

33832-1-III
Consolidated w/33296-9-III

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Court of Appeals
Division III
State of Washington

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

LELBERT WILLIAMS

Consolidated with 33840-1-III

IN RE PERSONAL RESTRAINT OF:

LELBERT L. WILLIAMS

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENTS OF ERROR

1. The court erred by convicting Mr. Williams of possession of stolen property where the evidence was insufficient.
2. The trial court erred by failing to provide a written instruction to the jury defining "intent."
3. The trial court erred by categorically denying a prison-based DOSA (drug offender sentencing alternative) request.

II. ISSUES PRESENTED

DIRECT APPEAL.

1. Does sufficient evidence exist to persuade a rational trier of fact beyond a reasonable doubt that Mr. Williams possessed stolen property with a value between \$750 and \$5000 based upon the owner's valuation of his property?
2. Is the defendant's complaint that the trial court did not provide a written definition of "intent" to the jury moot, because the court did provide a written instruction of "intent" to the jury in conjunction with reading that instruction aloud to the jury?
3. Did the trial court properly exercise its discretion by denying the defendant's request for a Drug Offender Sentencing Alternative where the court found there was no evidence supporting defendant's claim of

dependency, other than the defendant's self-serving statement that he suffered from a chemical dependency?

4. Whether this Court should impose costs against the defendant if the State prevails on appeal?

PERSONAL RESTRAINT PETITION.

5. Did police officers have a reasonable suspicion to stop and detain the defendant after multiple, contemporaneous 911 calls were received providing both a description of the defendant's extant suspicious behavior and a description of the defendant?

6. Did the officers' personal observations of the defendant's suspicious activity, including his flight from officers when ordered to stop, provide an independent basis for the officers to stop and detain the defendant?

7. Were the citizen-informants who called 911 contemporaneously with the defendant's suspicious activity sufficiently reliable to provide reasonable suspicion for the officers' investigative stop and detention of the defendant?

8. Has the defendant established a Fourth Amendment violation if he attempted to assert another's constitutional rights at the time of trial, and could not establish a privacy expectation in the stolen property he abandoned at the scene?

9. Has the defendant established a *Brady* violation without identifying what exculpatory evidence, if any, the State allegedly withheld, and how it prejudiced him?

10. Has the defendant established a Sixth Amendment violation where he has not identified any specific violation or produced any competent, admissible evidence to support this assertion?

11. Is the defendant's claim that the State used "perjured" testimony to convict him supported by the record?

12. Was the defendant prejudiced by the State's amendment of the information?

III. STATEMENT OF THE CASE

Procedural history.

The defendant/appellant, Leibert Williams, was charged by amended information in the Spokane County Superior Court with residential burglary (victim Joan Nelson), second degree burglary (victim Patricia Barnhouse), attempted second degree burglary (victim Cody Frazier), attempted theft of a motor vehicle (victim Cynthia Bell), and second degree possession of stolen property (Adam Macomber). CP 276-77.

Prior to trial, the court granted the defendant's motion to proceed pro se with stand-by counsel. 9/25/14 RP 3-17.¹

At trial, the defendant was convicted of the lesser included offense of second degree criminal trespass, attempted second degree burglary, the lesser included offense of vehicle prowling, and second degree possession of stolen property. CP 337, 339, 343, 344. The defendant was acquitted of the residential burglary under count I. CP 333-335.

At sentencing, the State and defendant agreed that he had a "9-plus" offender score. RP 489, 491; CP 374-75.² Mr. Williams was sentenced within the standard range. CP 378, 387, 389. This appeal and personal restraint petition timely followed.

Substantive facts.

On May 6, 2014, residents of the Finch Arboretum neighborhood placed telephone calls to 911 and crime check regarding an unknown person carrying two duffel bags, moving from backyard to backyard, and crawling

¹ The defendant was initially represented by assistant public defender Matt Harget. After several motions by the defendant requesting to represent himself, the trial court granted the motion and ordered Mr. Harget to be standby counsel. CP 192.

² The trial court determined Mr. Williams had 14 felony convictions which counted towards his offender score. RP 491.

over neighborhood fences.³ RP 138, 143-44, 152-53, 197, 244-45, 310-12, 320, 369.

Joan Nelson owned a rental house located at 3206 West Trinity in Spokane. RP 131. During the morning hours of May 6, 2014, Ms. Nelson was made aware of a potential burglary in progress at her rental house. RP 132. Shortly thereafter, several individuals observed the entrance door of Ms. Nelson's rental house had been pried open, damaging the door, the lock, and door jam. RP 133, 137, 149, 286. The defendant was not given permission to enter the home. RP 136. Ms. Nelson's husband, David Nelson, responded to the residence and observed unknown footprints inside the home. RP 137. Nothing appeared to be taken from the residence after the incident. RP 138.

Shortly after the incident, Mr. Nelson and his brother-in-law, John Johnston, canvassed the neighborhood looking for the burglar. RP 143. Mr. Johnston observed the defendant holding a long screwdriver and attempting to pry open a lock attached to a storage shed. RP 150. The defendant had two large duffel bags next to him. RP 150. Mr. Johnston yelled and the defendant grabbed the duffel bags and quickly walked away. RP 152. Mr. Johnston followed the defendant and gave periodical updates

³ This neighborhood is a small residential community, with older military housing, with intersecting, short blocks. RP 312.

to 911 of the defendant's location. RP 153. The defendant was contacted by police approximately 100 yards from the Nelson rental home. RP 156.

Patricia Barnhouse lived at 1208 South F Street in Spokane. RP 160-61. During the morning of the incident, Ms. Barnhouse was near her vehicle at her residence when she observed the defendant walk by with two duffel bags. RP 161-62. Thereafter, Ms. Barnhouse locked her residence and left for work. RP 161. Subsequently, police contacted her and told her that someone had broken into the crawl space of her home, jumped over her back fence, and attempted to get into her garage. RP 162. The door to her residence and garage had pry marks. RP 163. However, nothing was taken. RP 164.⁴

Cynthia Bell lived at 1214 South F Street in Spokane. RP 170. She owned an early 1990's Toyota Tercel, which was parked in her driveway. RP 170. Someone entered her vehicle and damaged the ignition column and ignition. RP 171, 174. Ms. Bell was a Bible school teacher, and had candy for her school children taken from the vehicle. RP 172-73, 179, 181. When the defendant was apprehended on the day of the incident, Ms. Bell

⁴ During the defendant's pretrial incarceration, he sent Ms. Barnhouse several letters stating he was a man of God, and that the charges against him were a "conspiracy to frame him for things that the police have done and he would hope that [she] would understand that." RP 167, 345.

observed an officer remove her candy from the defendant's pocket. RP 174-75.

On the day of the incident, Lisa Sedlmayer, who lived at 3212 West Trinity Circle, arrived home in the morning and noticed her neighbor's front door was ajar. RP 215-218. It appeared to be pried open.⁵ RP 215-218.

Cody Frazier, who owned a rental house at 3320 West Woodland, observed that someone attempted to pry the hasp off the door to his backyard shed. RP 223, 296, 314-15. It appeared to have fresh pry marks. RP 223, 296, 314-15. The damage was not present before the day of the incident. RP 223.

On the morning of the incident, Kate Jones, who lived at 3238 West Trinity Circle, observed the defendant, at different times, carrying several duffel bags, walking around in the backyards near her residence. RP 244, 247-48. Ms. Jones took several photographs of the defendant. RP 249, 395; Exs. 42, 43, 44, and 45.

Rodrigo Milantoni lived at 3228 West Trinity and observed the defendant underneath some bushes carrying one or several bags. RP 369-73.

⁵ When Ms. Sedlmayer arrived home from giving her boyfriend a ride, she noticed a police car traveling back and forth in her neighborhood. RP 216.

Adam Macomber resided at 228 West Riverside Avenue. RP 268. On May 6, 2014, when he returned home, he spotted several items missing from his apartment: specifically, an Adidas duffel bag, a JBL Bluetooth speaker, a Toshiba laptop computer, New Balance running shoes, an Under Armour jacket, his Big Sky championship ring and his Port Angeles class ring, a bracelet, a Samsung mobile hotspot (a mobile electronic router for a smartphone), clothing, and toiletries.⁶ RP 268-69, 274, 276-77. Mr. Macomber valued the items stolen at “roughly” \$800. RP 278.

Sergeant Jason Reynolds, a Spokane Police officer, observed the defendant attempting to enter into a residence at 1212 South F Street after 9:00 a.m. RP 260. During this time, the defendant disregarded officers’ commands to stop and comply with their instructions. RP 260. The defendant was ultimately apprehended at the porch of the residence at 1210 South F Street. RP 260.

Officer Devin Erickson responded to the area of the Finch Arboretum several times, approximately one hour apart, on the morning of May 6, 2015, on a suspicious person call. RP 290-91. Officer Erickson

⁶ Police recovered these items after the incident in the two duffel bags which were searched pursuant to a search warrant. *See infra* at 8. Photographs of the items were admitted as exhibits at the time of trial. RP 274.

observed the defendant climbing over the fence at 1208 South F Street and he fit the description of the suspicious person provided by neighbors who called 911. RP 290-91, 307.

The defendant started to run when he observed Officer Erickson and the defendant refused to stop when commanded to do so. RP 290-92. Incident to arrest, Officer Erickson found candy and a screwdriver on the defendant. RP 293-95. Thereafter, Officer Erickson found two heavy bags underneath some insulation in the basement crawl space area of the residence at 1208 South F Street. RP 297, 300, 307. Officer Erickson observed some pry marks on the door to the crawl space and the door was slightly ajar. RP 297.

Officer Dave Kennedy of the Spokane Police Department observed the defendant running across a yard and over a fence between two houses on F Street in the area of the Finch Arboretum around 9:37 a.m., with another officer behind the defendant attempting to apprehend him. RP 185, 197, 209. Shortly thereafter, the defendant was apprehended and detained. RP 185. During a search of the defendant incident to arrest, Officer Kennedy collected candy and a screwdriver, and an Eastern Washington University Big Sky Championship football ring.⁷ RP 186,

⁷ The ring was numbered and it had the name “Macomber” on it. RP 190. During the investigation, Officer Kennedy learned that a person

198-99, 210. During cross-examination, the defendant claimed he had purchased the ring from a “friend” that did not have a name. RP 391.⁸

The two duffel bags were collected and stored at the police property facility and later searched by Detective Ty Snyder pursuant to a search warrant granted by the superior court. RP 335-36. Within the bags, Detective Snyder located a large screwdriver, a JBL Bluetooth speaker, a Toshiba laptop, a Samsung mobile hotspot, a weight lifting belt, miscellaneous clothes including an Under Armour jacket, and a knee brace,

named Macomber played for Eastern in 2005 and his number was “35.” RP 193. The officer also found a “very nice” Armitron wristwatch, different necklaces, a heavy chain several band rings, and another sports ring from Port Angeles High School, all of which the defendant was wearing or possessed at the time his arrest. RP 190-91, 193.

⁸ [Deputy Prosecutor] Why were you -- why did you have Mr. Macomber's ring in your pocket?

[Defendant] I bought it from someone.

[Deputy Prosecutor] Who did you buy it from?

[Defendant] A friend.

[Deputy Prosecutor] And does this friend have a name?

[Defendant] No.

RP 391.

in addition to other items.⁹ RP 340-42, 346. During cross-examination, the defendant claimed the police planted the screwdriver in the bag after his arrest. RP 383.

During the defendant's case-in-chief, he alleged that he was in Downtown Spokane during the early morning hours of May 6, 2015. RP 377. He was headed to Seattle when an unknown male started to follow him. RP 378. He claimed that he walked westbound on Sunset Boulevard, and the unknown male continued to follow him. RP 379. The defendant contended he proceeded through various unidentified fields and backyards throughout the night of May 6, 2015, attempting to evade the unknown male. RP 379-80. At one point, he asserted he lost one shoe, and then removed the other shoe. RP 380. During cross-examination, the defendant maintained that he found Mr. Macomber's running shoes in a field and tried them on, but claimed the shoes did not fit. RP 391-92.¹⁰

In the morning hours, the defendant asserted he saw the unknown man who was following him walking with several officers. RP 381. After the defendant's capture and arrest, the defendant alleged officers rushed the

⁹ No useable fingerprint evidence was found on the recovered stolen property. RP 328-30.

¹⁰ This assertion was made by the defendant notwithstanding that he had Mr. Macomber's championship ring in his pocket. RP 391-92.

unknown male away from the scene, attempting to conceal his identity.

RP 384.

IV. ARGUMENT

DIRECT APPEAL.

A. VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE AND DRAWING ALL REASONABLE INFERENCES FROM THE EVIDENCE, MR. MACOMBER, WHO WAS THE VICTIM OF THE SECOND DEGREE POSSESSION OF STOLEN PROPERTY CRIME AND OWNER OF THE STOLEN PROPERTY, PROPERLY ESTABLISHED THE VALUE OF HIS STOLEN PROPERTY AT THE TIME OF TRIAL.

Mr. Williams first argues the evidence was insufficient to prove the stolen property he possessed exceeded \$750 in value, claiming the State did not present any evidence of market value of the stolen property. Appellant's Br. at 9.¹¹

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *In re Pers. Restraint of Martinez*, 171 Wn.2d 354, 364, 256 P.3d 277 (2011). Circumstantial evidence is as

¹¹ The defendant argues this same claim in his personal restraint petition.

reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). This Court defers to the trier of fact on issues of conflicting testimony, witness credibility, and the weight and persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992), *abrogated on other grounds by In re Cross*, 180 Wn.2d 664, 327 P.3d 660 (2014).

To convict Mr. Williams of possession of stolen property in the second degree, the State needed to prove that he possessed stolen property that exceeded \$750 in value. “Value means the market value of the property at the time and in the approximate area of the act.” RCW 9A.56.010(21). Market value is based on an objective standard and is the price that a well-informed buyer would pay to a well-informed seller. *State v. Kleist*, 126 Wn.2d 432, 438, 895 P.2d 398 (1995).

Mr. Williams argues that Mr. Macomber’s valuation of his own property was insufficient to establish market value. In *State v. Hammond*, 6 Wn. App. 459, 461, 493 P.2d 1249 (1972), the defendant was convicted of grand larceny for having stolen five rings. The rings were introduced into evidence as exhibits and the victim/owner was the only witness called by the State to testify concerning the value of the rings. The victim testified as to three rings, they were only worth a few dollars. *Id.* at 460. As to the fourth ring, the victim stated she had paid between \$25 and \$29. *Id.* As to the fifth

ring, and over defense counsel's objection, the victim testified "you couldn't buy a ring like this - for \$600. I know." *Id.*

Division Two of this Court ultimately held an owner of property may testify to the property's value "whether he [or she] is generally familiar with such values or not." *Id.* at 461. An owner of property is deemed to have sufficient expertise to testify regarding the value of property he or she owns without meeting the usual foundational requirements. As the *Hammond* court explained:

[t]he general rule requiring that a proper foundation be laid, showing the witness to have knowledge upon the subject before he can qualify to testify as to market value, does not apply to a party who is testifying to the value of property which he owns.

Id.; see also *McCurdy v. Union Pac. R. Co.*, 68 Wn.2d 457, 468, 413 P.2d 617 (1966) ("the owner of a chattel may testify as to its market value without being qualified as an expert in this regard").

The *Hammond* court further observed:

The owner of property is presumed to be familiar with its value by reason of inquiries, comparisons, purchases and sales. The weight of such testimony is another question and may be affected by disclosures made upon cross-examination as to the basis for such knowledge, but this will not disqualify the owner as a witness.

Hammond, 6 Wn. App. at 461 (emphasis added).

Under the general rule we think the witness was entitled to give her estimate of the value of the ring for whatever it might be worth in aiding the trier of the facts in determining the value. She was subject to cross-examination to bring out the basis or lack of basis for the estimate and in the end little

or no weight might have been given to her testimony. To adopt any other holding would foster a too narrowed and technical application of the general rule relating to an owner's testimony of value of personal property.

Id. at 463.

Here, it is not contested that Mr. Macomber was the owner of the property stolen and found in the two duffel bags, and identified at trial as belonging to him. The defendant had the opportunity to cross-examine Mr. Macomber regarding the approximate \$800 value of his property. In addition, Mr. Williams did not provide any contrary evidence regarding the valuation of the property.

Mr. Williams's reliance on *State v. Ehrhardt*, 167 Wn. App. 934, 938, 276 P.3d 332 (2012), is misplaced. In *Ehrhardt*, the defendant was charged and convicted of several property related crimes. The witness in *Ehrhardt* testified about the value of two rotary hammers and two nail guns stolen from his garage. The stolen tools belonged to his employer. *Id.* at 938.

Division Two of this Court held that *testimony from a non-owner* about the tools' original cost, and photographs showing them from one angle, was insufficient to establish market value. *Id.* at 947. The court reasoned that the jury could not infer from the photographs whether the tools worked or what effect their condition had on their value. *Id.*

In the present case, viewing the evidence in the light most favorable to the State with all reasonable inferences, and deferring to the trier of fact on the issues of witness credibility and persuasiveness and weight of the evidence, the evidence was sufficient to support the conviction for possession of stolen property in the second degree based on the owner's valuation of his property at approximately \$800.

B. CONTRARY TO DEFENDANT'S ASSERTION, THE TRIAL COURT PROVIDED A WRITTEN INSTRUCTION TO THE JURY DEFINING "INTENT."

Mr. Williams claims the trial court failed to provide a written instruction to the jury defining "intent." After the defendant filed his opening brief, the Spokane County Superior Court Clerk discovered that it had omitted the trial court's written instruction number "8" defining "intent" from the original index of clerk's papers because of a scanning error. Thereafter, the Superior Court filed an amended index of clerk's papers and included the trial court's written jury instruction number eight, the "intent" instruction, now identified as CP 295a. In addition to the trial court's written instruction number eight defining "intent," the trial court also read the instruction aloud for the jury. RP 424. The issue is now moot.

C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED THE DEFENDANT’S REQUEST FOR A DOSA SENTENCE ONCE IT CONCLUDED THERE WAS NO EVIDENCE SUPPORTING A DOSA SENTENCE.

The defendant next argues the trial court abused its discretion when it denied his DOSA request.¹² Appellant’s Br. at 20-23.

A sentencing judge is vested with broad discretion in deciding whether to give a DOSA sentence and an appellate court’s review of the exercise of that discretion is limited. *State v. Grayson*, 154 Wn.2d 333, 335, 111 P.3d 1183 (2005). Accordingly, a defendant may not seek review of a sentencing court’s discretionary decision not to grant a DOSA. *State v. Bramme*, 115 Wn. App. 844, 850, 64 P.3d 60 (2003).

Every eligible defendant is entitled to request a DOSA and have the court actually consider that request. *Grayson*, 154 Wn.2d at 342. The failure to consider a DOSA “is effectively a failure to exercise discretion and is subject to reversal.” *Id.*

Where a court has considered the evidence before it and has concluded that there is no basis for a requested sentence, it has exercised its discretion. *See State v. Garcia-Martinez*, 88 Wn. App. 322, 330,

¹² RCW 9.94A.660, known as DOSA, authorizes the sentencing court to give eligible nonviolent drug offenders a reduced sentence, treatment, and increased supervision in an attempt to help them recover from their substance abuse addiction. *Grayson*, 154 Wn.2d at 337.

944 P.2d 1104 (1997), *review denied*, 136 Wn.2d 1002 (1998). A trial court abuses its discretion only if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *See, e.g., State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993).

Here, the record does not support Mr. William's claim that the sentencing court categorically refused to consider his DOSA request. At the time of sentencing, the defendant requested a low end standard range sentence and a DOSA based sentence. RP 503. During the defendant's allocution, he remarked:

MR. WILLIAMS: And I would ask for the low end. And I'm also DOSA eligible because of the way I handled my case, you know. I have school set up for the summer. It's given me motivation to want to do something better with my life, and I would just like the opportunity to do that. I'm DOSA eligible. My last violent offense was in 2010, over a year. And like I said, I have my financial aid in, I got school set up, and I'd just like an opportunity to better my life and come out a better person than I came in. Thank you.

RP 503.

The court then pronounced its sentence and stated:

THE COURT: Now as far as the situation with Mr. Williams, even though I told him he didn't need to file anything in response to this memo,¹³ because, frankly, he was not going to do it. He never filed anything before today, this wasn't the first sentencing scheduled, that he wanted anything. I have no information with regard to DOSA. I do

¹³ The State had filed a brief requesting an exceptional sentence upward based upon Mr. William's offender score. CP 360-72.

not have any -- for one thing, I don't have anything that indicates there is any substance abuse that was going on during this period of time. I have nothing that supports a consideration of a DOSA other than somebody is asking me for it.

What I believe is appropriate to do in this case is the standard range, and to run all of these charges concurrently, which is what I am going to do. That, to me, is fair. It represents what Mr. Williams was convicted of. It certainly acknowledges, obviously, that he has a significant history. But I really have nothing that would support a DOSA sentence. That's something that wasn't dependent on what the state wanted.

RP 506.

After the court sentenced the defendant, he commented:

MR. WILLIAMS: Your Honor, I'm in agreement with that. But I wasn't sure that I had to address the court about the DOSA thing. There was drugs that played a factor in that in the hospital that Mr. Harget had got release of information from that stipulates that I did -- I was on drugs at the time. So I -- as I say, I wasn't aware I had to address the court on that.

THE COURT: Normally when somebody is asking for a particular type of something other than the standard range, they have to give me some information. And I am not willing to continue this and continue this and continue this sentencing. It is up to me. DOSA is strictly discretionary with the court, it is not something you are entitled to. It is something the court has to consider.

This case has gone on long enough at this point and you could have brought it to my attention sooner. At least what I read in this case didn't involve drugs. I don't know if there was something more that I didn't see, but I don't see all the police reports and that sort of thing. At any rate, this is what

intend to do. Of course he's entitled to credit for time served,
and I presume -

RP 507-08.

The trial court had no evidence that the defendant had a substance abuse addiction, other than his self-serving statement made only after the court pronounced its sentence that played a factor in the commission of the offenses. In fact, the court considered and determined that no evidence was produced at the time of trial regarding any drug addiction of the defendant.

Moreover, the defendant failed to provide the trial court with a written evaluation determining his eligibility and amenability for drug treatment. *See State v. Harkness*, 145 Wn. App. 678, 683, 186 P.3d 1182 (2008) (a written evaluation determining a defendant's responsiveness to drug treatment is a mandatory prerequisite to a determination for a DOSA sentence).

Accordingly, Mr. Williams has not demonstrated that the trial court categorically refused to consider his DOSA request. The court properly exercised its discretion when it denied his request.

D. IF THE STATE IS THE SUBSTANTIALLY PREVAILING PARTY, THIS COURT SHOULD REQUIRE THE DEFENDANT AFFIRMATIVELY ESTABLISH A CLAIM OF INDIGENCY AS SET FORTH IN THIS COURT'S JUNE 10, 2016 ORDER BEFORE THIS COURT DETERMINES WHETHER TO AWARD COSTS AS AUTHORIZED IN RCW 10.73.160 AND RAP 14.2.

If the defendant is unsuccessful in this appeal, the defendant requests this Court decline to impose the appellate costs authorized in RCW 10.73.160 and RAP 14.2.¹⁴ This Court should require the defendant to provide the requested information as set forth in this Court's general order dated June 10, 2016, regarding his claim of continued indigency.

PERSONAL RESTRAINT PETITION.

A request for relief through a collateral challenge to a judgment and sentence is extraordinary. *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 132, 267 P.3d 324 (2011). A personal restraint petition (PRP) will be dismissed unless the petitioner establishes by a preponderance of the evidence that a violation of a constitutional right results in prejudice or a nonconstitutional error constitutes a fundamental defect that inherently results in a complete miscarriage of justice. *In re Pers. Restraint of Nichols*, 171 Wn.2d 370, 373, 256 P.3d 1131 (2011).

¹⁴ It appears this Court has addressed this issue in its General Order dated June 10, 2016, dealing with motions on costs.

A PRP must state with particularity the factual allegations underlying the petitioner's claim of unlawful restraint. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 885-86, 828 P.2d 1086 (1992). Bald assertions and conclusory allegations are not sufficient. *Id.* at 886.

In addition, a petitioner's allegations must also have evidentiary support. *Id.* If the trial court record does not support the factual allegations, then the petitioner must show through affidavits or other forms of corroboration that competent and admissible evidence will establish the factual allegations. *Id.* The petitioner may not rely on mere speculation, conjecture, or inadmissible hearsay. *Id.*

In addition to Mr. William's broad, non-specific topical statements, he has not pointed to any factual allegations or submitted any affidavit or provided any other form of competent and admissible evidence to establish any of his assertions. Although Mr. William's allegations are unclear, each will be addressed briefly, in turn.

E. OFFICERS HAD A REASONABLE ARTICULABLE SUSPICION TO STOP THE DEFENDANT AFTER RECEIVING MULTIPLE 911 CALLS REGARDING A SUSPICIOUS PERSON, REPORTEDLY CARRYING TWO LARGE DUFFEL BAGS THROUGH THE BACKYARDS OF RESIDENCES, POTENTIALLY BURGLARIZING RESIDENCES, AND THE DEFENDANT FIT THE DESCRIPTION OF THE SUSPICIOUS PERSON.

This claim was not developed or argued in the trial court. Moreover, the defendant fails to identify a claim of error other than by a conclusory statement. RAP 16.7(a)(2)(i).¹⁵

Nevertheless, an officer may conduct an investigative *Terry* stop and briefly detain and question an individual if that officer has a well-founded suspicion based on objective facts that the individual may have information about or be connected to actual or potential criminal activity. *State v. Sieler*, 95 Wn.2d 43, 46, 621 P.2d 1272 (1980). A police officer may conduct an investigatory stop of an individual for the limited purpose of verifying or dispelling a reasonable suspicion that criminal activity is occurring or is about to occur. *State v. Acrey*, 148 Wn.2d 738, 64 P.3d 594 (2003). A reasonable suspicion is the “substantial possibility that criminal conduct has occurred or is about to occur.” *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986).

¹⁵ RAP 16.7(a)(2)(i) states; “*Grounds for Relief*. A statement of (i) the facts upon which the claim of unlawful restraint of petitioner is based and the evidence available to support the factual allegations, ...”

For instance, officers are permitted to briefly stop individuals near the scene of a burglar alarm in order to obtain identification and determine the individual's reason for being in the area. *See State v. Wheeler*, 43 Wn. App. 191, 196-97, 716 P.2d 902 (1986) (upholding a *Terry* stop made after the police detained a man matching the description of an individual whom neighbors had reported was behaving suspiciously even though the officers did not confirm a burglary had been committed until after detaining the suspect), *affirmed*, 108 Wn.2d 230, 737 P.2d 1005 (1987).

Courts may also consider flight to determine whether an officer had reasonable suspicion of criminal activity. *State v. Little*, 116 Wn.2d 488, 496, 806 P.2d 749 (1991). And while innocent explanations might exist, circumstances appearing innocent to the average person may appear incriminating to a police officer, based on the officer's experience. *State v. Samsel*, 39 Wn. App. 564, 570, 694 P.2d 670 (1985).

In *Little*, police received a call reporting a group of juveniles loitering on the grounds of an apartment complex. When the officers arrived at the apartment, Little fled. The court determined that these circumstances created a reasonable suspicion that Little was involved in criminal activity and justified the officers' investigative detention. *Little*, 116 Wn.2d. at 496.

Similarly, in *State v. Glover*, 116 Wn.2d 509, 806 P.2d 760 (1991), police routinely patrolled the grounds of an apartment complex for trespassers and loiterers. During one such occasion, officers noticed Glover, who they believed was not a resident of the complex. Glover tried to evade the police by walking in the other direction; he kept looking back and fidgeting while walking away. *Id.* at 512. The court held that the officers had a reasonable suspicion of criminal activity justifying an investigatory detention, based on Glover's location and suspicious actions and the officers' knowledge of the complex's residents. *Id.* at 514.

An appellate court determines the appropriateness of a *Terry* stop based on the "totality of the circumstances." *State v. Snapp*, 174 Wn.2d 177, 198, 275 P.3d 289 (2012). The focus is on what the officer knew at the time of the stop. *State v. Lee*, 147 Wn. App. 912, 917, 199 P.3d 445 (2008). A court must base its evaluation of reasonable suspicion on "'commonsense judgments and inferences about human behavior.'" *Illinois v. Wardlow*, 528 U.S. 119, 125, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000).

Here, officers' received multiple 911 calls regarding a suspicious person potentially burglarizing residences and buildings in the area of the Finch Arboretum. Several residents who called 911 reported seeing the defendant with two large duffel bags. In addition, several residents followed the defendant and updated 911 with his ongoing suspicious activities. When

Officer Erickson initially observed Mr. Williams, he fit the description of the suspicious person described by the 911 callers. Officer Erickson also watched the defendant climb over a fence of one of the residences, and when the officer told the defendant to stop, the defendant ran from the officer and refused to stop. These facts were reasonable and articulable grounds for the *Terry* stop of the defendant. The defendant has not established any prejudice and this claim should be denied.

F. THE CITIZEN-INFORMANTS WHO CALLED 911 PROVIDED RELIABLE INFORMATION AND OBJECTIVE FACTS TO JUSTIFY THE OFFICERS' INVESTIGATIVE STOP AND DETENTION OF THE DEFENDANT

Neighborhood residents' tips to 911.

With respect to this claim, the defendant does not specify his claim of error other than a bald and conclusory allegation, and the defendant fails to establish any facts which, if proven, would entitle him to relief. RAP 16.7(a)(2)(i).

The officers had an independent basis for conducting a *Terry* stop of the defendant based on their personal observations of him and his flight from the officers after being ordered to stop. Additionally, neighborhood residents' numerous calls to 911 were contemporaneous with the suspicious activity and bore sufficient indicia of reliability to justify the stop.

If an officer bases his or her suspicion on an informant's tip, the tip must bear some "indicia of reliability under the totality of the

circumstances.” *State v. Z.U.E.*, 183 Wn.2d 610, 618, 352 P.3d 796 (2015).

To show some indicia of reliability, there must

either be (1) circumstances establishing the informant’s reliability or (2) some corroborative observation, usually by the officers, that shows either (a) the presence of criminal activity or (b) that the informer’s information was obtained in a reliable fashion. These corroborative observations do not need to be of particularly blatant criminal activity, but they must corroborate more than just innocuous facts, such as an individual’s appearance or clothing.

Z.U.E., 183 Wn.2d at 618-19 (internal citations omitted).

Here, multiple named citizens reported to 911 observing possible suspicious activity while it was in progress in their neighborhood, and, in particular, their backyards. “A citizen-witness’s credibility is enhanced when he or she purports to be an eyewitness to the events described.” *Lee*, 147 Wn. App. at 918; *State v. Vandover*, 63 Wn. App. 754, 759, 822 P.2d 784 (1992). Similarly, when a citizen informant provides information, a relaxed showing of reliability suffices “because there is less risk of the information being a rumor or irresponsible conjecture which may accompany anonymous informants and an identified informant’s report is less likely to be marred by self-interest.” *State v. Gaddy*, 152 Wn.2d 64, 72-73, 93 P.3d 872 (2004). Accordingly, “[c]itizen informants are deemed presumptively reliable.” *Id.* at 73.

As stated above, numerous named citizen-informants called 911, and reported their observations regarding possible criminal activity of an unknown individual in the backyards of residences, an individual who was carrying two large duffel bags and was climbing over residential fences. The citizens described the precise location, a description of the suspect, and provided a description of the suspicious activity indicating criminal activity, during a one hour time period in the same neighborhood.

Viewing the totality of the circumstances, such as the callers use of the 911 emergency system which allows for tracing of calls,¹⁶ the defendant fitting the description of the suspicious person who had been in the area for over one hour, the officers' arrival on scene as the defendant was climbing over a backyard fence and running from officers after he was told to stop all support the reliability of the neighborhood residents' 911 calls to police.

The defendant has not made a prima facie showing of a fundamental defect with regard to the neighborhood residents calling 911 calls reporting his suspicious behavior which has resulted in a complete miscarriage of justice. This assertion should be denied.

¹⁶ See *Navarette v. California*, — U.S. —, 134 S.Ct. 1683, 1689, 188 L.Ed.2d 680 (2014) (holding that use of the 911 emergency system provides further reliability of an informants tip because the system includes features that allows for tracing calls, “and thus provide[s] some safeguards against making false reports with immunity”).

G. SINCE FOURTH AMENDMENT RIGHTS ARE PERSONAL, THE DEFENDANT CANNOT ASSERT THESE RIGHTS ON BEHALF OF ANOTHER AND THE DEFENDANT DID NOT ESTABLISH A LEGITIMATE EXPECTATION IN THE PROPERTY HE STOLE.

Again, the defendant does not identify in his petition what he alleges as a “Fourth Amendment violation” nor does he state any facts on which his claim is based. However, during a pretrial hearing, the defendant remarked:

MR. WILLIAMS: Your Honor, the 3.6 is based pretty much on the fact that there was some property seized from Patricia Barnhouse’s residence of 1208 South F Street. The officer that obtained the property in her home with Officer Eriksen, he stated in his police report that he found a pair of shoes allegedly belong to go [sic.] me in a women’s yard near a retaining wall of her yard. The officer then stated that he jumped the fence and he went to locate the homeowner. He noticed several doors to the home was [sic.] ajar, and he found a couple bags within her storage area underneath her home.

And my argument is pretty much based on the fact that I feel like Mrs. Patricia Barnehouse’s 14th amendment constitutional right was violated, and in doing so it infringed upon me because the officers connected me to the shoes. The shoes were a pair 9 inch shoes, and your Honor I’m a 13, so these shoes were not my shoes. And I feel like based on that, the evidence should be suppressed. If the shoes don’t fit, you must acquit.

11/17/14 RP 33-34.

Thereafter, the State commented it would move to admit the pair of shoes found in a residential backyard on the theory that the shoes belonged to Mr. Macomber. RP 35-36.

The defendant then asserted:

MR. WILLIAMS: Yes, your Honor. I mean, that's pretty much irrelevant, whether -- what does the bag have to do with me if I wasn't in a woman's yard? Using the bag to -- they're connecting me to the bags because of the shoes. If the shoes don't fit, then obviously I was never there. That's a third party perpetrator. I read case law on that. So by them connecting me to the shoes, they're charging me with the bags. If the shoes don't fit me, obviously I wasn't in the lady's yard. And that's pretty much my argument. I want to go try these shoes on in front of the court.

RP 36-37.

Subsequently, the trial court orally ruled on the defendant's suppression motion stating:

THE COURT: All right. So this search is of an alleged victim's house. Mr. Williams does not have standing to assert anyone else's rights with regard to searching a premises except under very limited circumstances. I believe I sort of referred to those last week, and the first one is that you are charged with a possessory offense. Now, the offense is relating to this house or what was found in this house. These are the burglary, attempted burglary type of offenses, correct?

MR. TREPPIEDI: Correct, your Honor.

THE COURT: Those are not possessory offenses. The second prong is if you're actually in possession, at the time of your arrest, of something that came from that house. At any rate, neither of those apparently occurred in this matter. As a practical matter, the only one who could assert any issues with a warrantless search - there was no search warrant involved here - would be the homeowner. It was her house. I read the police reports, and apparently her front door and windows, they were all locked and there was no sign of any forced entry. But given the nature of all the complaint

and what the witnesses were saying, the officer apparently jumped over a fence and took a look at the backyard. That's where he found that there were some doors ajar and proceeded to investigate and found some items. If that was a warrantless search, the only person who could assert that would be Ms. Barnhouse could assert that concern. She's apparently not asserting that, I gather, so Mr. Williams just does not have the right to assert that.

The second thing is that the shoes themselves, as I understand it, are not going to be offered to show that they are Mr. Williams's shoes. They are going to be offered to show they were Mr. Macomber's shoes that were taken. So I'm not sure Mr. Williams trying on the shoes has any relevance whatsoever because they are not asserting they're Mr. Williams's shoes. They're asserting they were shoes taken in a separate burglary, somewhat distance away, but found in the yard. The fact they don't fit Mr. Williams is irrelevant because Mr. Macomber is going to say they are my shoes, so nobody is going to assert they were Mr. Williams's shoes.... Assuming Mr. Macomber identifies they are his shoes that are in somebody's yard and he did not put them there, that is relevant for the jury. How they got there, who had them, presumably Mr. Macomber cannot testify to that. His roll is very limited in what he can testify. "My shoes and I did not put them there." That is probably all he is going to say, would be my guess. As I say, nobody is going to assert that they are Mr. Williams's shoes so the suppression motion is denied.¹⁷

An appellate court reviews a trial court's legal conclusions de novo.

Acrey, 148 Wn.2d at 745. Warrantless searches may violate article I, section 7 of the Washington State constitution and the Fourth Amendment of the

¹⁷ No written findings of fact and conclusions of law were formally entered by the court. CrR 3.6.

federal constitution. *State v. Evans*, 159 Wn.2d 402, 407-08, 150 P.3d 105 (2007); *State v. Reynolds*, 144 Wn.2d 282, 287, 27 P.3d 200 (2001).

As a precondition to claiming an unconstitutional search, a defendant must demonstrate that he or she had a reasonable expectation of privacy in the item searched. *State v. Poling*, 128 Wn. App. 659, 667, 116 P.3d 1054 (2005). This involves a two-part test. *Evans*, 159 Wn.2d at 409. The defendant must show that (1) he or she had an “actual (subjective) expectation of privacy by seeking to preserve something as private” and (2) society recognizes that expectation as reasonable. *Id.* (quoting *State v. Kealey*, 80 Wn. App. 162, 168, 907 P.2d 319 (1995)).

In addition, Fourth Amendment rights are personal, and a defendant cannot not assert these rights on behalf of another. *State v. Goucher*, 124 Wn.2d 778, 787, 881 P.2d 210 (1994); *State v. Jones*, 68 Wn. App. 843, 847, 845 P.2d 1358 (1993). A defendant may challenge a search or seizure only if he or she has a personal Fourth Amendment privacy interest in the area searched or the property seized. *State v. Simpson*, 95 Wn.2d 170, 174-75, 622 P.2d 1199 (1980). Here, the defendant establishes neither.

H. THERE IS NO EVIDENCE THE STATE WITHHELD ANY EXCULPATORY INFORMATION FROM THE DEFENDANT.

The defendant does not identify what, if any, *Brady* material he believes was withheld at the time of trial, nor does he provide any specific

evidence of a *Brady* violation.¹⁸ More so, even if he could establish a *Brady* violation, he has not established how he was prejudiced.

An appellate court does not need to address arguments that are unsupported by meaningful analysis or authority. *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990) (court need not consider claims that are insufficiently argued); *State v. Marintorres*, 93 Wn. App. 442, 452, 696 P.2d 501 (1999) (noting that pro se appellants are held to the same standard as attorneys and refusing to consider pro se's conclusory and unsupported claims); *In re Smith*, 185 Wn. App. 1020, *review denied*, 183 Wn.2d 1008 (2015) (pro se litigants are held to the same standard as lawyers and must comply with all procedural rules on appeal). Accordingly, this claim has no merit.

I. THERE WAS NO SIXTH AMENDMENT VIOLATION AT THE TIME OF TRIAL, OR A FAILURE TO DISCLOSE AN INFORMANT'S IDENTITY, AND THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION FOR AN IN CAMERA HEARING.

The defendant does not identify or provide any evidence of a Sixth Amendment violation. The defendant also fails to provide any citations to

¹⁸ To establish a *Brady* violation, a defendant must show that (1) the evidence was favorable to him, (2) the State suppressed the evidence, and (3) he was prejudiced by the suppression of evidence. *State v. Davila*, 184 Wn.2d 55, 69, 357 P.3d 636 (2015).

legal authority or to the record supporting this claim. RAP 10.3(a)(6). “[P]assing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.” *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998).

With respect to his claim regarding failure to disclose the identity of a confidential informant, Judge O’Connor addressed this claim pretrial and determined it had no merit. 11/13/14 RP 6-7. There was no confidential informant relied on or involved in this case.

Moreover, the defendant has not specified or identified any prejudice entitling him to relief and this claim should be dismissed.

J. THE DEFENDANT’S CLAIM THAT HIS CONVICTIONS WERE BASED ON PERJURED TESTIMONY IS FRIVOLOUS AND HAS NO MERIT.

The defendant does not identify what “perjured” testimony was used, cite to the record for this assertion, or present *any* evidence of this claim. It has no merit and it should be denied.

K. THE STATE PRESENTED SUFFICIENT EVIDENCE SUPPORTING THE CONVICTION FOR ATTEMPTED SECOND DEGREE BURGLARY AT 3320 WEST WOODLAND.

As stated previously, the defendant has not made a specific claim in his petition and he has not any identified competent, admissible evidence to establish his claim.

To uphold his conviction for attempted second degree burglary, there must be sufficient evidence that Mr. Williams performed an act that was a substantial step toward entering or remaining unlawfully in a building with the intent to commit a crime against a person or property. RCW 9A.28.020; RCW 9A.52.030(1); *State v. West*, 18 Wn. App. 686, 690, 571 P.2d 237, *review denied*, 90 Wn.2d 1001 (1978). The State must prove both the substantial step and the intent to commit the principal crime. *State v. Bencivega*, 137 Wn.2d 703, 706-07, 974 P.2d 832 (1999). A substantial step is conduct that strongly indicates a criminal purpose and that is more than mere preparation. *State v. Aumick*, 126 Wn.2d 422, 427, 894 P.2d 1325 (1995). The jury may infer intent to commit attempted burglary from all the facts and circumstances. *Bencivega*, 137 Wn.2d at 709, 974 P.2d 832.

Attempting to pry open a door of a building has been held sufficient to support a charge of attempted burglary. *See Bencivenga, supra*, (defendant tried to pry open a locked store); *State v. Chacky*, 177 Wash. 694, 33 P.2d 111 (1934) (evidence that the defendant pried open a padlock of a store with a crowbar at midnight, and then fled from police, was sufficient to submit to the jury on the questions of intent and overt act); *State v. Berglund*, 65 Wn. App. 648, 829 P.2d 247 (1992) (defendant broke a window and tried to pull out more glass); *West*, 18 Wn. App. 686 (defendants were trying to pry open the back door of a store).

As discussed *supra*, Cody Frazier, who owned a rental house at 3320 West Woodland, observed that someone attempted to pry the hasp off the door to his backyard shed and it had fresh pry marks. The damage was not present before the date of the incident on May 6, 2015. The jury certainly could have reasonably inferred a substantial step was taken by the defendant when he attempted to open the door to the shed in an attempt to unlawfully gain access because he was in the area for over one hour committing similar acts on nearby properties. The evidence amply demonstrates a connection between the defendant, the crime, and his attempted access into the shed.

The defendant offers no argument or citation to the contrary. His claim has not established actual or substantial prejudice and this court should affirm this conviction.

L. THE DEFENDANT HAS FAILED TO ESTABLISH THAT THE AMENDMENT TO THE INFORMATION PREJUDICED HIM.

Shortly after the defendant was arraigned, the State received additional facts supporting the charge of second degree possession of stolen property as contained in count five of the amended information. The State did not initially charge the crime pending any potential plea negotiations

with the defense attorney. RP 40. As summarized by the deputy prosecutor at a pretrial hearing:

Once I received that information, I disclosed it over to defense counsel, Mr. Harget at the time, but stated that I would not file the charge in an effort to negotiate the case, but said if this case was called ready for trial, we would move forward with the motion. Subsequent to those conversations, Mr. Williams was granted his pro se status and the case was called ready for trial in front of Judge Sypolt. Originally, I believe on October 31st at the pretrial hearing, we did put on the record that we had this motion to amend and it has subsequently been filed. The information leading to that charge was provided in the original packet of discovery. Detective Snider confirmed, with Adam Macomber, that the property found inside one of the duffel bags, and including one of the duffel bags itself, was actually Mr. Macomber's. And it wasn't until a search warrant was conducted on that bag that that was all able to be verified. That information, including the search warrant, ...

RP 40-41.

On October 31, 2014, the deputy prosecutor advised the court and the defendant that the State intended on moving the court to amend the information to include one count of second degree possession of stolen property. 10/31/14 RP 27. On November 12, 2014, the State formally filed the motion with the court. 11/13/14 RP 5.

At the time of the motion, the defendant objected, although he agreed that he had the additional discovery for several weeks prior to the start of trial. RP 43-44.

Thereafter, the court permitted amendment of the information, and

ruled:

THE COURT: ... In looking at this case, it sounds like most of the evidence that is in count 5 is actually what was found in counts 1 or 2, or whichever one is the proper one for, is it count 1?

[DEPUTY PROSECUTOR]: Ms. Barnhouse...

THE COURT: Barnhouse is count 2. So it is the property that was found in count 2, correct?

[DEPUTY PROSECUTOR]: That's correct, your Honor.

THE COURT: That's basically what it is. It's all part of the same nexus. It is part of the same events that occurred. It is related to the burglary charge with respect to count 2. I am satisfied - the fact the state chooses not to file every single charge they could file is not unusual. Often it is a way to facilitate a plea bargain. However, not all cases go to plea, we have our share of trials. As a consequence, the normal course of business is that they will add this particular charge to the information. Again, it is all part and parcel of the same events that occurred on May 6th, 2014, it is relevant to that.

It has been in the discovery. Mr. Williams has had an opportunity to review the discovery. I am satisfied that indeed any prejudice, and there is always prejudice when you add a charge, but it is outweighed by a couple things. Number one, it has a specific relationship to this group of events -- or group of charges. Number two, judicial economy, that this matter should be tried with these other matters. And Mr. Williams has made it very clear that he does not want to waive his speedy trial rights. I respect that, that's his right. But to set this off separately makes no sense judiciously economically because it is part and parcel of all the other charges, it has a relationship to those charges. Mr. Williams's counsel was aware of it before he decided to

represent himself. And it has been in discovery all along. So I will allow the amendment.

RP 45-47.

CrR 2.1(d) allows an information “to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.”

The trial court’s ruling on a motion to amend an information is reviewed for an abuse of discretion. *State v. James*, 108 Wn.2d 483, 490, 739 P.2d 699 (1987). When reversal is sought because of a late amendment, the burden is on the accused to demonstrate “specific prejudice resulting from the information amendment.” *James*, 108 Wn.2d at 489; *State v. Brown*, 74 Wn.2d 799, 801, 447 P.2d 82 (1968); *State v. Murbach*, 68 Wn. App. 509, 511, 843 P.2d 551 (1993). The fact that a defendant does not move for a continuance after amendment of the information is “persuasive of a lack of surprise and prejudice.” *Brown*, 74 Wn.2d at 801; *State v. Gosser*, 33 Wn. App. 428, 435, 656 P.2d 514 (1982).

Here, the defendant was placed on notice several weeks before trial that the State intended to move the court to amend the information. At the time of motion, the court found that the defendant’s lawyer was on notice of the potential amendment early on in this case before the defendant moved to represent himself, and the additional charge merely incorporated evidence originally contained and charged in count two of the information.

In addition, the defendant did not request a continuance to prepare for the additional charge. He has not established any prejudice outside of his bare allegation in his petition which is not sufficient. This assertion should be denied.

M. THE DEFENDANT HAS NOT ESTABLISHED OR IDENTIFIED ANY PREJUDICE REGARDING HIS ASSERTION THAT THE JURY WAS BIASED AGAINST HIM.

The State and criminal defendants both have the right to trial before an impartial jury. Wash. Const. art. I, § 22; U.S. Const. amend. VI; *State v. Hughes*, 106 Wn.2d 176, 185, 721 P.2d 902 (1986). The jury must therefore be “free[] from ... bias against the accused and for the prosecution, but [also] free[] from ... bias for the accused and against the prosecution.” *Hughes*, 106 Wn.2d at 185. The guarantee of an impartial jury does not, however, entitle the State or a criminal defendant the right to trial by a “particular juror or by a particular jury.” *State v. Gentry*, 125 Wn.2d 570, 615, 888 P.2d 1105 (1995).

A person who merely holds preconceived ideas may nonetheless serve as a juror if that person can set aside those ideas and decide the case impartially. RCW 4.44.190; *State v. White*, 60 Wn.2d 551, 569, 374 P.2d 942 (1962). Moreover, a personal experience with the type of crime at issue in the case does not by itself establish actual bias. *Cheney v. Grunewald*, 55 Wn. App. 810, 780 P.2d 1332 (1989).

Here, the defendant has not and cannot show any prejudice arising from his assertion that several members of the jury panel were allegedly victims of a property crime as this, by itself, does not establish actual bias. This claim fails. *Id.*

V. CONCLUSION

For the reasons stated herein, this Court should affirm the defendant's convictions and dismiss the defendant's personal restraint petition.

Dated this 22 day of September, 2016.

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Prosecuting Attorney



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Attorney for Respondent

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

STATE OF WASHINGTON, Respondent, v. LELBERT LOUISE WILLIAMS, Appellant,	NO. 33832-1-III (Consol. w/33296-9 and 33840-1) CERTIFICATE OF MAILING
In re: Personal Restraint Petition of LELBERT LOUISE WILLIAMS, Petitioner,	

I certify under penalty of perjury under the laws of the State of Washington, that on September 22, 2016, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

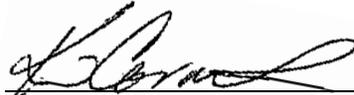
Laura M. Chuang and Kristina M. Nichols
Wa.appeals@gmail.com

And mailed a copy addressed to:

Lelbert Louise Williams, DOC #977983
Reynolds Work Release
410 4th Ave
Seattle, WA 98104

9/22/2016
(Date)

Spokane, WA
(Place)



(Signature)