

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

IN RE THE PERSONAL) NO. 45972-8-II
RESTRAINT PETITION OF) RESPONSE TO
) PERSONAL RESTRAINT
MICHAEL LYNN SUBLETT) PETITION

Comes now Jon Tunheim, Prosecuting Attorney in and for Thurston County, State of Washington, by and through Carol La Verne, Deputy Prosecuting Attorney, and files its response to petitioner's personal restraint petition pursuant to RAP 16.9.

I. BASIS OF CURRENT RESTRICTIONS ON LIBERTY

Michael Lynn Sublett is currently in the custody of the Washington Department of Corrections (DOC), serving a life sentence without the possibility of parole. He was convicted of first degree murder, a third strike under the Persistent Offender Accountability Act (POAA). Appendix A, Judgment and Sentence.

II. STATEMENT OF PROCEEDINGS

Sublett was charged by second amended information with first degree premeditated murder or, in the alternative, with first degree felony murder. Appendix B, Second Amended Information. He was

tried in a joint trial with his codefendant, Christopher Olsen, and found guilty of both of the alternatives charged. Appendix A. Sublett and Olsen both appealed. The Court of Appeals consolidated the appeals and affirmed the convictions. State v. Sublett, 156 Wn. App. 160, 231 P.3d 231 (2010). The Supreme Court granted discretionary review and that court affirmed. State v. Sublett, 176 Wn.2d 58, 292 P.3d 715 (2012). The mandate issued on February 12, 2013. Appendix C, copy of mandate. This timely personal restraint petition (PRP) was filed February 11, 2014.

The substantive facts of the case are comprehensively summarized in both of the appellate opinions referred to above.

III. RESPONSE TO ISSUES RAISED

A. Standard of review for Collateral Attacks.

A personal restraint petition is a collateral attack and is treated differently than a direct appeal. A petitioner can only obtain relief from restraint that is unlawful for the limited reasons set forth in the rules defining the procedure. RAP 16.4(c); In re Pers. Restraint of Cook, 114 Wn.2d 802, 809, 792 P.2d 506 (1990). A petitioner claiming constitutional error must demonstrate actual prejudice from

the error before a court will consider the merits. In re Pers. Restraint of St. Pierre, 118 Wn.2d 321, 328-30, 823 P.2d 492 (1992) (applying this threshold standard to deny relief for a constitutional error that would be per se prejudicial error on appeal). A petitioner claiming non-constitutional error must “establish that the claimed error constitutes a fundamental defect which inherently results in a complete miscarriage of justice.” In re Pers. Restraint of Fleming, 129 Wn.2d 529, 532-34, 919 P.2d 66 (1996). If a petitioner successfully claims ineffective assistance of counsel, he has met the burden to show actual and substantial prejudice. In re Pers. Restraint of Grace, 174 Wn.2d 835, 846-47, 280 P.3d 1102 (2012). If a petitioner fails to meet the threshold requirement for a constitutional claim, the petition must be dismissed. In re Pers. Restraint of Hews, 99 Wn.2d 80.

When determining whether an error resulted in prejudice, a reviewing court evaluates the practical effects of the error but does not “look into the mind and motivations of the defendant.” In re Pers. Restraint of Yates, 87518-9, slip op. at 8 (March 20, 2014); In re Pers. Restraint of Stockwell, 179 Wn.2d 588, 316 P.3d 1007 (2014).

Even meeting this threshold does not automatically entitle a

petitioner to relief or a reference hearing, however. A personal restraint petitioner is required by the rules to provide both “a statement of ... facts upon which the claim is ... based and the evidence to support the factual allegations.” RAP 16.7(a)(2)(i). A prerequisite to obtaining a reference hearing is that “the petitioner must state with particularity facts which, if proven, would entitle him (or her) to relief”, “bald assertions” and “conclusory allegations” are not enough. In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086, *cert. denied*, 506 U.S. 958 (1992). “The petitioner must demonstrate that he (or she) has competent, admissible evidence to establish the facts that entitle him (or her) to relief;” claims as to what other persons would say must be supported by “their affidavits or other corroborative evidence” consisting of competent and admissible evidence. Cook, 114 Wn.2d at 813-14. Both the factual basis and evidentiary support requirements are threshold procedural bars; the court must refuse to reach the merits of any petition that fails to comply. Id. at 814.

If a petition clears these procedural hurdles, the petitioner still must actually prove the error that makes his or her restraint unlawful

by a preponderance of the evidence. St. Pierre, 118 Wn.2d at 328.

On direct appeal, the burden is on the State to establish beyond a reasonable doubt that any error of constitutional dimensions is harmless. . . . On collateral review, we shift the burden to the petitioner to establish that the error was not harmless.

In re Pers. Restraint of Hagler, 97 Wn.2d 818, 825-26, 650 P.2d 1103 (1982).

B. The prosecutor's closing argument did not constitute prosecutorial misconduct. The argument in this case was significantly different from the argument in *Glassman*, on which Sublett bases his claims.

Sublett argues that the closing argument of the deputy prosecutor denied him the right to a fair trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and article I, section 22 of the Washington Constitution. Sublett asserts that the deputy prosecutor used a PowerPoint¹ presentation that was virtually identical to a presentation found to constitute prosecutorial misconduct in In re Pers. Restraint of Glasmann, 175 Wn.2d 696, 286 P.3d 673 (2012). That is not the case, and the closing argument in Sublett's trial was not prosecutorial misconduct. Sublett does not include a copy of the challenged slide in his petition; the State has attached a copy of the prosecutor's entire PowerPoint presentation to

this response as Appendix D. The slide Sublett challenges is at page 46.

A defendant who claims prosecutorial misconduct must first establish the misconduct, and then its prejudicial effect. State v. Dhaliwal, 150 Wn.2d 559, 578, 79 P.3d 432 (2003) (citing to State v. Pirtle, 127 Wn.2d 628, 672, 904 P.2d 245 (1995)). “Any allegedly improper statements should be viewed within the context of the prosecutor’s entire argument, the issues in the case, the evidence discussed in the argument, and the jury instructions.” Dhaliwal, 150 Wn.2d at 578. Prejudice will be found only when there is a “substantial likelihood the instances of misconduct affected the jury’s verdict.” Id.; State v. Russell, 125 Wn.2d 24, 85-86, 882 P.2d 747 (1994). While it is true that a prosecutor must act in a manner worthy of his office, a prosecutor is an advocate and entitled to make a fair response to a defense counsel’s arguments. Id. at 87. *See also* State v. Dykstra, 127 Wn. App. 1, 8, 110 P.3d 758 (2005). A prosecutor has a duty to advocate the State’s case against an individual. State v. James, 104 Wn. App. 25, 34, 15 P.3d 1041 (2000). It is not error for the prosecutor to argue that the evidence does not support the

¹ “PowerPoint” is a registered trademark of the Microsoft Company.

defense theory. State v. Graham, 59 Wn. App. 418, 429, 798 P.2d 314 (1990). In closing argument the prosecutor has wide latitude to draw reasonable inferences from the evidence, but a prosecutor may not suggest that evidence not presented provides additional grounds for convicting the defendant. Russell, 125 Wn.2d at 87 (citing United States v. Garza, 608 F.2d 659 (5th Cir. 1979)).

Sublett relies entirely on Glasmann to support his claim that the State's closing argument was so egregious that his convictions must be reversed and his sole complaint about the closing argument is that the final slide used in the prosecutor's PowerPoint presentation was unduly prejudicial. A comparison of the two cases shows that the argument is Sublett's trial was much different from that in Glassman. Sublett further asserts that his counsel was ineffective for failing to object to the slide. While it is true that Sublett's attorney did not object, Olsen's counsel did. The objection was sustained and the slide was removed. See Appendix E, a transcript of the entirety of the State and defense closing arguments, at 1003-04.²

1. Glassman opinion.

The facts of the Glasmann case were significantly different

² The page numbers refer to the page numbers of the transcript, not the page

from those of Sublett's. Glasmann was charged with, and convicted of, second degree assault, attempted second degree robbery, first degree kidnapping, and obstruction. Glasmann, 175 Wn.2d at 700-01. Glasmann did not deny that he had committed the acts charged, but he did dispute the degree of the crimes, and argued that he should be convicted of lesser included crimes. Id. at 700, 708. The charges resulted from an altercation that occurred after Glasmann and the victim, his fiancée, celebrated his birthday with alcohol, ecstasy, and methamphetamine. Glasmann punched and kicked the victim, dragged her out of their motel room to the car, and from the driver's seat attempted to pull her by her hair into the passenger seat of the car. While she was half in, half out of the car Glasmann ran the car onto her leg, then backed off and pulled her into the car. The victim was able to get the car stopped, grabbed the keys, and ran to a nearby convenience store, where she attempted to hide on the floor behind the cashier's counter. Police arrived. Glasmann shouted that he had a gun, invited the officers to shoot him, and put the victim in a choke hold, threatening to kill her. He held her between himself and the officers, until she was able to free herself enough that the officers

numbers of the appendix.

could use a stun gun on Glasmann. He was taken into custody but struggled so fiercely that the officers injured him in the process. Id. at 699-700.

In closing argument, the prosecutor used a PowerPoint slide presentation in which he incorporated video from security cameras, audio recordings, photographs of the victim's injuries, and Glasmann's booking photograph, which had been admitted into evidence. Id. at 700. The photograph showed "extensive facial bruising" and it was "digitally altered to look more like a wanted poster than properly admitted evidence." Id. at 710-15, J. Chambers concurring. Five slides used during the prosecutor's closing showed the booking photograph; one included the caption "DO YOU BELIEVE HIM?", one was captioned "WHY SHOULD YOU BELIEVE ANYTHING HE SAYS ABOUT THE ASSAULT?", and three showed the word "GUILTY" superimposed across it, an additional "GUILTY" on each successive slide. Id. at 701-02.

One of the slides showed a photograph, presumably taken from the security video, of Glasmann holding the victim in a choke hold while crouched behind the counter of a minimart, with the

captions "YOU JUST BROKE OUR LOVE". Another showed the victim's injuries with two captions: "What was happening right before the defendant drove over Angel . . . ", and ". . . you were beating the crap out of me!" Id. Glasmann did not object to any of the slides. Id. at 701.

The prosecutor argued that the evidence overwhelmingly supported the charges filed, but also told the jury that to reach a verdict it must decide "Did the defendant tell the truth when he testified?" and that they had a duty to compare the testimony of the State's witnesses to that of the defendant. Id. at 710.

The decision is Glassman is a plurality opinion, with four justices signing the lead opinion, one concurring, and four dissenting. However, the concurrence mirrors the lead opinion sufficiently that it can be treated as a five-four split of the court. The dissent disagreed primarily with the remedy, not the conclusion that the prosecutor committed misconduct. It is important, then, to examine exactly what the lead and concurring justices found improper about the State's argument and what it did not disapprove of. It started with the presumption that Glasmann had waived any error unless there was

misconduct so “flagrant and ill intentioned that an instruction would not have cured the prejudice.” Glasmann, 175 Wn.2d at 704.

It is error to show to the jury evidence not admitted at trial and is reversible error if there is reason to believe the defendant was prejudiced. Id. The court concluded that the booking photo, with the addition of “phrases calculated to influence the jury’s assessment of Glasmann’s guilt and veracity,” was the equivalent of altered evidence. Id. The court noted that the depiction of Glasmann as “unkempt and bloody” would have had prejudicial impact because of captions that challenged his truthfulness. Id. The court also found that the superimposed word “guilty” was even more prejudicial because it was in red letters, “the color of blood and the color used to denote losses.” Id. at 708. It is important to note that the court did *not* say that the photographs with captions which included direct quotes from witnesses or summaries of evidence that was admitted constituted altered evidence or that displaying them to the jury was error.

The Glasmann court found that the photograph, with the additional captions, constituted the prosecutor’s individual opinion that

the defendant was guilty, Id. at 706-07, although it is not clear from the court's opinion why it is an individual opinion as opposed to the opinion of the State, which the prosecutor represented. The court found this to be misconduct. It discussed at some length the "prejudicial imagery" which is considered to be of such an impact that an instruction cannot overcome it. Id. The court concluded that the "multiple ways in which the prosecutor attempted to improperly sway the jury and the powerful visual medium he employed," combined with his closing argument, created such prejudice that a curative instruction would have been pointless. Id. at 708.

The only statement made in the oral part of the closing argument that the court found sufficiently objectionable to include in the lead opinion was the statement that the jury must determine whether or not Glasmann told the truth when he testified, in effect shifting the burden of proof to the defendant. While the court concluded that was misconduct it did not find it to be sufficiently egregious, standing alone, to warrant reversal. Id. at 713-14.

Glasmann, unlike Sublett, was challenging only the degree of the offenses for which he was being tried, not his culpability.

“Because Glasmann defended by asserting he was guilty only of lesser offenses, and nuanced distinctions often separate degrees of a crime, there is an especially serious danger that the nature and scope of the misconduct here may have affected the jury.” *Id.* at 680. In its summary of the holding, the court said:

The prosecutor’s presentation of a slide show including alterations of Glasmann’s booking photograph by addition of highly inflammatory and prejudicial captions constituted flagrant and ill intentioned misconduct that requires reversal of his convictions and a new trial, notwithstanding his failure to object at trial. *Considering the entire record and circumstances of this case*, there is a substantial likelihood that this misconduct affected the jury verdict. The principal disputed matter at trial was whether Glasmann was guilty of lesser offenses rather than those charged, and this largely turned on whether the requisite mental element was established for each offense. More fundamentally, the jury was required to conclude that the evidence established Glasmann’s guilt of each offense beyond a reasonable doubt.

It is substantially likely that the jury’s verdict were (sic) affected by the prosecutor’s improper declarations that the defendant was “GUILTY, GUILTY, GUILTY!”, *together with* the prosecutor’s challenges to Glasmann’s veracity improperly expressed as superimposed messages over the defendant’s bloodied face in a jail booking photograph.

Glasmann, 175 Wn.2d at 714, emphasis added. Because Sublett was arguing his innocence, rather than the degree of the offense he

committed as in Glasmann, there is not an especially serious danger that the nature of the misconduct would affect the jury.

2. Argument in Sublett's trial.

Although, as noted above, Sublett's attorney did not object to the closing PowerPoint slide but Olsen's counsel did, the objection was sustained, and the slide was removed. Therefore, even assuming arguendo that the slide was improper, Sublett cannot show that there was a substantial likelihood that the verdict was affected by it. Russell, 125 Wn.2d at 85-86. The jury was instructed that it was to consider only evidence admitted, and that the lawyer's arguments were not evidence. Jury Instruction No. 1, Appendix F at 2-3.

In fact, however, the prosecutor's argument was significantly different from that in Glasmann. Appendix D, Appendix E at 976-1003, 1069-76. The only slide that is even similar to one disapproved in Glasmann is one photo of Sublett and one of Olsen with the word "guilty" written in red over their faces; Sublett does not claim that the photos have been altered in any way, much less made to look like a wanted poster. Neither does Sublett allege that he looked injured or even that the photo was unflattering. The objection in Glasmann was

to “highly inflammatory images unrelated to any specific count.” Glasmann, 175 Wn.2d at 712. The word “guilty” was here used once, not three times, and was obviously not a personal opinion as to guilt. The prosecutor was not indicating that Sublett was “intrinsically GUILTY GUILTY GUILTY.” Id. He was indicating that Sublett was guilty because of the totality of the evidence. Appendix D at 46, Appendix E at 1003. . The conclusion of guilt was solidly based on the evidence, and there was no suggestion that the prosecutor was using his “position of power and prestige to sway the jury.” Id. at 679.

Sublett's argument assumes that even one “guilty” on a photograph constitutes prosecutorial misconduct, but that is not the holding of Glasmann. That court was addressing three consecutive slides with the word “guilty” superimposed on an altered photograph of the defendant and apparently accompanied by inflammatory editorial comments rather than a summary of the evidence that proved guilt. A careful reading of Glasmann does not support the conclusion that that court would have found prosecutorial misconduct on the facts of Sublett's case. “In this case, the use of highly inflammatory images unrelated to any specific count was misconduct

that contaminated the entire proceedings.” Id. at 712.

When viewed as a whole, the prosecutor’s repeated assertions of the defendant’s guilt, improperly modified exhibits, and statement that the jurors could acquit Glasmann only if they believed him represent the type or pronounced and persistent misconduct that *cumulatively* causes prejudice demanding that a defendant be granted a new trial.

Id. at 710, emphasis added. That is not what happened in Sublett’s case.

Given the volume of the evidence against Sublett, that one slide, even if it were improper, which the State does not concede, cannot be said to have improperly influenced the jury. The court in Glasmann found that no instruction could have neutralized the *cumulative effect* of the improper slides and the statements the prosecutor made during argument. Glasmann, 175 Wn.2d at 707. The Glasmann court also found prejudicial the prosecutor’s comments that ‘the jury could acquit only if they believed the defendant’, there was no such argument presented in Sublett’s case.

3. There was no error.

The court in Glasmann did not reject the use of computer-generated visual aids during argument. “Certainly, lawyers may and

should use technology to advance advocacy and judges should permit and even encourage new techniques. But we must all remember that the only purpose of visual aids of any kind is to enhance and assist the jury's understanding of the evidence." Glasmann, 175 Wn.2d at 715, (J. Chambers concurring).

A prosecutor has wide latitude in arguing inferences from the evidence. It is not misconduct to argue facts in evidence and suggest reasonable inferences from them. Unless he unmistakably expresses a personal opinion, there is no error. Spokane County v. Bates, 96 Wn. App. 893, 901, 982 P.2d 642 (1999). A prosecutor may comment on the veracity of a witness as long as he does not express a personal opinion or argue facts not in the record. State v. Smith, 104 Wn.2d 497, 510-11, 707 P.2d 1306 (1985). The State has been unable to find any cases which prohibit the use of visual aids, including PowerPoint slides during closing arguments. Not only was the slide used in Sublett's trial much different than the slide used in Glassman's trial, Olsen's counsel objected, the objection was sustained, and the slide was removed.

4. Sublett's counsel was not ineffective for failing to object to the use of the final slide in the prosecutor's closing argument.

Sublett asserts that his counsel was ineffective for failing to object to the final slide in the State's PowerPoint presentation. Petition at 2. He does not include argument. Petition at 2-6. This court may decline to review an issue for which no authority is presented. State v. Gossage, 165 Wn.2d 1, 8-9, 195 P.3d 525 (2008). If this court chooses to review that claim, the State offers the following argument.

Deficient performance occurs when counsel's performance "[falls] below an objective standard of reasonableness." State v. Stenson, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997), *cert. denied*, 523 U.S. 1008 (1998). As the Supreme Court noted, "This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1984).

The test for whether a criminal defendant was denied effective assistance of counsel is if, after considering the entire record, it can be said that the accused was afforded effective representation and a fair and impartial trial. State v. Thomas, 71 Wn.2d 470, 471, 429 P.2d

231 (1967); State v. Bradbury, 38 Wn. App. 367, 370, 685 P.2d 623 (1984). Thus, "the purpose of the effective assistance guarantee of the Sixth Amendment is not to improve the quality of legal representation", but rather to ensure defense counsel functions in a manner "as will render the trial a reliable adversarial testing process." Strickland, 466 U.S. at 688-689; See Powell v. Alabama, 287 U.S. 45, 68-69, 53 S. Ct. 55, 77 L. Ed. 158 (1932). This does not mean, then, that the defendant is guaranteed *successful* assistance of counsel, but rather one which "make[s] the adversarial testing process work in the particular case." Strickland, 466 U.S. at 690; State v. Adams, 91 Wn.2d 86, 90, 586 P.2d 1168 (1978); State v. White, 81 Wn.2d 223, 225, 500 P.2d 1242 (1972).

Prejudice occurs when, but for the deficient performance, the outcome would have been different. In re Pers. Restraint of Pirtle, 136 Wn.2d 467, 487, 965 P.2d 593 (1996).

It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test, and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding.

Strickland, 466 U.S. at 693 (internal quotation omitted). Thus, the focus must be on whether the verdict is a reliable result of the adversarial process, not merely on the existence of error by defense counsel. Id. at 696. A reviewing court is not required to address both prongs of the test if the appellant makes an insufficient showing on one prong. State v. Fredrick, 45 Wn. App. 916, 923, 729 P.2d 56 (1989). "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . [then] that course should be followed [first]." Strickland, 466 U.S. at 697.

Even if Sublett's attorney's performance was lacking because he failed to object to the closing slide of the prosecutor's argument, counsel for Olsen did object. Appendix E at 1003. The Court sustained the objection and the slide was removed. It is impossible for Sublett to show any prejudice because what he says his attorney should have done in fact happened. The result would have been exactly the same had Sublett's attorney also objected. The jury would have understood that since the court ordered the slide removed, it was not to consider it. See Instruction No. 1, Appendix F. Sublett cannot show ineffective assistance of counsel.

C. Even if Sublett wore a shock device under his clothing during trial, without the court finding it necessary, any error was harmless.

Sublett argues that his right to a fair trial was implicated when he was forced to wear a non-visible restraint known as the “band-it” and shackles at trial without a hearing. Consequently, Sublett claims he had trouble concentrating, could not consult with counsel, and was in a continual state of fright during his trial. Petition at 7.

A defendant has the right to appear at trial without shackles or restraints, except in extraordinary circumstances. He or she may be physically restrained only when necessary to prevent escape, injury, or disorder in the courtroom. State v. Jennings, 111 Wn. App. 54, 61, 44 P.3d 1 (2002). Restraints are disfavored because they may impact the constitutional right to the presumption of innocence, State v. Elmore, 139 Wn.2d 250, 273, 985 P.2d 289 (1999), as well as the right to testify in one’s own behalf and the right to confer with counsel during a trial. State v. Damon, 144 Wn.2d 686, 691, 25 P.3d 418 (2001). The trial court must weigh on the record the reasons for using restraints on the defendant in the courtroom. Elmore, 139 Wn.2d at 305. The court should consider a long list of factors addressing the

dangerousness of the defendant, the risk of his escape, his threat to other persons, the nature of courtroom security, and alternative methods of ensuring safety and order in the courtroom. State v. Hutchinson, 135 Wn.2d 863, 887-88, 959 P.2d 1061 (1998) (citing to State v. Hartzog, 96 Wn.2d 383, 400, 635 P.2d 694 (1981)).

A trial court has broad discretion to provide security and ensure decorum in the courtroom. Restraints, even visible ones, may be permitted after the court conducts a hearing and enters findings justifying the restraints. State v. Damon, 144 Wn.2d at 691-92.

In State v. Flieger, 91 Wn. App. 236, 955 P.2d 872 (1998), the court found a legitimate distinction between a shock box which does not restrain physical movement and cannot be seen by jurors from other restraint methods which are visible. In that case the distinction did not matter because the shock box worn by the defendant had actually been noticed by the jurors. Id. at 242.

The State does not dispute that the court failed to hold a hearing regarding restraints before Sublett's trial. However, this claim is subject to a harmless error analysis. Because this is a collateral attack, Sublett bears the burden of showing, by a preponderance of

the evidence, that he was actually prejudiced, *i.e.*, that the outcome of the trial would have been different had the court held the required hearing. St. Pierre, 118 Wn.2d at 328-30.

Errors which infringe on a defendant's constitutional rights are presumed prejudicial *on direct appeal*. Flieger, 91 Wn. App. at 243. Like other constitutional errors, a claim of unconstitutional shackling is subject to a harmless error analysis. Jennings, 111 Wn. App. at 61. The State bears the burden, *on direct appeal*, of showing that the shackling did not influence the jury's verdict. Damon, 144 Wn.2d at 692.³ "A constitutional error is harmless if the appellate court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error." State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985).

The court in Hutchinson, a direct appeal, found that because the jury never saw the defendant in shackles he could not show prejudice and therefore the error was harmless. Hutchinson, 135

³ In State v. Hutchinson, 135 Wn.2d 863, 888, 959 P.2d 1061 (1998), the court said that the defendant must show that the shackling influenced the jury's verdict. Because the jury in that case never saw the defendant in shackles, he could not show prejudice.

Wn.2d at 888. Similarly, the court in Jennings held that the stun gun the defendant was wearing was not visible to the jury and the error was harmless. Jennings, 111 Wn. App. at 61. The court in Damon found that the jury must have observed the restraint chair in which the defendant was seated, and therefore the error was not harmless. Damon, 144 Wn.2d at 693 .

There is no evidence beyond Sublett's declaration that he was in fact wearing restraints or what those restraints were, and he offers no evidence that any jurors actually saw the restraints, only that could have. Assuming that he was wearing restraints, he is in a similar position to the defendant in Jennings, where the error was found to be harmless. Jennings, 111 Wn. App. at 61. The court has found a shock device similar to what Sublett claims to be wearing to be preferential to visible restraining devices. Flierger, 91 Wn App. 236. Further, without factual support, there no reason to believe that the jury would have been aware of a device that does not restrict movement and cannot be seen. Sublett's self-serving assertion that an observant juror would have been able to discern that he was wearing an electronic device does not constitute evidence, let alone

show he was prejudiced. Sublett was being charged with murder; it is reasonable for jurors to expect jail officers to be close to him. Without actually seeing the device on Sublett, it is not likely that a juror would jump to the conclusion that Sublett was wearing a shock belt because the jail officer was near him.

1. Sublett's ability to assist his counsel in his defense was not impaired because he was wearing a shock device.

Sublett claims that wearing a shock device terrified him to the point that he could not effectively talk to his counsel. Sublett states that "[t]here can be no question but that this fear...chills... his ability to actively cooperate with and assist counsel." Petition at 10. This claim is again a self-serving statement that is not backed by any other evidence. Sublett says that he told his counsel he did not want to wear the shock device, but does not claim that he communicated his fear of the device to the court, the jail staff, or anyone else. Declaration of Sublett.

Sublett attempts to justify his alleged crippling fear of the shock devices by portraying its awful effects. He does not offer any evidence that the device he says he was wearing was the same

device as discussed in the cases to which he cites for evidence of its awfulness.

Sublett cites to a case which cites to United States v. Durham, 219 F.Supp .2d 1234 (N.D. Fla. 2002), for his claim that 11 of 45 activations of a shock device, or 24.4%, were accidental. Petition at 10. Sublett fails to include the previous sentence from Durham which states “[t]he stun belt⁴ has been used approximately 63,000 times” with only 11 accidental activations. Id. at 1239. Sublett’s claim of crippling fear is based on a 0.01746% chance of accidental activations. Further Durham, 219 F. Supp. 2d at 1239, states that 7 of the 11 activations occurred before a plastic guard was installed over the activation button to greatly reduce risk of accidental activations. Id. Durham goes on to state that the shock device does not have short or long term effects. Id. at 1238. Moreover Sublett’s claims cites to authority that alleges the shock device can cause immediate self-defecation, a theory which Durham also states to have no evidentiary backing. Id. at 1239.

Contrary to Sublett’s portrayal, the device has been tested by

⁴ The shock device discussed in this case is a Remote Electronic Control Technology device. Durham, 219 F. Supp 2d at 1238. Sublett refers to the device he claims to have been wearing as a Band It. Petition at 6. There is no basis upon which to compare the two,

volunteers, and is effective at stopping people from running. Id. at 1339. There is no reason to believe that any device worn by Sublett would inhibit him from leaning over to talk to his attorney or assist him in any other manner. It cannot be seriously asserted that whoever controls the activation mechanism for a shock device would deploy the shock when a defendant speaks to his attorney or makes any normal movements in the courtroom.

Sublett did not raise this issue on direct appeal, including in his Statement of Additional Grounds. Sublett, 156 Wn. App. 160. It is only now, more than five years after his trial, that Sublett alleges this constitutional error. He has not carried his burden of proving either error or substantial prejudice.

2. The jury could not have considered Sublett's demeanor in reaching a verdict.

Sublett maintains that his paralyzing fright caused by the shock device caused him to adopt a demeanor that suggested to the jurors he was indifferent and unconcerned. Petition at 7. There is no evidence as to what his demeanor was, beyond his declaration. Even if he did display a flat affect, the jury could not have considered that in reaching a verdict. The defendant's demeanor, other than during the

time he testifies, is not evidence and the jury cannot consider it. State v. Barry, 179 Wn. App. 175, 179-80, 317 P.3d 528 (2014). Sublett did not testify at trial. Sublett, 176 Wn.2d at 69. The jury was instructed, as it was in Barry, that it could consider only testimony of witnesses and admitted exhibits. Appendix F at 2; Barry, 179 Wn. App. at 179-80. Even if it were true that Sublett appeared unconcerned, it would not have affected the verdict and he cannot show prejudice.

3. There is nothing available to show that Sublett's counsel was ineffective for failing to object to the use of a shock device.

The analysis for determining ineffective assistance of counsel is set forth above and will not be repeated here. Based upon the evidence before this court, there is no basis upon which to find ineffective assistance of counsel. Sublett does not offer a declaration from his defense counsel, and there is only his word that he told his attorney. Counsel may not, in fact, have known of the device. Counsel would obviously know many things about Sublett and his case that are not in any record available to the State. Based on the evidence before this court, there is simply no basis to find ineffective assistance of counsel.

D. Sublett offers no evidence that he was denied the right to testify at trial or that his counsel was ineffective.

Sublett did not testify at trial. Sublett, 176 Wn.2d at 69. He asserts in his petition that during closing arguments he told his attorney he wanted to testify and urged him to move to reopen the case so he could do so.⁵ Petition at 13. Sublett does not even offer a sworn declaration that this assertion is true. At sentencing, Sublett told the court that he had made the request after his own counsel had finished closing argument, but counsel told him it was too late. Appendix G, transcript of Sublett's allocution, at 1152.

A defendant's right to testify on his own behalf is fundamental, and cannot be abrogated by defense counsel or the court. State v. Thomas, 128 Wash.2d 553, 558, 910 P.2d 475 (1996). Only the defendant has the authority to decide whether to testify, or to waive that right. Id. A valid waiver of the right to testify must be knowing, voluntary, and intelligent, and that waiver does not need to be made on record. Id. at 558-59. Merely accepting tactical advice from an attorney to not testify does not constitute denial of right to testify.

⁵ His fear of the shock device did not prevent him from speaking to his attorney at all times.

State v. Hardy, 37 Wash.App. 463, 466-67, 681 P.2d 852 (1984). The defendant's right to testify is only violated when he is either coerced into not testifying, or when his attorney flagrantly disregards the defendant's requests to testify. State v. Robinson, 138 Wash. 2d 753, 763, 982 P.2d 590.

A defendant alleging he was denied the right to testify by his attorney would be entitled to an evidentiary hearing if he can produce more than a bald assertion that his right was violated. Underwood v. Clark, 939 F.2d 473, 476 (1991). (rejecting a claim where a defendant failed to produce more than "bare, unsubstantiated, thoroughly self-serving ... statement that his lawyer (in violation of professional standards) forbade him to take the stand"). In Underwood the appellant provided only his own affidavit that placed the blame on his attorney for not allowing him to testify. The court held that this was insufficient to require a new hearing or any other action because it was "too facile a tactic to succeed." Id. Further in Thomas, the court held that the defendant "must present substantial, factual evidence in order to merit an evidentiary hearing or other action." Thomas, 128 Wash.2d at 561.

As authority for his claim, Sublett cites the Fifth Circuit case United States v. Walker, 772 F.2d 1172 (5th.Cir.1985). Sublett notes that in Walker the court considers four factors when determining the timeliness of motion to reopen the evidence so that the defendant can testify on his own behalf. Without even getting to those four factors though, Walker is distinguishable from Sublett's case. In Walker the defendant made it clear to the court that he wanted to testify, going so far as on the record stating "I would love to testify." Id. at 1175. The defendant did not end up testifying though because as the defendant's defense explained: "His position, as I understand it, is he doesn't feel like he is emotionally prepared." Id. at 1176. After closing evidence the defendant then filed a motion to reopen evidence so that the defendant could testify. Id. In Walker, the defendant not only stated on the record that he wanted to testify, his counsel moved the court to reopen the evidence "solely for the purpose" of allowing the defendant to testify. Id. The case Sublett cites for authority involved a defendant that made it clear that he wanted to testify, and the record states instances in which he tried to testify. Sublett points to no factual evidence in support of his allegation.

In Walker, while the parties had rested, closing arguments had not begun. Walker, 772 F.2d at 1176. Here, Sublett claims he wanted to testify after the prosecutor and his own attorney had completed their closing arguments. The State has been unable to find any authority that a defendant has the right to seek to reopen the evidentiary portion of a trial after arguments have been made. Common sense tells us that his testimony would have been tailored to the arguments and most likely would have been nothing more than a pro se closing argument. Sublett has not shown that his right to testify was violated.

Even assuming Sublett did make such a request of his attorney, it is hard to imagine that any attorney would believe such a motion would succeed. It is not ineffective assistance of counsel to refuse to make a frivolous motion.

E. Sublett offers no evidence beyond his self-serving declaration that his attorney provided ineffective assistance at the plea bargaining stage.

Sublett alleges that he rejected a plea offer prior to trial because of erroneous advice given to him by his counsel. The plea offer allegedly would not have treated his California robbery

convictions as “strikes” under the POAA. Sublett’s Declaration, attached to his Petition. Under the POAA a persistent offender who receives a third “strike” shall be sentenced to a term of total confinement for life without the possibility of release. RCW 9.94A.570. The conviction for murder was Sublett’s third strike, subjecting him to life in prison under the POAA. Appendix A.

During plea bargaining, counsel must “actually and substantially [assist] his client in deciding whether to plead guilty.” State v. Osborne, 102 Wn.2d 87, 99, 684 P.2d 683 (1984) (quoting State v. Cameron, 30 Wn. App. 229, 232, 633 P.2d 901 (1981)). Ineffective assistance of counsel claims which cite erroneous advice by counsel to plead guilty implicates the principle that the decision to plead guilty or to go to trial must be made voluntarily and intelligently. North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L. Ed. 2d 162 (1970).

When a defendant claims ineffective assistance of counsel during plea bargaining, the courts use a formulated merger of the familiar Strickland test for ineffective assistance of counsel, and the requirements for a valid guilty plea. Hill v. Lockhart, 474 U.S. 52, 106

S.Ct. 366, 88 L.Ed. 2d. 203 (1985). As stated above, the Strickland test has a performance prong and a prejudice prong. In regards to the performance prong, the court said that when “a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice ‘was within the range or competence demanded of attorneys in criminal cases.’” Hill, 474 U.S. at 52. The court then addressed the prejudice prong stating:

[Prejudice] “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the “prejudice” requirement, the defendant must show that there is a reasonable probability that, but for counsel’s errors” [the result would have been different].

Id. at 59.

When counsel’s performance is in question, there is great judicial deference to counsel’s performance and the analysis begins with strong presumptions that counsel was effective. Strickland, 466 U.S. 689; State v. McFarland, 127 Wn.2d 332, 335, 899 P.2d 1251 (1995). Further, “[t]he reasonableness of counsel’s performance is to be evaluated from counsel’s perspective at the time of the alleged error and in light of all the circumstances.” Kimmelman v. Morrison,

477 U.S. 365, 384, 106 S. Ct. 2574, 91 L. Ed. 305 (1986).

Sublett alleges that receiving a third “strike” for a conviction for murder, and the consequences of life in prison without the possibility of parole, were not explained to him. Sublett claims the reason this happened was either his lawyer did not understand the law or just failed to explain the law to him. Sublett attempts to explain how or why this could have happened by trying to illustrate the law as being complex. Essentially Sublett’s argument is that “three strikes, you’re out” is too complex and confusing, that his lawyer couldn’t understand it, or that it was too confusing and complex to convey to Sublett himself. Sublett was well aware of his own criminal history that included robbery convictions. Sublett’s lawyer only had to convey to Sublett himself that these counted as two strikes, a conviction for murder would be a third, and the consequence is life in prison without the possibility of parole.

The principle of comparability is also something any criminal defense lawyer is likely to know, contrary to Sublett’s claim that his lawyer did not understand the law. Understanding that Sublett’s robbery convictions in California could be counted as strike offenses

in Washington, is also not a hard concept to convey or understand.

Given the strong presumption that counsel was effective, Sublett's allegations without factual backing cannot overcome that presumption. Hindsight does not factor into whether counsel strategy was correct. Kimmelman, 477 U.S. 384.

It also seems unlikely that Sublett would have accepted an offer at all. At sentencing, he said, "I want to tell Jerry's family and this court that, although I am extremely ashamed of my behavior for stealing from Jerry, from the bottom of my heart and soul I did not, I repeat did not, have anything to do with Jerry's murder. I know this is not what you want to hear, but I can without hesitation look each and every one in this courtroom in the eye and declare my innocence." Appendix G at 1150-51.

Sublett does not show that his counsel's performance fell below the range of competence demanded of attorneys in criminal trials. Hill, 474 U.S. at 52. He has not even provided a bare minimum of evidentiary support to entitle him to a reference hearing. Rice, 118 Wn.2d at 886. Therefore his claims of receiving ineffective assistance of counsel during plea bargaining should be denied and dismissed.

F. Sublett's claim of "actual innocence" of the persistent offender finding is not applicable to his own case.

In Sublett's final issue he again alleges his lawyer was at fault; each time he was convicted of second degree robbery in California. Sublett claims his lawyer gave him deficient advice, once for his 1994 conviction and then he received bad advice again for his 1997 conviction. Each time he was told to plead guilty, and without such advice, Sublett claims he would likely have been convicted of less serious crimes in California – crimes that Sublett argues would not be comparable to strikes. Therefore Sublett argues the court should invoke the actual innocence doctrine. Petition at 27-28.

Sublett claims that during the robberies for which he was convicted in California, he did not use force or fear to take personal property from another. Rather he tricked a teller into opening a cash drawer and then grabbed money. Declaration attached to the Petition. The record does not support that assertion. Before Sublett's sentencing hearing, the prosecutor filed a sentencing memorandum, attaching as appendices the evidence of the California convictions. Appendix H. Included in that documentation is the transcript of the

sentencing hearing for the 1994 robbery that appears on Sublett's criminal history. At that hearing, Sublett's counsel informed the court that in at least one instance, Sublett had pushed aside the victim and taken the money. Appendix H at 13. "But while I'm sure it frightened and upset her, she was physically unharmed by the incident." *Id.* The judge did not find the crimes to be so innocuous. "True, they are not a robbery with a gun, but when someone goes into a commercial establishment like a Denny's Restaurant or a Sparkle Cleaners and basically pushes the individuals aside and goes through the drawer, that is a robbery." *Id.* at 15. It may be true that, as Sublett claims in his declaration, he did not threaten to harm the victim, but the facts of his offense still constitute a robbery in Washington. RCW 9A.56.190. Because there was no deadly weapon and no bodily injury involved, the crime in Washington would be second degree robbery, which is a most serious offense. RCW 9A.56.210; RCW 9.94A.030(31)(o). There is no similar transcript available for the 1995 robberies, but there is no reason to believe Sublett's claim is any more reliable regarding those offenses. They were charged as using "means of force and fear" to take personal property from the person or

immediate presence of the victims. Appendix H at 26-27. Therefore, the first response to Sublett's argument is that he is incorrect as to the facts, and his actual innocence argument is inapplicable.

The actual innocence doctrine is a "narrow exception" to circumvent a procedural bar where a "fundamental miscarriage of justice would otherwise result if the collateral attack is dismissed." State v. Carter, 172 Wn.2d 917, 923, 263 P.3d 1241 (2011). Apart from his unsupported declaration, Sublett produces no evidence that his conviction constitutes a fundamental miscarriage of justice.

In Carter, upon which Sublett relies, Carter was making a "gateway" claim, seeking to avoid the one-year time bar on collateral attacks. Id. at 924. Sublett does not have such a procedural barrier and his claim is a "freestanding" claim of constitutional error. Id. However, even for gateway claims to the challenge of a persistent offender sentence, the petitioner must show, "by clear and convincing evidence," that he would have been found innocent of the predicate offenses which made this conviction his third strike. Carter, 172 Wn.2d at 931. Sublett offers nothing but his unsubstantiated declaration.

IV. CONCLUSION

Sublett has failed to carry the burden of proof required of any petitioner collaterally attacking a conviction. For all of the reasons argued above, the State respectfully asks this court to deny and dismiss his personal restraint petition.

RESPECTFULLY SUBMITTED this 1st day of July, 2014.

JON TUNHEIM
Prosecuting Attorney



CAROL LA VERNE, WSBA#19229
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I certify that I served a copy of Response to Personal Restrain Petition on the date below as follows:

Electronically filed at Division II

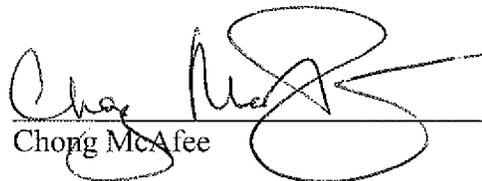
TO: DAVID C. PONZOHA, CLERK
COURTS OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA, WA 98402-4454

--AND--

JEFFREY ERWIN ELLIS, ATTORNEY FOR APPELLANT
JEFFREYERWINELLIS@GMAIL.COM

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

Dated this 1st day of July, 2014, at Olympia, Washington.


Chong McAfee

APPENDIX A

10

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

'08 JUL 23 12:03

BY:

MB

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

vs.

MICHAEL LYNN SUBLETT,
Defendant.

SID: WA16657131
If no SID, use DOB: 07/09/1959
PCN: 766910777 BOOKING NO. C143116

No. 07-1-00312-0

FELONY JUDGMENT AND SENTENCE (FJS)
 Prison RCW 9.94A.712 Prison Confinement
 Jail One Year or Less RCW 9.94A.712 Prison Confinement
 Persistent Offender
 Special Sexual Offender Sentencing Alternative
 Special Drug Offender Sentencing Alternative
 Clerk's Action Required, para 4.5 (SDOSA), 4.15.2, 5.3, 5.6 and 5.8

I. HEARING

1.1 A sentencing hearing was held on July 23, 2008 and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on June 18, 2008 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I	MURDER IN THE FIRST DEGREE (PREMEDITATED) and/or In the Alternative: MURDER IN THE FIRST DEGREE (FELONY MURDER)	9A.32.030(1)(a) and 9A.32.030(1)(c)	January 29, 2007

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

- Additional current offenses are attached in Appendix 2.1.
- The court finds that the defendant is subject to sentencing under RCW 9.94A.712.
- A special verdict/finding for use of firearm was returned on Count(s) _____, RCW 9.94A.602, 9.94A.533.
- A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) _____, RCW 9.94A.602, 9.94A.533.
- A special verdict/finding of sexual motivation was returned on Count(s) _____, RCW 9.94A.835.
- A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the

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perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____, RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- 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 court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.
- The crime charged in Count(s) _____ involve(s) domestic violence.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF CRIME	SENTENCING COURT (County & State)	DATE OF SENTENCE	A or J Adult, Juv.	TYPE OF CRIME
1 Robbery 2nd	8/23/95	L.A., Calif.	5/6/97	Adult	V
2 Robbery 2nd	8/23/95	L.A., Calif.	5/6/97	Adult	V
3 Robbery 2nd	1/14/94	L.A., Calif.	2/15/94	Adult	V
4 Burglary 2nd	1/13/94	L.A., Calif.	2/15/94	Adult	NV
5 Burglary 2nd	1/16/94	L.A., Calif.	2/15/94	Adult	NV

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS *	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	9+	LIFE	WITHOUT POSSIBILITY OF Release or	community custody		LIFE

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present. (SM) Sexual Motivation, RCW 9.94A.533(8).

Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

within below the standard range for Count(s) _____.

above the standard range for Count(s) _____.

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

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):

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

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 _____ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

\$ _____ Restitution to: Reserved

RTN/RJN

\$ _____ Restitution to: _____

\$ _____ Restitution to: _____

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

PCV

\$ 500. Victim assessment RCW 7.68.035

\$ _____ Domestic Violence assessment RCW 10.99.080

CRC

\$ 200 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ _____ FRC
Witness costs \$ _____ WFR
Sheriff service fees \$ Reserved SFR/SFS/SFW/WRF
Jury demand fee \$ _____ JFR
Extradition costs \$ _____ EXT
Other \$ _____

PUB \$ 5,000 Fees for court appointed attorney RCW 9.94A.760
WFR \$ 5,000 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/PCD \$ _____ Drug enforcement fund of _____ RCW 9.94A.760
NTF/SAD/SDI
CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690
\$ _____ Felony DNA collection fee [] not imposed due to hardship RCW 43.43.7541
RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430
\$ _____ Other costs for: _____
\$ _____ 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 _____

[] RESTITUTION. Schedule attached.

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

	<u>NAME of other defendant</u>	<u>CAUSE NUMBER</u>	<u>(Victim's name)</u>	<u>(Amount-\$)</u>
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 \$ _____ per month commencing _____, RCW 9.94A.760.

The defendant shall report as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).

[] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: _____ (JLR) 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.

4.2 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.

4.3 The defendant shall not have contact with Jeremy Tothen Family (name, DOB) 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 or Antiharassment No-Contact Order is filed with this Judgment and Sentence.

4.4 OTHER: _____

4.5 **CONFINEMENT OVER ONE YEAR: PERSISTENT OFFENDER.** The defendant was found to be a Persistent Offender.

The court finds Count 1 is a most serious offense and that 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.

The court finds Count _____ is a crime listed in RCW 9.94A.030(33)(b)(i) (e.g., rape in the first degree, rape of a child in the first degree (when the offender was 16 years of age or older when the offender committed the offense), child molestation in the first degree, rape in the second degree, rape of a child in the second degree (when the offender was 18 years of age or older when the offender committed the offense) or indecent liberties by forcible compulsion; or any of the following offenses with a finding of sexual motivation: murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or an attempt to commit any crime listed in RCW 9.94A.030(33)(b)(i)), and that the defendant has been convicted on at least one separate occasion, whether in this state or elsewhere, of a crime listed in RCW 9.94A.030(33)(b)(i) or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in RCW 9.94A.030(33)(b)(i).

Those prior convictions are included in the offender score as listed in Section 2.2 of this Judgment and Sentence. RCW 9.94A.030(33), RCW 9.94A.525.

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

<input checked="" type="checkbox"/> Life without the possibility of early release	on Count	<u>1</u>
_____	months on Count	_____
_____	months on Count	_____
_____	months on Count	_____

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: _____

4.6 OTHER: _____

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion 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, must be filed 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.** For an offense committed prior to July 1, 2000, the defendant 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. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 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 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 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): _____.
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (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.

Cross off if not applicable:

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside.

If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

2. Offenders Who Leave the State and Return: If you leave the state following your sentencing or

release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

3. **Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving.

4. **Additional Requirements Upon Moving to Another State:** If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

5. **Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006) If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

6. **Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours excluding weekends and holidays after losing your residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State

7. **Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

8. **Application for a Name Change:** If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days

before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

- 5.8 The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: Bail previously posted, if any, is hereby exonerated and shall be returned to the posting party

DONE in Open Court and in the presence of the defendant this date: 7/23/08

Christine Pomeroy
Judge/Print name: Christine Pomeroy

David H. Bruneau
Deputy Prosecuting Attorney
WSBA No. 6830
Print name: DAVID H. BRUNEAU

Charles W. Lane
Attorney for Defendant
WSBA No. 25022
Print name: CHARLES W. LANE

Michael Lynn Sublett
Defendant
Print name: MICHAEL LYNN SUBLETT

VOTING RIGHTS STATEMENT: I acknowledge that my right to vote has been lost due to 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 92A.84.660.

Defendant's signature: *Michael L. Sublett*

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: _____

I, _____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of the Court of said county and state, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA16657131
(If no SID take fingerprint card for State Patrol)

Date of Birth 07/09/1959

FBI No. 415966KA7

Local ID No. _____

PCN No. 766910777

Other _____

Alias name, DOB: _____

Race:

Asian/Pacific
Islander

Black/African-American

Caucasian

Native American

Other: _____

Ethnicity:

Hispanic

Non-Hispanic

Sex:

Male

Female

FINGERPRINTS: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Denise May Dated: 7-23-08

DEFENDANT'S SIGNATURE:

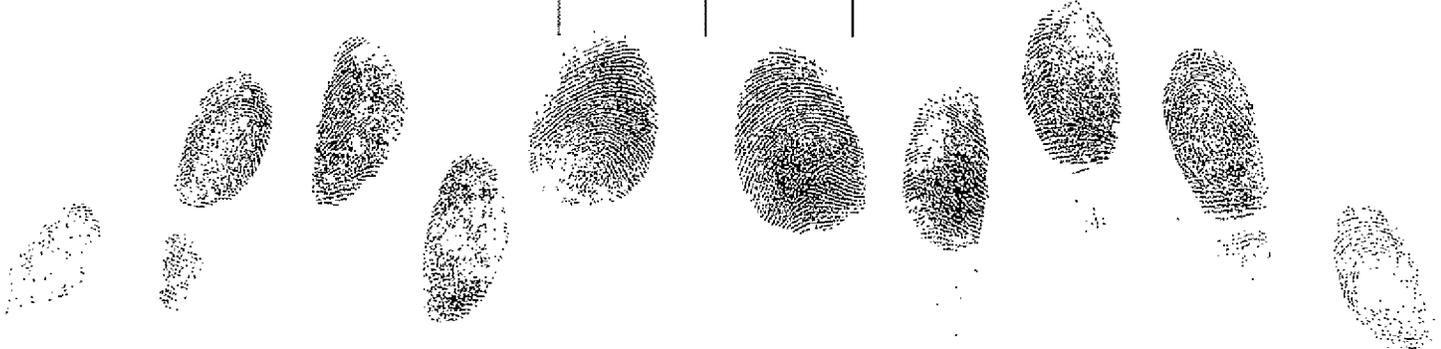
Michael L. Sullett

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON

NO. 07-1-00312-0

Plaintiff,

vs.

WARRANT OF COMMITMENT ATTACHMENT TO
JUDGMENT AND SENTENCE (PRISON)

MICHAEL LYNN SUBLETT,

Defendant.

DOB: 07/09/1959
SID: WA16657131 FBI: 415966KA7
PCN: 766910777
RACE: W
SEX: M
BOOKING NO: C143116

THE STATE OF WASHINGTON TO:

The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

The defendant MICHAEL LYNN SUBLETT has been convicted in the Superior Court of the State of Washington for the crime(s) of:

***MURDER IN THE FIRST DEGREE (PREMEDITATED) or IN THE ALTERNATIVE:
MURDER IN THE FIRST DEGREE (FELONY MURDER)***

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By direction of the Honorable:

Christine A. Pomeroy

BETTY J. GOULD
CLERK

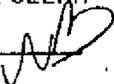
By: 
DEPUTY CLERK

APPENDIX B

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

08 MAY -7 AM 10:41

BETTY J. GOULD, CLERK

BY _____
DEPUTY 

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

STATE OF WASHINGTON, Plaintiff,

vs.

MICHAEL LYNN SUBLETT
DESC: W/M/5'11"/250/BRN/BRN
DOB: 07/09/1959
SID: WA16657131; FBI: 415966KA7
BOOKING NO: C143116
PCN: 766910777

Defendant.

NO. 07-1-00312-0

SECOND AMENDED INFORMATION

DAVID H. BRUNEAU
Senior Deputy Prosecuting Attorney

Jointly Charged with Co-Defendant(s):
CHRISTOPHER L. OLSEN, 07-1-1363-0

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crime(s):

COUNT I - MURDER IN THE FIRST DEGREE (Premeditated Murder), RCW 9A.32.030(1)(a) - CLASS A FELONY:

In that the defendant, MICHAEL LYNN SUBLETT, in the State of Washington, on or about January 29, 2007, with a premeditated intent to cause the death of another person, to wit: Jerry Totten, caused the death of said person.

OR IN THE ALTERNATIVE:

COUNT I - MURDER IN THE FIRST DEGREE (Felony Murder), RCW 9A.32.030(1)(c) - CLASS A FELONY:

In that the defendant, MICHAEL LYNN SUBLETT, in the State of Washington, on or about January 29, 2007, did commit or attempt to commit the crime of burglary in the first degree or robbery in the first or second degree, and in the course of or in furtherance of said crime or in immediate flight therefrom the defendant, or another participant, caused the death of a person other than one of the participants, to wit: Jerry Totten.

DATED this 2 day of May, 2008.


DAVID H. BRUNEAU, WSBA #6830
Senior Deputy Prosecuting Attorney

SECOND AMENDED INFORMATION - 1

Edward G. Holm
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
360/786-5540 Fax 360/754-3358

0-000000051

APPENDIX C

FILED
SUPERIOR COURT
THURSTON COUNTY, WA
2013 FEB 14 AM 10:59
BETTY J. GOULD, CLERK

122

FILED
SUPERIOR COURT
THURSTON
2013 FEB 12 P 3:24
BY RONALD H. CARPENTER
CLERK

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
v.
MICHAEL LYNN SUBLETT,
Petitioner.

STATE OF WASHINGTON,
Respondent,
v.
CHRISTOPHER LEE OLSEN,
Petitioner.

MANDATE
NO. 84856-4
C/A No. 38034-0-II & 38104-4-II
Thurston County Superior Court
No. 07-1-00312-0
&
Thurston County Superior Court
No. 07-1-01363-0

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Thurston County.

The opinion of the Supreme Court of the State of Washington was filed on November 21, 2012. The opinion became final on February 8, 2013, upon entry of the order denying motions for reconsideration. This cause is mandated to the superior court from which the appeal was

152/
edd/4

taken for further proceedings in accordance with the attached true copy of the opinion and the order denying motion for reconsideration.

Pursuant to Rule of Appellate Procedure 14.6 (c) and "CLERK'S RULING ON COSTS", entered on December 27, 2012, costs are taxed as follows: Costs in the amount of \$8,384.90, are taxed in favor of Respondent, Washington State Office of Public Defense, and against Petitioners, Michael Lynn Sublett and Christopher Lee Olsen, who shall be jointly and severally liable for payment of the same.



I have affixed the seal of the Supreme Court of the State of Washington and filed this Mandate this 12th day of February, 2013.

A handwritten signature in black ink, appearing to read "Ronald R. Carpenter".

Ronald R. Carpenter
Clerk of the Supreme Court
State of Washington

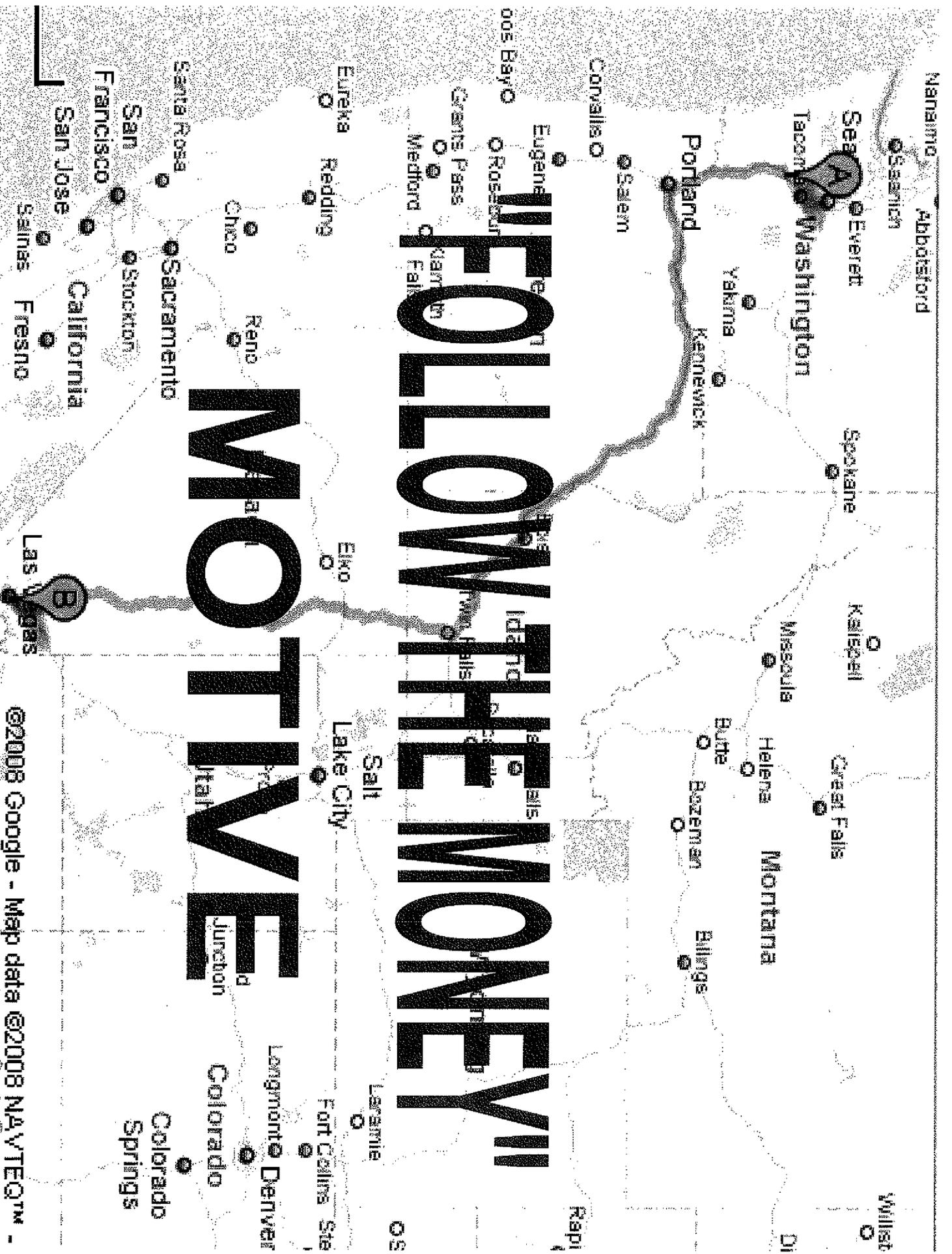
cc: Hon. Christine A. Pomeroy, Judge
Hon. Betty Gould, Clerk
Thurston County Superior Court
Jodi R. Backlund
Manek R. Mistry
Jeffrey Erwin Ellis
Carol L. La Verne
Reporter of Decisions

APPENDIX D

**STATE OF WASHINGTON
vs.
MICHAEL SUBLETT AND
CHRISTOPHER OLSEN**



**MURDER IN THE FIRST DEGREE
PREMEDITATED MURDER
OR
FELONY MURDER**



FOLLOW THE MONEY

MOTIVE



320 1ST STREET
SITE PLAN
SCALE: 1" = 40'



EXHIBIT 14

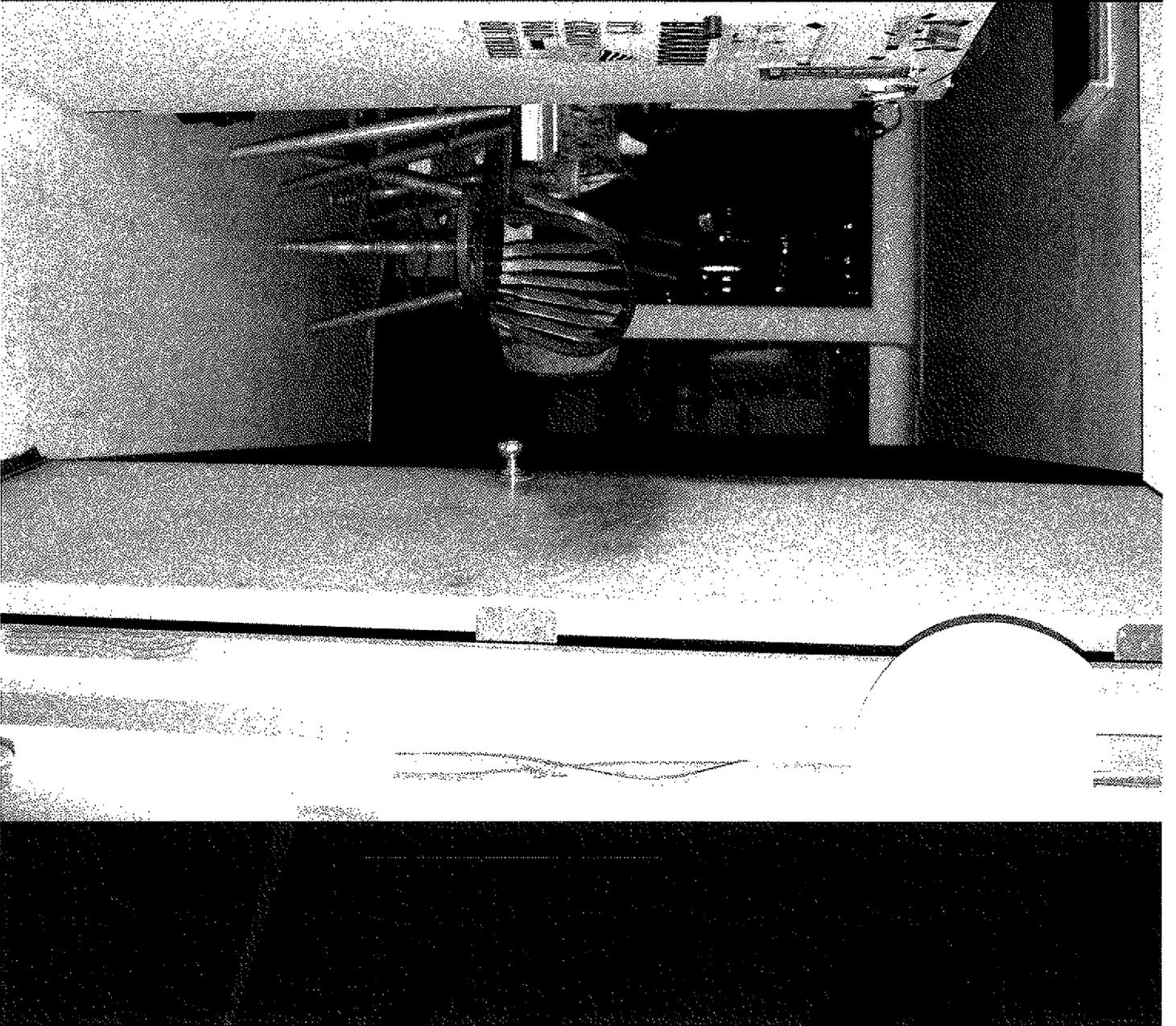


EXHIBIT 27







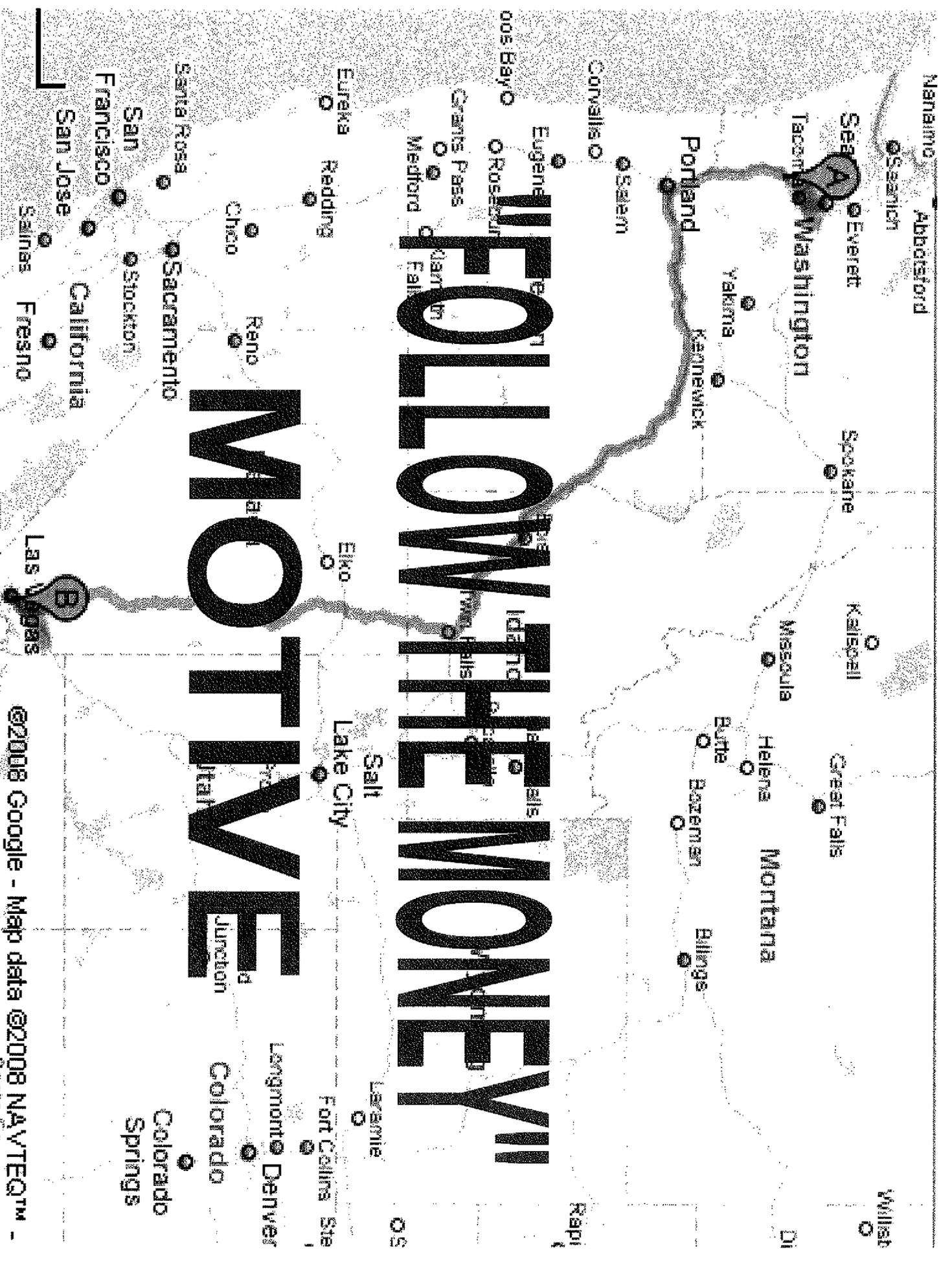
**STATE OF WASHINGTON
VS.
MICHAEL SUBLETT AND
CHRISTOPHER OLSEN**



**MURDER IN THE FIRST DEGREE
PREMEDITATED MURDER
OR
FELONY MURDER**

FOLLOW THE MONEY!

MOTIVE



©2008 Google - Map data ©2008 NAVTEQ™



320 1ST STREET
SITE PLAN
SCALE: 1" = 40'



EXHIBIT 14

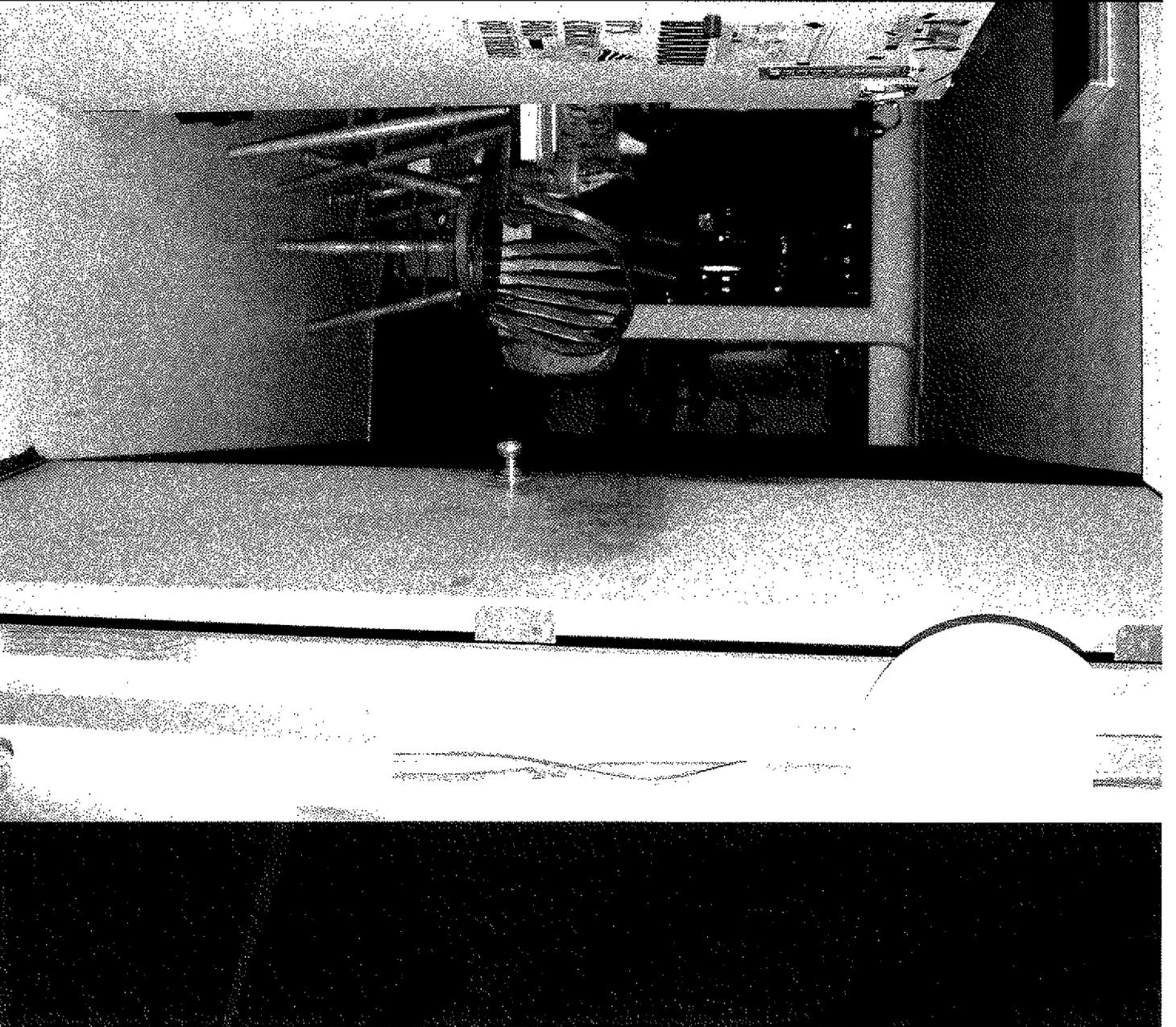
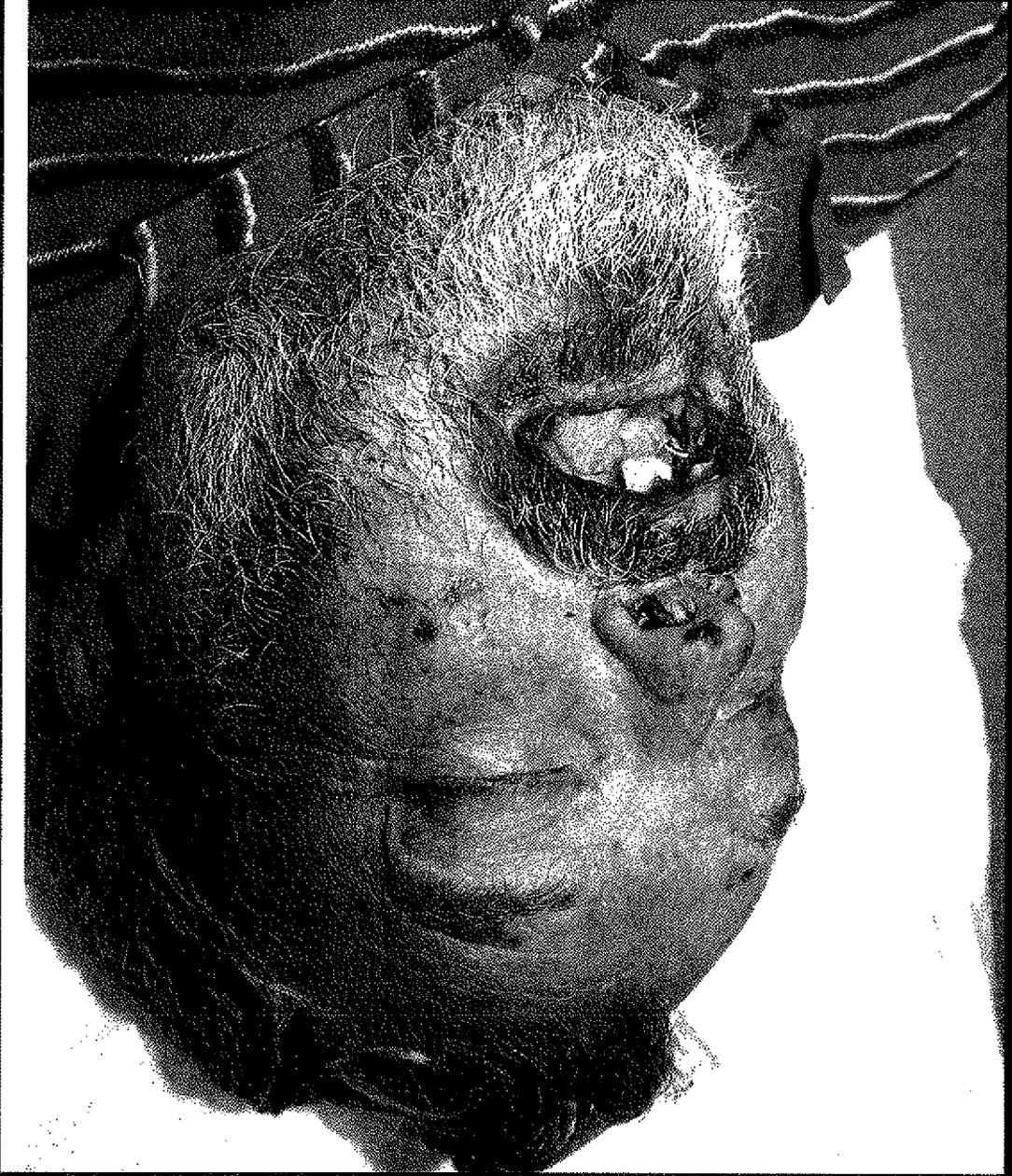
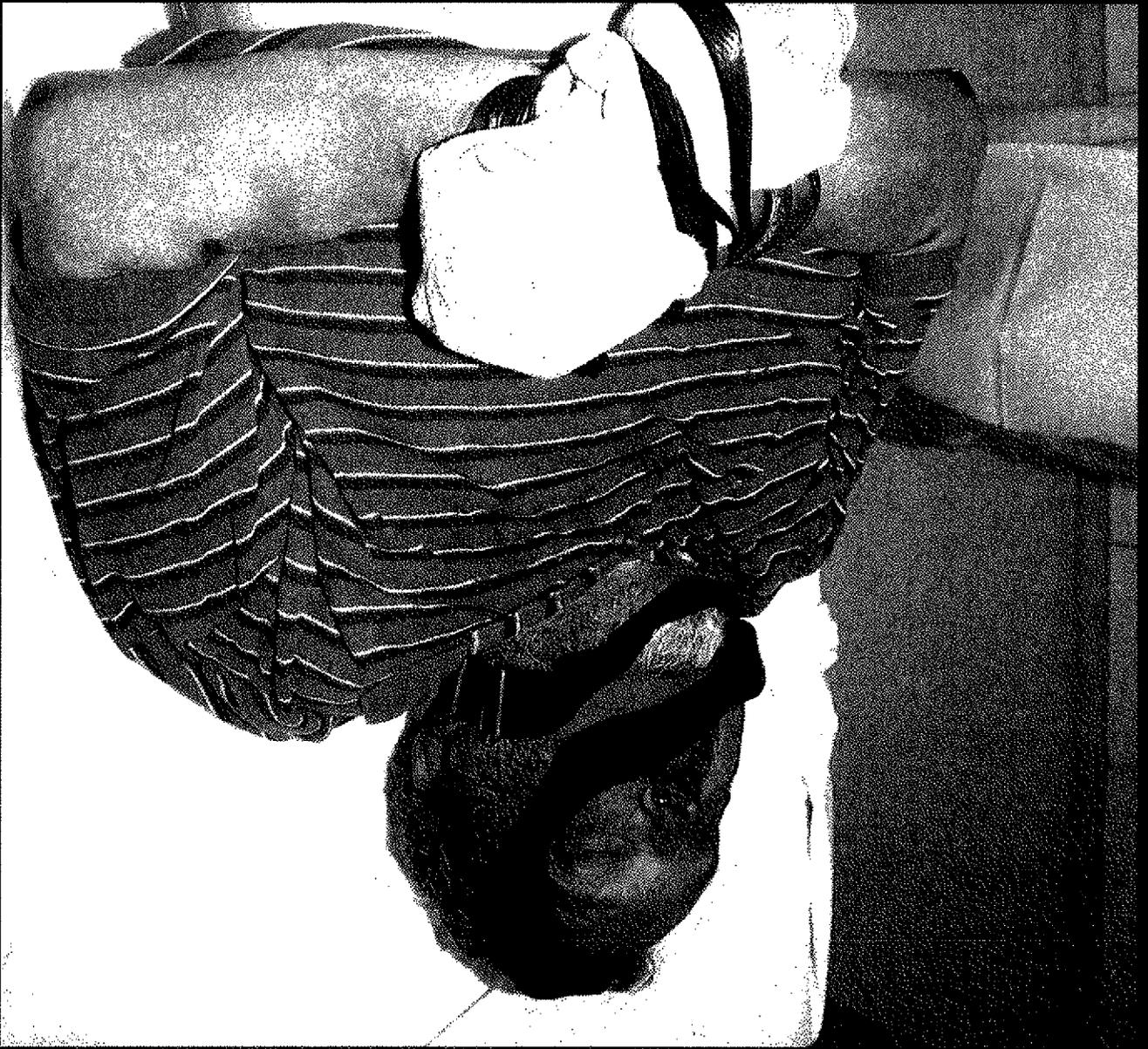


EXHIBIT 27







**STATE OF WASHINGTON
VS.
MICHAEL SUBLETT AND
CHRISTOPHER OLSEN**



**MURDER IN THE FIRST DEGREE
PREMEDITATED MURDER
OR
FELONY MURDER**

“MURDER IN THE FIRST DEGREE”

2 methods of committing same crime:

- Killing with premeditated intent
“Premeditated”
- Killing in course of Burglary in the First Degree or Robbery in the First or Second Degree = “Felony Murder”

BURGLARY IN THE FIRST DEGREE

Entering or remaining unlawfully in a building with intent to commit a crime against a person or property therein, and if, in entering or while in the building or in immediate flight therefrom, that person or an accomplice in the crime is armed with a deadly weapon or assaults any person.

ROBBERY IN THE SECOND DEGREE

He or she unlawfully and with intent to commit theft thereof takes personal property from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial.

ROBBERY IN THE FIRST DEGREE

When in the commission of a robbery or in immediate flight therefrom... is armed with a deadly weapon displays what appears to be a firearm other deadly weapon inflicts bodily injury.

“ACCOMPLICE”

- A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable.
- A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.
- A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:
 - (1) solicits, commands, encourages, or requests another person to commit the crime; or
 - (2) aids or agrees to aid another person in planning or committing the crime.

- The word “aid” means all assistance whether given by words, acts, encouragement, support, or presence.
- A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime.
- However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.
- A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

Each defendant is charged with
Murder in the First Degree

ALTERNATIVELY

- That evidence proves the defendant committed Premeditated Murder OR “Felony Murder”.
- Only one (alternative) needs to be proved.

ALTERNATIVE A: Murder in the First Degree – (Premeditated)

- (1) That on or about January 29, 2007, the defendant and/or an accomplice caused the death of Jerry Totten;
- (2) That the defendant or an accomplice acted with intent to cause the death of Jerry Totten;
- (3) That the intent to cause the death was premeditated;
- (4) That Jerry Totten died as a result of the defendant's and/or an accomplice's acts; and
- (5) That the acts occurred in the State of Washington.

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

ALTERNATIVE B: Murder in the First Degree -- (Felony Murder)

- (1) That on or about January 29, 2007, Jerry Totten was killed;
- (2) That the defendant was committing or attempting to commit the crime of burglary in the first degree or robbery in the first or second degree;
- (3) That the defendant, or another participant, caused the death of Jerry Totten in the course of or in furtherance of such crime or in immediate flight from such crime;
- (4) That Jerry Totten was not a participant in the crime; and
- (5) That the acts occurred in the State of Washington.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

“DIRECT” -- OBSERVATION THROUGH SENSES

(SEE, HEAR, SMELL)

“CIRCUMSTANTIAL” -- “REASONABLE INFERENCES”

- DRAWN FROM “COMMON EXPERIENCES”

“LAW MAKES NO DISTINCTION” BETWEEN THEM

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

CREDIBILITY = BELIEVABILITY OF WITNESSES

- You are the sole judges of the credibility of each witness.
- You are also the sole judges of the value or weight to be given to the testimony of each witness.

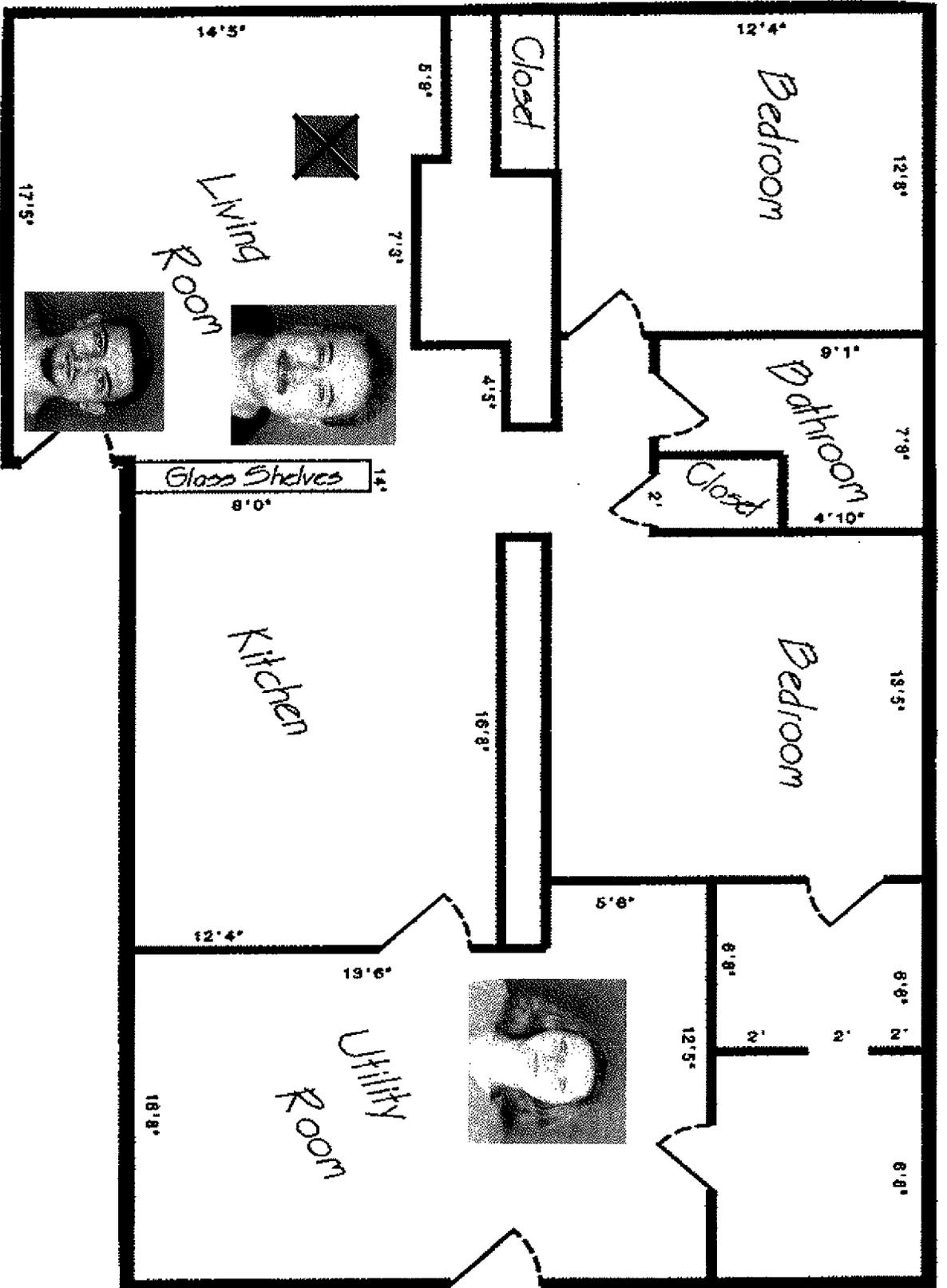
CONSIDER:

- The opportunity of witness to observe or know the things he or she testifies
- The ability of the witness to observe accurately
- The quality of a witness's memory
- The manner of the witness while testifying

CONSIDER:

- Any personal interest that the witness might have in the outcome
- Any bias or prejudice that the witness may have shown
- The reasonableness of the witness's statements in the context of all of the other evidence
- Any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony

The testimony of an accomplice, given on behalf of the plaintiff, should be subjected to careful examination in the light of other evidence in the case, and should be acted upon with great caution. You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied beyond a reasonable doubt of its truth.



February 2007

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
				Totten credit card Little Creek Casino	Little Creek Casino	ATM withdrawal - Turnwater Key Bank Guest House Suite (Turnwater)
4	5	6	7	8	9	10
Frazier contacts Elsie Pray-Hicks	Suburban borrowed	Puyallup ATM withdrawal	Western Union - \$1,000 Double Tree (Portland) ATM	ATM withdrawal- Portland, OR Key Bank Wild Horse Resort (Pendleton, OR)	ATM withdrawal- Pendleton, OR Key Bank	TW/PPD Welfare check Totten body discovered ATM withdrawal- Pendleton, OR
11	12	13	14	15	16	17
	ATM withdrawal Boise, Idaho	Sublett and Frazier arrested in Vegas	Sublett & Frazier property inventory (Det. Tabor)		Lt. Brenna searches for Olsen. Olsen says contact on 18th	
18	19	20	21	22	23	24
No contact				Olsen found. "Chris Dethawn" False I.D. Interviewed		
25	26	27	28			



EXHIBIT 36

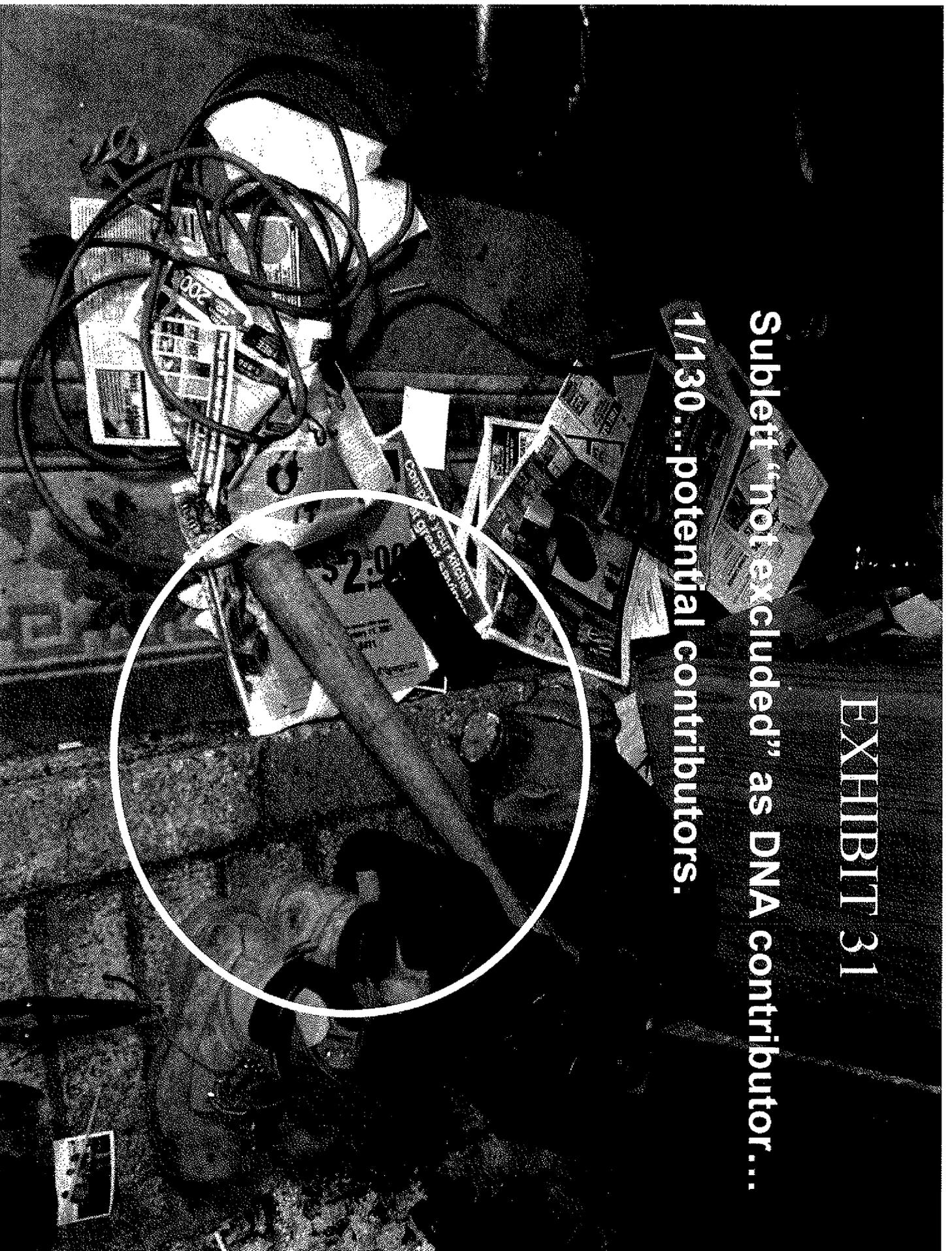
EXHIBIT 37



Christopher Oisen
DNA
"Nobody was
wearing gloves"

EXHIBIT 31

Sublett "not excluded" as DNA contributor...
1/130...potential contributors.



JAIL CALLS: (Christopher Olsen speaks)

“... we are hooked up...”

“... soon as I get out...”

“... how much do we need to make?...”

“... I mean, because I got a spot I can close up at...”

“... Exactly. That’s what I’m saying. That, that’s the plan, I mean...”

“... well how much money do we need to make?...”

“... well, then let’s get to the grind...”

“... Yeah. All we gotta do is get me outta here...”

“... Exactly. I mean, if you tell me to do it, it obviously needs to be done, Sis, so I’m gonna handle it...”

“... Baby girl, check this out. I’m like the terminator, okay? The only thing I need is a little bit of oil and water, I’ll be alright...”

Christopher Olsen interviews

- 3+ weeks after crime
- 5+ weeks after crime
- made AFTER his capture

Inconsistencies

“construction work”	none
Claimed fear	Never left when opportunity arises
Wanted to “call cops”	Avoided police
“nobody wearing gloves”	He <u>WAS</u>
“I wanted out”	He <u>STAYED</u>
“poor me”	“I’m like the Terminator...”

“Any time you mix drugs... and people with major attitudes, it always turns out... bad”

“My mouth... is the only thing that can save my ass...”

Michael Sublett to (Elsie Pray):

SUBLETT: "... I'm really thinkin' hard about comin' back and turnin' myself in,..."

ELSIE PRAY: "... You need to turn yourself in..."

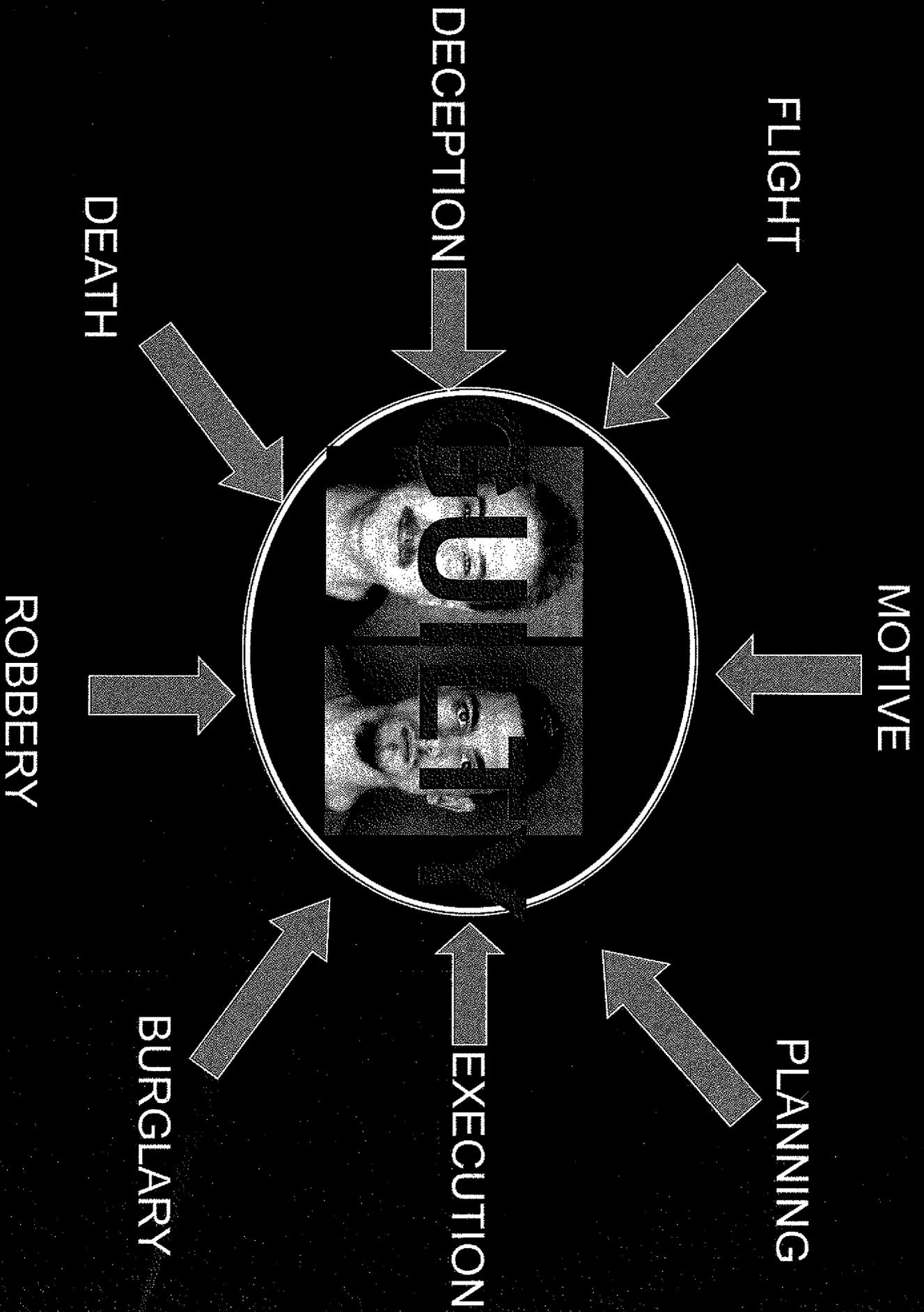
SUBLETT: "... Yeah, I know I do. I'm really messed up..."



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Office Wp 2cm

02/12/2007 12:29:36.50

- The defendant has entered a plea of not guilty.
- A defendant is presumed innocent.
- This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.
- A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence.
- If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.



APPENDIX E

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF THURSTON
3

4 STATE OF WASHINGTON,)
5 Plaintiff,)
6 vs.) NOS. 07-1-01363-0
7 CHRISTOPHER OLSEN and) 07-1-00312-0
8 MICHAEL L. SUBLETT,) COA NOS. 38104-4-II
9 Defendants.) 38034-0-II

COPY

10
11 VERBATIM REPORT OF PROCEEDINGS
12 Volume IX
13

14
15
16 BE IT REMEMBERED that on June 17, 2008, the
17 above-entitled and numbered cause came on for jury trial
18 before the HONORABLE CHRISTINE A. POMEROY, judge of
19 Thurston County Superior Court, Olympia, Washington.
20
21

22
23 Cheri L. Davidson
24 Official Court Reporter
25 Thurston County Superior Court
Olympia, Washington 98502
(360)786-5569
davidsc@co.thurston.wa.us

A P P E A R A N C E S

1
2 For the Plaintiff: DAVID BRUNEAU
3 SCOTT JACKSON
4 Deputy Prosecuting Attorneys
5 Thurston County Prosecutor's Office
2000 Lakeridge Drive SW
Olympia, Washington 98502

6 For the Defendant: RICHARD D. WOODROW
7 (Olsen) Attorney at Law
3732 Pacific Avenue SW
Olympia, Washington 98501

8 For the Defendant: CHARLES W. LANE
9 (Sublett) Attorney at Law
10 1800 Cooper Pt. Rd. SW, Bldg. 3
Olympia, Washington 98502

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I N D E X

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Colloquy	1076 - 1078

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MR. LANE: That's correct.

THE COURT: Mr. Woodrow?

MR. WOODROW: Yes, Your Honor.

THE COURT: So ordered.

(Exhibit No. 172 was admitted.)

THE COURT: Ladies and gentlemen of the jury, please give your attention to Mr. Bruneau.

MR. BRUNEAU: May it please the Court, counsel, ladies and gentlemen, good morning.

Now, ladies and gentlemen, about two weeks ago when my colleague, Mr. Jackson, made his opening remarks to you, he made reference to the travels of the defendant, Mr. Sublett, and his one-time paramour, April Frazier, in terms of following the money. Of course he was referring to the tracking that was done by bank security agents and the police who managed to track and then capture the defendant, Mr. Sublett, in Las Vegas. I mention this, ladies and gentlemen, because this following the money is a two-way street because this money provides evidence of motive, motive of what occurred at the residence of Jerry Totten on 320 I Street on January 29th, 2007.

It was at this location, ladies and gentlemen -- this location, the residence of Jerry Totten, was for this defendant, Mr. Sublett, and this defendant, Mr.

1 Olsen, the pot of gold if you will at the end of the
2 rainbow. This was the residence of Jerry Totten, a then
3 69-year-old disabled man who it became known to the
4 defendants was worth some substantial amount of money,
5 enough money for them to want to go in and help
6 themselves, and of course these defendants did. They
7 burst into his home, forced him into this recliner,
8 gagged him with paper shoved down his throat, bound his
9 wrists, throttled him with the straps, and he died by
10 manual strangulation, the method of killing, as you know
11 now, that takes two to three minutes of consistent
12 pressure, in this instance manual strangulation, that
13 is, the use of the hands for two to three minutes to
14 affect death. And so based upon this evidence, ladies
15 and gentlemen, we have these two defendants before you
16 who --

17 MR. WOODROW: Your Honor, I'm gonna object at
18 this time. The State is using unadmitted exhibits in
19 this case. I'd ask that that exhibit be taken down.

20 Thank you.

21 THE COURT: Thank you, counsel.

22 I will ask you to -- ladies and gentlemen of the
23 jury, we are going to take --

24 MR. BRUNEAU: Well, how about if I just move
25 along, Your Honor?

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THE COURT: Thank you.

MR. BRUNEAU: Ladies and gentlemen, you know that these defendants are both charged with murder in the first degree, and there are two methods of committing murder in the first degree. One is what we call killing with premeditation, and I will refer to that in argument as premeditated murder. The other method of committing the crime of murder in the first degree is killing in the course of a burglary in the first degree or a robbery in the first or second degree, and that form of murder, ladies and gentlemen, is what we sometimes refer to as felony murder.

Now, Judge Pomeroy in her instructions has necessarily defined for you what is involved in the crime of burglary in the first degree. It's sometimes referred to as a predicate, but what are we talking about here? How does the law define burglary? It is the entering or remaining unlawfully. That means the entry or the remaining was without permission. That means that somebody went in with a criminal purpose or stayed with a criminal purpose such as going into a home to commit assault, somebody going into a home to commit theft, somebody going into a home to commit robbery. With the intent to commit a crime against a person or property therein, and in entering or while in the

1 building or in immediate flight from the building that
2 person or an accomplice in the crime is armed with a
3 deadly weapon or - again the disjunctive - assaults any
4 person.

5 I expect, ladies and gentlemen, that as Judge
6 Pomeroy was reading these instructions to you and
7 reading this instruction to you when you were thinking
8 about the evidence in the case, it no doubt occurred to
9 you well, this certainly is what happened to Jerry
10 Totten. People came into his house. A bat was used.
11 He was assaulted. The intent was to commit theft or
12 robbery and a burglary occurred.

13 Judge Pomeroy also has provided you, ladies and
14 gentlemen, with a definition of robbery in the second
15 degree. A robbery in the second degree -- again the
16 reference is to unlawfully. That means without
17 permission and with the intent to commit theft takes
18 personal property from the person or in the presence.
19 You don't have to take someone's wallet from their
20 person in order to commit theft. You simply have to
21 take it from their person or in their presence against
22 the person's will by the use or threatened use of force,
23 violence, or fear of injury or to that person's
24 property. The force or fear must be used to obtain or
25 retain possession of the property or to prevent or

1 overcome resistance to the taking. The step above
2 robbery in the second degree or robbery is robbery in
3 the first degree which simply means, on top of
4 committing robbery, a person or an accomplice is armed
5 with a deadly weapon such as a bat or displays what
6 appears to be a firearm or other deadly weapon or
7 inflicts bodily injury.

8 Again, ladies and gentlemen, when you consider what
9 you know happened to Jerry Totten, the blunt force
10 injuries to his person inflicted before death, the
11 contusions and abrasions to his body, the wrapping of
12 tape around his wrists, the forced into the reclining
13 chair in order to affect a theft of his property, a
14 robbery occurred; a theft by means of force.

15 Ladies and gentlemen, before you came to court,
16 before you considered this case, you probably had an
17 idea or thoughts if you will about what an accomplice
18 is, and perhaps it comported with what the law says an
19 accomplice is. First in the first paragraph - and Judge
20 Pomeroy gives you the instruction - is you can be guilty
21 of the crime if it's committed by someone for whom or
22 with whom you are legally accountable. That means
23 you're legally accountable for the conduct of another
24 person when he or she is an accomplice.

25 Think of this, ladies and gentlemen, as being a

1 partner in crime. The classic example of course is a
2 trio of people that get together to rob a bank; the
3 getaway car driver, a lookout outside the bank, and
4 gunman who goes in with him. Three people with
5 different jobs. Three people all guilty of the same
6 thing.

7 A person is an accomplice in the commission of a
8 crime if, with knowledge that it will promote or
9 facilitate - that means keep it going, make it happen -
10 he or she either solicits, commands, encourages, or
11 requests somebody else to do the crime or aids or agrees
12 to aid. You help somebody commit a crime. And that
13 word aid means all assistance, whether given by words,
14 acts, encouragement, support, or presence. Someone who
15 is present at the scene and ready to assist by his or
16 her presence is aiding in the commission of the crime.
17 Standing by and rendering encouragement, standing by and
18 saying go get him, go do it, I'm here to help out, that
19 would be an accomplice. More than mere presence and
20 knowledge of the criminal activity of another must be
21 shown, that is, there has to be some showing of presence
22 and being capable or able to help out in the commission
23 of the crime.

24 Ladies and gentlemen, when you consider the
25 evidence in this case, when you consider the fact that

1 April Frazier was the bait, April Frazier was the person
2 that was let into the house by Jerry Totten under the
3 guise of doing laundry, thus allowing the entry of these
4 two defendants, you can see that in this trio we have
5 every one of them, Mr. Sublett, Mr. Olsen, and April
6 Frazier, acting as accomplices. They were there to
7 affect theft. They ended up -- these two ended up using
8 force and killing Jerry Totten. A person who is an
9 accomplice in the commission of a crime is guilty of the
10 crime whether present or not. Well, we have all three
11 accomplices at this scene, April Frazier in the utility
12 room, but we have got all three in the house.

13 Now, ladies and gentlemen, I have already touched
14 upon the fact that murder in the first degree has been
15 charged alternatively, and I submit that the evidence
16 shows both premeditated murder or felony murder, but you
17 must be satisfied. You can be satisfied that only one
18 occurred or that both occurred, and I submit, ladies and
19 gentlemen, that the evidence sustains beyond a
20 reasonable doubt both alternatives of murder in the
21 first degree, and these are the elements. I'm gonna set
22 forth, ladies and gentlemen, these elements are simply
23 the basics. What does have to be proved?

24 Obviously we have to prove that on or about
25 January 29th, 2007, the defendant or an accomplice

1 caused the death of Jerry Totten. Now, you notice,
2 ladies and gentlemen, that the law requires on or about
3 January 29th. Well, it appears that Jerry Totten was
4 killed on the late evening of January 29th. It may have
5 been the early morning of January 30th. We don't know.
6 The law says that's okay because we don't have to
7 specify the minute or the hour that someone was killed,
8 simply that it happened on or about, on or approximately
9 January 29th, 2007, that the defendant and/or an
10 accomplice caused the death of Jerry Totten.

11 Ladies and gentlemen, we don't know exactly what
12 happened or who did what when Jerry Totten was forced
13 into that recliner, bound, gagged, and strangled; we
14 don't know. We don't know exactly what part Mr. Sublett
15 played and we don't know exactly what part Mr. Olsen
16 played, but we know and the law says all we must show is
17 that the defendant and/or an accomplice caused the
18 death. These two went in and Jerry Totten died.

19 That the defendant or an accomplice acted with
20 intent to cause the death of Jerry Totten. You know
21 now, ladies and gentlemen, because the judge has
22 instructed you, that intent in the law means that you're
23 acting willfully, purposefully, that is, you're acting
24 with an objective. You're acting purposely. What do we
25 know about the death of Jerry Totten based upon simply

1 the evidence at the scene but more specifically the
2 evidence of the manner in which he was put to death? He
3 was beaten, forced into a chair, bound, and gagged, and
4 it took two to three minutes to kill him. They acted
5 with intent to kill.

6 That this intent to cause death was premeditated,
7 which means it was thought over beforehand, thought over
8 beforehand for more than a moment in point of time. I
9 submit, ladies and gentlemen, that when people set out
10 to beat, bind, gag, throttle, and strangle that the
11 intent to cause death is not only an intent but it is
12 premeditated intent. Clearly Jerry Totten died as a
13 result of these acts, and they certainly did happen in
14 Thurston County, excuse me, the state of Washington.

15 Now, ladies and gentlemen, you'll notice that this
16 display, that these elements do not contain the name of
17 either Mr. Sublett or Mr. Olsen. That is because the
18 elements are identical to each defendant, and the
19 elements instructions with regard to each defendant are
20 the same. I've already talked about premeditation, and
21 the key words of course are premeditation must involve
22 more than a moment in point of time. Premeditation is
23 sometimes thought of as something like a contract
24 killing where a plan is made days, weeks, sometimes
25 months ahead of time, but, ladies and gentlemen, you

1 know now, because Judge Pomeroy has instructed you, that
2 premeditation is simply more than a moment in point of
3 time. The law requires some time, however long or
4 short, in which a design to kill is deliberately formed.
5 I submit again, ladies and gentlemen, considering the
6 method of death inflicted on Jerry Totten in this case,
7 that premeditation is shown.

8 The other alternative, ladies and gentlemen, of
9 course is what we refer to as felony murder, and that
10 element requires that on or about January 29th Jerry
11 Totten was killed. That certainly has been proved.
12 That the defendant was committing or attempting to
13 commit the crime of burglary in the first degree or
14 robbery in the first or second degree. I have discussed
15 those crimes. I submit, ladies and gentlemen, that this
16 has been proved.

17 That the defendant or another participant caused
18 the death of Jerry Totten in the course of or in
19 furtherance of such crime or in immediate flight from
20 any of those crimes, either burglary in the first degree
21 and/or robbery in the first or second degree; that Jerry
22 Totten was not a participant in the crime. Well,
23 clearly he was the victim. This element, ladies and
24 gentlemen, the law contemplates that in some
25 circumstances two or three or four or more people may

1 set out to commit a crime, and being desperate, for
2 whatever reason, one of the accomplices might get hurt
3 in a shootout. This simply means that hey, if you're a
4 participant, if you're an accomplice in the commission
5 of a crime and something happens to you on the way out
6 the door, too bad, but this does not apply because
7 clearly Jerry Totten was a victim and not a participant.
8 And that the acts of course occurred in the state of
9 Washington.

10 Ladies and gentlemen, in considering the evidence
11 Judge Pomeroy has given you what we sometimes refer to
12 as guides if you will for the consideration of evidence,
13 and one of these guides if you will to assist you in
14 examining the evidence is the instruction on direct and
15 circumstantial evidence. Direct evidence is simply
16 that. It's what somebody sees or hears or smells. It's
17 perceived through the senses. Circumstantial evidence,
18 ladies and gentlemen, is that evidence that allows you
19 to use your common sense and make reasonable inferences
20 that other facts existed or did not exist drawn from
21 common experiences, and most significantly, ladies and
22 gentlemen, the law makes no distinction between the
23 value of what somebody sees and what you, ladies and
24 gentlemen, reasonably infer from what somebody tells you
25 on the witness stand.

1 I am setting forth this instruction in full, ladies
2 and gentlemen, because circumstantial evidence is
3 evidence of facts or circumstances from which the
4 existence or nonexistence of other facts may be
5 reasonably inferred from common experience. And I
6 reiterate that the law makes no distinction, ladies and
7 gentlemen, because I cannot remember how many of you
8 have not served or this is your first time as a juror,
9 but you know, because you've all been around long enough
10 perhaps to see a television show or a movie or read a
11 book where you've got maybe two lawyers talking about
12 some case and you might hear one of them say well, it's
13 just circumstantial as if circumstantial evidence is not
14 good, like circumstantial evidence is sort of a lesser
15 kind of stuff, that well, you know, you just kind of
16 ignore it.

17 Ladies and gentlemen, the law makes no distinction.
18 The law says to you folks individually and collectively
19 as a jury to do what you do in your everyday life and
20 that is draw reasonable inferences, and the value -- if
21 I may, ladies and gentlemen, the value of circumstantial
22 evidence, that is, the reasonable inferences that you
23 draw from facts, is that circumstantial evidence, those
24 reasonable inferences, unlike what you hear from a
25 witness, is never mistaken, it cannot lie, and it never

1 forgets because it's reasonable, your reasonable
2 inferences.

3 Ladies and gentlemen, another instruction that you
4 folks received in a manner to guide your deliberations
5 if you will is how to size up the credibility of
6 witnesses, and this is another -- if I may, this is
7 another one of those refreshing and rare examples of
8 where the law reflects common sense, common experience.
9 The law simply -- the judge tells you, for starters, you
10 folks are the sole judges of the credibility of the
11 witnesses. That's it. The buck stops with you folks.
12 You decide who to believe and who not to believe or what
13 value or what weight to give. You are the sole judges
14 of the value to be given the testimony of any witness.
15 It doesn't matter what anybody else thinks. All that
16 matters is what you think of the evidence. You're it.
17 The buck stops here.

18 Here the judge tells you that here are the things
19 you can consider, and the judge sets forth - this is in
20 I think the third paragraph, fourth paragraph of your
21 first instruction, Number 1 - you may consider the
22 opportunity of a witness to observe or know the things
23 that that witness testifies about. In other words,
24 could that person actually see or hear or smell what
25 they say? What was the opportunity that that person

1 had? What perspective did that person have? The
2 ability of the witness to observe accurately. Eyesight,
3 intoxication? These are factors that -- the quality of
4 the witness's memory. So you can -- hey, how did they
5 -- what was their memory like? Was it good, bad,
6 indifferent? If their memory was poor, is it
7 understandable? I mean, if you're relating events that
8 happened yesterday, okay, you should have a pretty good
9 memory. If you're relating events that happened five
10 years ago, well, not so good, but again a factor for you
11 to consider.

12 The manner of a witness while testifying. In other
13 words, what's the body language? Well, what is it I
14 don't like about that person? How did they sound? How
15 did they look? Fair game for you to consider. You also
16 can consider any personal interest the witness might
17 have in an outcome. Well, what's in it for them? I
18 mean, for example, ladies and gentlemen, you know from
19 the instructions that in our system a defendant does not
20 have to testify. A defendant cannot be compelled and
21 you're not to hold it against a defendant who does not
22 testify because the State, who Mr. Jackson and I
23 represent, bear the burden of proof. However, in this
24 instance we have Mr. Olsen testifying. Now, Mr. Olsen
25 certainly is a defendant, but when Mr. Olsen takes the

1 witness stand, ladies and gentlemen, he is a witness and
2 as a witness he is subjected to your scrutiny just like
3 any other witness in the case, and so when you hear from
4 Mr. Olsen, you may consider, among other things, any
5 personal interest that he has in this case.

6 Any bias or prejudice that the witness may have
7 shown on the witness stand and the reasonableness of
8 that witness's testimony in light of all of the evidence
9 in the case. You don't take what a witness has to say
10 in a vacuum. What does this witness have to say in
11 light of everything we know, and how does that
12 information stack up with everything we know?

13 Finally, ladies and gentlemen, the judge tells you
14 that you may consider any factors that bear on
15 believability or weight. So we have a list that the
16 judge has provided you of eight, nine, ten factors, and
17 I mention that and I hope -- not to belabor it, but I
18 wish to point out, ladies and gentlemen, that these
19 things, these things that the judge says for you to do
20 when you size up the credibility of witnesses, are
21 things that you do every day, in every day of your life.
22 All of us, all of you, go through life making decisions,
23 making decisions about things that matter. Some have
24 great consequences, some don't have such great
25 consequences, but when you make a decision you acquire

1 information from people, from whatever the source may
2 be, but this is what you do. You size up who is telling
3 you this, what's their knowledge of this, what's their
4 opportunity to observe? Does it make sense? Is it
5 reasonable? And what the Court is saying, ladies and
6 gentlemen, is that common sense that you have used in
7 your lifetimes -- you don't check that common sense at
8 the door. You bring that common sense with you. You
9 are officers of the Court, but you also retain - and I
10 urge you to use - your common sense. These factors say
11 you should.

12 Now, ladies and gentlemen, of course in this case,
13 speaking of using your common sense and subjecting
14 testimony to your scrutiny, you have received an
15 instruction from the Court about how to view the
16 testimony of an accomplice offered on behalf of the
17 plaintiff, which of course is me or the State of
18 Washington, who Mr. Jackson and I represent. This
19 instruction of course is referring to April Frazier who
20 testified, and the instruction tells you that you should
21 subject that evidence to careful examination in light of
22 all of the evidence in the case and should be acted upon
23 with great caution. You should not find the defendant
24 guilty upon such testimony alone unless, after carefully
25 considering the testimony, you are satisfied beyond a

1 reasonable doubt of its truth.

2 Ladies and gentlemen, in other words, look closely
3 at that evidence. You should not convict any defendant
4 based on that testimony alone. Well, ladies and
5 gentlemen, you know, having sat through this trial, that
6 this case is based on a lot more. This is not a case
7 where April Frazier was called to the stand and
8 testified and the State rested. This case was based on
9 much more than the evidence provided by April Frazier,
10 evidence that was corroborated by April Frazier and
11 evidence also that corroborated what April Frazier had
12 to say.

13 We know from the testimony of April Frazier, ladies
14 and gentlemen, that she was the bait. She acknowledged
15 that she was there on a ruse to get inside the utility
16 room so she could enable her confederates, Mr. Sublett
17 and Mr. Olsen, to get into the residence and kill Jerry
18 Totten and steal his goods.

19 And we have other evidence, ladies and gentlemen,
20 surrounding the time period January of '07 to February
21 of '07. January 10th, for example, when Mr. Sublett is
22 at Lacey Rare Coins selling coins that belonged to Jerry
23 Totten. On January 16th of '07 Mr. Sublett is at
24 Tumwater Pawn. There he's pawning a generator that was
25 purchased by Mr. Totten. January 21st and 22nd we have

1 Mr. Sublett and Ms. Frazier in Reno, and upon the return
2 of Sublett and Frazier, Jerry Totten's wallet, including
3 credit cards, were stolen. January 27th Mr. Sublett
4 again is at Pawn Exchange pawning a generator that was
5 again purchased by the victim, Jerry Totten.

6 On January 28th there is a jail telephone call from
7 Christopher Olsen where he talks about "We're hooked
8 up." Now, ladies and gentlemen, on January 29th we have
9 another jail telephone call that involves the defendant
10 Olsen, the defendant Sublett, and Ms. Frazier, and on
11 this day, January 29th, Sublett does a Western Union
12 transfer for \$2,400. He used a Visa card, a Visa card
13 stolen of course from Jerry Totten, stolen sometime
14 before January 29th. Now, we don't know when Sublett
15 and Frazier returned to Tumwater or Thurston County from
16 Reno. It was sometime in late January. Obviously it
17 was sometime before January 27th because Sublett pawned
18 some of the goods. We know he stole the wallet sometime
19 before the 29th. He discovered, that is, Mr. Sublett
20 discovered -- again applying common sense, Mr. Sublett
21 discovered well, through these stolen credit cards I can
22 tap into some resources. I can tap into some big money.
23 I mean, this pawning some coins and pawning a generator
24 and pawning the generator on the 27th, that's chump
25 change, a couple hundred bucks a throw, but, by gosh, I

1 get ahold of the credit cards - I realize this guy has
2 got a line of credit - I can tap into some big bucks.
3 But I need somebody to help, and I'm gonna hook up with
4 Christopher Olsen. And Mr. Sublett, using money stolen
5 from Jerry Totten, uses that money to bail out his
6 confederate, Mr. Olsen.

7 And of course on the late evening of January 29th,
8 early morning of January 30th, Jerry Totten is murdered.
9 And sometime apparently, ladies and gentlemen, sometime
10 in the afternoon of January 30th, Jerry Totten is
11 removed from that house by this trio and stuck up in the
12 middle of, relatively speaking, nowhere. I say that we
13 know he was moved at about that time because that
14 off-duty fireman who was moving who lived up somewhere
15 on the Old Olympic Highway was leaving his home sometime
16 between 6 and 6:30, and on the way back I believe he
17 testified that there was that pickup truck that he
18 hadn't seen before. Of course we know that pickup truck
19 contained the body of the murdered victim.

20 And of course on January 31st we have the
21 defendant, the two defendants, staying at Little Creek
22 Casino and another Western Union transfer, another
23 tapping into the resources, and of course Jerry Totten's
24 credit card was used at the casino. On February 2nd the
25 defendants are still at the Little Creek Casino.

1 There's an ATM withdrawal on February 3rd. Sublett and
2 Frazier move on to Tumwater. On February 3rd and on
3 February 4th, after apparently a beating of Frazier,
4 April Frazier contacts Elsie Hicks, excuse me, Elsie
5 Pray-Hicks, and on February 4th April Frazier pours her
6 heart out so to speak to Elsie Pray and tells her about
7 how we killed somebody, we killed Jerry Totten, how she
8 went there as bait and how the two killers went in and
9 used the bat and killed Jerry Totten.

10 Landstad loaned his Suburban to Sublett and
11 Frazier, and of course from there we have the
12 perpetrators moving on to Puyallup. There is another
13 Western Union transfer, there is an ATM withdrawal in
14 Portland, Oregon on February 8th. On February 9th we're
15 off to Pendleton, and then on February 10th of course
16 locally things start happening. Finally the family of
17 Jerry Totten themselves come up from Oregon, ask for a
18 welfare check. The home is searched and simultaneously,
19 although not in coordination, the sheriff's department
20 discovers the body of Jerry Totten. There is an ATM
21 withdrawal in Boise, Idaho, and then Sublett and Frazier
22 are arrested in Las Vegas.

23 Of course you know that Lieutenant Brenna and
24 Detective Liska went off to Vegas on the 14th, and upon
25 his return Lieutenant Brenna started looking for

1 Christopher Olsen. Now, you, ladies and gentlemen,
2 perhaps recall the testimony of Lieutenant Brenna. He
3 was pretty active not only on the phone but beating the
4 brush trying to find Olsen, contacting friends,
5 relatives, you name it, and that flushed out Olsen
6 enough to call Lieutenant Brenna and say well, yeah,
7 I'll contact you on the 18th, but he didn't.

8 Olsen was found walking the streets of Olympia
9 sometime before 4 o'clock in the morning, and he gives
10 the name of Chris DeShawn. Of course it's a false I.D.
11 so from the time of the commission of the crime,
12 January 29th, January 30th, and sometime around
13 February 2nd or 3rd, Olsen all this time is laying low
14 and is so insistent that he's not Christopher Olsen that
15 his tattoo has got to be revealed by the cops. The
16 police say hey, look, you are Christopher Olsen. Okay.
17 You've got me.

18 Other evidence, ladies and gentlemen, of course
19 this is a photograph taken from the utility room, and a
20 latex glove was recovered, this latex glove which had
21 the DNA of Christopher Olsen. Just as significant I
22 submit, ladies and gentlemen, is the fact that Mr.
23 Olsen's DNA was on that and when he was interviewed by
24 the police, nobody was wearing gloves; a lie.

25 Exhibit Number 31, a photographic exhibit, shows

1 the bat that was recovered close by the recliner on the
2 living room floor where Jerry Totten was killed. That
3 bat was wiped for DNA. Mr. Sublett was not excluded as
4 a DNA contributor, and the probability that he was the
5 contributor to that DNA found on that bat was one in
6 130. Now, you know, you take that number, one in 130,
7 and consider it in a vacuum, that's a low number,
8 especially when you consider what was the -- Mr. Olsen's
9 DNA was one in six I don't know how many gazillions; a
10 lot. So in light of that, one out of 130, that's a low
11 number, but when you consider that evidence, ladies and
12 gentlemen, one in 130, when you consider that evidence
13 in light of all of the evidence in the case, that was
14 Mr. Sublett's DNA because Mr. Sublett was at that house.
15 Mr. Sublett was at that house on January 29th. He was
16 the guy that stole the credit cards. He was the guy
17 that had the credit cards stolen from Jerry Totten. His
18 fingerprints were in the utility room. April Frazier
19 put him there and Christopher Olsen. So ladies and
20 gentlemen, I submit the totality of the evidence,
21 Sublett had that bat.

22 And of course. Considering the totality of the
23 evidence, ladies and gentlemen, we have the jail calls,
24 Mr. Olsen contacting April Frazier, Mr. Olsen talking to
25 April Frazier and Michael Sublett, I submit if you will

1 the real Christopher Olsen, not that Olsen who is
2 rambling and making excuses when he's talking to the
3 police on February 22nd and March 19th, trying to talk
4 his way out of a jam, but this is the guy that's telling
5 it like it is, making reference to "We are hooked up."
6 "As soon as we get out." "How much do we need to make?"
7 "I mean, because I got a spot I can close up at." And
8 the response to April Frazier, "That's what I'm saying."
9 "That's the plan." "How much money do we need to make?"
10 "Well, then let's get to the grind." "Yeah, all we
11 gotta do is get me outta here. Get me outta here and
12 I'm part of the plan." "Exactly. If you tell me to do
13 it, it obviously needs to be done, Sis, so I'm gonna
14 handle it." "Baby girl, check this out. I'm like the
15 terminator. The only thing I need is a little bit of
16 oil and water. I'll be all right. I'm the terminator."
17 He gets out on January 29th and a few hours later Jerry
18 Totten is dead.

19 Now, ladies and gentlemen, we have the Christopher
20 Olsen interviews February 22nd and March 19th. Now,
21 ladies and gentlemen, consider this is a defendant who
22 is laying low. He has participated in a killing, and
23 he's had three weeks to come up with a story in one case
24 and five weeks to come up with something better. These
25 are statements made of course after he's been captured.

1 Plenty of time to concoct a story. There are several,
2 well, many inconsistencies, several major
3 inconsistencies, ladies and gentlemen. He's talking
4 about, he says, construction work. That's why they
5 bailed him out, to do construction work, but there is no
6 construction talk. Lieutenant Brenna listened to a
7 bunch of jail calls, and there was no reference to
8 construction work.

9 Olsen claims that he was afraid, but he never left
10 when the opportunity arose. I gave up counting the
11 number of opportunities just based on what he had to
12 say. One moment he's saying well, yeah, I was afraid,
13 then I was alone in the parking lot, I was afraid, we
14 went driving somewhere and I was let go. This is
15 someone who claimed he was afraid. You've heard the
16 instruction on duress. Even if he was afraid, as he
17 claimed to the police, that doesn't matter. Duress is
18 not a defense.

19 He said he wanted to call the cops, but actually he
20 avoided the police. How about that? I wanted to call
21 the police. How many times did he say that during the
22 interview? I wanted to call you guys. Yeah, but when
23 confronted by the police, a couple of uniformed officers
24 in Olympia, "I'm Chris DeShawn." Here is this golden
25 opportunity. Hey, I've been meaning to tell you guys

1 about this. No, not Mr. Olsen. Nobody was wearing
2 gloves, but he was. Oops. Gosh, my DNA was found in
3 it. Well, gee. I wanted out. He stayed. Now, we have
4 a classic example of what he says and what he does. He
5 says all these things on the left, but he doesn't do
6 anything except play at murder. He's got this poor me
7 attitude, but he tells April Frazier - and we all heard
8 it - "I'm the terminator."

9 Of course if you do as much talking as Mr. Olsen,
10 if you ramble on as much as Mr. Olsen, every once in a
11 while you might blurt out a wee bit of truth. "Anytime
12 you mix drugs and people with major attitudes it turns
13 out bad." He did get that right, but he also revealed a
14 bit too much of himself, didn't he, ladies and
15 gentlemen? In one of his interviews he said "My mouth
16 is the only thing that can save my ass." He may have
17 been talking about some other issue, but he certainly
18 was using his mouth to save his, quote, ass, closed
19 quote, when he was talking to the police.

20 I submit, ladies and gentlemen, that when he
21 testified on the stand he was using his mouth to try to
22 save his ass. And what significance does this have
23 because, after all, I am referring to the totality of
24 the evidence in the case. Why do people lie? Why? Why
25 lie, lie, lie? Because you're covering up your

1 participation in a crime. The only thing that's gonna
2 save his ass, as he said, is his mouth; he hopes.

3 And along with all of the evidence in the case,
4 ladies and gentlemen, we have the remarks that the
5 defendant, Mr. Sublett, had to say about Elsie, to Elsie
6 Pray, Elsie Pray, who acknowledged that -- I believe she
7 said that she still regards Mr. Sublett as a friend.
8 She spoke to him when he was on the run and urged him to
9 turn himself in, and he tells his friend "I'm really
10 thinking hard about coming back and turning myself in."
11 "You need to turn yourself in." "Yeah, I know I do.
12 I'm really messed up." Well, that's what he told Elsie
13 Pray, but here we have Mr. Sublett in Boise. Really
14 messed up? What is that saying, a picture says a
15 thousand words? Here we have got a man, here we have
16 got a killer, who is literally and figuratively in the
17 driver's seat, ladies and gentlemen. He might say to
18 his friend "I'm messed up," but he's got Jerry Totten's
19 credit cards. He's tapped into his line of credit, and
20 as far as we know, he's been tapping into about \$50,000.

21 Ladies and gentlemen, the Court gives you what we
22 call the reasonable doubt instruction. I'd like to in
23 my completing remarks touch upon this. Another one of
24 those great things about our system is that a defendant
25 is presumed innocent, and when a person pleads not

1 guilty, that presumption of innocence continues
2 throughout the entire case until you, ladies and
3 gentlemen, are satisfied beyond a reasonable doubt that
4 a defendant is guilty.

5 I put this up on the screen because this is not
6 something that I just talk about. The presumption of
7 innocence and the burden of proof, which we welcome, is
8 not just something we talk about, but it is a living,
9 breathing reality. It is a factor that we deal with
10 every day. I put this up on the board, ladies and
11 gentlemen, because a reasonable doubt is something for
12 which a reason exists and may arise from the evidence or
13 lack of evidence. It is such a doubt as would exist in
14 the mind of a reasonable person after fully and
15 carefully considering the evidence. Keep in mind,
16 ladies and gentlemen, that we're talking about
17 reasonable. We're talking about reasonable people, such
18 as yourselves, considering evidence and scrutinizing
19 that evidence with a view towards reasonableness. And
20 if, after such consideration, you have an abiding belief
21 in the truth of the charge, then you're satisfied beyond
22 a reasonable doubt.

23 A reasonable doubt, ladies and gentlemen, is not
24 any doubt. It is not proof to a moral certainty. It is
25 not proof beyond any doubt whatsoever. It is proof that

1 excludes reasonable doubts. The judge concludes by
2 telling you that the law says if you have an abiding
3 belief, then you are satisfied. If you have an abiding
4 belief in the truth of the charge, then you're satisfied
5 beyond a reasonable doubt. Now, I don't -- I don't
6 know. People react in various ways. An abiding belief
7 might be something you know in your head. It might be
8 something that you feel in your heart. It might be
9 something that you know in your gut; I know he's guilty.
10 If you have that abiding belief, then you're satisfied.

11 When you consider, ladies and gentlemen, the
12 totality of the evidence of motive, of the planning, of
13 the execution, of the burglary, the robbery, of the
14 death of Jerry Totten --

15 MR. WOODROW: Your Honor, I'm going to object
16 again to unadmitted evidence in the State's closing.

17 MR. BRUNEAU: When you consider the --

18 MR. WOODROW: Objection. I'd ask Your Honor
19 make a ruling on that.

20 THE COURT: I'm going to ask that we move on,
21 that you take that picture off. Thank you, counsel.

22 MR. BRUNEAU: They are guilty as indicated.
23 These defendants, ladies and gentlemen, are guilty as
24 charged and guilty as proven.

25 Thank you for your attention.

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THE COURT: Thank you.

Ladies and gentlemen of the jury, we will now take our morning recess. First a word of caution. You have heard only one closing argument. Please don't talk about the case.

If you will go with the bailiff, I ask the attorneys to remain in session.

(Jury out.)

THE COURT: I ask for 15 minutes. Is there anything else? Thank you.

THE CLERK: Please rise.

(Recess.)

THE COURT: Mr. Bruneau? I am on the record, Cheri. I am going to ask you not to use the photos that were not admitted. Thank you.

Are we ready to proceed?

MR. LANE: Ready, Your Honor.

THE COURT: Bring them in.

(Jury in.)

THE COURT: Thank you. Ladies and gentlemen of the jury, please be seated, and be seated in the courtroom.

Ladies and gentlemen of the jury, please give your attention to Mr. Lane for his closing argument.

MR. LANE: Thank you, Your Honor, counsel.

1 Good morning, ladies and gentlemen.

2 I guess you're finally figuring out you're kind of
3 seeing the light at the end of the tunnel now after the
4 last couple of weeks, and I'm sure that probably makes
5 you very happy. One of the things that, even though we
6 anticipate, you know, this might be over soon and you're
7 seeing that light, you've taken an oath as jurors which
8 part of that oath has been explained to you in these
9 instructions that have been provided to us by Judge
10 Pomeroy. As previously indicated, this is now your rule
11 book basically. This is your guide book, as Mr. Bruneau
12 called it. This is what you must follow to figure out
13 the outcome of this case, what it's gonna be.

14 Instruction Number 1 -- well, at the very beginning
15 it says, in the very first sentence, "It is your duty to
16 decide the facts in this case based upon the evidence
17 presented to you during this trial. It is also your
18 duty to accept the law from the Court's instructions,
19 regardless of what you personally believe the law is or
20 what you personally think it should be."

21 Adhering to your duty as jurors, you must follow
22 these rules, whether you like them or not. You've taken
23 the oath to now follow these rules. It's the only way
24 that a fair and just determination can be made in this
25 case. It's when even just one of these rules is not

1 followed then the result is not fair and just, and
2 that's essentially what we're doing here. This is what
3 it's all about, to make sure, as we went through the
4 whole voir dire process, to try and figure out, you
5 know, who is going to be able to be fair? Part of that
6 comes with the territory of following these rules.

7 One of the things that we also went over with you
8 in part of the voir dire and as outlined in these rules
9 as they've been provided to you, as jurors you're now
10 basically -- you're officers of the Court. You've taken
11 an oath. You've been sworn in. You are now officers of
12 this Court to follow these rules. You must not let your
13 emotions overcome your rational thought process. In a
14 case like this that's very important because, I mean,
15 evidence has been presented to you by the pathologist in
16 the case and the facts of this case surrounding how Mr.
17 Totten was killed. It was horrible, and that can be
18 very emotional, but you're not to let any of those types
19 of emotions play on your decision-making process in the
20 case. You must reach your decision based on the facts
21 proved to you and on the law given to you, not on
22 sympathy, prejudice, or personal preference. No matter
23 how emotionally involved, listening to the facts of this
24 case and even in closing arguments it may appear to you,
25 your decision must be based on facts and evidence that's

1 actually been presented to you.

2 One of the things that Mr. Bruneau has already gone
3 over with you, one of the instructions, Instruction
4 Number 3, "The defendant has entered a plea of not
5 guilty. That plea puts in issue every element of each
6 crime charged." So if one element that's not present
7 your duty is to acquit. "The State is the plaintiff and
8 has the burden of proving each element of each crime
9 beyond a reasonable doubt." A defendant is presumed
10 innocent, so even as we sit here now, none of you should
11 have formed any kind of opinion at this point. My
12 client, Mr. Sublett, sits here. He is innocent, so if
13 you've already got in your mind something different than
14 that, then you're not following the rules.

15 "This presumption continues throughout the entire
16 trial unless, during your deliberations, you find it has
17 been overcome by the evidence beyond a reasonable
18 doubt." Now, reasonable doubt. You've heard us talk
19 about it during voir dire. You've heard it raised
20 during closing arguments. Essentially what we have got
21 to -- we're kind of toward the end of a race and we see
22 the finish line in sight, and once -- in approaching
23 that finish line the State essentially has a high burden
24 or a high hurdle it must leap over in order to reach
25 that goal. The question essentially at this point is

1 has the State been able to overcome that hurdle or that
2 burden?

3 The evidence that's been presented to you,
4 testimonial evidence, you've heard from one of the
5 State's primary witnesses, April Frazier. You just
6 heard a second ago from Mr. Bruneau regarding Mr.
7 Olsen's statement that Olsen had time to concoct a
8 story, I think it was three and four weeks -- I don't
9 remember what it was, but a couple of weeks. Well, Ms.
10 Frazier had six months before she gave a statement. He
11 also indicated that during the jail calls that you heard
12 that you heard the real Olsen. Well, you also heard the
13 real Frazier, not only in those statements but even in
14 her statement she made to Elsie Pray. She refers to
15 herself as a -- she's a gangster. That's what's going
16 through her mind. Her thought process is that's how she
17 thinks of herself. She's a gangster. She made a
18 comment to Mr. Olsen during the phone calls about, you
19 know, "Gangsters don't dance, we groove." She made a
20 comment to Elsie Pray-Hicks regarding the death of Mr.
21 Totten that it had to be done, "That's what gangsters
22 do." So it gives you some insight as to Ms. Frazier,
23 the real Ms. Frazier, which we didn't really hear much
24 about that in the State's closing, but think back to
25 what evidence was presented that ties Ms. Frazier and

1 gives you the background of her.

2 Well, we heard from Lemar Parker, who apparently,
3 according to Ms. Frazier, was romantically involved,
4 according to Mr. Parker, not. But even way back when, a
5 couple months, several months before this incident
6 occurred, she was getting, taking coins from Mr. Totten.
7 I believe she admitted that those coins that Mr. Parker
8 pawned were ones that she had stolen from Mr. Totten,
9 and she had him going to pawn them. She uses people,
10 but she's also smart enough to try to keep her own
11 tracks clean because she's had Mr. Parker go pawn.
12 Therefore, he fills out the certificate. He fills out
13 the paperwork. Her name is not traced to it. She's
14 smart like that.

15 Some more coins are pawned. She gets Mr. Sublett
16 to do it. She indicated that she was there with him
17 when those items were pawned. She keeps the trail off
18 of her tail and makes sure that it goes somewhere else.

19 Even when -- I mean, you can look at all the
20 different people that she's used, taken advantage of,
21 and lied to throughout the course of this case, and it's
22 essentially everybody she comes in contact with. She
23 lied to Lemar, supposedly telling him that the coins
24 weren't stolen. She lied to Sublett regarding a
25 relationship that was supposedly going on with Lemar,

1 unbeknownst to him. She totally took advantage of Mr.
2 Totten in the sense that here is a generous older man
3 trying to help somebody get back on their feet. He says
4 sure, you can stay in my fifth wheel that's out in my
5 driveway.

6 You know, and this is -- Mr. Bruneau brought up
7 using your common sense. Yes, we want you to bring your
8 common sense in here with you. We want you to use your
9 common sense. In order to help somebody get off their
10 feet, you know, you think maybe a week or two or, you
11 know, two months maybe to have somebody living out in
12 your driveway, but this was like eight months. This had
13 been going on. He had provided her with access to his
14 house, given her a key, provided her food, allowed her
15 to come and go as she pleased, wash her clothes all
16 hours of the night.

17 And Mr. Landstad, she took advantage of him, using
18 his generosity of allowing her to use his Suburban,
19 which apparently she had been using off and on for quite
20 some time. You heard reference to it in the jail calls
21 between her and Mr. Olsen that even Mr. Olsen was
22 familiar with the Suburban. I believe that was the
23 vehicle that was used that she was in when they first
24 met. But reference was made to it in those calls about
25 you know when the white Suburban is coming something is

1 up. I believe Ms. Frazier even said yeah, you better
2 get the hell out of the way basically because either,
3 you know, you're gonna be emptying your pockets or the
4 Suburban is gonna run over you or something to that
5 effect. But people knew of that Suburban and basically
6 that that Suburban meant trouble to the point where she
7 tells Mr. Olsen oh, well, I sold it. I've been through
8 like ten other cars since then. Well, no, she didn't
9 sell it. When she got arrested, Mr. Landstad came and
10 got it back.

11 Subsequently she called Mr. Landstad again, as
12 you've all heard, after Mr. Totten's murder -- she told
13 Mr. Landstad that she was moving furniture, so, the nice
14 fellow that he is, he allows her to use the Suburban
15 again and off she goes, telling him that, oh, we will
16 have it back in a day or two, on Friday. That never
17 happens. She's off in Vegas.

18 She takes advantage of Elsie Pray-Hicks. She tells
19 Elsie Pray-Hicks stories, borrows her car numerous
20 times. And in thinking about why she told Elsie
21 Pray-Hicks what she did, she's laying things in line to
22 try to cover her butt, even at that point because -
23 think about it - why would she tell Elsie that story
24 unless she wanted Elsie to hopefully go to the police so
25 the police already have a story in line from a witness

1 that's providing it to them? This is a woman, Elsie,
2 that April doesn't even know. I mean, they have only
3 met twice, and here she is borrowing her car numerous
4 times to basically go, as far as we know -- we don't
5 know if she borrowed the car to go over there with Mr.
6 Olsen to commit the murder. We don't know, but we do
7 know that she borrowed it at least to clean out -- I
8 mean, she had a car full of stuff, according to Ms.
9 Hicks. She also had the huge bag on the car that you
10 all heard about, a bag of garbage.

11 She indicated that when Michael came to pick up
12 Elsie, excuse me, April, that Michael didn't really
13 understand or appeared to not understand the
14 significance of the bag of garbage on the truck or on
15 the car. He basically was like leave it, leave it
16 there, and April went nuts. No, no, no, no, we can't
17 leave it there. We have got to take this with us.
18 Well, does that indicate that, one, my client didn't
19 even really know what was in the bag or realize or know
20 the significance of it? Obviously April did. She was
21 hell bent on making sure that that bag was not left
22 there.

23 April was also able to -- when police were called
24 at the Tumwater Suites, she was immediately able to tell
25 a story to Detective Liska, one that he bought hook,

1 line, and sinker, and a story which also contained
2 numerous lies and inaccuracies about when they had
3 gotten back from Reno, the fact that she hadn't used
4 drugs in two weeks, the fact that she had been beaten
5 the whole way back. She obviously could think at the
6 drop of a hat or at the split second what she needed to
7 say to keep law enforcement off her butt, even though
8 all the red flags were there as far as the clerk calling
9 in, basically saying somebody is going nuts, making, you
10 know, a bunch of noise in this room. Officers show up.
11 She looks distraught, but she immediately is able to
12 tell the officer a story, even though there's a butane
13 torch and a rock of meth sitting in the ashtray and
14 she's been spun out for weeks, and she's still able to
15 convince this officer that oh, I'm a victim of domestic
16 violence, and they get her another room? This is
17 somebody that knows how to tell a story. This is
18 somebody that knows what to say and how to say it to get
19 her butt out of any kind of situation. Just as Mr.
20 Bruneau was making comments about Mr. Olsen, about his
21 mouth being able to save his ass, well, look at April.
22 She's been doing the same thing throughout this whole
23 scenario.

24 Some of the other things that we know about April
25 is that she had worked basically about two months out of

1 the last several years. How do you think she supports
2 herself? Here again, use your common sense. She
3 supports herself by whatever means she can and by taking
4 advantage of whoever she can. You'd think that if she
5 had been a victim, as she indicated, that she would have
6 told somebody else, her good friend, Pete Landstad.
7 Sometime during this time she would have said something.

8 You also saw the picture of -- you know, Detective
9 Liska took pictures of her. She said oh, yeah, Michael,
10 he grabbed my arm, but in the picture -- if you look
11 closely at that photo, and this again is using your
12 common sense and common experience, ask yourself does
13 that bruise -- do those bruises look fresh? Also
14 there's only a bruise on one side. We don't see, you
15 know -- if somebody is grabbed obviously there's
16 pressure that's created. There's gonna be marks on both
17 sides of the arm. Ask yourself if that's not more
18 consistent with maybe her wrestling or having Mr. Totten
19 in an arm hold.

20 During voir dire the State had indicated that
21 sometimes it's necessary that they have to cut deals
22 with drug addicts or participants of a crime, but in
23 making a deal with her, does it really add or did it
24 really add anything to this case, any clarity, or did it
25 really just basically add more confusion? Because based

1 on her statements, one, and another way that she's
2 trying to cover her butt, she doesn't put herself in the
3 house when things are supposedly going on, so she can't
4 add any clarity or any information about what actually
5 happened inside the house. She had already made
6 admissions to Elsie Pray-Hicks that she was there,
7 although that information was another bunch of
8 inaccuracies and lies because that consisted of
9 supposedly my client shooting Mr. Totten, that he was a
10 rapist and they had a jar of teeth and any other number
11 of things that she told to Elsie Pray-Hicks which have
12 turned out not to be accurate.

13 This is who the State wants you to believe, and I
14 believe it was Instruction Number 23 that indicates that
15 "Testimony of an accomplice given on behalf of the
16 plaintiff should be subjected to careful examination in
17 light of other evidence in the case and should be acted
18 upon with great caution. You should not find the
19 defendant guilty upon such testimony alone unless, after
20 carefully considering the testimony, you are satisfied
21 beyond a reasonable doubt of its truth."

22 How many lies do you need before you totally
23 discredit any of her testimony? The lies that she told
24 to Elsie Pray-Hicks; Michael shot him. Totten
25 videotaping women and kids, hundreds of tapes. Totten

1 raped before. Totten was really sick. The scene was
2 really bloody, blood everywhere. That's not consistent
3 with the physical evidence. The jar of teeth. He
4 deserved to die. Landstad, she told him she borrowed
5 the car to move furniture, lied as to where she was,
6 when she was coming back. Detective Liska, had not
7 smoked meth for two weeks, just arrived back from Reno
8 the day before. She was beaten the whole way back.
9 Went to Reno to get married. To Debra Olsen, that she
10 had a job for Chris. That's just a few of the lies that
11 April told told, and yet the State wants you to believe
12 her.

13 The same goes for -- you can actually put that,
14 well, not that exact instruction but look at things in
15 light of what Mr. Olsen has said. He flat out said
16 yesterday on the stand that he'll do -- he'll say
17 whatever it takes to do what he needs to do. His excuse
18 for the conversations that he had with Ms. Frazier while
19 he was in jail was that he'd say anything. "I was just
20 trying to get out. I would have told her anything."
21 Well, that's not gonna go real far on the street or in
22 the world that they live in because your name, your
23 word, yourself, if people don't believe you on the
24 street -- I mean, he would have no street credibility
25 whatsoever by immediately burning supposedly a friend,

1 to lie to that friend to get them to bail him out.

2 You know, the relationship here -- you know, the
3 State wants you to believe that the relationship here
4 consisted solely of my client and Ms. Frazier, but if
5 you look closely at the interaction between Mr. Olsen
6 and Ms. Frazier, there was some relationship there too.
7 Ms. Frazier seemed to have relationships with a lot of
8 different people, but in here it was quite clear that
9 from the language that is used during those phone calls,
10 you know, both of them basically professing their love
11 to each other, and they try to insist that oh, it's just
12 kind of a brother-sister thing. Well, if this is a
13 brother-sister thing I think that relationship is pretty
14 incestuous because there appears to be a lot more going
15 on than just a brother-sister relationship. He had
16 already indicated that, you know, he had done little
17 things for her, buy her flowers. He had bought her a
18 ring. I mean, you don't -- I mean, use your common
19 sense in your experience, you know. You don't buy a
20 ring for a woman or a girl unless you've got something
21 going on or you're trying to get something going on. I
22 mean, that's -- I think everybody could probably use
23 that from common experience. The way that they talked
24 to each other made it perfectly clear.

25 One of the things that was also interesting during

1 their conversations is that, you know -- the State has
2 tried to make a big deal of Mr. Olsen being bailed out
3 of jail and the debt that was created by him being
4 bailed out, but on the phone call of the 29th April says
5 "I just missed you, and what -- what's a small little
6 fucking debt to pay to see my brother?" "Nothing."
7 That pretty much tells us that there was some obligation
8 between Mr. Olsen and Frazier prior to this, that the
9 debt that was owed was Ms. Frazier owed him. She was
10 indebted to him, and this was payback to basically get
11 him out. I mean, what efforts were made for her to come
12 back to basically get him out?

13 You know, it doesn't make sense if -- the State is
14 trying to say let's put the focus all on my client, but
15 ask yourself, one, the indications are that my client,
16 Mr. Sublett, didn't even know Mr. Olsen, never met him
17 before. Are you gonna bring in somebody to a situation
18 like this where you're gonna go rob and supposedly wind
19 up killing somebody? Are you gonna do that with
20 somebody that you don't even know? It makes more sense
21 and the evidence doesn't really show any different
22 because the only evidence that you really have is the
23 testimonial evidence of Mr. Olsen and Ms. Frazier that
24 they went and did this. She had the access. She had
25 the motive. She'd been staying at Mr. Totten's house

1 for months, indicated that she's been going in and out
2 of there, I mean, free reign of the house. She knew
3 where everything was in that house. And here she bails
4 out one of her friends that she knew was up for
5 something like this. She had the ability to go do it on
6 her own because she borrowed Elsie Pray-Hicks's car
7 several times, and that's right in the time frame that
8 this was going on.

9 Ask yourself this as well: Does it make sense --
10 and I'll submit to you, my client, he's a thief; there's
11 no question about that. He is a thief. That's been
12 clearly illustrated. He was stealing from Mr. Totten
13 before his death and after, but ask yourself, one, why
14 would you -- you know, why would you kill the cash cow
15 so to speak? There's no reason to. But as far as April
16 Frazier and Mr. Olsen go, they had the motive, the
17 opportunity. You heard the jail calls. It was
18 basically like a job interview for Mr. Olsen. Do you
19 have -- in fact, Mr. Olsen even lies to her and tells
20 her that the bail is only 600 bucks when it was in fact
21 a thousand. "Do you have a disposable car?" "I've got
22 a ride out in the Littlerock area." "I've done about
23 ten cars since that bullshit Suburban. Everybody knows
24 that car." That's her reason not to use that car
25 because everybody knows that car. Chris, "Fuck, yeah.

1 You see the white Suburban, you know what's up. Move
2 out of the way or fucking empty your pockets." "Are you
3 allowed to leave the State?" "Well, then let's talk
4 business." "Do you have some bitch hanging on your nuts
5 right now?" "Do you got to report to anyone?" Meaning
6 Department of Corrections. "You're the only person I
7 got to report to." "How much do we need to make?"
8 April, "I'm gonna make infinity, sweetheart. That's
9 what I do."

10 Talk about Lemar. "I don't trust him as far as I
11 can throw his scandalous little ass," yet in his
12 statement he says Lemar was his friend. April, "I've
13 got like 20 phones. You know the fucking funny phone
14 game, right?" She's switching around the phones. She's
15 the one that's talking about what she's doing. "Huh,
16 brother? You do what I say because you love me and
17 you've always stuck up for me." "Where is that gun?"
18 "I don't know right now." "I need another one 'cause
19 those are fucking loud. That mother fucker is sweet,
20 like a hand cannon." "We're gonna have to hustle. I
21 got a whole bunch of jobs planned that are going to have
22 to be done back to back." "You gotta pee?" meaning are
23 you having to do UAs for DOC that they're gonna check
24 you, "because you're gonna have to smoke some dope."

25 You can always -- you can tell at the end of that

1 phone call -- you could hear my client walk up in the
2 background, and April told Chris to shush, and they
3 changed the subject. On the 29th, "Hey, Sissy, loving
4 you so much it's crazy." "Do you remember when you gave
5 me that ring?" "Yes." "I still have it on." And then
6 ending up with "I just missed you and what -- what's a
7 small little fucking debt to pay to see my brother?"
8 "Nothing."

9 Would it make sense -- ask yourself this: Would it
10 make sense that my client would basically be putting his
11 name on everything -- I don't remember if this is the
12 correct children's story. I think it was Hansel and
13 Gretel when they were laying, you know, the crumbs onto
14 the floors, you know. Does it make sense that my client
15 would be leaving a trail with his name, proper name, all
16 over everything if he was running from a murder? It
17 makes more sense that all he thought at that point was
18 he's doing identity theft stuff, you know. Yeah, he's
19 working accounts and doing identity theft. It's not
20 consistent. His actions aren't consistent with running
21 from a murder.

22 You also heard Elsie Pray-Hicks say, you know, the
23 comments that the State indicated, oh, I'm thinking
24 about turning myself in. Ms. Hicks indicated that was
25 in relation to a parole violation because he knew he was

1 gonna have to come back and deal with California.

2 MR. BRUNEAU: Your Honor, I'm going to object.
3 There is no evidence whatsoever.

4 THE COURT: Excuse me. Overruled.

5 Ladies and gentlemen of the jury, I remind you that
6 what is said in closing argument is that, argument. You
7 remember the testimony.

8 Continue, counsel.

9 MR. LANE: Thank you, Your Honor.

10 You know, look at Mr. Olsen's statement too. Does
11 he really provide anything? He conveniently doesn't put
12 himself inside the house either. You know, this is kind
13 of like watching the game Survivor. I guess this is
14 Survivor Tumwater because everybody is doing this.
15 Everybody is gonna talk behind each other's back.
16 Nobody wants to take responsibility. He's trying to
17 minimize his conduct, you know, oh, I got there, you
18 know, I was at the hotel. I wasn't there. Then when I
19 did go, I didn't really help them pick up the table. I
20 just kind of put my hand on it, pretended like I was
21 helping. Put things in perspective of why people are
22 saying what, and as Mr. Bruneau indicated in regards to
23 Mr. Olsen, he's gonna try to have his mouth save his ass
24 once again.

25 You know, in getting back to April and all the

1 different things that for her don't really make sense,
2 you know, here she is allegedly traveling around with my
3 client and information all of a sudden pops up during
4 her testimony that oh, yeah, he told me was gonna kill
5 me, you know, at the Grand Canyon after we went to
6 Vegas. Does that make any sense whatsoever? So are you
7 gonna keep traveling with somebody you think is gonna
8 take you out, you know, further on down the road? She
9 obviously had plenty of time, plenty of resources to go
10 wherever she needed to go because, as you could clearly
11 see, anybody that she contacted she could use them for
12 something, whether it was a vehicle or money or
13 whatever.

14 Even the letters that she had written to Michael.
15 You heard about the ones that she wrote to Michael,
16 basically telling him what he needed to do. She even
17 tried to get him to contact Mr. Olsen. It shows that
18 basically she's in control. She's running things. That
19 goes back to even, you can tell if look at the
20 circumstances as they played out, all the different
21 things that she was directing people to do. She was on
22 the phone with Mr. Olsen's friend supposedly saying that
23 you don't make any decisions of whose coming over and
24 whose not.

25 You know, and look at the other things that April,

1 well, some of the other things that she told Elsie
2 Pray-Hicks, that supposedly she was there after the
3 murder took place, that my client and Mr. Olsen left her
4 there for approximately eight hours. Eight hours. She
5 indicated that she wasn't sure Mr. Totten was dead,
6 heard him gurgling, making noises, and yet she did
7 nothing, nothing whatsoever to even check to see if he
8 was dead, see if he was alive. What was she doing? She
9 was busy going through the house to see what valuables
10 she could take.

11 Another lie basically on the stand she comes out
12 with at some point Michael called on another time that
13 my client was gone, tells Mr. Olsen, oh, he thinks he's
14 being followed; we need to go our separate ways, and
15 gives Mr. Olsen a little bit of change, puts him on the
16 bus, and tells him that oh, my sister is coming to pick
17 me up. Well, then it turns out she testified I didn't
18 really leave the hotel, that we stayed there for another
19 two days. She works every angle and every person that
20 she can.

21 Now, with things that she told to law enforcement,
22 you know, law enforcement seemed, based on her
23 information and the statements that Mr. Olsen gave,
24 totally focused on my client and ignored things that
25 they could have done to possibly help clear the things

1 up. One of the things -- if you look in this photo
2 there's a plate right here with several cigarette butts
3 in it. This is right in the heart of the house, right
4 in the middle of everything, and yet they weren't
5 collected. They weren't able to be tested.

6 This might be a more clear picture. I mean, you'd
7 think that, you know -- we heard the testimony of the
8 DNA person. I mean, what better place to probably get
9 some DNA than off of a cigarette butt that somebody has
10 had in their mouth for, you know -- I don't smoke. But
11 I think it takes what, 10 or 15 minutes maybe to smoke a
12 cigarette? And you keep repeatedly taking it in and out
13 of your mouth. What better place to try to find some
14 DNA?

15 You know, also during the statements several other
16 people's names came up. Rob Kittleson. He supposedly
17 came over numerous times to bring dope. Anybody ever
18 bother to go try to talk to Mr. Kittleson? No.

19 Alexis Cox. Supposedly my client went to her house
20 with Mr. Olsen after the murder. Anybody bother to go
21 try to talk to Alexis Cox? No.

22 Also think about the fact that the scene itself was
23 actually compromised in the sense that before the calls
24 came in - and you heard about the sister and the mother
25 were worried about Mr. Totten and they called law

1 enforcement to do welfare checks - that law enforcement
2 had already been through that house twice as well as the
3 sister and the mother showing up and going through the
4 house before items were even collected.

5 The gun. You've heard all sorts of different
6 information regarding that nine-millimeter. During
7 testimony we heard that actually it turned out to be Mr.
8 Totten's gun, that he had bought it from the wife of one
9 of his deceased friends, but we have heard all sorts of
10 different stories as far as when it initially appeared,
11 whether it was back at Thanksgiving, as April had
12 indicated. Mr. Olsen had indicated that he wasn't sure
13 that when they got to the house that it wasn't taken
14 from the house.

15 You know, what the State has to do here is prove
16 their case beyond a reasonable doubt, and the majority
17 of their case in order for them to try to get over that
18 burden really rests on Ms. Frazier's testimony and
19 what's been presented by Mr. Olsen. But you really have
20 to consider and weigh that evidence, scrutinize that
21 evidence because, as I've already indicated, it's been
22 quite clear that they'll say and do anything to save
23 their ass. They both had a long time to figure out what
24 they were gonna say.

25 And as far as the testimonial evidence, the case is

1 saturated with reasonable doubt. I mean, how could you
2 possibly believe anything that Mr. Olsen says or Ms.
3 Frazier says? You shouldn't. I mean, how many lies do
4 you need, you know? We only need to show a reasonable
5 doubt. Do we need one lie for that or 50? And I think
6 we're closer to 50, so I'd ask you to closely scrutinize
7 anything that they had to say.

8 And then what's left is the physical evidence. The
9 only thing that the State has to try to tie my client to
10 the scene is a fingerprint that was on the washing
11 machine which that State's witness indicated could be --
12 that could have been there for a long, long time. It
13 was in a climate controlled area. The washing machine
14 is a good location for a print to stay. We also know
15 that my client had been in and out of that house on
16 numerous occasions. He actually knew Mr. Totten for as
17 long as April did. He had been over there to visit
18 April, been over there to visit Mr. Totten. All that
19 fingerprint shows is at some point in time that my
20 client touched a washer. They can't pinpoint it to that
21 night. It could have been done six months earlier, it
22 could have been done two months earlier, it could have
23 been done three weeks earlier; we don't know.

24 As far as the DNA evidence goes, well, we kind of
25 got some contradictory testimony from Ms. Green in that

1 she initially said you needed 13 markers or identifiers
2 for the sample to be good and then she said she didn't
3 have those in this case. She didn't have enough
4 markers, and yet she's still trying to say well, it
5 doesn't exclude him, and that's really all they can say
6 is it doesn't exclude my client. But if you think about
7 it, it doesn't really exclude, you know -- if there's
8 130 people in these two rooms, it doesn't exclude
9 somebody else that's within this immediate area. It
10 really doesn't exclude millions of other people in
11 America. You know, it's not the one in six gazillion,
12 you know, as she indicated for Mr. Olsen on that glove.

13 So when you really break it down, you know, the
14 State keeps going back to follow the money, but that
15 really, really doesn't show anything. Yes, it shows my
16 client is a thief, and yes, they were doing these
17 things, but it doesn't show really that he was even
18 there, that he actually knew about what was going on.
19 Think about the evidence that has actually been
20 presented to you, physical evidence, testimonial
21 evidence, you know. Between Mr. Olsen and Ms. Frazier
22 this case is saturated with reasonable doubt. We only
23 need a reasonable doubt.

24 I'd ask you to follow the law that has been
25 provided to you and if you do that you should find my

1 client not guilty.

2 Thank you.

3 THE COURT: Thank you, counsel.

4 Ladies and gentlemen of the jury, we are now going
5 to break and we will have you have lunch. I anticipate
6 it will be about a half hour for your lunches. I don't
7 know if it is here yet, but it should be.

8 THE BAILIFF: Should be.

9 THE COURT: If you will go and have lunch.
10 Please do not talk about the case. You have heard only
11 two closing arguments. Simply have a good lunch, and we
12 will break for about a half hour.

13 I ask the attorneys to remain in session.

14 (Jury out.)

15 THE COURT: Please be seated.

16 As I indicated, we will be breaking till 12:30. Is
17 there anything we need to take up outside the presence?

18 MR. BRUNEAU: I have nothing.

19 THE COURT: Okay. Mr. Woodrow?

20 MR. WOODROW: Nothing.

21 THE COURT: Please be available at 12:30. Mr.
22 Lane, please be available at 12:30.

23 We are in recess.

24 THE CLERK: Please rise.

25 (Recess.)

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THE COURT: Please be seated.

(Jury in.)

THE COURT: Ladies and gentlemen of the jury, please be seated, and be seated in the courtroom.

Ladies and gentlemen of the jury, please give your attention to Mr. Richard Woodrow.

MR. WOODROW: Thank you, Your Honor, counsel, ladies and gentlemen of the jury.

The issue in this case was touched upon by Mr. Bruneau and by Mr. Lane, but the issue in this case as far as Mr. Olsen is concerned is the accomplice liability statute and the testifying accomplice jury instruction. Those are the two issues in this case. The testifying accomplice jury instruction is the one -- and you had it read to you many times, so I'm not gonna do that, but it starts off with "The testimony of an accomplice given on behalf of the plaintiff."

Now, Mr. Bruneau in his opening summation talked about why you should believe Ms. Frazier, and he said something like well, Ms. Frazier's testimony is supported by other evidence, but then he didn't list any other evidence because there is no other evidence. Now, if there is no other evidence supporting her testimony, then you must find -- if you're gonna use her testimony to find anybody guilty of any crime you must believe her

1 beyond a reasonable doubt. All the evidence you've seen
2 so far, all the other people that have come in and
3 testified, all the other factual evidence that you have
4 seen says that she is not being truthful. She was not
5 being truthful when she testified. She was not being
6 truthful when she gave her statement to law enforcement
7 and to Mr. Bruneau back in August of 2007.

8 You know, the one thing that I disagree with with
9 Mr. Lane is Ms. Frazier got her lie down when she spoke
10 with Ms. Hicks. That's when she first talked about or
11 thought of what she was going to say. You know, she
12 told a lot of other lies to Ms. Hicks, you know, about
13 Mr. Totten being shot. I don't know why she said that.
14 You know, who knows what's in the mind of a liar? Who
15 knows? But why did she say that? Who could figure that
16 out? Well, you know it's a lie, right? So that's --
17 other evidence in this trial will tell you that she's
18 lying, but she doesn't care when she's lying because she
19 wants to make herself look good because she wants to
20 withdraw herself from this crime. That's what she does.
21 She's the consummate liar.

22 You know, the one thing she said to Ms. Hicks -
23 and you're probably gonna hear about this later on - is,
24 you know, she opened the door or she got Mr. Totten to
25 open the door to do her laundry, and she said that to

1 Ms. Hicks, and she testified to that. Now, Mr. Bruneau
2 and Mr. Jackson are submitting to you that that's true,
3 but what this jury instruction tells you to do is look
4 at that testimony, pay attention to it, and subject it
5 to careful examination. Why believe that? Because she
6 said it? Her whole past will suggest to you that she's
7 a liar, so why believe even that, that she was the bait,
8 okay?

9 You know, the whole laundry thing, you know, she
10 says she went to Mr. Totten's house -- one thing. If I
11 say something that your collective memory says is not
12 accurate, then disregard what I say because it's your
13 minds. You were here listening to the testimony. If
14 I'm asking questions I can't take notes, so please, if I
15 say something which you all when you go back there and
16 talk about the case thinks is inaccurate, disregard what
17 I say.

18 But she says, I believe, she came back from Reno,
19 Ms. Frazier and Mr. Sublett, called and said she was
20 gonna stop by Mr. Totten's house and she was gonna make
21 dinner for him. Remember that? There was no time
22 period in between. She said she came back from Reno,
23 she went to Mr. Totten's house. It was at that point in
24 time that she and Mr. Sublett stole Mr. Totten's wallet,
25 checkbook, and cell phone. Now, Mr. Bruneau said well,

1 we don't know when that happened. We don't know when
2 they actually got there. Well, there is the State's
3 witness, Ms. Frazier. Ask her that question. Pin her
4 down. When did you actually get there? The State
5 doesn't do that, you know. It's almost as if they're
6 not too sure they would believe her when she gave an
7 answer.

8 Now, let me ask you this: You steal somebody's
9 cell phone, their checkbook, and their wallet. When are
10 they gonna know that stuff is missing? What Ms. Frazier
11 said was well, he had a messy house, so it would take
12 him a while before he found out that these things were
13 in fact missing. Now, is that true for you guys? Do
14 you know where your purse is? Do you know where your
15 wallet is? Do you put your wallet and your purse in the
16 same spot when you come home so you know where it's at?
17 You know where your stuff is at. And she said something
18 like well, he must have known his wallet was stolen
19 because he deactivated his credit cards, and we know
20 that that's a lie because Detective Brenna talked with
21 Teresa at Key Bank and she said the credit cards were
22 dormant, which means they weren't being used. They
23 weren't inactivated. Why did she say that? Well,
24 because she wants you to believe that Mr. Totten was
25 still alive after the wallet, the cell phone, and the

1 checkbook were stolen. Where is the proof of that? She
2 says it. That's it. There is no other proof of that.

3 Now, maybe a few hours goes by, you're not getting
4 a phone call on your cell phone or you want to call
5 somebody. Where do people keep their phone numbers at?
6 In your head? Some do. A lot of people keep their
7 phone numbers on their cell phone. Well, where is my
8 cell phone? Where is my wallet at? Where is my
9 checkbook at? You know when it's gone and you're gonna
10 call, you're gonna deactivate your credit cards, and we
11 know Mr. Totten had a lot of them. When you take that
12 stuff back, he had like four or five credit cards.
13 You're gonna know your cell phone is missing. You're
14 gonna want to deactivate your cell phone. That never
15 happened. They had his cell phone. It was never turned
16 off.

17 Your checkbook is gone. What are you gonna do?
18 Are you gonna say deactivate my checking account? Don't
19 accept any of the checks on my checking account. That
20 never happened either. You had the people from the
21 credit card, the check, the bank, come in. They never
22 said any of that stuff happened because when his wallet
23 was stolen -- Mr. Totten's wallet was stolen when his
24 cell phone was stolen, and when his checkbook was stolen
25 he was dead, and he was dead because Mr. Sublett and Ms.

1 Frazier had killed him, okay?

2 Now, how do we know about when that happened?

3 Well, we know that Mr. Sublett pawned a generator on
4 January 27th, right? Now, that's a piece of fact that
5 just can't be changed. There it is. So did Mr. Sublett
6 and Ms. Frazier steal that generator and put it in the
7 rear of the 350Z and drive all over town? Remember what
8 Ms. Frazier said? Well, on the 28th we were out
9 partying all night. Well, where were you at? At a
10 friend's house. I don't know. We were smoking meth,
11 getting high, having a great time. Was the generator in
12 the back of the vehicle, as Mr. Bruneau said, from the
13 22nd or the 23rd on?

14 Exhibit Number 165, and I'm not too good with that
15 stuff, so I'll publish this by showing it to you.
16 That's a picture of that generator. Is somebody gonna
17 hang on to that generator for days in a little
18 two-seater vehicle scooting all around, committing
19 crimes, a piece of stolen property easily traceable? Or
20 was that taken when Mr. Totten was killed? Those are
21 facts that suggest that at least by the 27th Mr. Totten
22 was probably killed.

23 Who is bringing up January 29th? The only person
24 who said it happened on that date was Ms. Frazier.
25 Well, you already know when you're looking at her

1 testimony -- and she's the only person in this trial
2 that this jury instruction about accomplice testimony
3 applies to. It applies to nobody else. It applies
4 because -- this is -- Judge Pomeroy has given you this
5 law because it makes sense. An accomplice given a deal
6 for second degree manslaughter, looking at what, 51
7 months or so, those are reasons for a person not to be
8 truthful, to take the blame from me if I'm the
9 accomplice and put it on those two. So you could look
10 at her testimony carefully. If there's nothing else
11 supporting her testimony - and there's not - then you
12 must believe her beyond a reasonable doubt or you must
13 acquit. That's what that jury instruction says.

14 When it comes to Mr. Olsen's testimony, use Jury
15 Instruction Number 1, which Mr. Bruneau had up there,
16 which talks about how you weigh the credibility of
17 people. Now, you look at their biases, motives,
18 opportunity, vantage points, where they could see what
19 they're testifying about, but if you put her testimony
20 up there, Ms. Frazier's testimony, she loses because you
21 must believe her testimony beyond a reasonable doubt.

22 You know, the other thing that will suggest that
23 what Detective Brenna said, Teresa said at the Key Bank
24 is accurate, is that the 29th is a Monday, the 28th is a
25 Sunday. If the wallet was stolen on the 27th, the same

1 day that the generator was stolen, Mr. Sublett and Ms.
2 Frazier couldn't use the credit card because it couldn't
3 be turned on until the banks opened, and you know it was
4 turned on by the testimony of the credit card woman when
5 -- she said that it was starting to be used on the 28th
6 but it was activated on the 29th, but that was based
7 upon the Eastern Standard Time so it would be earlier
8 here.

9 The other reason to think that Mr. Totten was
10 murdered before the 29th is when you listen to the phone
11 calls, listen to Ms. Frazier's information that she's
12 trying to get from Mr. Olsen -- I mean, she's talking
13 about doing something, you know, talking about a job,
14 stuff like that, talking about bailing Mr. Olsen out.
15 From their prior contacts Ms. Frazier thinks well, she
16 can use Mr. Olsen, that he's a chump, that he's a mark.
17 Remember that? Remember what Mr. Olsen said, that he's
18 the one -- he's the scapegoat. Look at him. He's
19 135 pounds, 26 years old, addicted to drugs. He's the
20 type of person that gets used by people like Ms. Frazier
21 and Mr. Sublett, but he didn't go along with it.

22 When you're in jail and people are saying we have
23 got a job to do, we have got something we want to you
24 do, Mr. Olsen's only motive is to get out of jail, then
25 when he finds out -- remember, Ms. Frazier said she

1 never talked with Mr. Olsen about what they were
2 supposed to do. She never said that. She said well, it
3 must have been Mr. Sublett talked to Mr. Olsen when they
4 had their boy talk in the other room in the casino. She
5 said well, that must have been when this talk happened,
6 right? But she never told Mr. Olsen that they were
7 going to a man's house that was already dead, to
8 burglarize the house. Remember that? She never said
9 that.

10 You know, when the medical examiner was testifying,
11 Mr. Lane asked a few questions of her, well, how long
12 does it take before a body starts to smell, starts to
13 decompose? She said well, we just don't know, you know.
14 It depends on the environment that the body was kept in.
15 You don't know. But if you believe Ms. Frazier, what
16 she said was well, as soon as Mr. Olsen got out of jail
17 we went back to the casino, smoked some meth, and then
18 went over to Mr. Totten's place, and then that's when
19 Mr. Olsen and Mr. Sublett killed Mr. Totten. And that
20 may have been at 2 in the morning, 3 in the morning, 4;
21 she doesn't really say. She's intentionally vague about
22 that. Well, we know the body was discovered the
23 following day between 6 and 6:30 or so p.m., and we know
24 that when the body was moved both Ms. Frazier and Mr.
25 Olsen said the body -- Mr. Totten's body started to

1 smell. That's about a 12-hour period of time.

2 Now, you can reasonably conclude, okay, well, the
3 human body is going to start to smell in about a 12-hour
4 period of time, but I think it's more reasonable the
5 longer the body is not chilled, you know, the body is,
6 well, a person is dead, the more likely the body is
7 going to start to smell. If it happened on the 27th or
8 the 28th, then it's more likely that the body was going
9 to smell as opposed to 12 hours.

10 Then you have to ask yourself a question, you know,
11 why was Mr. Totten murdered? The State says it's
12 because of money. He was killed over money. Well, who
13 had the personal connection with Mr. Totten? Mr.
14 Sublett and Ms. Frazier. They're the ones who have more
15 of a motive because -- well, there may be other motive
16 because Mr. Totten of course is not here to say what was
17 going on between him and Ms. Frazier, him and Mr.
18 Sublett, but you do know Mr. Sublett was on Mr. Totten's
19 property a couple of weeks before Mr. Totten was killed
20 and he had a disagreement or an argument with Mr.
21 Totten. You do know that. You do know there was some
22 bad blood there. There was such amount of bad blood
23 that it was heard by the neighbor across the street.
24 That goes to motive.

25 The other things that you know about. There was a

1 gun stolen from Mr. Totten. Now, Ms. Frazier says she
2 saw that gun on Thanksgiving day. Now, is that true or
3 not true? Well, who knows, but she said she saw it, all
4 right? And you know that Ms. Frazier and Mr. Sublett
5 had been stealing from Mr. Totten, two generators and
6 some coins, of course the wallet, the cell phone, the
7 checkbook, you know, but that's just stuff that we know
8 about. That's just stuff that was pawned in Thurston
9 County. How about stuff that could have been stolen and
10 pawned in Pierce County or Clark County or on their
11 little, you know, travels across the Western U.S.? I
12 mean, we don't know what else was stolen. You know,
13 this generator is large. Perhaps the other generator
14 was just as large. What Ms. Frazier wants you to
15 believe is that Mr. Totten never knew that people were
16 stealing from him, you know, that he was blind to all
17 that. Well, what happens when somebody catches the
18 people who are stealing from him? Words are exchanged,
19 tempers flare, people get hurt. That's a motive for a
20 murder. Now, you know Mr. Sublett is stealing. We know
21 Mr. Sublett is on parole. If he gets caught he goes
22 back to prison. That's a motive for murder.

23 You know, one of the more troubling things about
24 this case was what happened to Mr. Totten before he was
25 killed. There's signs that he -- his wrists were taped.

1 He was beaten. There's trauma to his face. It's almost
2 as if somebody was trying to get information from him,
3 information that only he would know about, mother's
4 maiden name, combination to the safe, credit card
5 information, checking account information, other
6 checking accounts. Where does he keep his jewelry at,
7 if he has any? Where is the rest of his coins? We
8 already know Ms. Frazier knows where some of the coins
9 were because she was stealing from him. Well, we know
10 that information was put in this address book that came
11 out of Exhibit 130. I showed this to Ms. Frazier, and
12 the information in here is in her handwriting; credit
13 card information, mother's maiden name of Mr. Totten.
14 It's written down in this address book in Ms. Frazier's
15 handwriting. Now, it was written there because the
16 information was coming from Mr. Totten, and it was being
17 written there because Mr. Sublett and Ms. Frazier were
18 gonna use this information of course to steal from Mr.
19 Totten.

20 Now, what the State wants you to believe is that
21 Mr. Olsen rushed into a house of a person that he's
22 never seen before, he beat him to death or choked him to
23 death - they haven't really said which one - or both,
24 and then tied him up, right? Somehow tied him up,
25 gagged him. For what purpose? For no purpose of course

1 because when Frazier goes into the house, right, she
2 doesn't say anything about any questions being asked of
3 him. Why do you gag -- why do you tie up a dead person?
4 You don't. You only do it to a live person because you
5 want information. But Ms. Frazier said she didn't go in
6 there and that Mr. Olsen was, you know, asking questions
7 of Mr. Totten, anything like that. It's because she's
8 not truthful, and she's trying to deflect her
9 responsibility on to Mr. Olsen, and she did a pretty
10 good job of it so far.

11 You know, the other thing we know is that Shirley
12 Inman, Mr. Totten's sister, who is the executor of the
13 estate, said that she estimated that \$100,000 or so is
14 missing from the estate. We know that, you know, from
15 the transactions, you know, 20, 25,000 was used by the
16 trip that Mr. Sublett and Ms. Frazier were on, but
17 there's a lot of money left unaccounted for, and that
18 money could be in the form of cash. You know that Mr.
19 Sublett and Ms. Frazier had a lot of interest in that
20 big safe. They had a lot of motive to get into that
21 safe, and they were after the combination to the safe.

22 Remember when the officers talked with Chris? He
23 said the safe was closed and locked. Ms. Frazier said a
24 few days later, three days later or something, she went
25 back to the house, tried to open that safe up,

1 eventually Mr. Sublett did, and there was nothing in it.
2 So here is a big safe in the house with nothing in it.
3 Of course you have to believe Ms. Frazier to believe
4 that.

5 When it comes to accomplice liability - and that's
6 Jury Instruction Number 21 - it's not accomplice
7 liability to any crime. It's accomplice liability, and
8 this is the second paragraph in the accomplice liability
9 jury instruction. It's very important because it's not
10 a person is an accomplice to a crime or any crime. Mr.
11 Olsen has to be an accomplice to the crime, and the
12 crime in this case is robbery, first or second, and
13 burglary to prove that he was an accomplice to the
14 actions of Mr. Sublett and Ms. Frazier in order for him
15 to be held legally accountable for what they do. Where
16 is the proof of that? None whatsoever. If Mr. Totten
17 was killed on the 27th, then Mr. Olsen is simply not
18 guilty of murder, period, because there was no agreement
19 prior to that because Mr. Olsen was in the jail.

20 You have a complete transcript of all the
21 communications between Ms. Frazier and Mr. Olsen. They
22 never talk about a robbery, a burglary, anything like
23 that, so he's not an accomplice to their actions,
24 period. Period. Unless you believe Ms. Frazier beyond
25 a reasonable doubt, which means Mr. Olsen stormed into

1 the house. Remember that? Opened the door, he stormed
2 into the house. And what did he do? He grabbed a
3 baseball bat, all right?

4 (Discussion off the record.)

5 MR. WOODROW: You know, what Ms. Frazier
6 testified to was Chris stormed into the house and
7 grabbed the aluminum baseball bat. The only evidence we
8 have of anybody using a baseball bat is the bat laying
9 next to Mr. Totten's body which is a wooden baseball
10 bat, and that bat was tested by the DNA expert. The DNA
11 found on the bat excludes Mr. Olsen, so he didn't touch
12 that bat. That was laying next to Mr. Totten's body.
13 What Ms. Frazier said was Mr. Olsen grabbed this bat in
14 Exhibit Number 38, and that's the bat that he used.
15 This picture shows that that bat is still in the utility
16 room as if it was never touched, never used by anybody.
17 That is a 100 percent contradiction of Ms. Frazier's
18 testimony.

19 Whatever she says, if you look at the evidence, it
20 shows that she's not truthful. When the State has their
21 chance on rebuttal, you know, they're gonna argue that
22 she is truthful, but think about it. What piece of
23 evidence supports anything she has to say? What logic
24 or reason supports her? There is none whatsoever.

25 You know, when Ms. Frazier testified, you know, she

1 was talking about the laundry that she was doing, that
2 she dropped the laundry off when she got back from Reno,
3 presumably on January 27th, the same day the generator
4 was stolen, the same day the wallet and other items were
5 stolen, and she dropped off the laundry and she started
6 the laundry. Remember that? And she said well, the
7 ruse I used was I called up Mr. Totten and said I need
8 to come back to finish off the laundry. So two days
9 later she puts laundry into a person's washer and dryer
10 and then two days later she's gonna go back and finish
11 the laundry. Perhaps she in fact did that.

12 When we look on the casino bill, Exhibit Number
13 168, listed on here is \$35 for laundry at the casino.
14 Occupancy started on 1/29 and then February 2nd. So why
15 did she make up the lie about laundry? Because she had
16 to think of a lie to get back into the house and she had
17 to think of a lie to make the State believe her and for
18 you to believe her. Again the evidence supports the
19 clear conclusion that you can't believe anything she has
20 to say, and you have to believe her beyond a reasonable
21 doubt.

22 You know, the Elsie Pray-Hicks testimony versus Ms.
23 Frazier's testimony -- so I guess you have a choice of
24 who you're going to believe. Elsie Pray-Hicks, who
25 comes in here -- she's sober. She has no dog in this

1 fight. She has no axes to grind. She says the gun that
2 was used to kill Mr. Totten -- Ms. Frazier said it
3 belonged to her. She said Ms. Frazier said that Mr.
4 Totten was a rapist, and you heard all the other stuff.
5 I don't want to go into all that. But Ms. Frazier lies
6 to her. Now, why? Who knows why a liar lies? I mean,
7 you're almost asking an impossible question. The usual
8 ones that leap to mind, to make herself look better, to
9 justify a murder, to distance herself from the murder as
10 much as possible, things like that, but she lied. She
11 lied to a woman that she barely even knew, and she's
12 lying to you guys.

13 You know, think about -- you know, there was a --
14 one other thing. Ms. Frazier was asked a question, "Did
15 you tell Ms. Hicks that Mr. Sublett shot Mr. Totten?"
16 She goes no, no. She's calling Ms. Hicks a liar. But
17 who are you gonna believe? Just look at the demeanor of
18 the witnesses when they testified. How did Ms. Hicks
19 testify? She looked -- she answered the questions
20 quickly, concisely, to the point, you know, question
21 asked, answer given. What about Ms. Frazier? What was
22 her demeanor like on the stand? Remember that? I was
23 kind of walking around, and she was -- I'd ask a
24 question and she'd sit there, and once in a while I went
25 like this, you know, because I like to go fast, and it's

1 almost as if she wasn't thinking of the truth, but she
2 was thinking of the lie that she told. What did I say
3 in that statement?

4 What's the hardest thing to do as a human being?
5 Well, maybe more hard, more difficult, but one is
6 remembering a lie. That's difficult. You can remember
7 a little lie, like if you tell your -- all I can think
8 of right now is a boyfriend-girlfriend situation, you
9 know, and you tell your girlfriend, you know, two weeks
10 ago you went off with your buddies and you went off and
11 saw a movie. That's fairly easy to remember, but then
12 you say well, I saw Saving Private Ryan and they didn't
13 have any popcorn so we had pizza instead, and with a
14 little more detail it becomes a little more difficult.
15 You know, in Ms. Frazier's case, if it was the same time
16 period, you know, eight months later, a year later, you
17 have to remember a lie. It's difficult. Think back,
18 well, did I say we had pizza or did I say a burrito? I
19 don't even know if they even sell burritos in theaters
20 anymore. Or candy. But it's hard. That's what she was
21 doing. She was like what did I say? That's demeanor,
22 and that's what's in the first jury instruction. You
23 look at that to help you decide if she's being truthful,
24 and then you go to the jury instruction that talks about
25 accomplice testimony. Her testimony, without knowing

1 anything else about the lies that she's been caught in,
2 just by the way she testified, is enough for you not to
3 believe her.

4 Then Ms. Frazier of course had the spunk to say
5 well, I'm gonna add three things to my story because it
6 makes it better. She said well, Mr. Sublett threatened
7 to kill me. He was gonna drive me out to the Grand
8 Canyon. We were kind of thinking about going out there
9 anyhow, but I think he said he was going to kill me,
10 dump my body there or something. Okay. But then when
11 she gets arrested and she's in the Clark County
12 detention facility she writes love letters to her
13 potential murderer, and then when she's transported to
14 Thurston County in March she's still writing love
15 letters to the guy that just told her I'm gonna take you
16 out to the Grand Canyon, shoot you, and maybe toss you
17 into the Grand Canyon - maybe that was part of it too -
18 but that was a lie. She just thought of it at the
19 moment. Remember, she didn't tell anybody else. It
20 wasn't in her statement. Was this in your statement?
21 No. When I went out and talked to you two weeks before
22 you testified, did you mention it then? No, but it's
23 true. It's true because I said it. I said it. So it's
24 true.

25 And what about the statement she says Chris said?

1 "I like killing people, and I want to do it again." So
2 Ms. Frazier says Mr. Olsen's reaction to seeing Mr.
3 Totten's dead body was he crawled under a table, he was
4 holding his knees, and he was crying. That's his
5 reaction to seeing a dead body, and so presumably when
6 he said he likes to kill people - remember that - and he
7 wants to do it again, so he wants to experience this
8 again, right? He wants to crawl under somebody else's
9 table and cry, right? Come on. Beyond a reasonable
10 doubt?

11 So then the other one was the shotgun. Remember
12 that? Because on direct examination and then with Mr.
13 Lane's cross he asked her well, what does Chris get out
14 of it? Nothing. Well, he got bailed out. That's it.
15 He got bailed out. Well, maybe Mr. Sublett gave him \$40
16 to go gamble, and I think I gave him bus fare. Remember
17 that? Then I'm on cross, walking back and forth, giving
18 her time to think, and she said no, wait a minute. Chris
19 stole a shotgun that was in a shotgun case. There it
20 is. Caught her right then and there. Never told
21 anybody in August when she was talking to Mr. Bruneau
22 and law enforcement; doesn't mention it then. Doesn't
23 mention it to you guys on direct examination because
24 it's not important enough, right? It's not important to
25 have to say that he stole the shotgun, that he was

1 walking around the house with a shotgun. That's not
2 important enough. But on cross examination when she's
3 taking the brunt of it, right, she says well, no, no. I
4 go well, what did he get out of it? Well, a shotgun.
5 He stole a shotgun. Why do you believe her? Because
6 she said it. No proof. Who from Mr. Totten's family
7 has come in here and said Mr. Totten even owned a
8 shotgun, right? Nobody. Next door neighbor? A friend?
9 Registration? Nobody. But she can say it. She could
10 say he stole a typewriter or, you know, a truck tire.
11 She says it, must be true. But where is the proof?
12 This is first degree murder. Where is the proof? Prove
13 it. What we have done is prove how she's not truthful.

14 The coins. I asked Ms. Frazier if she ever stole
15 any coins from Mr. Totten. Yeah, I did, I did. How
16 many times? Once. Were they pawned? When? Close in
17 time. Remember that? Close in time. Mr. Sublett
18 pawned those coins January 10th, 2007. Mr. Parker
19 pawned those coins November 25th, 2007. And that's in
20 Exhibit Number 186. That's close in time? So you've
21 got to think of it one or two ways; either Ms. Frazier
22 is driving around with a bunch of coins on her -- well,
23 I guess she doesn't drive, so she's toting her coins
24 from car to car, hiding the coins in the fifth wheel,
25 you know, for that two-month period of time, or she's

1 giving the coins to, you know, guys and they're just
2 hanging on to them and they're thinking well, it's not
3 the right time to pawn these coins. Let's go ahead and
4 wait. No, she stole the coins on two separate
5 occasions, but she can't bring herself to tell the
6 truth. That's what happened. You don't hang on to
7 stolen property. I'm gonna drive around with it in case
8 I get caught and there it is and Mr. Totten might find
9 out. No. You pawn them as soon as you can so you can
10 get high, so you can go buy some drugs and get high.
11 She lied again because she didn't think she was gonna
12 get caught, until Mr. Parker came in and the Tumwater
13 pawnshop gentleman came in and said they were pawned
14 almost two months apart. So again another lie, but
15 you're supposed to overlook all these lies and believe
16 her beyond a reasonable doubt in order to find Mr. Olsen
17 guilty because she's the only evidence against him.

18 Now, the prosecutor is gonna say this: No, we have
19 his statement. We have his statement. We have got 80
20 pages on one and 47 pages on the other one. We have got
21 those phone calls. You know, those phone calls don't
22 tell you anything. Those phone calls tell you that a
23 young guy wants out of jail, period, and he's gonna say
24 whatever he wants to say to get out of jail. I'll do
25 whatever you want.

1 The whole Lemar Parker thing, you know, it's Mr.
2 Olsen's friend, but the State wants you to believe that,
3 you know, Mr. Olsen really wanted to kill him or stab
4 him or something and you had, you know, this back and
5 forth about, you know, the gun. Mr. Olsen says it's a
6 flare gun, and they're attacking him, saying it's a real
7 gun, isn't it? He said it's a flare gun, you get
8 toasty. It means the flare thing lights things up.
9 Then you ask Ms. Frazier, was it a flare gun? Yeah.
10 Was it blue and white? Yeah. It was a flare gun. It
11 wasn't a real gun, but that's what they want you to
12 believe because bad people carry guns even though this
13 wasn't a crime about guns, but that's why it's there
14 because bad people talk about shooting people and
15 stabbing people.

16 Lemar was seeing Ms. Frazier. They were in a
17 relationship. They break up. She's talking smack about
18 Lemar. He joins in, talks about wanting to throw his
19 scandalous ass or something. He's talking the same
20 smack as she is to get out of jail, talking bad about
21 his buddy, and his buddy testifies here. That's all
22 that was.

23 What about the tape, the statement given by Mr.
24 Olsen? That is exculpatory. It means it proves his
25 innocence. It's not inculpatory. It doesn't prove his

1 guilt. He said when he got to the house Mr. Totten was
2 dead, probably dead, but he couldn't check because he
3 was under the sheet, under the blanket. Mr. Totten had
4 been dead for two days at that point in time. These
5 guys knew it. They wanted a chump to come in there so
6 they could play him for a fool.

7 You know, Ms. Frazier testified that Mr. Totten
8 kept odd hours of the night, right? Well, the
9 prosecutor or somebody says well, you know, you went
10 over there at 2 in the morning and he was okay with it?
11 Yeah, he stayed up late at night, you know, he kept odd
12 hours. Why believe that? Who else said that? His next
13 door neighbor? Anybody, any member of his family say
14 that? No, but she says it, so it's okay to go over
15 there. No, no, don't believe her. Don't give her the
16 benefit of the doubt. Don't believe her beyond a
17 reasonable doubt. She made up that story that he was
18 killed on January 29th. She just made that up.

19 You know, what's offensive about her testimony,
20 besides the fact that she was part of the murder of Mr.
21 Totten, was the idea that all of the State's
22 case-in-chief -- their whole case comes from her and her
23 alone. You know, the State is gonna say well, you find
24 the glove of Mr. Olsen. Mr. Olsen said in his taped
25 statement, well, you know, when I was handling the

1 stuff -- when I was handling the stuff, I wasn't wearing
2 gloves, but when the body was moved he put gloves on.
3 Ms. Frazier said the same thing; we put gloves on when
4 the body was moved. And then a particularly insightful
5 moment was when Mr. Bruneau asked well, then what does
6 that mean? And she goes well, we were trying to cover
7 up the crime or something like that, but she said we
8 were wearing gloves to move the body. He said we were
9 wearing gloves to move the body. And when you listen to
10 his phone calls, listen to the taped statement -- I know
11 it was long, but if you listen to the tape statement
12 again, you know, he says nobody was wearing gloves when
13 they were handling the stuff. That's it. That's it.

14 You know, when I first started talking to you, I
15 said the issue in this case is accomplice liability, and
16 that is the issue in Mr. Olsen's case. The State is
17 gonna say that he's an accomplice to their actions, but
18 he's not, and in his statement he never says I agreed to
19 the robbery, I agreed to the burglary, and that's the
20 crimes that we're talking about. He never said that,
21 never. And when he went there, he never assisted them
22 in their crimes. He never said that in his statements.
23 The only way you're gonna get anything about that is
24 you've got to believe Ms. Frazier. Ms. Frazier is the
25 only way and she's completely discredited.

1 What Mr. Olsen said was he went there, you know,
2 freaked out over what he saw. In fact, he was so scared
3 that Mr. Sublett had to take him for a ride, and he
4 threatened him with a gun. Remember that? Even Ms.
5 Frazier says Mr. Sublett took him for a ride. Now, if
6 you're an accomplice to a crime, if you're in for the
7 crime, well, then you can be trusted. You don't need to
8 be threatened. If we're gonna go do a robbery together,
9 then I can trust him and he can trust me. I don't need
10 to say to him "Get in my car, buddy. We're gonna go for
11 a ride, and we're gonna have a talk." You don't need to
12 do that because it never happened. He never agreed to
13 the robbery, the burglary, and certainly not the murder.
14 You saw from his reaction from Ms. Frazier he didn't
15 agree to the murder. And then when he gets to the
16 casino, you know, he wants to leave. Mr. Sublett,
17 according to Ms. Frazier, puts the gun on him and says
18 "No, you're not going anywhere." Now, is that an
19 accomplice? No.

20 And so what this goes to is whether or not he's an
21 accomplice of the crime. That's what it goes to. And
22 he wasn't because he never made an agreement. If you
23 look at the accomplice liability instruction it says he
24 has to have knowledge of the crime and that he has to
25 agree to it, and he never did those two things. You

1 know, when you agree to a crime, what's the first thing
2 you say? Well, what do I get out of it? I'm not gonna
3 do a crime for free. I'm not like some kind of criminal
4 super hero, I go around doing crimes for nothing. I
5 want something out of it. What am I gonna get out of
6 it? In a burglary what you do you get? Theft, stolen
7 items. Robbery, what do you get? Theft, money,
8 wallets, whatever. Mr. Olsen got nothing. He got
9 nothing.

10 So if you believe Ms. Frazier he storms in through
11 the door, grabs a baseball bat, goes in there and starts
12 wailing on somebody he had no beef with, and he got
13 nothing out of it. 135 pounds and he's wailing on this
14 guy or, you know, he's strangling him, you know, one or
15 the other, but he got nothing out of it. There's no
16 motive for him to do it, whether it's theft, personal
17 animosity, nothing.

18 You know, stuff about Ms. Frazier saying that the
19 house was messy and whatnot. You know, there's no
20 pictures before all this happened, so we don't know if
21 Mr. Frazier kept, excuse me, Mr. Totten kept a clean
22 house or not. We know in the house there were a lot of
23 items, but, you know, she's throwing that out there to
24 tell you why Mr. Totten wouldn't notice his wallet was
25 stolen and stuff like that, but if it's your wallet,

1 it's your cell phone, it's your checkbook, you know when
2 these things are missing.

3 You know, you may ask yourself, well, it takes a
4 lot of guts for somebody to get on the witness stand and
5 lie. It takes a lot of audacity to get in front of a
6 jury, you know, four eyeballs, in this case four extra,
7 and lie. It takes a lot of guts to do that, right? So
8 how do we know that Ms. Frazier has guts? How do we
9 know? Well, we know that a woman answered the phone to
10 Mr. Totten's residence February 3rd or something like
11 that. Ms. Inman had called and then Mr. Totten's mom
12 had called and spoke to a woman who said her name was
13 Julie who said "Mr. Totten is not here right now. He
14 went down to the store." And then Julie called her back
15 and said "He's gonna go on to a meeting." That's the
16 kind of audacity Ms. Frazier has because that was her in
17 the house answering the phone. That was her in the
18 house answering the phone. That's the kind of audacity.
19 That's the kind of showmanship. That's the kind of
20 ability to lie on the spot that she has. She's good at
21 it. She made up two good lies. And of course we had a
22 man answering the phone a bit later on saying "Jerry is
23 not here," boom, and that was Mr. Sublett.

24 You know, Mr. Lane already showed you the picture
25 of Ms. Frazier's arm, and ostensibly Ms. Frazier says

1 that this is signs of an assault by Mr. Sublett on her.
2 You know, you'll notice the fingerprint marks up on the
3 forearm, and there's some fingerprint marks down here,
4 and I don't really remember what Ms. Frazier said she
5 told the police officers, if it was pushing, shoving,
6 striking, something like that, but that bruise on the
7 upper arm, that's an old bruise. It wasn't made the
8 same day that the officer got there. That's an old
9 bruise, and that tells you Ms. Frazier is lying. She
10 just thought of another lie to tell the cops because she
11 was high on drugs going crazy in her room, so crazy,
12 acting up so bad that the clerk calls the cops on her
13 and she lies and says "Mr. Sublett beat me up."

14 Now, if you're being strangled, what's the first
15 thing you're gonna do? You're gonna grab that arm
16 that's strangling you and you're gonna seep fingerprint
17 marks just like that. Now, she thought she was gonna
18 get away with something. These bruises show that I'm
19 the victim of domestic violence. I want a room. Okay.
20 You get a room. In fact, we're not even gonna charge
21 you with having the meth and the pipe in your room
22 because you're such a victim of domestic violence. This
23 is what, four or five days after she killed somebody?
24 What's on her arms is the death struggle of Mr. Totten,
25 and those bruises, I submit to you, are four or

1 five days old.

2 The writing in the address book -- okay. I mean,
3 she said she did that at the casino or whatever. I
4 mean, whatever she wants to say, that was taken from Mr.
5 Totten himself because you don't need to tie up or tape
6 a person that's dead. You only tie up or tape or gag a
7 person that's alive, and he was alive and this
8 information came from him. That's proof. That has been
9 proven to you. He wasn't murdered, as she said, by Mr.
10 Olsen when he rushed into the house with a baseball bat.
11 It's just a lie. He had nothing to gain from it. And
12 then she said she went into the house and Mr. Totten was
13 already under that blanket. That's just a lie too.
14 You're not gonna do all this work, gag somebody, tie
15 them up. It makes no sense.

16 You know, you had the State spend quite an
17 extraordinary period of time on fingerprints, and what
18 you get out of that is Mr. Sublett's fingerprints -- two
19 fingerprints were on the washer, Mr. Sublett's was on
20 the dryer, and then two of Mr. Totten's were on the
21 washer. The rest of the latents were of no value.
22 There were fingerprints taken from the truck also. But
23 somewhere along the line someone is going to say this to
24 you, that Mr. Olsen must have been lying and they were
25 wearing gloves because there's no fingerprints of Mr.

1 Olsen on the stuff in the house and there's no
2 fingerprints of Mr. Sublett on the stuff in the house
3 and there's no fingerprints of Ms. Frazier on the stuff
4 in the house, but there's also no fingerprints of Mr.
5 Totten, who lived in the house, and touched all that
6 stuff. Was he wearing gloves throughout the entire time
7 that he lived there? Obviously not. But where's his
8 fingerprints? They weren't lifted by the people doing
9 the lifts. His fingerprints didn't come from inside the
10 house. And you know Frazier had free run of the place,
11 and you know Mr. Sublett had free run of the place, so
12 don't go for what's called a red herring. If you're an
13 old guy like me you know what that means. When dogs
14 were taught to track in the south, they would try and
15 throw off a dog by getting a red herring, which smells
16 bad, and run around with it and try to throw the dogs
17 off from the scent of the animal, and the dogs were
18 taught well, you need to go past that and go after the
19 prey.

20 What the State is doing with this print stuff is a
21 red herring because it proves nothing. It proves
22 nothing. If it doesn't pick up Mr. Totten's
23 fingerprints who lived there in the house and touched
24 everything that he owned, presumably at one point in
25 time, then either the lifts are bad or the surface that

1 the fingerprints were on wasn't conducive to catching
2 the fingerprints, whatever, but you're going to get Mr.
3 Totten's fingerprints because he lived there. You
4 didn't. End of subject.

5 You know, no one ever talked about, including Ms.
6 Frazier, that the house was wiped down, that a rag was
7 used to wipe every single thing. Nobody testified to
8 that. In fact, Mr. Lane asked a question of the
9 fingerprint person, did it appear as if there was a
10 wipe-down going on? He said no.

11 What's important to draw from the statements of Ms.
12 Hicks about the rapist, teeth in a jar is that's exactly
13 the same thing Mr. Sublett and Ms. Frazier told Chris.
14 Remember his statement to the police in February and
15 then in March? He says they told me that Mr. Totten was
16 a rapist, that he tried to -- Mr. Sublett said Mr.
17 Totten tried to rape April. Remember that? And that's
18 in Mr. Olsen's statement to law enforcement in February.
19 Well, Mr. Olsen doesn't know Ms. Hicks. They didn't get
20 together to talk about this rapist idea, that this
21 person has to die. That didn't happen. That's because
22 Mr. Olsen and Ms. Frazier said we're gonna tell the
23 story to people to justify what we did, to justify what
24 happened to Mr. Totten. He said it to him. He don't
25 need to justify anything to him because, according to

1 Ms. Frazier, he's a murderer already and, according to
2 the State, he's an accomplice to the crime. You don't
3 need to say Mr. Totten is a rapist or child molester.
4 You don't need to say he, Mr. Totten, tried to rape Ms.
5 Frazier, and that's what Mr. Sublett was saying to get
6 him all pumped up, to try to make him help them, to help
7 them steal stuff. It's the same lie, the same lie told
8 to two different people who don't know each other. It
9 shows coordination, it shows sophistication, it shows a
10 plan. It shows a lot of stuff. And when he's stealing
11 these credit cards and doing this cross-country trip,
12 that shows what? A plan, coordination, sophistication.
13 They were in it together, Mr. Sublett and Ms. Frazier.
14 We know they are very good at using money orders, but
15 Mr. Olsen never got a money order. He never got any
16 cash. He never got anything. He didn't even get any
17 drugs after the fact.

18 You know, the whole construction job thing, you
19 know, Chris said there were other phone calls made on
20 three-ways. I asked the detective, what is a three-way?
21 He basically said the person from the jail calls a
22 different phone number, and then another phone can be
23 patched in to that phone, and that's where Chris said
24 that the idea of a construction job came up when they
25 were first talking about it. Now, you don't have those

1 phone calls because we don't know who was actually
2 called, but on the bail bond slip, 185, it's listed here
3 -- well, the person signing for Mr. Olsen when he was
4 bailed out is Debra Olsen, Mr. Olsen's mom, and then it
5 says where does the defendant work? And then it says
6 Sublett Construction, and that was written when
7 everybody was there. Chris was there, his mom was
8 there, Mr. Sublett was there. It even has April
9 Frazier's name in there too, kind of like just thrown in
10 there for the fun of it. They were all there.

11 So the State says well, this was all a lie, you
12 know, there was no construction job. It didn't say that
13 kind of job, but that's what was being talked about at
14 first and then sort of morphed on January 28th and 29th
15 when Mr. Totten was dead. It morphed because they
16 needed Chris for something else, but Chris was never
17 told what that something else was, and you need to be
18 told because that's how we find out things. If he's
19 gonna be held to be legally accountable for their
20 actions, he needs to be told what it is they're going to
21 do and what it is they've done or that's simply unfair.
22 That's not right. None of you or us should be held
23 accountable for somebody else's actions unless we have
24 knowledge of the crime, like this jury instruction says,
25 and we do something to aid and abet it, we have an

1 agreement. If you don't have those two things, then you
2 can't be held accountable.

3 Now, we talked on voir dire. I asked you guys this
4 question: When we prove the State has not proved their
5 case beyond a reasonable doubt that my client is
6 innocent, what are you gonna do? I said you've got a
7 dead body. You're gonna have a dead body in this case.
8 You're gonna want to find somebody guilty of this
9 offense. What are you gonna do? You say look, I'm
10 gonna throw my hands in the air. I don't care. He uses
11 drugs. He's been convicted of crimes. He says bitch
12 and shit and fuck on the phone and whatever else he said
13 on the phone. He's a bad guy. What do I care? But
14 then, as Mr. Lane said, you wouldn't be doing your duty
15 as officers of the Court. Nobody is gonna suggest that
16 you're not gonna do your duty, but this is difficult.
17 This is difficult. One of the most important decisions
18 in your life is going to be made here in the next few
19 days because you have enough evidence to say the State
20 has not proved their case beyond a reasonable doubt
21 because their case comes in through Ms. Frazier, and so
22 you're gonna have to find Mr. Olsen not guilty of this
23 crime, but in the back of your mind you're going to be
24 thinking I have a dead body, I have the family of Mr.
25 Totten here. We all want to hold people accountable for

1 things that they do and if they're close to the action,
2 if they know people, in our minds we might say well,
3 that's enough, and he's a bad guy because he was in
4 jail. Well, in all these elements they don't talk about
5 a person being a bad guy, you know, a person who says
6 shit and bitch and whatever else he said. They don't
7 talk about that.

8 You know, I know I'm running longer, but one of the
9 ways that you can believe somebody is when you have
10 indicia of reliability, when you can look to other
11 things that support what that person is saying. If it's
12 someone you love and you care for and they tell you
13 something, then you know from past experience that you
14 can either accept it or not accept it based upon your
15 past experience with that person, but when you don't you
16 have to look for external validation as to what they're
17 saying. With Frazier you have none. Every piece of
18 evidence works against her, but with Chris we have him
19 in his statement on February 27th that occurred from 9
20 a.m. to 6:00 a.m. when he was high on methamphetamines,
21 up for four or five days, him talking about what
22 happened, over and over and over again, but he never
23 changed it. He always says I didn't know what they were
24 doing. I went there. Things happened. I didn't see
25 him moving. I didn't know if he was alive or dead. I

1 thought he was dead. I never agreed to a robbery, a
2 burglary. I never got anything out of it. He said all
3 of that over and over again on February 26th when he was
4 high, not at your peak form if you're gonna lie, unlike
5 Ms. Frazier who was brought in here in her peak form.
6 And then, you know, he also said stuff like the
7 construction job on both of those statements. The
8 construction job is validated by the bail receipt. He
9 talked about after he went into the house that he then
10 went with Mr. Sublett when he was threatened, went to
11 the Circle K. Remember that? Where did you go? Circle
12 K. When you look at the evidence, number 170, it shows
13 on 1/29 that the credit card was used at the Circle K.
14 That supports what Mr. Olsen says.

15 Tamera came in here and said she heard April
16 Frazier make a threat over the phone, you know, "You're
17 not going anywhere. I've got a gun and I know how to
18 use it." She states she overheard that. Chris said
19 that, okay? On both occasions he said that. Now,
20 beyond the fact that it shows that he was not an
21 accomplice, it also supports what he says because she
22 came in here and said she overheard that conversation or
23 that threat.

24 The flare gun supports what Chris said in his
25 statements and his testimony because Ms. Frazier

1 supports what he says. Contrary to the assumption of
2 the State when they were cross-examining Chris about
3 that flare gun, trying to imply that it was a gun gun --
4 and you all heard that on cross, it's a real gun, isn't
5 it? That is the gun you were gonna use to shoot Lemar,
6 huh? It was a flare gun. Ms. Frazier said it was a
7 flare gun. That supports what he has to say.

8 You know, Ms. Frazier when she took her deal, she
9 also made a bet. She made a bet that when she'd come
10 here and testify, point the finger at Mr. Olsen and said
11 he's the guy that burst into the door with the bat in
12 his hand, the wrong bat by the way, that you were gonna
13 believe her and you were gonna find him guilty based
14 upon her testimony and her testimony alone. Don't let
15 her win that bet. Don't let the person responsible for
16 committing the murder of Mr. Totten win that bet with
17 you.

18 You know, the one thing I do agree with Mr. Lane
19 about is the idea of Ms. Frazier using the men around
20 her because she has the men around her sign their name
21 to stuff, Mr. Sublett, Mr. Parker, you know, when she
22 could do it, when she could pawn those items herself,
23 but she's too smart. What she said on cross examination
24 was I can pawn stuff. She has a driver's license. But
25 she doesn't do it because she knows sooner or later a

1 finger is going to be pointed, and she's making sure the
2 finger is not going to be pointed at her, that it's
3 going to be pointed at somebody else, and it was.

4 I think I'm done. I just want to make sure I
5 didn't miss anything.

6 You all know what I'm gonna say because I've been
7 kind of saying it for the past hour or so is I'm asking
8 you to find Mr. Olsen not guilty of the charge of first
9 degree murder, whether it was premeditated, which
10 there's no proof of whatsoever, or felony murder. The
11 basis of that is Mr. Olsen was not an accomplice to the
12 actions of Mr. Sublett or Ms. Frazier and Mr. Totten
13 was, in all probability, already murdered by the time
14 Mr. Olsen got to the house because of the wallet being
15 stolen, the items being pawned, you know. We don't have
16 any phone records of Mr. Totten, if he got any phone
17 calls during that time period. We have nothing else to
18 help us pinpoint the time of the death except what, you
19 know, we were able to work with, and even the State's
20 main witness is not able to help us out. So in all
21 probability Mr. Totten was already dead and Mr. Olsen
22 was asked to arrived at the house.

23 I'm asking you to find him not guilty.

24 THE COURT: Thank you, Mr. Woodrow.

25 Ladies and gentlemen, we are going to be taking our

1 afternoon break. Remember, you have not heard all the
2 closing arguments. The State has the burden of proof
3 and as such has the final say. What will happen is I
4 ask you not to discuss it on your break. Simply go and
5 have a good 15 minutes. You will come back and hear the
6 final closing argument.

7 If you will go with the bailiff, I ask the
8 attorneys to remain in session.

9 (Jury out.)

10 THE COURT: I do want to make sure you get all
11 your exhibits back.

12 15 minutes. Is there anything else?

13 MR. LANE: No, Your Honor.

14 THE COURT: All right. Thank you.

15 (Recess.)

16 (Jury in.)

17 THE COURT: Please be seated, and be seated in
18 the courtroom. Thank you.

19 Ladies and gentlemen of the jury, please give your
20 attention to Mr. Bruneau.

21 MR. BRUNEAU: Thank you, Your Honor.

22 Ladies and gentlemen, for the last five hours with
23 only a few breaks you have been in this courtroom
24 listening to instruction and listening to arguments, and
25 it would seem to me that at this juncture the last thing

1 you want to do is hear from another lawyer, so I can
2 assure you, I will assure you, that I will be very brief
3 because there are only a few themes that I want to talk
4 about in my rebuttal argument.

5 One is, ladies and gentlemen, I hope that among
6 you -- I hope all of you -- well, some of you appreciate
7 irony because listening to the arguments of both defense
8 counsel was sort of a treat in ironies, both small and
9 large, and when I say irony, I mean, for example, Mr.
10 Woodrow argues that April Frazier is not to be believed,
11 but it kind of depends on what she has to say. If she's
12 talking about something favorable to Mr. Olsen such as
13 him underneath a table weeping, that's good, believe
14 that, but don't believe anything else she has to say.
15 And Mr. Lane, for example, faults the Tumwater Police
16 Department because they didn't collect any cigarette
17 butts in Jerry Totten's kitchen to find out if there was
18 anybody's DNA on the cigarettes, and then a few minutes
19 later he's arguing well, those fingerprints that were
20 found in Jerry Totten's house, Sublett's fingerprints in
21 the utility room, that doesn't mean anything because
22 Sublett has been there many times. I would expect if
23 the Tumwater police did recover DNA from a cigarette
24 butt Mr. Lane would argue the same thing, well, yeah,
25 sure, Mr. Sublett had a cigarette butt there. He's been

1 there many times.

2 More significantly, ladies and gentlemen, are the
3 larger ironies in play here and that is fundamentally,
4 very fundamentally, ladies and gentlemen, when a crime
5 occurs and police investigate the crime and when they
6 present that case, that investigation to the prosecutor
7 we're talking about reality. We're talking about the
8 real world. In this case when I say the real world, I
9 mean ugly, sinister, drug saturated, real life. As
10 prosecutors we don't go to central casting and say hey,
11 rustle up some witnesses for us, will you? We have got
12 a case to try, a little case of murder, and we need some
13 witnesses. Give us somebody -- give us some actors to
14 come in here. Give us some nice looking people. Well,
15 that's not the way it happens. We deal with ugliness.
16 We deal with what is sinister. We deal with things that
17 are obviously unpleasant like murder, like meth, like
18 lying, cheating, stealing, like robbery, and murder. So
19 what are we to do? We deal with the cards that we are
20 dealt. We deal with the facts as they are.

21 Isn't it a very large irony, ladies and gentlemen,
22 that April Frazier, the paramour of Mr. Sublett for some
23 year and a half, maybe two years, and April Frazier, the
24 good friend, the sister of Mr. Olsen, is taken to task
25 so vigorously and so vehemently by Mr. Olsen through his

1 counsel and by Mr. Sublett through his counsel? I mean,
2 Mr. Woodrow I believe said to you her whole past
3 suggests she's a liar. Well, ladies and gentlemen,
4 April Frazier's whole past or a substantial part of her
5 past involves this defendant, Mr. Sublett, and this
6 defendant, Mr. Olsen. For that defendant and this
7 defendant through their counsel to belabor her
8 untrustworthiness is a very large irony. They were in
9 this together.

10 You know, contrary to what these two attorneys said
11 to you, I don't want you to believe anything. The State
12 does not want you to believe anything except in the
13 evidence and the reasonable inferences to be drawn from
14 all of the evidence you have heard.

15 Now, some of that evidence came from April Frazier,
16 and there has been much talk about this instruction -
17 and I believe it's been misstated and so I will go back
18 to it - concerning the testimony of April Frazier, and
19 the first sentence says that "The testimony of an
20 accomplice given on behalf of the plaintiff is to be
21 subjected to careful examination and should be acted
22 upon with great caution." The second sentence says "You
23 should not find the defendant guilty upon such testimony
24 alone unless, after carefully considering the testimony,
25 you are satisfied beyond a reasonable doubt." The

1 testimony of April Frazier is not offered alone. It is
2 not offered in a vacuum. It is sustained and
3 corroborated by the totality of the evidence.

4 But let us take April Frazier in a vacuum for a
5 moment, ladies and gentlemen, and when you do, consider
6 her testimony on the stand. Consider how she appeared
7 as she was here two days. She testified for some long
8 period of time the first time she testified. When you
9 consider the guides for construing or I should say
10 looking at her testimony, her memory and manner while
11 testifying, I suspect that when you heard her testify
12 she seemed believable to you, and I say that because you
13 are to consider any factors that affect the
14 believability. You may consider any other factors that
15 bear on believability and truth, and what are some of
16 those factors? She did not hold herself out as anything
17 but someone who had been or is addicted to
18 methamphetamine. When she was asked a question about
19 something that had not been brought up on direct
20 examination, she acknowledged a lie. Yes, that's true.
21 Yes, I stole from Jerry Totten. She acknowledged that
22 she betrayed Jerry Totten. She was not held out for
23 anything but what she was, a participant in a crime.

24 And also, ladies and gentlemen, consider how her
25 evidence that she gave meshes with the evidence that you

1 heard from Elsie Pray-Hicks, who described Ms. Frazier
2 on February 4th as being afraid and as being apparently
3 remorseful. Now, when confronted, that is, when Elsie
4 Pray talked about murder, I believe the first remarks
5 attributed to April Frazier by Elsie Pray were "We
6 killed someone." This is not someone, that is, April
7 Frazier, who is trying to distance herself from
8 responsibility. "We killed Jerry Totten." And then she
9 went on to describe what happened to Jerry Totten, and
10 the evidence shows that the killing was done in the
11 living room by Mr. Sublett, by Mr. Olsen.

12 Now, April can't tell us who used the bat on Mr.
13 Totten or who did the manual strangulation. She said
14 that she believed that Christopher Olsen grabbed the
15 bat. She thought it was an aluminum bat. Turns out
16 that Mr. Sublett's DNA is on a wooden bat. Are these
17 the discrepancies that make her a liar? I submit that
18 these are the sort of discrepancies in what happened
19 that you would expect in real life, someone who betrayed
20 Jerry Totten and in concert with two others got into his
21 house, was participating, participated in the killing,
22 and then took money. Is she a good person? No. Is she
23 addicted to meth? Has she admitted to that? Yes. Did
24 she participate in homicide? Yes. Is she telling the
25 truth? I submit the evidence and the circumstances

1 surrounding her statements are true.

2 Now, ladies and gentlemen, counsel for Mr. Sublett,
3 Mr. Lane, says the State makes a big deal of that
4 January 29th bail-out. Well, even Mr. Olsen says that
5 that killing occurred on January 29th. In spite of his
6 counsel's theory about January 27th, Mr. Olsen says --

7 MR. WOODROW: Your Honor, I'm gonna object.
8 Those are not the facts that are in evidence.

9 THE COURT: Overruled. Ladies and gentlemen,
10 again I remind you, you remember the evidence. What
11 counsel said is not evidence.

12 Continue.

13 MR. BRUNEAU: In spite of Mr. Woodrow's theory
14 about January 27th being the day that Jerry Totten was
15 killed, Mr. Olsen himself said it was January 29th, but
16 aside from that, ladies and gentlemen, whether or not
17 anyone is making a big deal out of the bail-out on
18 January 29th, consider the basics. Jerry Totten died.
19 Jerry Totten was killed on the late evening of
20 January 29th or early morning of January 30th, mere
21 hours after this defendant, Mr. Olsen, was bailed out.
22 This defendant, Mr. Olsen, was credited \$1,000 by Mr.
23 Sublett. Mr. Sublett came up with the money to bail him
24 out and he got him out. Mr. Olsen owed a debt. Now,
25 the bail-out on January 29th, ladies and gentlemen, was

1 not just a coincidence. It happened because they needed
2 his help. Two is better than one, three is better than
3 two.

4 Mr. Lane refers to Mr. Sublett as merely a thief
5 and a parole violator. Well, ladies and gentlemen,
6 there's evidence that Mr. Sublett is more than that. He
7 is a thief and he's a burglar and he's a robber, and on
8 the evidence Mr. Sublett and Mr. Olsen are both killers
9 and are guilty as charged.

10 Thank you for your attention.

11 THE COURT: Ladies and gentlemen of the jury,
12 I am going to ask that the jury depart us now with the
13 bailiff. You will go into the jury room to begin
14 deliberation. I am going to ask the alternates, Mr.
15 Mullins and Ms. Schactler, to stay with us for a moment.
16 If you will go, I ask you two for a moment to stay,
17 please.

18 (Jury retired to deliberate.)

19 THE COURT: I wonder if you can have a seat in
20 the front row. Please be seated, and be seated in the
21 courtroom.

22 On behalf of the attorneys and the defendants,
23 thank you. I am going to excuse you at this time, but I
24 am going to ask two things. One is that you not talk
25 about the case, that you hand whatever notes you had to

APPENDIX F

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FILED
SUPERIOR COURT
THURSTON

'08 JUN 18 P4:57

BY _____ DEPUTY

**SUPERIOR COURT OF WASHINGTON
THURSTON COUNTY**

STATE OF WASHINGTON,)
)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL LYNN SUBLETT and)
 CHRISTOPHER LEE OLSEN,)
)
 Defendant.)

Nos. 07-1-00312-0 and
07-1-01363-0

Court's Instructions To Jury

Dated this 17th day of June, 2008.

Christine Pomeroy
Christine A. Pomeroy, Judge

0-000000131

SSCCANNED

INSTRUCTION NO. 1

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

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

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

One of the court's duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for the court's rulings on the evidence. If the court has ruled that any evidence is inadmissible, or if the court has asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

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

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S . C . A . N . N . E . D

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

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

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

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for the court to express, by words or conduct, the court's personal opinion about the value of testimony or other

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S.C.A.N.N.E.D

evidence. The court has not intentionally done this. If it appeared to you that the court has indicated it's personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

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

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

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

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S . C . A . N . N . E . D

INSTRUCTION NO. 2__

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

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S.C.A.N.N.E.D

INSTRUCTION NO. 3

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

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

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

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S.C.A.N.N.E.D

INSTRUCTION NO. __4__

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

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S.C.A.N.N.E.D

INSTRUCTION NO. 5

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

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S.C.A.N.N.E.D

INSTRUCTION NO. 6

You must separately decide the count charged against each defendant.
Your verdict on one count as to one defendant should not control your
verdict on the other count or as to the other defendant.

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S.C.A.N.N.E.D

INSTRUCTION NO. 7

A defendant is not compelled to testify, and the fact that a defendant has not testified cannot be used to infer guilt or prejudice him in any way.

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S.C.A.N.N.E.D

INSTRUCTION NO. 8

You may give such weight and credibility to any alleged out of court statements of the defendant as you see fit, taking into consideration the surrounding circumstances.

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S.C.A.N.N.E.D

INSTRUCTION NO. 9

You may not consider an admission or incriminating statement made out of court by one defendant as evidence against a co-defendant.

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S.C.A.N.N.E.D

INSTRUCTION NO. 10

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

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S.C.A.N.N.E.D

INSTRUCTION NO. 11

A person commits the crime of murder in the first degree when, with a premeditated intent to cause the death of another person, he or she causes the death of such person.

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

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S.C.A.N.N.E.D

INSTRUCTION NO. 12

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

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S.C.A.N.N.E.D

INSTRUCTION NO. 13

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

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S.C.A.N.N.E.D

INSTRUCTION NO. __14__

To convict the defendant, Michael Lynn Sublett, of the crime of murder in the first degree as charged, each of the following elements of the crime must be proved beyond a reasonable doubt:

(ALTERNATIVE A)

- (1) That on or about January 29, 2007, the defendant and/or an accomplice caused the death of Jerry Totten;
- (2) That the defendant or an accomplice acted with intent to cause the death of Jerry Totten;
- (3) That the intent to cause the death was premeditated;
- (4) That Jerry Totten died as a result of the defendant's acts and/or an accomplice's; and
- (5) That the acts occurred in the State of Washington.

- OR -

(ALTERNATIVE B)

- (1) That on or about January 29, 2007, Jerry Totten was killed;
- (2) That the defendant or an accomplice was committing or attempting to commit the crime of burglary in the first degree or robbery in the first or second degree;
- (3) That the defendant, or another participant, caused the death of Jerry Totten in the course of or in furtherance of such crime or in immediate flight from such crime;
- (4) That Jerry Totten was not a participant in the crime; and
- (5) That the acts occurred in the State of Washington.

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S.C.A.N.N.E.D

If you find from the evidence that each of the elements in Alternative A or each of the elements in Alternative B has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. All of the elements of only one alternative need be proved. You must unanimously agree as to which one or more of the alternatives, A or B, has been proved beyond a reasonable doubt.

On the other hand, if after weighing all of the evidence, you have a reasonable doubt as to any one of the elements in Alternative A, or as to any one of the elements in Alternative B, then it will be your duty to return a verdict of not guilty on that alternative.

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S.C.A.N.N.E.D

INSTRUCTION NO. 15

To convict the defendant, Christopher Lee Olsen, of the crime of murder in the first degree as charged, each of the following elements of the crime must be proved beyond a reasonable doubt:

(ALTERNATIVE A)

- (1) That on or about January 29, 2007, the defendant and/or an accomplice caused the death of Jerry Totten;
- (2) That the defendant or an accomplice acted with intent to cause the death of Jerry Totten;
- (3) That the intent to cause the death was premeditated;
- (4) That Jerry Totten died as a result of the defendant's and/or an accomplice's acts; and
- (5) That the acts occurred in the State of Washington.

- OR -

(ALTERNATIVE B)

- (1) That on or about January 29, 2007, Jerry Totten was killed;
- (2) That the defendant or an accomplice was committing or attempting to commit the crime of burglary in the first degree or robbery in the first or second degree;
- (3) That the defendant, or another participant, caused the death of Jerry Totten in the course of or in furtherance of such crime or in immediate flight from such crime;
- (4) That Jerry Totten was not a participant in the crime; and
- (5) That the acts occurred in the State of Washington.

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S.C.A.N.N.E.D

If you find from the evidence that each of the elements in Alternative A or each of the elements in Alternative B has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. All of the elements of only one alternative need be proved. You must unanimously agree as to which one or more of the alternatives, A or B, has been proved beyond a reasonable doubt.

On the other hand, if after weighing all of the evidence, you have a reasonable doubt as to any one of the elements in Alternative A, or as to any one of the elements in Alternative B, then it will be your duty to return a verdict of not guilty on that alternative.

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S.C.A.N.N.E.D

INSTRUCTION NO. ____16____

A person commits the crime of burglary in the first degree when he or she enters or remains unlawfully in a building with intent to commit a crime against a person or property therein, and if, in entering or while in the building or in immediate flight therefrom, that person or an accomplice in the crime is armed with a deadly weapon or assaults any person.

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S C A N N E D

INSTRUCTION NO. ____17_

Deadly weapon means any weapon, device, instrument, substance, or article [including a vehicle], which under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.

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S.C.A.N.N.E.D

INSTRUCTION NO. ____18____

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

0-000000153

S.C.A.N.N.E.D

INSTRUCTION NO. ___19__

A person commits the crime of robbery in the second degree when he or she unlawfully and with intent to commit theft thereof takes personal property from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial.

0-000000154

S . C . A . N . N . E . D

INSTRUCTION NO. 20

A person commits the crime of robbery in the first degree when in the commission of a robbery or in immediate flight therefrom he or she is armed with a deadly weapon or displays what appears to be a firearm or other deadly weapon or inflicts bodily injury.

0-000000155

S.C.A.N.N.E.D

INSTRUCTION NO. 21

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

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

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

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

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

0-000000156

S.C.A.N.N.E.D

INSTRUCTION NO. 22

A person knows or acts knowingly or with knowledge when he or she is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge.

Acting knowingly or with knowledge also is established if a person acts intentionally.

0-000000157

S . C . A . N . N . E . D

INSTRUCTION NO. 23

The testimony of an accomplice, given on behalf of the plaintiff, should be subjected to careful examination in the light of other evidence in the case, and should be acted upon with great caution. You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied beyond a reasonable doubt of its truth.

0-000000158

S.C.A.N.N.E.D

INSTRUCTION NO. 24

In a prosecution for a crime, it may be a defense that the defendant acted under duress. Duress means that the actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he or she or another would be liable to immediate death or immediate grievous bodily injury; and that such apprehension was reasonable upon the part of the actor; and that the actor would not have participated in the crime except for the duress involved.

However, the defense of duress is not available if the crime charged is murder, manslaughter, or homicide by abuse.

The defense of duress is not available if the actor intentionally or recklessly places himself or herself in a situation in which it is probable that he or she will be subject to duress.

0-000000159

S C A N N E D

INSTRUCTION NO. 25

It is a defense to a charge of murder in the first degree based upon committing Burglary or Robbery that the defendant:

- (1) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and
- (2) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury; and
- (3) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article or substance; and
- (4) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

This defense must be established by a preponderance of the evidence.

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

INSTRUCTION NO. 26

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

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

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

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

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

0-000000161

S C A N N E D

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

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

0-000000162

S.C.A.N.N.E.D

APPENDIX G

A P P E A R A N C E S

1
2 For the Plaintiff: DAVID BRUNEAU
3 SCOTT JACKSON
4 Deputy Prosecuting Attorneys
5 Thurston County Prosecutor's Office
6 2000 Lakeridge Drive SW
7 Olympia, Washington 98502

8 For the Defendant: RICHARD D. WOODROW
9 (Olsen) Attorney at Law
10 3732 Pacific Avenue SW
11 Olympia, Washington 98501

12 For the Defendant: CHARLES W. LANE
13 (Sublett) Attorney at Law
14 1800 Cooper Pt. Rd. SW, Bldg. 3
15 Olympia, Washington 98502
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I N D E X

	<u>Page Reference</u>
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Witnesses: Page Reference

LARAMIE McALMOND

Direct Examination	1108 - 1116
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Redirect Examination	1116 - 1116

1 whatsoever as to what happened regarding the homicide.

2 So we're asking for the low end, Your Honor, and
3 that's all I have. Thank you.

4 THE COURT: Mr. Sublett?

5 THE DEFENDANT: Good morning, Your Honor.

6 THE COURT: Good morning.

7 DEFENDANT SUBLETT: I'd like to read a
8 statement that I prepared to you. I'll try to do it
9 verbatim because I am emotional.

10 The first thing I'd like to do is apologize to
11 everyone who has been affected by Jerry's death and this
12 trial. Obviously it has been highly stressful and an
13 emotional situation, not only for me but for Jerry's
14 family and friends as well as my own. I am extremely
15 embarrassed and remorseful for my role in stealing money
16 and other things from Jerry. Although others
17 benefitted, I accept full responsibility for my actions
18 and disgraceful behavior.

19 I keep wishing and hoping that I'm going to wake up
20 from this nightmare and realize it's all been just a bad
21 dream, a dream that would scare me into once and for all
22 turning my life around. Unfortunately, that's not going
23 to happen, and I realize that my life and the lives of
24 many other people have been irreversibly changed
25 forever, but there are a few things that I continue to

1 wish and hope for. I sincerely wish that Jerry was
2 still alive. No one deserves to die the way he did. I
3 sincerely wish that Jerry's family and friends will
4 eventually find a way to soften the pain, grief, and
5 anger they're feeling right now. I sincerely hope that
6 my family and all my loyal friends who have supported me
7 and believed in me during this process know how much I
8 appreciate their support and efforts.

9 Specifically I hope that my mother, my stepfather
10 know how much I truly appreciate all the endless efforts
11 and financial investments they have made in me over the
12 last 25 years in an attempt to help me deal with and
13 overcome my drug addiction and dysfunctional lifestyle.
14 I want to apologize particularly to my mother for all
15 the stress, money, false hope, embarrassment, and lost
16 family opportunities that my behavior has caused her.

17 Lastly, I'd like to say that, although I naturally
18 and adamantly disagree with the verdict, I bear no ill
19 feelings towards the jury or the Court.

20 In closing, I want to tell Jerry's family and this
21 Court that, although I am extremely ashamed of my
22 behavior for stealing from Jerry, from the bottom of my
23 heart and soul I did not, I repeat did not, have
24 anything to do with Jerry's murder. I know this is not
25 what you want to hear, but I can without hesitation look

1 each and every one in this courtroom in the eye and
2 declare my innocence. I hope the truth will eventually
3 be revealed not only for my benefit but for the benefit
4 of everyone concerned.

5 Also in closing I would like to insist for the
6 record the following, that I adamantly request an appeal
7 to this conviction due to the following: The joining of
8 Chris Olsen's trial and my trial, forcing me to have
9 Olsen as an accuser and a co-defendant in the same
10 trial; the State's use of DNA expertise that was not
11 conclusive towards me but stated it was one in 130 that
12 the DNA on one of the baseball bats could have been
13 mine; the Court's not allowing two phone conversations
14 between Chris Olsen and April Frazier on the 25th and
15 27th of January, 2007 when Olsen called Frazier from the
16 Thurston County Jail phone to her cell phone; that at
17 some point in time, more than a moment in time, Alexis
18 Cox contacted the prosecutor's office during the trial
19 and was sent away without my counsel having an
20 opportunity to interview this potential critical
21 witness; Prosecutor Bruneau referring to me as a killer
22 and murderer, not defendant, during the trial and before
23 the verdict was even announced; Prosecutor Bruneau's use
24 of visual graphics that displayed my image with a red
25 circle around that image with arrows pointing to me with

1 the word guilty in bold red letters across my face.
2 This visual was not offered as evidence.

3 Also an objection to Mr. Bruneau's offering me a
4 plea bargain of murder one, standard range, then after
5 being found guilty recommending a life sentence because
6 of two second degree prior convictions of robbery in
7 California. To recommend to the Court a life sentence
8 for me after giving a confessed participant, April
9 Frazier, in the murder of Jerry four years, five months
10 for lying or having misspoke on the stand is criminal at
11 the very least and just not right. Never entering into
12 the trial were the statements of Erin Van Brocklin or
13 Michael Wayne Robinson. There were also several other
14 potential witnesses that were never interviewed or
15 sought out by law enforcement.

16 Also after Mr. Lane's closing I made the request of
17 testifying in my own behalf and was told by my counsel
18 that I could not testify after we had already closed,
19 even though the trial was still in progress. I offer
20 these objections to the Court for the record, and I
21 thank the Court for its time.

22 Thank you.

23 THE COURT: Thank you, Mr. Sublett.

24 DEFENDANT OLSEN: Your Honor, first I'd like
25 to apologize to the family of Jerry Totten for

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF LEWIS)

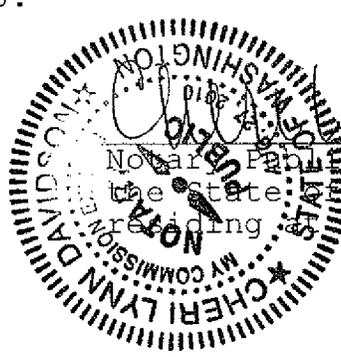
I, Cheri L. Davidson, Notary Public, in and for the State of Washington, residing at Olympia, do hereby certify:

That the annexed and foregoing Verbatim Report of Proceedings, Volume XI, was reported by me and reduced to typewriting by computer-aided transcription;

That said transcript is a full, true, and correct transcript of the proceedings heard before Judge Christine A. Pomeroy on the 23rd day of July, 2008 at the Thurston County Courthouse, Olympia, 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 16th day of October, 2008.

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

APPENDIX H

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FILED FILED
SUPERIOR COURT
THURSTON COUNTY WA

'08 JUL 15 P3:09

BEFORE THE COURT

BY _____ DEPUTY

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IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY	
STATE OF WASHINGTON,	Plaintiff,
vs.	
MICHAEL LYNN SUBLETT,	Defendant.

NO. 07-1-00312-0
**PLAINTIFF'S SENTENCING
MEMORANDUM**

1. INTRODUCTION.

The defendant has been found guilty by jury of the crime of Murder in the First Degree, a "serious violent offense" as well as a "most serious offense". RCW 9.94A.030(41) - .030(29). Given the defendant's criminal history, attached as an Appendix A, it appears that the defendant is a "persistent offender", thus qualifying for a sentence of life imprisonment without parole. This memorandum sets forth the bases for this conclusion.

2. CRIMINAL HISTORY OF THE DEFENDANT.

The defendant has thrice been convicted of Robbery in the State of California on two separate occasions: on February 15, 1994, Mr. Sublett was convicted of Robbery in the Second Degree (as well as two counts of Burglary in the Second Degree). On May 6, 1997, the defendant was convicted of two counts of Robbery in the Second Degree. The copies of the material portions of the records from California are set forth in Appendices B and C and incorporated by reference.

3. DISCUSSION OF APPLICABLE LAW.

A. The defendant's prior convictions in California are "most serious offenses" and should be computed as prior convictions.

1 RCW 9.94A.030(33), which defines "persistent offenders", sets forth the criteria for
2 considering prior out-of-state convictions as "previous strikes". The current conviction must be for
3 one convicted of a "most serious offense" (such as Murder in the First Degree) and who:

4 "... Has... been convicted as an offender on at least two separate
5 occasions, whether in this state or elsewhere, of felonies that
6 under the law of this state would be considered most serious
7 offenses and would be included in the offender score under
8 RCW 9.94A.525; provided that of the two or more previous
9 convictions, at least one conviction must have occurred
10 before the commission of any of the other most serious offenses
11 for which the offender was previously convicted;"
12 ... RCW 9.94A.030(33)(a)(ii)"

13 RCW 9.94A.525 provides, in pertinent part:

14 (1) A prior conviction is a conviction which exists before
15 the date of sentencing for the offense for which the offender score
16 is being computed...

17 (b) Class B prior felony convictions other than sex offenses
18 shall not be included in the offender score, if since the last date of
19 release from confinement (including full-time residential treatment)
20 pursuant to a felony conviction, if any, or entry of judgment and
21 sentence, the offender had spent ten consecutive years in the community
22 without committing any crime that subsequently results in a conviction...

23 (3) Out-of-state convictions for offenses shall be classified
24 according to the comparable offense definitions and sentences provided
25 by Washington law...

26 Accordingly, we are obliged to determine whether the defendant's robbery convictions are
"comparable" to offenses in Washington State.

In *State v. Russell* 104 W.App. 422, 440, 16 P3 664, the Court of Appeals summed up
Washington common law concerning the methodology to determine "comparability":

Washington courts use a three-step analysis when determining
the Washington sentencing consequences of an out-of-state conviction.
The first step is to convert the out-of-state crime into its Washington
counterpart. The second step is to determine the relevant sentencing
consequences of the Washington counterpart. The third step is to assign
those same sentencing consequences to the out-of-state conviction,
thus "treat[ing] a person convicted outside the state as if he or she
had been convicted in Washington" (citations omitted)

1 The "first step" is performed by comparing the elements of the out-of-state crime as they
2 existed on the date of the offense with the elements of the proposed Washington counterpart crime as
3 they existed on the date of the offense. *Russell*, supra, at p.441.

4 The California penal code defines Robbery in the Second Degree as follows¹:

5 §211 Robbery is the felonious taking of personal property in the
6 possession of another, from his person or immediate presence, and
against his will, accomplished by means of force or fear.

7 PC §212.5 defines this crime as Robbery in the Second Degree. (Appendix E)

8 Washington's counterpart is RCW 9A.56.190, which defines robbery and is enumerated
9 "Robbery in the Second Degree" by RCW 9A.56.210:

10 A person commits robbery when he unlawfully takes
11 personal property from the person of another or in his presence
12 against his will by the use or threatened use of immediate force,
violence or fear of injury to that person or his property...
[1975 1st ex.s. 9A.56.190.]

13 Thus, the elements of Robbery in the Second Degree in California are:

- 14 1. Felonious² taking of personal property in the possession of another,
- 15 2. from his person or immediate presence,
- 16 3. against his will, by means of force or fear.

17 In Washington, the elements of Robbery in the Second Degree are:

- 18 1. Unlawful³ taking of personal property, with intent to commit theft⁴,
- 19 2. from the person of another or in his presence,
- 20 3. against his will, by the use or threatened use of immediate force, violence,
or fear of injury to that person...

21 Thus, the elements of Robbery in the Second Degree in California and Washington appear not
22 merely "comparable", but are-in fact- similar.

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26 ¹ See Appendix D

² "Felonious" is accepted in Washington State as meaning criminal intent. *St. v. Nieblas-Duarte*, 55 Wn.App 376, 381, 777 P2 583 (1989);

³ "Unlawfully" necessarily implies guilty knowledge. *St. Johnson*, 69 Wn.App. 935, 938, 851 P2 701 (1993)

⁴ Intent to steal is an essential element of robbery. *St. Kjorsvik*, 117 W2 93, 812 P2 86 (1991)

1 The "second step" of the Russell methodology "...involves ascertaining whether the
2 Washington counterpart is a Class A, B, or C felony...". Russell, supra, at p. 443. Robbery in the
3 Second Degree is a Class B felony. RCW 9A.56.210.

4 The "third step" "... is simply to assign the counterpart's (i.e., Washington State's Robbery in
5 the Second Degree) sentencing consequences to the out-of-state conviction. The end result... should
6 be to treat a person convicted outside the state as if he or she had been convicted in Washington.
7 Russell, supra, at page 443; State v. Berry, 141 W2 121, 5 p3 658 (2000)

8 Michael Sublett was convicted of Robbery in the Second Degree in 1994. He was convicted
9 of Robbery in the Second Degree on May 6, 1997. Neither offense "washes", since the crime date in
10 the instant offense was January 29, 2007. RCW 9.94A.525(1)(b).

11 Robbery in the Second Degree is a "most serious offense". RCW 9.94A.030(29).

12 **4. CONCLUSION.**

13 The defendant has--with the instant conviction for Murder in the First Degree--gained his
14 "third strike", and status as a "persistent offender". Accordingly, he should be sentenced to a term of
15 life without the possibility of release or community custody. RCW 9.94A.570.

16 Respectfully submitted this 15 day of July, 2008.

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18 DAVID H. BRUNEAU, WSBA #6830
19 Senior Deputy Prosecuting Attorney

Appendix A

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**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

STATE OF WASHINGTON,
Plaintiff,

vs.

MICHAEL LYNN SUBLETT,
Defendant.

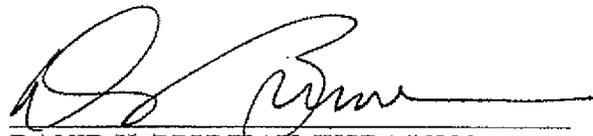
NO. 07-1-00312-0

OFFICE OF THE PROSECUTING
ATTORNEY'S STATEMENT OF
CRIMINAL HISTORY

There are no known convictions for SRA purposes.
 The defendant's known criminal history:

CRIME	CRIME DATE	SENTENCE DATE	COURT OF SENTENCE	ADULT or JUVENILE	CRIME TYPE
Robbery 2°	5/6/97	8/23/95	L.A., Calif.	Adult	V
Robbery 2°	5/6/97	8/23/95	L.A., Calif.	Adult	V
Robbery 2°	2/15/94	1/14/94	L.A., Calif.	Adult	V
Burglary 2°	2/15/94	1/13/94	L.A., Calif.	Adult	NV
Burglary 2°	2/15/94	1/16/94	L.A., Calif.	Adult	NV

DATED this 15 day of July, 2008.



DAVID H. BRUNEAU, WSBA#6830
Senior Deputy Prosecuting Attorney

PROSECUTOR'S STATEMENT OF
CRIMINAL HISTORY

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

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Appendix B

Los Angeles County

#NA018796

(Long Beach Branch)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. SGF

Date FEBRUARY 15 1994

HONORABLE: JAMES PIERCE

JUDGE Deputy Sheriff

THEDFOR D-FERRENDESK Reporter

305 D-JACOBS NA018796-01

(Parties and counsel checked if present)

Counsel for People:

DEPUTY DISTRICT ATTY:

PEOPLE OF THE STATE OF CALIFORNIA

VS

01 SUBLETT MICHAEL L

Counsel for Defendant: B W STERKENBERG PD

LARGE 211 001CTS 459 002CTS V10851-A 001CTS

(BOX CHECKED IF ORDER APPLICABLE)

NATURE OF PROCEEDINGS P&S REM FE1

71 IS SWORN AS THE ENGLISH/ INTERPRETER OATH FILED PER 68550 G.C. DUE TO CONFLICT OF INTERESTS, PUBLIC DEFENDER RELIEVED, PURSUANT TO PENAL CODE SECTION 987.2/GOVERNMENT CODE SECTION 81000 ALTERNATE DEFENSE COUNSEL IS APPOINTED.

72 CRIMINAL PROCEEDINGS ARE ADJOURNED/REMAIN ADJOURNED/ARE RESUMED. 73 DEFENDANT ORDERED DELIVERED TO DEPARTMENT OF CORRECTIONS PURSUANT TO PENAL CODE SECTION 1203.03. DEFENDANT ORDERED DELIVERED TO CALIFORNIA YOUTH AUTHORITY PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 707.2.

74 ON MOTION, PROBATION AND SENTENCE HEARING/FURTHER PROCEEDINGS CONTINUED TO AT A.M. IN DEPT. NON-APPEARANCE CALENDAR DEFENDANT ORDERED TO RETURN

75 DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR SENTENCING. SUPPLEMENTAL PROBATION REPORT/PROGRESS REPORT ORDERED RE:

76 PROBATION DENIED/SENTENCE IMPOSED AS FOLLOWS: IMPRISONED IN STATE PRISON FOR TERM PRESCRIBED BY LAW TOTAL OF 2 YEARS MONTHS COURT SELECTS THE TERM OF YEARS/MONTHS FOR THE BASE TERM AS TO COUNT PLUS YEARS/MONTHS PURSUANT TO SECTION OF THE CODE AS INDICATED BELOW

TO BE HOUSED AT CALIFORNIA YOUTH AUTHORITY PURSUANT TO SECTION 1731.5(C) W.I.C. COMMITTED TO CALIFORNIA YOUTH AUTHORITY, THE TERM OF IMPRISONMENT TO WHICH THE DEFENDANT WOULD HAVE BEEN SENTENCED PURSUANT TO SECTION 1170 PENAL CODE IS YEARS MONTHS. IMPRISONED IN LOS ANGELES COUNTY JAIL FOR TERM OF AS TO COUNT(S) PAY \$ FINE TO SUPERIOR COURT, PLUS PENALTY AND SURCHARGE. RESTITUTION FINE TO STATE VICTIMS RESTITUTION FUND PURSUANT TO SECTION 13967(A) G.C.

77 SENTENCE IS SUSPENDED. 78 IMPOSITION OF SENTENCE SUSPENDED. PROBATION GRANTED FOR YEAR(S). PROBATION TO BE WITHOUT FORMAL SUPERVISION. 79 DIVERSION GRANTED FOR PERIOD OF YEARS/MONTHS PER SECTION 1000.2 P.C. DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL.

- 1 SPEND FIRST DAYS/MONTHS IN COUNTY JAIL. NOT TO BE ELIGIBLE FOR COUNTY PAROLE. WORK FULROUGH PROGRAM RECOMMENDED. 2 PAY A FINE OF \$ PLUS PENALTY ASSESSMENT (1484 P.C. & 78000 G.C.) THROUGH PROBATION OFFICER. LAB FEE PURSUANT TO 11372.8 HAS CODE (\$60 FOR EACH H&S VIOLATION) THROUGH PROBATION OFFICER. 3 PAY RESTITUTION TO THE VICTIM(S)/VICTIM RESTITUTION FUND PURSUANT TO 1203.04 P.C. IN AMOUNT OF \$ IN AMOUNT AND MANNER AS INSTRUCTED BY PROBATION OFFICER, INCLUDING SERVICE CHARGE PER 1203.1 P.C. MINIMUM PAYMENT OF RESTITUTION TO BE. 4 PAY \$ RESTITUTION FINE PURSUANT TO SECTION 13967 (A) G.C. THROUGH PROBATION OFFICER. TOTAL AMOUNT TO INCLUDE A SERVICE CHARGE IN THE AMOUNT OF \$ PURSUANT TO SECTION 13967(d) G.C. STAYED WHILE DEFENDANT PAYS RESTITUTION AND IF RESTITUTION IS PAID IN FULL, STAY SHALL BE PERMANENT. 5 NOT DRINK OR POSSESS ANY ALCOHOLIC BEVERAGE AND STAY OUT OF PLACES WHERE THEY ARE THE CHIEF ITEM OF SALE. 8 NOT USE OR POSSESS ANY NARCOTICS, DANGEROUS OR RESTRICTED DRUGS OR ASSOCIATED PARAPHERNALIA EXCEPT WITH VALID PRESCRIPTION, AND STAY AWAY FROM PLACES WHERE USERS, BUYERS OR SELLERS CONGREGATE. 7 NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE NARCOTIC OR DRUG USERS OR SELLERS. 8 SUBMIT TO PERIODIC ANTI-NARCOTIC TESTS/ALCOHOL TESTS AS DIRECTED BY THE PROBATION OFFICER OR OTHER PEACE OFFICER. 9 HAVE NO BLANK CHECKS IN POSSESSION; NOT WRITE ANY PORTION OF ANY CHECKS; AND, NOT HAVE BANK ACCOUNT UPON WHICH YOU MAY CASH CHECKS. NOT USE OR POSSESS OR APPLY FOR ANY CREDIT OR ATM CARD. 10 NOT ASSOCIATE WITH/STAY AWAY FROM. 11 COOPERATE WITH PROBATION OFFICER IN A PLAN FOR. 12 SUPPORT DEPENDENTS AS DIRECTED BY PROBATION OFFICER. 13 SEEK AND MAINTAIN TRAINING, SCHOOLING, OR EMPLOYMENT AS APPROVED BY PROBATION OFFICER. 14 KEEP PROBATION OFFICER ADVISED OF YOUR RESIDENCE AT ALL TIMES. 15 SURRENDER DRIVER'S LICENSE TO CLERK OF COURT TO BE RETURNED TO DEPARTMENT OF MOTOR VEHICLES. 16 NOT DRIVE A MOTOR VEHICLE UNLESS LAWFULLY LICENSED AND INSURED. 17 NOT OWN, USE OR POSSESS ANY DANGEROUS OR DEADLY WEAPONS. 18 SUBMIT YOUR PERSON AND PROPERTY UNDER YOUR CONTROL TO SEARCH OR SEIZURE AT ANY TIME OF THE DAY OR NIGHT BY ANY PROBATION OFFICER OR OTHER PEACE OFFICER, WITH OR WITHOUT A WARRANT OR PROBABLE CAUSE. 19 OBEY ALL LAWS, OBEY ALL ORDERS, RULES AND REGULATIONS OF THE PROBATION DEPARTMENT AND OF THE COURT. 20 USE ONLY YOUR TRUE NAME, STATED TO BE. 21 REPORT TO PROBATION OFFICER UPON RELEASE FROM CUSTODY/WITHIN. 22 IF YOU LEAVE THE COUNTRY, DO NOT REENTER THE UNITED STATES ILLEGALLY. IF YOU DO RETURN, REPORT TO THE PROBATION OFFICER WITHIN AND PRESENT DOCUMENTATION WHICH PROVES YOU ARE IN THE UNITED STATES LEGALLY.

30 DEFENDANT GIVEN TOTAL CREDIT FOR DAYS IN CUSTODY (DAYS ACTUAL CUSTODY AND DAYS GOOD TIME/WORK TIME). 31 SENTENCE/COUNTS TO RUN CONSECUTIVELY TO/CONCURRENTLY WITH. 32 STAY OF EXECUTION OF GRANTED TO. 33 ON MOTION OF PEOPLE, COUNTS/ENHANCEMENTS REMAINING ARE DISMISSED IN FURTHERANCE OF JUSTICE/PER CASE SETTLEMENT AGREEMENT.

34 COURT ADVISES DEFENDANT OF HIS APPEAL/PAROLE RIGHTS. NOTICE OF APPEAL IS RECEIVED. 35 "NOTICE RE CERTIFICATE OF REHABILITATION AND PARDON" GIVEN TO DEFENDANT. 36 DEFENDANT TO PAY COSTS OF PROBATION SERVICES IN AMOUNT OF \$ /AMOUNT TO BE DETERMINED BY PROBATION OFFICER.

37 COURT FINDS DEFENDANT DOES NOT HAVE PRESENT ABILITY TO PAY COSTS OF INCARCERATION/LEGAL SERVICES/PROBATION SERVICES. 38 DEFENDANT IS REFERRED TO THE TREASURER/TAX COLLECTOR FOR FINANCIAL EVALUATION. 39 PROBATION OFFICER IS ORDERED TO REGISTER THE DEFENDANT WITH C.I.I. AND REPORT ANY NEW ARREST TO THE COURT. 30 FURTHER ORDER AS FOLLOWS: ADDITIONAL CONDITIONS OF PROBATION

31 SHERIFF IS ORDERED TO ALLOW DEFENDANT PHONE CALLS AT DEFENDANT'S OWN EXPENSE. 32 DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT CAUSE. 33 BAIL, IF POSTED, FORFEITED/O.R. REVOKED. BENCH WARRANT ORDERED ISSUED/REISSUED/AND HELD UNTIL NO BAK. BAIL FIXED AT \$ 34 DEFENDANT APPEARING, BENCH ORDERED RECALLED/QUASHED. RECALL NO. ISSUED. ABSTRACT FILED.

31 REMANDED. BAIL. BAIL EXON. ON PROBATION. PAGE OF. 32 RELEASED. O.R. BOND NO. IN CUSTODY OTHER MATTER. MINUTES ENTERED. 33 BENCH WARRANT. O.R. DISCHARGED. ON DIVERSION. FEB 15, 1994. 34

1 A & P

LONG BEACH MUNICIPAL COURT, COUNTY OF LOS ANGELES

Date 1-28-94
HONORABLE: James B. Pierce
T. Long

JUDGE
Deputy Sheriff

Howard Sells
L. Altman

DEPT. 50-F
Deputy Clerk
Reporter

CASE NO. NAO10796-01
PEOPLE OF THE STATE OF CALIFORNIA

Counsel for People:
DEPUTY DISTRICT ATTY: R. Healey
Counsel for Defendant:
B.W. Steinkenberg PD

vs.
01 Sublett, Michael L.

CHARGE: 21101CT 459 02 CTS; VIOL 51.A 01 CT

NATURE OF PROCEEDINGS

PREHEARING/PRELIMINARY HEARING

HEM/BAIL/OR FGI

- 1 IS SWORN AS THE ENGLISH/ INTERPRETER.
- 2 OATH FILED PER SECTION 58000 GOVERNMENT CODE.
- 3 DUE TO CONFLICT OF INTEREST, PUBLIC DEFENDER BELIEVED. PURSUANT TO SECTION 947.5 PENAL CODE / 91000 GOVERNMENT CODE, ALTERNATE DEFENSE COUNSEL IS APPOINTED.
- 4 ON PEOPLE'S MOTION, COMPLAINT AMENDED BY INTERLINEATION AS FOLLOWS:
- 5 DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TRIAL BY JURY AND COURT - COURT ACCEPTS WAIVER(S).
- 6 DEFENDANT ADVISED AND PERSONALLY WAIVES HIS / HER RIGHT TO CONFRONTATION OF WITNESSES FOR THE PURPOSE OF FURTHER CROSS EXAMINATION, AND WAIVES PRIVILEGE AGAINST SELF-INCRIMINATION. DEFENDANT ADVISED OF POSSIBLE EFFECTS OF PLEA ON ANY ALIEN / CITIZENSHIP / PROBATION / PAROLE STATUS.
- 7 DEFENDANT PERSONALLY WITHDRAWS PLEA OF NOT GUILTY TO COUNT(S) 1, 2, 3. REINSTATEMENT.
- 8 PLEAS GUILTY / HOLD CONTENDERE, WITH CONSENT OF DEFENDANT ATTORNEY AND APPROVAL OF COURT TO VIOLATION OF SECTION(S) 211 and 459 IN COUNT(S) 1, 2, 3. Final Order (114 Degree)
- 9 COURT CERTIFIES PLEA.
- 10 PEOPLE STRIKE / WITHDRAW PRIOR(S) / ALLEGATION(S) FOR SENTENCING PURPOSES.
- 1 PRE-POST PROBATION REPORT SET 2-15-94 AT 01:30 IN DEPT. 50-F FOR NONAPPEARANCE / APPEARANCE CALENDAR.
- 2 DEFENDANT WAIVES TIME FOR SENTENCE AND REQUESTS IMMEDIATE SENTENCE. DEFENDANT REFERRED TO PROBATION DEPARTMENT.
- 3 PROBATION DENIED / PROCEEDINGS SUSPENDED / SENTENCE IMPOSED AS FOLLOWS:
 - IMPRISONED IN STATE PRISON FOR TERM PRESCRIBED BY LAW TOTAL OF _____ YEARS _____ MONTHS
 - COURT SELECTS THE _____ TERM OF _____ YEARS / MONTHS FOR THE BASE TERM AS TO COUNTY _____
 - PLUS _____ YEARS / MONTHS PURSUANT TO SECTION _____ OF THE _____ CODE
 - PLUS _____ AS INDICATED BELOW.
 - COMMITTED TO CALIFORNIA YOUTH AUTHORITY. THE TERM OF IMPRISONMENT TO WHICH THE DEFENDANT WOULD HAVE BEEN SENTENCED PURSUANT TO SECTION 1770 PENAL CODE IS _____ YEARS.
 - IMPRISONED IN LOS ANGELES COUNTY JAIL FOR TERM OF _____ DAYS.
 - FINED IN SUM OF \$ _____ PLUS ADDITIONAL FINE OF \$ _____ (11572.5 HEALTH & SAFETY CODE) FOR A TOTAL FINE OF \$ _____ PLUS \$ _____ ASSESSMENT AND BURCHARGE (1464 PC & 78000 GC) TO BE PAID TO COUNTY CLERK
 - PAY RESTITUTION FINE IN SUM OF \$ _____ PURSUANT TO SECTION 13687 (a) AND (b) GOVERNMENT CODE PAYABLE TO RESTITUTION FUND.
- 4 SENTENCE IS SUSPENDED.
- 5 PROBATION GRANTED FOR A PERIOD OF _____ YEARS. PROBATION TO BE WITHOUT FORMAL SUPERVISION.
- 6 DIVERSION GRANTED PER SECTION 1000.1 PENAL CODE FOR PERIOD OF _____ YEARS / MONTHS.
 - DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL.
 - 1 SPEND FIRST _____ DAYS IN COUNTY JAIL. ROAD CAMP OR HONOR FARM RECOMMENDED. WORK FURLOUGH PROGRAM RECOMMENDED. NOT TO BE ELIGIBLE FOR COUNTY PAROLE.
 - 2 FINED IN SUM OF \$ _____ PLUS ADDITIONAL FINE OF \$ _____ (11572.5 HEALTH & SAFETY CODE) FOR A TOTAL FINE OF \$ _____ PLUS \$ _____ ASSESSMENT AND BURCHARGE (1464 PC & 78000 GC), TO BE PAID TO PROBATION OFFICER IN SUCH MANNER AS HE/SHE SHALL PRESCRIBE.
 - 3 MAKE RESTITUTION OF \$ _____ TO THE VICTIM/RESTITUTION FUND PURSUANT TO SECTION 1203.04 PENAL CODE IN SUCH MANNER AS THE PROBATION OFFICER SHALL PRESCRIBE. (7778) TOTAL AMOUNT OF RESTITUTION TO INCLUDE _____ % SERVICE CHARGE AS AUTHORIZED BY SECTION 1203.1 P.C.
 - PAY RESTITUTION FINE IN SUM OF \$ _____ PURSUANT TO SECTION 13687 (a) GOVERNMENT CODE PAYABLE TO PROBATION DEPARTMENT IN SUCH MANNER AS THEY PRESCRIBE. SAID FINE TO BE STAYED WHILE DEFENDANT PAYS RESTITUTION AND IF RESTITUTION IS PAID IN FULL, STAY SHALL BE PERMANENT.
 - 4 MINIMUM PAYMENT OF FINE/RESTITUTION TO BE \$ _____ (50)
 - 5 NOT DRINK ANY ALCOHOLIC BEVERAGE AND STAY OUT OF PLACES WHERE THEY ARE THE CHIEF ITEM OF SALE.
 - 6 NOT USE OR POSSESS ANY NARCOTICS, DANGEROUS OR RESTRICTED DRUGS OR ASSOCIATED PARAPHERNALIA, EXCEPT WITH VALID PRESCRIPTION, AND STAY AWAY FROM PLACES WHERE USERS CONGREGATE.
 - 7 NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE NARCOTIC OR DRUG USERS OR SELLERS.
 - 8 SUBMIT TO PERIODIC AMBULANCING TESTS AS DIRECTED BY THE PROBATION OFFICER. SUCH TESTING TO BE SUSPENDED WHILE THE DEFENDANT IS IN CUSTODY, IS HOSPITALIZED, OR IS IN A RESIDENTIAL DRUG TREATMENT PROGRAM APPROVED BY PROBATION OFFICER. (247/311)
 - 9 HAVE NO BLANK CHECKS IN POSSESSION. NOT WRITE ANY PORTION OF ANY CHECKS. NOT HAVE BANK ACCOUNT UPON WHICH YOU MAY DRAW CHECKS. (209)
 - 10 NOT GAMBLE OR ENGAGE IN BOOKMAKING ACTIVITIES OR HAVE PARAPHERNALIA THEREOF IN POSSESSION, AND NOT BE PRESENT IN PLACES WHERE GAMBLING OR BOOKMAKING IS CONDUCTED. (202)
 - 11 NOT ASSOCIATE WITH _____
 - 12 COOPERATE WITH PROBATION OFFICER IN A PLAN FOR _____ (530)
 - 13 SUPPORT DEPENDENTS AS DIRECTED BY PROBATION OFFICER. (503)
 - 14 SEEK AND MAINTAIN TRAINING, SCHOOLING OR EMPLOYMENT AS APPROVED BY PROBATION OFFICER. (500)
 - 15 MAINTAIN RESIDENCE AS APPROVED BY PROBATION OFFICER. (516)
 - 16 SURRENDER DRIVER'S LICENSE TO CLERK OF COURT TO BE RETURNED TO DEPARTMENT OF MOTOR VEHICLES. (573)
 - 17 NOT DRIVE A MOTOR VEHICLE UNLESS LAWFULLY LICENSED AND INSURED. (242)
 - 18 NOT OWN, USE OR POSSESS ANY DANGEROUS OR DEADLY WEAPONS.
 - 19 SUBMIT PERSON AND PROPERTY TO SEARCH OR SEIZURE AT ANY TIME OF THE DAY OR NIGHT BY ANY LAW ENFORCEMENT OFFICER WITH OR WITHOUT A WARRANT.
 - 20 OBEY ALL LAWS, ORDERS, RULES AND REGULATIONS OF THE PROBATION DEPARTMENT AND OF THE COURT.
- 7 DEFENDANT GIVEN TOTAL CREDIT FOR _____ DAYS IN CUSTODY, _____ DAYS ACTUAL CUSTODY AND _____ DAYS GOOD TIME WORK TIME.
- 8 SENTENCE/COUNTS TO RUN CONSECUTIVELY TO/CONCURRENTLY WITH _____
- 9 STAY OF EXECUTION OF _____ GRANTED TO _____
- 0 ON MOTION OF PEOPLE, COUNTS _____ DISMISSED IN FURTHERANCE OF JUSTICE. (118)
- 1 COURT ADVISES DEFENDANT OF HIS / HER APPEAL / PAROLE RIGHTS.
- 2 "NOTICE RE CERTIFICATE OF REHABILITATION AND PAROLE" GIVEN TO DEFENDANT.
- 3 DEFENDANT TO PAY COSTS OF PROBATION SERVICES IN AMOUNT OF \$ _____ (135)
- 4 COURT FINDS THAT DEFENDANT DOES NOT HAVE PRESENT ABILITY TO PAY COSTS OF INCARCERATION / LEGAL SERVICES RENDERED / PROBATION SERVICES RENDERED. (144/148/148)
- 5 DEFENDANT IS REFERRED TO TREASURER/TAX COLLECTOR FOR FINANCIAL EVALUATION.
- 6 FURTHER ORDER AS FOLLOWS / ADDITIONAL CONDITIONS OF PROBATION:
Count 4 to be dismissed at P&S.
- 7 INTERIFF IS ORDERED TO ALLOW DEFENDANT TELEPHONE CALLS AT DEFENDANT'S OWN EXPENSE.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SOUTH F	HON. JAMES B. PIERCE, JUDGE
THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
PLAINTIFF,)
)
VS.) NO. NA 018796
)
MICHAEL L. SUBLETT,) STATE PRISON
)
DEFENDANT.)

LONG BEACH, CALIFORNIA; TUESDAY, FEBRUARY 15, 1994

-- 11:36 A.M. --

UPON THE ABOVE DATE, THE DEFENDANT BEING PRESENT
IN COURT WITH COUNSEL, ELIZABETH WARNER-STERKENBURG, DEPUTY
PUBLIC DEFENDER, THE PEOPLE BEING REPRESENTED BY GUY
DELONG, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, THE
FOLLOWING PROCEEDINGS WERE HELD:

(GLENDA LEE ERLEY, OFFICIAL REPORTER, CSR #2695.)

THE COURT: I'LL CALL AT THIS TIME THE MATTER OF MICHAEL
SUBLETT. MR. SUBLETT IS PRESENT IN COURT WITH COUNSEL,
MISS STERKENBURG. MR. DELONG IS HERE FOR THE PEOPLE.

CALIFORNIA

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THIS MATTER IS ON CALENDAR TODAY FOR PURPOSES OF SENTENCING.

THE PROBATION DEPARTMENT HAS PREPARED A REPORT IN THIS MATTER DATED TODAY'S DATE. THE COURT HAS READ AND CONSIDERED IT, AND WILL RECEIVE IT INTO EVIDENCE.

THE PROPOSED PLEA AGREEMENT WAS A THREE-YEAR, EIGHT-MONTH LID IN THIS MATTER.

THE PROBATION DEPARTMENT IS RECOMMENDING STATE PRISON. I'LL LISTEN TO COUNSEL ON BOTH SIDES; BUT, FIRST OF ALL, COUNSEL, DO YOU WAIVE TIME AND ARRAIGNMENT FOR SENTENCING, NO LEGAL CAUSE?

MS. WARNER-STERKENBURG: YES.

THE COURT: DO YOU WISH TO BE HEARD?

MS. WARNER-STERKENBURG: YES, PLEASE, YOUR HONOR.

YOUR HONOR, I HAVE SUBMITTED A LETTER THAT I RECEIVED THROUGH THE AUSPICES OF MR. SUBLETT'S MOTHER.

I PROVIDED A COPY BOTH TO THE COURT AND TO THE DISTRICT ATTORNEY.

MR. SUBLETT HAS A VERY SEVERE COCAINE PROBLEM. IT'S IN A LONG-STANDING PROBLEM.

HIS MOTHER, WITH HIS TOTAL SUPPORT, HAS LOCATED A RESIDENTIAL LOCKED-DOWN PROGRAM THAT IS NEAR LAS VEGAS.

THE LETTER DESCRIBES THE NATURE OF THE PROGRAM.

MY CLIENT IS DESIROUS, YOUR HONOR, OF AN OPPORTUNITY TO COMPLETE SUCH A RIGID PROGRAM.

THIS INCIDENT, THESE INCIDENTS, WERE AS A RESULT OF VIRTUALLY A CRIME SPREE.

THESE ROBBERIES, OR THESE INCIDENTS BASICALLY

1 INVOLVED PETTY THEFTS; AN ESTES ROBBERY IN ONE SITUATION,
2 WHERE HE WOULD GO INTO VARIOUS ASSORTED ESTABLISHMENTS,
3 EITHER A RESTAURANT, PERHAPS A CONVENIENCE STORE. I THINK
4 ONE WAS A DRY-CLEANING ESTABLISHMENT, ASKED FOR CHANGE, AND
5 WHEN THE CASH REGISTER WAS OPENED, MAKE A GRAB FOR THE
6 MONEY. USUALLY IT AMOUNTED TO A RELATIVELY MINOR AMOUNT OF
7 MONEY, 30 DOLLARS, IN ONE CASE. AMOUNTS OF THAT NATURE.

8 TO SUPPORT AN OUT-OF-CONTROL COCAINE HABIT.

9 THERE WERE, I BELIEVE, TWO OTHER CONTACTS WITH THE
10 LAW IN LAS VEGAS, BUT NOTHING OF A VIOLENT OR CONFRONTIVE
11 NATURE.

12 NO ONE, IT'S MY UNDERSTANDING, WAS HURT IN ANY OF
13 THESE INCIDENTS. I BELIEVE THERE WAS ONLY ONE OF THESE
14 INCIDENTS THAT WAS ACTUALLY CHARGED AS AN ESTES ROBBERY,
15 BECAUSE THE LADY THAT WAS STANDING AT THE CASH REGISTER WAS
16 PUSHED OUT OF THE WAY.

17 BUT WHILE I'M SURE IT FRIGHTENED AND UPSET HER, SHE
18 WAS PHYSICALLY UNHARMED BY THE INCIDENT.

19 MY CLIENT WAS ENTIRELY COOPERATIVE WITH THE POLICE
20 WHEN HE WAS CAUGHT.

21 HE WAS VERY FORTHRIGHT WITH THEM ABOUT THESE
22 DIFFERENT INCIDENTS THAT HE HAD BEEN INVOLVED IN, AND IT
23 APPEARS ON THE FACE OF IT THAT WHILE THESE INCIDENTS WERE
24 SERIOUS, AND I'M NOT UNDERESTIMATING THE SERIOUSNESS OF
25 THEM, THEY ARE AS DIRECT AS A RESULT OF A VERY, VERY
26 SERIOUS COCAINE PROBLEM.

27 AND WHILE WE ALL KNOW THAT DRUGS MAY STILL BE
28 AVAILABLE WITHIN THE STATE PRISON, IT DOESN'T NECESSARILY

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MEAN THAT HE'S GOING TO DRY OUT THERE.

EVEN IF HE DOES, THAT DOESN'T TREAT THE ADDICTION.
IT DOESN'T GO AWAY.

AND THE FAMILY IS WILLING TO SUPPORT HIM THROUGH
THIS PROGRAM, AND HE IS ASKING THE COURT FOR THAT
OPPORTUNITY.

THE COURT: MR. DELONG?

MR. DELONG: WELL, I SEE A COUPLE OF PROBLEMS.

ONE, IT'S AN OUT-OF-STATE PROGRAM, AND THE
DEFENDANT IS GOING TO BE ON PROBATION IN CALIFORNIA; AND,
IN VIEW OF THE ROBBERIES, THE ROBBERY AND BURGLARIES THAT
ARE CHARGED I DON'T THINK HE'S GOING TO BE ALLOWED TO LEAVE
THE STATE.

TWO IS -- I NOTICE A 1990 -- IS IT "3" OR "1"? I
CAN'T REMEMBER. 1991. PAGE 8, HE WENT TO SOME KIND OF
DETOX PROGRAM WHEN HE WAS LIVING IN LAS VEGAS.

ALSO, ACCORDING TO THE RESIDENCY PAGE, HE CLAIMS
HIS RESIDENCE IS IN LAS VEGAS, NEVADA.

WHY DIDN'T HE GO THERE AT THAT TIME, AND STAY IN
THE SIX-MONTH PROGRAM, IF IT'S SO GREAT.

THE OTHER THING IS HOW DO THEY KNOW THAT THIS
PERSON IS AN ELIGIBLE CANDIDATE FOR THEIR PROGRAM WHEN THEY
ARE IN ANOTHER STATE; AND, AS FAR AS I CAN TELL FROM THIS
LETTER, NO ONE FROM THAT PROGRAM HAS EVER TALKED TO THE
DEFENDANT OR EVEN KNOWS WHAT THE CHARGES ARE.

THE DEFENDANT'S COCAINE HABIT APPEARS TO BE OUT OF
CONTROL, AND I ACCEPT THAT, BECAUSE HE'S GETTING MORE AND
MORE DESPERATE FOR MONEY TO BUY DRUGS.

1 I DON'T THINK HE'S A GOOD CANDIDATE FOR PROBATION,
2 AND THE DONOVAN PROGRAM MAY BE HIS BEST BET.

3 CREDITS ARE 28.

4 THE COURT: I DISAGREE WITH COUNSEL'S ASSESSMENT THAT
5 THESE ARE MERE PETTY THEFT-TYPE CRIMES.

6 IT'S SURE THE DEFENDANT DID NOT OBTAIN MUCH MONEY,
7 BUT IT WOULD BE MUCH MORE AGGRAVATED THAN A PETTY THEFT.

8 TRUE, THEY ARE NOT A ROBBERY WITH A GUN, BUT WHEN
9 SOMEONE GOES INTO A COMMERCIAL ESTABLISHMENT LIKE A DENNY'S
10 RESTAURANT OR A SPARKLE CLEANERS AND BASICALLY PUSHES THE
11 INDIVIDUALS ASIDE AND GOES THROUGH THE DRAWER, THAT IS A
12 ROBBERY.

13 AND I AM CONCERNED THAT HIS DRUG PROBLEM HAS
14 ESCALATED TO A POINT BEYOND THE CONTROL OF EVERYONE.

15 HOWEVER, THERE WAS AN EARLY DISPOSITION OF THIS
16 MATTER, AND I'M NOT GOING TO GIVE HIM THE THREE YEARS,
17 EIGHT MONTHS. THAT'S THE MAXIMUM THAT HE ENTERED INTO IN
18 THIS DEAL.

19 I'M HOPING THIS ONE TIME OF MR. SUBLETT REACHING
20 BOTTOM, BECAUSE THAT'S WHERE YOU ARE, SIR -- YOU'RE GOING
21 TO STATE PRISON TODAY -- THAT THAT WILL WAKE YOU UP.

22 THESE PROGRAMS DON'T WORK IN REGARDS TO DRUGS. THE
23 ONLY PERSON THAT CAN SAY "NO" IS YOU. YOU'VE GOT TO DO
24 IT. I KNOW THAT'S EASIER SAID THAN DONE, BUT SOMEHOW
25 YOU'VE GOT TO FIND THE STRENGTH AND THE COURAGE TO DO IT.

26 DO YOU UNDERSTAND?

27 THE DEFENDANT: YES, SIR.

28 MR. DELONG: ALSO, YOUR HONOR, ON COUNT 4, THE PEOPLE

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ARE MOVING TO DISMISS IT, NOT AS ANY PART OF A PLEA
BARGAIN, BUT BECAUSE ORANGE COUNTY MAY BE FILING CHARGES.

APPARENTLY THE CAR WAS STOLEN THERE AND DRIVEN HERE TO
COMMIT THE ROBBERIES.

THE COURT: COUNT 4 IS DISMISSED.

AS TO COUNTS 1, 2 AND 3, IT IS THE JUDGMENT AND
SENTENCE OF THIS COURT THE DEFENDANT BE SENTENCED TO STATE
PRISON AS TO COUNT 1, THE LOW TERM OF TWO YEARS; AS TO
COUNT 2, THE MID TERM OF TWO YEARS, AND AS TO COUNT 3, THE
MID TERM OF TWO YEARS, THOSE ARE TO RUN CONCURRENT; THAT IS
ONE WITH THE OTHER, FOR A TOTAL AGGREGATE TERM OF TWO YEARS
IN THE STATE PRISON.

NOW, YOU WILL RECEIVE CREDIT TOWARDS THAT TWO YEARS
STATE PRISON COMMITMENT OF 28 ACTUAL DAYS GOOD TIME/WORK
TIME DAYS OF 14 FOR A TOTAL OF 42 DAYS CREDIT.

HE'S ALSO TO PAY A \$200 RESTITUTION FUND PAYMENT
PURSUANT TO MANDATORY STATE LAW, AND HE IS TO BE TAKEN
FORTHWITH TO THE DEPARTMENT OF CORRECTIONS FOR ASSIGNMENT
THERE.

GOOD LUCK TO YOU, MR. SUBLETT.

MS. WARNER-STERKENBURG: THANK YOU, YOUR HONOR.

(PROCEEDINGS CONCLUDED.)

MUNICIPAL COURT OF LONG BEACH JUDICIAL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff

Case No. NA018796 *gs*

v.

01 MICHAEL LYNN SUBLETT

Defendant(s)

FELONY COMPLAINT

The undersigned is informed and believes that:

COUNT 1

On or about January 14, 1994, in the County of Los Angeles, the crime of 2ND DEGREE ROBBERY, in violation of PENAL CODE SECTION 211, a Felony, was committed by MICHAEL LYNN SUBLETT, who did willfully, unlawfully, and by means of force and fear take personal property from the person, possession, and immediate presence of MARIA GASTELUM. It is further alleged that the above offense is a serious felony within the meaning of Penal Code Section 1192.7(c)(19).

* * * * *

COUNT 2

On or about January 13, 1994, in the County of Los Angeles, the crime of SECOND DEGREE COMMERCIAL BURGLARY, in violation of PENAL CODE SECTION 459, a Felony, was committed by MICHAEL LYNN SUBLETT, who did willfully and unlawfully enter a commercial building occupied by SPARKLE CLEANERS with the intent to commit larceny and any felony.

* * * * *

COUNT 3

On or about January 16, 1994, in the County of Los Angeles, the crime of SECOND DEGREE COMMERCIAL BURGLARY, in violation of PENAL CODE SECTION 459, a Felony, was committed by MICHAEL LYNN SUBLETT, who did willfully and unlawfully enter a commercial building occupied by LINA'S DONUTS with the intent to commit larceny and any felony.

* * * * *

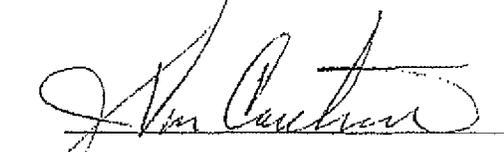
COUNT 4

On or about January 19, 1994, in the County of Los Angeles, the crime of UNLAWFUL DRIVING OR TAKING OF A VEHICLE, in violation of VEHICLE CODE SECTION 10851(a), a Felony, was committed by MICHAEL LYNN SUBLETT, who did willfully and unlawfully drive and take a certain vehicle, to wit, A 1993 DODGE LUMINA, then and there the personal property of AVIS RENT-A-CAR without the consent of and with intent, either permanently or temporarily, to deprive the said owner of title to and possession of said vehicle.

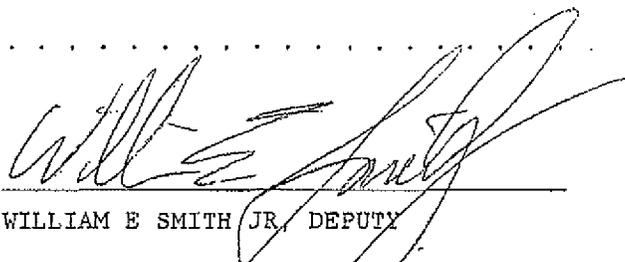
* * * * *

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS COMPLAINT, CASE NUMBER NA018796, CONSISTS OF 4 COUNT(S).

Executed at Long Beach, County of Los Angeles, on January 21, 1994.


J. VAN COUTREN
DECLARANT AND COMPLAINANT

.....
GIL GARCETTI, DISTRICT ATTORNEY

BY: 
WILLIAM E SMITH JR, DEPUTY

AGENCY: LBPD SID CAT
DR NO: 511863

I/O: VAN COUTREN ID NO: PHONE NO: 310-5907231
OPERATOR: nso PRELIM.TIME EST:

DEFENDANT
SUBLETT, MICHAEL LYNN

<u>CII NO.</u>	<u>DOB</u>	<u>BOOKING NO.</u>	<u>BAIL RECOM'D</u>	<u>CUSTODY R'TN DATE</u>
	7/09/59	3833-298	\$ 60,000	1/21/94

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defense counsel provide discovery to the People as required by Penal Code Section 1054.3.

FEB 16 1994
pm

FELONY COMPLAINT - ORDER HOLDING TO ANSWER - P.C. SECTION 872

It appearing to me from the evidence presented that the following offense(s) has/have been committed and that there is sufficient cause to believe that the following defendant(s) guilty thereof, to wit:

(Strike out or add as applicable)

MICHAEL LYNN SUBLETT

<u>Count</u>		<u>Charge</u>	<u>Special</u>	<u>Alleg.</u>
<u>No.</u>	<u>Charge</u>	<u>Range</u>	<u>Allegation</u>	<u>Effect</u>
1	PC211	2-3-5		
2	PC459	16-2-3		
3	PC459	16-2-3		
4	VC10851(a)	16-2-3		

I order that defendant(s) be held to answer therefor and be admitted to bail in the sum of:

MICHAEL LYNN SUBLETT _____ Dollars

and be committed to the custody of the Sheriff of Los Angeles County until such bail is given. Date of arraignment in Superior Court will be:

MICHAEL LYNN SUBLETT _____ in Dept: _____

at: _____ A.M.

Date: _____

Committing Magistrate

Appendix C

Los Angeles County

#KA028990

(East Branch)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE

CASE NUMBER

vs.

Michael L. Sablett

KA028990

GUILTY PLEA IN THE SUPERIOR COURT

- 1. My full name is Michael Sablett, I am represented by A. Russell Halpern who is my attorney.
- 2. I understand that I am pleading guilty and admitting the following offenses, prior convictions and special punishment allegations, carrying possible penalties as follows:

COUNT	CHARGE	MAXIMUM TERM	YEARS	ENHANCEMENTS	YEARS	TERM FOR PRIORS	YEARS	TOTAL PENALTY YEARS
1	211 P.C.	2 1/2	5	6676-1 PC 6676 X2				
2	211 P.C.		1 1/2	6676-1 P.C. 1 1/2 X2	5			
MAXIMUM TOTAL PUNISHMENT: 10 1/2								

FILED
LOS ANGELES
SUPERIOR COURT
MAR 17 1997
JOHN A. CLARKE
M. Katinas
BY M. KATINAS, DEPUTY

- 3. If I am convicted of first or second degree murder, the period of parole is life. (3000.1 P.C.)
- If I receive a life sentence, not due to a conviction of first or second degree murder, the period of parole is 5 years. (3000(b) P.C.)
- A sentence to state prison other than the two mentioned above may result in parole for up to 3 years. (3000(a) P.C.)
- It is also my understanding that each violation during the parole period may result in re-commitment for up to one year.
- I understand that the courts and the Legislature have approved plea bargaining. That it is absolutely necessary all plea agreements, promises of particular sentences or sentence recommendations be completely disclosed to the court on this form.
- 5. I understand that I have the right to be represented by an attorney at all stages of the proceedings until the case is terminated and that if I cannot afford an attorney, one will be appointed free of charge.
- 6. I understand that I have a right to a trial by jury, which means that 12 citizens selected by my lawyer and the prosecutor would hear all the facts in this case and decide whether or not I am guilty of the crime charged against me. All 12 citizens would have to agree that I am guilty in order for me to be convicted of any crime charged against me or all 12 citizens would have

to agree that I am not guilty in order to acquit me. I hereby waive and give up this right.

I understand that I have the right to be confronted by witness(es) against me; in other words, that they testify under oath in my presence, and to cross-examine them through my attorney. I hereby waive and give up this right.

I understand that I have the right to testify on my own behalf, but that I cannot be compelled to be a witness against myself, and may remain silent if I so choose. I hereby give up these rights.

I understand that I have the right to call witnesses to testify in my behalf and to use the assistance and processes of the court to subpoena those witnesses and to compel them to come to court to testify. I hereby waive and give up these rights.

I understand that if I am not a citizen of the United States, the conviction for the offense charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

I understand that I may be required to register as a sex offender to section 290 of the Penal Code.

I understand that I may be required to register as a narcotic offender pursuant to section 11590 of the Health and Safety Code.

I understand that a conviction in this case would constitute a violation of any probation or parole that I may have at this time; that the court or authority that has me on probation or parole can take me back on a violation and impose a separate sentence for the violation.

My lawyer has told me that if I plead guilty to the above charge(s), enhancement(s) and prior conviction(s), the court will sentence me as follows:

- State prison for the term prescribed by law, which term is a maximum of _____ years imprisonment in the penitentiary. I waive my right to make application for probation and request immediate sentence.
- That I make an application for probation which will be considered by the court before sentence is pronounced. I understand the court may send me to state prison for a maximum of _____ years.
- Probation under the conditions to be set by the court. I understand that a violation of probation may cause the court to send me to the penitentiary for a maximum of _____ years on this case.
- Commitment to CYA.
- Institution of MDSO.
- 1293.03 P.O. Commitment
- CRC Proceedings.

State I

Other: Sentenced to
low term of 2 yrs for
PC 211 in 97 - doubled per
669b P.C. + enhanced by
5 yrs per 667a PC - in
addition to receive
1 yr consecutive doubled
per 667b-1 P.C. for a
total of 14 yrs.

I understand that the court may make me pay a sum of money to the State Indemnity Fund, as part of my sentence (Section 13967 of the Government Code).

I have discussed the charge(s), the facts and the possible defenses with my attorney.

I offer my plea of "Guilty" freely and voluntarily and with full understanding of all the matters set forth in the pleading and in this form. No one has made any threats, used any force against myself, family or loved ones, or made any promises to me except as set out in this form, in order to convince me to plead guilty.

18. I offer to the court the following as the basis for my guilty:

Factual basis: _____

MJD I am pleading guilty to take advantage of a plea barg
 My attorney will stipulate to a factual basis for my pl
 Other: _____

MJD I have personally initialed each of the above boxes and discussed them with my attorney. I understand each and every one of the rights outlined above and I hereby waive and give up each of them in order to enter my plea to the above charges.

Dated: 3/17/97

Signed: Michael J. Sublett
DEFENDANT

20. DEFENDANT'S ATTORNEY ONLY—I am attorney of record and I have explained each of the above rights to the defendant, and having explored the facts with him/her and studied his/her possible defenses to the charge(s), I concur in his/her decision to waive the above rights and to enter a plea of guilty. I further stipulate this document may be received by the court as evidence of defendant's intelligent waiver of these rights, and that it should be filed by the clerk as a permanent record of that waiver. No promises of a particular sentence or sentence recommendation have been made by myself or to my knowledge by the prosecuting attorney or the court which have not been fully disclosed in this form.

Dated: 3/17/97
Signed: [Signature]
ATTORNEY

21. FOR THE PEOPLE:

Dated: _____
Signed: _____
DEPUTY DISTRICT ATTORNEY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

CASE NO. KA028990

v.

01 MICHAEL LYNN SUBLETT (7/9/1959)

Defendant(s).

INFORMATION

FILED

Arraignment Hearing
Date: 11/13/1996
Department: EA N

NOV 13 1996

INFORMATION
SUMMARY

D. Swart
BY D. SWART, DEPUTY

<u>Ct. No.</u>	<u>Charge</u>	<u>Charge Range</u>	<u>Defendant</u>	<u>Special Allegation</u>	<u>Alleg. Effect</u>
1	PC 211	2-3-5	SUBLETT, MICHAEL LYNN	PC 667(A)(1) PC 1170.12(A)-(D)	+5 yrs per prior MSP Check Code
2	PC 211	2-3-5	SUBLETT, MICHAEL LYNN	PC 667(A)(1) PC 1170.12(A)-(D)	+5 yrs per prior MSP Check Code
3	PC 211	2-3-5	SUBLETT, MICHAEL LYNN	PC 667(A)(1) PC 1170.12(A)-(D)	+5 yrs per prior MSP Check Code

The District Attorney of the County of Los Angeles, by this Information alleges that:

COUNT 1

On or about August 23, 1995, in the County of Los Angeles, the crime of 2ND DEGREE ROBBERY, in violation of PENAL CODE SECTION 211, a Felony, was committed by MICHAEL LYNN SUBLETT, who did willfully, unlawfully, and by means of force and fear take personal property from the person, possession, and immediate presence of CHRISTINE HOWARD.

"NOTICE: The above offense is a serious felony within the meaning of Penal Code section 1192.7(c)."

COUNT 2

On or about August 23, 1995, in the County of Los Angeles, the crime of 2ND DEGREE ROBBERY, in violation of PENAL CODE SECTION 211, a Felony, was committed by MICHAEL LYNN SUBLETT, who did willfully, unlawfully, and by means of force and fear take personal property from the person, possession, and immediate presence of JENNIFER ESPINDOLA.

"NOTICE: The above offense is a serious felony within the meaning of Penal Code section 1192.7(c)."

* * * * *

COUNT 3

On or about September 4, 1995, in the County of Los Angeles, the crime of 2ND DEGREE ROBBERY, in violation of PENAL CODE SECTION 211, a Felony, was committed by MICHAEL LYNN SUBLETT, who did willfully, unlawfully, and by means of force and fear take personal property from the person, possession, and immediate presence of AGNES MAUSETH.

"NOTICE: The above offense is a serious felony within the meaning of Penal Code section 1192.7(c)."

It is further alleged as to count(s) 1, 2, and 3 that said defendant(s), MICHAEL LYNN SUBLETT, was on and about the 2ND day of MARCH, 1994, in the SUPERIOR Court of the State of CALIFORNIA, for the County of LOS ANGELES, convicted of a serious felony, to wit: 2ND DEGREE ROBBERY, in violation of section 211 of the PENAL Code, case NA018796 within the meaning of Penal Code Section 667(a)(1).

It is further alleged pursuant to Penal Code sections 1170.12(a) through (d) and 667(b) through (i) as to count(s) 1, 2, and 3 that said defendant(s), MICHAEL LYNN SUBLETT, has suffered the following prior conviction of a serious or violent felony or juvenile adjudication:

Case No. Code/Statute Conv. Date County of Court State Court Type
NA018796 P.C. 211 03/02/1994 LOS ANGELES CA SUPERIOR

* * * * *

THIS INFORMATION CONSISTS OF 3 COUNT(S).

GIL GARCETTI
DISTRICT ATTORNEY
County of Los Angeles,
State of California

BY: _____
DAVID R. TRAUM
DEPUTY DISTRICT ATTORNEY

Filed in Superior Court,
County of Los Angeles

MLG

DATED: _____

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defense counsel provide discovery to the People as required by Penal Code Section 1054.3.

The Document to which this certification is attached is a full, true and correct copy of the original on file and of record in my office.

Attest: JUN - 2 2008
JOHN A. CLARKE
Executive Officer/Clerk of the
Superior Court of California,
County of Los Angeles

By [Signature], Deputy



IN THE MUNICIPAL COURT OF WEST COVINA COURTHOUSE JUDICIAL
DISTRICT,
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA
NO. KA028990 PAGE NO. 1
THE PEOPLE OF THE STATE OF CALIFORNIA VS. CURRENT DATE 06/02/08
DEFENDANT 01: MICHAEL LYNN SUBLETT
LAW ENFORCEMENT AGENCY EFFECTING ARREST: GLENDORA POLICE DEPARTMENT

BAIL: DATE	APPEARANCE AMOUNT OF BAIL	DATE POSTED	RECEIPT OR BOND NO.	SURETY COMPANY	REGISTER NUMBER
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CASE FILED ON 09/08/95.
COMPLAINT FILED, DECLARED OR SWORN TO CHARGING DEFENDANT WITH HAVING
COMMITTED, ON OR ABOUT 08/23/95 IN THE COUNTY OF LOS ANGELES, THE FOLLOWING
OFFENSE(S) OF:
COUNT 01: 211 PC FEL - ROBBERY.
COUNT 02: 245(A)(1) PC FEL - ASSAULT W DEADLY WEAPON/INSTR..
COUNT 03: 211 PC FEL - ROBBERY.
NEXT SCHEDULED EVENT:
ARREST WARRANT TO ISSUE

09/12/95 ARREST WARRANT IN THE AMOUNT OF \$115,000.00 BY ORDER OF JUDGE MICHAEL
DUGGAN ISSUED. (09/12/95).

ON 10/31/95 AT 830 AM IN WEST COVINA COURTHOUSE DIV 011

CASE CALLED FOR BENCH WARRANT HEARING
PARTIES: MICHAEL DUGGAN (JUDGE) EDIE PEARMAN (CLERK)
MELINDA DELGADO (REP) JAMES M. BELNA (DA)
DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL
BENCH WARRANT ORDERED/ISSUED
NEXT SCHEDULED EVENT:
WARRANT ISSUED & CLDR CANCEL

10/31/95 ARREST WARRANT IN THE AMOUNT OF \$115,000.00 RECALLED. (10/31/95).

10/31/95 BENCH WARRANT IN THE AMOUNT OF \$200,000.00 BY ORDER OF JUDGE MICHAEL
DUGGAN ISSUED. (11/01/95).

ON 10/15/96 AT 830 AM IN WEST COVINA COURTHOUSE DIV 007

CASE CALLED FOR BENCH WARRANT HEARING
PARTIES: R. BRUCE MINTO (JUDGE) CHERYL PANTALEO (CLERK)
KRISTINE TOOLE (REP) JAMES M. BELNA (DA)
DEFENDANT DEMANDS COUNSEL.
PUBLIC DEFENDER APPOINTED. ALAN R. ABAJIAN - P.D.
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY ALAN R. ABAJIAN DEPUTY PUBLIC
DEFENDER

THE COMPLAINT READ TO THE DEFENDANT.
BAIL SET AT \$200,000.
NEXT SCHEDULED EVENT:
UPON MOTION OF DEFENDANT
10/17/96 830 AM ARRAIGNMENT AND PLEA DIST WEST COVINA COURTHOUSE DIV 007

10/15/96 BENCH WARRANT IN THE AMOUNT OF \$200,000.00 RECALLED. (10/15/96).

CUSTODY STATUS: REMANDED TO CUSTODY

CASE NO. KA028990
DEF NO. 01

PAGE NO. 2
DATE PRINTED 06/02/08

ON 10/17/96 AT 830 AM IN WEST COVINA COURTHOUSE DIV 007

CASE CALLED FOR ARRAIGNMENT AND PLEA
PARTIES: R. BRUCE MINTO (JUDGE) CHERYL PANTALEO (CLERK)
SHERYL SAYLOR (REP) JAMES M. BELNA (DA)
DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY ALAN R. ABAJIAN DEPUTY
PUBLIC DEFENDER
DEFENDANT A MISSOUT. REMOVAL ORDER ISSUED FOR 10-18-96
NEXT SCHEDULED EVENT:
10/18/96 830 AM ARRAIGNMENT AND PLEA DIST WEST COVINA COURTHOUSE DIV 007

ON 10/18/96 AT 830 AM IN WEST COVINA COURTHOUSE DIV 007

CASE CALLED FOR ARRAIGNMENT AND PLEA
PARTIES: PATRICK B. MURPHY (JUDGE) CHERYL PANTALEO (CLERK)
CHARLENE L. MORLEY (REP) JAMES M. BELNA (DA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY ALAN R. ABAJIAN DEPUTY PUBLIC
DEFENDER
DEFENDANT WAIVES ARRAIGNMENT, READING OF COMPLAINT, AND STATEMENT OF
CONSTITUTIONAL AND STATUTORY RIGHTS.
DEFENDANT WAIVES FURTHER ARRAIGNMENT.
DEFENDANT PLEADS NOT GUILTY TO COUNT 01, 211 PC - ROBBERY.
DEFENDANT PLEADS NOT GUILTY TO COUNT 02, 245(A)(1) PC - ASSAULT W DEADLY
WEAPON/INSTR..
DEFENDANT PLEADS NOT GUILTY TO COUNT 03, 211 PC - ROBBERY.
BAIL SET AT \$200,000.
NEXT SCHEDULED EVENT:
UPON MOTION OF DEFENDANT
10/30/96 830 AM PRELIMINARY HEARING DIST WEST COVINA COURTHOUSE DIV 007

CUSTODY STATUS: REMANDED TO CUSTODY

ON 10/30/96 AT 830 AM IN WEST COVINA COURTHOUSE DIV 007

CASE CALLED FOR PRELIMINARY HEARING
PARTIES: R. BRUCE MINTO (JUDGE) CHERYL PANTALEO (CLERK)
CHARLENE L. MORLEY (REP) EUGENE HANKS (DDA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY GRADY RUSSELL DEPUTY PUBLIC
DEFENDER
BOTH SIDES READY.
PEOPLE WITNESS SWORN AND TESTIFIED KRISTINE HOWARD.
DEFENSE MOTION TO EXCLUDE GRANTED.
CROSS EXAMINATION.
PEOPLE WITNESS SWORN AND TESTIFIED JENNIFER ESPINDOLA
CROSS EXAMINATION.
PEOPLE WITNESS SWONR AND TESTIFIED GEORGE DYNES
PEOPLE EXHIBIT #1 FOR I.D . PICTURES
CROSS EXAMINATION
PEOPLE EXHIBIT #1 RECEIVED.

CASE NO. KA028990
DEF NO. 01

PAGE NO. 3
DATE PRINTED 06/02/08

PEOPLE REST.
NO AFFIRMATIVE DEFENSE
131.3 CCP REPORT ORDERED
DEFENDANT MAY NOT BE INTERVIEWED REGARDING THE FACTS OF THE CASE
NEXT SCHEDULED EVENT:
PRELIMINARY HEARING

ON 10/30/96 AT 900 AM IN WEST COVINA COURTHOUSE DIV 007

CASE CALLED FOR PRELIMINARY HEARING
PARTIES: R. BRUCE MINTO (JUDGE) CHERYL PANTALEO (CLERK)
CHARLENE L. MORLEY (REP) EUGENE HANKS (DDA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY GRADY RUSSELL DEPUTY PUBLIC
DEFENDER
COUNT (01) : DISPOSITION: HELD TO ANSWER
COUNT (02) : DISPOSITION: DISMISSAL IN FURTH OF JUSTICE PER 1385 PC

COUNT (03) : DISPOSITION: HELD TO ANSWER
BAIL SET AT \$200,000.
NEXT SCHEDULED EVENT:
HELD TO ANSWER, ON NOVEMBER 13, 1996, IN SUPERIOR COURT OF LOS ANGELES COUNTY,
EAST DISTRICT, DEPT N, AT 830 AM.

CUSTODY STATUS: REMANDED TO CUSTODY

ON 11/01/96 AT 930 AM :
COMPLAINT AND EXHIBITS FORWARDED TO POMONA SUPERIOR COURT
400 CIVIC CENTER PLAZA, POMONA
CASE FORWARDED ON 11-07-96
REFERRAL FORWARDED TO PROBATION.

IN THE SUPERIOR COURT OF EAST DISTRICT JUDICIAL DISTRICT,
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

NO. KA028990 PAGE NO. 1
THE PEOPLE OF THE STATE OF CALIFORNIA VS. CURRENT DATE 06/02/08
DEFENDANT 01: MICHAEL LYNN SUBLETT
LAW ENFORCEMENT AGENCY EFFECTING ARREST: GLENDORA POLICE DEPARTMENT

BAIL: APPEARANCE DATE	AMOUNT OF BAIL	DATE POSTED	RECEIPT OR BOND NO.	SURETY COMPANY	REGISTER NUMBER
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CASE FILED ON 10/30/96.
INFORMATION FILED ON 11/13/96.
OFFENSE(S):

COUNT 01: 211 PC FEL - ROBBERY.
COUNT 02: 211 PC FEL - ROBBERY.
COUNT 03: 211 PC FEL - ROBBERY.

COMMITTED ON OR ABOUT 08/23/95 IN THE COUNTY OF LOS ANGELES
NEXT SCHEDULED EVENT:
11/13/96 830 AM ARRAIGNMENT DIST EAST DISTRICT DEPT EAN

ON 11/13/96 AT 830 AM IN EAST DISTRICT DEPT EAN

CASE CALLED FOR ARRAIGNMENT
PARTIES: ROBERT C. GUSTAVESON (JUDGE) DOUGLAS SWART (CLERK)
DENISE NELSON (REP) JOHN F. URGO (DDA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY HELANA HALPERN-SUDD PRIVATE
COUNSEL APPEARING FOR R. HALPERN

INFORMATION FILED AND THE DEFENDANT IS ARRAIGNED.
DEFENDANT PLEADS NOT GUILTY TO COUNT 01, 211 PC - ROBBERY.
DEFENDANT PLEADS NOT GUILTY TO COUNT 02, 211 PC - ROBBERY.
DEFENDANT PLEADS NOT GUILTY TO COUNT 03, 211 PC - ROBBERY.
PUBLIC DEFENDER'S OFFICE IS RELIEVED.
NEXT SCHEDULED EVENT:
12/09/96 830 AM PRETRIAL CONFERENCE DIST EAST DISTRICT DEPT EAN
NEXT SCHEDULED EVENT 2:
01/10/97 830 AM JURY TRIAL DIST EAST DISTRICT DEPT EAN

CUSTODY STATUS: DEFENDANT REMANDED

ON 12/09/96 AT 830 AM IN EAST DISTRICT DEPT EAN

CASE CALLED FOR PRETRIAL CONFERENCE
PARTIES: ROBERT C. GUSTAVESON (JUDGE) HAROLD BARAN (CLERK)
DENISE NELSON (REP) JOHN F. URGO (DDA)
DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY HELANA HALPERN-SUDD
PRIVATE COUNSEL
PRE TRIAL OFF CALENDAR. TRIAL DATE OF 1-10-97 REMAINS.
NEXT SCHEDULED EVENT:
JURY TRIAL

CUSTODY STATUS: DEFENDANT REMANDED

ON 01/10/97 AT 830 AM IN EAST DISTRICT DEPT EAN

CASE CALLED FOR JURY TRIAL
PARTIES: ROBERT C. GUSTAVESON (JUDGE) FAYE HADLEY (CLERK)
NONE (REP) JOHN F. URGO (DDA)
DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY HELANA HALPERN-SUDD

CASE NO. KA028990
DEF NO. 01

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DATE PRINTED 06/02/08

PRIVATE COUNSEL

170.6 CODE OF CIVIL PROCEDURE FILED AGAINST THIS COURT BY THE
DEFENSE. MATTER TRANSFERRED TO DEPARTMENT EAM FORTHWITH UPON
ORDER FROM DEPARTMENT A.

NEXT SCHEDULED EVENT:

UPON MOTION OF COURT

01/10/97 900 AM JURY TRIAL DIST EAST DISTRICT DEPT EAM

CUSTODY STATUS: DEFENDANT REMANDED

ON 01/10/97 AT 900 AM IN EAST DISTRICT DEPT EAM

CASE CALLED FOR JURY TRIAL

PARTIES: DAVID S. MILTON (JUDGE) BLANCA AZPEITIA (CLERK)
SHARON FOX (REP) REID A. ROSE (DDA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY HELANA HALPERN-SUDD
LANA HALPERN-SUDD STANDS IN FOR R. HALPERN.

DEFENDANT AND COUNSEL STIPULATE TO 1-13-97 AS 58/60.

WAIVES STATUTORY TIME.

NEXT SCHEDULED EVENT:

UPON MOTION OF COURT

01/13/97 830 AM JURY TRIAL DIST EAST DISTRICT DEPT EAM

CUSTODY STATUS: DEFENDANT REMANDED

ON 01/13/97 AT 830 AM IN EAST DISTRICT DEPT EAM

CASE CALLED FOR JURY TRIAL

PARTIES: DAVID S. MILTON (JUDGE) BLANCA AZPEITIA (CLERK)
SHARON FOX (REP) REID A. ROSE (DDA)
DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL
J. TYRE STANDS IN FOR R. HALPERN.

NEXT SCHEDULED EVENT:

UPON MOTION OF DEFENDANT

01/14/97 830 AM JURY TRIAL DIST EAST DISTRICT DEPT EAM

CUSTODY STATUS: DEFENDANT REMANDED

ON 01/14/97 AT 830 AM IN EAST DISTRICT DEPT EAM

CASE CALLED FOR JURY TRIAL

PARTIES: DAVID S. MILTON (JUDGE) BLANCA AZPEITIA (CLERK)
SHARON FOX (REP) REID A. ROSE (DDA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY HELANA HALPERN-SUDD
WAIVES STATUTORY TIME.

NEXT SCHEDULED EVENT:

UPON MOTION OF DEFENDANT

02/06/97 830 AM JURY TRIAL DIST EAST DISTRICT DEPT EAM

CUSTODY STATUS: DEFENDANT REMANDED

ON 02/06/97 AT 830 AM IN EAST DISTRICT DEPT EAM

CASE CALLED FOR JURY TRIAL

PARTIES: DAVID S. MILTON (JUDGE) BLANCA AZPEITIA (CLERK)
SHARON FOX (REP) REID A. ROSE (DDA)

CASE NO. KA028990
DEF NO. 01

PAGE NO. 3
DATE PRINTED 06/02/08

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY HELANA HALPERN-SUDD
LANA HALPERN-SUDD STANDS IN FOR R. HALPERN. 1050 FILED THIS
DATE. COURT IMPOSES FINE OF \$50.00 FOR LATE FILING OF 1050.
COURT WILL HAVE HEARING ON ISSUE OF \$50.00 FINE ON 3-7-97.

WAIVES STATUTORY TIME.

NEXT SCHEDULED EVENT:

UPON MOTION OF DEFENDANT

03/07/97 830 AM JURY TRIAL DIST EAST DISTRICT DEPT EAM

CUSTODY STATUS: DEFENDANT REMANDED

ON 03/07/97 AT 830 AM IN EAST DISTRICT DEPT EAM

CASE CALLED FOR JURY TRIAL

PARTIES: DAVID S. MILTON (JUDGE) BLANCA AZPEITIA (CLERK)
SHARON FOX (REP) REID A. ROSE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY HELANA HALPERN-SUDD

DEFENDANT IN LOCK-UP. LANA SUDD HALPERN STANDS IN FOR
R. HALPERN. 1050 NOT FILED, BUT COUNSEL IS ILL.

MATTER TRAILED WITHIN STATUTORY TIME.

NEXT SCHEDULED EVENT:

UPON MOTION OF DEFENDANT

03/14/97 830 AM JURY TRIAL DIST EAST DISTRICT DEPT EAM

CUSTODY STATUS: DEFENDANT REMANDED

ON 03/14/97 AT 830 AM IN EAST DISTRICT DEPT EAM

CASE CALLED FOR JURY TRIAL

PARTIES: DAVID S. MILTON (JUDGE) BLANCA AZPEITIA (CLERK)
SHARON FOX (REP) REID A. ROSE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY HELANA HALPERN-SUDD

DEFENDANT IN LOCK-UP. BOTH SIDES ANNOUNCE READY.

MATTER IS TRANSFERRED TO DEPARTMENT EA J FORTHWITH FOR TRIAL.

NEXT SCHEDULED EVENT:

UPON MOTION OF COURT

03/14/97 1030 AM JURY TRIAL DIST EAST DISTRICT DEPT EAJ

CUSTODY STATUS: DEFENDANT REMANDED

ON 03/14/97 AT 1030 AM IN EAST DISTRICT DEPT EAJ

CASE CALLED FOR JURY TRIAL

PARTIES: CLIFTON L. ALLEN (JUDGE) MARGARITA KATINAS (CLERK)
DEZZA SIMS (REP) JAMES C. DALOISIO (DA)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY HELANA HALPERN-SUDD PRIVATE
COUNSEL

THE CAUSE IS TRANSFERRED FROM DEPARTMENT EA M FOR TRIAL.

COURT AND COUNSEL CONFER IN CHAMBERS OFF THE RECORD.

IN OPEN COURT/ON THE RECORD:

THE COURT FINDS THAT THIS IS DAY 7 OF 10.

CASE NO. KA028990
DEF NO. 01

PAGE NO. 4
DATE PRINTED 06/02/08

PURSUANT TO STIPULATION, THE TRIAL IS TRAILED TO 03/17/97, AT 10:00 A.M. IN DEPARTMENT EA J; THE DEFENDANT WAIVES TIME TO 03/17/97.

COUNSEL STIPULATE THAT 03/18/97, IS THE LAST DAY.

THE COURT DIRECTS THE CLERK TO ORDER A PANEL OF 35 JURORS FOR 03/17/97, AT 10:00 A.M.

NUNC PRO TUNC ORDER PREPARED 05/27/97, BY M. KATINAS, CLERK: IT APPEARING TO THE COURT THAT THROUGH INADVERTENCE AND CLERICAL ERROR THE MINUTE ORDER OF 03/14/97, IN THE ABOVE ENTITLED ACTION DOES NOT PROPERLY REFLECT THE COURT'S ORDER, SAID MINUTE ORDER IS AMENDED NUNC PRO TUNC AS OF THAT DATE AS FOLLOWS:

DELETE: "HELANA HALPERN-SUDD"
SUBSTITUTE: "H RUSSELL HALPERN"

WAIVES STATUTORY TIME.

NEXT SCHEDULED EVENT:

03/17/97 1000 AM JURY TRIAL IN PROGRESS DIST EAST DISTRICT DEPT EAJ

CUSTODY STATUS: DEFENDANT REMANDED

ON 03/17/97 AT 1000 AM IN EAST DISTRICT DEPT EAJ

CASE CALLED FOR JURY TRIAL IN PROGRESS

PARTIES: CLIFTON L. ALLEN (JUDGE) MARGARITA KATINAS (CLERK)
DEZZA SIMS (REP) JAMES C. DALOISIO (DA)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY H RUSSELL HALPERN PRIVATE COUNSEL

DEFENDANT ADVISED OF AND PERSONALLY AND EXPLICITLY WAIVES THE FOLLOWING RIGHTS:
WRITTEN ADVISEMENT OF RIGHTS AND WAIVERS FILED, INCORPORATED BY REFERENCE
HEREIN

TRIAL BY COURT AND TRIAL BY JURY

CONFRONTATION AND CROSS-EXAMINATION OF WITNESSES;
SUBPOENA OF WITNESSES INTO COURT TO TESTIFY IN YOUR DEFENSE;
AGAINST SELF-INCRIMINATION;

DEFENDANT ADVISED OF THE FOLLOWING:

THE POSSIBLE CONSEQUENCES OF A PLEA OF GUILTY OR NOLO CONTENDERE, INCLUDING THE MAXIMUM PENALTY AND ADMINISTRATIVE SANCTIONS AND THE POSSIBLE LEGAL EFFECTS AND MAXIMUM PENALTIES INCIDENT TO SUBSEQUENT CONVICTIONS FOR THE SAME OR SIMILAR OFFENSES;

COUNSEL FOR THE DEFENDANT JOINS IN THE WAIVERS AND CONCURS IN THE PLEA.
COURT FINDS THAT EACH SUCH WAIVER IS KNOWINGLY, UNDERSTANDINGLY, AND EXPLICITLY MADE;

UPON MOTION OF DEFENDANT, PLEA TO COUNT 01 VACATED AND SET ASIDE, AND NEW AND DIFFERENT PLEA OF GUILTY ENTERED.

COUNT (01) : DISPOSITION: CONVICTED

UPON MOTION OF DEFENDANT, PLEA TO COUNT 02 VACATED AND SET ASIDE, AND NEW AND DIFFERENT PLEA OF GUILTY ENTERED.

COUNT (02) : DISPOSITION: CONVICTED

COURT ACCEPTS PLEA

CASE NO. KA028990
DEF NO. 01

PAGE NO. 5
DATE PRINTED 06/02/08

DEFENDANT ADMITS SPECIAL ALLEGATION OF A PRIOR CONVICTION IN
CASE NO. NA018796; DEFENDANT ALSO WAIVES AND GIVES UP ALL RIGHTS
AS TO THIS PRIOR.

SENTENCING IS SET ON 04/14/97, AT 9:00 A.M. IN DEPARTMENT EA J.

ALL COUNSEL WAIVE FURTHER PROBATION REFERRAL.
WAIVES STATUTORY TIME.

NEXT SCHEDULED EVENT:
04/14/97 900 AM PROBATION AND SENTENCE HEARING DIST EAST DISTRICT DEPT EAJ

CUSTODY STATUS: DEFENDANT REMANDED

ON 04/14/97 AT 900 AM IN EAST DISTRICT DEPT EAJ

CASE CALLED FOR PROBATION AND SENTENCE HEARING
PARTIES: CLIFTON L. ALLEN (JUDGE) MARGARITA KATINAS (CLERK)

NONE (REP) NONE (DDA)
DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY H RUSSELL HALPERN PRIVATE
COUNSEL

ON THE DEFENSE ATTORNEY'S MOTION, THE PROBATION AND SENTENCING
HEARING IS TRAILED TO 04/15/97, AT 9:00 A.M. IN DEPARTMENT EA J.

DEFENDANT IS PRESENT IN LOCK-UP AND IS ORDERED TO RETURN ON THE
ABOVE DATE VIA THE SHERIFF.

NEXT SCHEDULED EVENT:
04/15/97 900 AM PROBATION AND SENTENCE HEARING DIST EAST DISTRICT DEPT
EAJ

CUSTODY STATUS: DEFENDANT REMANDED

ON 04/15/97 AT 900 AM IN EAST DISTRICT DEPT EAJ

CASE CALLED FOR PROBATION AND SENTENCE HEARING
PARTIES: CLIFTON L. ALLEN (JUDGE) MARGARITA KATINAS (CLERK)
LYNN A. BARASCH (REP) JAMES C. DALOISIO (DA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY H. HALPERN-SUDD PRIVATE

COUNSEL
ON THE DEFENDANT'S COUNSEL MOTION, THE PROBATION AND SENTENCING
HEARING IS CONTINUED TO 05/06/97, AT 9:00 A.M. IN DEPARTMENT EA
J; DEFENDANT WAIVES TIME FOR SENTENCING TO 05/06/97.

ALL COUNSEL AND THE DEFENDANT ARE ORDERED TO RETURN ON THE ABOVE
DATE.

WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:
05/06/97 900 AM PROBATION AND SENTENCE HEARING DIST EAST DISTRICT DEPT
EAJ

CUSTODY STATUS: DEFENDANT REMANDED

ON 05/06/97 AT 900 AM IN EAST DISTRICT DEPT EAJ

CASE CALLED FOR PROBATION AND SENTENCE HEARING
PARTIES: CLIFTON L. ALLEN (JUDGE) GREGORY JOHNSON (CLERK)

CASE NO. KA028990
DEF NO. 01

PAGE NO. 6
DATE PRINTED 06/02/08

DEZZA SIMS (REP) JAMES C. DALOISIO (DA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY H. HALPERN-SUDD PRIVATE
COUNSEL

IMPRISONED IN STATE PRISON FOR A TOTAL OF 11 YEARS
AS TO THE BASE COUNT (01):

COURT ORDERS PROBATION DENIED.

SERVE 9 YEARS IN ANY STATE PRISON

COURT SELECTS THE LOW TERM OF 4 YEARS AS TO THE BASE TERM COUNT 01.

PLUS 5 YEARS PURSUANT TO SECTION 667.A(1) P.C.

DEFENDANT GIVEN TOTAL CREDIT FOR 429 DAYS IN CUSTODY 287 DAYS ACTUAL CUSTODY
AND 142 DAYS GOOD TIME/WORK TIME

AS TO COUNT 1 LOW TERM OF 2 YEARS IS DOUBLED PURSUANT TO PENAL
CODE SECTION 667B-I. DEFENDANT IS GUILTY OF ROBBERY IN THE
SECOND DEGREE.

DEFENDANT TO PAY RESTITUTION IN AMOUNT OF \$200.00 PURSUANT TO
PENAL CODE SECTION 1202.4.

COUNT (01): DISPOSITION: CONVICTED

DMV ABSTRACT NOT REQUIRED

NEXT SCHEDULED EVENT:

PROCEEDINGS TERMINATED

AS TO COUNT (02):

COURT ORDERS PROBATION DENIED.

SERVE 2 YEARS IN ANY STATE PRISON

COURT SELECTS ONE-THIRD THE MID-TERM OF 3 YEARS WHICH IS 1 YEARS.

PLUS 1 YEARS PURSUANT TO SECTION 667B-I P.C.

DEFENDANT IS FOUND TO BE GUILTY OF ROBBERY IN THE SECOND DEGREE.

ALL REMAINING ALLEGATIONS ARE DISMISSED PURSUANT TO PENAL CODE
SECTION 1385.

COUNT (02): DISPOSITION: CONVICTED

REMAINING COUNTS DISMISSED:

COUNT (03): DISMISSED DUE TO PLEA NEGOTIATION

DMV ABSTRACT NOT REQUIRED

NEXT SCHEDULED EVENT:

PROCEEDINGS TERMINATED

CUSTODY STATUS: DEFENDANT REMANDED

ON 06/10/97 AT 900 AM :

ADR SENT 06-10-97.

PROCEEDINGS TERMINATED

ON 07/13/98 AT 1100 PM :

EXH. TRANS. TO CCB 7-13-98. 4. JH

ON 10/08/98 AT 830 AM IN EAST DISTRICT DEPT EAM

CASE CALLED FOR FURTHER PROCEEDINGS

PARTIES: GARY FEESS (JUDGE) MARK NATOLI (CLERK)

NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

PETITION OF DEFENDANT FOR WRIT OF HABEAS CORPUS IS DENIED. THE

COURT HAS REVIEWED THE PETITION AND FINDS THAT ON ITS FACE THE

PETITION IS WITHOUT MERIT AND FAILS TO STATE A CLAIM UPON WHICH

CASE NO. KA028990
DEF NO. 01

PAGE NO. 7
DATE PRINTED 06/02/08

RELIEF COULD BE GRANTED. WRITTEN ORDER OF DENIAL IS SIGNED AND
FILED THIS DATE; THE DEFENDANT IS NOTIFIED VIA U.S. MAIL THIS
DATE.

NEXT SCHEDULED EVENT:
UPON MOTION OF COURT
PROCEEDINGS TERMINATED

ON 02/03/99 AT 1100 PM IN EAST DISTRICT DEPT CLK

CASE CALLED FOR EXHIBIT DISPOSAL LIST
PARTIES: NONE (JUDGE) NONE (CLERK)
 NONE (REP) JAMES C. DALOISIO ()
DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL
EXHIBIT DISPOSAL LIST 98-041
NEXT SCHEDULED EVENT:
PROCEEDINGS TERMINATED

The Document to which this certification
is attached is a full, true and correct
copy of the original on file and of
record in my office.

Attest: JUN - 2 2008

JOHN A. CLARKE
Executive Officer/Clerk of the
Superior Court of California,
County of Los Angeles

By *John A. Clarke*, Deputy



Appendix D

1 of 1 DOCUMENT

DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED ***
***THROUGH 2007 CH. 170, APPROVED 7/30/07 ***

PENAL CODE
Part 1. Crimes and Punishments
Title 8. Crimes Against the Person
Chapter 4. Robbery

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pen Code § 211 (2007)

§ 211. Robbery defined

Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

Appendix E

1 of 1 DOCUMENT

DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED ***
***THROUGH 2007 CH. 170, APPROVED 7/30/07 ***

PENAL CODE
Part 1. Crimes and Punishments
Title 8. Crimes Against the Person
Chapter 4. Robbery

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pen Code § 212.5 (2007)

§ 212.5. First degree robbery; Second degree robbery

(a) Every robbery of any person who is performing his or her duties as an operator of any bus, taxicab, cable car, streetcar, trackless trolley, or other vehicle, including a vehicle operated on stationary rails or on a track or rail suspended in the air, and used for the transportation of persons for hire, every robbery of any passenger which is perpetrated on any of these vehicles, and every robbery which is perpetrated in an inhabited dwelling house, a vessel as defined in *Section 21 of the Harbors and Navigation Code* which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of *Section 18075.55 of the Health and Safety Code*, a trailer coach as defined in the *Vehicle Code* which is inhabited, or the inhabited portion of any other building is robbery of the first degree.

(b) Every robbery of any person while using an automated teller machine or immediately after the person has used an automated teller machine and is in the vicinity of the automated teller machine is robbery of the first degree.

(c) All kinds of robbery other than those listed in subdivisions (a) and (b) are of the second degree.

THURSTON COUNTY PROSECUTOR

July 01, 2014 - 2:37 PM

Transmittal Letter

Document Uploaded: prp2-459728-Response.pdf

Case Name: State v. Michael Lynn Sublett

Court of Appeals Case Number: 45972-8

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion:

Answer/Reply to Motion:

Brief:

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

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

Hearing Date(s):

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other:

Comments:

No Comments were entered.

Sender Name: Chong H McAfee - Email: mcafeec@co.thurston.wa.us

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

jeffreywinellis@gmail.com