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STATE OF WASHINGTON

BY _____
DEPUTY

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

In the Matter of Release from
Personal Restraint

No. 12-1-00762-2

John Michael Bale
Petitioner

PERSONAL RESTRAINT
PETITION

The Defendant now raises these issues in this court due to the violation of his Constitutional and Due Process rights, and he is not time-barred in this case, pursuant to RCW 10.73.100 (2,4) and RAP 16.3, for the following reasons:

- 1) The attorney of record was ineffective;
- 2) The Prosecutor committed misconduct;
- 3) The Defendant was granted access to the Law Library by court order and was subsequently denied access by correctional officers, which frustrated and impeded the case; and

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ARGUMENT

1) Does this court have subject matter jurisdiction over this matter, or has it been time-barred?

The issues that are going to be argued must now be brought up with this court to allow it to determine whether it wants to cure the errors that were committed, or to have the Court of Appeals review this court's decisions. In re Pers. Restraint of Cadwallader, 155 Wn.2d. 867, 879-80, 123 P.3d. 456 (2005)

Due to the fact that errors are of Constitutional magnitude and violated his Due Process Rights, this court must review. State v. Roberts, 138 Wash. App. 1059 (2007), Sweeney, 109 Wash. App. at 1073

Subject matter jurisdiction is an elementary prerequisite to the exercise of Judicial power: (see) Okanogan Wilderness v. Town of Twisp, 133 Wn.2d. 769, 788, 947 P.2d. 732 (1997) (quoting In re Adoption of Buhl, 87 Wn.2d. 649, 655, 555 P.2d. 1334 (1976))

Jurisdiction is the power of a court to hear and determine a matter in a case. State v. Lane, 112 Wn.2d. 464, 468, 771 P.2d. 1150 (1989)

A court's jurisdiction over a case may be either exclusive or concurrent with that of other courts. Lane, 112 Wn.2d. at 468

Jurisdiction is a question of Law that the courts review De Novo. State v. Leffingwell, 106 Wn. App. 835, 841, 25 P.3d. 484 (2001)

This court has subject matter jurisdiction over this case and the Petitioner is not time-barred.

2) Did the Defendant's case get frustrated and impeded by the jail staff's conduct by violating court order for access to the Correctional Facility Law Library?

It is clear in the case that the Petitioner has raised ineffective assistance claims to the Trial Court, and the Court entered an order allowing hybrid-representation with counsel, allowing the Petitioner access to the Law Library to assist in his defense "Pro se." State v. Hightower, 36 Wash. App. 536, 541, 676 P.2d. 1016 (1984)

However, the Petitioner was still denied the court-ordered access to the Law Library. (See Exhibit C)

Under the First and Fourteenth Amendments to the Constitution, it is established that inmates have a right of access to the courts. Lewis v. Casey, 518 U.S. 343, 346 (1996)

Access to the courts means the opportunity to prepare, serve and file legal pleadings or other documents as necessary or appropriate in order to commence or continue court proceedings affecting one's personal liberty. Id.

This right requires correctional staff to assist inmates in the preparation and filing of meaningful legal papers by providing inmates with adequate Law Libraries. Bounds v. Smith, 430 U.S. 817, 828 (1977)

There were needed cases in the Law Library that the correctional facility staff with-held, violating the court order for access to the Law Library, that impeded the Petitioner's case, since the Law Library was not made accessible for use. Benjamin v. Kerik, 102 F.Supp. 2d. 157 (S.D.N.Y.

2000); Judgment affirmed, 264 F.3d. 157 (2d. Cir. 2001)

An incarcerated defendant may not meaningfully exercise his right to represent himself without access to Law books, witnesses, or other tools to prepare a defense. Bribiesca v. Galaza, 215 F.3d. 1015, 1020 (9th Cir. 2000) (dictum); accord; Taylor v. List, 880 F.2d. 1040, 1047 (9th Cir. 1989); Milton v. Morris, 767 F.2d. 1443, 1447 (9th Cir. 1985); Kaiser v. City of Sacramento, 780 F.Supp. 1309, 14-15 (E.D. Cal. 1992)

The courts must apply the test articulated by the Supreme Court in Anderson v. Creighton, 483 U.S. 635, 97 L.Ed.2d. 523, 107 S.Ct. 3034 (1987), to determine whether the right is sufficiently clear that a reasonable official would understand that what he is doing violates the inmate's rights, as occurred to this inmate.

3) Do the errors in this case amount to
manifest error of Constitutional magnitude,
or are the harmless errors herein?

Since the Petitioner will be able to prove that all the facts raised in this motion had occurred, this court cannot excuse them as harmless errors, especially since this case went to trial, resulting in an unjust conviction.

Generally, an issue cannot be raised for the first time after trial if they were not objected to unless it is a manifest error affecting a Constitutional right. This Petitioner must now and will show actual prejudice to establish that these errors are manifest. State v. Murguia, 107 Wn. App. 328, 340, 26 P.3d. 1017 (2001), citing State v. McFarland, 127 Wn.2d. 322, 333, 899 P.2d. 1251 (1995); review denied, 145 Wn.2d. 1023 (2002); under both the Washington and United States Constitutions, a criminal defendant is entitled to the assistance of counsel at critical stages in

the litigation. State v. Heddrick, 166 Wn.2d. 898, 909-10, 215 P.3d. 201 (2009) (citing U.S. Const. Amend. VI; Wash. Const. Art. 1 § 22; State v. Everybodytalksabout, 161 Wn.2d. 702, 708, 166 P.3d. 693 (2007); sentencing is a critical stage of a criminal proceeding. State v. Robinson, 153 Wn.2d. 689, 694, 107 P.3d. 90 (2005)

The courts hold that the Brecht Harmless-error Standard applies when there has been a failure to engage in the "close appellate scrutiny" required when a State Appellate Court engages in a Walton analysis. Under Brecht, an error is "not harmless" if it has a substantial and injurious effect or influence in determining the Jury's verdict. Brecht v. Abrahamson, 507 U.S. at 637, 113 S.Ct. 1710 (quoting Kotteakos v. United States, 328 U.S. 750, 776, 66 S.Ct. 1239, 90 L.Ed. 1557 (1946)

There are clear errors such as: the attorney failed to argue the late and untimely filing of Amended Complaint (see Exhibits B, G); failed to object (see Exhibit H); failed to present Jury instructions of a lesser included offense of Resisting Arrest and Assault in the Third Degree (see Exhibits D, E).

The Prosecutor committed numerous misconducts that will be argued further in details in this motion.

There was a clear error where the Prosecutor and the Attorney of Record both stated at sentencing that both Assault One charges must run consecutively, and that is factually untrue and has been for some time now. In re Mulholland, 166 P.3d. 677 (2007) (see also Exhibit)

The State, rather than the Petitioner, bears the "risk of doubt" in the harmless-error analysis. (see) O'Neal v. McAninch, 513 U.S. 432, 439, 115 S.Ct. 992, 130 L.Ed.2d. 947 (1995)

Thus, the State must now provide this court with "fair assurance" that there was no substantial and injurious effect on the verdict and this will not happen. Gray v. Klauer, 282 F.3d. 633, 651 (9th Cir. 2002); United States v. Hitt, 981 F.2d. 422, 425 (9th Cir. 1992); see also O'Neal, 513 U.S. at 443, 115 S.Ct. 992 (the State normally bears responsibility for

the error that affected this initial trial); Payton v. Woodford, 299 F.3d. 815, 828 (9th Cir. 2002)

4) Did the Prosecutor in this case violate the Defendant's Rights of Due Process by delaying in the filing of the charges in Amended Complaint?

The Prosecutor had all the relevant evidence of the case and the potential victims that were named in the original and amended complaints and cannot show any reason why there was a delay in the filing except to be vindictive towards the Petitioner (see Exhibits G, H).

A delay between an alleged criminal act and the filing of charges may violate the Petitioner's Due Process Rights, as here and now require dismissal. State v. Potter, 68 Wn. App. 134, 139-40, 842 P.2d. 481 (1992) (citing United States v. Lovasco, 431 U.S. 783, 97 S. Ct. 2044, 52 L.Ed.2d. 752 (1977)); State v. Chavez, 111 Wn.2d. 548, 558, 761 P.2d. 607 (1988); State v. Calderon, 102 Wn.2d. 348, 353, 684 P.2d. 1293 (1984); State v. Bernsen, 40 Wn. App. 729, 733, 700 P.2d. 758, review denied, 104 Wn.2d. 1016 (1985) (See Exhibit B, G)

The Petitioner can show the delay had prejudiced him, due to his conduct clearly never meeting the requirements of another charge that was added. The State must show facts of what new evidence was discovered between the original information and the Amended information to justify the delay. Potter, 68 Wn. App. at 140 (citing Chavez, 111 Wn.2d. at 558; State v. Dixon, 114 Wn.2d. 857, 860, 792 P.2d. 137 (1990); State v. Lidge, 111 Wn.2d. 845, 848, 765, P.2d. 1292 (1989))

Pursuant to C.r.R. 8.3 (b), a court may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially effect

the accused's right to a fair trial.

To obtain this dismissal, the Petitioner will show (1) arbitrary governmental action and/or misconduct that (2) prejudiced this Petitioner's right to a fair trial. State v. Miller, 92 Wn. App. 693, 702, 964 P.2d. 1196 (1998) (citing State v. Michielli, 132 Wn.2d. 229, 239-40, 937 P.2d. 587 (1997))

The misconduct need not be of an evil nature, simple mismanagement is enough. Michielli, 132 Wn.2d. at 239

The Court of Appeals will review *De Novo* this Trial Court's decision for a manifest abuse of discretion, i.e., a ruling based on untenable grounds or reasons. Miller, 92 Wn. App. at 702

5) Did the Defendant get sentenced to an Exceptional Sentence herein?

The Prosecutor and the attorney of record had stated facts at the sentencing phase that contradict the Statutes and have been known since 2007. In re Mulholland, 166 P.3d. 677 (See Exhibits S.5, T.1, U.1)

Since the Law states that the courts can sentence violent crimes concurrently and are not mandatory to be consecutive, this sentence has now become clearly excessive. State v. Oxborrow, 106 Wn.2d. 525, 530, 723 P.2d. 1123 (1986) (quoting State v. Ritchie, 126 Wn.2d. 388, 392, 894 P.2d. 1308 (1995))

The Fourteenth Amendment Due Process clause and the Sixth Amendment Jury Trial provision require notice and a Jury determination of any aggravating factor supporting an exceptional sentence. Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d. 556 (2002); Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d. 435 (2000)

This court must now review the Statutes that apply to consecutive

and concurrent sentences and the construction that was established in Mulholland Id. at 677.

When interpreting a Statute, the courts seek to ascertain the legislature's intent. State v. Jacobs, 154 Wn.2d. 600, 115 P.3d. 281 (2005)

Where a Statute's meaning is plain on its face, the courts must give effect to that meaning as expressing the legislature's intent. Jacobs, 154 Wn.2d. at 600

The courts must determine the Statute's plain meaning from the ordinary meaning of its language, as well as from the Statute's general context, related provisions, and the statutory scheme as a whole. Jacobs, 154 Wn.2d. at 600

In the past, the courts have used this Statute in numerous ways to determine a sentence when there is a factor in question. State v. Yarbrough, 157 Wn. App. 66, 96-97, 210 P.3d. 1029 (2009); State v. Monschke, 133 Wn. App. 313, 321, 135 P.3d. 566 (2006); State v. Johnson, 124 Wn.2d. 57, 64-66, 73, 873 P.2d. 514 (1994); State v. Smith, 64 Wn. App. 620, 622-23, 825 P.2d. 741 (1992)

The Court of Appeals will review the findings of aggravating factors under the clearly erroneous standard. Hale, 146 Wn. App. at 307

In applying the "clearly erroneous" standard in reviewing the fact finders reasons for imposing an exceptional sentence, the courts will reverse the findings only if substantial evidence does not support them. State v. Jeannotte, 133 Wn.2d. 847, 856, 947 P.2d. 1192 (1997)

"Substantial evidence" is defined as evidence is sufficient quantum to persuade a fair-minded person of the truth of the declared premises. Jeannotte, 133 Wn.2d. at 856 (quoting Olmstead v. Dept of Health, Med. Section, 61 Wn. App. 888, 893, 812 P.2d. 527 (1991))

A clearly excessive sentence is one that is clearly unreasonable, i.e., exercised on untenable grounds, or for untenable reasons, as the Prosecutor has done. State v. Kolesnik, 146 Wn. App. 805, 192 P.3d. 937 (2008); review denied, 165 Wn.2d. 1050 (2009)

The Court of Appeals must review this *De Novo*. *Jacobs*, 154 Wn. 2d. at 596, 600, 115 P.3d. 281

6) Did the Defendant here receive Ineffective Assistance of Counsel in this case?

It is usually seen that an attorney may make a few mistakes that may not amount to a manifest error, but this attorney of record made at least twenty-eight (28) errors in this case, which amounts to a manifest error and is not a harmless error, which will be seen in this argument and the Petitioner tried to plea to the courts prior to going to trial, so in no way can this Court state that the Petitioner is just now complaining because he does not like the outcome of the case. (See Exhibit C).

Generally, an issue cannot be raised for the first time on appeal unless it is a manifest error affecting a constitutional right. R.A.P. 2.5 (a)(3).

This Petitioner will show actual prejudice to establish that the error is truly manifest. *Munguia*, 107 Wn. App. at 328, 340, 26 P.3d. 1017 (citing *McFarland*, 127 Wn. 2d. at 322, 333, 899 P.2d. 1251, review denied, 145 Wn. 2d. 1023) Both the Washington and U.S. Constitutions clearly state that a criminal defendant is entitled to the assistance of counsel at critical stages in any litigation. *Heddrick*, 166 Wn. 2d. at 898, 909-10, 215 P.3d 201 (2009); *Everybody talks about*, 161 Wn. 2d 702, 708, 166 P.3d. 693 (2007)

Again, the sentencing stage was also critical and the attorney had failed at this stage also. (See Exhibit T.T); *Robinson*, 153 Wn. 2d. 689, 694, 107 P.3d. 90 (2005)

This issue cannot be taken lightly and that is why we have to

come back to re-examine this argument.

The Federal and State Constitutions guarantee a criminal defendant the right to effective assistance of counsel. U.S. Const. Amend. VI, WA. Const. Art. 1 § 22.

This Petitioner is claiming ineffective assistance of counsel and will show deficient performance and resulting prejudice. State v. Tilton, 149 Wash.2d. 775, 783-84, 72 P.3d. 735 (2003); Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d. 674 (1984)

To prove deficient performance, this Petitioner will show that counsel's performance fell below an objective standard of reasonableness. Tilton, 149 Wash.2d. at 784, 72 P.3d. 735 (2003); McFarland, 127 Wash.2d. 322, 334-35, 899 P.2d. 1251; Strickland, 466 U.S. at 668, 104 S.Ct. 2052

This Petitioner will also satisfy the prejudice prong by showing that the outcome of the proceedings would have differed but for counsel's deficient performance. State v. Grier, Wash.2d. 17, 33, 246 P.3d. 1260 (2011), 168 Wash. App. 635, 278 P.3d. 225 (2012); State v. Hendrickson, 129 Wash.2d. 78, 917 P.2d. 563 (1996)

In a recent decision at the U.S. Supreme Court, there was an argument about the right to counsel of their own choice for people that could afford it, even though that does not apply, the part that does is when the Court had stated in part:

"So also with the Sixth Amendment right to counsel of choice; it commands, not that a trial be fair, but that a particular guarantee of fairness be provided - to wit, that the accused be defended by the counsel "he believes" to be best. The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair

trial largely through the several provisions of the Sixth Amendment including the Counsel Clause. Gonzalez-Lopez, 126 S.Ct. at 2561, 165 L.Ed.2d.

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(A) Jury Instruction Error

The attorney of record had multiple chances to submit and/or object to the Jury instructions that were submitted, but instead, even after this court's request for him to submit instruction, this attorney failed to do so. (See Exhibits D and L)

A defendant is entitled to a lesser included offense instruction if (1) each of the elements of the lesser offense is a necessary element of the offense charged (legal prong), and (2) the evidence supports an inference that the lesser crime was committed (factual prong). State v. Hohn, 174 Wash.2d. 126, 129, 271 P.3d. 892 (2012); State v. Workman, 90 Wash.2d. 443, 447-48, 584 P.2d. 382 (1978), superceded by statute on other grounds by State v. Adlington-Kelly, 95 Wash.2d. 917, 631 P.2d. 954 (1981)

The factual prong of "Workman" is satisfied since substantial evidence supports a rational inference that the Petitioner committed only the lesser included or inferior degree offense to the exclusion of the greater one. State v. Fernandez-Medina, 141 Wash.2d. 448, 461, 6 P.3d. 1150 (2000)

This Petitioner can and has shown that this attorney was ineffective since there is no conceivable way that this was some legitimate strategy when the Petitioners going to prison for life compared to a maximum of 60 months is the alternative. State v. Grier, 171 Wash.2d. 42, 246 P.3d. 1260 (2011)

The Petitioner had lost his right to present a lesser included offense instruction to the Jury due to the conflict of interest with

his attorney and this right is statutory. RCW. 10.61.006, .010;
State v. Bowerman, 115 Wash.2d. 794, 805, 802 P.2d. 116 (1990)

The State should now concede that in this case the legal
prong is met here. State v. Stevens, 158 Wash.2d. 304, 310, 143
P.3d. 817 (2006)

(B) Failed to Object

The attorney of record had only objected in this case one
time and it was over-ruled, which the Court was correct in it's ruling.
However, there were numerous times that the Court would have
certainly sustained an objection had the attorney ever raised them.

To establish that counsel's failure to object to evidence
constituted ineffective assistance, the Petitioner will show that (1)
counsel's failure to object fell below prevailing professional norms;
(2) the Trial Court would have sustained the objection if counsel had
actually made it; and (3) the result of the trial would have differed
if the Trial Court excluded the evidence. State v. Sexsmith, 138
Wash.App. 497, 509, 157 P.3d. 901 (2007)

The following are times when an objection should have been
raised and was not:

(1) When the Court violated the speedy
arraignment rights of the Petitioner
(Exhibit A);

(2) The Prosecutor's actions of filing an amended
complaint that was untimely, the day before
the trial (Exhibits B, G, H);

(3) When the Prosecutor filed for a no speaking

objections in a complex case like this (Exhibit F);

(4) When testimony came out that the Petitioner had cocked the pistol, when that was opinion-based testimony (Exhibit O);

(5) When the Prosecutor made an ill-intentioned statement of if the officer had the chance to draw the revolver when initial contact occurred to show intent and there was no grounds to admit opinion based testimony (Exhibit R);

(6) When the Prosecutor asked the officer to relate to evidence of finger prints on the weapon, which the officer is not an expert on fingerprints (Exhibits T, U);

(7) The Prosecutor made a comment of that the officer would have been less surprised if he didn't have gloves on that there would have been prints on the gun (Exhibit U);

(8) The Prosecutor entered the B.B. gun that had no probative value and only prejudicial effect towards the Petitioner (Exhibit W);

(9) The officer states that the holster ties the weapon to the Petitioner, but prior to this the officer stated that officer Schardel found the holster 15 feet from initial contact on the

ground and neither officer had seen the Petitioner discard it (Exhibit A.A);

(10) Officer Schandel states that the holster was the Petitioner's and again there was no proof (Exhibit F.F);

(11) The Prosecutor had questioned the witness by leading the witness into stating an answer of what was recovered, as if the only thing thrown was the holster, trying to avoid the holster issue with the other two male suspects (Exhibit G.G);

(12) The Prosecutor, in closing arguments, had again mis-stated the element of "intent" by stating "all you have to do is scare them" (Exhibit M.M);

(13) The Prosecutor was testifying on evidence that the Petitioner's intent was to inflict great bodily harm on both officers when no evidence ever showed this (Exhibit N.N);

(14) The Prosecutor was testifying that the Petitioner had the holster and threw it when officers were present, but this was not witnessed (Exhibit N.N);

(15) The Prosecutor made a statement that the Petitioner's intent was to kill (Exhibit O.O);

(16) The Prosecutor testified that the evidence proves assault one against both officers (Exhibit P.P);

(17) The Prosecutor continued to state that a person only needs to be afraid to prove intent of assault one (Exhibit Q.Q)

(18) The Prosecutor made speculative statements that the Petitioner intended to shoot officer Schandel (Exhibit R.R);

(19) The Prosecutor stated during sentencing that the Assault One charges must run consecutively to each other (Exhibit S.S).

This is more than enough to show that the attorney of record failed to object and for him to not object to the Prosecutor's remarks on testimony central to the State's case shows that the failure constitutes incompetence of counsel that justifies reversal. State v. Johnston, 143 Wash. App. 19, 177 P.3d. 1127 (2007) (quoting State v. Madison, 53 Wash. App. 754, 763, 770 P.2d. 662 (1989))

(C) Conflict of Interest

These actions that have occurred clearly show that the Petitioner and counsel had a conflict that could not be avoided and the Court was warned prior to trial by the Petitioner, and it now shows by counsel's conduct of just sitting at trial as if he was a bystander, and not acting to any actions committed by the Prosecutor. (See Exhibit C)

If a trial court knows, or reasonably should know, of a defense attorney's potential conflict of interest, the Court must conduct an inquiry to determine the nature of the conflict. State v. Dhaliwal, 150 Wash.2d. 559, 570, 79 P.3d. 432 (2003)

The Petitioner has now shown that these conflicts had adversely affected the counsel's performance in this case drastically. Dhaliwal, 150 Wash.2d. at 571, 79 P.3d. 432 (2003)

The Court here must make a justifiable determination or the Court of Appeals will review the issue of the Trial Court's refusal to appoint new counsel in this case for an abuse of discretion. State v. Cross, 156 Wash.2d. 580, 607, 132 P.3d. 80, cert. denied, 549 U.S. 1022, 127 S.Ct. 559, 166 L.Ed.2d. 415 (2006)

After reviewing the facts that have been included in this motion, it is clear that the Court should now take action against this attorney of record.

Courts have long recognized their authority to suspend or disbar attorneys as an inherent power derived from the attorney's role as an officer of the court that granted admission. In re Hoare, 155 F.3d. 937, 940 (8th Cir. 1998)

As such, a court's power to discipline members of its bar is autonomous. In re Attorney Discipline Matter, 98 F.3d. 1082, 1087 (8th Cir. 1996) (citing Theard v. United States, 354 U.S. 278, 281 (1957))

The exercise of this "autonomous" authority is, however, limited by the constitutional requirements of Due Process. Schwartz v. Board of Bar Exam of State of N.M., 353 U.S. 232, 238-39 (1957)

In a proceeding, due process requires, at a minimum, notice and an opportunity to be heard, charges of unprofessional conduct against, 99-37 v. Stuart, 249 F.3d. 821, 825 (8th Cir. 2001); and that the district court follow its procedural rules governing attorney discipline. In re Bird, 353 F.3d. 636, 638 (8th Cir. 2003)

After the review of more than 25 mistakes in one trial that are clearly not harmless and absolutely manifest error, it is required that a reversal of trial be made in this case alone, and this court should also now rule that this attorney made many misrepresentations to the Petitioner and to this Trial Court, in violation of R.P.C. 4-3.3 (a)(1) (Making a false statement of fact to the tribunal) and 4-8.3 (c) (Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The attorney of record engaged in conduct prejudicial to the administration of justice, in violation of R.P.C. 4-8.4(c). In re Disciplinary Matter of Michael Robert Fletcher, No. 03-272, Slip op. at 5-6 (W.D. Mo. May 18th, 2004)

All the evidence and issues presented are a error could have been discovered and been resolved before trial had the Petitioner's attorney exercised a reasonable due diligence. State v. Macon, 128 Wn. 2d. 784, 799-800, 911 P.2d. 1004 (1996)

This court must review these issues De Novo. State v. S.M., 100 Wn. App. 401, 409, 996, P.2d. 1111 (2000) (citing State v. White, 80 Wn. App. 406, 410, 907 P.2d. 310 (1995))

7) Did the Prosecutor commit misconduct that now requires reversal in this matter?

The Petitioner pointed out all of the errors of how the attorney of record never objected to the Prosecutor's conduct, so there is no sense in pointing out the facts, but only to state how the law applies to such misconduct.

Prosecutorial misconduct requires a showing that the Prosecutor's conduct was both improper and prejudicial in the

context of the entire record and circumstances at trial. State v. Hughes, 118 Wn. App. 713, 727, 77 P.3d. 681 (2003) (citing Stenson, 132 Wn.2d. at 718, review denied, 151 Wn.2d. 1039 (2004)); State v. Thorgerson, 172 Wash.2d. 438, 442, 258 P.3d. 43 (2011)

Prosecutorial misconduct is grounds for reversal here since there is substantial likelihood that this misconduct complained of did effect this verdict. State v. Russell, 125 Wn. 2d. 24, 86, 882 P.2d. 747 (1994), cert. denied, 514 U.S. 1129 (1995)

Even though there was no objection as argued in this motion in accord to this argument the misconduct was "so flagrant and ill-intentioned" that no curative instruction could have prevented this kind of resulting prejudice. State v. Zeigler, 114 Wn.2d. 533, 540, 789 P.2d. 79 (1990)

If this court does not properly decide there were errors that were committed, the Court of Appeals will review any allegedly improper statements within the context of the Prosecutor's entire argument, the issues in the case, the evidence that was discussed in the arguments, and the Jury instructions, and compelling show of proof has been presented here. State v. Dhaliwal, 150 Wn.2d. 559, 577, 79 P.3d. 432 (2003)

The court at this point could now also state that the cumulative error doctrine also applies since there are several trial errors that occurred which, even if the court stated standing alone, may not be sufficient to justify reversal, but combined did deny the Petitioner a fair trial. State v. Greiff, 141 Wn.2d. 910, 10 P.3d. 390 (2000)

8) Did any of the officers, in their testimony, commit misconduct or perjury during their testimony on the stand?

The officers in this case had made most of their statements stay within the facts except for three statements that should never been heard:

(1) When the officer stated that the Petitioner had cocked the gun (Exhibit 0);

(2) When the officer stated that the Petitioner had thrown the holster (Exhibit A.4); and

(3) When the officer had stated facts about fingerprints on the weapon as if he was an expert in the field (Exhibits B.B, T, U)

These officers knew when they made these statements that it wasn't from first-hand knowledge but from anger towards the Petitioner for not just making it a simple arrest like most of their daily arrests in their careers.

Judge Schulthels of the Court of Appeals, Division III, characterized such behavior as "outrageous police misconduct" and in possible violation of the Due Process clause of the Fourteenth Amendment so as to shock the judicial conscience. State v. Valentine, 75 Wash. App. 611, 625, 879 P.2d. 313 (1994), review granted 128 Wash.2d. 1001, 907 P.2d. 298 (1995); see also State v. Lively, 130 Wash.2d. 1, 921 P.2d. 1035, 1044-49, 65 U.S.L.W. 2180 (1996)

This court must now defer to the fact-finder on these issues that involve so much conflicting testimony, their credibility, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d.

821, 874-75, 83 P.3d. 970 (2004); Camarillo, 115 Wash.2d. at 71, 794 P.2d. 850

The officers know that had they not testified in this kind of manner, the Petitioner would never have been convicted of these charges. State v. Green, 94 Wn.2d. 216, 221, 616 P.2d. 628 (1980) (quoting Jackson v. Virginia, 443 U.S. at 307, 319, 99 S.Ct. 2781).

9) Do the lesser included offenses fall under the Defendant's conduct herein?

As you look at the actions taken during the contact and arrest of the Petitioner, what occurred between officer Schandel and the Petitioner never amounted to Assault One but actually only amounted to Assault Three and Resisting Arrest. (See Exhibits P, X, D.D, E.E, H.H)

A person is guilty of resisting arrest if they are intentionally preventing or attempts to prevent a peace officer from lawfully arresting them. R.C.W. 9A.76.040 (1)

A person acts with intent or intentionally when he acts with the objective or purpose to accomplish a result which constitutes a crime. R.C.W. 9A.08.010 (1)(a)

Assault in the Third degree against a police officer is assault against an officer who was performing their official duty at the time of the assault. R.C.W. 9A.36.031 (1)(g)

One may resist arrest by various types of conduct. State v. Williams, 29 Wash. App. 86, 92, 627 P.2d. 581 (1981)

Here the Petitioner ran away from a police officer who was attempting to arrest him. State v. Walls, 106 Wash. App. 792, 800, 25 P.3d. 1052 (2001); R.C.W. 9A.76.040

During the act of resisting arrest there was a confrontation during apprehension towards this officer which a person can commit an assault on an officer who is performing their official duty unrelated to making an arrest. State v. Williams, 29 Wash. App. 86, 92, 627 P.2d. 581 (1981)

The Petitioner's actions only amounted to the charges of Assault Three and Resisting Arrest on the officer. State v. Marshall, 37 Wash. App. 127, 678 P.2d. 1308, review denied, 101 Wash.2d. 1017, 101 Wash.2d. 1017 (1984); State v. Godsey, 131 Wash. App. 278, 289, 127 P.3d. 11, review denied, 158 Wash.2d. 1022, 149 P.3d. 379 (2006)

10) Did the State ever bring forth opinion-based evidence?

There were a few times that the State brought forth opinion-based evidence in this case, such as:

(1) When the officers stated that the Petitioner had thrown the holster (Exhibit A.A);

(2) When the officer stated facts about fingerprints on the evidence without being an expert on the subject (Exhibit T,U);

(3) When the Prosecutor stated in closing arguments that the Petitioner intended to kill (Exhibit O.O).

There are many facts that would be seen as opinion-based testimony if this court was to review the times that the attorney of record was supposed to object to the questioning that the Prosecutor brought forth for the witnesses to answer that brought most of this kind of testimony forth in this case and made this such an unfair trial and the errors harmful.

Even when the officer stated on the stand with a testimony regarding the verbal and non-verbal impressions of deceptiveness by the Petitioner during the initial arrest and questioning, it led to the testimony of how the holster ended up near the scene but 15 feet away from where the Petitioner actually was, and there were actually witnesses that stated how they had seen the other two males (co-conspirators) throw things away from them (i.e. B.B. Gun), which one of them could have used to make a B.B. Gun look more like an actual pistol (firearm), this constitutes a manifest constitutional error that is "not-harmless". State v. Bar, 123 Wn. App. 373. (2004)

Given the lack of evidence of some of the facts that were proven and the gross amount of "opinion-based testimony" and errors, it shows that these victims allegations, in general, alone cannot be harmless without "hard-evidence" introduced or submitted. State v. Kirkman, 126 Wn. App. 97 (2005)

This court cannot ignore that these are clear errors that have caused this unjust conviction.

11) Did the State violate the Defendants Speedy Arraignment Rights in this case?

A criminal defendant has a right to both a "speedy arraignment" and a speedy trial. C.r.R. 3.3

The purpose behind C.r.R. 3.3 is to provide a prompt trial for the defendant once a prosecution is initiated. State v. Edwards, 94 Wn.2d. 208, 216, 616 P.2d. 620 (1980)

Pursuant to C.r.R. 4.1 (a)(1) and (b), the defendant shall be arraigned not later than 14 days after that appearance which next follows the filing of information or indictment if the defendant is not detained in that jail or subject to such conditions of release.

Any delay in bringing the defendant before the court shall not affect the allowable time for arraignment, regardless of the reason for that delay. For purposes of this rule, "appearance" has the meaning defined in C.r.R. 3.3 (a)(3)(iii).

It is clear that this court had some concerns about the Petitioner's rights to speedy arraignment due to the court's errors and not the Petitioner's. (Exhibit A)

This court had originally filed charges in the district court and this court can only be used if the other courts (Superior) have no available space and it's the only option and that did not occur, and this court knows that the Petitioner's speedy arraignment rights were violated due to the district court lacking subject matter jurisdiction. Okanogan Wilderness v. Town of Twisp, 133 Wn.2d. 769, 788, 947 P.2d. 732 (1997) (quoting In re Adoption of Buehl, 87 Wn.2d. 649, 655, 555 P.2d. 1334 (1976))

Where a court has no subject matter jurisdiction, the proceeding is void.

A court's lack of subject matter jurisdiction may be raised by a party or the court at "any time" in a legal proceeding.

The authority of a tribunal is confined by the terms of its authorizing statute, the tribunal has no power to assume jurisdiction greater than that conveyed by the statute.

Under C.r.R. 3.3 a defendant has the right to be arraigned within the time frame established for in-custody

defendants, which this court has violated. State v. Striker, 87 Wn.2d. 870, 875, 557 P.2d. 847 (1976)

"Striker" further states: where a long and unnecessary delay occurs in bringing a defendant who is amenable to process before the court "C.r.R. 3.3 and 4.1" is deemed to commence at the time the information was filed, instead of when the defendant made his first appearance in court, and there was no fault of the defendant. State v. Greenwood, 120 Wn.2d. 585, 600, 845 P.2d. 971 (1993); State v. Hudson, 130 Wn.2d. 48, 54, 921 P.2d. 538 (1996)

It may not have been clear about why the Petitioner did not want a continuance but did object and state that he wanted his speedy rights upheld and the court granted that matter, and since the Petitioner acted pro-se, this shows enough to have an objection on record (Exhibits B, W).

The law is clear that when the applicable speedy trial period has expired, the court must dismiss the charges if the defendant objects within 10 days of the trial, even if the defendant has not suffered any prejudice. C.r.R. 3.3 (d)(3)(h); State v. Swenson, 150 Wn.2d. 181, 187, 75 P.3d. 513 (2003); State v. Earl, 97 Wn.App. 408, 410, 984 P.2d. 427 (1999); Striker, 87 Wn.2d. at 870, 875-77, 557 P.2d. 847 (1976)

A defendant's right to speedy trial requires that charges be dismissed with prejudice if a defendant is unable to secure release from custody and is not brought to trial within 60 days. State v. Crane, No. 38066-4-I (1997) (citing C.r.R. 3.3); State v. Harris, 130 Wn.2d. 35, 43, 921 P.2d. 1052 (1996)

Failure to comply with the speedy trial rule "requires" dismissal, regardless of whether the defendant can show any prejudice. State v. Kenyon, 167 Wn.2d. 131-32, 138-39, 216 P.3d. 1024 (2009); Downing, 151 Wn.2d. at 272 (quoting Junker, 79 Wn.2d. at 26); State v. Ralph Vernon G., 90 Wn.App. 16, 21-22, 950 P.2d. 971 (1998)

The court failed to uphold the Petitioner's speedy trial rights (Exhibit B).

12) Does this Defendant have the right for this Court to review this motion?

These issues are serious and this court should not try to avoid this issue or push the issue away from them and relegate it to another court, especially since this court is the appropriate setting for review of this motion.

To have an automatic abatement of the entire criminal proceeding *ab initio* disregards the presumptive validity of the conviction, while dismissing this motion for relief and leaving the judgement standing without any prospect for critical review fails to accommodate the possibility that a conviction is subject to reversal, vacation, or modification and the possibility of success should not be dismissed out of hand. Surland v. State, 392 Md. 34, 35, 895 A.2d. 1034 (2006) (see also Gollob v. State, 646 So. 2d. 1297 (Miss. 1994); State v. Makaila, 79 Haw. 40, 897 P.2d. 967 (1995); State v. Webb, 219 P.3d. 695, 167 Wash.2d. 470 (2009))

13) Did the Court of Appeals err by not conducting a harmless error analysis after removing the Theft of a Firearm conviction?

The jury's verdict is based on knowledge and evidence that this Petitioner possessed a stolen firearm, when fleeing the officers, and

such evidence in trial effected the assault verdicts entered by the jury.

The jury's knowledge that the Petitioner used a stolen firearm in the commission of the alleged assaults cannot be said to have no effect on the jury verdict in this instance.

If a person is believed to have stolen a firearm, then it is reasonable to reach inferences that the person in possession of a stolen firearm would intend to use the stolen firearm for a criminal purpose.

State v. Sattarelli, 98 Wn.2d 358, 655 P.2d 687 (1982)

That very inference of intent resulted in a guilty verdict on the two "First Degree Assaults" charged in this action, therefore the jury's verdict does show that the evidence the firearm is now stolen did effect the verdict of the jury in the trial.

Once the Court of Appeals determined that the Petitioner was not guilty of "Possession of a Stolen Firearm," directing the charge now dismissed with prejudice, the Court of Appeals determined that this matter should be remanded for a new trial excluding all evidence of the firearm being stolen, which effected the Jury verdict.

Herein, any reasonable person would provide this Petitioner the new trial proceeding, excluding prejudicial evidence of the firearm being stolen, as nothing showed that the Petitioner was involved in the theft, nor that the Petitioner had knowledge that the firearm he bought was actually stolen. However, the jury obviously thought that the Petitioner had involvement in the prior theft of the firearm, whereby they rendered a verdict that the Petitioner had some knowledge of the theft. Therefore the jury believed that the Petitioner had committed a prior crime in this firearm possession, thereby the verdict on assault in the first degree would not have been the same without all the information on firearm theft.

The evidence admitted regarding "Possession of Stolen Firearm" did effect the jury verdict, and therefore the Petitioner should be now granted a new trial on the remaining charges. The

admission of the prejudicial evidence cannot be deemed "harmless error," as it was in a case resting on the Petitioner's actual "intent," and that intent is effected by the determination of whether the Petitioner 'possessed a stolen firearm' during his fleeing from the officers.

There is a reasonable probability that the jury verdict would not be the same on the Petitioner's actual intent with the firearm, had the jury not been told that the firearm was stolen, and the Petitioner had such knowledge of the theft before the officers approached.

The Court of Appeals failed to conduct this analysis on these facts after determining that the Petitioner did not know that the firearm was stolen, therefore the Court of Appeals errors removing evidence in the jury's verdict, without providing a new trial excluding evidence, (see Appendix FFF)

14). Missing transcripts have affected the Defendant's direct appeal and now require reversal.

The Petitioner had requested transcripts from Kitsap County Superior Court, on December 23, 2014 (see Appendix WW), and on February 4, 2015 (see Appendix XX). On February 12, 2015, he received a letter from Kitsap County Superior Court stating that a hearing was scheduled for February 20, 2015, at 11:00 A.M. (see Appendix YY).

On March 2, 2015, the Petitioner received a letter from the Court stating that the Motion to Request Verbatim and Tape Recorded Transcripts at State Expense had been denied (see Appendix ZZ), with no explanation for the denial of the Motion.

All pleadings have been filed properly, pursuant to court rules, so in no way can it be said that any pleading was not filed properly.

Kitsap County Superior Court has violated the Petitioner's right to have a fair and proper appeal by refusing to provide the transcripts from August 2, 2012 and by refusing to provide the Petitioner with a necessary hearing.

It can be assumed that, by the actions of Kitsap County Superior Court, the court does not, in actuality, have the transcripts. This is clearly a violation pursuant to State v. Tilton, 149 Wash.2d 779, 72 P.3d 735 (2003) as well as a violation of Brady, 473 U.S. at 83. The Supreme Court has made it clear that an indigent defendant is entitled to all discoveries and transcripts at State expense. State v. Harvey, 175 Wn.2d 919, 288 P.3d 1111 (2012).

The Petitioner raises issue in this matter because there is a clear problem as to why Kitsap County Superior Court will not provide the Petitioner with the requested transcripts. The transcripts will show that the judge in the matter removed Kelly Montgomery, the prosecutor, from the case, and a week later, Kelly Montgomery was back on the case. This will serve to show prejudice as well as conflict in the case.

These transcripts, if not found or cannot be produced, would greatly affect the Petitioner's rights to a fair appeal and this court "must" rule that either the charges be dismissed or that the matter be remanded for a new trial. State v. Tilton, 149 Wash.2d 779, 72 P.3d 735 (2003).

The following factors would have to be considered:

- (1) Whether all or only part of the trial record is missing or reconstructed;
- (2) The importance of the missing portion

- to review the issues raised on appeal;
- (3) The adequacy of the reconstructed record to permit appellate review; and
 - (4) The degree of resultant prejudice from the missing or reconstructed record, if any, to the Petitioner.

State v. Classen, 143 Wash. App. 45, 57, 176 P.3d 582, review denied, 164 Wash.2d 1016, 195 P.3d 88 (2008).

The Petitioner will show that these portions that are missing are reversible error and demonstrate prejudice. State v. Burton, 165 Wash. App. 866, 883, 269 P.3d 337, review denied, 147 Wash.2d 1002, 278 P.3d 1111 (2012).

- 15). The State and Court of Appeals erred in overlooking the elemental proof of the required "Assaults another with a firearm" when addressing the issue of sufficient evidence.

The State and Court of Appeals focused solely on the element of intent to cause the required "Great Bodily Harm," while completely ignoring the element of actual "assault" required under statutes for First Degree Assault RCW 9A.36.011 (1)(a), which reads in these relevant parts: "assaults another with a firearm."

There are two known ways to "assault another with a firearm" as follows: (1) Requires shooting the victim with a bullet fired from the actual firearm; (2) Requires hitting the victim with the firearm physically, without actually firing the firearm, neither of which is done by the Petitioner in the present instance, per evidence in trial.

The Petitioner never shot either officer anywhere, and never even fired the gun at any time, per officers' actual testimony that the jury heard at trial, nor did the jury ever hear that the Petitioner's struggle with the officers resulted in the Petitioner striking either officer physically with the firearm. (see Appendix HH).

The officers made deliberate contact with the firearm, during the 5 to 10 second struggle by grabbing the firearm slide and the barrel, keeping such pointed away from the officers, per testimony. (see Appendix HH) This conviction for "Assault in the First Degree" required a greater degree of proof offering than that the Petitioner possessed the firearm, or that the firearm was pointed at the victim during the 5 to 10 second struggle with the Petitioner, for finding of guilt. see State v. Davis, 177 Wa.App. 454, 311 P.3d 1278 (2014) (defendant's pointing a gun at victim constituted Second Degree Assault); State v. Hart, 180 Wa.App. 297, 320 P.3d 1109 (2014) (aimed gun in officer's direction is Second Degree Assault); State v. Sakellis, 164 Wa.App. 170, 269 P.3d 1029 (2011) (three witnesses testified to pointing of gun or holding gun to victim's head, and striking victim with gun hand, was Second Degree Assault); State v. Knight, 176 Wa.App. 936, 309 P.3d 776 (2013) (pointed gun to the head of victim and made actual threats to shoot, is Second Degree Assault); State v. Chesnokov, 175 Wa.App. 345, 305 P.3d 1103 (2013) (pointed gun to the head of victim, is Second Degree Assault); and State v. Kier, 164 Wn.2d 798, 194 P.3d 212 (2008) (pointed gun at victim, then forced them from the vehicle, is Second Degree Assault).

Therefore, not only is the actual element of assault never proven in the struggle with the Petitioner by the evidence, the mere act of pointing the gun at the officers would have been "Second Degree Assault," as argued.

The reviewing courts have long held two or more reasonable inferences could be drawn from a set of circumstances, and inference should not then be drawn, and it is reasonable for a jury to believe that

the Petitioner never intended to cause an actual injury likely to cause either officer's actual death, where there are no facts showing that the Petitioner actually would shoot the officers.

The officer's testimony admits that the Petitioner had the opportunity to shoot the officers during his fleeing, and did not act with an actual objective or purpose to accomplish shooting either officer, therefore did not act with the intent to cause the required "Great Bodily Harm" in a 'First Degree Assault' conviction.

The Court of Appeals erred in overlooking this factor presented in the Petitioner's claim that he had the opportunity to shoot either of the officers, and did not shoot the officers, claiming this is not relevant to the elements of Assault in the First Degree, however it is clearly a relevant factor to the charged crime, where conviction is resting solely on the intent of the Petitioner during the confrontation.

Therefore, without shooting or striking the officers physically, the elemental intent of First Degree Assault cannot be inferred herein, and a new trial should be granted.

16) Did the Petitioner receive ineffective assistance of counsel when trial counsel failed to have the State prove that the Petitioner knew that the firearm in his possession was stolen?

It was clear that the Petitioner had raised issue with his trial attorney, prior to trial, and made it clear on record. (see Appendix C).

The Court of Appeals ruled in favor of the Petitioner, stating that the "State failed to prove that the Petitioner knew the gun he possessed and/or bought was stolen" in order to prove one prong and the elements of a "Possession of a Stolen Firearm" charge. (see Appendix FFF).

The Petitioner's trial counsel should have raised this issue prior to or during trial. By the trial counsel's actions, the Petitioner was deprived of his right to a fair trial as well as his right to due process. (see Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

The trial counsel's actions constitute ineffective assistance of counsel. It is very difficult to prove ineffective assistance of counsel, but in this case, it is relatively simple.

The Court of Appeals made the ruling in favor of the Petitioner, and by that ruling, it has affected the outcome of the Petitioner's right to Due Process and/or trial rights, thus providing grounds for a new trial. (see In re Delmarter, 124 Wash.2d 1024, 120 P.3d 577 (2004)

The Petitioner's trial counsel's performance fell way below an objective standard of reasonableness, resulting in prejudice toward the Petitioner. The Petitioner will satisfy the prejudice prong by showing that the outcome of the proceedings would have differed but for counsel's deficient performance. State v. Grier, Wash. 2d 17, 33, 246 P.3d 1260 (2011), 168 Wash. App. 635, 278 P.3d 225 (2012); State v. Hendrickson, 129 Wash.2d 78, 917 P.2d 563 (1996).

The Petitioner now asks that the court remand this matter for a new trial.

17) Did the Petitioner's appellate counsel provide ineffective assistance by failing to file a "Motion For Reconsideration", or to notify the Petitioner that the appellate counsel would not be filing the motion, or notify the Petitioner of time limitations on the Petitioner?

"To prevail on ineffective assistance of counsel, proof that the counsel's performance was deficient, and the deficiency prejudiced an element of

the defense must be shown." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); In re Netherton, 306 P.3d 918, 177 Wn.2d 798 (Wash. 2013).

Herein, the Petitioner addresses the attorney representing the Petitioner on direct appeal, whom was assigned by the reviewing Court for this matter. The appellate attorney informed the Petitioner on October 22, 2014 that, as soon as she got the opinion of the reviewing Court, she would file a "Motion For Reconsideration" of any adverse decisions. (see Appendix GGG).

The appellate attorney did not file a "Motion For Reconsideration" in the matter, and did not inform the Petitioner that he had a limited time in which to file such a motion if he wished to continue review.

The appellate attorney should have informed the Petitioner that the attorney did not intend to file further pleadings in the appeal process, and that the Petitioner had to file these pleadings within the times established in the rules to continue direct appeal of the adverse holdings of of the Court of Appeals opinion.

"We begin with a strong presumption that adequate and effective representation is provided every matter." State v. McFarland, 127 Wn.2d 322, 889 P.2d 1251 (1995).

"Deficient performance is that which falls below an objectionable standard of reasonableness." State v. Horton, 116 Wn.App. 909, 68 P.3d 1165 (2003).

The Court should see that the appellate counsel's conduct of not informing the Petitioner that he had time limits to seek further review of the Court of Appeals opinion falls below any reasonable standard. The attorney is appointed by the reviewing court to represent the Petitioner's best interest on review, which includes keeping the Petitioner properly informed of the required time frames to file pleadings. The attorney should have reasonably informed the Petitioner that she was not going to be filing any further pleadings in the matter, and that if he wanted further review of the issues, that he would have to file pleadings.

The conduct of this attorney on October 22, 2014, in a letter to the Petitioner, claiming that she did not know the opinion of the Court at

that date and time, is improper. Counsel are served copies of opinions at the time the clerk enters the opinion into the record of the court; which, in this case, was October 14, 2014, at 8:55 A.M., ^(see Appendix FFF) per copy of the opinion that the Petitioner obtained through the Coyote Ridge Corrections Center Law Library on December 4, 2014.

The Petitioner's appellate counsel failed in this instance to exercise "the customary skills and diligence that a reasonably competent attorney would have exercised under similar circumstances." The attorney should have, in the minimum, informed her client that she would not be filing pleadings seeking further review, and of the timelines required by the rules. The Petitioner now asks that the court remand this matter for a new trial.

CONCLUSION

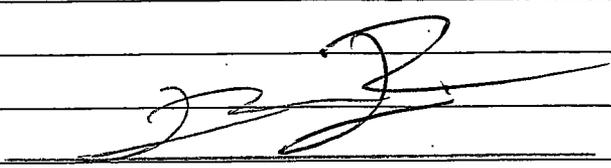
The Petitioner now now requests that the court do the following:

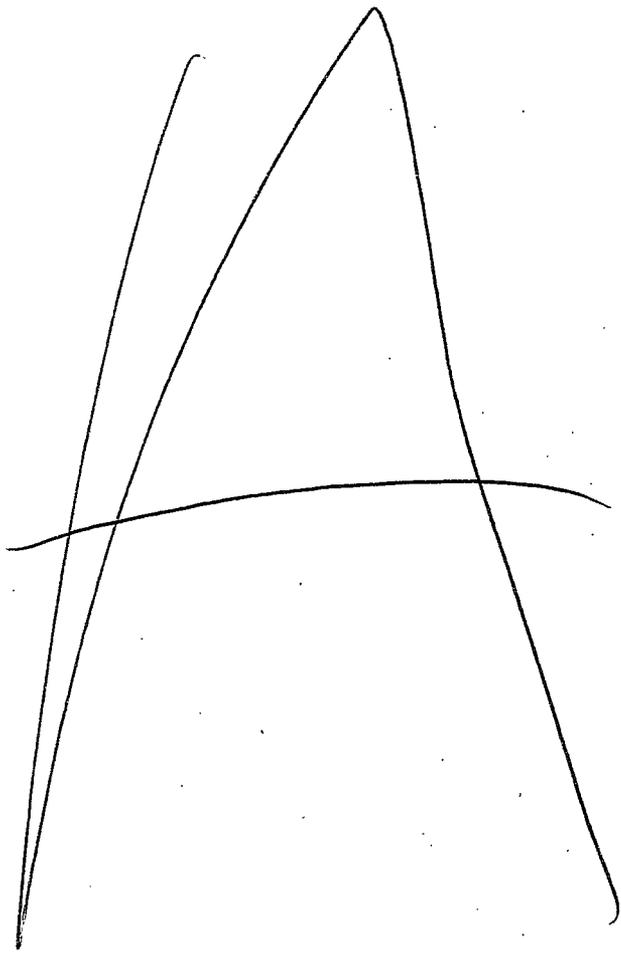
(1) Dismiss the charges with prejudice and allow the State to file the appropriate charges against the Petitioner that meet the requirements of his actions; or

(2) Remand this case for a new trial to ensure a proper conviction, because 531 months in prison is excessive due to the fact that no one was harmed and the firearm was never discharged.

I swear, under the penalty of perjury, that all statements contained herein are true to the best of my knowledge.

Dated this 7 day of
MAY, 2015.


Petitioner



1 attorney because the attorney we had yesterday has a
2 conflict of interest, so I will appoint Craig Kibbe to
3 represent you.

4 THE DEFENDANT: From what firm? What law
5 firm?

6 MR. LEWIS: From his own law firm.

7 THE DEFENDANT: Okay. Am I able to talk
8 freely?

9 THE COURT: Please do not.

10 MR. LEWIS: Your Honor, in terms of yesterday,
11 did he sign the acknowledgment of advice of rights?

12 THE COURT: He did not. We were uncomfortable
13 doing that because he had an attorney who he was
14 alleging was not acting in his best interests, and
15 otherwise had a conflict of interest, and we determined,
16 I believe, at that time that since the motion was his to
17 substitute counsel, that we had at least one additional
18 day in which to do the arraignment. At this point, I
19 would like to do the arraignment.

20 Mr. Lewis, do you feel comfortable doing the
21 arraignment and the entry of the not guilty plea before
22 I sign the order substituting?

23 MR. LEWIS: Yes, Your Honor, I am fine doing
24 that.

25 THE COURT: Mr. Bale, would you please come

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forward.

THE DEFENDANT: Yes.

THE COURT: Sir, are you John Michael Bale?

THE DEFENDANT: Yes, Your Honor.

THE COURT: How old are you?

THE DEFENDANT: 29.

THE COURT: Do you read and write English well?

THE DEFENDANT: Yes.

THE COURT: Mr. Bale, I am in possession of a document entitled Information, which charges you with attempted assault in the first degree in count I, and unlawful possession of a firearm in the second degree in count II. Have you seen that document?

THE DEFENDANT: Yes, I have.

THE COURT: Did you understand it?

THE DEFENDANT: Yes, I did.

THE COURT: Would you like me to read it to you?

THE DEFENDANT: Yeah, actually.

THE COURT: I am reading the information, sir.

"Comes now, the Plaintiff, State of Washington, by and through its attorney, Barbara O. Dennis, Deputy Prosecuting Attorney, and hereby alleges that contrary

1 to the form, force and effect of the ordinances and/or
2 statutes in such cases made and provided, and against
3 the peace and dignity of the State of Washington, the
4 above-named defendant did commit the following offenses:
5 Count I, assault in the first degree. On or about
6 July 2, 2012, in the County of Kitsap, State of
7 Washington, the above-named defendant did, with intent
8 to inflict great bodily harm, assault another, to-wit:
9 Stephen Morrison, with a firearm or any deadly weapon or
10 by any force or means likely to produce great bodily
11 harm or death, contrary to the Revised Code of
12 Washington 9A.36.011 (1) (a), maximum penalty, life
13 imprisonment and/or a \$50,000 fine pursuant to
14 RCW 9A.36.011 (2) and RCW 9A.20.021 (1) (a), plus
15 restitution and assessments.

16 "If the defendant has previously been convicted on
17 two separate occasions of a 'most serious offense' as
18 defined by RCW 9.94A.030, in this state, in federal
19 court, or elsewhere, the mandatory penalty for this
20 offense is life imprisonment without the possibility of
21 parole pursuant to RCW 9.94A.030 and 9.94A.570.

22 "Mode of commission, criminal attempt."

23 MR. LEWIS: Your Honor, Mr. Bale is indicating
24 that he understands what he's being charged with and we
25 will waive further reading.

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THE DEFENDANT: Yes.

THE COURT: I am reviewing the certificate of probable cause on file herein. I find probable cause to support the charges on file herein, and the court is entering a plea of not guilty to all charges on behalf of the defendant.

Mr. Bale, with respect to the charges, you have a number of important legal rights. Those rights are set forth in this document entitled Acknowledgment of Advice of Rights.

THE DEFENDANT: Uh-hum.

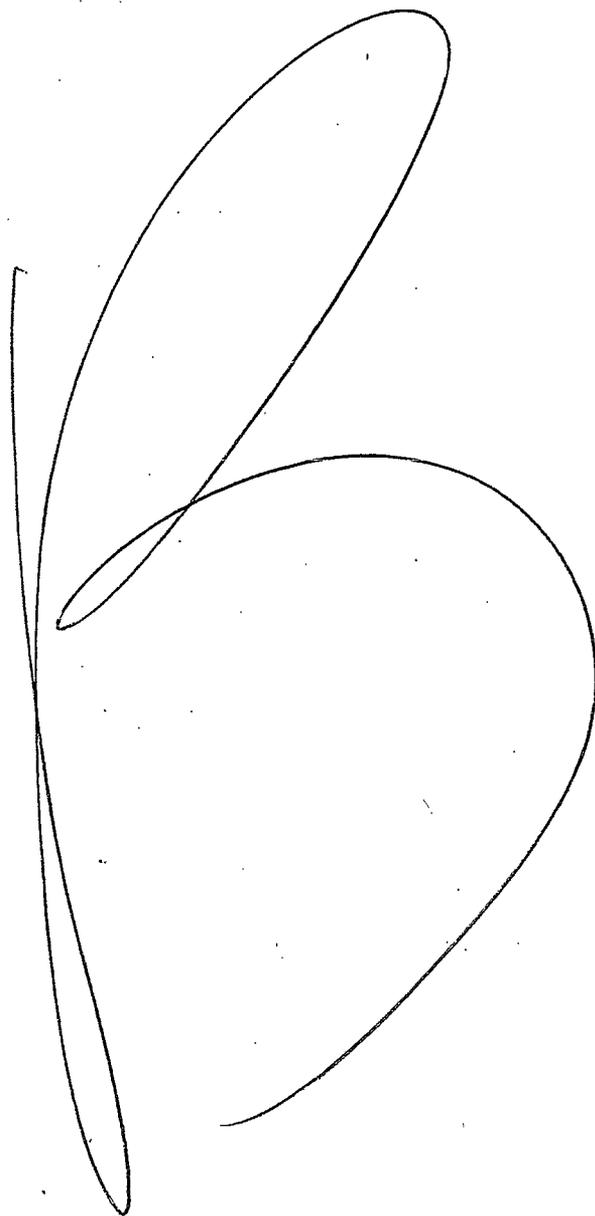
THE COURT: Please read it over. If you understand your rights, please indicate the same by signing the document. If you do not understand your rights, please let me know which rights you do not understand.

THE DEFENDANT: Okay.

MR. LEWIS: Mr. Bale has signed the Acknowledgment of Advice of Rights, Your Honor.

THE COURT: I am setting this man's trial date for September 25th, 2012, with a speedy trial expiration date of October 2nd, 2012, and an omnibus hearing August 23rd, 2012.

Did I take up conditions of release yesterday on this?



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THE COURT: State vs. Bale, 12-1-00762-2.

MR. KIBBE: Let's have him brought up, Your Honor.

THE COURT: The matter comes before the Court for further arraignment and Rule 3.5 status.

Are there any further charges, Ms. Montgomery?

MS. MONTGOMERY: Yes, Your Honor, as a matter of fact. Assault one, possession of a stolen firearm, and other special allegations.

THE COURT: Do you have an Amended Information then that you intend to --

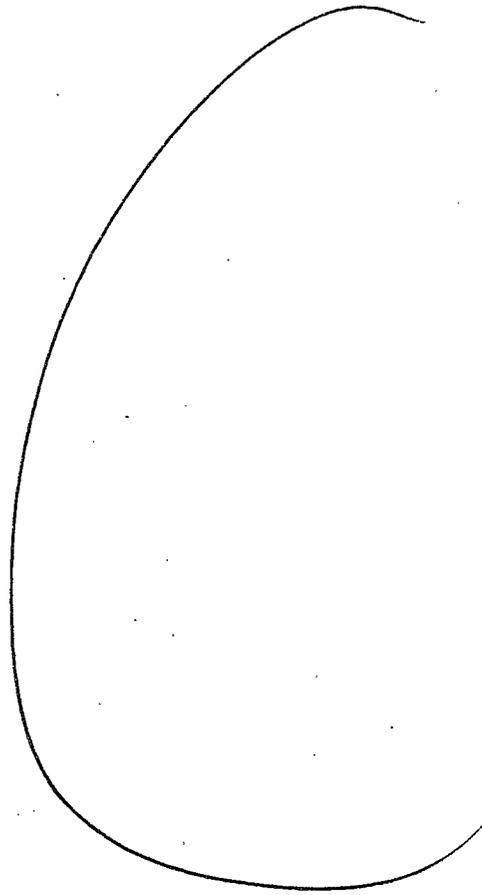
MS. MONTGOMERY: No, Your Honor. I believe we're going to go ahead and set this over. There's interviews that are happening next week that need to happen before we can continue on in the process.

THE COURT: Very well.

Mr. Kibbe, is that your position as well?

MR. KIBBE: Your Honor, we did, the last time we were in court, a couple of weeks ago, we set the trial date over to the end of October. The interviews of the officers involved and, I guess, the alleged victims are scheduled for next Thursday.

I don't know if the Court is in receipt of, but Mr. Bale has filed several different correspondence with the Court, with the prosecutor's office, I think, throughout the case, and I believe at this point he is asking for new



1 to defend me. I have entered -- Okay. We have already gone
2 over that one.

3 Not -- Time has been -- So I just -- There's just -- I
4 just don't have faith in him right now or -- And I have
5 tried to work it out, me and him tried to work it out. But
6 I just don't have faith in him.

7 THE COURT: I understand.

8 Your request for a different attorney is denied.
9 There's an insufficient factual basis for that. I don't --
10 The reason that your personal motions haven't been heard is
11 that when you are represented by an attorney, all motions
12 are to be filed by your attorney, not by yourself.

13 THE DEFENDANT: Uh-huh.

*Court
order* →

14 THE COURT: I have no intent to continue your
15 trial any longer. I am signing the order allowing you
16 access to the Kitsap County Jail Law Library in accordance
17 with the Kitsap County Jail Inmate Handbook and their
18 inherent safety procedures.

19 THE DEFENDANT: Uh-huh.

20 THE COURT: The matter continues to be set for
21 trial on October 30th, 2012.

22 Have the 3.5 hearing on the morning of trial?

23 MS. MONTGOMERY: That sounds fine.

24 THE COURT: Have further arraignment on the
25 morning of trial?

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MS. MONTGOMERY: Yes, Your Honor.

THE COURT: Very well.

Anything else for me to address?

THE DEFENDANT: May I please state something else
too?

THE COURT: No, sir.

Anything else for me to address?

MS. MONTGOMERY: No.

MR. KIBBE: No, Your Honor.

(Hearing adjourned.)

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RECEIVED AND FILED
IN OPEN COURT
OCT 04 2012
DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE SUPERIOR COURT FOR KITSAP COUNTY, STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

JOHN BALE,

Defendant.

Case No. 12-1-00762-2

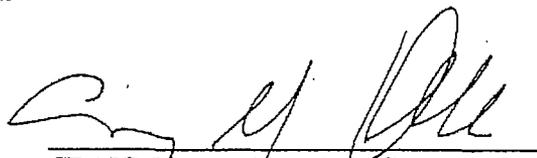
DEFENSE REQUEST TO ALLOW
JAIL INMATE ACCESS TO THE
LAW LIBRARY

MOTION

COMES NOW the defendant above named, by and through her attorney of record,
Craig G. Kibbe, and moves the above entitled court to allow defendant access to the Law
Library.

This motion is based upon the record and files herein, and subjoined declaration of
Craig G. Kibbe.

DATED this 4th day of October, 2012.


CRAIG G. KIBBE, WSBA #31692
Attorney for Defendant

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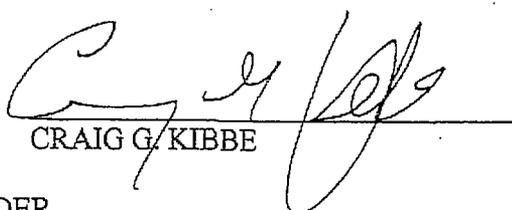
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DECLARATION

I declare under penalty of perjury of the laws of the State of Washington that the following is true and correct. My name is Craig G. Kibbe and I am the attorney for the above named defendant.

The Defendant needs access to the Jail Law Library to assist counsel in his/her defense. This request is in accordance with the procedure outlined in the Kitsap County Jail Inmate Handbook.

DATED at Port Orchard, Washington, this 4th day of October, 2012.

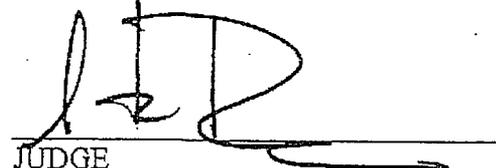

CRAIG G. KIBBE

ORDER

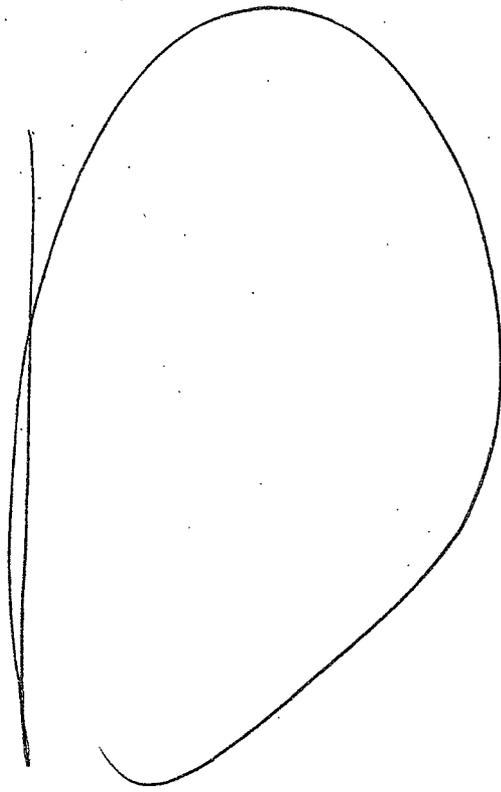
THIS MATTER having come on before me, the undersigned, upon motion of the above named defendant, the court having reviewed the record and files herein and for good cause shown, does now therefore

ORDER, that defendant shall have access to the Kitsap County Jail Law Library in accordance with the Kitsap County Jail Inmate Handbook and safety procedures of the jail.

DONE IN OPEN COURT this 4 day of October, 2012.


JUDGE

STEVEN DIXON



P R O C E E D I N G S

* * *

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3 THE COURT: State of Washington versus John
4 Michael Bale, 12-1-00762-2. This matter comes on for
5 trial.

6 Do the parties stipulate to a pre-draw jury
7 panel?

8 MS. MONTGOMERY: Yes.

9 MR. KIBBE: Yes.

10 THE COURT: Want to take up the Prosecution's
11 motions in limine?

12 MS. MONTGOMERY: That sounds good.

13 THE COURT: Number 1, filing of jury
14 instructions on or before the first day of trial.

15 Mr. Kibbe, you have your jury instructions
16 prepared?

17 MR. KIBBE: I do -- no. Jury instructions I
18 don't as of yet. I had motions in limine. I'm just
19 reviewing State's motions. Ms. Montgomery and I have
20 talked about what instructions would be offered. And I
21 think she may be offering an instruction that I talked
22 about. What I can say is, I'm going to review the State's
23 motions. And if I have my own motions, I intend to file
24 them tomorrow.

25 THE COURT: My question is, are your jury

1 instructions prepared?

2 MR. KIBBE: No.

3 THE COURT: We want to see those on the first
4 day of trial, so I'll expect to see those first thing
5 tomorrow morning.

6 MS. MONTGOMERY: Your Honor, I can let the Court
7 know that we discussed jury instructions, because we do
8 anticipate a lesser included. And so those would normally
9 be the instructions that he prepares. And just for the
10 sake of ease, I prepared them so that the font and
11 everything would match.

12 THE COURT: Excellent.

13 MR. KIBBE: If I have any additional ones that
14 haven't been provided, I'll review them and provide them.

15 THE COURT: Number 1 will be granted.

16 Number 2, exclusion of witnesses?

17 MR. KIBBE: No objection.

18 THE COURT: Granted.

19 Number 3, Court to direct attorneys for each
20 party to clearly instruct their witnesses that they are
21 not to discuss the case or what the testimony has been or
22 would be or what occurs in the courtroom with anyone other
23 than counsel for either side.

24 MR. KIBBE: No objection.

25 THE COURT: Granted. Applies to both of you.

1 No reference or description of a character trait
2 of a person, unless previously approved by the Court via
3 offer of proof.

4 MR. KIBBE: No objection.

5 THE COURT: Granted.

6 Number 5, no examination inviting one witness to
7 comment on another witness' accuracy or credibility.

8 MR. KIBBE: No objection.

9 THE COURT: Number 6, no reference to
10 Defendant's self-serving hearsay statements to potential
11 witnesses.

12 MR. KIBBE: No objection.

13 THE COURT: Granted.

14 Number 7, no reference to other suspect
15 evidence.

16 MR. KIBBE: No objection.

17 THE COURT: Granted.

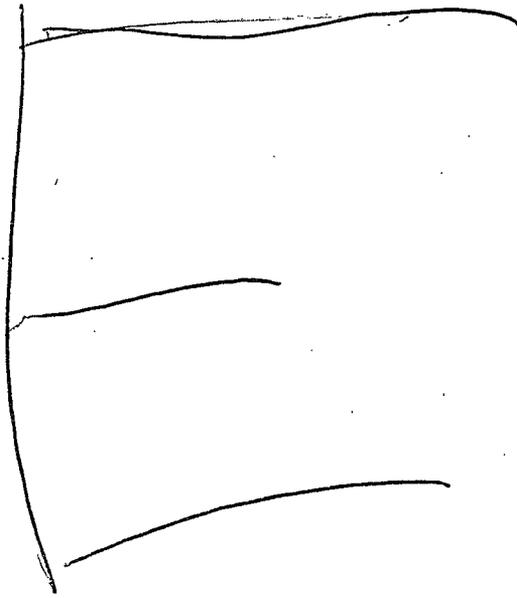
18 Number 8, no references to consequences of
19 punishment.

20 MR. KIBBE: No objection.

21 THE COURT: Granted.

22 Number 9, no references -- no reference to the
23 term sentence enhancement or special -- no. No reference
24 to the term "sentence enhancement."

25 MR. KIBBE: No objection.



and

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and

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1 THE COURT: Granted.

2 Number 10, no reference to the procedural
3 history of this action..

4 MR. KIBBE: No objection.

5 THE COURT: Granted.

6 Number 11, no reference to charging decisions.

7 MR. KIBBE: No objection.

8 THE COURT: Granted.

9 Number 12, no argument regarding a missing
10 witness or a party's failure to produce a witness, unless
11 previously approved by the Court with instruction under
12 WPIC 5.20.

13 MR. KIBBE: No objection.

14 THE COURT: Granted.

15 Number 13, no speaking objections.

16 MR. KIBBE: No objection.

17 THE COURT: Granted.

18 Ms. Montgomery, you'll prepare an order to the
19 effect that all of your motions in limine were granted?

20 MS. MONTGOMERY: Yes, Your Honor.

21 THE COURT: Mr. Kibbe, you have motions in
22 limine?

23 MR. KIBBE: I do, Your Honor. It's just
24 duplicative of one of the State's motions that's already
25 been granted. But I'll just hand forward an original and

1 bench copy, just to have it on file. But --

2 THE COURT: Exclusion of witnesses has
3 previously been granted. Applies to both parties, of
4 course.

5 Now, the last information I have in my file
6 charges one count of assault one and one count of unlawful
7 possession of a firearm.

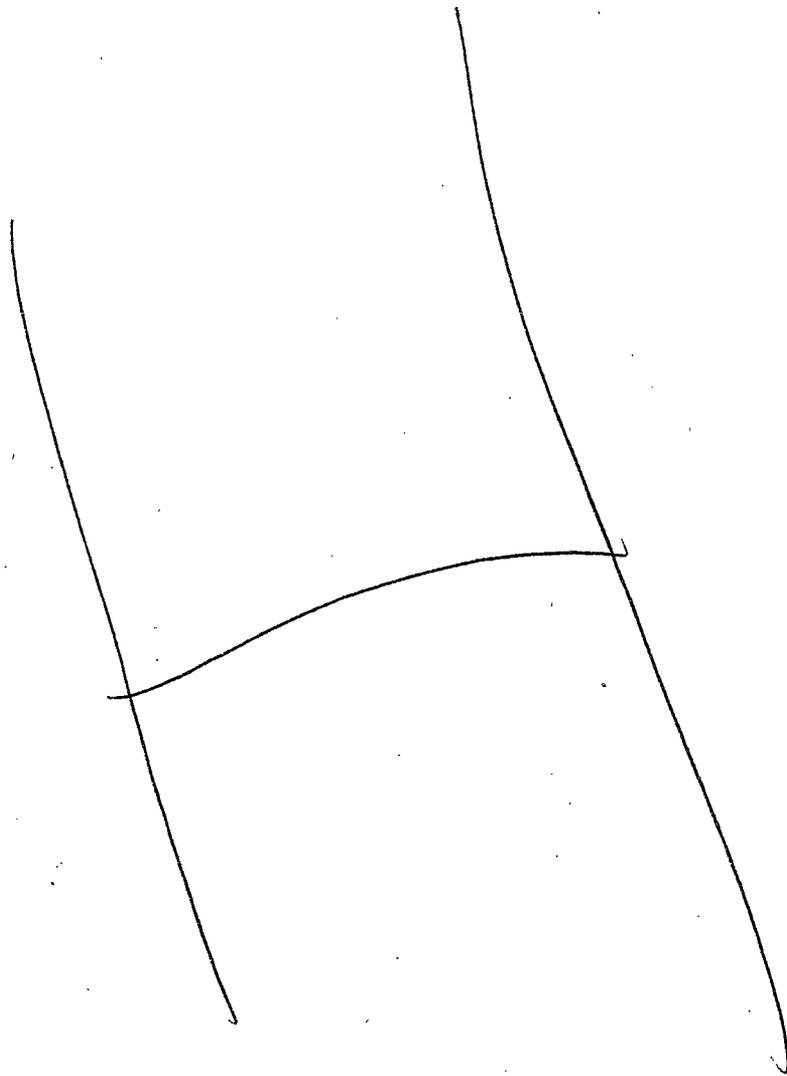
8 MS. MONTGOMERY: That's correct, Your Honor. We
9 had filed this afternoon a First Amended Information
10 charging one count of Assault in the First Degree, victim
11 Stephen Morrison; one count -- that's Count 2 -- of
12 Assault in the First Degree, victim Charles Schandel; and
13 Count 3, Possession of a Stolen Firearm. Counts 1 and 2
14 carry the special allegation of armed with a firearm.

15 THE COURT: For the record, I'll note that the
16 prior possession of a stolen firearm was based upon
17 Mr. Bale's prior -- he had a prior felony conviction. And
18 this was based on stolen property.

19 MS. MONTGOMERY: Right. He was originally
20 charged, under the original information, with felon in
21 possession or unlawful possession of a firearm. We
22 completely changed the charge and made it possession of a
23 stolen firearm.

24 THE COURT: Mr. Bale, are you John Michael Bale?

25 THE DEFENDANT: Yes, Your Honor.



1 THE COURT: How old are you?

2 THE DEFENDANT: Twenty-nine.

3 THE COURT: You read and write English well?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Mr. Bale, I am in possession of a
6 First Amended Information charging you, Count 1, Assault
7 in the First Degree with a special allegation that you
8 were armed with a firearm; Count 2, Assault in the First
9 Degree with a special allegation that you were armed with
10 a firearm; and Count 3, Possession of a Stolen Firearm.

11 Have you seen that document?

12 THE DEFENDANT: Yes, I have.

13 THE COURT: Do you understand those charges?

14 THE DEFENDANT: Yes.

15 THE COURT: Your client pleads not guilty to all
16 three charges?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: For the record, I'm accepting the
19 First Amended Information for filing in lieu and instead
20 of the original Information. I have the State's amended
21 witness list.

22 Mr. Kibbe, do you have a witness list?

23 MR. KIBBE: Your Honor, I don't have a witness
24 list. If the Defense calls a witness, it would be
25 Mr. Bale. That's yet to be determined. But I am in

1 receipt of the State's witness list.

2 THE COURT: Okay. I see, Ms. Montgomery, that
3 you've proposed a questionnaire.

4 MS. MONTGOMERY: A short one, yes.

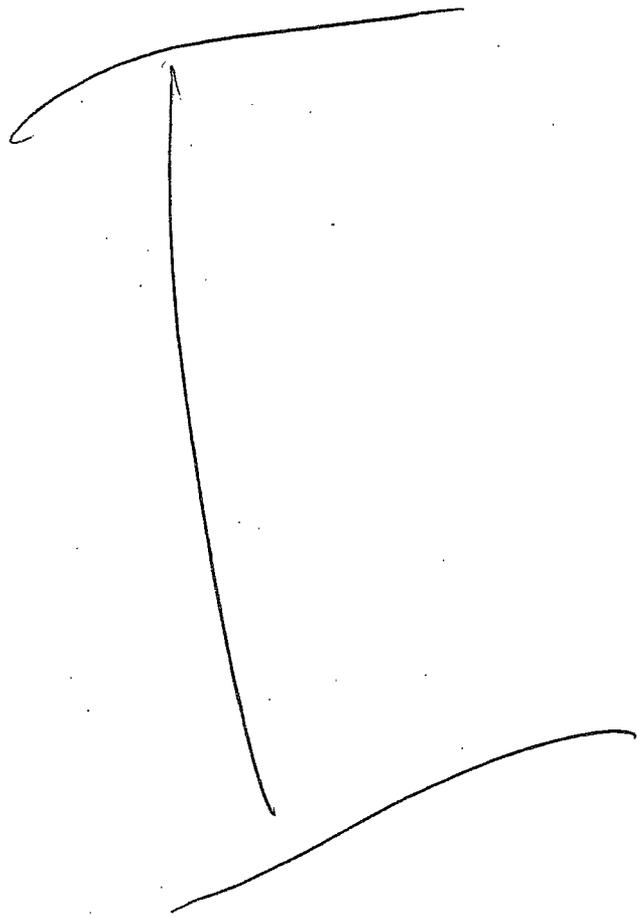
5 THE COURT: You want this court to read the
6 questionnaire, or do you want to distribute the
7 questionnaire to the individual jurors?

8 MS. MONTGOMERY: Right. The State would
9 suggest, Your Honor, that we -- at the onset of jury
10 selection, prior to them coming up to the Court, that the
11 bailiff person provide copies to our panel, and then they
12 fill it out. And the reason that we're suggesting this,
13 obviously, is because of firearm issues and issues in this
14 particular case. It might be more productive for us to do
15 individual voir dire of certain jurors, potential jurors.
16 It might speed up the process and otherwise make it less
17 complicated.

18 THE COURT: Mr. Kibbe, do you agree?

19 MR. KIBBE: That's fine. I'm just -- I'm
20 looking over the questionnaire for the first time.
21 Ms. Montgomery and I just talked about it this morning. I
22 don't have any objection to the questionnaire.

23 THE COURT: All right. Ms. Montgomery, I will
24 leave this questionnaire in the file for record purposes.
25 And you will, by close of business today, supply my clerk



1 A. No.

2 Q. Was he detained?

3 A. He was detained, yes.

4 Q. Were you asking him any other questions besides
5 just for identification?

6 A. No, not at that time.

7 Q. Okay. And did he -- when you asked him for ID,
8 were you asking him questions about who he was and things
9 of that nature, or did you just ask him to produce his ID?

10 A. I just asked for him to produce his ID, at that
11 point.

12 Q. The statements that the Defendant made to you,
13 were they made in response to questions that you asked?

14 A. When I asked him for his ID, yeah.

15 Q. All right. And in terms of him responding to
16 you, he said what?

17 A. That he didn't have his ID with him.

18 Q. Did you have any show of force on the Defendant
19 by way of gun, Taser, baton, any of those kind of things?

20 A. Not at that time, no.

21 Q. Did it appear that he was coerced in any way to
22 make those statements that he made to you?

23 A. No.

24 Q. Did he appear to make those statements
25 voluntarily?

1 A. Yes.

2 Q. Did he appear to be under the influence of any
3 intoxicants?

4 A. Not at that time.

5 MS. MONTGOMERY: I have nothing further.

6 THE COURT: Mr. Kibbe?

7 MR. KIBBE: Your Honor, I don't have any
8 questions of this witness on this particular issue.

9 THE COURT: Officer, you may be excused.

10 THE WITNESS: Thank you.

11 THE COURT: Any further witnesses,
12 Ms. Montgomery?

13 MS. MONTGOMERY: Yes, Officer Morrison.

14 STEPHEN MORRISON,

15 having first been sworn
16 under oath, testified
as follows:

17 THE COURT: Please have a seat, Officer.

18 DIRECT EXAMINATION

19 BY MS. MONTGOMERY

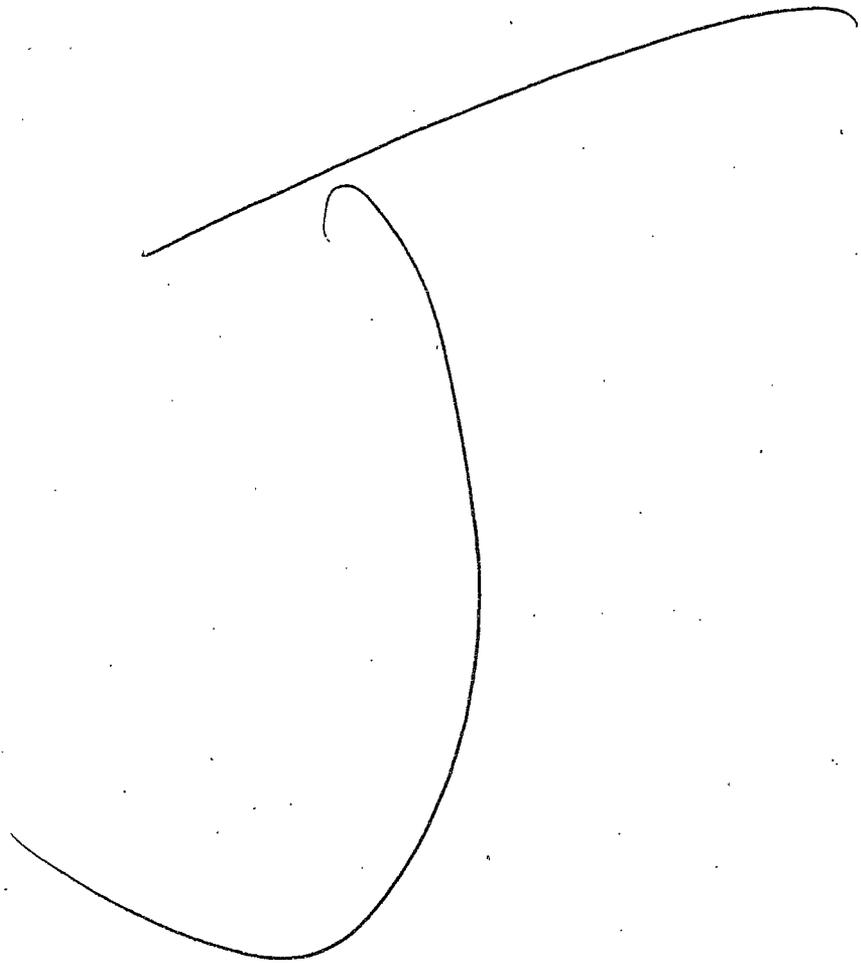
20 Q. Can you please state your name and spell your
21 last for the record?

22 A. Officer Stephen Morrison, M-O-R-R-I-S-O-N.

23 Q. And how are you employed?

24 A. I'm a patrol officer with the City of
25 Port Orchard.

MORRISON - Direct (by Ms. Montgomery)



1 A. I was.

2 Q. And Mr. Bale then ran again?

3 A. Correct.

4 Q. I want to turn your attention to what happened
5 after that.

6 Were you able, eventually, to catch up with
7 Mr. Bale?

8 A. I was.

9 Q. And put him into custody?

10 A. I was.

11 Q. All right. From the time that he ran the second
12 time, did Mr. Bale make any statements to you?

13 A. No.

14 Q. So the only statements that Mr. Bale made to you
15 were the initial statements, prior to him running the
16 first time?

17 A. Yes.

18 MS. MONTGOMERY: I have nothing further at this
19 time.

20 THE COURT: Mr. Kibbe?

21 MR. KIBBE: Your Honor, no questions of this
22 witness on this particular issue.

23 THE COURT: Officer, you may step down. You are
24 excused.

25 THE WITNESS: Yes, Your Honor.

1 MS. MONTGOMERY: And, Your Honor, he's free to
2 go.

3 THE COURT: Free to go.

4 Any further witnesses?

5 MS. MONTGOMERY: No.

6 THE COURT: Rest your case with respect to the
7 3.5 hearing?

8 MS. MONTGOMERY: Yes.

9 THE COURT: Mr. Bale, you may but need not
10 testify at this hearing on the circumstances surrounding
11 any statements you may or may not have made to the law
12 enforcement officers. If you do testify at this hearing,
13 you will be subject to cross examination with respect to
14 the circumstances surrounding the statement and with
15 respect to your credibility. If you do testify at the
16 hearing, you do not, by so testifying, waive your right to
17 remain silent during the trial. And if you do testify at
18 this hearing, neither this fact nor your testimony at this
19 hearing shall be mentioned to the jury at the trial,
20 unless you testify concerning that statement at trial.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Mr. Kibbe, that warning being said,
24 have you discussed with Mr. Bale whether he wants to
25 testify at this hearing?

K

1 MR. KIBBE: One moment, Your Honor.

2 Your Honor, at this time the Defense is not
3 going to present any testimony on this particular issue.

4 THE COURT: Very good.

5 So the Defense rests with respect to its case in
6 this 3.5 hearing?

7 MR. KIBBE: Yes.

8 THE COURT: Argument?

9 MS. MONTGOMERY: Thank you, Your Honor.

10 Your Honor, although the Defendant was detained
11 for purposes of investigation, he was not in custody, in
12 handcuffs, in a coercive manner. He was asked to give
13 identification, and he basically volunteered up statements
14 to Officer Morrison. He made statements to Officer
15 Schandel in response to, Give me your ID. But there's no
16 evidence that the statements that he made were coerced,
17 made under duress, made under the influence of
18 intoxicating liquors or drugs. And there's no evidence
19 the Defendant had any mental conditions that would vitiate
20 his voluntariness of the statements. So the State would
21 suggest that those statements are admissible.

22 THE COURT: Mr. Kibbe?

23 MR. KIBBE: Your Honor, the Defense does not
24 wish to present any argument on this particular issue.

25 THE COURT: I'll rule that the statements are

1 admissible.

2 And you'll prepare findings in that respect?

3 MS. MONTGOMERY: I will, Your Honor.

4 THE COURT: What courtroom are we in tomorrow,
5 Ken?

6 THE CLERK: 271, Your Honor.

7 THE COURT: Unless there's any other issues,
8 we'll start up in Room 271 tomorrow at 9:00 a.m.

9 MS. MONTGOMERY: Very well.

10 THE COURT: At recess.

11 (Matter concluded)

12 * * *

13 P R O C E E D I N G S

14 October 31, 2012

15 * * *

16 THE COURT: State v. John Michael Bale,
17 12-1-00762-2.

18 Counsel, anything preliminary, before I invite
19 the jury in?

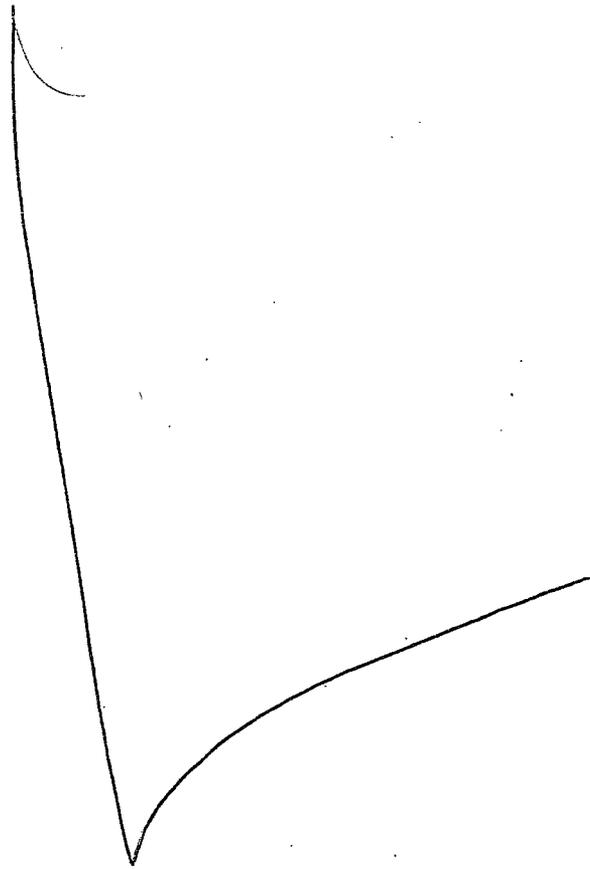
20 MS. MONTGOMERY: No. Thank you, Your Honor.

21 THE COURT: Mr. Kibbe?

22 MR. KIBBE: No, Your Honor.

23 THE COURT: Let's have the jury, please.

24 For the record, we are making an exception for
25 exclusion of witnesses for the officer assisting the



1 MS. MONTGOMERY: I am almost done.

2 THE COURT: Okay.

3 MS. MONTGOMERY: So I think we both have
4 indicated we don't think there's any challenges for cause.

5 THE COURT: Oh, okay. Well, I will ask, though.

6 MS. MONTGOMERY: Okay. And then we'll just go
7 right into peremptories after that?

8 THE COURT: Yes.

9 MS. MONTGOMERY: Sounds great.

10 THE COURT: Mr. Kibbe, did you have any jury
11 instructions?

12 MR. KIBBE: No, Your Honor.

13 THE COURT: Have you looked at the State's set?

14 MR. KIBBE: I had, yes.

15 THE COURT: Any problems?

16 MR. KIBBE: No, Your Honor.

17 THE COURT: Okay. Might want to assemble a
18 packet. I'm going to change a couple of typos.

19 MS. MONTGOMERY: Oh, is there typos?

20 THE COURT: If that's okay.

21 MS. MONTGOMERY: Sorry.

22 THE COURT: Did you send Shelly a disk?

23 MS. MONTGOMERY: No, but I will. I'll send them
24 to her via e-mail.

25 THE COURT: Yeah, very well.

1 MS. MONTGOMERY: It goes to Shelly?

2 THE COURT: Yeah.

3 MS. MONTGOMERY: If you let me know what the
4 typos are, I'll fix them, before I send them.

5 THE COURT: Very minor. It's just easier for me
6 to fix them when she's -- I'm going to re-order them, too.
7 But other than that, they're fine.

8 MS. MONTGOMERY: Excellent.

9 THE COURT: And you know for sure you're going
10 to have an expert?

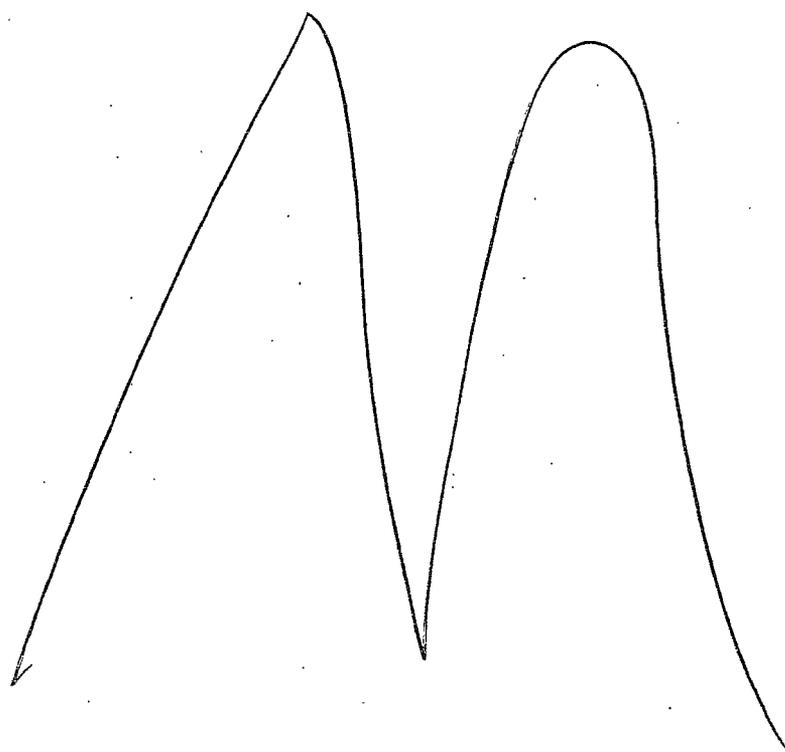
11 MS. MONTGOMERY: Yeah. We have a -- somebody
12 who tested the firearm.

13 THE COURT: Okay.

14 MR. KIBBE: Your Honor, I was just discussing
15 with Counsel. The only instruction that we were talking
16 about was if Mr. Bale doesn't testify, there is an
17 instruction about, you know, not testifying.
18 Ms. Montgomery was talking about making it part of her
19 packet. I just don't want it to be a situation where you
20 number it and then we can't add that one so --

21 MS. MONTGOMERY: If he wants that instruction,
22 then I'll gen (sic) it up and get it to the Court
23 electronically and provide copies.

24 THE COURT: Okay. Well, I won't number them
25 yet.



1 Mr. Bale was acting. I was afraid for our safety, at that
2 point.

3 Q. Okay. So what did you do?

4 A. So basically, because of his actions, I decided
5 I'm going to place Mr. Bale in wrist restraints, detain
6 him, frisk him for weapons and then figure out the name
7 and stuff later. My primary focus, at that point, was our
8 safety. So I go in -- I went and grabbed his wrist --

9 Q. That would be a normal procedure, in order to
10 put wrist restraints on an individual?

11 A. It depends on your approach. I mean, I was --
12 he was standing kind of in front of me, so I went in to
13 get one of his wrists.

14 Q. Why not just say, Hey, do you mind putting your
15 hands behind your back for me?

16 A. Because of, again, the way he was acting very
17 nervous. I mean, he was looking -- he was looking -- he
18 was digging through this wallet, right, but he's not
19 looking at his wallet, when he's saying, you know, where
20 he's looking for an ID. He's -- all he's doing is looking
21 back and forth, shifting his weight, just those
22 furtive-type movements to us. Every red flag in my head
23 was going off. I mean, the hair on the back of my neck
24 was standing up, at that point.

25 Q. Okay. So you go to place your hand on his wrist

1 and what -- did you tell him anything?

2 A. I -- I got to the point, I said, turn around,
3 put your hands behind your back. And I was going to tell
4 him he was detained, but I didn't get that far. Because
5 as soon as I went hands on with him, he starts pulling
6 away.

7 Q. And when you say pulling away, can you describe
8 what that was like to the jury?

9 A. Just -- I went and grabbed a wrist, and he was,
10 like, pulling away, pulling away (indicating), and he
11 eventually broke free and ran.

12 Q. How long did you struggle with him, right there
13 at the spot where you initially saw him?

14 A. Briefly. I mean, it was just a pulling back and
15 forth. I didn't have a super good grip on him because of
16 my positioning. So it was pretty brief right there.

17 Q. Okay. And after he broke away, what happened?

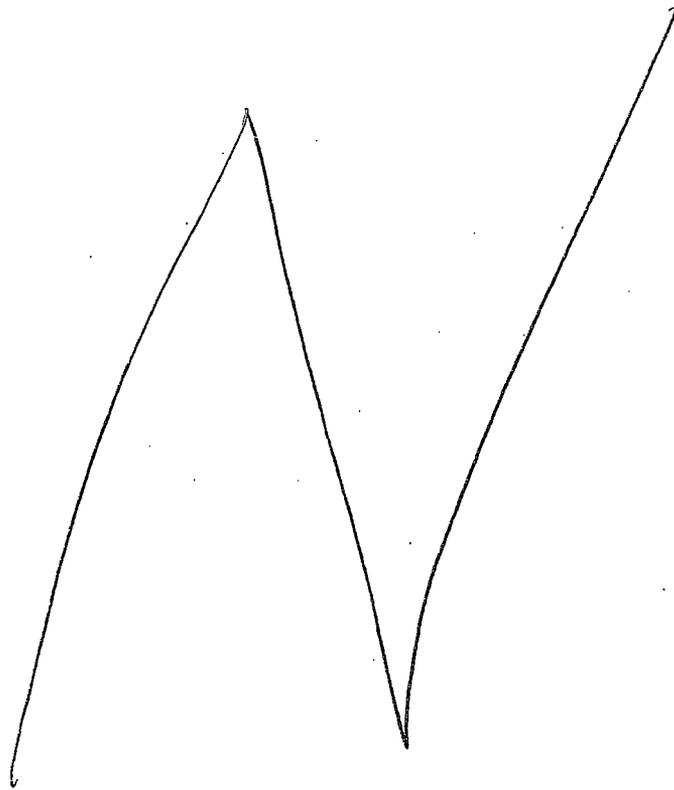
18 A. After he broke away, he takes off running down
19 Granat toward -- closer going into the trailer park.

20 Q. Okay. I'm going to give you a different color
21 pen, if I can find one. That's blue up there? Okay.

22 Can you put a triangle where the Defendant was,
23 when you initially contacted him?

24 A. (Witness complies.)

25 Q. Okay. Now, you testified earlier that he took



1 off running.

2 Can you draw a path of where you saw him run?

3 A. Took off running this direction, down Granat.

4 Q. Okay. You can go ahead and have a seat for now.

5 Now, as a police officer, do you have training
6 and experience or a protocol what you do when somebody
7 you're trying to detain takes off?

8 A. Tell them to stop running, order them to stop
9 running, you're under arrest.

10 Q. Okay. And what did you do in this particular
11 case?

12 A. That's -- Officer Schandel and me were both
13 running after him, ordering him to stop running. And I'm
14 following -- following him.

15 Q. When you say you order him to stop running, not
16 that I want you to yell in the courtroom, but what's your
17 tone of voice and things of that nature?

18 A. Very loud. You're yelling: Stop running, get
19 down on the ground, you're under arrest. Those are the
20 things you normally say to try and get someone to stop
21 what they're doing.

22 Q. And did the Defendant comply with your order?

23 A. No, he did not.

24 Q. When you're running after the Defendant, what's
25 going on with the other two males? Do you have any

1 concern regarding those folks?

2 A. I'm concerned about them, but they're now behind
3 me so -- I really did not see them until way later again.
4 But you're concerned about what are these other two people
5 behind you doing.

6 Q. Okay. Where did the Defendant run to?

7 A. Again, he was running into the park.

8 Q. Okay.

9 A. Do you want me to show where we eventually
10 caught him?

11 Q. Yeah. Why don't you go ahead and step up to the
12 board and draw the path that he took to the point where
13 you were able to catch up to him.

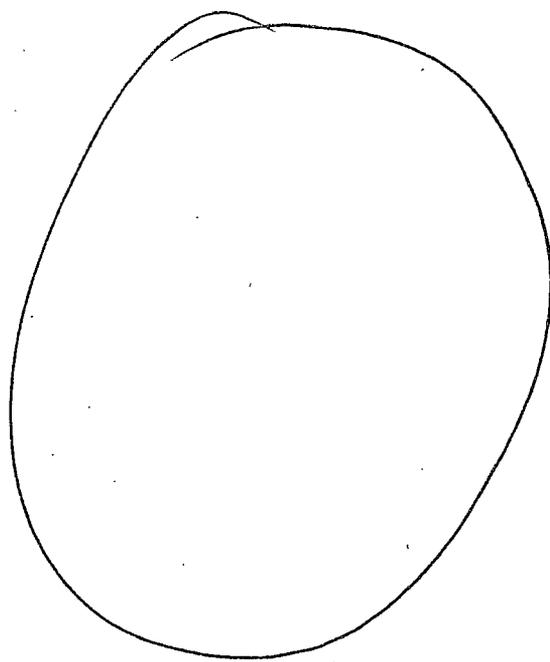
14 A. So this first area right in here (indicating) is
15 kind of just a yard, and then a fence line starts
16 somewhere out in this area.

17 Q. Go ahead and draw the fence line in and mark it
18 with an "F" so we have a good record of what you're
19 talking about there.

20 A. (Witness complies.)

21 Q. When you say there's a fence there, that's the
22 green mark that you made?

23 A. Yeah, the green mark along the side of the road.
24 There's a small -- there is a small area of grass right in
25 here, right beside -- between the road and the fence line.



1 A. Not right at that moment. I did not realize
2 what it was, because it all happened so quickly. After
3 the fact, it was a pistol being racked is what I -- I
4 realized what that noise was later.

5 Q. And did you hear anything from Officer Schandel?

6 A. As soon as we hit the ground with him, I hear
7 Officer Schandel yell out, He's got a gun, He's got a gun.
8 And so I'm, like, oh, crap. And I kind of -- over the
9 side and I seen in his right hand he's gripping a pistol,
10 a black pistol, semi-auto.

11 Q. All right. Now, during the time that the
12 Defendant first took off to the point that you tackled
13 him, did you hear the Defendant say anything?

14 A. No.

15 Q. Okay. Did you hear Officer Schandel say
16 anything, prior to the time that he said the Defendant's
17 got a gun, he's got a gun?

18 A. Other than I know we had both -- were yelling at
19 him to stop running. That's the only thing we told him.

20 Q. When you -- you kind of made a motion, when you
21 said that you heard Schandel say he's got a gun, and you
22 kind of like peeked up a little bit in your chair.

23 Can you describe to the jury what you actually
24 did, when you heard the words, "He's got a gun"?

25 A. Okay. So I'm on my knees, and Mr. Bale is --

1 his body is about right here (indicating) with his back
2 kind of at an angle to me --

3 Q. I need to stop you for a second.

4 When you say stop right here, we have to make a
5 record for the court reporter, so use left or right.

6 A. All right. To the left quarter of me would be
7 how I would explain it. I'm on my knees. He's down on
8 his knees. And I'm not quite sure if Schandel is -- if he
9 was on his knees or sitting, what position he ended up in.
10 Because I couldn't see most of his body, because he was on
11 the other side of Mr. Bale. I see -- Officer Schandel
12 yells, He's got a gun, He's got a gun. So I kind of pop
13 up a little bit to see over his shoulders.

14 Q. The Defendant's shoulders?

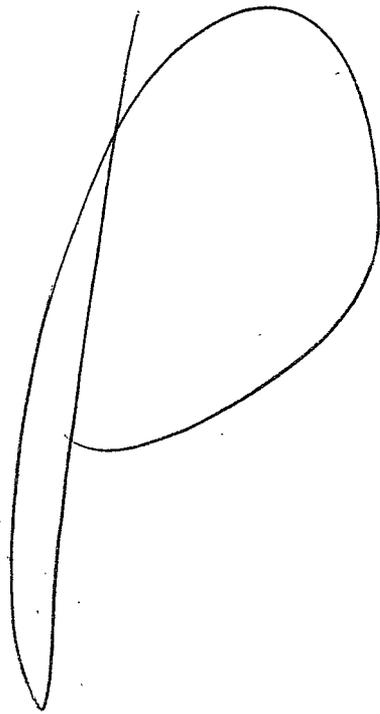
15 A. The Defendant's shoulders. I just raise up a
16 little, and then that's where I see he's got the pistol in
17 his right hand.

18 Q. Okay. What did you notice about the pistol,
19 initially?

20 A. I noticed the pistol, initially.

21 Q. What did you notice -- did you notice anything
22 about the state of the pistol?

23 A. That was just a little bit later, after I --
24 because what happened is, I saw the pistol, and I went
25 over and grabbed the top of the barrel with both hands.



1 Q. Okay. Why not just huck it or throw it and get
2 it a distance away?

3 A. Because there's still several other individuals,
4 the other two males, that were -- I did not see them,
5 because I was totally focused on Mr. Bale, at the time.
6 But there was still other people around. I mean, it's a
7 trailer park where there are other people and children
8 that live there. So you never just throw a weapon that
9 you've taken, ever.

10 Q. So based on your training and experience and
11 protocol, you kept it on your person?

12 A. Correct.

13 Q. So after you wrenched the gun away from the
14 Defendant and you put it back so he can't get it, what did
15 you do then?

16 A. I'm still trying to hold on to Mr. Bale and --

17 Q. What's he doing?

18 A. He's trying to break free of my grasp, at that
19 point. And Officer Schandel, he was on the radio. I
20 heard him calling out to CenCom. Everything had happened
21 so quickly. We had not been able to advise CenCom that we
22 were in a foot pursuit or, you know, fighting with a
23 person with a gun.

24 Q. Okay. I'm going to stop you there. Let's talk
25 about that for a minute.

1 What is the standard protocol for you to alert
2 CenCom or your dispatcher that you're chasing after
3 somebody?

4 A. You get on the radio and inform CenCom. And
5 then the world is going to be coming your direction.

6 Q. Is that the purpose of it, to have backup?

7 A. Yes, correct.

8 Q. Now, when you first saw the Defendant running
9 from the area of the car, why not, at that point, call for
10 CenCom?

11 A. It was so dynamic and quick. We just didn't
12 have a chance to -- you know, he didn't make it that far
13 before we tackled him, were fighting with him, so we just
14 never got a chance to get out on the radio.

15 Q. Why not, during the time that you're struggling
16 with him, click your radio on?

17 A. There's no way I'm going to release my grip on
18 the weapon to get on the radio. My sole concern, right at
19 that point, was to not be shot.

20 Q. Okay. So you hear Schandel calling for backup.
21 What is the Defendant doing?

22 A. He was still struggling.

23 Q. What do you mean by struggle?

24 A. Just pulling out of the grip. You know, I'm
25 trying to hang on to him, and he's pulling away, pulling

1 away, trying to get up.

2 Q. At this point in time, can you describe the
3 positioning of yourself, Schandel and the Defendant?
4 You've got the gun away from him. He's pulling away from
5 you. How is he -- his body?

6 A. I would be facing him. He was in front, and I'm
7 still to the side of him. And then Officer Schandel was
8 still on the other side.

9 Q. Is he on his knees? On his back? Describe how
10 he was, if you can recall.

11 A. I know I was on my knees. I believe Mr. Bale
12 was on his knees. I'm not sure of Officer Schandel's
13 position, because there was a body in between me and him.
14 I think he was on his knees, but I'm not 100 percent sure.

15 Q. All right. What happened next?

16 A. I only had one grip on Mr. Bale. And because
17 Officer Schandel also was on the radio, he only had one
18 grip on -- also on Mr. Bale. So he was able to stand
19 up -- break our grip, stand up and take off running again.

20 Q. Okay. Now, what color did we use yesterday?

21 A. Green.

22 Q. Can you describe to the jury what Mr. Bale then
23 did?

24 A. He ran eastbound, still on Granat Street, back
25 down farther into the trailer park.

1 Q. Okay.

2 A. Then he cut southbound at the corner, that
3 corner trailer. He went then south back towards Powers
4 Park.

5 Q. All right. I'm going to ask you to step to the
6 board, and let's draw another line that shows the jury the
7 direction. Go ahead and draw it, and then we'll discuss
8 it.

9 A. (Witness drawing.)

10 Q. Okay. Now, you've drawn a line that's kind of a
11 curved line towards the left side of the paper, as you're
12 looking at the paper, towards Powers Park.

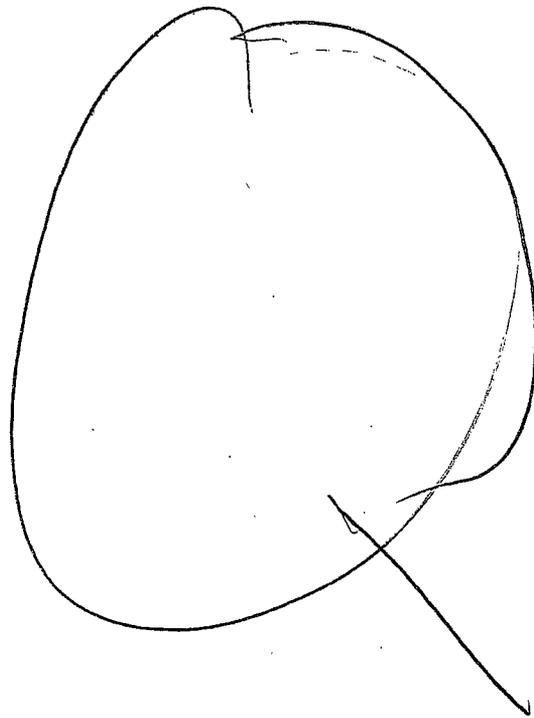
13 A. Correct.

14 Q. Now, can you describe to the jury what is the
15 terrain right there?

16 A. Again, this is a roadway.

17 Q. You're talking about Granat there?

18 A. Yeah, on Granat and then into the trailer park.
19 This is a roadway (indicating). But he kept through the
20 very small grassy area. And there's trees in this area on
21 the corner, a couple of trees. And he cut through that at
22 the edge of the trailer right here then just basically ran
23 through. And then right here there's a fence line here
24 that separates this park from Powers -- or the trailer
25 park from Powers Park. But there is a break in the



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1 A. I had no idea. And plus there's a cover issue
2 on the -- if I'm on the other side of the car, right at
3 that point, I'm -- if he's got -- if he had another
4 weapon, I have some cover between me and him.

5 Q. Was there anybody inside the vehicle?

6 A. There was a female sitting in the driver's seat
7 of that vehicle.

8 Q. Now, once you got yourself positioned where you
9 needed to be, what happened?

10 A. I still had my gun on him, pointing at him,
11 ordering him to get down on the ground, get down on the
12 ground.

13 Q. Did he?

14 A. Did not.

15 Q. Okay. About how many times did you order him
16 down?

17 A. Three to four times.

18 Q. What's your tone of voice?

19 A. Very loud and stern. I was yelling it.

20 Q. At what point during the run did you pull your
21 service revolver?

22 A. While we were still -- after we started chasing
23 him the second time, after the struggle. And I think it
24 was right after Officer Schandel had tripped, as we were
25 coming around that bottom edge and heading back towards

MORRISON - Direct, cont'd (by Ms. Montgomery)

State v. Bale, 11/1/12

1 the park, is where I draw my service revolver.

2 Q. The fact that Officer Schandel fell, did that
3 cause you concern that now you're one-on-one with this
4 guy?

5 A. Absolutely. And that's the biggest reason why.
6 Right at that point I'm, like, now I'm in this by myself,
7 at least for a bit. And that's why I drew my service
8 weapon.

9 Q. Okay. Now, you've got his gun in which of your
10 hands?

11 A. My left hand.

12 Q. Which is your gun hand?

13 A. My right hand.

14 Q. Now, in the academy or in your trainings after
15 that, do you folks train on drawing your weapon? Is that
16 something you guys do?

17 A. A lot of.

18 Q. How come?

19 A. Practice makes perfect. You want to be able to
20 holster, draw, snap, do everything without even having to
21 look at your holster.

22 Q. Let's talk about your holster for a minute.

23 How is your holster -- how does that holster
24 your gun and hold it in there so when you're running or
25 whatever it doesn't fall out?

MORRISON - Direct, cont'd (by Ms. Montgomery)

R

1 A. It has a retention, double retentions on it,
2 where you have to push a lever and also slide the bail
3 down, before you can actually pull the gun out.

4 Q. Now, are you proficient with doing that with one
5 hand?

6 A. Yes.

7 Q. Can you do it on the run?

8 A. Yes.

9 Q. Did you, in fact, do it this time?

10 A. I did.

11 Q. So back to the car, you are at -- basically over
12 the top of the car with the Defendant. He's on one side.
13 You're on the other.

14 What is the Defendant doing, when you're
15 ordering him to get down on the ground?

16 A. He was yelling at the driver of the vehicle to
17 start it, let's go, let's go, let's go.

18 Q. And what is his body doing, at that time?

19 A. He was initially starting to get into the
20 vehicle.

21 Q. Okay. And did that change?

22 A. It did.

23 Q. Okay. Now, you've got him at gunpoint. He's
24 pulled a gun on you. Why not just shoot him dead?

25 A. Because I -- it doesn't meet the force of --

State v. Bale, 11/1/12

1 doesn't meet the requirements for the use of deadly force,
2 at that point, because I have his weapon. I don't see
3 another weapon in his hands, at that point. So I'm not
4 going to just shoot somebody for that.

5 Q. You talked about the protocol for using deadly
6 force with somebody.

7 Would there have been a different protocol in
8 place at the initial point where you took him to the
9 ground, if you had your service revolver out?

10 A. Yes.

11 Q. And what would that have been?

12 A. That would have met the requirements for the use
13 of deadly force.

14 Q. You're over the top -- you're on the opposite
15 sides of the vehicle of the Defendant.

16 Does he get in the car?

17 A. He does not fully get into the car when he finds
18 out the car is not going anywhere.

19 Q. Okay. What does he do next?

20 A. He -- I'm still ordering him, still telling him
21 get down on the ground, get down on the ground. He's not
22 doing it. He -- he's just -- I'm wanting to kind of get
23 around on him, at this point, because I don't see he has a
24 weapon in his hands. So I'm trying to -- I'm moving
25 towards the front of the vehicle, and he kind of moves to

MORRISON - Direct, cont'd (by Ms. Montgomery)

S

1 arriving on scene.

2 Q. Okay. Where is the Defendant's gun, at this
3 point?

4 A. I still had it, at that point.

5 Q. All right. At some point, are you able to make
6 sort of an inspection of this weapon to see, you know,
7 what type of weapon it was?

8 A. Yeah. Just a little bit after that, I go, okay,
9 I've still got this weapon. I need to make it safe. And
10 then that's what I did.

11 Q. Okay. Was that pretty immediately thereafter?

12 A. Yes.

13 Q. How do you go about making a weapon safe?

14 A. You eject the magazine. For a semi-auto pistol,
15 it will have a button on it that you'll hit, and it'll
16 eject the magazine that contains the bullets. So I took
17 that out, saw that it had bullets in the magazine, and
18 then take the slide and you rack it back. And you're
19 doing this, obviously pointing it down at the ground, pull
20 it back. And then to make sure the chamber is clear,
21 inspect the chamber and then leave the slide lock back.

22 Q. Did you do that?

23 A. Yes.

24 Q. And then what, if anything, did you discover in
25 the chamber?

1 A. I discovered that there was not a round in the
2 chamber.

3 Q. Were you surprised by that?

4 A. Very surprised.

5 Q. Why were you very surprised by that?

6 A. Well, the gun was cocked. And normally, when
7 you rack a gun properly and it cocks it, when the slide
8 goes forward, it usually puts a round in the chamber.

9 Q. All right. Now, on a semi-automatic -- is this
10 a 9mm, by the way?

11 A. Yes. This was a black Hi-Point M95 Detective,
12 9mm.

13 Q. I want to talk about the hammer for a minute.
14 Is a hammer being back, or cocked is the word,
15 is that a universal signal of something for somebody who
16 is looking at this gun?

17 A. Yes. That is a signal that it's ready to shoot;
18 that there's a round in the chamber and ready to go.

19 Q. Okay. Now, when you folks have weapons or other
20 pieces of evidence that you want to retain for purposes of
21 your investigation, do you have a procedure that you take
22 to secure these things?

23 A. Yes. It will eventually be placed into our
24 evidence room.

25 Q. Okay.

T

1 fingerprints, I want to talk to you a little bit about
2 your uniform.

3 On July 2, 2012, what kind of vehicle were you
4 operating?

5 A. A police motorcycle.

6 Q. All right. And in terms of operating a
7 motorcycle, do you wear anything on your hands?

8 A. Gloves.

9 Q. Why do you wear gloves?

10 A. For protection in case you crash.

11 Q. Okay. What do the gloves -- what do the gloves
12 look like?

13 A. They're black, leather palm. And it was
14 somewhat warm that day, so I was wearing my ventilated.
15 So it's kind of like a cloth material on the back that
16 just allows air to flow in but leather in the palms.

17 Q. Okay. As part of your training and experience,
18 are you trained to take fingerprints off of items? Do you
19 do that?

20 A. Yes, in the academy.

21 Q. Okay. And throughout your career, have you done
22 that in cases?

23 A. Occasionally.

24 Q. Okay. When the State asked for this gun to be
25 fingerprinted, was it, in fact, fingerprinted?

1 A. It was.

2 Q. And were fingerprints found?

3 A. No.

4 Q. Did that surprise you?

5 A. No.

6 Q. Why not?

7 A. From my experience, it's actually very few times
8 do you actually retrieve good prints off of an item such
9 as this or in a lot of cases. It's almost -- it's a lot
10 of luck that somebody actually touched the proper surface
11 the right way to leave a good print and that it is
12 undisturbed enough by the time you get it to fingerprint
13 it to actually get a decent or a useable print.

14 Q. Now, in this particular case, you had gloves on
15 your hands.

16 A. Correct.

17 Q. With the gloves on your hands, are you able to
18 leave your prints on that weapon?

19 A. No.

20 Q. Why not?

21 A. Because I've got gloves on.

22 Q. All right. What, if anything, could be the
23 effect of your gloved hands on the surfaces that the
24 Defendant touched?

25 A. It could wipe off any prints that could possibly

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1 exist on it.

2 Q. Would you have been less surprised if there was
3 fingerprints on the gun if you had not been wearing gloves
4 that particular day?

5 A. Not really.

6 Q. I'm going to ask you to go ahead and take a look
7 at the evidence tape there. There's lots of writing on
8 that box.

9 Can you describe what that writing is, not this
10 writing where I'm talking about the make and model and
11 stuff but along the evidence tape. I want you to focus on
12 that.

13 A. There are multiple dates and initials where
14 it -- the box was opened for purposes -- I know the first
15 one was for actually taking it out to do the
16 fingerprinting but other dates where the weapon eventually
17 was test fired. And so each time it was repackaged, new
18 evidence tape was placed over the seams and initialed and
19 dated by the persons doing whatever actions are required
20 with it.

21 Q. All right. From time to time when there is a
22 case, an investigation, does the State ask the police
23 department to do certain activities with a piece of
24 evidence?

25 A. Yes.

1 Q. Okay. And in this particular case, did I ask
2 for that gun to be test fired?

3 A. Yes.

4 Q. And were you aware that Trey Holden from your
5 office test fired that gun?

6 A. Yes.

7 Q. Were you aware that I also asked for another
8 sort of inspection of that gun at a later date?

9 A. Yes.

10 Q. And were you aware that Andy Brandon did that
11 second test?

12 A. Yes.

13 Q. Okay. Does that -- your knowledge square with
14 the initials that are on that evidence tape?

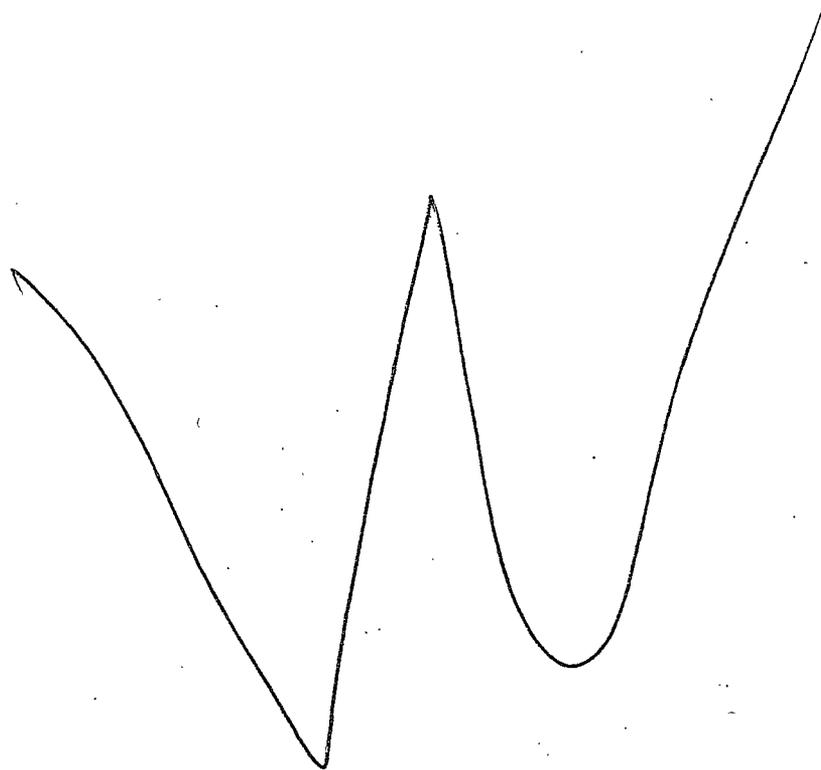
15 A. Yes.

16 Q. Okay. Do you recognize Holden and Brandon's
17 initials?

18 A. It's hard to tell. There's so many on here.
19 Yes.

20 Q. Okay. Go ahead and cut open that box. Don't
21 pull -- I don't think you can pull anything out. But go
22 ahead and just kind of look at it without showing the
23 jury, at this point.

24 A. I'll tell you a little bit. There's a lot of
25 tape on this.



1 box.

2 MS. MONTGOMERY: Right, Your Honor. I'm just
3 going to hold it up.

4 THE COURT: Okay.

5 MS. MONTGOMERY: It's usually her but --

6 THE WITNESS: The weapon is safe.

7 THE COURT: Either way.

8 MS. MONTGOMERY: Myself?

9 THE COURT: You may.

10 MS. MONTGOMERY: Okay. Thank you.

11 BY MS. MONTGOMERY

12 Q. Now, we're going to talk a little bit about this
13 gun where you're going to have to touch it and stuff like
14 that.

15 Can you -- holding it up -- well, can you
16 identify the hammer on that gun?

17 A. It's hard to see with the slide back, but you
18 can see the bottom of it.

19 MS. MONTGOMERY: All right. Move to publish the
20 officer pointing at the hammer, just from the witness
21 chair.

22 THE COURT: Granted.

23 MS. MONTGOMERY: Okay.

24 BY MS. MONTGOMERY

25 Q. Can you hold that box up to the jury and point

1 to where the hammer is?

2 A. It's partially obscured because where the slide
3 is back, locked back right now. But this is the bottom
4 portion of the hammer.

5 Q. So does the hammer operate sort of like on a
6 hinge-type of deal, where you slide it back, it pushes the
7 hammer back? So if the gun is not, basically, cocked, for
8 lack of a better word, what position will the hammer be
9 in?

10 A. It will be forward.

11 Q. And will it rest on the body of the gun, the
12 rear end of the gun?

13 A. Yes.

14 Q. Okay. Now, I showed you what's been marked as
15 State's Number 4.

16 How -- this is the BB gun, you indicated?

17 A. Yes.

18 MS. MONTGOMERY: The State offers four.

19 MR. KIBBE: No objection.

20 THE COURT: Admitted.

21 BY MS. MONTGOMERY

22 Q. Okay. How is this BB gun different than that
23 gun, in terms of -- I want to talk about the slide, so to
24 speak.

25 A. Well, this -- on this BB gun, what actually

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1 Q. So for a lack of a better analogy, is it a
2 decent analogy to say that he was sort of, like, in a
3 center's position in a football game, and you're sort of
4 in a quarterback position, to the side of him, so that he
5 and you are facing the same direction, as opposed to being
6 face-to-face?

7 A. We were not face-to-face but -- we weren't
8 totally face-to-face either. He was still looking more --
9 if I'm looking straight ahead, he's looking more this way
10 (indicating). And, I mean, he was turning his head. But,
11 I mean, his general body positioning was this direction.
12 And then he was turning, twisting around with the gun like
13 that.

14 Q. In the area where he was facing, was there
15 adequate place to pitch a gun or toss a gun to get it away
16 from him and you?

17 A. Yeah, absolutely. Or he could have just let go
18 of it.

19 Q. That was my next question.

20 Did he do anything with his hand movement to
21 suggest that he was trying to let go of that gun?

22 A. No. When I took the gun from his hand, it took
23 everything I had to twist up and out to break his grip on
24 it.

25 MS. MONTGOMERY: I have nothing further, at this

1 time.

2 THE COURT: Mr. Kibbe, cross examination?

3 CROSS EXAMINATION

4 BY MR. KIBBE

5 Q. Good morning, Officer.

6 A. Good morning, sir.

7 Q. All right. So let's -- at the time of the
8 pursuit on foot -- we've been over this -- you talked
9 about the fact that you caught up with Mr. Bale and took
10 him to the ground. And at that point, you didn't see the
11 weapon until he was already on the ground; is that
12 correct?

13 A. Correct.

14 Q. Did you do anything besides just tackle him, in
15 terms of did you hit him or punch him or anything like
16 that?

17 A. No.

18 Q. And did he -- he didn't make any statements at
19 any time during that, right?

20 A. No, he did not.

21 Q. He did not make any threats with the weapon,
22 nothing like, I'm going to shoot, or something like that?

23 A. He never said anything.

24 Q. All right. And during the time that you're
25 struggling over this weapon, you've indicated that he was

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1 was assigned by CenCom to this call.

2 Q. How do you actually receive the case number?

3 A. We call CenCom on the radio, assign a case
4 number. They do it, and then they give us the case
5 number. And then it's attached to the case. So when you
6 do your report, it automatically populates all the events
7 that occurred into that case report.

8 Q. So you don't have to keep typing the case number
9 over and over?

10 A. No.

11 Q. Now, is everything about that case sort of
12 umbrellaed under that particular case number?

13 A. Yes.

14 Q. Is that true for this particular case number?

15 A. Yes.

16 Q. So when evidence is stored in the evidence
17 locker, initially, is it stored by unique case number?

18 A. It is.

19 Q. Okay. And is it the same case number that you
20 get from CenCom?

21 A. Yes.

22 Q. Do you have a knife on you? You do?

23 That's okay. You can sit. You're going to use
24 it, so you can hang on to the knife. Thanks.

25 Now, after the Defendant was in handcuffs and

1 dealt with, did you have an opportunity to walk back the
2 trail of the chase?

3 A. I did not.

4 Q. Okay. Were you aware that other officers had
5 done that?

6 A. Yes, I was.

7 Q. Okay. Were you -- when you first contacted the
8 Defendant, did you notice, like, what he was wearing?

9 A. It was blue jeans, a shirt and kind of a jacket
10 over that.

11 Q. Did he have a hat on?

12 A. At which point?

13 Q. At the very beginning.

14 A. At the very beginning? I believe he had a --
15 like a watch-cap-type or a beanie-type cap, I believe.

16 Q. Did you -- were you aware, at some point, that a
17 holster was found?

18 A. I was.

19 Q. Okay. How did you become aware of that?

20 A. Officer Schandel told me that when he walked
21 back, due to -- he had to go back to pick up some other
22 items. But while back there, he did locate a holster
23 about 15 feet from the point where we initially tackled
24 Mr. Bale --

25 Q. Okay.

1 holding on to the grip of the pistol.

2 A. Correct.

3 Q. And that would be how you would have to hold the
4 gun if you were, in fact, going to fire it; correct?

5 A. Yes.

6 Q. You've indicated you're not sure exactly if his
7 finger was on the trigger; is that correct?

8 A. I could not see his -- I wasn't looking at his
9 trigger finger.

10 Q. Okay. But from your perspective, is there
11 anything that would have -- could he have been able to
12 fire the weapon?

13 A. The way he was holding it, all he had to do is
14 move his finger into the trigger and fire.

15 Q. Right. And that didn't happen; right?

16 A. That did not happen.

17 Q. And were you injured, during the course of your
18 time with Mr. Bale?

19 A. Scuffed up knees and such, just from fighting on
20 the ground with him.

21 Q. So you didn't require any hospitalization?

22 A. No.

23 Q. We've talked about the fact that no fingerprints
24 were recovered. And you didn't perform that test; is that
25 correct?

1 A. I did not.

2 Q. Is that something you normally don't do, as a
3 patrol officer?

4 A. We do that, like, on the scene of, like,
5 residential burglaries, car prowls. Stuff like that we'll
6 dust for prints. Something like this, though, we'd prefer
7 to have someone who does it more often do that printing.
8 And so we have a lab technician who works for the
9 Department who actually did the testing for that.

10 Q. All right. And you've told the Court that to
11 your knowledge no fingerprints were recovered; correct?

12 A. That is correct.

13 Q. And you give an explanation to why that could be
14 the case.

15 Are you aware of any other -- any other physical
16 evidence, other than, you know, you're saying that you
17 took the weapon from him, that would say Mr. Bale
18 possessed it? Any other physical evidence tying him to
19 the weapon?

20 A. The holster.

21 Q. Any DNA or anything recovered off the holster or
22 anything like that?

23 A. I do not believe that was tested.

24 Q. When you ultimately got Mr. Bale to the ground
25 by the vehicle that you talked about here, were you pretty

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and

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1 upset with him?

2 A. Oh, I was upset, yeah.

3 Q. Did you tell him that, to your knowledge? Did
4 you express --

5 A. Yeah, I expressed I was upset.

6 Q. How would you have expressed that?

7 A. I was telling him to get f-ing on the ground.

8 And then after the fact, I was, How dare you pull a gun on
9 me.

10 Q. Did you do anything besides just Taser him?

11 A. What's that?

12 Q. Did you assault him in any other way, other than
13 just tase him?

14 A. Absolutely not.

15 Q. And Officer, so let's talk -- the weapon you
16 have in your hand and when the other officers arrive,
17 where does that weapon go? How does it get from your
18 hands to the police station?

19 A. I initially -- after I made the weapon safe, I
20 turned it over. Deputy McDonald had arrived on scene.
21 And I was still out of breath from the whole scenario. So
22 I was, like, just trying to catch my breath afterwards.
23 And she goes, Do you want me to take that from you for
24 now? And I said yes. So I go ahead and handed over the
25 safe weapon and the magazine to Deputy McDonald.

1 Q. So you didn't participate in packaging the
2 weapon?

3 A. I did not package that weapon.

4 MR. KIBBE: Nothing further at this time.

5 THE COURT: Redirect?

6 MS. MONTGOMERY: Very briefly.

7 REDIRECT EXAMINATION

8 BY MS. MONTGOMERY

9 Q. We talked about the fact that the holster was
10 not fingerprinted; is that correct?

11 A. Correct.

12 Q. All right. Are there certain --

13 A. Or DNA.

14 Q. Yeah, DNA.

15 Are there certain types of surfaces that
16 fingerprint better than others?

17 A. Correct. A solid, flat surface, something
18 that's non-textured, non-material will, hopefully. Glass
19 is a good surface for fingerprints, mirrors. Some metal
20 surfaces that are very smooth to the touch are good for
21 that.

22 Q. How about nylon fabric?

23 A. You're never going to get a fingerprint off of a
24 nylon fabric.

25 Q. What about the base of a gun grip that's kind of

1 bumpy?

2 A. It's just not a suitable surface to pick up a
3 print.

4 Q. Okay. Now, in every case where you have
5 evidence that's found on a suspect, do you send all that
6 stuff off to the lab to DNA it?

7 A. No.

8 Q. Why not? That would be a great way, if we could
9 get DNA off of stuff.

10 A. The lab can't do that much work. It has to meet
11 certain requirements for the lab, like a murder or
12 something like that, before they usually go spend the time
13 and the cost and expense of DNA testing, which takes
14 awhile, also.

15 Q. Okay. And in this particular case, talk about
16 DNA on the holster.

17 Where would you expect to potentially get DNA
18 from the Defendant's body on a holster? Would you expect
19 there to be saliva?

20 A. No.

21 Q. Blood?

22 A. No.

23 Q. Fingerprints?

24 A. No.

25 Q. Semen?

1 A. No.

2 Q. What about skin cells?

3 A. Possibly would be -- that would be about the
4 only thing you could, possibly. But, I mean, this type of
5 nylon holster is attached -- at least looking at the
6 holster, it attaches to the outside of a belt. So the
7 probability of that is very little.

8 Q. Is that holster the type of thing that the lab
9 would even accept for DNA analysis?

10 A. No.

11 MS. MONTGOMERY: Nothing further.

12 THE COURT: Re-cross?

13 MR. KIBBE: No, Your Honor.

14 MS. MONTGOMERY: Subject to recall, Your Honor.

15 THE COURT: Subject to recall, Officer, you may
16 retake your seat.

17 MS. MONTGOMERY: I'm ready to go, if the Court
18 is.

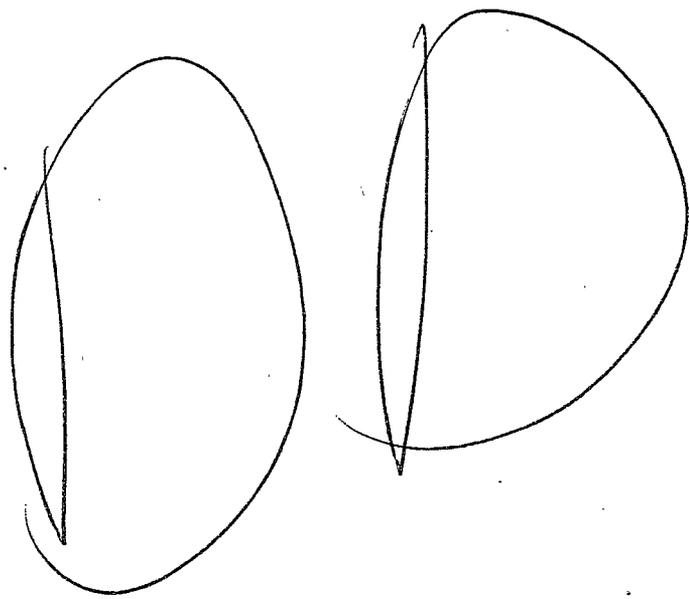
19 THE COURT: Let's do that.

20 MS. MONTGOMERY: All right. Let's call Officer
21 Schandel.

22 CHARLES LEE SCHANDEL,

23 having first been sworn
24 under oath, testified
as follows:

25 THE COURT: Please have a seat, sir.



1 Q. Now, why would you leave two guys on the trunk
2 of your car to chase after the Defendant when Morrison
3 already is?

4 A. I'm not going to leave my partner alone chasing
5 somebody.

6 Q. Okay. Is that the standard procedure for police
7 officers?

8 A. Pretty much.

9 Q. Did it give you any pause that you had two guys
10 back there that you hadn't quite ID'd?

11 A. It did. But I did ID them. I had their ID in
12 my hand. I knew who they were. So even if they ran, I
13 knew who they were.

14 Q. What about from a safety concern perspective of
15 having two guys there that --

16 A. It's a huge safety concern. But given that
17 somebody's running, it's usually they're trying hide
18 something. There's something more going on with those
19 guys who's running away. And once we catch them,
20 99 percent of the time we're going to go to the ground.
21 We're going to end up in a fight with them. And the last
22 thing we want is one cop rolling around on the ground with
23 some bad guy by himself. Just don't do it.

24 Q. So you gave chase?

25 A. Yes.

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1 Q. Did you happen to catch up with Officer Morrison
2 and the Defendant?

3 A. Yes.

4 Q. About how far of a jump did they have on you?

5 A. Not very much because I started running the same
6 time they did.

7 Q. All right. Describe what happened when you
8 folks took Mr. Bale down?

9 A. Well, I had come up on Mr. Bale's left side.
10 Officer Morrison was behind Bale. As soon as we got -- I
11 got up next to him, we took him to the ground. I was up
12 towards his head. Officer Morrison was down towards his
13 feet. Immediately I saw that Mr. Bale was holding a
14 semi-automatic handgun in his right hand.

15 Q. How was he holding it?

16 A. He was holding it in a firing position. It
17 appeared to me he was trying to point it at Officer
18 Morrison.

19 Q. Could you get a good look at the position that
20 the gun was in, specifically the hammer?

21 A. Yes.

22 Q. And what did you observe?

23 A. It was cocked to the rear.

24 Q. Okay. What does that mean to you?

25 A. It means the gun's ready to fire.

Handwritten characters resembling the letters 'E' and 'L'.

State v. Bale, 11/1/12

1 split seconds. You have seconds to go through your
2 options on what you can do.

3 Q. Did you think that if you let go of the
4 Defendant, with the grips that you had on him, that there
5 was -- in order to go for your gun to shoot him dead, did
6 you think that that would put Officer Morrison and
7 yourself at great risk?

8 A. Yes. And that's the only reason why I didn't.

9 Q. Okay. Now, you've indicated that you were in
10 fear for Officer Morrison's safety.

11 How afraid were you for your own?

12 A. Not as much as for Officer Morrison because I --
13 in my position as being a training officer, he was one of
14 my officers I trained. And I tend to take personal
15 responsibility for everyone I deal with down there. So
16 putting my own safety at times comes secondary for my
17 partners I work with, especially the ones I trained. But
18 I still had a realistic fear that -- there's no doubt in
19 my mind, if he's going to use the gun on one of my
20 officers, he's going to try to use it on me. And the last
21 thing I wanted to be in is in a fight with him, by myself,
22 with a gun, knowing my partner's down.

23 Q. What was the Defendant doing with the gun?

24 A. He was -- I believe he was trying to point it at
25 Officer Morrison.

SCHANDEL - Direct (by Ms. Montgomery)

1 Q. What made you think that?

2 A. Because he was fighting us and continuously --
3 we kept trying to take the gun away. We were giving him
4 instructions. And he was holding it to the point where he
5 was pushing it back towards Officer Morrison. Officer
6 Morrison had to push it away, and I was trying to pull it
7 away.

8 Q. How good was your angle, in order to wrench that
9 gun away from the Defendant?

10 A. I was parallel to the gun.

11 Q. So in terms of your ability to get a grip on
12 that and yank it away not so good?

13 A. No.

14 Q. Okay. Did you have any thought process, based
15 on your training and experience, either then or now, about
16 what might have happened had Officer Morrison gone down?
17 What would you have done? If the Defendant had shot
18 Officer Morrison, what's your step? What do you do?

19 A. First thing I'd probably shoot him. If I could,
20 I'd shoot him. If I couldn't, I'd do whatever I can to
21 try to get control of him still.

22 Q. All right. In a semi-automatic that is
23 functioning properly, if you take a shot at one person, do
24 you have to reload the gun or do anything else before you
25 can take a shot at another person?

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1 A. I didn't feel I could make up that distance
2 quick enough to get with them.

3 Q. Did you then happen on to Morrison and the
4 Defendant?

5 A. Yes.

6 Q. Where did you see them next?

7 A. When we entered Powers Park, there was the
8 vehicle that was in the park that we originally got the
9 call on. They were directly at the rear of the car.
10 Mr. Bale was down on his hands and knees, facing
11 northbound. Officer Morrison was behind him with his
12 Taser out.

13 Q. Okay. What did you do?

14 A. I came up on Mr. Bale's left side, and I put him
15 in handcuffs.

16 Q. And at some point in time, did you go back along
17 the trail where you guys chased him?

18 A. Yes.

19 Q. Okay. Did you discover anything that was
20 interesting to you?

21 A. Well, we got a call from a witness there who
22 said that they saw a -- some items being thrown, so we
23 returned to the area. And I walked back up, exactly
24 retraced the route that we chased Mr. Bale. Where we took
25 him to the ground, about 15 feet to the west of that or.

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1 just between -- between my patrol car and where we took
2 him down to the ground I found a black nylon holster, the
3 stocking cap that Mr. Bale was wearing, when we originally
4 made contact, and his wallet, which contained his ID.

5 Q. Okay. I'm showing you what's been marked as
6 State's 3 for purposes of identification.

7 Can you take a look at that and see if you
8 recognize it?

9 A. It's an ankle holster that Mr. Bale had.

10 Q. Okay. How do you know it's an ankle holster?

11 A. Well, it's from the strap that goes -- that's --
12 Velcro strap that comes away from the holster. And also,
13 it can be used inside the belt, because it has a clip on
14 it, as well.

15 Q. All right. Does that look as -- in the same
16 condition as when you saw it on July 2, 2012?

17 A. Yes.

18 MS. MONTGOMERY: State offers three.

19 MR. KIBBE: No objection.

20 THE COURT: Three will be admitted.

21 We will take our morning recess. Ladies and
22 gentlemen, we'll recess until 10:55.

23 I'd like to remind you not to discuss the case
24 amongst yourselves or with anyone else, during the recess.
25 Do not permit anyone to discuss it with you or in your

66

1 Q. Okay. Now, you testified earlier that some
2 people who were sort of just witnesses saw the other two
3 males associated throw some stuff.

4 A. Yes.

5 Q. Did you recover or was a BB gun recovered?

6 A. Yes.

7 Q. Did you get a look at the BB gun?

8 A. Yes.

9 Q. And did it look different than the weapon that
10 Mr. Bale had?

11 A. Yes.

12 Q. Okay. Is there any doubt in your mind that the
13 weapon that Mr. Bale had was a semi-automatic gun, 9mm, as
14 opposed to a BB gun?

15 A. No doubt in my mind whatsoever.

16 Q. You suffered some injuries?

17 A. Yes.

18 Q. All right. I'm going to show you what's been
19 marked as State's 5, 6, 7, 8, 9, 10, and 11. Can you just
20 go ahead and just quickly look through those and then look
21 up when you're done.

22 A. (Witness complies.)

23 Q. Okay. Do you recognize those photos?

24 A. Yes.

25 Q. Do those photos accurately reflect the injuries,

1 presence. This admonishment applies to the evidence, the
2 parties, their lawyers, the witnesses or anything
3 concerning the case. Continue to keep your mind open and
4 free of outside influences so that you can decide this
5 case on the evidence under the Court's instructions.
6 Please leave your notebooks on the seat of your chair so
7 that only your seat number appears.

8 (Jury exits the courtroom)

9 (Recess)

10 (Jury enters the courtroom)

11 THE COURT: Please be seated. Officer, you
12 remain under oath.

13 Please proceed, Ms. Montgomery.

14 MS. MONTGOMERY: Thank you, Your Honor.

15 BY MS. MONTGOMERY

16 Q. You indicated earlier that you had come to the
17 scene where Officer Morrison was with the Defendant, and
18 you placed him into handcuffs.

19 A. Yes.

20 Q. Did the Defendant say anything to you at all?

21 A. At that point, I don't recall.

22 Q. Okay. If you would have -- if he would have
23 said something to you, you would have put it in your
24 report?

25 A. Yes.

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1 identification, did he provide any of those cards, Social
2 Security, ID?

3 A. No. He said he didn't have it with him.

4 Q. You indicated earlier that your fear, during
5 that fight for that gun, was largely involving Officer
6 Morrison getting shot.

7 A. Yes.

8 Q. How much fear did you have for yourself and the
9 fact that you could potentially be shot, as well?

10 A. Enough of a fear that afterwards I was
11 evaluating my career a little bit. It makes you think
12 about it. Like I stated earlier, my concern, generally
13 and when I'm working with other officers, is more geared
14 towards them. For me it's just the way I am. That's the
15 way most police officers, I think, are is our concern gets
16 put aside, to a certain point, for the public safety or
17 the people we work with. Doesn't mean we don't have a
18 fear of something bad happening. The fear was realistic.
19 It went through my head that it could go very bad for both
20 of us, and one of us could end up laying there dead,
21 especially at that range. It doesn't take no effort to
22 pull that trigger at that range. It was elevated more for
23 Officer Morrison, just simply because Officer Morrison was
24 closer to that gun, and it was easier for Mr. Bale to
25 point that gun at Officer Morrison than it would have been

1 for him to point it at me.

2 Q. Did you actually see Mr. Bale turning, actively
3 turning to point that gun at Officer Morrison?

4 A. No. We had taken the ground, and that's when I
5 saw the weapon.

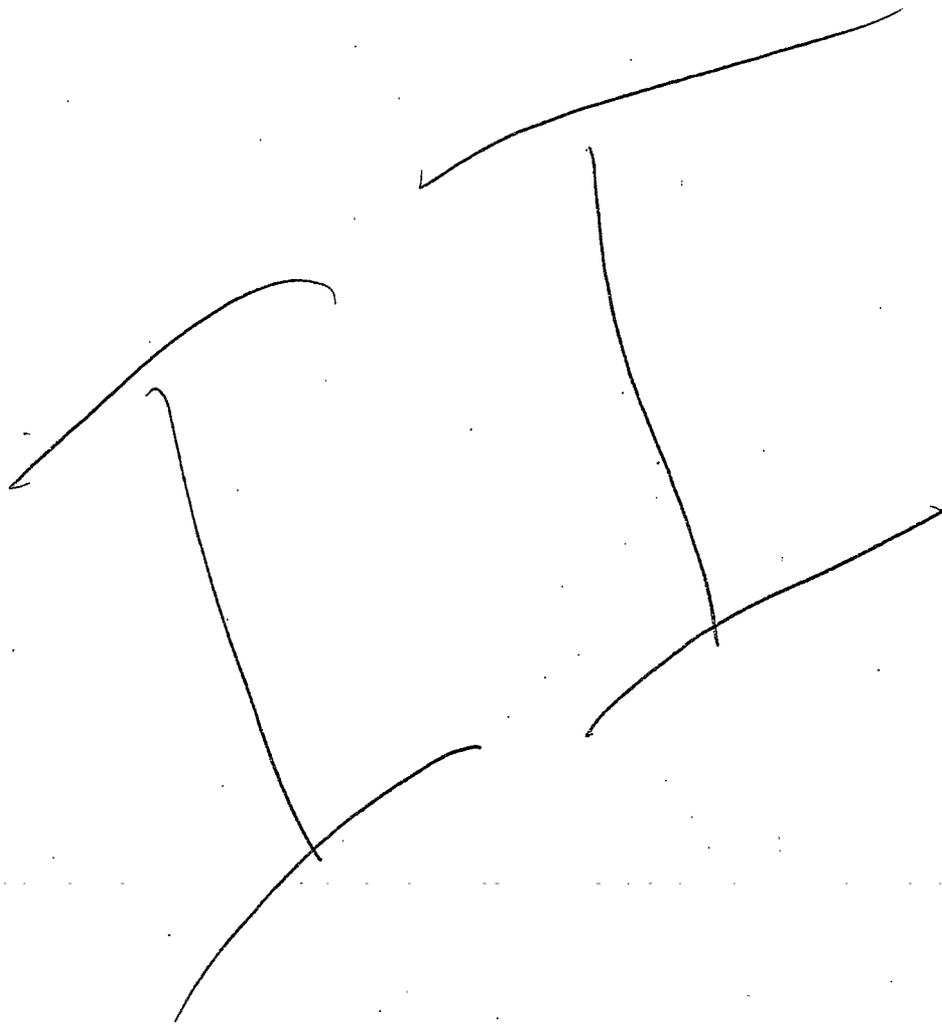
6 Q. So when you were running, he didn't turn and
7 point it at you guys?

8 A. Not that I saw. We were taking -- like I said,
9 I come up on his right side and, as I got up with him,
10 took him to the ground. Where I found his holster 15 feet
11 back, there's really -- in a foot pursuit, 15 feet is
12 nothing. That's a couple steps. So the time it would
13 take him to pull that out and even start to come around,
14 we were on top of him by then, so he wouldn't have a lot
15 of an opportunity to turn. And from my vantage point, I
16 didn't see it. Because like I said, I come up right
17 beside him, and I started to plow into him.

18 Q. Let's talk about that for a minute.

19 If a person is just trying to scare the police
20 off in order to get you folks to stop chasing him, if
21 somebody is to turn and point a gun at you from 15 feet,
22 20 feet distance, are you guys going to keep running into
23 that gun, or what are you going to do?

24 A. We're going to keep running, but we're going to
25 draw down and shoot him.



1 top here is called a follower. And that's got a spring
2 under it. So as you put bullets in the top, it pushes
3 that follower down and compresses it. So when that cycle
4 of operations happens and those empty bullets are thrown
5 out, because you put this magazine in here and it's full
6 of bullets, it has a next one that it continues to feed,
7 until all the bullets are used.

8 Q. And the follower is inside the magazine?

9 A. That's correct.

10 Q. Did you check to make sure that that was
11 functioning properly?

12 A. Yes.

13 Q. And okay? And did it?

14 A. It did.

15 Q. What's your next step?

16 A. After I loaded it, then I actually -- well, I
17 loaded the bullets into the magazine and the magazine into
18 the gun. And then I pulled the slide back of the weapon
19 to load the first round.

20 Q. Okay. Now, you testified earlier that when you
21 pull the trigger, this explosion makes the slide go back
22 again and pick up another bullet.

23 A. Right.

24 Q. But you're testifying here that you're making
25 the slide go back, manually, yourself.

1 A. There has to get -- a bullet has to get in there
2 to make the cycle of operations begin. That first bullet
3 in there, when the firing pin hits it, that begins the
4 cycle of operations. To begin it, I have to manually put
5 that first bullet in there.

6 Q. Okay. Can you describe to the jury the
7 operation of basically putting that first bullet into
8 an -- a firing position?

9 A. Inserting the magazine. And then this right
10 here (indicating), on a semi-automatic this is the slide,
11 which is in this case you can see here it's pulled back
12 and locked to the rear. Without these zip ties, this
13 would be forward. It would be flush here. And the back
14 would be all the way to the back here. And this is the
15 hammer on this weapon, which would be exposed. So to
16 actually get that first bullet in there, you grab the top
17 slide. You pull it back. As you pull it back, that first
18 bullet is allowed to enter into the chamber so that when
19 it moves forward, now the bullet is locked into place, and
20 it's ready to fire, to control that explosion.

21 Q. And what happens to the hammer, when you let go
22 of that slide and it goes back forward?

23 A. The hammer stays in the back position, ready,
24 with that spring pressure that, when it's released, it can
25 hit that first round.

55

and KK

State v. Bale, 11/1/12

1 Q. If the hammer is not cocked back, for whatever
2 reason, is there anything to make that bullet fire?

3 A. The bullet can't fire until something hits the
4 back to activate the primer.

5 Q. Okay. All right. And did you check to make
6 sure the slide was operational and that you could actually
7 chamber a bullet?

8 A. Yes, I did. And it functioned properly.

9 Q. Okay. So what's your next step in checking to
10 see if the gun is operational?

11 A. Once it's ready to go, I made sure it had -- the
12 safety was off. And then I was actually videotaping
13 myself doing it at the same time. I fired three rounds
14 consecutively with the bullet, with the gun.

15 Q. Where do you fire them to?

16 A. I was at the Port Orchard Police firing range,
17 firing them down range.

18 Q. So was there any difficulty in that weapon
19 firing three consecutive bullets?

20 A. No. Did everything absolutely like it was
21 supposed to.

22 Q. All right. Now, between the time that you fired
23 the first bullet to the second one, did you have to
24 re-cock the hammer and slide it back?

25 A. Not at all. The way that it's designed, as a

HOLDEN - Direct (by Ms. Montgomery)

1 semi-automatic versus, like, a revolver is, once you fire
2 that first one, it does everything on its own to get rid
3 of the empty casing load, the next one in there. And then
4 that one will fire as soon as you pull the trigger again.
5 So it did that all three times in a row.

6 Q. Now, what would the purpose be for having the
7 hammer cocked back on any weapon?

8 A. To fire it.

9 Q. Is there any other purpose for having a hammer
10 in a cocked position, other than firing a weapon?

11 A. Not that I'm aware of, no.

12 MS. MONTGOMERY: I have nothing further at this
13 time.

14 MR. KIBBE: No questions of this witness, Your
15 Honor.

16 THE COURT: Thank you, Officer. You may be
17 excused, subject to recall.

18 MS. MONTGOMERY: The State calls Officer Andy
19 Brandon.

20 Your Honor I've got to walk just a distance.

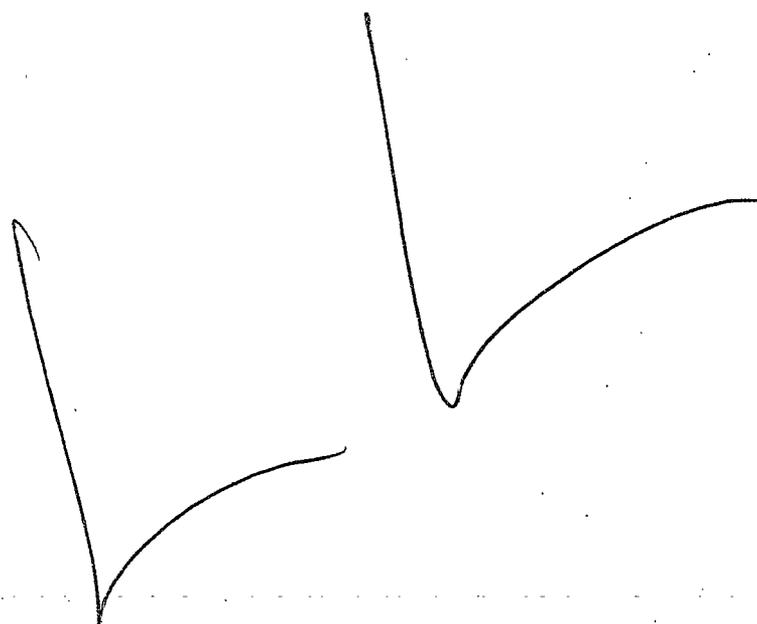
21 (Ms. Montgomery exits and re-enters the courtroom)

22 DIRECT EXAMINATION

23 BY MS. MONTGOMERY

24 Q. Good afternoon. Can you please state your name
25 and spell your last for the record?

BRANDON - Direct (by Ms. Montgomery)



1 Q. -- can you tell as to when exactly it was --
2 when exactly it was cocked?

3 A. No.

4 MR. KIBBE: Thank you.

5 REDIRECT EXAMINATION

6 BY MS. MONTGOMERY

7 Q. So if you carry a gun around that's cocked back,
8 what does that mean? What does that mean, in terms of
9 that gun?

10 A. Typically, with law enforcement, if you have a
11 firearm that has a hammer on it, when it's cocked back, it
12 means it's live and ready to fire.

13 Q. Is a gun more ready to fire if the hammer is
14 cocked back or less ready to fire, if the gun has a
15 hammer?

16 A. If it's -- let's say I'd say it's more ready to
17 go. It's an easier trigger pull. And depending on the
18 type of gun, sometimes you have to have it cocked back at
19 all times to pull it. If it wasn't cocked back, it
20 wouldn't fire.

21 Q. Is there a certain term of art called a half
22 cock or to have a gun cocked back halfway? Or is that
23 hammer back or it's not back?

24 A. Some firearms do have it where there's two
25 different stages. But there is not -- like, for the

1 second stage would be, in some firearms, more of a safety,
2 more as a safety than if it was all the way back.

3 Q. But this gun does not have that two-stage cock?

4 A. No. It only has fully cocked or depressed.

5 Q. So if a person is carrying around a fully -- a
6 gun that's fully cocked back, that gun is ready to fire?

7 A. Correct.

8 MS. MONTGOMERY: No further questions.

9 THE COURT: Re-cross?

10 MR. KIBBE: No, Your Honor.

11 THE COURT: Thank you, Officer. You may be
12 excused, subject to recall.

13 THE WITNESS: Thank you, sir.

14 MS. MONTGOMERY: Your Honor, the State would
15 rest.

16 THE COURT: Mr. Kibbe?

17 MR. KIBBE: One moment.

18 Your Honor, at this time the Defense rests.

19 THE COURT: We'll take a brief recess. Ladies
20 and gentlemen, we're going to take a brief recess. We're
21 going to discuss some administrative matters. We didn't
22 anticipate getting the case to you this quickly. But I am
23 anticipating doing closing arguments later today.

24 I made a mistake. I told you that we would not
25 be in court on Friday, because I did not expect that we

1 would be able to get to closing arguments. We can
2 deliberate tomorrow. So I'm going to ask you to talk
3 amongst yourselves whether you wish to deliberate
4 tomorrow, if necessary, if you do not reach a verdict by
5 close of business today, or whether you want to skip
6 deliberations Friday and come back Monday. I hope you can
7 reach a consensus on that point.

8 We'll be at recess for a few minutes.

9 (Jury exits the courtroom)

10 THE COURT: First of all, I've given each of --
11 each of the attorneys a copy of my proposed court
12 instructions to the jury. Please take your time. Read
13 your copies, and let me know if either of you has any
14 objections or exceptions.

15 MS. MONTGOMERY: No objections from the State,
16 no exceptions from the State.

17 MR. KIBBE: One moment, Your Honor.

18 No objections from the Defense.

19 THE COURT: Nor exceptions?

20 MR. KIBBE: Nor exceptions.

21 THE COURT: Mr. Clerk, may I have the record of
22 admitted -- of exhibits?

23 According to the Court's records, 11 exhibits
24 have been admitted, being Exhibits 1 through 11. Number 1
25 is the 9mm weapon. Number 2 is 14 rounds of ammunition.

1 Number 3 is a gun holster. And Numbers 4 through 11 are
2 eight-by-ten photographs.

3 Does that concur with your -- Counsels'
4 understanding?

5 MS. MONTGOMERY: Yes.

6 MR. KIBBE: Yes.

7 THE COURT: And these are the only documents
8 that will be going back to the jury room. I do anticipate
9 I will send the firearm back. I will caution the jury
10 about not cutting the restraints.

11 MS. MONTGOMERY: Your Honor, the bullets -- I
12 never like having a firearm and bullets go back. I just
13 don't. I don't know how the Court feels about it.

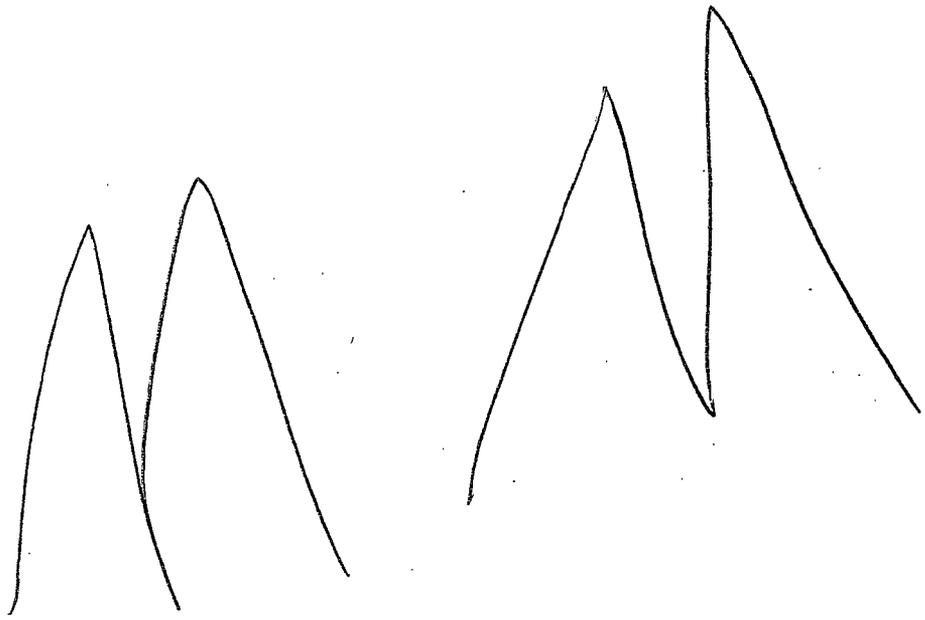
14 THE COURT: Not real happy about it.

15 What's your position on that, Mr. Kibbe?

16 MR. KIBBE: As I -- so as I understand it,
17 you're saying that you don't want it to, and the Court is
18 more or less agreeing with that. That's fine with the
19 Defense.

20 MS. MONTGOMERY: In the past the -- like, when
21 we have drugs, we would take a picture and then send that
22 back to them or do something like that. Or they can look
23 at it at separate times. That's also something we've
24 done, which I think would be the best in this situation.

25 THE COURT: What I'm going to do is tell them



1 minute.

2 What is my job as the State? I have to prove
3 the elements that make up the crimes charged beyond a
4 reasonable doubt. In Count 1, the Defendant is charged
5 with Assault in the First Degree. In Count 2, he's also
6 charged with the crime of Assault in the First Degree.
7 The elements that I have to prove, there's four of them.
8 There's four things that I have to prove beyond a
9 reasonable doubt; that on July 2, 2012, the Defendant
10 assaulted Officer Morrison for Count 1 and Officer
11 Schandel for Count 2 with a firearm; and that he acted
12 with the intent to inflict great bodily harm; and that
13 these actions took place in the state of Washington.

14 Well, the State would submit that elements
15 Number 1, Number 2, and Number 4 are not at issue. We
16 know that the Defendant had a gun. We know that the
17 Defendant -- the firearm was operable. We know that these
18 things happened in the state of Washington. The real
19 issue in this case comes down to did he act with the
20 intent to cause great bodily harm to these two officers?

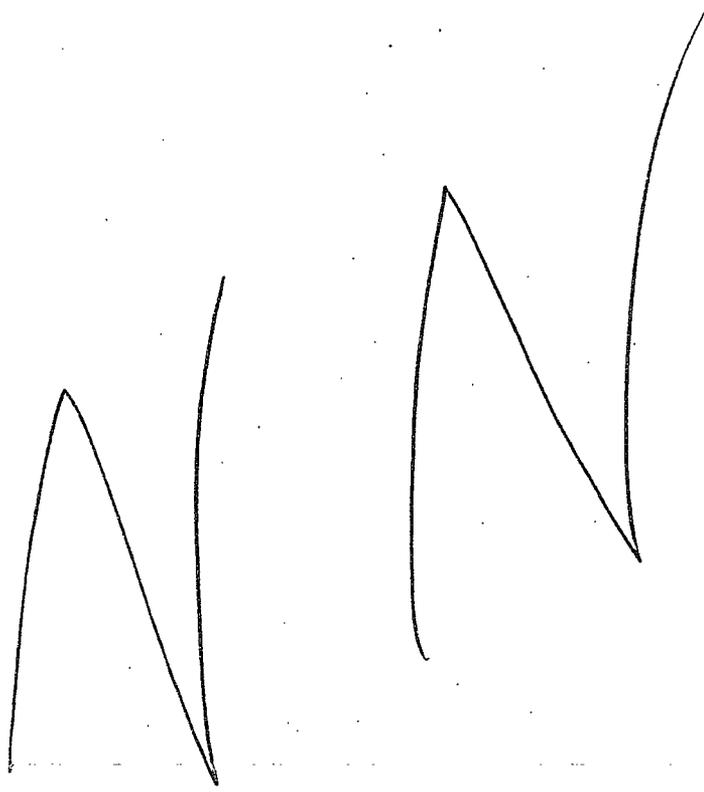
21 Now, back to your jury instructions, the State
22 would suggest that you use them and read them. Because it
23 contains definitions for various terms, like assault and
24 intent and great bodily harm. And these definitions
25 instruct you for how to go about your deliberations.

1 Let's talk about what intent is. Intent is
2 acting with an objective. You have something that you
3 want to accomplish. You have an objective, something to
4 do. Or you're acting with a purpose to accomplish. And
5 that purpose or objective turns out to be a crime, turns
6 out to be something you're not supposed to do. That's
7 what intent means, under the law.

8 What does assault mean? Assault is acting with
9 the purpose to accomplish or with the purpose to have an
10 objective to injure. But in our particular case, and the
11 law says it's okay, you're acting with the intent to
12 injure, but for some reason you fail. You're prevented
13 from injuring another person. But you could have hurt
14 them, if you weren't prevented from doing it. That's an
15 assault. That's the definition of assault.

16 The other definition of assault is you act with
17 the intent to scare the heck out of somebody into
18 believing that they're going to be injured. Assault, in
19 the state of Washington, does not mean that you caused
20 bodily injury. It does not mean that. You do not have to
21 hurt somebody to assault them in Washington state. You
22 have to scare them. You have to act like you were going
23 to hurt them and you could have, but thank goodness you
24 didn't.

25 Let's talk about great bodily harm. That is



1 also defined in the law. And what that means is that this
2 harm that you could have but were prevented from causing
3 would have created the probability of death or the
4 probability of significant serious permanent disfigurement
5 or loss of function of a body part or organ.

6 Do I have to prove that the Defendant intended
7 to kill Officers Morrison and Schandel? If you look at
8 elements one through four, you will not see any
9 requirement that I have to prove that he intended to kill
10 them. What I have to prove is that he assaulted them and
11 that his intent was to inflict great bodily harm.

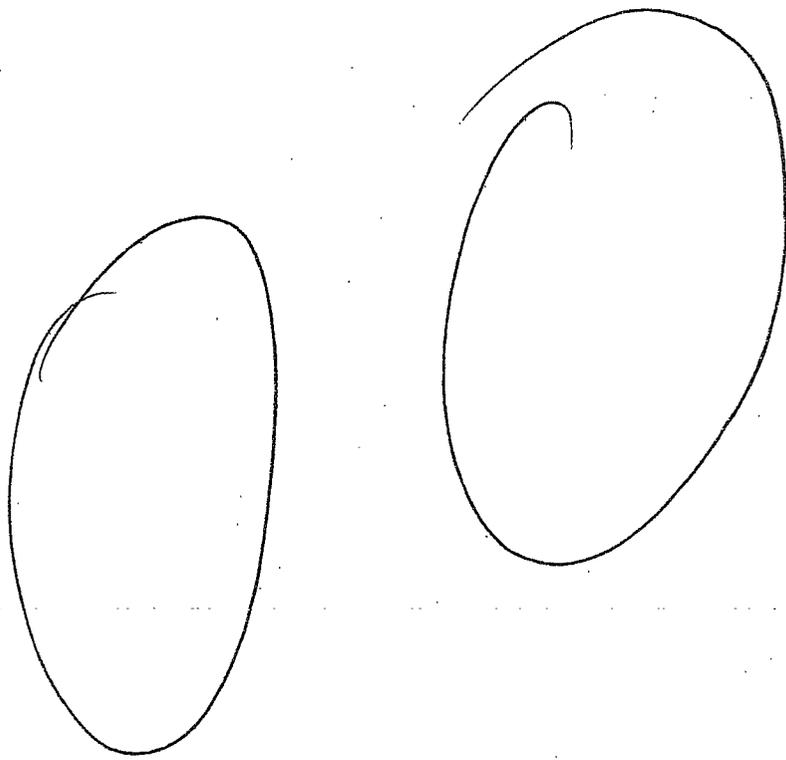
12 All right. Let's talk about the facts for a
13 minute. You heard from several witnesses in this case.
14 What you heard was that the Defendant was contacted
15 because of a drug investigation and that he did not give
16 his ID. You heard that he was looking furtively around,
17 that he was acting sketchy, that he said he didn't have
18 his ID and that he took off running. You heard that the
19 officers gave chase, and you heard that the officers
20 tackled him, that Officer Schandel said he's got a gun and
21 that Officer Morrison heard a click. You also heard that
22 the first thing that Officer Morrison saw about that
23 weapon was that the hammer was cocked back in a position
24 ready to fire.

25 Why do these facts equal intent to create great

1 bodily harm or to inflict great bodily harm, on the
2 Defendant's part, towards these officers? Well, let's
3 talk about that. If intent means acting with a purpose,
4 let's look at what the Defendant did, step by step.

5 Is it interesting to you that a holster for a
6 gun was found about 15 feet back from where Schandel and
7 Morrison were able to tackle the Defendant? Fifteen feet
8 away. That holster was separate from where that gun was.
9 The housing for that gun was dropped back a ways away,
10 enough a ways away that it's got to make you think. If
11 the Defendant was trying to just ditch this gun, because
12 he didn't want to be caught with it for whatever reason,
13 why not ditch the entire thing? If you're pulling your
14 gun out and you want to get rid of it, what's the easiest
15 thing for you to do? Drop it. End of story. The holster
16 was dropped. The holster fell out. Why wasn't the gun
17 with it? Because the Defendant didn't want to drop it.
18 He wanted to keep it with him. That's why he held on to
19 it.

20 Well, think about the reasonableness of holding
21 a firearm, when you've got two armed police officers
22 chasing you down. What do you think a reasonable person
23 would think might happen, if you get caught with a
24 firearm, running away from the cops? Do you think that
25 the cops might take out a gun and maybe shoot you dead?



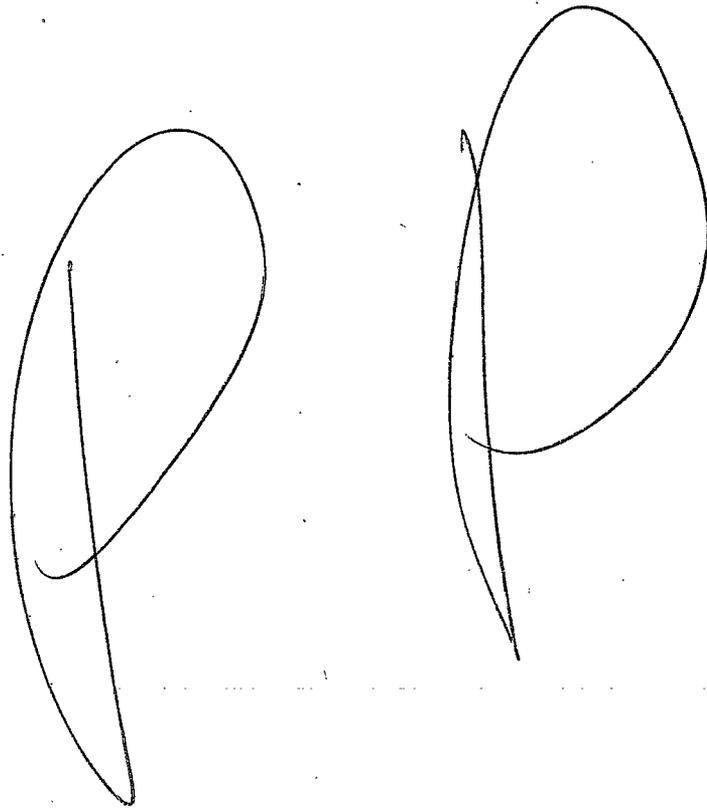
1 Do you think that's something that might go through your
2 mind? If you're running with a gun, what is your purpose
3 in holding on to that gun, as opposed to dropping it where
4 the holster was dropped?

5 Let's talk about the next significant step in
6 this process. When the officers tackled the Defendant,
7 what happened? He went to his knees. Officer Morrison
8 went to his knees. Officer Schandel is to the side of
9 him. The Defendant is facing the same direction and is in
10 front of Officer Morrison and to the side. He's facing
11 away from him. It's not like they're face-to-face. What
12 does that mean? That's so significant in this case.
13 Because what did the Defendant do? Turns. Unless he's a
14 robot or somehow possessed by something that made him do
15 that, that turning is a volitional act. And what other
16 purpose would he have done that for, other than to get the
17 gun where it needed to be, in order to inflict great
18 bodily harm on this officer? What other purpose would
19 this man have to turn his body, with a gun in his hand, to
20 contact that gun against Officer Morrison. That's intent.
21 That shows you intent right there. Because it's a
22 volitional act that he did with a purpose. It wasn't
23 accidental. It was intentional. He did it on purpose.
24 Because he had a purpose. What's that purpose? To kill
25 this officer, to hurt this officer, to get away from this

1 officer.

2 But that's not all. Let's think about the next
3 step. He didn't just turn and kind of wave the gun around
4 in Officer Morrison's general direction. When Officer
5 Morrison was hands on with that gun, what did the
6 Defendant do? Did he give up, drop the gun, take his
7 hands off, say I surrender, I'm going to stop, I'm not
8 doing this anymore, I'm done? No. He pushed it. He
9 pushed it against him. He resists Officer Morrison's
10 efforts to keep the gun away from Officer Morrison. This
11 Defendant wanted to do the exact opposite of what Officer
12 Morrison was doing. Officer Morrison was trying to save
13 himself. What's the Defendant doing? Pushing it. What
14 does Officer Morrison have to do? He's got both hands on
15 this gun, and he's having to lean back so that this gun
16 doesn't come around and end up square in his chest. Is
17 that an act done for a purpose? Is pushing a gun an act
18 done with a purpose and an objective? You bet it is.

19 But that's not all. The Defendant didn't try to
20 pull the gun, point the gun from a range that was
21 ten feet, 20 feet, 15 feet. He didn't run from the
22 officers, take a step and turn back and go leave me alone,
23 I've got a gun, let me be. No. He took off running. And
24 when he's running, what is he doing? Pulling that gun out
25 and sliding that gun back. He didn't get it slid all the



1 way back, probably because he was running or falling. But
2 he did slide it back enough to cock that thing.

3 Couldn't -- if you just wanted to get away from
4 these guys, couldn't he have just taken a few steps of
5 running and pointed a gun and said leave me alone?
6 Couldn't he have done that? Would it have taken the extra
7 steps of cocking and sliding and pushing and twisting and
8 pointing to get done what he needed to do, unless he had
9 some other objective in mind besides just escaping?

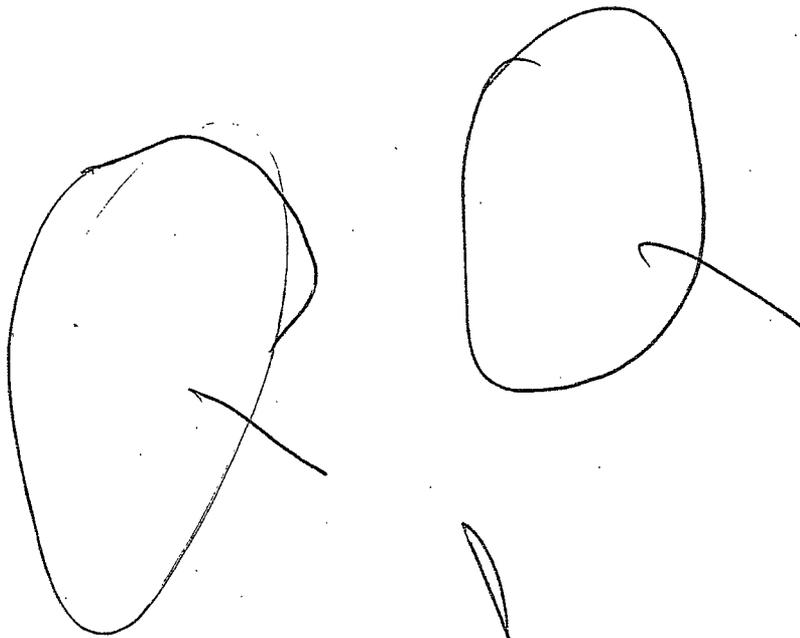
10 Sometimes the part of the trial that becomes the
11 most interesting is not what you hear but what you don't
12 hear. And in this particular case, you didn't hear
13 something that really should inform you about the
14 Defendant's intent. You've got two officers fighting you
15 for a loaded, cocked gun. And what does the Defendant
16 say? Nothing. Not I quit, I surrender, don't, I'm
17 stopping, nothing. He says nothing. Does he have to say
18 I'm going to kill you? Well, there's a couple ways of
19 saying that, and one is with your words, and another is
20 with a cocked gun. But isn't it interesting to you that
21 even with his words he doesn't take any steps to back out
22 of this or to stop this? No. Because he's fighting,
23 because he has an objective. And his objective is to
24 inflict great bodily harm on these officers.

25 Did the Defendant assault Officers Morrison and

1 Schandel in the first degree? Let's go back to the
2 elements for a moment. Did he assault them? Did he --
3 with intent to cause great bodily harm, did he act with an
4 objective? Did he act with a purpose to accomplish? Was
5 that purpose to injure, and did he fail because he was
6 prevented? Yeah. The evidence shows, in fact, that
7 that's exactly what happened here. Can there really be
8 any other explanation?

9 Well, how do you know, since you all weren't
10 there, if Officer Morrison and Officer Schandel are
11 telling you the truth? You have a jury instruction --
12 it's number one in your packet -- that talks about how do
13 you determine credibility. And if you'll remember back in
14 voir dire, that was a conversation that we had and that
15 you also had with the Defense. How do you determine
16 whether somebody is telling you the truth or not? Well,
17 the jury instruction provides you with a road map. Let's
18 take a look at what the factors are that you can consider.

19 Jury instruction Number 1 talks about the
20 credibility and how to judge it. The first thing to
21 consider, when you're determining credibility, is the
22 opportunity of the witness to observe, the opportunity of
23 the witness to know the things that they're testifying
24 about, their ability to observe accurately, the quality of
25 their memory, manner while testifying, any personal



and
r r

1 A firearm is a deadly weapon. Your jury
2 instructions tell you that. What's interesting about the
3 jury instructions is that a firearm is a deadly weapon
4 whether it's loaded or whether it's not. And in this
5 case, there is no doubt that this weapon was loaded. It
6 had bullets in the magazine that was inside the gun. Is
7 it interesting to you that there wasn't one bullet in the
8 chamber? The State suggests that this actually makes the
9 credibility of these officers -- the fact that there was
10 no bullet in the chamber makes the credibility of these
11 officers more tried and true. And here's why. You've got
12 a Defendant running. He's trying to get away. He does
13 not want to be caught. He's pulling out his gun. He's
14 sliding it back. He's getting tackled. He's running for
15 his life, too, because he doesn't want to go to jail.
16 Don't you think it's reasonable that, in that crazy
17 scenario, he wasn't able to get that slide all the way
18 back and chamber a round? Yeah. It's reasonable. Think
19 about it. What also is reasonable? That those officers,
20 when they saw that hammer back, thought that that gun was
21 ready to put a bullet into their chest.

22 All right. Let's talk about Count 2. Count 2
23 has to do with Officer Schandel. Now, you may say, well,
24 the gun was never pointed at Officer Schandel. Well,
25 ladies and gentlemen of the jury, he was afraid, not only

State v. Bale, 11/1/12

1 for his partner, the man he trained, but also for himself.
2 Because what did he tell you? He told you that if John
3 Bale blew away Officer Morrison, all he had to do is lift
4 up his arms and fire one at him, too. How fast would it
5 have been for John Bale to do that? Much faster than it
6 would have been for Officer Schandel to release, to pull
7 his gun that has a double tension on it on the holster and
8 to prevent that from happening. Officer Schandel was
9 equally as assaulted as Officer Morrison that day.

10 Let's talk about Count 3, Possession of a Stolen
11 Firearm. You have a jury instruction that tells you what
12 the elements are for that particular crime. Possession of
13 a Stolen Firearm, the to convict instruction with the
14 elements is Number 18. And it tells you that on -- that I
15 have to prove on July 2, 2012, that the Defendant
16 possessed a firearm, that he acted with knowledge that it
17 was stolen, and that basically him having it meant that
18 the real owner couldn't have it, and that these actions
19 happened in the state of Washington.

20 Now, can you know, beyond any shadow of a doubt,
21 that the Defendant knew this firearm was stolen? No. We
22 don't submit that you can know that. Nobody can know
23 that. But can you have confidence, can you know beyond a
24 reasonable doubt, that John Michael Bale knew that this
25 firearm was stolen? You bet you can. And you want to

S S

1 purposes, the judgment and sentence.

2 THE COURT: Very well.

3 MS. MONTGOMERY: I have them separated out.

4 So, Your Honor, in this particular case, the
5 defendant's standard range on counts I and II is fairly
6 complicated. He is -- his offender score in count I is a
7 nine. The seriousness level is a 12. His range is 240 to
8 318 months. He also has a firearm enhancement that he was
9 found -- that was found by the jury, which adds 60 months
10 to that particular sentence.

11 Under count II, his offender score is actually zero,
12 and the way that is calculated is under 9.94A -- I believe
13 that it's 589 where there is a most serious offense when
14 there is two of them. Then the first one is calculated not
15 using the second count, and then the second one is
16 calculated with the offender score of zero.

17 So under the SRA, he is a zero for count II. His
18 range is 93 to 123 months. With a firearm enhancement, he
19 is looking at 153 to 183 for that.

20 The other interesting spin on this is the firearm
21 enhancements have to be served first and consecutive with
22 no good time for 120 months on counts I and II. And then
23 following that, counts I and II -- whatever time the Court
24 gives him in the standard range -- has to be served
25 consecutively as well. And count III he has an offender

1 score of ten, seriousness level of five. He is looking at
2 72 to 96 months. That runs concurrent with everything.

3 Now --

4 THE COURT: I'm sorry, Counsel. Is it the
5 State's position that one and two run concurrent?

6 MS. MONTGOMERY: One and two run consecutive.

7 THE COURT: So he is looking at 214 to 318, plus
8 153 to 183, plus 72 to 96, plus 10?

9 MS. MONTGOMERY: Actually, it's -- probably the
10 easiest way to break it down is to say 60 months on count I
11 and 60 months on count II and then figure out the range
12 between -- on count I of 240 to 318, and then the range on
13 count II is 93 to 123. So then once you get all of those
14 numbers, you add it all together for a total number of
15 months of confinement.

16 THE COURT: Which is?

17 MS. MONTGOMERY: Which would be, as I figured
18 it, Your Honor, at the high end -- he is looking at 453
19 months on the low end and 561 months on the high end; 37.75
20 years on the low.

21 THE COURT: Without the firearm enhancements?

22 MS. MONTGOMERY: That is with everything.

23 THE COURT: That is with everything.

24 MS. MONTGOMERY: And 46.75 on the high.

25 And, Your Honor, we do have a recommendation on



1 The firearm enhancements, and so on, add up to a lot of
2 time.

3 Mr. Bale's criminal history, he does not have any
4 prior crimes of this nature. All of his prior convictions
5 are class C property crimes, drug possession-type of
6 offenses.

7 He has a long history of drug abuse. What we have
8 talked about in private, Mr. Bale and I, is at the time
9 that this happened he was under the influence of narcotics.
10 That may have played a role in his decision-making at that
11 time. There is no excuse for what it was that the jury
12 said that happened.

13 Ultimately I am going to be asking for the low end
14 of the standard range of 240 months on count I and 93
15 months to run consecutive on count II and to run
16 consecutive -- and count III to run concurrent. I think
17 that is more than sufficient. We are talking about, you
18 know, 36 years or so in terms of confinement time.

19 The way that the statute is written, as I explained
20 to Mr. Bale, an Assault I can include very, very serious
21 injuries. Is the way that I can figure, if Mr. Bale had,
22 in fact, pulled the trigger and shot the officer but failed
23 to kill him, we may be also an Assault I. So it may be
24 that because of the officer's own attempts to get the gun
25 away from Mr. Bale that the gun was not fired.

1 Nevertheless, ultimately no one was injured, so for
2 that reason, I think the bottom of the range is appropriate
3 and also given the fact that Mr. Bale's criminal history
4 does not include any firearms or violent offenses.

5 And in looking at this case, you know, Mr. Bale and
6 I have talked about what options that he has.
7 Unfortunately because of the fact that this is considered a
8 violent crime, as far as I can tell, he is not eligible for
9 a DOSA sentence. So if I were to ask the Court for a DOSA
10 and have him screened for a DOSA, as far as I can tell, the
11 Court would not have the jurisdiction to grant it if it was
12 so inclined anyway.

13 So I do have -- I prepared a notice of appeal and
14 order of indigency for Mr. Bale, and I ask the Court to
15 sign the order of indigency and find that Mr. Bale cannot
16 afford to represent himself at appeal. That will be his
17 next avenue to see what he can do in this case. I guess
18 that is all that I have at this time.

19 THE COURT: Mr. Bale?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Is there anything that you want to
22 say before I impose a sentence?

23 THE DEFENDANT: Yes. May I read something that
24 I wrote?

25 THE COURT: You may.

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1 THE DEFENDANT: Your Honor, I am asking for a
2 second chance at life, and I am thankful at least to have a
3 chance to speak freely. I am not a violent person. You
4 can tell by my past record and -- nor gun charges. I have
5 done a lot of bad things in my life, but this time I am not
6 guilty of harming anyone or intending to.

7 I have a daughter and a son to take care of, and I
8 would really like to see them, touch their faces, kiss them
9 again while they are young. I am 29 years old, and I just
10 got my GED and was on my way to college to be a master
11 welder at Seattle Central Community College. I had a clean
12 -- I have -- I had a clean-and-sober living arrangement at
13 Hope Center on Bainbridge Island and start over. This
14 letter is so that you see the truth in me and my heart. I
15 am asking for an exceptionally low sentence with DOSA or
16 some sort of treatment from you.

17 Your Honor, this is a beg for my life and a huge
18 wake-up call to see what I could have done or lost. I am
19 asking for a second chance so I can be something before my
20 life will be over when I get out of prison. I am asking
21 for ten years or less. I mean, that is a lot to ask for.
22 I never intended to even harm or even shoot an officer,
23 nothing.

24 You went through the jury, and I -- it's just
25 unbelievable that something could turn into 36 years for

1 not harming somebody, and I wasn't even intending to. It's
2 just that is a lot of weight. That is a lot of weight to
3 put on somebody and for not doing something.

4 I would have had people to come back me up here, but
5 they couldn't make it, like my pastor, my mom and my dad,
6 but they were, unfortunately, unable to make it.

7 I just -- this is just a rude awakening, you know.
8 I just ask for not that much time. This is -- that is just
9 amazing, you know. I have no record of violence or,
10 anything. I am just asking for a second chance of like ten
11 years or less. I know that it's way far-fetched. I know
12 that it's out there, but that is all.

13 THE COURT: On count I it was very fortunate
14 that officer Morrison is not dead. Mr. Bale, you had a gun
15 strapped to your ankle, and you tried to pull it out in the
16 course of a routine arrest. And you had that barrel right
17 up against his chest, and I think that there was a very
18 good chance that he could have been dead. I can't conceive
19 of going below 318 months on count I.

20 The facts are a little bit less egregious on count
21 II; 93 months on count II and 96 months on count III,
22 concurrent, plus the two 60-month periods for the firearm
23 enhancement.

24 That is a lot of weight, sir, but we can't have
25 people running around with guns strapped to their ankles



COURT PROCEEDINGS

1
2
3
4 THE COURT: State versus Bale, 12-1-00762-2.

5 MR. KIBBE: Your Honor, Mr. Bale can remain
6 seated. We are on for a status this morning. There is a
7 couple of different pending issues right now. We are in
8 the process -- my investigator met with Mr. Bale last week,
9 and we are scheduled for interviews of the officers, and
10 the State is, I think, still in the process of getting some
11 DNA fingerprint stuff from the crime lab.

12 The trial date, at this point, is only two weeks
13 away. I don't see that as realistic, given the serious
14 nature of the charges and the outstanding discovery issues,
15 so I am asking to move the trial date a few weeks and set a
16 status again in a couple of weeks.

17 *me objecting* THE DEFENDANT: I object, Your Honor. I object
18 to that.

19 THE COURT: Mr. Bale, the determination to make
20 a motion for a continuance is at your attorney's
21 discretion.

22 MR. KIBBE: Your Honor, there has been no prior
23 continuances. I think that it's in Mr. Bale's best
24 interest. He is --

25 THE DEFENDANT: I object still.

W W

SUPERIOR COURT OF WASHINGTON
IN AND FOR KITSAP COUNTY

STATE OF WASHINGTON,
Plaintiff

v.

John M. Bale
Defendant

No. 12-1-00762-2

MOTION FOR VERBATIM
REPORT OF PROCEEDINGS

Comes now Defendant John Bale, pro se, hereby moves the court order Verbatim Report of Proceedings (VRP) for August 2, 2012 hearings, at Public Expense to assist in appeals.

DATED This 23 Day of December, 2014

Respectfully Submitted



John Bale, Pro Se

Superior Court of Washington
in and for Kitsap County

STATE OF WASHINGTON

Plaintiff

v.

JOHN M. BALE

Defendant

NO. 12-1-00762-2

order FOR VERBATIM
REPORT OF PROCEEDING

This matter: Having come before the undersigned Judge on motion of the defendant, and the court having considered the balance of the records;

It is hereby ordered:

The motion for Verbatim report of proceeding of August 2nd 2012 shall be made at public expense by the court reporter Carisa Grossman.

It is also ordered:

The court clerk shall send all party's
a copy of this order

DONE [] IN OPEN Court [] Ex Parte This Day of
_____, 2014

(Judge/Commissioner)

Presented By

John Dale #845543 DA-07

Coyote Ridge prison

P.O. Box 769

Connell, WA 99326

order-2

SUPERIOR COURT of WASHINGTON

County of Kitsap

STATE OF WASHINGTON,

Respondent,

NO. 12-1-00762-2

Pro se Notice of Appearance

VS.

John M. Bale

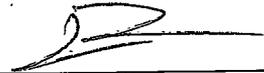
Defendant.

The undersigned enters an appearance in this action, and demands notice of all further proceedings. The Clerk of the Court and the opposing party will be informed of any changes in address. Any notices may be sent to [You may list an address that is not your residential address where to accept legal documents]

Service Address:

John M Bale #845543 DA-07
Coyote Ridge prison P.O. Box 769 Connell, WA 99326

Dated: 12/23/14



Signature of Party Appearing

John M Bale

Print or Type Name

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF Kitsap

STATE OF WASHINGTON

Plaintiff.

v.

John M Bale

Defendant.

Case No.: 12-1-00762-2

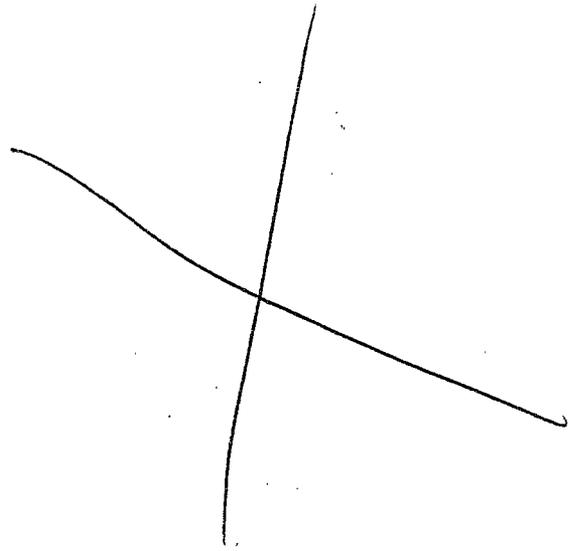
MOTION TO DOCKET

(Criminal)

To: The State of Washington, and Kitsap County
Prosecutor, Attorney for the Plaintiff, and the Clerk of Superior Court.

PLEASE TAKE NOTICE that the defendant, John M Bale,
Pro Se, will move the above court on the 2 day of January, 2015,
at the hour of 9:00 AM, for a Hearing to motion for (VRP) and the
clerk of the court is requested to note the same at the date and time on the Criminal
Motions Calendar.

or at an earlier date



Judge Steven Dixon

DECLARATION OF MAILING

GR 3.1

I, John Bale on the below date, placed in the U.S. Mail, postage prepaid, 3 envelope(s) addressed to the below listed individual(s):

Judge
Steven Dixon
614 Division St
Port Orchard
WA 98366

Prosecutor
Russel D. Hauge
c/o Kelly Montgomery
614 Division St MS-35
Port Orchard, WA 98366

Court Clerk
614 Division St
Port Orchard
WA 98366

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. pro-se notice of Appearance
2. order of telephonic appearance
3. Motion to request recorded of transcripts
4. _____
5. _____
6. _____

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 4 day of February, 20 15, at Connell WA.

Signature [Signature]

Exhibit E



SUPERIOR COURT OF WASHINGTON
COUNTY OF KITSAP

State of Washington
Plaintiff/Petitioner

~~Pat~~ Russell D. Hauge
Attorney for Plaintiff/Petitioner

vs.

John M. Bale
Defendant/Respondent

John M. Bale, Pro-se
Attorney for Defendant/Respondent

No.: 12-1-00762-2

NOTE FOR MOTION DOCKET

(NTMTDK)

TO THE CLERK OF THE COURT AND

TO: - Kelly Montgomery

AND: - Craig Kpbbe

Please take notice that the undersigned will bring on for hearing:

NATURE OF MOTION: To Request Verbatim and Tape recording Court transcripts
At state expense.

The hearing is to be held:

DATE: February 20th, 20 15

TIME: 9:00 a.m./p.m.

AT: JUDGE/DEPARTMENT NO.: Steven B. Dixon
Superior Court of Kitsap County
614 Division Street
Port Orchard, WA 98366

COURT COMMISSIONER MAY HEAR THIS MOTION: YES NO

ELECTRONIC RECORDER ACCEPTABLE: YES NO

COURT COMMISSIONER MAY HEAR THIS MOTION: YES NO

DATED Feb. 4th, 2015

Signed: [Signature]

Lawyer for: Defendant

Address: 1301 W. Ephrata (PO Box 760)
Connell, Washington 99326

Telephone: (509)

Superior COURT of WASHINGTON
County of Kitsap

State of Washington,

Respondent,

NO. 12-1-00762-2

Pro se Notice of Appearance

VS.

John M. Bale

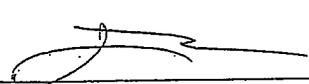
Defendant.

The undersigned enters an appearance in this action, and demands notice of all further proceedings. The Clerk of the Court and the opposing party will be informed of any changes in address. Any notices may be sent to [You may list an address that is not your residential address where to accept legal documents]

Service Address:

John M Bale #845543 DA-07
Coyote Ridge prison P.O. Box 769 Connel, WA 99326

Dated: 2/4/15



Signature of Party Appearing
John M. Bale

Print or Type Name

Judge Steven Dixon

STATE OF WASHINGTON
Kitsap COUNTY

STATE OF WASHINGTON
Plaintiff,

v.

John M Bale
Defendant

NO. 12-1-00762-2

MOTION FOR ORDER OF TELEPHONIC
APPEARANCE

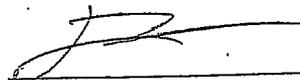
COMES NOW, John M Bale, the defendant, pro se, to respectfully
move this court for an order to appear by telephone on the 20 day of February, 2015
The defendant, John M. Bale, requests telephone appearance because

He is in coyote ridge prison

The defendant's attendance at this hearing is not possible absent an order from this court
for this purpose on the aforementioned date.

Dated: 2/4/15

Respectfully submitted,



John Bale #845543
Signature
Printed Name

P.O. Box 769 Council
WA, 99326
Address

In The Superior Court of Washington
For Kitsap county

State of Washington,
Plaintiff,

vs.

John M Bale;
Defendant.

Motion To Request
Verbatim and Tape
Recorded Court Transcripts
At State Expense.

Case # 12-1-00762-2

I. Facts.

The defendant now comes forth and states and argues pursuant to C.R.R. 7.8(b)(5) the following:

- (1). That there are parts of the record missing in the transcripts such as:
 - (a) off the record and side bars
 - (b) 8/2/12; and
- (2). The defendant needs a copy of the tape recorded during proceedings from the clerk to identify any and all other transcripts possible missing.

These items need to be processed and sent at state expense due to the defendant is indigent and the state had waived all expenses for his appeal.

II. Argument

Does The Defendant Have The Right To Have This Request Met Here At State Expense?

It is clear that this information that the defendant is requesting is directly related to his appeal and if it was denied there would be what would be seen as a Brady Violation, 473 us at 83.

It is well established that the state "must" provide indigent criminal defendants with means of presenting their contentions on appeal which are as good as those available to non-indigent defendants with similar contentions. State v. Giles, 148 Wash. 2d. 449, 450, 60 P.3d. 1208 (2003) (citing Draper v. Washington, 372 U.S. 487, 496, 83 S.Ct. 774, 9 L.Ed. 2d. 899 (1963)). The record must be sufficiently complete to allow consideration of the defendant's claim. Id. (citing Draper, 372 U.S. at 499, 83 S.Ct. 774). The defendant need not make a particularized factual showing to be entitled to the record. Id. at 451, 60 P.3d. 1208 (citing Britt v. North Carolina, 404 U.S. 226, 228, 92 S.Ct. 431, 30 L.Ed. 2d. 400 (1971)).

The Supreme court has made it clear that an indigent defendant is entitled to all discovery and transcripts at state expense. State v. Harvey, 175 Wn. 2d. 919, 288 P.3d. 1111 (2012).

This request now before the court is clearly reasonable and there should be no disputing this request in the interest of justice.

III. Conclusion

The defendant now comes forth and requests this court to do the following:

- (1). Make a certified copy of the recorded tape of the court proceedings that the court clerk has in her possession pursuant to this case number including any and all hearings and Side-Bars;
- (2). A copy of the verbatim for the dates of 8/2/12
8/3/12, 10/4/12, 10/30/12, 10/31/12, 11/1/12, 11/5/12, 11/9/12

And all of this processed and sent at state expense since this defendant was found to be indigent.

I swear under the penalty of perjury that all statements are true to the best of my knowledge.

Dated this 4 day
of February, 2015.


Defendant

Handwritten characters, possibly 'V' and 'W', written in black ink on a white background. A horizontal dashed line is visible below the characters.

RECEIVED FOR FILING
KITSAP COUNTY CLERK

FEB 12 2015

DAVID W. PETERSON

SUPERIOR COURT OF WASHINGTON
IN AND FOR KITSAP COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOHN BALE,

Defendant.

NO. 12-1-00762-2

ADMINISTRATIVE CONTINUANCE
OF MOTION TO REQUEST
VERBATIM AND TAPE
RECORDING TRANSCRIPTS AT
STATE EXPENSE

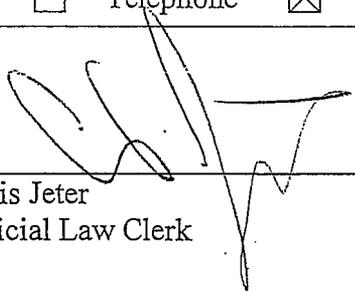
****Clerk's Action Required****

The matter set for 9:00 A.M. on February 20, 2015 is continued to the After-Sentencing Calendar on **February 20, 2015 at 11:00 A.M.** The Court has notified the following persons:

John Bale Telephone Mail Email

Kitsap County Prosecutor's Office Telephone Mail Email

DATED February 12, 2015.


Chris Jeter
Judicial Law Clerk

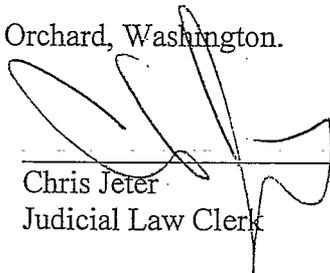
CERTIFICATE OF SERVICE

I, Chris Jeter, certify under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above entitled action, and competent to be a witness herein.

On February 12, 2015, I caused a copy of the foregoing document to be served in the manner noted on the following:

John Bale DOC# 845543 Coyote Ridge Corrections Center PO Box 769 Connell, WA 99326	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Fax: <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via E-mail
Kitsap County Prosecutor 614 Division Street, MS-35 Port Orchard, WA 98366	<input type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Fax: <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via E-mail <input checked="" type="checkbox"/> Via Interdepartmental Mail

DATED February 12, 2015, at Port Orchard, Washington.



Chris Jeter
Judicial Law Clerk

22



Office of the
KITSAP COUNTY CLERK

David W. Peterson, Clerk

614 Division Street, MS 34 – Port Orchard, WA 98366-4692
360-337-7164 FAX 360-337-4927
www.kitsapgov.com/clerk

March 2, 2015

John Bale #845543
DA 07
Coyote Ridge Prison
PO Box 769
Connell, WA 99326

Re: 15-2-00237-8 / 12-1-00762-2

Dear Mr. Bale:

I have included a complimentary copy case of your civil matter. You are responsible for arranging service on the Defendants and moving your case forward. Neither the Court nor the Clerk can review or respond to ex parte communication.

In order to have a matter heard by the Court, the moving party must properly schedule it in accordance with state and local court procedural rules.

We are prohibited from giving legal advice per RCW 2.32.090.

I have also included a minute from the hearing in your criminal matter at which time the Judge denied your motion.

Respectfully,

Amanda Hamilton

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

Hon. JEANETTE DALTON

THE STATE OF WASHINGTON

Court Reporter BARBARA BRACE

vs

Court Clerk ANGIE SMITH

Date

2/2/15

No.

12-1-00762-2

Defendant(s).

The State of Washington represented by Montgomery Deputy Prosecuting Attorney.

The Defendant(s) appearing no, represented by _____ of counsel.

The Defendant is in custody not in custody. CCO Present _____

- The matter before the court is:
- Omnibus 3.5/3.6 Restitution/Order on costs
 - Motion _____ Motion re restoration of firearm rights
 - Motion re no contact order Motion re vacate/seal

Court denies motion for public funds
without prejudice

The Court signs Omnibus/3.5 Stipulation as presented: The Court rules Statements are admissible

The Court sets a hearing for _____ on _____ at _____ AM/PM.

Courtroom polled No response Time _____ am/pm

Bench warrant ordered/quashed Bail set at \$ _____ To be held until _____

Written and Oral Notice given to defendant for date set.

The Court granted/denied the motion.

The Court takes the matter under advisement.

Order signed as presented. Order to be presented.

Pleadings/File taken from this hearing by _____

The matter is continued to _____ at _____ AM/PM for _____

This matter stricken

Court Scheduler advised

8B CRIMINAL MOTION

109

FILED
COURT OF APPEALS
DIVISION II

2014 OCT 14 AM 8:55

STATE OF WASHINGTON

BY _____
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 44172-1-II

Respondent,

v.

JOHN MICHAEL BALE,

UNPUBLISHED OPINION

Appellant.

WORSWICK, P.J. — John Michael Bale appeals his convictions for two counts of first degree assault with a deadly weapon, and one count of possessing a stolen firearm. Bale argues that (1) insufficient evidence supports his assault convictions because the State failed to prove that Bale intended to cause great bodily harm, and (2) insufficient evidence supports his conviction for possessing a stolen firearm because the State failed to prove that Bale knew the gun was stolen. Bale also raises several issues in his statement of additional grounds (SAG). We hold that sufficient evidence supports Bale's convictions for two counts of first degree assault, and we affirm those convictions. But we further hold that the evidence was insufficient to support Bale's conviction for possessing a stolen firearm and we reverse this conviction and remand for an order dismissing this charge with prejudice.

FACTS

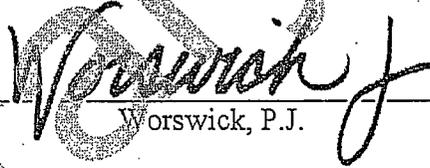
I. SUBSTANTIVE FACTS

On July 2, 2012, Officers Stephen Morrison and Charles Schandel contacted three males in a trailer park as part of a narcotics investigation. One of the men contacted was Bale. The

CONCLUSION

We affirm Bale's convictions on both counts of first degree assault with a deadly weapon. However, because insufficient evidence supports it, we reverse his conviction for the count of possessing a stolen firearm and remand with instructions to dismiss with prejudice.

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

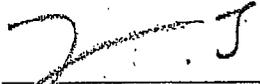


Worswick, P.J.

We concur:

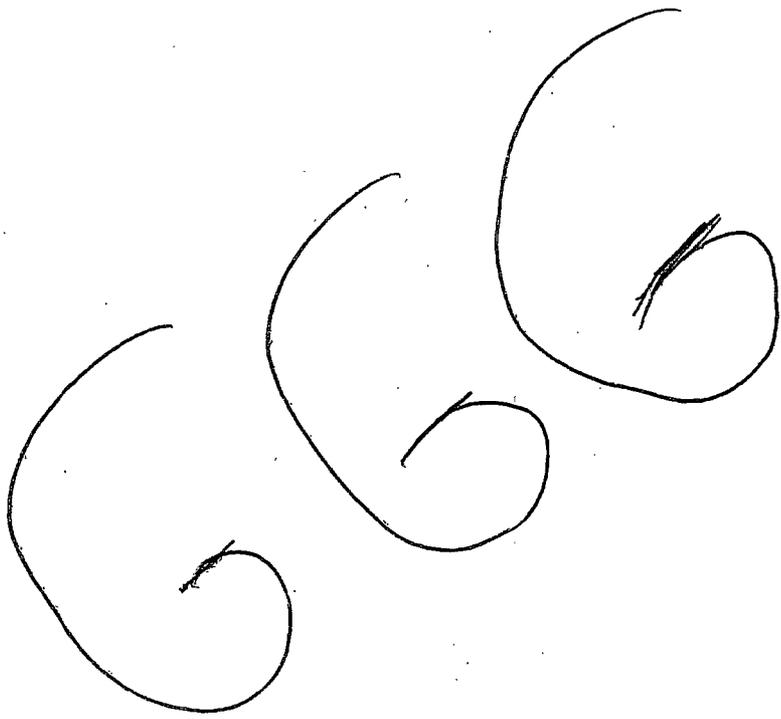


Maxa, J.



Lee, J.

Law Library



Law Offices of Lise Ellner P.O. Box 2711 Vashon, WA 98070

October 22, 2014

Delivered via U.S. Postal Service

John Bale DOC# 845543
Coyote Ridge CC
PO Box 769
Connell, WA 99326

Legal Mail

Re: State v. Bale
SUP. CT. NO. 12-1-00762-2 COA NO. 44172-1-II

Mr. Bale:

Thank you for your latest letter. Oral argument took place on September 9, 2014. I do not have access to the CD of the oral argument. The Court of Appeals does not offer counsel a copy of the CD. You may ask the Court directly, but I have never heard of the Court providing this. If you do not prevail, I will file a motion for reconsideration. I cannot determine if I will file a petition for review; that depends on the Court of Appeals opinion and the presence of any issues that meet the criteria for a petition for review. I will make that decision after the Court of Appeals issues their final decision.

Sincerely,



Lise Ellner
Attorney at Law

December 3, 2014

Lise Ellner, Attorney

PO Box 2711

Vashon, WA 98070

RE: COA# 44172-1-II

State v. Bale

Dear Ms. Ellner:

In your October 22, 2014 letter you stated you will file a "motion to Reconsider" the opinion adverse to my position. Since I did not prevail in the total arguments, have you timely filed these motions?

Also, will you or I be filing the "Petitions for Review" to the Supreme Court on this cause of action?

Thank you for your time, please let me now know your position, so I may move my appeal forwards timely.

Sincerely,

