEPUTY PROSECUTOR Chehalis, Washington
For the Defendant:	MR. DONALD BLAIR ATTORNEY AT LAW Centralia, Washington
Presiding Judge:	NELSON HUNT DEPARTMENT 1

KATHLEEN M. MAHR, CSR NO. 2311
OFFICIAL COURT REPORTER
LEWIS COUNTY SUPERIOR COURT
CHEHALIS, WASHINGTON 98532
(360)740-1173

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May 26, 2010

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THE COURT: Please be seated. Go ahead.

MR. WERNER: Good afternoon. State of Washington versus Michael Anthony Lar, 10-1-55-5, Kjell Werner for the state. Present also is Mr. Lar appearing before the court in custody represented by his attorney of record on this matter, Mr. Donald Blair.

We are here for a sentencing hearing, Mr. Lar having been found guilty during a jury trial of the three counts which he was accused of having committed, specifically, Count I, Burglary in the First Degree, Count II, Kidnapping in the First Degree, and Count III, Attempted Robbery in the First Degree.

THE COURT: Mr. Blair, are you ready?

MR. BLAIR: We're ready to go.

THE COURT: Is there anyone here representing the victim who wishes to speak?

MR. WERNER: Your Honor, the victim is here, I do not believe she wishes to make a statement or otherwise address the court. The state has one witness that it does wish to call.

THE COURT: All right, go ahead.

MR. WERNER: State calls Jennifer Tien.

1 Q When did you started supervising him?

2 A I started supervising him in October of 2008.

3 Q Was he still in the custody of the Department of Justice
4 at that time or had he been released?

5 A He was released from custody in June of '08.

6 Q Are you familiar with Mr. Lar's criminal record?

7 A Yes.

8 MR. WERNER: May I approach?

9 THE COURT: Yes.

10 Q (By Mr. Werner) Showing you Plaintiff's Identification
11 Numbers 1 and 2, could you take a look at those, please.
12 First, just Number 1, do you recognize that document?

13 A Yes.

14 Q Does that document bear the seal of the custodian of
15 record or designated representative of the custodian of
16 records for the National Archives Trust?

17 A Yes.

18 Q What is that document?

19 A It is called Judgment and Commitment Form.

20 Q And is this the Judgment and Commitment Form of Mr. Lar?

21 A Yes.

22 Q Is that from 1985?

23 A Yes, it is.

24 MR. WERNER: State moves to admit.

25 Q (By Mr. Blair) You're not the custodian of records, are

1 you.

2 A No.

3 Q And is that one document or multiple documents?

4 A This is multiple documents.

5 Q And do they all bear a seal?

6 A They all have stamps on them from the court.

7 MR. BLAIR: May I approach, your Honor?

8 THE COURT: Yes.

9 Q (By Mr. Blair) When you say they all have stamps on them
10 of a court, presumably, the court that dealt with the
11 documents back in 1985?

12 A Yes, the federal court.

13 Q Do you know who put this seal in this piece of paper on
14 these documents?

15 A No, I don't.

16 Q And you don't know if all those documents go together,
17 do you?

18 A I do know they go together, yes.

19 Q How do you know that?

20 A Because generally a Commitment, the Judgment and
21 Commitment, contains the plea agreement the indictment
22 or the information, if there is a waiver of indictment,
23 and the facts of the case, the complaint, so that's --
24 those are all combined in the judgment and sentence.

25 Q The documents are generally prepared by somebody else

1 then put together for the court?

2 A That's correct.

3 Q You didn't do that?

4 A No.

5 MR. BLAIR: We object to foundation, your
6 Honor.

7 THE COURT: Do you wish to be heard on this,
8 Mr. Werner?

9 Q (By Mr. Werner) Are those documents bound in any way?

10 A With the seal.

11 Q Is there also a ribbon that's attached or binding those
12 documents?

13 A Yes.

14 Q Affixed to the ribbon, is there a seal?

15 A Yes.

16 Q Is that seal intact?

17 A Yes.

18 Q Is there a certification that appears on the first page
19 of that document?

20 A Yes, there is.

21 Q Would you read the certification into the record?

22 THE COURT: That's really not necessary. I'll
23 overrule the objection, it's admissible as a document,
24 public record under seal.

25 Q (By Mr. Werner) Specifically, what offenses was Mr. Lar

1 convicted of back in 1985?

2 A He was convicted of two counts of Armed Bank Robbery.

3 Q I'd like to turn your attention now to state's
4 Identification Number 2, would you take a look at that,
5 please?

6 A Yes.

7 Q Do you recognize that document?

8 A Yes.

9 Q What do you recognize it to be?

10 A It's a judgment and sentence in a 1996 case.

11 Q Does that document bear the seal of the custodian of
12 records or his or her designated representative of the
13 National Archives Trust?

14 A Yes.

15 Q Is that certified to be a true, accurate copy of the
16 documents that are on file at that agency or entity?

17 A Yes.

18 MR. WERNER: State moves to admit.

19 MR. BLAIR: Same objection.

20 THE COURT: Same ruling. I think I misspoke,
21 it's a court record of United States, not necessarily a
22 public record, there is a distinction. They will be
23 admitted as 2, the other one be admitted as 1.

24 Q (By Mr. Werner) What in that document is listed as the
25 convictions that Mr. Lar was found to have committed?

1 A There is actually three cases. In the first judgment is
2 two counts of Armed Bank Robbery in two different case
3 numbers. And then the second judgment is additional --
4 there is actually two -- I'm sorry, there is two counts
5 of Armed Bank Robbery, two judgments, separate case
6 numbers.

7 Q Was the second count of Armed Bank Robbery specifically
8 the count -- or was that amended from the offense that
9 it was originally charged as?

10 A It shows that it was amended to Armed Bank Robbery.

11 Q What was that charge amended from?

12 A Bank Robbery.

13 MR. WERNER: I don't have any further
14 questions.

15 THE COURT: Mr. Blair.

16 MR. BLAIR: May I approach, your Honor?

17 THE COURT: Yes.

18

19 CROSS EXAMINATION

20 BY MR. BLAIR:

21 Q Do you know who made the amendment from Bank Robbery to
22 Armed Bank Robbery?

23 A I would believe the US Attorney's Office would do that.

24 Q Do you know when that occurred?

25 A Well, the amended judgment was entered on January 31st.

1 The original judgment was January 31, 1997 and the
2 amended judgment was signed on August 31, 2001, so
3 sometime between those two dates.

4 Q Do you know if Mr. Lar was involved in the amendment in
5 any way?

6 A He is legally supposed to be present at all hearings.

7 Q And I know that, but is there any evidence in that
8 document that he, in fact, participated in that at all?

9 A In the amended document?

10 Q Right.

11 A I don't have any information on that.

12 Q Because his signature isn't affixed to that, is it?

13 A No, it's never affixed.

14 Q His signature, or purported signature, is on some of
15 these documents?

16 A On the plea agreement, it is, that's the only document
17 that he signs.

18 Q And the plea agreement was one Bank Robbery and one
19 armed Bank Robbery?

20 A It appears that he pled -- in the plea agreement it
21 shows one count of Armed Bank Robbery and one count of
22 Unarmed Bank Robbery.

23 Q So you have absolutely no idea how that case was
24 amended, do you?

25 A No.

1 Q Years after the original case, right?

2 A No, I don't have any idea from these documents.

3 Q So can you say what you're seeing there is actually
4 accurate?

5 A From the judgment, yes, I can see there is an amendment.

6 Q But you don't have any idea how that happened?

7 A The only way I would assume it happens, normally happens
8 procedurally, is US Attorney's Office would file
9 something, the judge reviews it, defense reviews it, and
10 it would be amended based on the defense having no
11 objection to it.

12 Q But you can't tell us Mr. Lar was involved in that at
13 all, can you?

14 A No.

15 MR. BLAIR: I don't have anything else.

16 THE COURT: Mr. Werner.

17 MR. WERNER: Briefly.

18

19 REDIRECT EXAMINATION

20 BY MR. WERNER:

21 Q The man you see sitting before you in court here today,
22 is that the same person convicted of those offenses
23 enumerated in Exhibits 1 and 2?

24 A Yes.

25

1 is to treat Mr. Lar as a persistent offender. He has
2 been convicted of crimes which are comparable to most
3 serious offenses under Washington State law in the
4 United States District Court in two separate occasions
5 in 1985 and also subsequently in 1997. The crimes of
6 which he was convicted in '85, two counts of Armed Bank
7 Robbery, in '97, one count of Armed Bank Robbery and one
8 count of Bank Robbery, which, as the testimony bore out,
9 was later amended to Armed Bank Robbery I believe in
10 2001. The elements of these offenses mirror the
11 elements of the Robbery in the First Degree as set forth
12 within Washington State law as it existed both in 1985
13 and 1997.

14 THE COURT: Is there a challenge to the
15 comparability of these offenses, Mr. Blair?

16 MR. BLAIR: Well, Mr. Werner just said they
17 mirror the statutes back then, we're dealing with
18 something now. I think --

19 THE COURT: So I asked you, is there a
20 challenge or isn't there?

21 MR. BLAIR: There is.

22 THE COURT: You told me, or the court
23 administrator, yesterday, this would take less than half
24 an hour. We're interrupting a trial that has to end
25 today. We're not going to finish if you're going to

1 raise a legal issue. Have you briefed anything on that?

2 MR. BLAIR: No, I anticipate I know what the
3 court's ruling is going to be, so for the record, we're
4 objecting.

5 THE COURT: All right, go ahead.

6 MR. WERNER: For the court and counsel's
7 benefit, the test is whether the offenses as codified
8 when the actual crimes were committed were comparable to
9 Washington State law as it existed at the time. There
10 is a case on point not included in my memorandum.
11 Anyhow, the facts of Mr. Lar's prior criminal offenses
12 in United States District Court are factually similar to
13 what would have constituted acts that were in essence a
14 commission of Robbery in the First Degree, not Robbery
15 in the Second Degree. As such, his prior federal
16 criminal convictions are both legally and factually
17 comparable to most serious convictions under Washington
18 State law.

19 Based upon that, the state is recommending the
20 court sentence Mr. Lar on Counts I, II and III to a life
21 commitment in the Department of Corrections without the
22 possibility of parole. Further, we're asking the court
23 impose the following legal financial obligations, \$500
24 crime victim assessment, \$200 criminal filing fee, \$100
25 felony DNA collection fee, \$825 subpoena service fees,

1 and attorney fees in an amount yet to be determined.

2 THE COURT: Mr. Blair.

3 MR. BLAIR: We don't have anything more.

4 THE COURT: All right.

5 Mr. Lar, this is your opportunity to tell me what
6 you think sentencing ought to be. You don't have to if
7 you don't want to, you're free to rely on what Mr. Blair
8 has said and done on your behalf. I won't hold it
9 against you if you decide to say nothing. On the other
10 hand, if you have something to say, now is the time to
11 say it.

12 MR. BLAIR: He won't be making a statement.

13 THE COURT: Is that right, Mr. Lar?

14 THE DEFENDANT: (Nodding head)

15 THE COURT: All right. Is there anyone here
16 who wishes to speak on behalf of the victim herself or
17 -- no. I just want to make sure.

18 Well, to the extent that I need to make findings
19 here, I'm not really quite sure whether I need to, but
20 there are at least two, and it appears to be three,
21 prior Armed Robbery convictions here. They are
22 comparable and that leaves me with no discretion at all.
23 And the sentence is life without the possibility of
24 parole.

25 Now, I don't know if credit for time served needs

1 to be reflected, but do we have a number for that?

2 MR. WERNER: No, I don't. What I would ask,
3 not knowing what the court's ruling would have been in
4 regard to sentence, I would ask the matter be put on for
5 formal entry tomorrow. Mr. Lar is due before the court
6 anyway tomorrow morning. After his hearing, I believe
7 we could present the judgment and sentence in this court
8 for formal entry.

9 THE COURT: We could, but I'm going to be in
10 trial.

11 MR. BLAIR: We're not before your Honor,
12 tomorrow morning.

13 THE COURT: Actually, I know Mr. Lar is facing
14 other local charges, he's going to be here for a while.

15 MR. BLAIR: That's not going to be our request
16 tomorrow, we will request he be sent away.

17 THE COURT: I don't think that will happen,
18 quite frankly, but you can request it. The judgment and
19 sentence isn't done, so we need to set a date.

20 MR. BLAIR: I didn't know that. I filed my
21 notice to the prosecutor this morning anticipating
22 today's sentencing would actually go forward.

23 THE COURT: It has gone forward, it's just
24 that formal entry, apparently he was concerned there was
25 an issue I might rule against him on and impose a

1 sentence other than what I imposed. So the end result
2 is the documents aren't ready.

3 MR. BLAIR: Are you going to be in trial all
4 through the end of the day?

5 THE COURT: I don't have a crystal ball, it's
6 a nonjury trial, Burglary.

7 MR. BLAIR: Can we tentatively set this for
8 4:30 this afternoon?

9 THE COURT: No, because I'm definitely in
10 trial this afternoon.

11 MR. WERNER: 8:30?

12 THE COURT: How about 4:30 tomorrow afternoon.

13 MR. BLAIR: Do I have a choice? My request
14 would be earlier than later, but --

15 THE COURT: Well, I'm not going to do it at
16 8:30 so --

17 MR. BLAIR: Does the court have a
18 nine o'clock?

19 THE COURT: Yes.

20 MR. BLAIR: How about a 9:15?

21 THE COURT: It is actually a trial starting
22 then, so 4:30. I also have a one o'clock, none of those
23 times are available. Or it doesn't have to be tomorrow,
24 it can be put on the docket.

25 MR. BLAIR: Mr. Lar would like to get out of

1 here, that's going to be our request. We told that to
2 Judge Brosey two weeks ago so.

3 THE COURT: Well, come up with a solution then
4 if you want it in a hurry. It will have to be tomorrow
5 at 4:30.

6 MR. BLAIR: I anticipate formal entry will
7 literally take five minutes.

8 THE COURT: I'm not going to break from trial.
9 If it turns out I'm done earlier, I can call you. Let's
10 set it at 4:30 now.

11 MR. BLAIR: All right.

12 May 27, 2010

13 * * * * *

14 MR. WERNER: State of Washington versus
15 Michael Anthony Lar, cause 10-1-55-5, Kjell Werner for
16 the state. Also present this afternoon is Mr. Lar who
17 appears before the court in custody represented by his
18 attorney of record, Mr. Donald Blair. We are here for
19 formal entry of judgment and sentence.

20 THE COURT: Mr. Blair.

21 MR. BLAIR: We're ready to go. We have signed
22 off on the judgment and sentence, I believe that it
23 purports to say what your Honor ordered.

24 THE COURT: Do you agree with that, Mr. Lar?

25 THE DEFENDANT: What's that now?

1 MR. BLAIR: The judgment we signed off on,
2 what he ordered.

3 THE DEFENDANT: Yeah.

4 THE COURT: All right, I signed it.

5 I need to advise you of a couple of things, Mr.
6 Lar. Some of this, I think probably all of it, is a
7 little extraneous, I can see Mr. Blair completed your
8 notice of appeal.

9 In case something goes wrong in the next five
10 minutes or so, you have the right to appeal your
11 conviction. That right starts today, it expires 30 days
12 from today. If you do not file a notice of appeal
13 within those 30 days, your right to appeal is forever
14 lost.

15 As you have already found out, part of Mr. Blair's
16 contract requires that he complete, at your direction,
17 the notice of appeal and documents necessary to get the
18 process started. He has done that. If for some reason
19 you decide not to proceed with that, you can still file
20 a notice of appeal within that 30 days and the clerk
21 will provide you a form and file it upon your
22 completion.

23 You have the right to be represented by an attorney
24 on your appeal. If you cannot afford to hire one, one
25 will be appointed to represent you. You also have the

1 right to have those portions necessary for review
2 prepared at public expense if you can't afford to have
3 that done. That's the reason for the order of indigency
4 which I'm just about to sign.

5 You also have the right to challenge the validity
6 of your conviction pursuant to a personal restraint
7 petition. The time limits for that are usually a year,
8 however, they can vary. The issues you can bring are
9 generally limited, much more limited than on a notice of
10 appeal. If you have any questions about that, you can
11 read RCW 10.73.090 and .100 or ask Mr. Blair, as I am
12 certain he will be happy to provide you any information
13 you need.

14 Do you understand your rights of appeal?

15 THE DEFENDANT: (Nodding head)

16 THE COURT: The main thing is it expires
17 30 days from today. I would acknowledge Mr. Blair has
18 in fact filed a notice of appeal and it's going to be
19 placed in the filing. I'm signing off on the order of
20 indigency. Mr. Blair, I changed the date, I know you
21 had these ready yesterday, the date of my signature, at
22 any rate.

23 One other thing, Mr. Lar, I also have to advise
24 you, as a result of this felony conviction your right to
25 own, possess, or have under your control any firearm is

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revoked. That revocation continues forever unless and until you get a superior court judge in this state to reinstate your right to bear arms. If you own, possess, or have under your control any firearm without such a written reinstatement order, it is a new felony. So don't do it.

Do you understand?

THE DEFENDANT: I don't think you have them in Walla Walla, do they?

THE COURT: No. The law requires I advise you of that. Whether it ever happens in your case, I can't say. Maybe something could come along and change, not the conviction, but the sentence, I don't know. If that should happen and you get out, you can't have a firearm. All right. I think that completes this matter, Mr. Lar.

(Conclusion of Sentencing)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

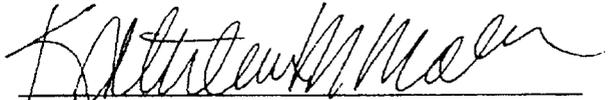
I, Kathleen Mahr, Notary Public, in and for the State of Washington, residing at Olympia, do hereby certify:

That the foregoing Verbatim Report of Proceedings consisting of 20 pages was reported by me and reduced to typewriting by means of computer-aided transcription;

That said transcript is a full, true, and correct transcript of my shorthand notes of the proceedings heard before Judge Nelson Hunt on the 26th day of May, 2010, at the Lewis County Superior Court, Chehalis, Washington;

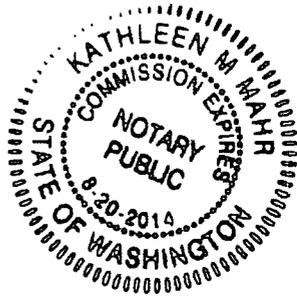
That I am not a relative or employee of counsel or to either of the parties herein or otherwise interested in said proceedings.

WITNESS MY HAND AND OFFICIAL SEAL this 30th day of August, 2010.



KATHLEEN MAHR

Notary Public in and for the State of Washington, residing at Olympia.



VERIFICATION OF PERSONAL RESTRAINT PETITION

I, Michael Lar, personally verify that I am the Petitioner. I authorize the filing of the petition. I believe the petition is true.

9/8/13 WSP Walla Walla
Date and Place

Michael D. Lar
Michael Lar
