

FILED  
September 19, 2016  
Court of Appeals  
Division III  
State of Washington  
No. 33812-6-III  
Consolidated with 33836-3-III,  
33804-5-III, and 33805-3-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON,

Respondent

v.

TAYLOR ROSS LANDRUM,

Appellant

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR BENTON COUNTY

NO. 08-1-01051-5 and 08-1-00749-2

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BRIEF OF RESPONDENT

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## **I. RESPONSE TO ASSIGNMENTS OF ERROR ON DIRECT REVIEW**

- A. (Defendant's assignment of error number 1: "The trial court erred in sentencing Mr. Landrum to 20 months confinement on the solicitation to commit first degree perjury count.") The State concedes the defendant should have been sentenced to a range of 10.25 to 15 months.
- B. (Defendant's assignment of error number 2: "Mr. Landrum was denied his Sixth Amendment right to effective assistance of counsel when defense counsel failed to object to the entry of post-conviction sexual assault protection orders for witnesses J.R., A.M., M.J."). The trial court has the authority to issue no-contact orders protecting witnesses. RCW 7.90 should be interpreted liberally to include those witnesses, since they were sexual assault victims of the defendant. His attorney did not fall below any reasonable standard of practice and the defendant is not prejudiced unless.
- C. (Defendant's assignment of error number 3: "The trial court erred by indicating in each judgment and sentence that sentence was imposed under RCW 9.94A.507."). The State concedes the scrivener's error.
- D. (Defendant's assignment of error number 4: "The trial court erred in imposing the following terms of community custody . . . [various provisions cited]."). Procedurally, the same conditions were imposed in the defendant's prior sentencing and were not challenged on the direct appeal. Therefore, the trial court did not have the authority to modify those conditions, even if requested. Substantively, the trial court did not abuse its discretion in imposing the various conditions of community custody.
- E. (Defendant's assignment of error number 5: "The trial court erred in imposing discretionary legal financial obligations, a \$60 sheriff's service fee.") The State concedes.
- F. (Defendant's assignment of error number 6: "The judgment and sentence for the cause number with the attempted

indecent liberties count contains an error that must be corrected: it imposes more than the \$760.00 in legal financial obligations ordered by the trial court.”) This is alternative argument to the one above since the State is conceding that the \$60 sheriff’s service fee should be deleted.

- G. (Defendant’s assignment of error number 7: “An award of costs on appeal against the defendant would be improper.”) The Court should use its discretion in deciding whether to impose appellate costs.

## **II. RESPONSE TO ASSIGNMENT OF ERROR ON PERSONAL RESTRAINT PETITION**

The case of *State v. W.R.*, 181 Wn.2d 757, 336 P.3d 1134 (2014), is not applicable because a “consent” instruction, WPIC 18.25, was not given.

## **III. STATEMENT OF FACTS**

The relevant timeline is as follows:

October 2, 2009: The defendant was found guilty of Attempted Indecent Liberties in Benton County cause number 08-1-00749-2, and Rape in the Second Degree and four counts of Solicitation to Commit Perjury in the First Degree in Benton County No. 08-1-01051-5. CP 372-77.

February 23, 2012: This Court issued an opinion, holding that, “We then affirm the convictions for second degree rape, attempted indecent liberties, and one count of solicitation of perjury; and dismiss with prejudice the remaining counts of solicitation of perjury. And we

remand for reconsideration of the order sealing the juror questionnaires and for resentencing.” CP 59.

June 13, 2013: The mandate on direct appeal was issued.  
CP 20.

January 7, 2014: The State began attempting to resentence the defendant pursuant to this Court’s holding. RP 01/07/2014 at 3.

September 18, 2015: The trial judge, the Honorable Cameron Mitchell, limited himself to resentencing the defendant following the reversal of three counts of Solicitation to Commit Perjury in the First Degree and reconsideration of the order sealing the juror questionnaires. RP 09/18/2015 at 53-55, 60.

The defendant on direct appeal has noted some mistakes on the Judgment and Sentence. Between 2009 and 2015, the statute for an indeterminate sentence was recodified from RCW 9.94A.712 to RCW 9.94A.507. The State incorrectly listed the new statute on the Judgment and Sentence. CP 304, 831. The State also failed to accurately calculate the standard range for Solicitation to Commit Perjury in the First Degree. CP 831. The Court incorrectly considered a \$60 service fee as mandatory. CP 317, 844; RP 09/18/2015 at 113.

The other remaining arguments are set forth below.

Regarding the Personal Restraint Petition, there were no jury instructions given at trial on the issue of consent, who has the burden to prove consent, or how consent and “forcible compulsion” are related. CP 45-76.

#### IV. APPEAL ARGUMENT

**A. The standard range for Count II – Solicitation to Commit Perjury in the First Degree should be 10.25 to 15 months; however, this will not affect the defendant’s incarceration.**

The defendant is correct that the standard range on Count II of 08-1-01051-5 should be 10.25 to 15 months. Of course, this will not affect the defendant’s incarceration since this count is concurrent with the other counts which have a higher seriousness level and offender score.

**B. The defense attorney appropriately did not object to the no-contact orders with witnesses.**

**1. The standard on review is abuse of discretion.**

As discussed below, the no-contact orders are crime-related prohibitions. Crime-related prohibitions are reviewed for abuse of discretion. *State v. Ancira*, 107 Wn. App. 650, 653, 27 P.3d 1246 (2001).

**2. The trial court has the authority to issue no-contact orders protecting witnesses.**

*State v. Armendariz*, 160 Wn.2d 106, 156 P.3d 201 (2007), is on point. A police officer responded to the scene of a possible domestic violence incident. *Id.* at 109. While the officer was speaking with the

possible victim, the defendant returned to the scene and ended up in a struggle with the officer. *Id.* The defendant was convicted of Assault in the Third Degree on the officer. *Id.* The trial court issued a no-contact order prohibiting the defendant from contacting the third person. *Id.* The *Armendariz* court upheld that order, stating trial courts have the authority to impose no-contact orders on behalf of witnesses under RCW 9.94A.505(8) (“As part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.”) *Id.* at 113. So, the defense attorney did not fall below reasonable standards by failing to object to the no-contact orders.

See also *State v. Warren*, 134 Wn. App. 44, 138 P.3d 1081 (2006), which upheld a no-contact order entered against the victim’s mother because the mother testified against the defendant.

**3. RCW 7.90.150 also would allow the trial court to issue no-contact orders on J.R., A.M., and M.J.**

The defendant suggests that only a victim named in an Information could be the subject of a Sexual Assault Protection Order. However, “victim” is not defined in RCW 7.90. The Legislative Declaration in RCW 7.90.005 refers to victims who do not report the crime and states the intent of the statute includes giving such individuals a remedy. There is no reason to suggest that the legislature wanted the statute to be interpreted

conservatively to exclude victims not named in an Information; certainly J.R., A.M., and M.J. view themselves as sexual assault victims of the defendant, and they assisted in convicting him.

When RCW 7.90.150 refers to “victim,” it should be interpreted as including victims of a defendant whose testimony is admitted under ER 404(b) to show motive, common scheme or plan, or lack of accident.

**4. In any event, there is no prejudice to the defendant.**

If the defense attorney had objected to the no-contact orders because they were deemed “Sexual Assault Protection Orders,” the trial court may have issued an Anti-Harassment No-Contact Order. Either would have contained the same provisions. Unless the defendant wants to contact J.R., A.M., or M.J., there is no prejudice to the defendant.

**C. The reference to RCW 9.94A.712 in the Judgment and Sentence is a scrivener’s error.**

The defendant argues correctly that the statute in effect at the time of the offenses, RCW 9.94A.712, should have been referenced in the Judgments and Sentence. That statute had been recodified as RCW 9.94A.507 when the defendant was resentenced. But, the State accepts the defendant’s argument that the reference to RCW 9.94A.507 is a scrivener’s error.

**D. The trial court did not abuse its discretion by imposing the now-challenged community custody conditions.**

**1. Procedurally, the argument should not be allowed.**

The defendant was convicted by jury verdicts on October 2, 2009.

CP 3. He filed a direct appeal which was decided by this court on February 23, 2012, in an unpublished opinion. *See* Court of Appeals No. 28985-4-III, consolidated with No. 28986-9-III; CP 23-60. The defendant did not challenge any of the conditions of community custody. This Court affirmed the convictions for Rape in the Second Degree and Attempted Indecent Liberties. CP 23-60. The defendant was also convicted at trial of four counts of Solicitation to Commit Perjury in the First Degree. The State conceded, and this Court agreed, that there was only one unit of prosecution and, therefore, dismissed three of the counts of Solicitation to Commit Perjury. As a result, the defendant's offender score and standard range would change. There was also an issue about the trial court entering an order sealing the juror questionnaires. Therefore, the holding was "we remand for reconsideration of the order sealing the juror questionnaires and for resentencing." CP 59.

This should not have opened up all issues, specifically the issues of the propriety of the conditions of community custody, for resentencing.

*State v. Kilgore*, 167 Wn.2d 28, 216 P.3d 393 (2009), dealt with similar facts. The defendant was convicted of three counts of Rape of a Child and four counts of Child Molestation. *Id.* at 32. Two counts were reversed on appeal. *Kilgore* cited *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 43, 604 P.2d 1293 (1980), that “‘the finality of that portion of the judgment and sentence that was correct and valid at the time it was pronounced’ is unaffected by the reversal of one or more counts.” 167 Wn.2d at 37. If the trial court elects to exercise its discretion to revisit an issue on remand that was not the subject of an earlier appeal, its decision may be the subject of a later appeal.

The trial judge, the Honorable Cameron Mitchell, limited himself to resentencing the defendant following the reversal of three counts of Solicitation to Commit Perjury in the First Degree and reconsideration of the order sealing the juror questionnaires. RP 09/18/2015 at 53-55, 60. The trial court did not intend to readdress all issues. The conditions of community custody were not appealed on direct review. The mandate was issued on the direct review on June 14, 2013. CP 20. The Judgment and Sentence regarding the community custody conditions became final at that time.

**2. The argument also fails on its merits.**

**a) The standard on review is abuse of discretion.**

“We review whether a community placement decision is crime-related for abuse of discretion.” *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993).

**b) The trial court did not abuse its discretion.**

To address the specific challenged community custody conditions:

*Conditions relating to minors:* Number 10: “Have no contact with minors, unless approved by your therapist.”; Number 21: “Avoid places where children congregate . . . .”; and Number 22: “Hold no position of trust or authority involving children.” CP 315-16, 842-43.

The defendant has a history of inappropriate acts with young women or minors. The Pre-Sentence Investigation states that the defendant was a suspect in a Child Molestation case in Tucson, Arizona. CP 99. He also went to a high school in Oro Valley, Arizona, to try to contact a fifteen-year-old girl by claiming to be her cousin, although he had been trespassed from that high school. CP 100.

In this case, one victim, A.M., was in her late teens. CP 845. He met another victim at a county fair, a place where minors would

congregate. In all the cases, he preyed on females who needed transportation—a common issue for young girls.

The defendant rightly cites *State v. Riles*, 135 Wn.2d 326, 957 P.2d 655 (1998), as holding that an order prohibiting contact with a minor against a defendant who sexually assaulted an adult is disallowed. However, there was no evidence that the defendant in *Riles* was a danger to minors. In this case, the defendant's past and current offenses demonstrate otherwise.

*Polygraph testing condition*: Number 13: "Submit to polygraph testing upon the request of your therapist and/or Community Corrections Officer, at your own expense." CP 315, 842.

*State v. Riles* should resolve this issue. The *Riles* Court upheld the same condition: "submit to polygraph and plethysmograph testing upon the request of your therapist and/or Community Corrections Officer, at your own expense." 135 Wn.2d at 337, 345.

**E. The State concedes that the sheriff's service fee should be stricken.**

The State concedes that a \$60 sheriff's service fee is not a mandatory cost. The trial court did not intend to include that fee as a cost and it should be stricken.

**F. The Court should use its discretion in deciding whether to impose costs.**

The defendant has cited three minor areas in which the Judgment and Sentence is incorrect: the standard range on the Solicitation to Commit Perjury, the citation to the recodified indeterminate statute and the \$60 sheriff's service fee. None of these will affect the defendant's length of incarceration. All could have been accomplished via a motion under CrR 7.8 to the trial court. This Court can use its discretion to determine if this will result in the defendant being the "substantially prevailing party" under RAP 14.2.

Appellate costs were assessed against the defendant in his direct appeal. The defendant's circumstances have not changed. This Court should impose appellate costs, pursuant to RCW 10.73.160 and *State v. Sinclair*, 192 Wn. App. 380, 367 P.3d 612 (2016).

**V. PERSONAL RESTRAINT PETITION ARGUMENT**

**A. The "consent" instruction, WPIC 18.25, was not given.**

The defendant argues that *State v. W.R.*, 181 Wn.2d 757, 336 P.3d 1134 (2014), holding that the standard consent instruction, WPIC 18.25, impermissibly shifts the burden to the defendant to disprove forcible compulsion in a rape case, should be applied retroactively and result in a new trial. However, WPIC 18.25 was not given; the jury was not

instructed on the defense of consent. *See* App. A – Court’s Instructions to the Jury. The jury necessarily found beyond a reasonable doubt that the defendant used forcible compulsion to have intercourse with C.S. and that he used forcible compulsion in an attempt to have sexual contact with C.H. *W.R.* is not applicable.

On some other case, it may be important to decide whether *W.R.* should be applied retroactively. This Court should not reach this issue in this case. Likewise, there is no need to decide whether the defendant’s motion/petition is timely, and there is no reason to argue whether the verdicts would have been different. The defendant’s argument is resolved by the fact that the “consent” instruction was not given.

## VI. CONCLUSION

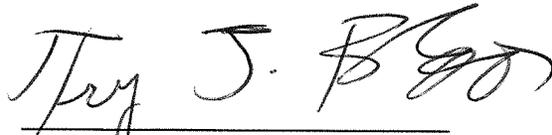
On the direct appeal, there are three errors: 1) the standard range is not correct on the charge of Solicitation to Commit Perjury in the First Degree; 2) the section for the indeterminate sentence is incorrectly listed as RCW 9.94A.507; and 3) the \$60 sheriff’s service fee should be stricken.

On the defendant’s pro se Personal Restraint Petition, the argument is not well taken. The jury was not given an instruction regarding consent under WPIC 18.25, the instruction found impermissible by *State v. W.R.*

**RESPECTFULLY SUBMITTED** this 19th day of September,

2016.

**ANDY MILLER**  
Prosecutor

A handwritten signature in cursive script, appearing to read "Terry J. Bloor". The signature is written in black ink and is positioned above a horizontal line.

---

Terry J. Bloor, Deputy  
Prosecuting Attorney  
Bar No. 9044  
OFC ID NO. 91004

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

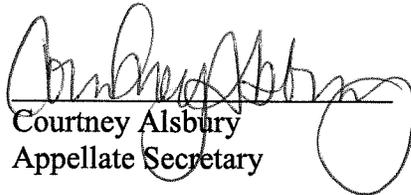
Jill Reuter  
Nichols Law Firm, PLLC  
PO Box 19203  
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E-mail service by agreement  
was made to the following  
parties:  
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Taylor Ross Landrum  
#889074  
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P.O. Box 769  
Connell, WA 99326

U.S. Regular Mail, Postage  
Prepaid

Signed at Kennewick, Washington on September 19, 2016.

  
Courtney Alsbury  
Appellate Secretary

APPENDIX A

Court's Instructions to the Jury

JOSIE DELVIN  
BENTON COUNTY CLERK

OCT 02 2009

FILED *KJ*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF BENTON

STATE OF WASHINGTON,

Plaintiff,

vs

TAYLOR LANDRUM,

Defendant.

NO. ✓ 08-1-00749-2  
08-1-01051-5

COURT'S INSTRUCTIONS

*Gary Metro*  
10/2/09

SCOTT W. JOHNSON  
Chief Deputy Prosecuting Attorney  
Benton County, Washington  
Attorney for Plaintiff

Gary Metro  
Attorney at Law  
Attorney for Defendant

0-000000045

INSTRUCTION NO. 1

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

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

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

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

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you

must not discuss that evidence during your deliberations or consider it in reaching your verdict.

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

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

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

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

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

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

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

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

INSTRUCTION NO. 2

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

0-000000049

INSTRUCTION NO. 3

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

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

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

INSTRUCTION NO. 4

You have heard evidence that alleges the defendant engaged in other crimes, wrongs, or acts. You must not consider this evidence as propensity evidence, meaning that you must not use the evidence to conclude that because the defendant may have done other acts, he necessarily did the acts charged. You may only consider this evidence to determine whether or not the other crimes, wrongs, or acts show that the defendant was engaged in a common scheme or plan.

0-000000051

INSTRUCTION NO. 5

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

0-000000052

INSTRUCTION NO. 6

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts which he or she has directly observed or perceived through the senses. Circumstantial evidence consists of proof of facts or circumstances which, according to common experience permit a reasonable inference that other facts existed or did not exist. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

0-000000053

INSTRUCTION NO. 7

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

0-000000054

INSTRUCTION NO. 9

A person commits the crime of rape in the second degree when he or she engages in sexual intercourse with another person by forcible compulsion.

0-000000055

INSTRUCTION NO. 9

To convict the defendant of the crime of rape in the second degree, each of the following three elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about October 10, 2008, the defendant engaged in sexual intercourse with Carolyn Strand;
- (2) That the sexual intercourse occurred by forcible compulsion;
- (3) That this act occurred in the State of Washington.

If you find from the evidence that elements (1), (2), and (3) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

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

INSTRUCTION NO. 10

Sexual intercourse means that the sexual organ of the male entered and penetrated the sexual organ of the female and occurs upon any penetration, however slight or any penetration of the vagina or anus however slight, by an object, including a body part, when committed on one person by another, whether such persons are of the same or opposite sex or any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

0-000000057

INSTRUCTION NO. 11

Forcible compulsion means physical force that overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to oneself or another person or in fear of being kidnapped or that another person will be kidnapped.

0-000000058

INSTRUCTION NO. 12

A person commits the crime of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he or she offers to give or gives money or other thing of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such crime been attempted or committed.

0-000000059

INSTRUCTION NO. 13

The defendant has been charged with three counts of solicitation to commit perjury in the first degree. To convict the defendant of the three separate crimes of criminal solicitation, each of the following elements of the crime must be proved beyond a reasonable doubt for each of the three counts:

(1) That between October 11, 2008 and September 1, 2009 the defendant offered to give a thing of value to another to engage in specific conduct;

(2) That such offering was done with the intent to promote or facilitate the commission of the crime of perjury in the first degree;

(3) That the specific conduct of the other person would constitute the crime of perjury or would establish complicity of the other person in the commission or attempted commission of the crime of perjury in the first degree, if such crime had been attempted or committed; and

(4) That the acts occurred in the State of Washington.

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

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

INSTRUCTION NO. 14

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

0-000000061

INSTRUCTION NO. 15

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

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

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

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

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

0-000000062

No. 16

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

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

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

0-000000063

INSTRUCTION NO. 17

A person commits the crime of perjury in the first degree when in any official proceeding he or she makes a materially false statement which he or she knows to be false while under an oath required or authorized by law.

0-000000064

INSTRUCTION NO. 18

To convict the defendant of the crime of perjury in the first degree there must be either positive testimony of at least two credible witnesses which directly contradicts the defendant's statement made under oath or there must be one such direct witness along with independent direct or circumstantial evidence of supporting circumstances which clearly overcomes the oath of the defendant and the legal presumption of defendant's innocence.

0-000000065

INSTRUCTION NO. 19

Oath includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated.

An oath is required or authorized by law when the use of the oath is specifically provided for by statute or regulatory provision. A Superior Court judge is authorized by law to administer an oath to witnesses testifying in a Superior Court trial.

0-000000066

INSTRUCTION NO. 20

Official proceeding means a proceeding heard before any legislative, judicial, administrative or other government agency or official authorized to hear evidence under oath.

0-000000067

INSTRUCTION NO. 21

A materially false statement is any false statement, oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding.

0-000000068

INSTRUCTION NO. 22

A person commits the crime of attempted indecent liberties when, with intent to commit that crime, he or she does any act which is a substantial step toward the commission of that crime.

0-000000069

INSTRUCTION NO. 23

A substantial step is conduct of the defendant which strongly indicates a criminal purpose and which is more than mere preparation.

0-000000070

INSTRUCTION NO. 24

To convict the defendant of the crime of attempted indecent liberties, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about October 21, 2006, the defendant did an act which was a substantial step toward the commission of indecent liberties;

(2) That the act was done with the intent to commit indecent liberties; and

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

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

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

INSTRUCTION NO. 25

A person commits the crime of indecent liberties when he or she knowingly causes another person who is not his spouse to have sexual contact with him by forcible compulsion.

0-000000072

INSTRUCTION NO. 26

Sexual contact means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desires of either party.

0-000000073

INSTRUCTION NO. 27

Married means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in court for legal separation or for dissolution of the marriage.

0-000000074

INSTRUCTION NO. 28

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

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

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

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or

procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

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

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

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