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

45959-1 II

IN RE THE PERSONAL RESTRAINT
PETITION OF:

NO. 46848-4-II

CONLAN JADEN SHAW,

Petitioner.

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Has petitioner failed to meet his burden of showing either deficient performance or resulting prejudice necessary to succeed on his claim of ineffective assistance of counsel?

B. STATUS OF PETITIONER:

Petitioner, CONLAN JADEN SHAW, is restrained pursuant to a Judgment and Sentence entered in Pierce County Cause, 13-8-00892-8, entered on February 26, 2014.

Appendix A. Petitioner was found guilty of one count of arson in the first degree, one count of residential burglary and one count of malicious mischief in the first degree. The trial court entered Findings of Fact and Conclusions of Law to support the guilty findings.

Appendix B.

1 Petitioner appealed his sentence under COA No. 45959-1-II. The Court has
2 consolidated this petition with the direct appeal. A complete statement of the case,
3 including the procedure and facts of the case, can be found in the State's Brief of
4 Respondent.

5 C. ARGUMENT:

- 6 1. PETITIONER HAS FAILED TO PRESENT EVIDENCE TO
7 SHOW BOTH DEFICIENT PERFORMANCE AND
8 RESULTING PREJUDICE NECESSARY TO SUCCEED ON
9 THIS CLAIM; THE STATE DISPUTES THAT PETITIONER
10 RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.

11 The right to effective assistance of counsel is the right "to require the
12 prosecution's case to survive the crucible of meaningful adversarial testing." *United*
13 *States v. Cronin*, 466 U.S. 648, 656, 104 S. Ct. 2045, 80 L. Ed. 2d 657 (1984). When
14 such a true adversarial proceeding has been conducted, even if defense counsel made
15 demonstrable errors in judgment or tactics, the testing envisioned by the Sixth
16 Amendment of the United States Constitution has occurred. *Id.* "The essence of an
17 ineffective-assistance claim is that counsel's unprofessional errors so upset the adversarial
18 balance between defense and prosecution that the trial was rendered unfair and the verdict
19 rendered suspect." *Kimmelman v. Morrison*, 477 U.S. 365, 374, 106 S. Ct. 2574, 2582,
20 91 L. Ed. 2d 305 (1986).

21 To demonstrate ineffective assistance of counsel, a defendant must satisfy the
22 two-prong test laid out in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052,
23 80 L. Ed. 2d 674 (1984); *see also*, *State v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987).
24 First, a defendant must demonstrate that his attorney's representation fell below an
25 objective standard of reasonableness. Second, a defendant must show that he or she was
prejudiced by the deficient representation. Prejudice exists if "there is a reasonable

1 probability that, except for counsel's unprofessional errors, the result of the proceeding
2 would have been different." *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251
3 (1995); *see also*, *Strickland*, 466 U.S. at 695 ("When a defendant challenges a conviction,
4 the question is whether there is a reasonable probability that, absent the errors, the fact
5 finder would have had a reasonable doubt respecting guilt."). There is a strong
6 presumption that a defendant received effective representation. *State v. Brett*, 126 Wn.2d
7 136, 198, 892 P.2d 29 (1995), *cert. denied*, 516 U.S. 1121, 116 S. Ct. 931, 133 L. Ed. 2d
8 858 (1996); *Thomas*, 109 Wn.2d at 226. A defendant carries the burden of demonstrating
9 that there was no legitimate strategic or tactical rationale for the challenged attorney
10 conduct. *McFarland*, 127 Wn.2d at 336.

11
12 The standard of review for effective assistance of counsel is whether, after
13 examining the whole record, the court can conclude that defendant received effective
14 representation and a fair trial. *State v. Ciskie*, 110 Wn.2d 263, 751 P.2d 1165 (1988). An
15 appellate court is unlikely to find ineffective assistance on the basis of one alleged
16 mistake. *State v. Carpenter*, 52 Wn. App. 680, 684-685, 763 P.2d 455 (1988).

17 Judicial scrutiny of a defense attorney's performance must be "highly deferential
18 in order to eliminate the distorting effects of hindsight." *Strickland*, 466 U.S. at 689.
19 The reviewing court must judge the reasonableness of counsel's actions "on the facts of
20 the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; *State v. Benn*,
21 120 Wn.2d 631, 633, 845 P.2d 289 (1993).

22
23 In addition to proving his attorney's deficient performance, the defendant must
24 affirmatively demonstrate prejudice, i.e. "that but for counsel's unprofessional errors, the
25 result would have been different." *Strickland*, 466 U.S. at 694. Defects in assistance that

1 have no probable effect upon the trial's outcome do not establish a constitutional
2 violation. *Mickens v. Taylor*, 535 U.S. 162, 122 S. Ct. 1237, 152 L. Ed. 2d 29 (2002).

3 The reviewing court will defer to counsel's strategic decision to present, or to forego, a
4 particular defense theory when the decision falls within the wide range of professionally
5 competent assistance. *Strickland*, 466 U.S. at 489.

6 A defendant must demonstrate both prongs of the Strickland test, but a reviewing
7 court is not required to address both prongs of the test if the defendant makes an
8 insufficient showing on either prong. *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d
9 816 (1987).

10
11 a. Counsel's performance was not deficient.

12 Generally the decision whether to call a particular witness is a matter for
13 differences of opinion, and therefore presumed to be a matter of legitimate trial tactics.
14 *In re Davis*, 152 Wn. 2d 647, 742, 101 P.3d 1, 52 (2004). The decision to call a witness
15 is generally a matter of legitimate trial tactics and will not support a claim of ineffective
16 assistance of counsel. *State v. Byrd*, 30 Wn. App. 794, 799, 638 P.2d 601, 604 (1981).
17 The decision to not call an alibi witness is a reasonable tactical decision because the
18 decision requires the defense attorney to evaluate the strength of the State's case, assess
19 the witness's credibility, and judge the testimony in light of the totality of the other
20 evidence. *See, e.g. State v. James*, 48 Wn. App. 353, 360, 739 P.2d 1161 (1987)(The
21 court found it was a reasonable tactical decision not to call an alibi witness because of his
22 impeachability, especially in light of the overwhelming evidence of guilt). "A weak alibi
23 witness can weaken a defense case." *State v. Thomas*, 71 Wn.2d 470, 472, 429 P.2d 231,
24 233 (1967).
25

1 Petitioner cannot show that his trial counsel's performance was deficient. In this
2 case, petitioner's argument is that his trial counsel was deficient for not calling a supposed
3 alibi witness who may have testified that petitioner was with him from 10:00 a.m. until
4 2:00 p.m. From the petitioner's brief, it is clear that the petitioner's trial counsel knew
5 about this supposed alibi witness, as the witness indicates that he spoke to petitioner's trial
6 attorney and she told him he did not need to stay in the lobby. Petitioner's Appendix C.
7 This declaration raises issues regarding Mr. Spencer's testimony due to his background
8 and education. *Id.* The declaration indicates that he is dyslexic and only has a 7th grade
9 education. It is silent on his criminal history, his relationship to the petitioner, or other
10 grounds by which the State could have impeached his testimony.
11

12 It is clear that trial counsel's strategy at trial was to argue that the State had not
13 met its burden of proof with regard to the three charges. Without a record below, we can
14 only engage in pure speculation about why petitioner's trial counsel did not call this
15 person to testify. Under the law, the court must presume that trial counsel considered the
16 prospective witness and made a conscious choice not to call Mr. Spencer as a witness.

17 b. No prejudice can be presumed to result from the decision
18 not to call the alleged alibi witness.

19 For a finding of ineffective assistance of counsel, the defendant must demonstrate
20 prejudice. To demonstrate prejudice, the defendant must show that the outcome of the
21 trial would probably have been different if counsel had offered the instruction. *State v.*
22 *Brett*, 126 Wn.2d 136, 199, 892 P.2d 29 (1995).

23 The petitioner was found guilty of arson in the first degree, residential burglary,
24 and malicious mischief in the first degree. Even with an alibi witness, the petitioner
25 concedes his fingerprints and blood were found at the scene of the ingress into the house,

1 in the home itself, and specifically on damaged items in the home. This witness could
2 not explain away his fingerprints and blood in the house. The defendant would still have
3 been found guilty of the residential burglary.

4 With regard to the arson and malicious mischief, the defendant's presence in the
5 house is directly connected to the damage in the home based on the fact that the
6 petitioner's fingerprints were found inside the home on a piece of broken window glass
7 and on a broken floor lamp. Appendix B. In addition, the defendant's blood was found
8 on a wall near where a blackened roll of toilet paper was found on the floor. Petitioner's
9 Appendix A, 72 - 73. Based on the evidence, the trial court had sufficient evidence to
10 conclude that the petitioner caused the damage to the house and that this damage resulted
11 in the convictions for arson and malicious mischief.
12

13 This purported alibi witness could not have provided a perfect alibi for the
14 petitioner even if defense counsel had called him. In addition, the trial court could easily
15 have found the alibi witness's testimony not credible considering the witness's known
16 issues, especially when coupled with the fact that petitioner's fingerprints and blood were
17 at the scene. The petitioner has not proven that the verdict would have been any different
18 with this alibi witness.

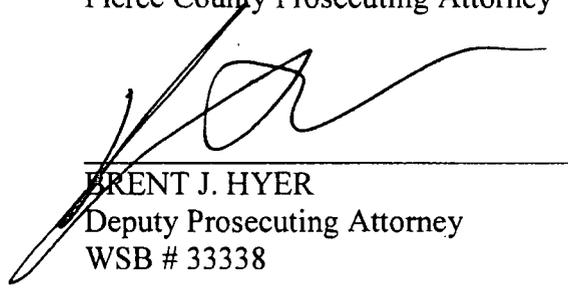
19 Therefore, petitioner has failed to show ineffective assistance of counsel. His
20 petition should be dismissed.
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1 D. CONCLUSION:

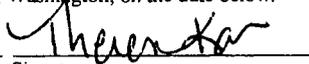
2 The State respectfully requests that this Court dismiss this personal restraint
3 petition.

4 DATED: February 2, 2015

5 MARK E. LINDQUIST
6 Pierce County Prosecuting Attorney

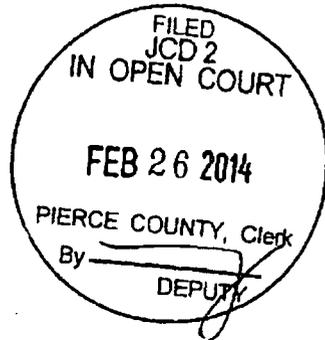
7 
8 BRENT J. HYER
9 Deputy Prosecuting Attorney
WSB # 33338

10 Certificate of Service:
11 The undersigned certifies that on this day she delivered by ~~U.S.~~ mail
12 to the petitioner a true and correct copy of the document to which this
13 certificate is attached. This statement is certified to be true and correct
14 under penalty of perjury of the laws of the State of Washington. Signed
15 at Tacoma, Washington, on the date below.

16 2/2/15 
17 Date Signature

APPENDIX "A"

Judgment and Sentence



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY
JUVENILE COURT

STATE OF WASHINGTON,

CAUSE NO. 13-8-00892-8

Plaintiff,

vs.

CONLAN JADEN SHAW
D.O.B. 06/25/00
JUVIS#: 942407-13R028440

DISPOSITION ORDER

- TRIAL
- PLEA
- AMENDED

SEX: MALE
RACE: WHITE
ETHNICITY: NON-HISPANIC

RESTITUTION DATE: 3/17/14 @
[X] DECLARATION Am JCD2
[] TESTIMONY

Respondent.

[X] RESPONDENT WAIVES RIGHT TO
APPEAR AT RESTITUTION HEARING

It has been found beyond a reasonable doubt that the above respondent, a male, 13 years of age, has committed the offense(s) of:

Count No.. I
Crime: ARSON IN THE FIRST DEGREE, (Charge Code: H2)
Statute: RCW 9A.48.020(1)(b)

Count No. II
Crime: RESIDENTIAL BURGLARY, (Charge Code: G12)
Statute: RCW 9A.52.025

Count No.. III
Crime: MALICIOUS MISCHIEF IN THE FIRST DEGREE, (Charge Code: H52)
Statute: RCW 9A.48.070(1)(a)

CRIMINAL HISTORY The Court finds the respondent's offender score is 1 1/2

[] The conduct in count(s) _____ is the same course of conduct.

DISPOSITION ORDER - 1
DSP_DispoJRA.dot

Office of the Prosecuting Attorney
Juvenile Division
5501 Sixth Avenue
Tacoma, Washington 98406-2697
Telephone (253) 798-3400

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Based upon the testimony heard and the case record to date, the Court Hereby Orders the disposition as set forth below.

COMMUNITY SUPERVISION. Shall submit to _____ months supervision by the Probation Officer to commence on _____ and terminate on _____

CONDITIONS OF DISPOSITION

- Shall maintain regular contact with the Probation Officer.
- Shall not violate any of the criminal laws of this State, any other State, any political subdivision of this State, or any other State, or United States.
- Shall successfully complete all counseling or treatment as directed by the Probation Officer.
- Shall reside only at a residence approved by the Probation Officer.
- Shall comply with curfew restrictions as set by the Probation Officer or supervising adult.
- Shall have no contact, direct or indirect, with victim(s) and on residence located at 4314 Pearl St.
- Shall not associate with people specified by the Probation Officer or supervising adult or _____
- Shall not use, possess, or consume alcohol or any controlled substance except by a doctor's prescription.
- Shall maintain best efforts and attendance at school or place of employment with no unexcused absences.
- Shall perform _____ hours of community service in a manner determined by the Probation Officer. Hour for hour credit is authorized for time spent in treatment and/or counseling.
- Shall remain subject to the discipline and supervision of the Probation Officer.
- Shall not possess or control any guns, firearms, ammunition, or any other weapons.
- Shall obtain a complete drug/alcohol evaluation and successfully complete any recommended treatment or follow-up.
- Shall be subject to random urinalysis testing as directed by the Probation Officer.
- Shall write a letter of apology to the victim to the satisfaction of the Probation Officer.
- Shall undergo and successfully complete all conditions that would be imposed in a Chemical Dependency Disposition Alternative (CDDA).
- Other _____

DETENTION. Count I _____ days Count II _____ days Count III _____ days
Credit for _____ days served.
The Court orders that _____ days may be converted to Electronic Home Monitoring

COMMITMENT: The respondent is committed to Department of Social and Health Services, Division of Juvenile Rehabilitation (JRA), for institutional placement for
Count I 103-120 weeks Count II _____ weeks Count III _____ weeks
Credit for 60 days served.

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2 **OPTION B-SUSPENDED DISPOSITION ALTERNATIVE.** Respondent is committed
3 to the Juvenile Rehabilitation Administration for a total of _____ weeks with
4 credit for _____ days served. This commitment is suspended on condition that
5 respondent comply with the conditions of community supervision imposed by this
6 court.

7 **OPTION C-CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE.**
8 Execution of the disposition imposed in this case is suspended for a period of
9 _____ upon condition that (1) respondent undergo drug/alcohol
10 treatment as directed by his probation officer (2) that respondent comply with the
11 conditions of supervision stated above, (3) that respondent pay the legal financial
12 obligations and any restitution imposed in this order, (4) that respondent serve
13 _____ days in confinement with credit for _____ days served, and (5) that
14 respondent perform _____ hours of community restitution.

15 The Court may revoke a suspended sentence at any time during the period of
16 community supervision and order execution of the sentence or impose sanctions
17 pursuant to RCW 13.40 200, if:

- 18 1. Respondent violates any condition of the disposition, OR
- 19 2. Respondent fails to make satisfactory progress in treatment.

20 **OPTION D-MANIFEST INJUSTICE (RCW 13.40.020).**

21 **MITIGATING FACTORS:**

- 22 The respondent's conduct neither caused nor threatened serious bodily injury or
23 the respondent did not contemplate that his/her conduct would cause or threaten
24 serious bodily injury;
- 25 The respondent acted under strong and immediate provocation;
- 26 The respondent was suffering from a mental or physical condition that
27 significantly reduced his/her culpability for the offense though failing to
28 establish a defense,
- 29 Prior to his/her detection, the respondent compensated or made a good faith
30 attempt to compensate the victim for the injury or loss sustained,
- 31 There has been at least one year between the respondent's current offense and
32 any prior criminal offense;
- 33 The Probation Officer's report is hereby incorporated by reference and this
34 Court adopts its finding and conclusions;
- 35 Other _____

36 **AGGRAVATING FACTORS.**

- 37 In the commission of the offense, or in flight therefrom, the respondent inflicted
38 or attempted to inflict serious bodily injury to another,
- 39 The offense was committed in an especially heinous, cruel, or depraved manner,
- 40 The victim or victims were particularly vulnerable,
- 41 The respondent has a recent criminal history or has failed to comply with
42 conditions of a recent dispositional order or diversion agreement;

- The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;
- The respondent was the leader of a criminal enterprise involving several persons,
- There are other complaints which have resulted in diversion or a finding or plea of guilty which are not included as criminal history,
- The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications;
- The Probation Officer's report is hereby incorporated by reference and this Court adopts its finding and conclusions,
- Other _____

MINIMUM TERM OF COMMITMENT is set at.

- The lowest possible term per RCW 13 40.030(2) (50% if maximum is 90 days or less, 75% if maximum is greater than 90 days but less than one year, 80% if the maximum term is more than one year)
- Maximum term
- Other _____

DEPARTMENT OF LICENSING. MANDATORY SUSPENSION. The respondent's privilege to drive or operator's license shall be revoked pursuant to RCW 9.41.040(5); RCW 13 40.265, RCW 46 20 265, RCW 46 20.285, RCW 66.44.365; RCW 69 41.065; or RCW 69.50 420.

FIREARM ENHANCEMENT. Pursuant to RCW 13.40 193 the court finds that the respondent or an accomplice was armed with a firearm while committing a felony Therefore, the following applicable sentence is imposed consecutive to the standard range or manifest injustice disposition

- Class A - 6 months Class B - 4 months Class C - 2 months

FELONY FIREARM REGISTRATION. Pursuant to RCW 9.41 (new section 3) and RCW 9.41.010((7)(8), within 48 hours of being released from custody or the imposition of sentence (if no confinement ordered), the respondent is required to register as a "Felony Firearm Offender" as outlined in Attachment/Felony Firearm Offender.

HIV TESTING. Required under RCW 70.24.340 for sexual offenses under RCW 9A.44, prostitution or prostitution related offenses under RCW 9A.88; and drug offenses involving the use of hypodermic needles under RCW 69.50

SUPERVISION IS TRANSFERRED TO _____ County

JURISDICTION IS TRANSFERRED TO _____ County

COSTS ORDERED:

- A. FINE. \$ _____
- B. RESTITUTION (see attached): \$ LOC
- Payable to LOC
- C. CRIME VICTIM PENALTY ASSESSMENT: \$ 100-

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5133 2/26/2014 00035

\$75.00 Misdemeanor/
\$100.00 Gross Misdemeanor/Felony

[X] D. DNA FEE.

TOTAL COSTS

\$ 100-
\$ 200-

Costs to be paid by CASH or MONEY ORDER to: PIERCE COUNTY JUVENILE COURT.
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. RCW10 82.090.

RESTITUTION AMENDMENTS. The portion of the sentence regarding restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime.

DNA IDENTIFICATION ANALYSIS. Required under RCW 43.43.754 for any Felony, Stalking, Harassment, or Communication with a Minor for Immoral Purposes.

FIREARM PROHIBITION. If you are found to have committed a felony or a crime against a family member under RCW 10.99.020, to include Assault in the Fourth Degree, Coercion, Stalking, Reckless Endangerment, Criminal Trespass, or Violation of a restraining order, no-contact order, or protection order. You may not own, use or possess any firearm unless your right to do so is restored by a court of record.

SCHOOL NOTIFICATION. The common school in which you are enrolled will be notified of the disposition of this case, if the offense is one of those listed in RCW 13.04.155. The School District in which the respondent resides and/or is enrolled shall release all of the respondent's school records to the Juvenile Court probation officer upon request.

JURISDICTION is extended beyond the age of eighteen (18) to accomplish this order.

Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

OTHER _____

VIOLATION OF ANY TERM OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS PUNISHABLE BY UP TO THIRTY (30) DAYS CONFINEMENT FOR EACH VIOLATION.

It is adjudged and ordered this 20 day of FEB, 14.

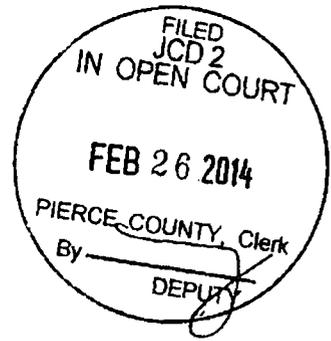
[Signature]
JUDGE/COURT COMMISSIONER
Kitty-Ann van Doorninck

Presented by:
[Signature]
Deputy Prosecuting Attorney
WSB # 24429

[Signature]
Respondent's Attorney
WSB # _____

CONAN SHAW
Respondent

rtb



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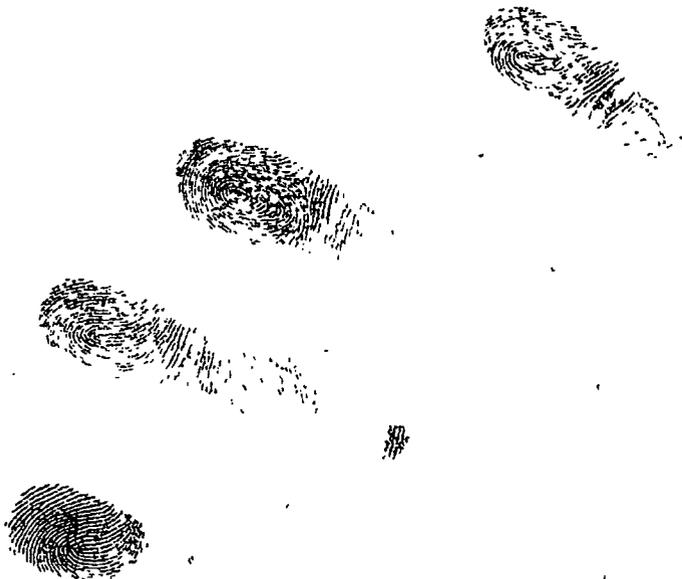
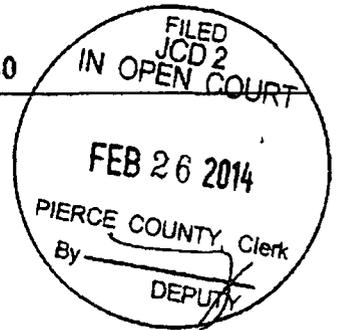
FELONY ONLY
FOUR FINGERPRINTS IN THIS SPACE



Dated: 2/26/14 Attested by:
KEVIN STOCK, County Clerk

By M. Jones JA
~~Deputy Clerk~~

CONLAN JADEN SHAW / 13-8-00892-8 / JUVIS#: 942407-13R028440
Respondent's Name/Cause Number/JUVIS Number



ADVISEMENT OF RIGHT TO SEAL RECORDS

Under current Washington law, you may file a motion with the court to have the records of the court sealed.

You **MAY NOT** have your record sealed if you have been convicted of the following Sex Offenses. Rape in the First Degree, Rape in the Second Degree, Indecent Liberties that was committed with actual forcible compulsion.

The Court **SHALL** grant your motion to seal if

- (1) (a) You were convicted or plead guilty to a Class A offense and since the last date of release from confinement, including full-time residential treatment, you have spent five (5) consecutive years in the community without a new adjudication or conviction for any offense or crime; and
- (b) You were convicted or plead guilty to a Class B offense, Class C felony, Gross Misdemeanor, or Misdemeanor and since the last date of release from confinement, including full-time residential treatment, you have spent two (2) consecutive years in the community without a new adjudication or conviction for any offense or crime; and
- (2) You were convicted or plead guilty to a Sex Offense, other than those listed above; and you are no longer required to register as a Sex Offender under RCW 9A.44.130 or you have been relieved of the duty to register under RCW 9A.44.143, and
- (3) There are no charges pending against you for a juvenile offense or a criminal offense; and
- (4) There are no matters pending against you related to a juvenile diversion agreement, and
- (5) You have paid the full amount of any restitution.

Any sealed juvenile records **WILL** be unsealed if:

- (1) You plead guilty or are found guilty of any juvenile offense or criminal offense, or
- (2) You are charged with a felony as an adult.

The following is a partial list of Sex Offenses: Rape, Rape of a Child, Child Molestation, Incest, Indecent Liberties, and any felony charged with Sexual Motivation enhancement.

The following is a partial list of Class A Offenses: Arson 1°, Assault 1°, Murder 1°, Murder 2°, Manslaughter 1°, kidnapping 1°, Robbery 1°, Vehicular Homicide, Burglary 1°.

The following is a partial list of Class B Offenses: Assault 2°, Burglary 2°, Residential Burglary, Drive-by Shooting, Kidnapping 2°, Escape 1°, Malicious Mischief 1°, Robbery 2°, Manslaughter 2°, Possession Stolen Property 1°, Theft 1°, Unlawful Possession of a Firearm 1°, Theft of a Firearm.

The following is a partial list of Class C Offenses: Assault 3°, Forgery, Malicious Mischief 2°, Taking A Motor Vehicle Without Owner's Permission 2°, Unlawful Possession of a Firearm 2°, Possession Stolen Property 2°, Theft 2°, Escape 2°, Vehicular Assault

CONLAN JADEN SHAW / 13-8-00892-8 / JUVIS#: 942407-13R028440

Respondent's Name/Cause Number/JUVIS Number

Respondent's Initials: CS

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 02 day of February, 2015



Kevin Stock, Pierce County Clerk

By /S/Tricia McFarland, Deputy.

Dated: Feb 2, 2015 2:33 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 4C6E8B01-110A-9BE2-A98D28EA6B77D135.

This document contains 8 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “B”

Findings of Fact and Conclusions of Law

5161 2/27/2014 00005

Case Number: 13-8-00892-8 Date: February 2, 2015
SerialID: 4C6EBDB9-F20F-6452-DCD2A3179E93699E
Certified By: Kevin Stock Pierce County Clerk, Washington



13-8-00892-8 42110305 FNCL 02-27-14

FILED
IN PIERCE COUNTY JUVENILE COURT

AM FEB 27 2014 PM

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY [Signature] DEPUTY

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SUPERIOR COURT WASHINGTON FOR PIERCE COUNTY
JUVENILE COURT

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO 13-8-00892-8

vs

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

CONLAN JADEN SHAW
DOB 06/25/00
JUVIS# 942407-13R028440

Respondent

THIS MATTER having come on before the Honorable Kitty Ann van Doorninck,
Judge of the above entitled court, for trial on 1/28/2014, upon an information charging the
respondent with ARSON IN THE FIRST DEGREE, RESIDENTIAL BURGLARY,
MALICIOUS MISCHIEF IN THE FIRST DEGREE, the respondent having been present
and represented by JEAN ANN O'LOUGHLIN and the State being represented by Deputy
Prosecuting Attorney R BRIAN LEECH, and the court having observed the demeanor and
heard the testimony of the witnesses and having considered the arguments of counsel and
being duly advised in all matters, the Court makes the following Findings of Fact and
Conclusions of Law

FINDINGS OF FACT

I

That CONLAN JADEN SHAW, age 13, is a juvenile, being born on 06/25/00

FINDINGS OF FACT AND CONCLUSIONS OF LAW - I
TRL_FFCL.Trial dot

Office of the Prosecuting Attorney
Juvenile Division
5501 Sixth Avenue
Tacoma, Washington 98406-2697
(253) 798-3400 / Fax (253) 798-4019

ORIGINAL

II

1 That on 8/08/2013, an Information was filed charging the respondent with ARSON
2 IN THE FIRST DEGREE and RESIDENTIAL BURGLARY, an amended information was
3 filed on the date of trial adding a third count, MALICIOUS MISCHIEF IN THE FIRST
4 DEGREE
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III

6 That all relevant events occurred in Pierce County
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IV

8 The State called four (4) witnesses Tacoma Police Officer James PINCHAM,
9 Tacoma Fire Department Arson Investigator Kenneth HANSEN, Mary CASEY and Esther
10 MBAJAH The parties entered stipulations regarding the admissibility of fingerprint and
11 DNA evidence
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V

13 On 6/20/2013 Officer PINCHAM responded to a Tacoma residence located at 4314
14 N Pearl St in Tacoma, Pierce County (the "residence" or "home") PINCHAM arrived in
15 response to a welfare check of the property after a 911 caller reported hearing sounds of
16 breaking glass at that location A few minutes prior to being dispatched to this location,
17 PINCHAM had driven by the same residence while en route to Pt Defiance regarding an
18 unrelated call While en route just before noon PINCHAM heard the sound of glass breaking
19 in the area of the 4314 N Pearl St address When PINCHAM was dispatched moments later
20 to the residence, he realized that the sound of breaking glass he heard was likely related to
21 the incident at the residence PINCHAM arrived a few minutes after noon and waited briefly
22 for backup to arrive He could clearly see broken windows on the front of the house When
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1 he and the backup officer approached the residence, PINCHAM saw that the upper windows
2 overlooking the driveway of the residence were broken. He saw multiple metal dining room
3 chairs in the driveway surrounded by broken glass. He would later determine that the dining
4 room chairs had likely been thrown through the upper windows, landing on the driveway.

5 As PINCHAM and the other officer approached the residence they could smell the
6 odor of smoke. The odor became stronger as they approached the front door. The officers
7 requested Tacoma Fire to respond to the scene. The officers entered the residence through
8 the unlocked front door. The residence is a tan, two-story split-level home. PINCHAM and
9 the other officer entered the front door, which opens onto a landing halfway between the
10 upper and lower levels of the residence. As they entered the front door, the smell of smoke
11 was stronger. The entryway floor was covered in broken glass. There were pieces of a
12 chandelier on the ground. The chandelier had been hanging over the front door landing. The
13 remnants of the fixture were hanging from the ceiling and consisted of a brass-colored bar
14 with exposed wires hanging from the ceiling. PINCHAM would later find part of the
15 chandelier on the ground on the driveway.

16 PINCHAM and the other officer then continued through the home to determine
17 whether anyone was still inside. They would find the home unoccupied. As they walked
18 through the home, PINCHAM observed extensive damage throughout the upper and lower
19 levels of the home. The upper level consists of two bedrooms towards the south end of the
20 home. A living room and a dining area are on the north end of the home. The dining area
21 abuts a kitchen, which sits roughly at the top of the stairs leading to the upper level. In the
22 kitchen, PINCHAM saw broken glass on the ground and a refrigerator that had been tipped
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1 over The refrigerator had dents on it and was leaning at an approximate 45 degree angle,
2 resting against a wall

3 The living room area is in the northeast corner of the upper level It has a large
4 window that faces the front street and driveway Several dining chairs were in the living
5 area along with a couch The chairs matched the chairs that were seen on driveway The
6 large window was shattered An approximately three foot long piece of bent black metal was
7 on the floor and had what appeared to be drywall dust on it The piece of metal was
8 apparently part of one of the broken dining room chairs It was bent, suggesting that it was
9 used to cause other damage in the residence The dining area had a broken light fixture and
10 broken glass on the floor A table with a glass top was tipped over and the glass top was
11 shattered A floor lamp was broken and laying on the floor There were holes in the drywall

12 The hallway leading south away from the living areas on the upper level of the
13 residence had broken glass on the floor, a ceiling light fixture was broken, the home's
14 thermostat on the wall was damaged and the doorbell housing on the wall was missing The
15 doorbell housing was found on the floor of the entryway The hallway ceiling was covered
16 in black soot

17
18 Off of the hallway of the upper level of the home are two closets, two bedrooms and
19 a bathroom One bedroom suffered little damage but had a strong odor of smoke The other
20 bedroom had a broken ceiling light fixture, a broken floor lamp, broken glass on the floor
21 and both windows in the bedroom were shattered

22 The upstairs bathroom had extensive damage, including a broken mirror on the vanity
23 and a broken and dented ceiling fan The cover of the ceiling fan was found in the bathtub
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VI

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After checking on the upper level, the officers went to the lower level The lower level consists of two bedrooms on the south end of the hallway, a bathroom and a family room on the north end of the hallway A utility room is adjacent to the family room

In the lower hallway the officers detected a strong odor of smoke The hallway walls were covered in soot and the soot extended up the wall leading to the entry landing

In the family room to the north of the hallway the officers found a large section of wall-to-wall carpeting that had been burned and was still smoldering The area was roughly 8 feet by 5 feet in size The north wall of the family room next to the burned area of carpeting was blackened by smoke It appeared that flames had burned some of the north wall There was a metal bed frame in the burned area on the floor and the light fixture on the ceiling had been ripped from the ceiling, which was also covered in black soot

The laundry/utility room off of the family room had smoke damage and broken fixtures were found on the floor The washer and dryer in the room did not appear to be damaged

In the hallway the officers found smoke and soot damage as well as two areas on the wall where apparent blood evidence had been smeared on the walls A forensic technician would later respond to the scene and take samples of this blood evidence

The bathroom in the lower level had a window that was shattered The towel holders had been ripped from the walls The toilet paper dispenser was in tact, but had apparent smoke or fire damage near it and a burned roll of toilet paper was found resting on the floor directly beneath the toilet paper holder There was damage to the wall next to the toilet paper, indicating that the toilet paper had burned

1 The bedrooms off the hallway in the lower level had been damaged as well In one
2 bedroom PINCHAM found a burned roll of toilet paper sitting towards the middle of the
3 floor The carpet underneath the roll had burned PINCHAM moved the charred toilet paper
4 with his foot and could see burning red embers in the carpet, indicating that the fire had been
5 recently set

6 The other bedroom in the lower level has a window that looks out onto the back yard
7 The glass in the window had been shattered and blood evidence was found on the interior
8 and exterior frames of the window, indicating the window was the likely point of entry The
9 forensic technician responded and obtained samples of this blood as well The same forensic
10 technician located and obtained latent prints from several locations within the upper and
11 lower levels of the home, including from the broken floor lamp found on the floor in the
12 dining area

13 After checking the interior of the residence, the officers went outside and checked on
14 the exterior of the home In addition to the damage they had seen while initially approaching
15 the residence, the officers found a screen that had been removed from one of the rear
16 windows The screen was resting under the stairs that lead to an elevated deck outside the
17 dining area of the upper level The officers found broken glass from the apparent point of
18 entry and saw blood evidence on the exterior frame of that window This is the same
19 window where the officers had seen blood evidence on the inside of the frame in one of the
20 lower lever bedrooms Based on this evidence, the respondent likely broke this window to
21 gain entry and, in the process of either breaking the window or climbing through the broken
22 window, cut himself He then smeared the fresh blood onto the hallway wall as he worked
23 his way through the residence
24

Officer PINCHAM's testimony was very credible

VII

The blood evidence obtained by the forensic technician was sent to the Washington State Patrol crime lab. A forensic scientist extracted DNA from the blood evidence and developed a DNA profile. That profile was then compared to the known DNA of the respondent and found to match the respondent. The forensic scientist determined that the estimated probability of selecting an unrelated individual at random from the US population with a matching profile is 1 in 68 quintillion. Therefore, the blood came from the respondent, indicating that he had entered through the broken window in the lower bedroom and then walked down the hallway and wiped his blood on the walls.

Another forensic scientist trained in comparing fingerprints received the latent impressions from the scene and compared the latent impressions to the known prints of the respondent. This scientist determined that the respondent's prints were located in several locations inside the home, including on the broken floor lamp found on the upper level and a piece of broken window glass from the residence.

VIII

Mary CASEY is the next door neighbor to the 4314 N Pearl St residence. She testified that she first heard the sound of glass breaking coming from the 4314 residence between 8:30 and 9:00 am on 6/20/13 and that she last heard the sounds of breaking glass as the officer was walking towards the residence. PINCHAM testified he arrived at approximately noon on 6/20/13, indicating that the vandalism was likely ongoing between 8:30 to 9:00 am and noon. CASEY said that she thought the house was being torn down based on the nature of the noises coming from it.

IX

1 Esther MBAJAH testified that she and her husband own the residence located at 4314
2 N Pearl St They had lived in the home previously and had rented the property in the past
3 The home was vacant on 6/20/13 and a real estate agent had been hired to rent the property
4 MBAJAH lives in the area and made a habit of driving past the residence each weekday on
5 her way to work She would drive the alleyway behind the home and then circle around the
6 front of the house to check on it On 6/20/13 she drove by the house on her way to work that
7 morning around 7:30 am She did not see any signs of damage at that time and would have
8 seen the damage had it occurred by then due to the obvious nature of the broken windows
9 and the presence of broken dining chairs on the driveway
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11 MBAJAH also made a habit of routinely visiting the house and going inside to check
12 on it She was last inside the home one or two days prior to 6/20/13 and none of the damage
13 the officers described seeing had occurred She reviewed several photos taken by the
14 responding officers of the extensive damage during her testimony and noted that none of that
15 damage existed when she was last inside the home She and her family do not know the
16 respondent, did not give him permission to be in the home or to cause any of the listed
17 damage
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19 MBAJAH received an estimate from her insurance company to repair the damage at
20 the home The estimate was roughly \$20,000 However, the insurance company ultimately
21 denied the claim Consequently, the MBAJAHs had to pay to repair the damages
22 themselves MBAJAH testified that she spent over \$13,000 to repair the damage caused by
23 the respondent While MBAJAH made some upgrades and repaired or replaced some items
24 unrelated to the fire damage or vandalism, the costs to repair the damage that was not
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5161 2/27/2014 00012

1 attributed to the fires easily exceeded \$5,000 The cost to replace the burned carpeting
2 exceeded \$1,200 MBAJAH's testimony was very credible

3 X

4 Kenneth HANSEN testified as follows He is an arson investigator for the Tacoma
5 Fire Department Prior to working as an arson investigator, he worked for several years as a
6 firefighter He has the training and experience to qualify him as an expert in the field of
7 arson investigation and has participated in several arson investigations during his career
8 HANSEN responded to the residence and observed the areas in the residence where the
9 carpeting had been burned He determined that the fires originated in three separate areas of
10 the home the burned toilet paper roll found toward the middle of the floor in one of the
11 lower level bedrooms caused a small fire to the carpeting on the floor, another toilet paper
12 roll had been burned in the lower level bathroom and appeared to have been ignited while it
13 was on the toilet paper holder prior to falling to the floor and causing additional damage to
14 the base of the wall, and the largest burned area of carpeting occurred in the family room
15 The two carpet fires originated away from the walls and were not near any source of
16 potential accidental ignition, such as faulty wiring Based on the nature and origin of the
17 fires, the multiple locations of the fire throughout the lower lever, the lack of any other
18 source of natural or accidental ignition and the degree and volume of other contemporaneous
19 damage throughout the house, it was HANSEN's opinion that the fires were intentionally set
20 He was unable to offer an opinion as to whether an accelerant was used, but noted that
21 carpeting does not spontaneously combust without an applied ignition source In addition,
22 HANSEN testified that it was common sense that three fires in three different locations
23 would lead to the conclusion that they were not accidental fires
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From the foregoing Findings of Fact, the Court makes the following Conclusions of

1 Law

2 CONCLUSIONS OF LAW

3 I

4 That the Court has jurisdiction of the parties and subject matter

5 II

6 That CONLAN JADEN SHAW is guilty beyond a reasonable doubt of the crime of
7 ARSON IN THE FIRST DEGREE, RESIDENTIAL BURGLARY and MALICIOUS
8 MISCHIEF IN THE FIRST DEGREE in that, on 06/20/13 he

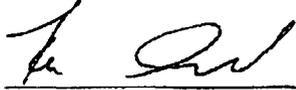
- 9 1 Knowingly and maliciously caused a fire inside the residence located at 4314 N
- 10 Pearl St in Tacoma, the fire damaged the residence's carpeting in two areas of the
- 11 home, burned parts of walls near the fires and caused smoke and soot damage
- 12 throughout the house, and the residence is a dwelling
- 13
- 14 2 Unlawfully entered the residence located at 4314 N Pearl St in Tacoma and had
- 15 the intent upon entry and while remaining in the residence to commit a crime
- 16 against the property of another
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5161 2/27/2014 00015

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3 Unlawfully, knowingly and maliciously caused physical damage throughout the
1 house to the property of another, including, but not limited to, walls, windows,
2 doors, fixtures and furniture, and that the value of the damage was well in excess
3 of \$5,000

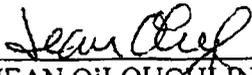
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5 DONE IN OPEN COURT this _____ day of 2/27, 2014

6
7 
8 JUDGE/COMMISSIONER
9 KITTY ANN VANDOORNINCK

8 Presented by

9
10 
11 R BRIAN LEECH
12 Deputy Prosecuting Attorney
13 WSB# 24449

12 Approved as to Form

13
14 
15 JEAN O'LOUGHLIN
16 Attorney for Respondent
17 WSB# 14756

17 rbl

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FILED
IN PIERCE COUNTY JUVENILE COURT
A M FEB 27 2014 P M
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY  DEPUTY

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 02 day of February, 2015



Kevin Stock, Pierce County Clerk

By /S/Tricia McFarland, Deputy.

Dated: Feb 2, 2015 2:33 PM



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PIERCE COUNTY PROSECUTOR

February 02, 2015 - 2:57 PM

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Court of Appeals Case Number: 46848-4

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Letter

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

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