

No. _____

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

IN RE THE PERSONAL RESTRAINT PETITION OF:

JESSUP B. TILLMON,

PETITIONER.

PERSONAL RESTRAINT PETITION

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A. STATUS OF PETITIONER

Jessup B. Tillmon (hereinafter “Tillmon”) challenges his Thurston County judgment of convictions (Case No. 09-1-01930-8) for burglary, robbery, and kidnapping. Mr. Tillmon (DOC # 342740) is currently incarcerated at the Monroe Corrections Center in Monroe, Washington.

This is Mr. Tillmon’s first collateral attack on his judgment.

B. FACTS

Procedural History

Mr. Tillmon was charged with multiple counts of burglary, kidnapping, and robbery, as well as numerous firearm enhancements. At a consolidated trial on April 13, 2010, a jury found John Lee Burns and Jessup Bernard Tillmon guilty of one count of first degree burglary, three counts of first degree kidnapping, and four counts of first degree robbery for their role in a December 2009 home invasion. The jury also found by special verdict that both Burns and Tillmon committed all eight offenses while armed with firearms.

Both Tillmon and Burns appealed. On April 12, 2012, this Court reversed “Tillmon's and Burns's three robbery convictions related to Oatfield and Nick and Aaron Ormrod and remand to the trial court with directions to dismiss the three convictions, and the three firearm sentence enhancements attendant to those counts, with prejudice and for resentencing on the remaining counts and enhancements.”

Mr. Tillmon was resentenced on November 2, 2012.

He appealed. (Case No. 442361). This Court affirmed Tillmon's judgment and sentence. Tillmon then unsuccessfully sought review by the Washington Supreme Court. This Court issued its mandate on April 8, 2014.

This timely PRP follows.

Facts from Trial

On direct appeal, the facts were summarized by this Court:

At approximately four in the morning on December 27, 2009, Tillmon and Burns forcibly entered and then burglarized the Thurston County home of Zachary Dodge, Nicholas Oatfield, and Nick and Aaron Ormrod. All four young men were home at the time of the incident as well as Dodge's girlfriend, Brittany Burgess, and two close friends, Casey Jones and Malcolm Moore, who were spending the night before going to paintball practice with the housemates early the next day. In the course of the break-in, the armed intruders forced everyone present to gather in the dining room on their stomachs while they ransacked other parts of the home for valuables.

Although the robbers stole property from many of the rooms in the home, only Dodge was robbed prior to being forced into the dining room. One of the intruders took Dodge's laptop and the money in his wallet before escorting him and Burgess to the dining room at gunpoint. Oatfield and both Ormrods were unaware of what the intruders stole until after the suspects fled the scene: roughly \$150 was stolen from Oatfield's wallet, as well as \$50 from Aaron Ormrod's wallet. The television from Nick Ormrod's bedroom was also stolen.

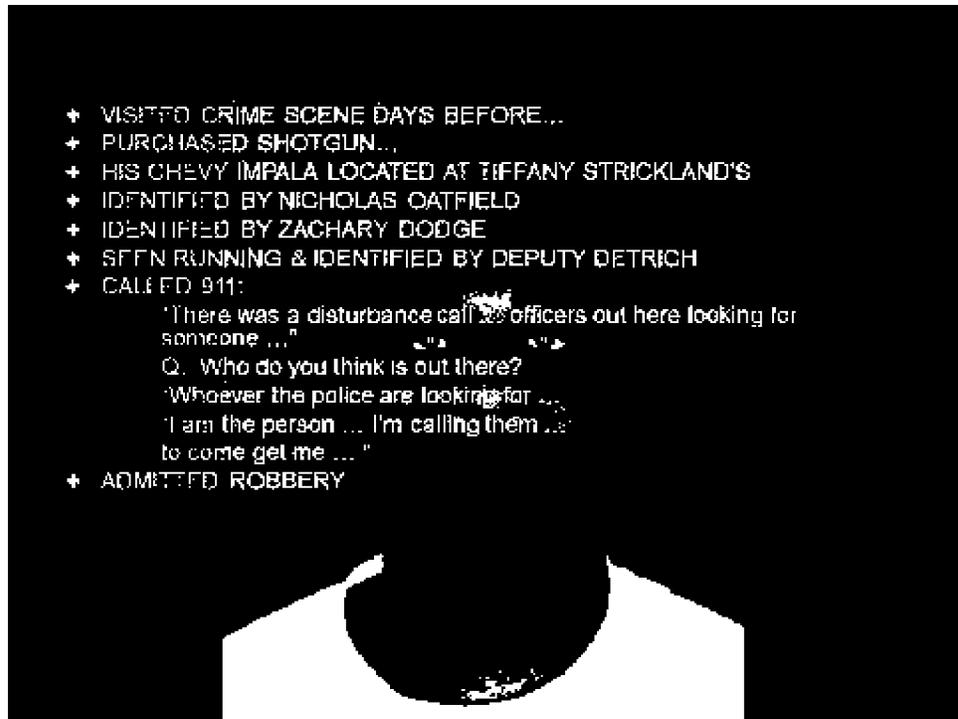
State v. Burns, 167 Wash.App. 1032 (2012).

C. ARGUMENT

1. MR. TILLMON WAS DEPRIVED OF DUE PROCESS AND THE RIGHT TO A FAIR TRIAL BY THE PROSECUTOR'S USE OF A POWERPOINT SLIDE WHICH SUPERIMPOSED THE WORD "GUILTY" OVER TILLMON'S FACE.
2. MR. TILLMON WAS DEPRIVED OF THE SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO OBJECT TO THE POWERPOINT SLIDE.
3. MR. TILLMON WAS DEPRIVED OF HIS FEDERAL AND STATE CONSTITUTIONAL RIGHTS TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL WHEN COUNSEL FAILED TO ASSIGN ERROR TO THE IMPROPER PROSECUTORIAL ARGUMENT.

Introduction

The prosecutor's closing argument was accompanied by a PowerPoint slide show. The slides shown to Tillmon's jury are attached. See PowerPoint Closing at Appendix A (obtained through a public disclosure request). One of the final slides was a photo of Tillmon with the word "GUILTY" superimposed on his face. In addition, another slide included the photographs of the three co-defendants with the words "= PARTNERSHIP IN CRIME" written below.



This Court has already reversed in co-defendant Herbin's case, albeit from a later trial (where he was tried alone). *State v. Herbin*, 174 Wash.App. 1078 (2013) (unpublished opinion). Although it is an unpublished decision and does not have precedential value, because Herbin's case arises out of essentially the same set of facts this Court can certainly consider its analysis. This Court reversed:

Similarly here, there was no evidence at trial depicting Herbin's face with the word "GUILTY" superimposed on it and it was improper for the prosecutor to present this slide at closing. Additionally, the use of the slide containing the text, "GUILTY AS CHARGED" in quotation marks suggests the prosecutor's personal belief as to Herbin's guilt, particularly because this quoted phrase was not attributable to any trial testimony. Suppl. CP at 162. Finally, the use of Oatfield's testimony, "(FACE) 'burned in my memory scariest day of my life ...' " superimposed over an enlarged photograph of Herbin could potentially inflame the passions of the jury by suggesting that Herbin is a scary and dangerous person.

Suppl. CP at 249. Accordingly, the prosecutor's use of these slides was improper.

Moreover, we agree with Herbin that the prosecutor's improper use of these slides requires reversal of his convictions. We recognize that this case is distinguishable from *Glasmann* because, unlike *Glasmann*, Herbin's booking photograph does not depict him in a bloody an unkempt manner, “a condition likely to have resulted in even greater impact because of captions that challenged the jury to question the truthfulness of [Glasmann's] testimony.” *Glasmann*, 175 Wn.2d at 705. Also unlike *Glasmann*, Herbin's credibility was not directly at issue since he did not testify at trial, and none of the prosecutor's slides commented on Herbin's credibility. Despite these distinctions, however, we hold that the use of the slides resulted in prejudice that “had a substantial likelihood of affecting the jury verdict” warranting a new trial. *Thorgerson*, 172 Wn.2d at 455.

Like *Glasmann*, here the prosecutor “intentionally presented the jury with copies of [Herbin's] booking photograph altered by the addition of phrases calculated to influence the jury's assessment of [Herbin's] guilt.” 175 Wn.2d at 705. As our Supreme Court reasoned when holding that the prosecutor's use of a similarly altered booking photograph was misconduct warranting a new trial, “the prosecutor's modification of photographs by adding captions was the equivalent of unadmitted evidence ... made a part of the trial by the prosecutor during closing argument.” *Glasmann*, 175 Wn.2d at 706. Additionally, although we recognize that the prosecutor here linked the “GUILTY” statement superimposed over Herbin's booking photograph with various pieces of evidence presented during the trial and, thus, did not express a personal opinion of Herbin's guilt through use of that slide, the prosecutor did express a personal opinion of Herbin's guilt when presenting a slide with the phrase “GUILTY AS CHARGED” written beneath Herbin's booking photograph. Suppl. CP at 259, 162.

Following' *Glasmann*, we hold that the prosecutor's use of slides containing Herbin's altered booking photograph “was so pervasive that it could not have been cured by an instruction.” 175 Wn.2d at 707. As our Supreme Court recognized when reversing *Glasmann's* convictions for prosecutorial misconduct, “Highly prejudicial images may sway a jury in ways that words cannot” and, thus, “may be very

difficult to overcome with an instruction.” *Glasmann*, 175 Wn.2d at 707 (citing *State v. Gregory*, 158 Wn.2d 759, 866–67, 147 P.3d 1201 (2006)). Because the prosecutor's misconduct in presenting highly inflammatory slides containing Herbin's altered booking photograph had a substantial likelihood of affecting the jury verdict that was incurable by a jury instruction, we reverse Herbin's remaining convictions and remand for a new trial.

In addition, the slide with Tillmon’s face and the superimposed “guilty” is virtually indistinguishable from the slides that the Washington Supreme Court condemned in *In re PRP of Glasmann*, 175 Wash.2d 696 286 P.3d 673 (2012). Put another way, this case is a carbon copy (to use a technologically outdated metaphor) of *Glasmann*. In *Glasmann*, the State argued to the Supreme Court that its PowerPoint slides, which prominently featured the use of the word “guilty” superimposed over a photograph of the defendant, merely combined an admitted photograph of defendant with the court's instructions and fair argument. The Supreme Court rejected the State’s claim and concluded that the prosecutor's modification of a photograph by adding the “guilty” captions was the equivalent of unadmitted evidence. *Id.* at 678 (“And there were no sequence of photographs in evidence with ‘GUILTY’ on the face or ‘GUILTY, GUILTY, GUILTY.’ ”).

The Supreme Court also found that the slide amounted to a personal opinion. It is well established that a prosecutor cannot use his or her position of power and prestige to sway the jury and may not express an

individual opinion of the defendant's guilt, independent of the evidence actually in the case. The commentary on *American Bar Association Standards for Criminal Justice* std. 3–5.8, quoted with approval in *Glasmann*, emphasizes:

The prosecutor's argument is likely to have significant persuasive force with the jury. Accordingly, the scope of argument must be consistent with the evidence and marked by the fairness that should characterize all of the prosecutor's conduct. Prosecutorial conduct in argument is a matter of special concern because of the possibility that the jury will give special weight to the prosecutor's arguments, not only because of the prestige associated with the prosecutor's office but also because of the fact-finding facilities presumably available to the office.

Likewise, *Glasmann* noted that many cases warn of the need for a prosecutor to avoid expressing a personal opinion of guilt. *E.g.*, *State v. McKenzie*, 157 Wash.2d 44, 53, 134 P.3d 221 (2006) (finding it improper for a prosecuting attorney to express his individual opinion that the accused is guilty, independent of the testimony in the case (citing *State v. Armstrong*, 37 Wash. 51, 79 P. 490 (1905))). The *Glasmann* court concluded: “By expressing his personal opinion of *Glasmann*’s guilt through both his slide show and his closing arguments, the prosecutor engaged in misconduct.” *Id.* at 679.

The *Glasmann* court concluded:

The case law and professional standards described above were available to the prosecutor and clearly warned against the conduct here. We hold that the prosecutor's misconduct, which permeated the state's closing argument, was flagrant and ill intentioned.

Moreover, the misconduct here was so pervasive that it could not have been cured by an instruction. ‘[T]he cumulative effect of repetitive prejudicial prosecutorial misconduct may be so flagrant that no instruction or series of instructions can erase their combined prejudicial effect.’ *State v. Walker*, 164 Wash.App. 724, 737, 265 P.3d 191 (2011) (citing *Case*, 49 Wash.2d at 73, 298 P.2d 500).

Id. at 679.

This case is also controlled by the decision in *State v. Hecht*, 179 Wash.App. 497, 319 P.3d 836 (2014), where the Court of Appeals described the trial record:

In closing argument, the prosecutor employed a slideshow showing images of trial evidence, quotes from witnesses at trial, and titles and commentary reflecting the prosecutor's argument. Slide 85 was titled “PATRONIZING A PROSTITUTE” and shows Hecht's driver's license photo next to a booking photo of Pfeiffer. The word “GUILTY” appears in red, diagonally across Hecht's face. Slide 65, titled “COUNT I—HARASSMENT” shows Hecht's license photo next to a booking photo of Hesketh. Again, the word “GUILTY” appears in red, diagonally across Hecht's face. Slide 84 bore the title “DEFENDANT'S CREDIBILITY,” asked “If he's not truthful about the little things ... [w]hy should you believe him when he denies the big things?” and answered “YOU SHOULDN'T.” The slides of Hecht's photograph with a large red “GUILTY” printed across his face were at odds with the prosecutor's duty to ensure a fair trial. No legitimate purpose is served by a prosecutor showing the jury a defendant's photograph with the word “GUILTY” superimposed over his face. Such images are the graphic equivalent of shouting “GUILTY.” “A prosecutor could never shout in closing argument that ‘[the defendant] is guilty, guilty, guilty!’ and it would be highly prejudicial to do so.”

The Court of Appeals reversed:

The prosecutor argues that the driver's license photo of Hecht was not equivalent to the booking photo of Glasmann's battered face. But

the prosecutor's graphics, though arguably less severe than those at issue in *Glasmann*, were clearly improper.

Id. at 506.

The “partners in crime” slide is also highly problematic.



Both *Glasmann* and *Hecht* expressed concern that the slides constituted a type of vouching. That is also true of the above slide which puts the three photos together and then equates that with proof of a “partnership” in crime. Given the contested accomplice liability issue at trial, this slide was both improper and prejudicial.

In contrast to *Glasmann*, the State’s evidence in this case was much weaker. In that case, the Supreme Court reversed all counts despite the strong evidence:

We cannot say that the jury would not have returned verdicts for lesser offenses, or even acquittal, *i.e.*, we cannot even presume the jury would have accepted defense counsel's concessions even as to the obstruction charged. The impact of such powerful but unquantifiable material on the jury is exceedingly difficult to assess but substantially likely to have affected the *entirety* of the jury deliberations and its verdicts. Even the dissent agrees that the misconduct mandates reversal of the assault conviction. The requisite balance of impartiality was upset. Mr. Glasmann's right to a fair trial must be granted in full. In this way, we give substance to our message that 'prejudicial prosecutorial tactics will not be permitted,' and our warnings that prosecutors must avoid improper, prejudicial means of obtaining convictions will not be empty words.

Id. at 682 (emphasis in original). Likewise, in *Hecht* the Court of Appeals held:

We conclude that the prosecutor's slides undermined Hecht's right to a fair trial by creating the substantial likelihood of a verdict improperly based on passion and prejudice. "The impact of such powerful but unquantifiable material on the jury is exceedingly difficult to assess" but, as in *Glasmann*, we conclude that the misconduct was so flagrant and ill-intentioned that it caused an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury. The prosecutor's misconduct necessitates reversal of both convictions and remand for a new trial.

179 Wn.App. at 507.

It is important to note that *Glasmann* was a PRP, so this Court's prejudice analysis is the same in this case. However, Tillmon has alternatively framed his claim as IAC of trial and appellate counsel. This Court's reversal in co-defendant Herbin's case amply demonstrates that this Court would have also reversed on Tillmon's direct appeal, if the issue had been raised.

The bottom line is reversal is required.

4. BASED ON THE “LAW OF THE CASE” THERE WAS INSUFFICIENT EVIDENCE TO CONVICT TILLMON OF MULTIPLE COUNTS OF KIDNAPPING.

On direct appeal, this Court reversed several robbery counts based on the law of the case established by the jury instructions. This Court held:

Burns and Tillmon both contend that, under the “law of the case” doctrine, the trial court's jury instructions for the first degree robbery charges created an additional burden on the State—the necessity to prove that Tillmon and Burns took property “from the person of another”—a burden it failed to meet. We agree. Accordingly, we reverse Burns's and Tillmon's convictions related to the robberies of Oatfield and both Ormrods.

We review jury instructions *de novo*, “within the context of the jury instructions as a whole.” *State v. Jackman*, 156 Wn.2d 736, 743, 132 P.3d 136 (2006). Jury instructions, “taken in their entirety, must inform the jury that the State bears the burden of proving every essential element of a criminal offense beyond a reasonable doubt.” *State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995), *cert. denied*, 518 U.S. 1026 (1996).

“In criminal cases, the State assumes the burden of proving otherwise unnecessary elements of the offense when such added elements are included without objection in the ‘to convict’ instruction.” *State v. Hickman*, 135 Wn.2d 97, 102, 954 P.2d 900 (1998). On appeal, “a defendant may assign error to elements added under the law of the case doctrine.” *Hickman*, 135 Wn.2d at 102. When a defendant challenges the sufficiency of the evidence in light of an incomplete or incorrect jury instruction, we determine whether sufficient evidence exists to sustain the conviction based on the given instruction. *See, e.g., Tonkovich v. Dep't of Labor & Indus.*, 31 Wn.2d 220, 225, 195 P.2d 638 (1948) (“It is the approved rule in this state that the parties are bound by the law laid down by the court in its instructions.... In such case, the sufficiency of the evidence to sustain the verdict is to be determined by the application of the instructions and rules of law laid down in the charge.”).

Here, the State proposed “to convict” robbery instructions based on 11 *Washington Practice: Washington Pattern Jury Instructions: Criminal* 37.02, at 667 (3d ed. 2008) (WPIC), which reads, in relevant part,

To convict the defendant of the crime of robbery in the first degree, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about (date), the defendant unlawfully took personal property from the person [or in the presence] of another.

But the State's proposed jury instructions, which the trial court gave, *omitted* the “or in the presence of another” language from WPIC 37.02. Because the trial court did not include the optional “or in the presence of another” language from WPIC 37.02 in its defendant-specific “to convict” robbery instructions, the State was required to prove that either appellant (or an accomplice) took property “from the person” rather than “in the presence” of the named robbery victim. At trial, the State presented no evidence that Oatfield, Aaron Ormrod, or Nick Ormrod had property stolen from their person.

Because the State failed to prove the elements as stated in its proposed instruction—that each victim had property taken from his person—insufficient evidence supports the three robbery convictions related to Oatfield and the Ormrods. Accordingly, we reverse these convictions and remand with instructions that the trial court dismiss them and their attendant firearm sentence enhancements with prejudice. *Hickman*, 135 Wn.2d at 103 (“Retrial following reversal for insufficient evidence is ‘unequivocally prohibited’ and dismissal is the remedy.”).

The same problem exists with respect to the kidnapping counts.

Each kidnapping count relied on jurors unanimously concluding that Tillmon committed a first-degree robbery. In order for jurors to determine whether a first-degree robbery had been proved beyond a reasonable doubt, they had to look to the corresponding robbery instructions. Because those

instructions required proof that property was taken from Oatfield and the Oates. Because there was no proof of that adduced at trial, reversal is required for at least two of the three counts. Alternatively, A new trial is required given that the kidnapping instructions failed to require unanimity about which robbery jurors found in order to elevate the crime to first-degree.

D. CONCLUSION AND PRAYER FOR RELIEF

This Court should call for a response from the State. If the State contests Tillmon's evidence, this Court should remand to the trial court for either an evidentiary hearing or for a determination on the merits. RAP 16.11-.13. Otherwise, this Court should reverse and remand for a new trial.

DATED this 31st day of December, 2014.

Respectfully Submitted:

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THURSTON COUNTY WA

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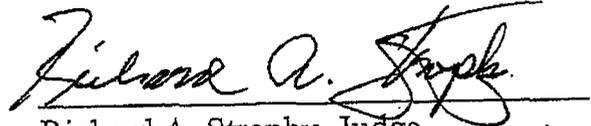
**SUPERIOR COURT OF WASHINGTON
THURSTON COUNTY**

STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.)
)
JESSUP BERNARD TILLMON,)
JOHN LEE BURNS,)
DESHONE VERELL HERBIN,)
)
Defendant.)
_____)

No. 09-1-01930-8
09-1-01927-8
09-1-01928-6

Court's Instructions To Jury

Dated this 9th day of April, 2010.


Richard A. Strophy, Judge

INSTRUCTION NO. 1

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

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

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

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

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

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

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to

observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

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

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

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

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

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

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To

assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

INSTRUCTION NO. 2

The defendants, JESSUP BERNARD TILLMON, JOHN LEE BURNS and DESHONE VERELL HERBIN are charged as follows:

1. Count I with the crime of Burglary In The First Degree, While Armed With A Deadly Weapon - Firearm; and
2. Count II with the crime of Kidnapping In The First Degree While Armed With A Deadly Weapon - Firearm; and
3. Count III with the crime of Kidnapping First Degree, While Armed With A Deadly Weapon - Firearm; and
4. Count IV with the crime of Kidnapping In The First Degree, While Armed With A Deadly Weapon - Firearm; and
5. Count V with the crime of Robbery In The First Degree, While Armed With A Deadly Weapon - Firearm; and
6. Count VI with the crime of Robbery In The First Degree, While Armed With A Deadly Weapon - Firearm; and
7. Count VII with the crime of Robbery In The First Degree, While Armed With A Deadly Weapon - Firearm; and
8. Count VIII with the crime of Robbery In The First Degree, While Armed With A Deadly Weapon - Firearm.

INSTRUCTION NO. 3

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

INSTRUCTION NO. 4

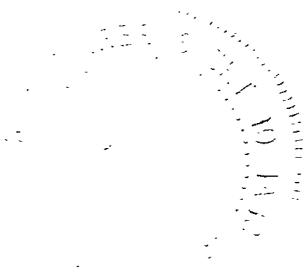
Each defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

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.

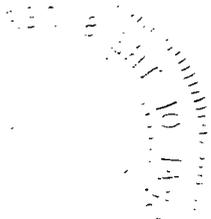
INSTRUCTION NO. 5

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.



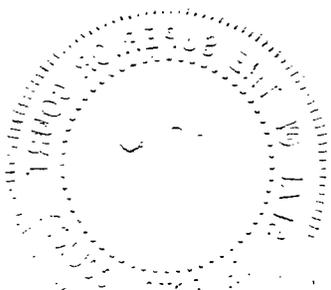
INSTRUCTION NO. 6

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



INSTRUCTION NO. 7

You may consider a statement made out of court by one defendant as evidence against that defendant, but not as evidence against another defendant.



INSTRUCTION NO. 8

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.

INSTRUCTION NO. 9

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

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

INSTRUCTION NO. 10

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.

INSTRUCTION NO. 11

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, you are 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.

INSTRUCTION NO. 12

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

INSTRUCTION NO. 13

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.

INSTRUCTION NO. 14

A person enters or remains unlawfully in a building when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.

INSTRUCTION NO. 15

Dwelling means any building or structure that is used or ordinarily used by a person for lodging.

INSTRUCTION NO. 16

Deadly weapon means any firearm, whether loaded or unloaded.

INSTRUCTION NO. 17

An assault is an intentional touching or striking of another person 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.

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

An assault is also an act done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

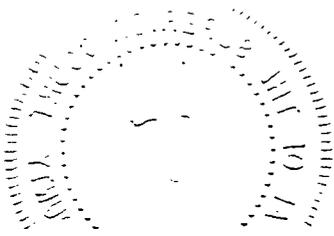
INSTRUCTION NO. 18

To convict the defendant, JESSUP BERNARD TILLMON, of the crime of burglary in the first degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about December 27, 2009 the defendant entered or remained unlawfully in a building;
- (2) That the entering or remaining was with intent to commit a crime against a person or property therein;
- (3) That in so entering or while in the building or in immediate flight from the building the defendant or an accomplice in the crime charged was armed with a deadly weapon or assaulted a person; and
- (4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.



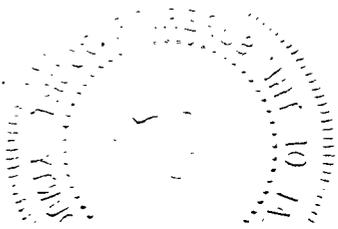
INSTRUCTION NO. 19

To convict the defendant, JOHN LEE BURNS, of the crime of burglary in the first degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about December 27, 2009 the defendant entered or remained unlawfully in a building;
- (2) That the entering or remaining was with intent to commit a crime against a person or property therein;
- (3) That in so entering or while in the building or in immediate flight from the building the defendant or an accomplice in the crime charged was armed with a deadly weapon or assaulted a person; and
- (4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.



INSTRUCTION NO. 20

To convict the defendant, DESHONE VERELL HERBIN, of the crime of burglary in the first degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about December 27, 2009 the defendant entered or remained unlawfully in a building;
- (2) That the entering or remaining was with intent to commit a crime against a person or property therein;
- (3) That in so entering or while in the building or in immediate flight from the building the defendant or an accomplice in the crime charged was armed with a deadly weapon or assaulted a person; and
- (4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 21

A person commits the crime of kidnapping in the first degree when he or she intentionally abducts another person with intent to facilitate the commission of Robbery In the First Degree or flight thereafter.

INSTRUCTION NO. 22

Abduct means to restrain a person by using or threatening to use deadly force.

Restraint or restrain means to restrict another person's movements without consent and without legal authority in a manner that interferes substantially with that person's liberty.

INSTRUCTION NO. 23

To convict the defendant, JESSUP BERNARD TILLMON, of the crime of kidnapping in the first degree, as charged in Count II, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice intentionally abducted MALCOM D. MOORE,

(2) That the defendant or an accomplice abducted that person with intent to facilitate the commission of Robbery in the First Degree or flight thereafter; and

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

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 24

To convict the defendant, JOHN LEE BURNS, of the crime of kidnapping in the first degree, as charged in Count II, each of the following three elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about December 27, 2009, the defendant or an accomplice intentionally abducted MALCOM D. MOORE,
- (2) That the defendant or an accomplice abducted that person with intent to facilitate the commission of Robbery in the First Degree or flight thereafter; and
- (3) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 25

To convict the defendant, DESHONE VERELL HERBIN, of the crime of kidnapping in the first degree, as charged in Count II, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice intentionally abducted MALCOM D. MOORE,

(2) That the defendant or an accomplice abducted that person with intent to facilitate the commission of Robbery in the First Degree or flight thereafter; and

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

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 26

To convict the defendant, JESSUP BERNARD TILLMON, of the crime of kidnapping in the first degree, as charged in Count III, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice intentionally abducted CASEY ROBERT JONES.

(2) That the defendant or an accomplice abducted that person with intent to facilitate the commission of Robbery in the First Degree or flight thereafter; and

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

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 27

To convict the defendant, JOHN LEE BURNS, of the crime of kidnapping in the first degree, as charged in Count III, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice intentionally abducted CASEY ROBERT JONES,

(2) That the defendant or an accomplice abducted that person with intent to facilitate the commission of Robbery in the First Degree or flight thereafter; and

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

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 28

To convict the defendant, DESHONE VERELL HERBIN, of the crime of kidnapping in the first degree, as charged in Count III, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice intentionally abducted CASEY ROBERT JONES,

(2) That the defendant or an accomplice abducted that person with intent to facilitate the commission of Robbery in the First Degree or flight thereafter; and

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

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 29

To convict the defendant, JESSUP BERNARD TILLMON, of the crime of kidnapping in the first degree, as charged in Count IV, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice intentionally abducted BRITTANY THERESA BURGESS,

(2) That the defendant or an accomplice abducted that person with intent to facilitate the commission of Robbery in the First Degree or flight thereafter; and

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

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 30

To convict the defendant, JOHN LEE BURNS, of the crime of kidnapping in the first degree, as charged in Count IV, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice intentionally abducted BRITTANY THERESA BURGESS,

(2) That the defendant or an accomplice abducted that person with intent to facilitate the commission of Robbery in the First Degree or flight thereafter; and

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

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 31

To convict the defendant, DESHONE VERELL HERBIN, of the crime of kidnapping in the first degree, as charged in Count IV, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice intentionally abducted BRITTANY THERESA BURGESS,

(2) That the defendant or an accomplice abducted that person with intent to facilitate the commission of Robbery in the First Degree or flight thereafter; and

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

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 32

A person commits the crime of robbery 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 or to the person or property of anyone. 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. The taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom it was taken, such knowledge was prevented by the use of force or fear.

INSTRUCTION NO. 33

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

INSTRUCTION NO. 34

Theft means to wrongfully obtain or exert unauthorized control over the property or services of another, or the value thereof, with intent to deprive that person of such property or services.

INSTRUCTION NO. 35

Property means anything of value.

INSTRUCTION NO. 36

To convict the defendant, JESSUP BERNARD TILLMON, of the crime of robbery in the first degree, as charged in Count V, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice unlawfully took personal property from the person of another, ZACHARY OLSON DODGE;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or accomplice's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;

(4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon; or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon; and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a), or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a), or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 37

To convict the defendant, JOHN LEE BURNS, of the crime of robbery in the first degree, as charged in Count V, each of the following six elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about December 27, 2009, the defendant or an accomplice unlawfully took personal property from the person of another, ZACHARY OLSON DODGE;
- (2) That the defendant or an accomplice intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant's or accomplice's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;
- (4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property;
- (5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon; or
- (b) That in the commission of these acts or in the immediate flight therefrom the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon; and
- (6) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a), or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a), or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 38

To convict the defendant, DESHONE VERELL HERBIN, of the crime of robbery in the first degree, as charged in Count V, each of the following six elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about December 27, 2009, the defendant or an accomplice unlawfully took personal property from the person of another, ZACHARY OLSON DODGE;
- (2) That the defendant or an accomplice intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant's or accomplice's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;
- (4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property;
- (5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon; or
- (b) That in the commission of these acts or in the immediate flight therefrom the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon; and
- (6) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a), or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a), or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 39

To convict the defendant, JESSUP BERNARD TILLMON, of the crime of robbery in the first degree, as charged in Count VI, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice unlawfully took personal property from the person of another, NICHOLAS THOMAS OATFIELD;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or accomplice's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;

(4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon; or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon; and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a), or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a), or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 40

To convict the defendant, JOHN LEE BURNS, of the crime of robbery in the first degree, as charged in Count VI, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice unlawfully took personal property from the person of another, NICHOLAS THOMAS OATFIELD;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or accomplice's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;

(4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon; or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon; and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a), or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a), or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 41

To convict the defendant, DESHONE VERELL HERBIN, of the crime of robbery in the first degree, as charged in Count VI, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice unlawfully took personal property from the person of another, NICHOLAS THOMAS OATFIELD;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or accomplice's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;

(4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon; or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon; and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a), or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a), or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 42

To convict the defendant, JESSUP BERNARD TILLMON, of the crime of robbery in the first degree, as charged in Count VII, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice unlawfully took personal property from the person of another, AARON FRANCIS ORMROD;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or accomplice's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;

(4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon; or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon; and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a), or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a), or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 43

To convict the defendant, JOHN LEE BURNS, of the crime of robbery in the first degree, as charged in Count VII, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice unlawfully took personal property from the person of another, AARON FRANCIS ORMROD;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or accomplice's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;

(4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon; or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon; and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a), or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a), or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 44

To convict the defendant, DESHONE VERELL HERBIN, of the crime of robbery in the first degree, as charged in Count VII, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice unlawfully took personal property from the person of another, AARON FRANCIS ORMROD;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or accomplice's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;

(4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon; or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon; and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a), or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a), or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 45

To convict the defendant, JESSUP BERNARD TILLMON, of the crime of robbery in the first degree, as charged in Count VIII, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice unlawfully took personal property from the person of another, NICHOLAS GEORGE ORMROD;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or accomplice's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;

(4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon; or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon; and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a), or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a), or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 46

To convict the defendant, JOHN LEE BURNS, of the crime of robbery in the first degree, as charged in Count VIII, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice unlawfully took personal property from the person of another, NICHOLAS GEORGE ORMROD;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or accomplice's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;

(4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon; or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon; and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a), or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a), or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 47

To convict the defendant, DESHONE VERELL HERBIN, of the crime of robbery in the first degree, as charged in Count VIII, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 27, 2009, the defendant or an accomplice unlawfully took personal property from the person of another, NICHOLAS GEORGE ORMROD;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or accomplice's use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of another;

(4) That force or fear was used by the defendant or an accomplice to obtain or retain possession of the property;

(5)(a) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon; or

(b) That in the commission of these acts or in the immediate flight therefrom the defendant or an accomplice displayed what appeared to be a firearm or other deadly weapon; and

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

If you find from the evidence that elements (1), (2), (3), (4), and (6), and any of the alternative elements (5)(a), or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (5)(a), or (5)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 48

For purposes of a special verdict, the State must prove beyond a reasonable doubt that the defendants were armed with a firearm at the time of the commission of the crime in Counts I through VIII.

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

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

INSTRUCTION NO. 49

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.

INSTRUCTION NO. 50

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 verdict forms 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.

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

You will also be given special verdict forms for the crimes charged in Counts I to VIII. If you find the defendants not guilty of these crimes, do not use the special verdict forms. If you find the defendant guilty of these crimes, you will then use the special verdict forms and fill in the blank with the answer "yes" or "no" according to the decision you reach. Because this is a criminal case, all twelve of you must agree in order to answer the special verdict forms. In order to answer the special verdict forms "yes," you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously have a reasonable doubt as to this question, you must answer "no".

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 forms to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.

1. The defendant is guilty of the crime charged in the indictment.

2. The defendant is not guilty of the crime charged in the indictment.

3. The defendant is guilty of the crime charged in the indictment, but the evidence is insufficient to support a conviction.

4. The defendant is guilty of the crime charged in the indictment, but the evidence is insufficient to support a conviction.

5. The defendant is guilty of the crime charged in the indictment, but the evidence is insufficient to support a conviction.

6. The defendant is guilty of the crime charged in the indictment, but the evidence is insufficient to support a conviction.

7. The defendant is guilty of the crime charged in the indictment, but the evidence is insufficient to support a conviction.

8. The defendant is guilty of the crime charged in the indictment, but the evidence is insufficient to support a conviction.

9. The defendant is guilty of the crime charged in the indictment, but the evidence is insufficient to support a conviction.

10. The defendant is guilty of the crime charged in the indictment, but the evidence is insufficient to support a conviction.

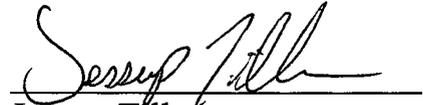
VERIFICATION OF PETITION

I, Jessup Tillmon, verify under penalty of perjury that the attached petition is true and correct and filed on my behalf.

Monroe Correctional Complex
Twin Rivers Unit
P.O. Box 888
Monroe, LA. 70502

Date and Place

12/1/14



Jessup Tillmon

ALSEPT & ELLIS LAW OFFICE

December 31, 2014 - 12:12 PM

Transmittal Letter

Document Uploaded: 0-prp-Personal Restraint Petition-20141231.pdf

Case Name: In re PRP of Jessup Tillmon

Court of Appeals Case Number:

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: Jeffrey Ellis - Email: JeffreyErwinEllis@gmail.com